

## **APPENDIX A CONTRACT BOILERPLATE**

This Agreement (“Agreement”) is made and effective as of July 1, 2022 (the “Effective Date”) between the Fund for Public Health in New York, Inc. (hereinafter “FPHNY”) a nonprofit corporation having its principal office located at 22 Cortlandt Street, 8<sup>th</sup> Floor, New York, New York 10007 and Name of Contractor (hereinafter “Contractor”), having its principal office located at 123 New Road Suite 312 Edison, NJ 08837-2429.

### **WHEREAS:**

- A. FPHNY is a nonprofit corporation that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and is formed for the purpose of soliciting, administering and receiving funds and using such funds to assist the Department of Health and Mental Hygiene (“DOHMH”) of the City of New York (the “City”) to fulfill its mission.
- B. Pursuant to an Agreement dated as of June 1, 2022 between the City acting by and through DOHMH and FPHNY (the “DOHMH Federally Funded Special Projects Contract”), FPHNY has agreed to provide to DOHMH services, on a requirements basis, in connection with disbursing federal funds from, but not limited to, Federal Emergency Management Agency (“FEMA”), United States Department of Housing and Urban Development (“HUD”), United States Department of Health & Human Services (“HHS”) to support equitable access to COVID-19 vaccines and vaccine information in neighborhoods that have been disproportionately impacted by COVID-19, systemic racism, and disinvestment (“the Project”).
- C. In furtherance of the purpose of the DOHMH Federally Funded Special Projects Contract and the Project, FPHNY requires certain assistance and services of the kind Contractor has offered and is able to furnish, in consideration of the compensation set out in this Agreement.

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

### **I. DESCRIPTION AND CONDUCT OF WORK**

- A. Services/Deliverables: Contractor shall provide services and complete deliverables in the manner and at the levels set forth in the Scope of Services annexed hereto and incorporated herein as Appendix A and consistent with and in adherence to the Schedule of Deliverables & Compensation annexed hereto and incorporated herein as Appendix B. Any due dates listed in Appendix A are subject to change at the discretion

of DOHMH.

- B. Standard of Care: Contractor shall deliver and provide all services and deliverables set forth in this Agreement ("Services") in accordance with generally accepted standards of professional quality and care existing or recognized during the term of this Agreement.
- C. Licensure and Professional Qualifications: Contractor shall ensure that all persons, consultants and staff performing Services pursuant to this Agreement are qualified to perform such Services and maintain any required New York State licenses and certifications throughout the term of this Agreement.
- D. Terms of the DOHMH Federally Funded Special Projects Contract: Contractor agrees that (i) the Services performed hereunder shall be in accordance with the terms of the DOHMH Federally Funded Special Projects Contract, (ii) nothing contained herein shall impair the rights of the City, (iii) nothing contained herein, or under the DOHMH Federally Funded Special Projects Contract shall create any contractual relation between Contractor and the City, and (iv) Contractor specifically agrees to be bound by Section 4.05 and Article 5 of Appendix A of the DOHMH Federally Funded Special Projects Contract, attached hereto and incorporated herein as Appendix D, and agrees that the City may enforce such provisions directly against Contractor as if the City were a party to this Agreement.
- E. Terms of the Uniform Federal Contract Provisions Rider & FEMA Rider. Contractor agrees that the Services performed hereunder shall be in accordance with the terms of the Uniform Federal Contract Provisions Rider, annexed hereto and incorporated herein as Appendix E, and the FEMA Rider, annexed hereto and incorporated herein as Appendix F, as applicable.
- F. No Publicity: Contractor shall not give any interviews, issue any press releases or otherwise disclose any information whatsoever about this project and this agreement without at least 48 hours prior written notice to FPHNY. Contractor will cause its officers, employees, consultants, agents and representatives to observe the requirements of the foregoing provision.
- G. No Exclusion: Contractor represents and warrants that neither Contractor nor Contractor's employees or permitted subcontractors who provide Services in connection with this Agreement have been excluded from participation in, or otherwise sanctioned by, Medicare, Medicaid or any other federal, state or local health care program, as applicable, and have not otherwise been barred from being a government contractor or subcontractor by any unit of the federal, state, or local government, and will promptly notify FPHNY if it or any such persons becomes so excluded or sanctioned during the term of this Agreement.

- H. Evaluation: Contractor shall cooperate fully with FPHNY and DOHMH regarding the evaluation of Services provided hereunder, and will advise and consult with employees and officials of FPHNY, DOHMH, and any designated Project evaluation agent.
- I. Inspections: FPHNY, DOHMH or their designated agents, shall have the right at any time, given reasonable notice, to inspect the site(s) where Services are performed, to inspect the materials and curricula (if any) used by Contractor in connection with the provision of Services under this Agreement, and to attend any and all trainings, drills, tests, and activities (if any) organized or sponsored by Contractor pursuant to this Agreement. Contractor shall render all assistance and cooperation to FPHNY, DOHMH, or their designated agents, in making such inspections and shall assure FPHNY, DOHMH, and their designated agents, ready access to such site(s), materials, curricula, trainings, drills, tests, and activities, and all medical, financial or other records and reports relating to Services provided hereunder.
- J. Investigations Clause: The parties to this Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental 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 this Agreement or the DOHMH Federally Funded Special Projects Contract. By signing this Agreement, the Contractor agrees to be fully bound by the "Investigations Clause" contained in the DOHMH Federally Funded Special Projects Contract, which is hereby made part of this Agreement and incorporated herein by reference, as if such Contractor were a party or any of the parties, persons or entities therein described.

## **II. TERM AND TERMINATION**

- A. Term: This Agreement shall commence on the Effective Date and shall continue in force until [x] (the "Expiration Date"), except as terminated sooner in accordance with the terms of this Agreement.
- B. Right of Termination: FPHNY shall have the right to terminate this Agreement, in whole or in part, before the Expiration Date, with or without cause and in FPHNY's sole discretion, provided that written notice of termination is given at least ten (10) days prior to the effective date of the proposed termination. Upon termination of this Agreement, Contractor shall immediately cease the provision of all Services and shall, within ten (10) days of FPHNY's request, return to FPHNY all FPHNY equipment, materials and supplies within the possession or control of Contractor as required by Section VI of this Agreement.
- C. Immediate Termination: In the event that, in FPHNY's opinion, Contractor demonstrates a clear intent not to fulfill the terms of this Agreement, FPHNY shall have the right to terminate this Agreement immediately, by written notice faxed, mailed or

delivered to Contractor. FPHNY shall also have the right to terminate this Agreement immediately, by written notice faxed, mailed, or delivered to Contractor, or if the DOHMH Federally Funded Special Projects Contract is terminated.

- D. Effect of Termination: In the event that this Agreement is terminated pursuant to paragraphs B or C of this Section II., Contractor shall not incur any further obligation pursuant to this Agreement beyond the termination date. Any obligation necessarily incurred by Contractor on account of this Agreement prior to receipt of notice of termination and falling due after termination shall be paid in accordance with the terms of this Agreement.
- E. Close-out Procedures: Upon the Expiration Date, or the sooner termination of this Agreement, Contractor shall comply with FPHNY's disclosed close-out procedures, including, but not limited to:
1. submitting within fifteen (15) days of the contract end date a final invoice for all services that have been completed under the contract terms and conditions;
  2. accounting for and refunding to FPHNY, within fifteen (15) days, any excess payments that have been made to the Contractor pursuant to this Agreement;
  3. furnishing to FPHNY, within fifteen (15) days, an inventory of all equipment, appurtenances and property purchased through this Agreement on behalf of FPHNY or DOHMH as provided for herein;
  4. turning over to FPHNY, upon request, within fifteen (15) days, all books, records, documents and material specifically relating to this Agreement; and
  5. confirming the completion of the processes set forth in 1 through 4 above.

### **III. CONSIDERATION AND PAYMENT**

- A. Total Compensation: The total maximum amount payable to Contractor under this Agreement shall not exceed \$99,600 in accordance with the Schedule of Deliverables & Compensation contained in Appendix B (the "Fee Schedule").

- B. Invoices: Contractor shall submit to DOHMH, no later than fifteen (15) days following the end of each month within the term of this Agreement, a detailed invoice (each, an “Invoice,” and together, “Invoices”) itemizing each deliverable completed and all costs incurred as part of Services rendered, as specified in the Fee Schedule. DOHMH’s fiscal year (the “Fiscal Year”) begins July 1 and ends June 30. All deliverables completed or costs incurred as part of Services rendered within the Fiscal Year must be invoiced within fifteen (15) days of the end of the Fiscal Year. The Invoices shall be in a form approved by FPHNY, and shall identify the type and quantity of each deliverable and the overall costs and fees claimed in accordance with the Fee Schedule. The Invoices shall be accompanied by supporting documentation providing proof of performance of Services as specified in Appendix A and Appendix B, and any other supporting documentation deemed necessary by FPHNY. FPHNY shall review the Invoices and supporting documentation as required, and may disallow for payment any costs or fees claimed which were for Services not rendered, documented and/or authorized in accordance with the terms of this Agreement, or for failure to deliver any required service, deliverable, or work product.
- C. Payments: FPHNY shall pay Contractor for costs and/or fees claimed on Invoices submitted to DOHMH in accordance with the Fee Schedule, provided that Contractor has submitted to FPHNY a duly executed Form W-9 and the requirements of paragraph B of this Section III. have been completed to the satisfaction of DOHMH and FPHNY.
- D. Subject to the Availability of Funds. This Agreement is subject to the availability of funds and all approvals required by DOHMH, HUD, HHS and/or FEMA. FPHNY shall notify Contractor, in writing, of any modification, payments, delays, or cancellations of said funds and shall modify the Agreement accordingly.
- E. Use of Payment(s); Certified Statement: Reimbursement or payments made under this Agreement shall be deposited within (90) days of the issuance of the check.
- F. No Duplicative Reimbursement: Contractor shall not seek nor be paid for services, deliverables or costs provided for under this Agreement if Contractor has received or is reasonably likely to receive payments for such services, deliverables or costs from another source, including, but not limited to client fees, private insurance, public donations, grants, legislative funding from units of government, or any other source.
- G. Erroneous Payments: Contractor shall immediately return to FPHNY any payments made to Contractor to which it is not entitled.
- H. Maintenance of Books and Records:
- a. Contractor shall maintain complete and accurate books and records supporting all payments made under this Agreement. Contractor shall keep such books and

records in accordance with generally accepted accounting principles. Such records may include but are not limited to bank statements, canceled checks, bills, receipts, employee time cards, requests for payment and deposit slips relating to all financial accounts and transactions. The expenditures and receipts shall be segregated on the books of Contractor.

- b. For six (6) years after the Expiration Date, or sooner termination of this Agreement, Contractor shall maintain copies of all financial and work reports, evaluation surveys and audits which reflect all Services rendered hereunder and fiscal accountability for all monies appropriated and spent thereby, all training and curricula materials (if any) prepared or compiled in connection with Services provided under this Agreement, and all attendance sheets and training rosters collected and prepared in connection with all trainings and activities (if any) held pursuant to this Agreement.
- c. Contractor shall make such books, financial documentation, records, reports, surveys, audits, materials, and other documents available at all reasonable times during the performance period of this Agreement and for six (6) years after the Expiration Date or sooner termination of this Agreement or, in the case of an ongoing audit that encompasses the Services provided under this Agreement by federal, state or local authorities, for six (6) years after completion of the audit, for inspection and/or audit by FPHNY, DOHMH, the City of New York, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives. FPHNY, DOHMH, the City or their agents, and other federal, state or local governmental agencies will determine the scope and protocol of all inspections and audits, based on a review of any materials they consider reasonably necessary, and Contractor shall assist and cooperate in relation to such inspections and audits.

#### **IV. CONFIDENTIALITY AND PRIVACY**

- A. General Compliance: Contractor shall comply with all federal, state, and local laws, rules and regulations (each, a “Law,” and together, the “Laws”) pertaining to confidentiality, privacy and security of information received, generated, used or held by Contractor in the course of its performance under this Agreement.
- B. Confidential Information: As used in this Agreement, “Confidential Information” shall mean information disclosed to, or known to, Contractor, in connection with the services to be provided pursuant to this Agreement, 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, systems 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 the Contractor in connection with this Agreement, terms and conditions of arrangements of any government system relating to secure information transfers, as well as reports, informational lists, which Contractor 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. 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.

Contractor agrees, at all times, to regard and preserve as confidential such Confidential Information, and to refrain from publishing or disclosing any part of such Confidential Information or from using it, except as provided pursuant to the terms and conditions of this Agreement, or with the express written consent of FPHNY or the person to whom such information pertains, or except as otherwise authorized by applicable Laws. Contractor shall require any person, including, but not limited to, all agents, employees or volunteers, performing Services on behalf of Contractor under this Agreement to do the same. In the event that Contractor receives a request to produce Confidential Information pursuant to an order of a court of competent jurisdiction or a facially valid administrative, Congressional, state or local legislative or other subpoena, or believes Contractor is otherwise required by law to disclose Confidential Information, then Contractor shall promptly notify FPHNY prior to making such disclosure, and shall afford FPHNY, or other owner of the Confidential Information, the opportunity to challenge or otherwise lawfully seek limits upon such disclosure of Confidential Information.

- C. City/DOHMH Information: All documents of any nature pertaining to the activities of the City and DOHMH that include any Confidential Information, in Contractor's possession now or at any time during DOHMH's evaluation of any services provided, or to be provided hereunder, including, without limitation, memoranda, notebooks, notes, data sheets, records, and DOHMH computers, software programs, are and shall be exclusively property of the City and that all copies thereof shall be surrendered to DOHMH, or its designee, upon such party's request.
- D. Patient Health Information: All medical or mental health information identifiable to a person received by Contractor in the course of its performance under this Agreement shall be kept confidential and shall not be used or disclosed except as permitted by an applicable law and, where permitted by law, such use or disclosure shall be undertaken in strict compliance with Contractor's policies regarding the use or disclosure of such information. Contractor represents and warrants that its policies regarding use and disclosure of patient information are compliant with all applicable state, federal, and

local laws, including, but not limited to, New York State Laws and the federal Health Insurance Portability and Accountability Act of 1996.

## **V. LITERATURE**

- A. Approvals: Contractor shall submit to DOHMH the final draft copy of each piece of written material, educational material, manual, survey, test, brochure, flyer, pamphlet, questionnaire, or video developed by it under this Agreement, as applicable, for review and approval prior to printing. DOHMH will respond in writing to Contractor within twenty (20) business days indicating approval or need for modification of the submitted material. Should this response indicate need for modification, specific written guidance will be given to Contractor. Contractor shall make the modifications as indicated by DOHMH, and resubmit the material for DOHMH's final approval. The format and content of educational programs (if any) will also be subject to the approval provision of this paragraph A.
- B. Copyright Ownership: All materials, publications, videos, curricula, reports, and other material produced under this Agreement ("Material") 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 Section 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might subsist. To the extent that the Material does not qualify as "work-made-for-hire," Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Material to the City, free and clear of any liens, claims or other encumbrances.
- C. Technology/Software Licensing: In the event that, for the provision of Services under this Agreement, Contractor requires the use of any technology, software or systems belonging to, or licensed to, FPHNY or the City, then such use is permitted only to the extent necessary for Contractor's performance under this Agreement, and only for so long as this Agreement is in force, and such permission shall immediately terminate on the expiration or sooner termination of this Agreement.

## **VI. EQUIPMENT**

- A. All equipment with a purchase price of \$5,000 or more, the cost of which is reimbursed in whole or in part from Agreement funds or which is provided by FPHNY to Contractor for use on the Project, shall be deemed to be property of the City of New York and shall be used as far as practicable by Contractor for the purpose of carrying out the intent of this Agreement and shall not be available for the general use of Contractor. Contractor shall properly maintain and keep in good repair all such equipment and shall maintain at all times a complete inventory of all such equipment, including a description of the item and a clear record of its location, serial number, date of purchase, and purchase price. Contractor shall submit a copy of said inventory to FPHNY promptly following a request by FPHNY. Upon termination of this Agreement, Contractor shall dispose of all such



equipment in the manner directed by FPHNY, and shall maintain detailed records concerning such disposition.

## **VII. DISPUTE RESOLUTION**

- A. Jurisdiction and Venue; Claims and Actions: (i) The parties agree that any and all claims asserted by or against the other 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, the Contractor shall be responsible for and shall promptly reimburse FPHNY for any attorneys' fees incurred by FPHNY in removing the action to a proper court consistent with this Section and (ii) No action shall be instituted or maintained on any such claim unless such action shall be commenced within six (6) months of the termination or expiration of this Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs.
- B. Injunctive Relief: Contractor acknowledges and agrees that, in the event of Contractor's breach of any part of Section IV. or Section V. hereof, money damages will be difficult to quantify and will not appropriately compensate FPHNY and/or the City for Contractor's breach, and, therefore, FPHNY and/or the City (as applicable) may seek to enjoin any breach of the provisions of Section IV. and Section V. hereof in any court of competent jurisdiction.
- C. Resolution of Disputes: Except as set forth in paragraph B of this Section VII., the parties will attempt in good faith to negotiate a resolution of any dispute arising out of or relating to this Agreement. If applicable, resolutions of disputes hereunder shall be subject to the terms of the DOHMH Federally Funded Special Projects Contract in respect of FPHNY's rights to resolve disputes with the City and/or DOHMH.

## **VIII. MISCELLANEOUS**

- A. Insurance: Contractor warrants and represents that it has, and will have continuously during the term of this Agreement, and that it shall require all subcontractors to obtain and maintain continuously during the term of this Agreement:
1. Commercial General Liability: insurance to provide coverage for bodily injury and property damage, including damage to any facilities, equipment or vehicles, in limits of no less than \$1,000,000 per occurrence \$3,000,000 aggregate, \$1,000,000 personal and advertising injury aggregate; written on an occurrence basis with coverage at least as broad as the most recently-issue version of ISO form CG 00 01, and no exclusions other than as required by law or approved in writing by DOHMH. Such insurance shall include the City of New York and FPHNY, including their

respective officials, and employees as additional insured, with coverage at least as broad as the most recently issued ISO form CG 20 26.

2. Professional Liability (Medical Malpractice): If Contractor is providing professional services, Contractor shall obtain professional liability insurance, in limits of no less than \$1,000,000 per occurrence and \$3,000,000 aggregate;
3. Employers Liability: maintain employer's liability as required by law. and
4. Workers' Compensation: workers' compensation and disability insurance as required by the applicable New York State law.
5. Commercial Auto: If Contractor uses any vehicles in the performance of services under this Agreement, Contractor shall obtain commercial auto coverage for all owned, non-owned, and hired vehicles, written on a form at least as broad as ISO form CA 00 01, with minimum limits of \$1,000,000 per accident.
6. Excess Umbrella Liability: in the event that contractor's insurance policy(s) does not meet the limits stated above.

Contractor shall maintain on file with FPHNY current Certificates of Insurance for the above referenced policies, listing FPHNY and the City as Additional Insureds for General Liability policies and as Certificate Holders for all other required insurance. All of the above policies shall provide for a waiver of subrogation in favor of the City of New York and FPHNY, including their respective officials and employees, and shall be primary and non-contributing to any insurance or self-insurance maintained by any of those parties. Contractor waives all claims against the City of New York and FPHNY, including their respective officials and employees, that would be covered under any policy of insurance required by this Agreement. Acceptance of a certificate of insurance or policy of insurance by FPHNY or the City of New York does not waive the requirements of this section. Contractor's insurance obligations are in addition to, separate from, its obligations to defend and indemnify the City of New York and FPHNY and their respective officials and employees as provided for elsewhere in this Agreement. The limits stated in this section are minimums; the amount available to the City and FPHNY and their respective officials and employees as additional insured, shall be the greater of such minimum limits or the maximum total insurance limits available to the Contractor under all primary and excess policies of insurance.

- B. Equal Employment Opportunity: This contract is subject to the requirements of Executive Order No. 50 (1980) of the Mayor of the City of New York as revised ("E.O. 50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and

until these requirements have been complied with in their entirety. 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, 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 City Department of Small Business Services, 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.
- g. 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 of DOHMH to impose any or all of the following sanctions:
  1. Disapproval of the Contractor; and/or
  2. Suspension or termination of this Agreement; and/or
  3. Declaring the Contractor in default; and/or
  4. In lieu of any of the foregoing sanctions, imposition of an employment program.
- h. Failure to comply with E.O. 50 and the rules and regulations promulgated thereunder in one or more instances may result in DOHMH declaring the Contractor to be non-responsible.

- C. COVID-19 Precautions & Vaccination Requirements: The Contractor shall comply with all New York City Executive Orders and Orders of the Commissioner of Health and Mental

Hygiene (“City Orders”) that apply to City contractors and subcontractors. The Contractor shall also be responsible for ensuring that the Contractor remains current with all such City Orders and requirements, which may be subject to change. For the avoidance of doubt, the Contractor by executing this Agreement is a subcontractor of a City human services contract. As of November 30, 2021, the Contractor shall comply, as applicable, with the following City Orders: i) New York City Executive Order 83 of 2021 regarding Amendment and Partial Repeal of Executive Order 78 with Respect to Requiring Vaccination or Testing for City Employees and Certain Contractors (amending New York City Executive Order 78 of 2021); ii) New York City Executive Order 79 of 2021 regarding Safety Practices of Public-Facing Contracted Personnel During the COVID-19 Crisis; and iii) the Order of the Commissioner of Health and Mental Hygiene to Require COVID-19 Vaccination for City Employees and Certain City Contractors, each annexed hereto and incorporated herein as Appendices G, H, and I, respectively.

- D. Whistleblower Protection Expansion Act. The Contractor shall comply with the provisions of the Whistleblower Protection Expansion Act, in accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code and outlined in the Whistleblower Protection Expansion Rider annexed to this Agreement as Appendix C.  
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- E. Conflict of Interest: 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 would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Contractor further represents and warrants that in the performance of this Agreement no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City of New York or DOHMH, 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 association in which he or she is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof.
- F. Independent Contractor Status: Contractor and FPHNY agree that Contractor is an independent contractor, and not an employee of FPHNY or the City, and that in accordance with such status as an independent contractor, Contractor covenants and agrees that neither it nor its employees nor its agents will hold themselves out as, nor claim to be, officers or employees of FPHNY or the City, or of any department, agency or unit thereof, by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of FPHNY or the City, including, but not limited to, workers’ compensation coverage, unemployment insurance benefits, social security coverage or employee benefits, retirement membership or credit.

- G. Employees of Contractor: Contractor represents and warrants that all experts or consultants or employees of Contractor who are employed or engaged by Contractor to perform Services under this Agreement will not be employees of FPHNY or the City and will not otherwise be under contract to FPHNY or the City. Contractor alone shall be responsible for the consultants' or employees' work, direction, compensation and personal conduct while engaged under this Agreement. Nothing in this Agreement shall impose any liability or duty on FPHNY or the City for the acts, omissions, liabilities or obligations of Contractor, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of Contractor, or for taxes of any nature, including, but not limited to, worker's compensation, unemployment insurance, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.
- H. Indemnification: Contractor shall be solely responsible for all injuries or death to its agents, servants, or employees, or to any other person, or damage to any property sustained in connection with the rendering of Services pursuant to this Agreement, resulting from any act or omission or commission or error in judgment of any of its officers, trustees, employees, agents, servants, or independent contractors. To the fullest extent allowable by law, Contractor shall indemnify, defend, and hold harmless FPHNY and the City, including their respective officials and employees from claims, (even if the allegations of the claims are without merit), judgments for damages on account of injuries or death to any person or damage to any property, and costs and expenses to which FPHNY, the City, or their respective officials and employees may suffer or incur allegedly arising out of any of the operations of the Contractor to the extent arising from any negligent act of commission or omission, intentional tortious act, and/or failure to comply with the law or with the requirements of this Agreement. Insofar as the facts or law relating to any of the foregoing would preclude FPHNY, the City or their respective officials or employees from being completely indemnified by the Contractor, FPHNY, the City, and their respective officials and employees shall be indemnified to the fullest extent permitted by law.
- I. Infringements: To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless FPHNY, the City of New York, and their respective 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 FPHNY or the City or their respective officials and 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 secret, trademark or patent or any 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 FPHNY, the City, and their respective 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 FPHNY, the City, or their respective officials and employees from being completely

indemnified by the Contractor, FPHNY, the City, and their respective officials and employees shall be partially indemnified by the Contractor to the fullest extent permitted by law.

- J. Prohibition on Assignment/Subcontract: This Agreement shall neither be assigned nor subcontracted by Contractor in whole or in part without the prior, express, written consent of FPHNY. Contractor shall not assign, transfer, convey or otherwise dispose of this Agreement or of Contractor's rights, obligations, duties, in whole or in part, or of its right to execute it, or its right, title or interest in it or any part thereof, or assign, by power of attorney or otherwise, any of the notices due or to become due under this Agreement, unless the prior, express, written consent of FPHNY shall be obtained. Any such assignment, transfer, conveyance or other disposition without such consent shall be void. This Agreement may be assigned by FPHNY to any corporation, agency or instrumentality having authority to accept such assignment without the consent of, or notice to, Contractor. In particular, but not limiting the foregoing, this Agreement may be assigned by FPHNY to the City at any time without the consent of, or notice to, Contractor.
- K. No Partnership, Agency, Association or Joint Venture: The parties agree that nothing contained herein shall create any partnership, agency, association, or joint venture relationship between the parties. Except as expressly provided in this Agreement, neither party shall have any right of authority to create any obligation or responsibility, express or implied, on behalf of or in the name of the other party, or to bind the other party contractually in any manner whatsoever.
- L. No Contractual Relationship: Contractor agrees that nothing contained herein shall create any contractual relationship between Contractor and the City. The City is hereby deemed to be the sole and exclusive third party beneficiary of this Agreement. Accordingly, this Agreement does not grant any third party beneficiary rights with respect to the City to individuals or entities involved in the provision of Services under this Agreement.
- M. Legal Compliance: Notwithstanding any other provision in this Agreement, Contractor remains responsible for ensuring that all Services provided pursuant to this Agreement comply with all pertinent provisions of federal, state and local law, and that all necessary approvals from federal, state and local governmental authorities have been obtained in order to perform the work provided for under this Agreement.
- N. 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, either in person or by certified mail, return receipt requested, and shall be effective upon delivery:

If to FPHNY: Fund for Public Health in New York, Inc.  
22 Cortlandt Street, 8<sup>th</sup> Floor  
New York, New York 10007-3160  
Attn.: Sara W. Gardner, M.P.H.  
Executive Director

If to Contractor: Name of Contractor.  
123 New Road Suite 312  
Edison, NY 08837-2429  
Attn.: Bob Jones  
VP, Client Solutions

- O. No Waiver: No delay or failure by any party to exercise any right under this Agreement, nor any partial exercise of any such right, shall constitute a waiver of such right or any other right. The waiver by any party of the breach of any terms and conditions of, or any right under, this Agreement shall not be deemed to constitute the waiver of any other breach of the same or any other term or condition or of any similar right. No waiver shall be binding or effective unless expressed in writing and signed by an authorized representative of the party giving such waiver.
- P. Conflict of Laws: This Agreement and all disputes arising out of this Agreement shall be interpreted and decided in accordance with the laws of the State of New York, without regard to conflict of law rules.
- Q. All Legal Provisions Deemed Included: It is the intent and understanding of the parties to this Agreement that each and every provision of Law required to be inserted in this Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the Law or Laws and without prejudice to the rights of either party hereunder.
- R. Other Provisions Deemed Included: It is the intent and understanding of the parties to this Agreement that, to the extent that FPHNY's subcontractors are bound by or obligated under the terms and conditions of grants from and contracts with the federal government or other funders, then each and every such obligation shall be and is inserted herein and imputed to Contractor, which shall comply with such terms and conditions as a subcontractor of FPHNY.

- S. Order of Precedence. The Parties agree to and incorporate as though set forth fully herein the appendices attached to this Agreement. During the term of this Agreement, any conflicts between the Agreement or any appendices shall be resolved in the following order of precedence:
- a. Uniform Federal Contract Provisions Rider
  - b. FEMA Rider;
  - c. This Agreement;
  - d. Section 4.05 and Article 5 of Appendix A of the DOHMH Federally Funded Special Projects Contract
  - e. Whistleblower Protection Expansion Act Rider
  - f. Scope of Work;
  - g. Schedule of Deliverables & Compensation
- T. Severability: If this Agreement contains any unlawful provision which is not an essential part of this Agreement and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from this Agreement without affecting the binding force of the remainder.
- U. Counterparts: This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute but one and the same instrument. This Agreement will become effective when duly executed by both parties.
- V. Entire Agreement and Amendments: This Agreement, including all exhibits and attachments hereto, constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior negotiations, writings, agreements and understanding between the parties, whether oral or written. No amendment or modification of this Agreement shall be binding or effective unless expressed in writing and signed by an authorized representative of each party.
- W. Survival: Notwithstanding any other provision of this Agreement, the following Sections shall survive termination of this Agreement: Sections II.D, II.F, III.D, III.E, III.F, III.G, IV., V.B, VI., VII., and VIII.

#### **ATTACHMENTS:**

**Appendix A: Scope of Services**

**Appendix B: Schedule of Deliverables & Compensation**



- Appendix C: Whistleblower Protection Expansion Act Rider**
- Appendix D: Section 4.05 and Article 5 of Appendix A of the DOHMH FEMA Funds  
Emergency Contract**
- Appendix E: Uniform Federal Contract Provisions Rider**
- Appendix F: FEMA Rider**
- Appendix G: Executive Order 79**
- Appendix H: Executive Order 78 and 83**
- Appendix I: Order of the Commissioner of Health and Mental Hygiene to Require  
Covid-19 Vaccination for City Employees and Certain City Contractors**

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

**FUND FOR PUBLIC HEALTH IN NEW YORK, INC**

By:

\_\_\_\_\_  
Name: Sara W. Gardner, M.P.H.

Title: Executive Director

**NAME OF CONTRACTOR**

By:

\_\_\_\_\_  
Name:

Title:

## **Appendix A**

### Scope of Services

## **Appendix B**

### **Schedule of Deliverables and Compensation**

DOHMH reserves the right to review and approve any and all deliverables submitted by Contractor under this Agreement. As such, a deliverable will not be deemed completed without such DOHMH approval in writing. Payment will not be made on any deliverable until it is both completed and approved.

## **Appendix C**

### **WHISTLEBLOWER PROTECTION EXPANSION ACT RIDER**

1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,

- (a) 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 Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) 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 subparagraph (a) of paragraph 1 of this rider, 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.
- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
  - (i) 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 Contract; and
  - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 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 Contract.

For the purposes of this rider, “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.

## **Appendix D**

### **Section 4.05 and Article 5 of Appendix A of the DOHMH Federally Funded Special Projects Contract**

#### **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;

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,



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

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.

## **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 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 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.

1. 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.

2. 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.

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 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.

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.

## Appendix E:

### UNIFORM FEDERAL CONTRACT PROVISIONS RIDER FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS

(Version 01.20.2021)

***[Instructions to Agencies: This Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts ("Rider") must be attached to all federally funded procurement contracts (of any dollar amount) that are subject to 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). This Rider does not apply to subrecipient or subaward agreements. Procurement contracts funded by HUD's CDBG Program, CDBG-DR Program, or by FEMA must also include the program-specific rider.]***

**A. Definitions.** As used in this Rider:

- (1) "Awarding Entity" means the entity awarding the Contract. The Awarding Entity may be the City or a contractor at any tier.
- (2) "City" means the City of New York.
- (3) "Commissioner" means the head of the City agency entering into this Contract.
- (4) "Construction" means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.
- (5) "Contract" refers to the contract or the agreement between the Awarding Entity and the Contractor.
- (6) "Contractor" means the entity performing the services pursuant to a Contract.
- (7) "Federal Agency" means the U.S. agency or agencies funding this Contract in whole or in part.
- (8) "Government" means the U.S. government.

(9) "Rider" means this Uniform Federal Contract Provisions Rider.

**B.** *Termination and Remedies for Breach of Contract.* The following provisions concerning remedies for breach of contract and termination apply to Contracts between the City and the City's Contractor.

(1) **Remedies for Breach of Contract.** If the Contractor violates or breaches the Contract, the City may avail itself of any or all of the remedies provided for elsewhere in this Contract. If there are no remedies provided for elsewhere in this Contract, the City may avail itself of any or all of the following remedies.

After declaring the Contractor in default pursuant to the procedures in paragraph (a) of subdivision (2) of this section (B) below, the City may (i) withhold payment for unsatisfactory services, (ii) suspend or terminate the Contract in whole or in part; and/or (iii) have the services under this Contract completed by such means and in such manner, by contract procured with or without competition, or otherwise, as the City may deem advisable in accordance with all applicable Contract provisions and law. After completion of the services under this Contract, the City shall certify the expense incurred in such completion, which shall include the cost of procuring that contract. Should the expense of such completion, as certified by the City, exceed the total sum which would have been payable under the Contract 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 City may be charged against and deducted out of monies earned by the Contractor.

(2) **Termination.** The City shall have the right to terminate the Contract in whole or in part for cause, for convenience, due to force majeure, or due to reductions in federal funding. If the Contract does not include termination provisions elsewhere, the following termination provisions apply:

a. **Termination for Cause.** The City shall have the right to terminate the Contract, in whole or in part, for cause upon a determination that the Contractor is in default of the Contract. Unless a shorter time is determined by the City to be necessary, the City shall effect termination according to the following procedure:

i. *Notice to Cure.* The City shall give 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 (10) 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 Contract pending the outcome of the default proceedings pursuant to this section.

- ii. *Opportunity to be Heard.* 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. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Contractor must be given an opportunity to be heard upon not less than five (5) 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.
- iii. *Notice of Termination.* After an opportunity to be heard, the Commissioner may terminate the Contract, in whole or in part, upon finding the Contractor in default. The Commissioner shall give the Contractor written notice of such termination ("Notice of Termination"), specifying the applicable provision(s) under which the Contract is terminated and the effective date of termination. If no date is specified in the Notice of Termination, the termination shall be effective either 10 calendar days from the date the notice is personally delivered or 15 calendar days from the date Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope.

iv. *Grounds for Default.* 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 Contract, 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 Contract when and as directed by the Commissioner;

4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Contract 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.

5. If the Contractor or any of its officers, directors, partners, five percent (5%) 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 (5%) 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.

v. *Basis of Settlement.* The City shall not incur or pay any further obligation pursuant to this Contract beyond the termination date set by the

City in its Notice of Termination. The City shall pay for satisfactory services provided in accordance with this Contract prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract 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 Contract. 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.

- b. **Termination for Convenience.** The City shall have the right to terminate the Contract for convenience, by providing written notice ("Notice of Termination") according to the following procedure. The Notice of Termination shall specify the applicable provision(s) under which the Contract is terminated and the effective date of termination, which shall be not less than 10 calendar days from the date the notice is personally delivered or 15 days from the date the Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. The basis of settlement shall be as provided for in subparagraph (v) of paragraph (a) of subdivision (2) of this section (B), above.

- c. **Termination due to Force Majeure**

- i. For purposes of this Contract, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Force Majeure 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.
- ii. In the event the Contractor cannot comply with the terms of the Contract (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 Contract. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Contract because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Contract. Such a termination shall be deemed to be without cause.

- iii. If the City terminates the Contract due to a Force Majeure Event, the basis of settlement shall be as provided for in subparagraph (v) of paragraph (a) of subdivision (2) of this section (B), above.

**d. Termination due to Reductions in Federal Funding**

- i. This Contract is funded in whole or in part by funds secured from the Federal government. Should the Federal government reduce or discontinue such funds, the City shall have, in its sole discretion, the right to terminate this Contract in whole or in part, or to reduce the funding and/or level of services of this Contract caused by such action by the Federal government, 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 Contract and in the total amount payable under this Contract. Any reduction in funds pursuant to this paragraph shall be accompanied by an appropriate reduction in the services performed under this Contract.
- ii. In the case of the reduction option referred to in subparagraph (i), 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 calendar days from the date of such notice. Prior to sending such notice of reduction, the City shall advise the Contractor that such option is being exercised and afford



the Contractor an opportunity to make within seven calendar 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 City shall not be bound to utilize any of the Contractor's suggestions and that the City shall have sole discretion as to how to effectuate the reductions.

- iii. If the City reduces funding pursuant to this paragraph (d), the basis of settlement shall be as provided for in subparagraph (v) of paragraph (a) of subdivision (2) of this section (B), above.

C. **Standard Provisions.** The Contractor shall comply with, include in its subcontracts, and cause its subcontractors to comply with the following provisions, as applicable:

- (1) *Reporting.* Contractor shall be required to produce and deliver such reports relating to the services performed under the Contract as may be required by the Awarding Entity, City or any other State or Federal governmental agency with jurisdiction.
- (2) *Non-Discrimination.* Contractor shall not violate any Federal, State, or City law prohibiting discrimination concerning employment, the provision of services, and, if applicable, housing, funded by this Contract.
- (3) *Environmental Protection.* If the Contract is in excess of \$150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. § 7401-7671q), Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA). The Contractor shall include this provision in all subcontracts.
- (4) *Energy Efficiency.* The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).
- (5) *Debarment.* The Contractor certifies that neither it nor its principals or affiliates are currently in a state of debarment, suspension, exclusion, disqualification, or other ineligible status as a result of prior performance, failure, fraud, or violation of City or New York State laws. The Contractor further certifies that neither it nor its principals or affiliates are debarred, suspended, excluded, disqualified, or otherwise ineligible for participation in Federal assistance programs. The City reserves the right to terminate this Contract if knowledge of debarment,

suspension, exclusion, disqualification or other ineligibility has been withheld by the Contractor.

(6) *Lobbying*. The Contractor certifies, to the best of its knowledge and belief, that:

- (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement;
- (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (which is available on the HUD website or here: <https://www.hudexchange.info/resources/documents/HUD-Form-Sflll.pdf>) in accordance with its instructions; and
- (c) It will require that the language of this Section (C)(6) be included in the award documents for all subcontracts at all tiers.
- (d) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

(7) *Solid Waste Disposal Act*. Pursuant to 2 CFR § 200.323, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

(8) *Prohibition on certain telecommunications and video surveillance services or equipment.*

(a) The Contractor is prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to

procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) The Contractor's attention is directed to Public Law 115-232, section 889 for additional information.

(d) The Contractor's attention is directed to § 200.471.

*(9) Domestic preferences for procurements.*

(a) As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

(10) *Documentation of Costs.* All costs shall be supported by properly executed payrolls, time records, invoices, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and regularly accessible.

(11) *Records Retention.* The Contractor shall retain all books, documents, papers, and records relating to the services performed under the Contract in accordance with 2 C.F.R. §200.334.

(12) *Records Access.* The Contractor shall grant access to the City, State or any other pass-through entity, the Federal Agency, Inspectors General, and/or the

Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and/or records of the Contractor that are pertinent to the Contract for the purpose of making audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.

(13) *Small Firms, M/WBE Firms, and Labor Surplus Area Firms.* Contractor shall take the following affirmative steps in the letting of subcontracts, if subcontracts are to be let, in order to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible:

- a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
- e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

(14) *Intangible Property.*

- a. Pursuant to 2 CFR § 200.315, the Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a)

the copyright in any work developed under the Contract or subcontract; and (b) any rights of copyright to which a Contractor purchases ownership with grant support.

- b. Any reports, documents, data, photographs, deliverables, and/or other materials produced pursuant to the Contract ("Copyrightable Materials"), and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to the contract, shall upon their creation become the exclusive property of the City. The 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 Contract without the prior written permission of the City. The City may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the City 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.
- 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 Contract, copies of which shall be provided to the City upon execution of this Contract.

- e. The Contractor shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Contract and the Contractor shall promptly and fully report to the 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.
- 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.

**D. Special Provisions for Construction Contracts.** If this Contract involves Construction work, design for Construction, or Construction services, all such work or services performed by the Contractor and its subcontractors shall be subject to the following requirements in addition to those set forth above in paragraphs (A), (B), and (C):

(1) *Federal Labor Standards.* The Contractor will comply with the following:

- a. The Davis-Bacon Act (40 U.S.C. §§ 3141-3148): If required by the federal program legislation, in Construction contracts involving an excess of \$2000, and subject to any other federal program limitations, all laborers and mechanics must be paid at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the City. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found

in 29 CFR Parts 1, 3, 5 and 7 which enforce statutory labor standards provisions.

- b. If required by the federal program legislation and subject to any other federal program limitations, Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701-3708), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits, under any Construction contract costing in excess of \$2000. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages.

c. Copeland Anti-Kickback Act: If required by the federal program legislation and subject to any other federal program limitations: (i) the Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Contract; (ii) The Contractor or subcontractor shall insert in any subcontracts the language contained in (i) of this subsection and also a clause requiring the subcontractors to include the language in subsection (i) in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor of this subsection; and (iii) A breach of this subsection may be grounds for termination of the Contract, and for debarment as a contractor or subcontractor as provided in 29 C.F.R. § 5.12.

d. If this Contract involves Construction work, design for Construction, or Construction services, a more complete detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2. If there is a conflict between the provisions of this Article D and FEDERAL EXHIBIT 2, the stricter standard shall be controlling.



- (2) *Equal Employment Opportunity*. Executive Order 11246, as amended, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for Construction contracts or subcontracts in excess of \$10,000. The Contractor shall include the notice found at FEDERAL EXHIBIT I in all Construction subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term “Construction Work” means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction .

**Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of \$10,000.**

1. As used in these specifications:
  - a. “Covered area” means the geographical area described in the solicitation from which this Contract resulted;
  - b. “Director” means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - c. “Employer identification number” means the Federal Social Security number used on the Employer’s Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. “Minority” includes:
    - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
    - (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female

participation and which is set forth in the solicitations from which this Contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction Contractors performing Construction Work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 as amended, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each Construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company

newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

- (3) **Equal Opportunity Clause** (for contracts for Construction Work) required by 41 CFR § 60-1.4(b).

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or

federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, 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 the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

**E. Rights to Inventions. [Special Provisions For Contracts Involving Experimental, Developmental, or Research Work.]**

(1) If this Contract involves the performance of experimental, developmental, or research work by the Contractor or its subcontractors, and the entity performing such work is a Nonprofit Organization or Small Business Firm as defined below, the following provisions apply in addition to those set forth above in paragraphs (a), (b) and (c), unless the Contract specifically states that this provision is superseded:

*a. Definitions.* The following definitions apply to this section (D).

- i. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. § 2321 *et seq.*).
- ii. "Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act,



7 U.S.C. 2401(d)) must also occur during the period of Contract performance.

- iii. "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
- iv. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- v. "Small Business Firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
- vi. "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- vii. "Statutory period" means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b), as amended by the Leahy-Smith America Invents Act, Public Law 112-29.

- viii. The “contractor” means any person, small business firm or nonprofit organization, or as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.
- b. *Allocation of Principal Rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.
- c. *Invention Disclosure ,Election of Title and Filing of Patent Application by Contractor.*
  - i. The Contractor will disclose each subject invention to the City and the Federal Agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. Such disclosure shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after such disclosure, the Contractor will promptly notify the City and the Federal Agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

- ii. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the City and the Federal Agency within two years of disclosure to the City and the Federal Agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Federal Agency to a date that is no more than 60 days prior to the end of the statutory period.
- iii. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the Contractor files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The Contractor will file patent applications in additional countries or international patent offices within earlier ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent applications where such filing has been prohibited by a Secrecy Order.
- iv. For any subject invention with Federal agency and contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the contractor, may file such application at its own expense, provided that the contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).

- v. Requests for extension of the time for disclosure, election, and filing under paragraphs (i), (ii), and (iii) of this clause may, at the discretion of the Federal agency, be granted. When a contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the contractor within 60 days of receiving the request.

*d. Conditions When the Government May Obtain Title*

The Contractor will convey to the Federal Agency, upon written request, title to any subject invention --

- i. If the Contractor fails to disclose or elect title to the subject invention within the times specified in (c) of this clause, or elects not to retain title., .
  - ii. In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in (c) of this clause, but prior to its receipt of the written request of the Federal Agency, the Contractor shall continue to retain title in that country.
  - iii. In any country in which the Contractor decides not to continue the prosecution of any non-provisional patent application for, to pay a maintenance annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.
- e. Minimum Rights to Contractor and Protection of the Contractor Right to File
- i. The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject

invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the Contract was awarded. The license is transferable only with the approval of the Federal Agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.

- ii. The Contractor's domestic license may be revoked or modified by the funding Federal Agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal Agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- iii. Before revocation or modification of the license, the funding Federal Agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal Agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404

and Federal Agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

f. Contractor Action to Protect the Government's Interest

- i. The Contractor agrees to execute or to have executed and promptly deliver to the Federal Agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal Agency when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.
- ii. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c), of this clause, to assign to the Contractor the entire right, title and interest in and to each subject invention made under Contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

- iii. For each subject invention, the contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter partes review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a pre-issuance submission, a post-issuance submission, and supplemental examination..
- iv. The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the contract) awarded by (identify the Federal Agency). The government has certain rights in the invention."

g. Subcontracts

- i. The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

- ii. The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by 2 CFR § 200.315(c) and Appendix II to 2 CFR Part 200.
  - iii. In the case of subcontracts, at any tier, when the prime award with the Federal Agency was a contract (but not a grant or cooperative agreement), the Agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal Agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.
- h. *Reporting on Utilization of Subject Inventions.* The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Federal Agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Federal Agency in connection with any march-in proceeding undertaken by the Federal Agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. § 202(c)(5), the Federal Agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.
- i. *Preference for United States Industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be



manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal Agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

j. *March-in Rights.* The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal Agency has the right in accordance with the procedures in 37 CFR § 401.6 and any supplemental regulations of the Federal Agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal Agency has the right to grant such a license itself if the Federal Agency determines that:

- i. Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
- ii. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;
- iii. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or
- iv. Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject

invention in the United States is in breach of such agreement.

k. *Special Provisions for Contracts with Nonprofit Organizations.* If the Contractor is a nonprofit organization, it agrees that:

- i. Rights to a subject invention in the United States may not be assigned without the approval of the Federal Agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
- ii. The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Federal Agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. § 202(e) and 37 CFR § 401.10;
- iii. The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- iv. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are Small Business Firms and that it will give a preference to a Small Business Firm when licensing a subject invention if the Contractor determines that the Small Business Firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not Small Business Firms; provided, that the Contractor is also satisfied that the Small Business Firm has the capability and resources to carry out its plan or proposal. The decision

whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Federal Agency may review the Contractor's licensing program and decisions regarding Small Business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal Agency when the Federal Agency's review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(iv). In accordance with 37 CFR 401.7, the Federal agency or the contractor may request that the Secretary review the contractor's licensing program and decisions regarding small business applicants.

- I. *Communication.* The central point of contact at the Federal Agency for communications on matters relating to this clause may be obtained from the City upon request.

**NOTICE TO BIDDERS**

**NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL CONSTRUCTION CONTRACTS AND SUB-CONTRACTS IN EXCESS OF \$10,000.**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

**Goals and Timetables for Minorities**

<u>Trade</u>	<u>Goal</u> <u>(percent)</u>		
Electricians . . . . .	9.0	to	10.2
Carpenters . . . . .	27.6	to	32.0
Steamfitters . . . . .	12.2	to	13.5
Metal Lathers . . . . .	24.6	to	25.6
Painters . . . . .	28.6	to	26.0
Operating Engineers . . . . .	25.6	to	26.0
Plumbers . . . . .	12.0	to	14.5

Iron Workers (structural) . . . . .	25.9	to	32.0
Elevator Constructors . . . . .	5.5	to	6.5
Bricklayers . . . . .	13.4	to	15.5
Asbestos Workers . . . . .	22.8	to	28.0
Roofers . . . . .	6.3	to	7.5
Iron Workers (ornamental) . . . . .	22.4	to	23.0
Cement Masons . . . . .	23.0	to	27.0
Glazers . . . . .	16.0	to	20.0
Plasterers . . . . .	15.8	to	18.0
Teamsters . . . . .	22.0	to	22.5
Boilermakers . . . . .	13.0	to	15.5
All Other . . . . .	16.4	to	17.5

#### Goals and Timetables for Women

From April 1, 1980 until the present . . . . .	6.9
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These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved Construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any Construction subcontract in excess of \$10,000 at any tier for Construction Work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.

4. As used in this Contract, the “covered area” is the City of New York.

## **Appendix F**

### **FEDERAL EMERGENCY MANAGEMENT AGENCY (“FEMA”) RIDER**

**(1/20/2021)**

**For use with contracts funded by the FEMA Grant and Cooperative Agreement Programs,  
including the Public Assistance Program**

(This Rider should not be used with contracts funded by the following FEMA Programs: Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. This Rider should be accompanied by the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.)

1. Suspension and Debarment. Section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is supplemented with the following provisions:
  - (a) This contract is a covered transaction for purposes of 2 C.F.R. Parts 180 and 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). By entering into this contract, the Contractor certifies that it is in compliance with 2 C.F.R. Parts 180 and 3000.
  - (b) The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C during the term of this contract and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
  - (c) The certification in paragraph (a), above, and section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is a material representation of fact relied upon by the City of New York. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of New York and, if applicable, the State of New York, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

2. Davis-Bacon Act. For the purposes of Section D(1)(a) of the Uniform Federal Contract Provisions Rider, compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148) is not required of the Contractor pursuant to FEMA regulations. However, if this Contract is funded by another federal funding source (e.g., the U.S. Department of Housing and Urban Development CDBG or CDBG-DR programs), compliance with the Davis-Bacon Act is required to the extent required by law and as set forth in the contract documents.
3. Rights to Inventions Made Under a Contract or Agreement. Section E of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts does not apply to the following FEMA Programs: Public Assistance Program, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program.
4. Copeland “Anti-Kickback” Act. The Contractor shall comply with provisions of the Copeland “Anti-Kickback” Act (18 U.S.C. § 874) as delineated in the Uniform Federal Contract Provisions Rider, FEMA Exhibit 2, Section (A).
5. Contract Work Hours and Safety Standards Act. The Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act as delineated in the Uniform Federal Contract Provisions Rider, FEMA Exhibit 2, Section (B).
6. Access to Records.
  - (a) The Contractor agrees to provide the City of New York, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.
  - (b) The Contractor agrees to permit any of the foregoing parties to reproduce said documents by any means or to copy excerpts and transcriptions as reasonably needed.
  - (c) The Contractor agrees to provide the FEMA Administrator or his/her authorized representative access to construction or other work sites pertaining to the work being completed under the contract.
  - (d) In compliance with the Disaster Recovery Act of 2018, the City of New York and the Contractor acknowledge and agree that no language in this



contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

7. Logos. The Contractor shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
8. Compliance with Law. The Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
9. Federal Government not a Party. The Contractor acknowledges and understands that the Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the City, Contractor or any other party pertaining to any matter resulting from the contract.
10. False Claims. The Contractor acknowledges that 31 U.S.C. Chap. 38 applies to the Contractor's actions pertaining to this contract.



THE CITY OF NEW YORK

OFFICE OF THE MAYOR

NEW YORK, N.Y. 10007

## EXECUTIVE ORDER NO. 79

September 10, 2021

### SAFETY PRACTICES OF PUBLIC-FACING CONTRACTED PERSONNEL DURING THE COVID-19 CRISIS

WHEREAS, the City's efforts to mitigate the spread of COVID-19 are critical to the health and well-being of City workers and residents and other persons with whom they interact in the provision of services; and

WHEREAS, wearing a face covering that covers the person's mouth and nose is a highly effective measure for reducing the spread of COVID-19; and

WHEREAS, the U.S. Centers for Disease Control ("CDC") reports that new variants of COVID-19, identified as "variants of concern," have emerged in the United States, and some of these new variants, which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible than earlier variants; and

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

WHEREAS, the recent appearance in the City of the highly transmissible Delta variant of COVID-19 has substantially increased the risk of infection for the City's workforce; and

WHEREAS , many employees of City contractors hold positions in which they come into contact with other people in the course of their work for the City, and are thus in a position to transmit or contract COVID-19 while they are at work ; and

WHEREAS , it is essential that the City promote the best health and safety practices recognized in light of current scientific understanding of the conditions under which COVID-19 can spread ;

NOW , THEREFORE , by the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. Executive Order No. 74, dated July 31 , 2021, and Executive Order No. 77, dated August 25, 2021 , shall be superseded by this Order, effective September 13, 2021 .

§ 2. Definitions. For the purposes of this Order, the following terms have the following meanings:

Contract. The term "contract" means a contract awarded by the City, and any subcontract under such a contract, for work (i) to be performed within the City of New York; and (ii) where employees can be expected to physically interact with City employees or members of the public in the course of performing work under the contract.

Covered Employee. The term "covered employee" means a person (i) employed by a contractor or subcontractor holding a contract; (ii) whose salary is paid in whole or in part from funds provided under a City contract ; and (iii) who performs any part of the work under the contract within the City of New York. However, a person whose work under the contract does not include physical interaction with City employees or members of the public shall not be deemed to be a covered employee.

Full vaccination. The term "full vaccination " means at least two weeks have passed after a person received a single-dose of an FDA- or WHO- approved one dose COVID-19 vaccine or the second dose of an FDA- or WHO- approved two-dose COVID-19 vaccine.

Shared indoor workspace. The term "shared indoor workspace" means a communal or open office setting in which individuals cannot be separated by a closed door.



§ 3. Requirement. Effective September 13, 2021 , all City agencies must take all necessary actions to ensure that their contractors :

- a. Require all covered employees, including those who are fully vaccinated against COVID- 19, to

wear a face covering when (i) interacting with members of the public ; or (ii) present in a pre-kindergarten to twelfth grade school, public transit facility , homeless shelter, correctional facility , nursing home, or health care setting; or (iii) in a shared indoor workspace .

- b. Require all covered employees conducting City business outside, including those who are fully vaccinated against COVID-19 , to wear a face covering when interacting with members of the public .
- c. Authorize covered employees to remove their face covering in the workplace (indoors or outdoors) only when:
  - i. They are not required by subdivision (a) or (b) of this section to wear the face covering; and
  - ii. They have provided documentation of their full vaccination status.

§ 4. Notice . Each City agency must send each of its contractors notice that the Mayor has directed City contractors to comply with the requirement of this Order and request a response from each such contractor, as soon as possible, with regard to the contractor 's intent to follow this Order.

§ 5. Effective date. This Order shall take effect immediately. .

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Bill de Blasio, MAYOR



THE CITY OF NEW YORK  
OFFICE OF THE MAYOR  
NEW YORK, N. Y. 10007

EXECUTIVE ORDER NO. 83  
October 20, 2021

**AMENDMENT AND PARTIAL REPEAL OF  
EXECUTIVE ORDER 78 WITH RESPECT TO REQUIRING  
VACCINATION OR TESTING FOR CITY EMPLOYEES AND  
CERTAIN CONTRACTORS**

WHEREAS, on August 31, 2021, I issued Executive Order No. 78, requiring that, beginning September 13, 2021, City employees and covered employees of City contractors be vaccinated against COVID-19 or submit on a weekly basis proof of a negative COVID-19 PCR diagnostic test; and

WHEREAS, it is essential that the City promote the best health and safe practices recognized in light of current scientific understanding of the conditions under which COVID-19 can spread; and

WHEREAS, on October 20, 2021, the New York City Commissioner of Health and Mental Hygiene issued a Commissioner's Order requiring employees of all City agencies and of all human services contractors of City agencies to show proof of vaccination;

NOW, THEREFORE, by the power vested in me as the Mayor of the City of New York, it is hereby ordered:

Section 1. Sections 1 and 2 of Executive Order No. 78, dated August 31, 2021, are repealed as of November 1, 2021, provided that nothing in this Order shall affect the City's ability to seek legal or contractual remedies, or impose discipline, for any violation of Executive Order No. 78 that occurred while it was in eff

§ 2. Section 3 of Executive Order No. 78, dated August 31, 2021, is amended to read as follows

§ 3. All City agencies must continue to take all necessary actions to require any contractors who are not covered by Section 4 of the Order of the Commissioner of Health and

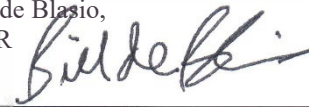
Mental Hygiene relating to required COVID-19 vaccination for City employees and City human service contractors to require their covered employees to either:

1

- a. Provide their employer with proof of full vaccination, or
- b. On a weekly basis until the employee submits proof of full vaccination, provide their employer with proof of a negative COVID-19 PCR diagnostic test (not an antibody test).

§ 3. This Order shall take effect on November 1, 2021. Nothing in this Order shall affect the enforcement of other orders issued by the Mayor, the Commissioner of Citywide Administrative Services, the Commissioner of Health and Mental Hygiene, or the Board of Health.

—  
Bill de Blasio,  
MAYOR

A handwritten signature in black ink, appearing to read "Bill de Blasio", is written over a horizontal line.

NOTE: Order was amended and partially repealed by  
Executive Order No. 83

THE CITY OF NEW YORK OFFICE OF THE MAYOR NEW YORK, N. Y. 10007

EXECUTIVE ORDER NO. 78

August 31, 2021

MANDATORY VACCINATION OR TEST REQUIREMENT FOR CITY EMPLOYEES AND COVERED  
EMPLOYEES OF CITY CONTRACTORS

WHEREAS, the COVID-19 pandemic poses a danger to the health and safety of the City of New York and its residents;

WHEREAS, the U.S. Centers for Disease Control ("CDC") reports that new variants of COVID-19, identified as "variants of concern have emerged in the United States, and some of these new variants, which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible;

WHEREAS, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated;

WHEREAS, the City and its contractors provide services to all New Yorkers that are critical to the health, safe and well-being of City residents, and should take reasonable measures to reduce the transmission of COVID-19 when providing such services;

WHEREAS, a study by Yale University demonstrated that the New York City Department of Health's vaccination campaign was estimated to have prevented about 250,000 COVID-19 cases, 44,000 hospitalizations and 8,300 deaths from COVID-19 infection since the start of vaccination through July 1, 2021, and the Department believes the number of prevented cases, hospitalizations and death has risen since then; and that between January 1, 2021, and June 15, 2021, over 98% of hospitalizations and deaths from COVID-19 infection involved those who were not fully vaccinated;

WHEREAS, it is essential that the City promote the best health and safety practices recognized in light of current scientific understanding of the conditions under which COVID-19 can spread; and

NOW, THEREFORE, by the power vested in me as the Mayor of the City of New York, it is hereby ordered:



§ 1. City employees must either:

- a. Provide the City agency or office where they work with proof of full vaccination by September 13, 2021, or
- b. Beginning September 13, 2021, and on a weekly basis thereafter until the employee submits proof of full vaccination, provide the City agency or office where they work with proof of a negative COVID-19 PCR diagnostic test (not an antibody test).

Nothing in this Order shall preclude a City agency from requiring an employee who has been vaccinated to be tested for COVID-19 or preclude a City agency from requiring employees to be tested more frequently than once a week.

§ 2. Any City employee who does not comply with this Order may be subject to disciplinary action.

§ 3. All City agencies must take all necessary actions to require their contractors to require their covered employees to either:

- a. Provide their employer with proof of full vaccination by September 13, 2021, or
- b. Beginning September 13, 2021, and on a weekly basis thereafter until the employee submits proof of full vaccination, provide their employer with proof of a negative COVID-19 PCR diagnostic test (not an antibody test).

All such contractors shall submit a certification to their contracting agency confirming that they are requiring their covered employees to provide such proof. If contractors are non-compliant, the contracting City agencies may exercise any rights they may have under their contract.

§ 4. For purposes of this Order:

- a. The term "full vaccination" means at least two weeks have passed after a person received a single-dose of an FDA- or WHO- approved COVID-19 vaccine or the second dose of an FDA- or WHO- approved two-dose COVID-19 vaccine except that, for the purposes of this Order, a City employee or covered employee of a contractor who provides documentation of having received one dose of any COVID-19 vaccine before September 13, 2021 will be considered fully vaccinated even though two weeks have not passed since their first dose, so long as, if such City employee or covered employee of a contractor received a two-dose vaccine, the employee provides documentation that the second dose has been administered before October 28, 2021.
- b. The term "contract" means a contract awarded by the City, and any subcontract under such a contract, for work: (i) to be performed within the City of New York; and (ii) where employees can be expected to physically interact with City

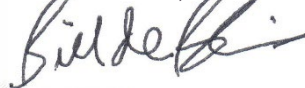
employees or members of the public in the course of performing work under the contract.

- c. The term "contractor" means a person or entity that has a City contract, including the subcontracts described in the definition of "contract."
- d. The term "covered employee" means a person: (i) employed by a contractor or subcontractor holding a contract; (ii) whose salary is paid in whole or in part from funds provided under a City contract; and (iii) who perform any part of the work under the contract within the City of New York. However, a person whose work under the contract does not include physical interaction with City employees or members of the public shall not be deemed to be a covered employee.
- e. The term "City employee" means a full or part-time employee, intern or volunteer of a City agency.

§ 5. Each City agency shall send each of its contractors notice that the Mayor has directed contractors to comply with the requirement of section 3 of this Order and request a response from each such contractor, as soon as possible, with regard to the contractor's intent to follow this Order.

§ 6. This Order shall take effect immediately. Nothing in this Order shall affect the enforcement of other orders issued by the Mayor, the Commissioner of Citywide Administrative Services, the Commissioner of Health and Mental Hygiene, or the Board of Health.

Bill de Blasio, MAYOR

A handwritten signature in dark ink, appearing to read "Bill de Blasio", is written over a horizontal line.



**ORDER OF THE COMMISSIONER  
OF HEALTH AND MENTAL HYGIENE  
TO REQUIRE COVID-19 VACCINATION FOR**

**CITY EMPLOYEES AND CERTAIN CITY CONTRACTORS**

**WHEREAS**, on March 12, 2020, Mayor Bill de Blasio issued Emergency Executive Order No. 98 declaring a state of emergency in the City to address the threat posed by COVID-19 to the health and welfare of City residents, and such order remains in effect; and

**WHEREAS**, on March 25, 2020, the New York City Commissioner of Health and Mental Hygiene declared the existence of a public health emergency within the City to address the continuing threat posed by COVID-19 to the health and welfare of City residents, and such declaration and public health emergency continue to be in effect; and

**WHEREAS**, pursuant to Section 558 of the New York City Charter (the “Charter”), the Board of Health may embrace in the Health Code all matters and subjects to which the power and authority of the Department of Health and Mental Hygiene (the “Department”) extends; and

**WHEREAS**, pursuant to Section 556 of the Charter and Section 3.01(c) of the Health Code, the Department is authorized to supervise the control of communicable diseases and conditions hazardous to life and health and take such actions as may be necessary to assure the maintenance of the protection of public health; and

**WHEREAS**, the U.S. Centers for Disease Control and Prevention (“CDC”) reports that new variants of COVID-19, identified as “variants of concern” have emerged in the United States, and some of these new variants which currently account for the majority of COVID-19 cases sequenced in New York City, are more transmissible than earlier variants; and

**WHEREAS**, the CDC has stated that vaccination is an effective tool to prevent the spread of COVID-19 and the development of new variants, and benefits both vaccine recipients and those they come into contact with, including persons who for reasons of age, health, or other conditions cannot themselves be vaccinated; and

**WHEREAS**, the Department reports that between January 17 and August 7, 2021, people who were unvaccinated or not fully vaccinated accounted for 96.1% of COVID-19 cases, 96.9% of COVID-19 hospitalizations, and 97.3% of COVID-19 deaths in New York City; and

**WHEREAS**, a study by Yale University demonstrated that the Department’s vaccination campaign was estimated to have prevented about 250,000 COVID-19 cases, 44,000 hospitalizations, and 8,300 deaths from COVID-19 infection since the start of vaccination through July 1, 2021, and by information and belief, the number of prevented cases, hospitalizations, and death has risen since then; and

**WHEREAS**, on August 16, 2021, Mayor de Blasio issued Emergency Executive Order No. 225, the “Key to NYC,” requiring that patrons and employees of establishments providing indoor entertainment, dining, and gyms and fitness centers must show proof that they have received at least one dose of an approved COVID-19 vaccine, and such Order, as amended, is still in effect; and

**WHEREAS**, on August 24, 2021, I issued an Order requiring that Department of Education employees, contractors, and visitors provide proof of COVID-19 vaccination before entering a DOE building or school setting, and such Order was re-issued on September 12 and 15, 2021, and subsequently amended on September 28, 2021, and such Orders and amendment were ratified by the New York City Board of Health on September 17, 2021 and October 18, 2021; and

**WHEREAS**, on August 26, 2021, the New York State Department of Health adopted emergency regulations requiring staff of inpatient hospitals and nursing homes to receive the first

dose of a COVID-19 vaccine by September 27, 2021, and staff of diagnostic and treatment centers, hospices, home care and adult care facilities to receive the first dose of a COVID-19 vaccine by October 7, 2021; and

**WHEREAS**, on August 31, 2021, Mayor de Blasio issued Executive Order No. 78, requiring that, beginning September 13, 2021, City employees and covered employees of City contractors be vaccinated against COVID-19 or submit on a weekly basis proof of a negative COVID-19 PCR diagnostic test; and

**WHEREAS**, on September 9, 2021 President Biden issued an Executive Order stating that “It is essential that Federal employees take all available steps to protect themselves and avoid spreading COVID-19 to their co-workers and members of the public,” and ordering each federal agency to “implement, to the extent consistent with applicable law, a program to require COVID- 19 vaccination for all of its Federal employees, with exceptions only as required by law”; and

**WHEREAS**, on September 12, 2021, I issued an Order requiring that staff of early childhood programs or services provided under contract with the Department of Education or the Department of Youth and Community Development provide proof of COVID-19 vaccination; and

**WHEREAS**, Section 17-104 of the Administrative Code of the City of New York directs the Department to adopt prompt and effective measures to prevent the communication of infectious diseases such as COVID-19, and in accordance with Section 17-109(b), the Department may adopt vaccination measures to effectively prevent the spread of communicable diseases; and

**WHEREAS**, City employees and City contractors provide services to all New Yorkers that are critical to the health, safety, and well-being of City residents, and the City should take reasonable measures to reduce the transmission of COVID-19 when providing such services; and

**WHEREAS**, a system of vaccination for individuals providing City services and working in City offices will potentially save lives, protect public health, and promote public safety; and

**WHEREAS**, there is a staff shortage at Department of Corrections (“DOC”) facilities, and in consideration of potential effects on the health and safety of inmates in such facilities, and of the benefit to public health and employee health of a fully vaccinated correctional staff, it is necessary that the requirements of this Order for DOC uniformed personnel not assigned to posts in healthcare settings be delayed; and

**WHEREAS**, pursuant to Section 3.01(d) of the Health Code, I am authorized to issue orders and take actions that I deem necessary for the health and safety of the City and its residents when urgent public health action is necessary to protect the public health against an existing threat and a public health emergency has been declared pursuant to such Section;

**NOW THEREFORE** I, Dave A. Chokshi, MD, MSc, Commissioner of Health and Mental Hygiene, finding that a public health emergency within New York City continues, and that it is

necessary for the health and safety of the City and its residents, do hereby exercise the power of the Board of Health to prevent, mitigate, control and abate the current emergency, and order that:

- 1) My Order of August 10, 2021, relating to a vaccination or testing requirement for staff in City operated or contracted residential and congregate settings, shall be **RESCINDED** as of November 1, 2021. Such staff are subject to the requirements of this Order.
- 2) No later than 5pm on October 29, 2021, all City employees, except those employees described in Paragraph 5, must provide proof to the agency or office where they work that:
  - a) they have been fully vaccinated against COVID-19; or
  - b) they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or
  - c) they have received the first dose of a two-dose COVID-19 vaccine

Any employee who received only the first dose of a two-dose vaccine at the time they provided the proof described in this Paragraph shall, within 45 days after receipt of the first dose, provide proof that they have received the second dose of vaccine.

- 3) Any City employee who has not provided the proof described in Paragraph 2 must be excluded from the premises at which they work beginning on November 1, 2021.
- 4) No later than 5pm on October 29, 2021, City agencies that contract for human services contracts must take all necessary actions to require that those human services contractors require their covered employees to provide proof that:
  - a) they have been fully vaccinated against COVID-19; or
  - b) they have received a single-dose COVID-19 vaccine, even if two weeks have not passed since they received the vaccine; or
  - c) they have received the first dose of a two-dose COVID-19 vaccine.

Any covered employee of a human service contractor who received only the first dose of a two-dose vaccine at the time they provided the proof described in this Paragraph shall, within 45 days after receipt of the first dose, provide proof that they have received the second dose of vaccine.

All such contractors shall submit a certification to their contracting agency confirming that they are requiring their covered employees to provide such proof. If contractors are non-compliant, the contracting City agencies may exercise any rights they may have under their contract.

- 5) Notwithstanding Paragraphs 3 and 4 of this Order, until November 30, 2021, the provisions of this Order shall not apply to uniformed Department of Corrections ("DOC") employees, including staff serving in Warden and Chief titles, unless such uniformed employee is assigned for any time to any of the following locations: Bellevue Hospital; Elmhurst Hospital; the DOC infirmary in North Infirmity Command; the DOC West Facility; or any clinic staffed by Correctional Health Services.

Uniformed employees not assigned to such locations, to whom this Order does not apply until November 30, 2021,

must, until such date, either:

- a) Provide DOC with proof that:
  - i) they have been fully vaccinated against COVID-19; or
  - ii) they have received a single-dose COVID-19 vaccine, even if two weeks have
    - 1. not passed since they received the vaccine; or
  - iii) they have received the first dose of a two-dose COVID-19 vaccine, provided
    - 1. that they must additionally provide proof that they have received the second
    - 2. dose of vaccine within 45 days after receipt of the first dose; or
- b) On a weekly basis until the employee submits the proof described in this Paragraph,
  - (a) provide DOC with proof of a negative COVID-19 PCR diagnostic test (not an
  - (b) antibody test).
- 6) For the purposes of this Order:

“City employee” means a full- or part-time employee, intern, or volunteer of a New York City agency.

“Contract” means a contract awarded by the City, and any subcontract under such a contract, for work: (i) to be performed within the City of New York; and (ii) where employees can be expected to physically interact with City employees or members of the public in the course of performing work under the contract.

“Contractor” means a person or entity that has a City contract, including a subcontract as described in the definition of “contract.”

“Covered employee” means a person: (i) employed by a contractor or subcontractor holding a contract; (ii) whose salary is paid in whole or in part from funds provided under a City contract; and (iii) who performs any part of the work under the contract within the City of New York. However, a person whose work under the contract does not include physical interaction with City employees or members of the public shall not be deemed to be a covered employee.

“Fully vaccinated” means at least two weeks have passed after an individual received a single dose of a COVID-19 vaccine that only requires one dose, or the second dose of a two-dose series of a COVID-19 vaccine as approved or authorized for use by the Food and Drug Administration or World Health Organization.

“Human services contract” means social services contracted by an agency on behalf of third-party clients including but not limited to day care, foster care, home care, health or medical services, housing and shelter assistance, preventive services, youth services, the operation of

senior centers, employment training and assistance, vocational and educational programs, legal services and recreation programs.

- 7) Each City agency shall send each of its human services contractors notice that covered employees of such contractors must comply with the requirement of Paragraph 4 of this Order and request a response from each such contractor, as soon as possible, with regard to the contractor's intent to follow this Order.
- 8) Nothing in this Order shall be construed to prohibit any reasonable accommodation otherwise required by law.
- 9) This Order shall not apply to individuals who already are subject to another Order of the Commissioner of Health and Mental Hygiene, Board of Health, the Mayor, or a State or federal entity that requires them to provide proof of full vaccination and have been granted a reasonable accommodation to such requirement.
- 10) This Order shall not apply to per diem poll workers hired by the New York City Board of Elections to conduct the election scheduled for November 2, 2021.
- 11) Subject to the authority of the Board of Health to continue, rescind, alter or modify this Order pursuant to Section 3.01(d) of the Health Code, this Order shall be effective immediately and remain in effect until rescinded, except that Paragraph 5 of this Order will be deemed repealed on December 1, 2021.



Dated: October 20, 2021

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Dave A. Chokshi, M.D., MSc  
Commissioner