



NEW YORK CITY DEPARTMENT OF  
DESIGN + CONSTRUCTION

**NYC**  
**Department of Design + Construction**  
**Capital Discretionary Program Presentation:**  
**Non-Profit Organization Project Overview**

**A G E N D A**

**Monday, February 2<sup>nd</sup>, 2015**

**9:30 AM**

**Manhattan Borough  
President's Office  
1 Centre Street, 19th Floor  
New York, NY 10007**

**Gail A. Brewer  
Manhattan Borough President**

**Feniosky A. Peña-Mora, Sc.D.  
Commissioner, DDC**

**Bruce Rudolph  
Director, Discretionary  
Projects**

■ **Introduction to the Capital Discretionary Program**

■ **Topics of Discussion**

- **Part I** - Suggested Projects
- **Part II** – Forms Required for Budget Review and Approval
- **Part III** – Forms Required for CP and Legal Agreement Approval
- **Part IV** – Forms Required for Registration
- **Part V** – Lien Clearance Requirements
- **Part VI** – Forms Required for DDC Payment Reimbursement

■ **Oversight Agency Review and Approval Requirements**

- Office of Management & Budget, Mayor's Office of Contract Services, Department of Small Business Services- DLS, Comptroller's Office, Other Agencies

■ **Final Discussion and Q & A**



NYC  
Department of Design + Construction  
Capital Discretionary Program Seminar:  
Non-Profit Organization Project Overview

*Part I*

■ **Suggested Types of Projects:**

1. Vehicles
2. Initial Outfitting
3. Large Equipment
  - One piece of Equipment greater than \$35k.

**Suggested types of projects that have been found to move quickly.**

## **Vehicles**

- Ambulances
- Cargo Vans and Trucks
- Passenger Vehicles of 10 or more passengers



\* Budget and specifications for vehicles are listed in Part II.

## **Initial Outfitting**

Initial Outfitting (i.e., the outfitting of a defined area that has been newly acquired, leased or constructed or is the subject of a comprehensive reconstruction), items that are not physically connected may be combined to meet the \$35,000 minimum as long as each item has a minimum cost of \$110 and as long as such 4 items are ordered within six months of the first use of such area. The 2.5% administrative fee may not be included in meeting the \$35,000 minimum threshold.

- Health Centers
- Community Centers
- Offices

## **Large Equipment**

Examples:

- CAT Scan
- MRI
- Mammography
- Copy Machine



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*Part II*

**Forms Required for  
Budget Review & Approval**

**Please contact your DDC  
Project Manager for most  
recent forms and  
templates.**

**DDC cannot submit for  
formal review and  
approval of the project  
without the submission of  
the required documents.**

■ **Budget/Equipment Listing Document**

1. Price Quotes\*
2. Order Purchase Dates
3. Vehicle Budget & Specifications \*
4. Vehicle Graphics/Extended Warranty Information\*

■ **Software Licensing Documents**

5. Software Checklist\*
6. Software Acknowledgment Letter\*
7. Software License Assignment Agreement Letter\*
8. Software Licensing Terms and Conditions
  - Including for equipment with embedded software

■ **Organization/Use Information**

9. Operating Hours of Organization
10. Frequency of Use of Equipment/Vehicles

■ **Other Applicable Documents**

11. ISM Questionnaire\*
12. Major Medical Systems Letter
13. Initial Outfitting Affirmation\*
14. Training Cost Removal Letter
15. Attachment/Fixture Letter

*\* Template and/or sample attached*



Category: Sold Buses » [Back To Inventory](#)

**New** 2013 Starcraft Allstar

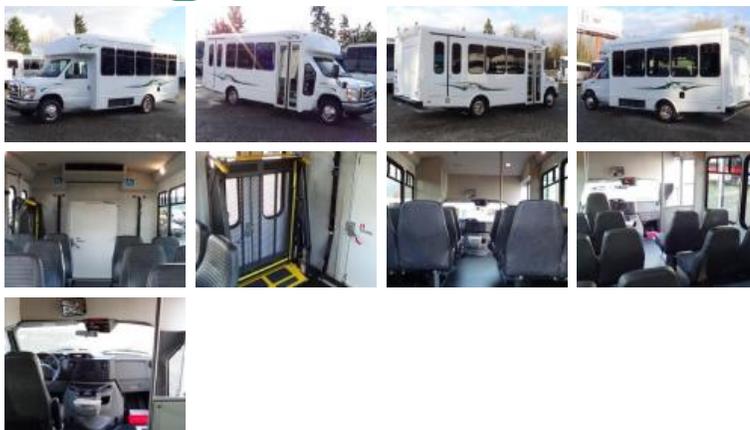
## Ford Starcraft Allstar 12 Passengers And 2 Wheelchairs S05928 SALE PENDING



### Item Details

Exterior Color:	White
Stock Number:	S05928
Odometer:	New
Engine:	Ford 6.8 Liter V10 Gas
Transmission:	Ford 5-Speed Automatic
Canadian Admissible:	Yes
Passengers:	12
Our Price:	\$52,517

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[Click Here To View Larger Video](#)

Safety is the primary focus at Starcraft Bus, from the 3,000 lbs. seat-pull test to the rigorous 7-year/200,000 mile Altoona testing, passengers can be assured that the Allstar surpasses the most stringent testing. Bus operators can relax knowing that the fully welded steel cage construction offers the best passenger protection.

Performance is not measured by how fast the bus will go, but rather by passenger comfort. The Allstar features straight side wall construction that maximizes passenger shoulder space and the widest aisle in the industry.

Durability does not come easy or quickly. The Allstar has been time tested for close to a decade. The 22,000-plus Starcraft buses on North America's roads offer a billion reasons why the Allstar has become a favorite, and those reasons are called miles. The Allstar is engineered to accommodate a variety of seating arrangements including wheelchair accessibility and various storage options for luggage.

#### **Standard Exterior Features:**

- Fully welded steel cage construction meeting all applicable FMVSS requirements
- "Starview" drivers visibility window in front of entry door
- Electric actuated passenger entry door with full length glass

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[Calculate Payments](#)

- 36" wide x 36" high upper double T-Slider tempered safety glass windows with climate control tint
- Black powder coated steel rear bumper
- Rear mud flaps
- Pre-painted white aluminum side, rear walls, skirts
- One-piece seamless FRP (fiberglass reinforced plastic) roof
- Breakaway rearview mirrors with built-in convex
- Sealed LED stop, tail and turn signal lights with incandescent reverse lights
- Exterior graphics package

#### **Standard Interior Features:**

- 93" Interior width
- 80" Interior floor to ceiling height with standard floor (raised floor is 75")
- Floor and wall seat track for flexible seating
- Black non-skid flooring
- 5/8" exterior grade plywood flooring
- Ceiling and rear wall fabric for sound abatement
- FRP (fiberglass reinforced plastic) sidewalls for ease of cleaning
- White step nosing
- 1.25" left hand vertical passenger assist rail at entry door
- Printed circuit board with automotive type fuses and LED trouble shooting lights
- Entry door step well lights
- Incandescent driver and passenger area lighting

#### **Conversion Features:**

- Ford E350 Dual Rear Wheel Chassis
- Ford 6.8 Liter V10 Gas Engine
- Ford 5-Speed Automatic Transmission with Tow/Haul Mode
- 225 Amp Alternator
- Grey FRP Sidewall
- Grey Cloth Rearwall and Ceiling
- Grey Padded Vinyl Driver Area
- Gerflor Sirius Graphite Black Flooring
- Dual Compressor 68,000 BTU A/C System
- OEM Dash A/C & Heat
- Rear 35,000 BTU Passenger Heat
- Electric Passenger Entry Door
- Rear Door, No Window
- Double Wheelchair Doors
- Braun Century Wheelchair Lift
- Fast Idle w/ FMVSS Interlock
- Wheelchair Tie Downs
- 5lb Fire Extinguisher
- 16 Unit First Aid Kit
- Emergency Triangle Kit
- Back-Up Alarm
- Interior Convex Mirror 6"x9"
- Right Hand Entry Vertical Grab Rail
- Ceiling Grab Rail
- SHIELD FC Driver Seat - Oxen Gray Seat Cover
- 12 Mid High Passenger Seats - Oxen Gray Seat Covers
- Stainless Wheel Inserts
- Passenger Seat Belts
- Exterior Graphics Package - Green

**Please call us at 1-800-231-7099 with any questions about this bus for sale or any buses for sale on our website. If you are traveling from out of town, we're happy to pick you up at the airport or your hotel. If you would like some help with travel arrangements we can make recommendations. All buses for sale on website are located on our lot in Federal Way, Washington just south of Seattle.**

\*A negotiable documentary service fee up to \$85.00 may be added

\*All prices are listed after OEM rebates

\*Rebate only applicable in the United States



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**Northwest Bus Sales, Inc.**  
 33207 Pacific Highway South, Federal Way, WA 98003  
 Phone: 1-800-231-7099 | Fax: 1-253-845-9384

**Vehicle Graphics & Extended Warranty**

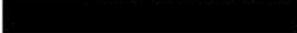
Graphics and Extended warranties are **not** eligible items for any vehicle and therefore we may need a letter from the dealer stating either it is not included in the price or quantifying the cost of lettering or extended warranty to be deducted.



To whom it may concern;

In regards to the graphics package on new Starcraft Allstar bus - Exterior Graphics Package-Green are optional and not included in the price of the quote.

If any further information is needed, please feel free to contact [redacted]



Thank you.





## Budget Review Checklist

Funding Recipient:  
(Insert Full Corporate Name)

**NOTE: DDC cannot process your project without these submissions and information. Additional documents will be required later in the Discretionary Funding process.<sup>1</sup> Please include this checklist as a cover sheet with all of the below-requested documents included as attachments (incomplete submissions will not be accepted.)**

**Budget in format specified by OMB**

- DDC Project Manager (PM) will supply the template
- Please also include a list of changes from the proposed budget submitted with the original request

**Updated quotes corresponding to the items listed on the Budget**

**Order/Purchase Dates for City-Funded Equipment and/or Vehicles**

**General Operating Hours of the Organization**

**Frequency of Use of the City-Funded Equipment and/or Vehicles**

**Completed ISM Questionnaire, if applicable**

**Major Medical Systems Letter, if applicable**

**Initial Outfitting Affirmation, if applicable**

**Training Cost Removal Letter, if applicable**

**A software checklist, if applicable**

- **Along with any Software Acknowledgment letters, if applicable**
  - o If software is not assignable pursuant to its terms, the City will need letters from each applicable software company that indicates a willingness to sign the City's software license assignment agreement.
  - o Note: DDC will not be able to clear any payments for any software (or equipment with embedded software) that require a final executed software license assignment agreement.

**Information on whether equipment is minimally attached, if applicable**

- If so, will need applicable lenders / lessors to provide letters that indicate a willingness to sign-off on the City's template personalty (non-fixture) agreement.

<sup>1</sup> For a detailed explanation of the City's discretionary funding process and for a copy of DDC's additional checklists, please see DDC's NFP website.





Software Checklist

Funding Recipient's Full Legal Name (as indicated on the Non-Profit organization's Certificate of Incorporation):

[Empty box for funding recipient's full legal name]

Funding Recipient hereby acknowledges that: 1) it has read all of the provisions relating to software licenses in the City's "Guidelines for Capital Funding Requests for Not-For-Profit Organizations" found in Exhibit 1 of the City's "Capital Funding Request Form for Not-for-Profit Organizations" (the "Request Form"); 2) reviewed the City's template "Form of Assignment of Software License and Consent" in Exhibit 5 of the Request Form; and 3) answered all software-related questions in the applicable section of the Request Form and this Software Checklist.

Funding Recipient understands that any software license(s) associated with Moveable Property (i.e., Eligible Equipment) purchases will need to be purchased for a term of at least five (5) years up front. Funding Recipient also understands that any software license(s) for Moveable Property purchases must be transferable to the City and/or the City's designee, and the City's Assignment of Software License and Consent must be executed by the software licensor(s), if the license is not transferable by its terms.

Funding Recipient makes the following representations about any and all software associated with Moveable Property:

Table with 7 columns: LIST ALL SOFTWARE ASSOCIATED WITH MOVEABLE PROPERTY (i.e., THE EQUIPMENT), IS SOFTWARE EMBEDDED IN THE EQUIPMENT?, IS STAND-ALONE SOFTWARE INCLUDED?, IS THE LICENSE TRANSFERABLE BY ITS TERMS?, IF LICENSE IS NOT TRANSFERABLE BY ITS TERMS, HAS THE LICENSOR AGREED TO EXECUTE THE CITY'S FORM OF ASSIGNMENT OF SOFTWARE LICENSE AND CONSENT?1, IS LICENSOR'S LETTER AGREEING TO EXECUTE THE CITY'S ASSIGNMENT FORM ATTACHED? Rows 1-12.

SIGNATURE OF FUNDING RECIPIENT'S DULY AUTHORIZED REPRESENTATIVE OR IT SPECIALIST:

By: \_\_\_\_\_
Name: \_\_\_\_\_
Title: \_\_\_\_\_
Date: \_\_\_\_\_

1 Licenses for certain standard software may not need to be assigned to the City if the City already maintains a license with the software provider. For example, the City does not require a "Form of Assignment of Software License and Consent" from the following software providers: 1) Microsoft Word, and 2) McAfee, etc. Funding Recipients should check with your organization's assigned DDC Project Manager to confirm whether any standard software included in a reimbursement project may fall into this category.

**Preliminary Approval Letter of NYC Software License Assignment**  
[Note: This letter must be on the Licensor’s letterhead.]

Date

Company Name [FUNDING RECIPIENT]  
Address  
City, State, ZIP

Re: [LICENSOR] Quotation No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_ (the "Quotation")

Ladies and Gentlemen:

[LICENSOR] has provided the above-referenced Quotation to \_\_\_\_\_ (“Customer”). [LICENSOR] understands that the New York City Form of Assignment of Software License and Consent (attached hereto as Exhibit A) must be executed in the event that the City of New York (the “City”) provides funding for the purchase of a non-transferrable software license associated with [a medical device.]

In the event that a funding agreement is executed between the City and Customer for the purchase of a non-transferrable software license that has been sold by [LICENSOR], and [LICENSOR] has been paid in full for the software license and associated medical equipment, [LICENSOR] shall execute the attached Assignment of Software License and Consent for that software license and associated medical equipment.

Regards,

**[LICENSOR]**

By: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

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**[NYC TEMPLATE ASSIGNMENT OF SOFTWARE LICENSE AGREEMENT]**

[Note: This letter must be on the Licensor's letterhead and all bracketed references must be removed to include the necessary information.]

\_\_\_\_\_, 20\_\_\_\_

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

Dear Sirs and Madams:

Re: Funding Agreement dated as of \_\_\_\_\_, 20\_\_ (“Funding Agreement”) by and between The City of New York acting by and through its Department of Design and Construction (the “City”) and \_\_\_\_\_ (“Funding Recipient”); Security Agreement dated as of \_\_\_\_\_, 20\_\_ (“Security Agreement”) by Funding Recipient in favor of the City; and License Agreement dated as of \_\_\_\_\_, 20\_\_ (the “License Agreement”) by and between the undersigned (“Licensor”) and Funding Recipient.

Funding Recipient has advised Licensor that the City has provided funding (“Funding”) to Funding Recipient pursuant to the Funding Agreement to finance the acquisition of certain equipment (“Equipment”) and software (“Software”) necessary to operate said Equipment. Licensor is the holder of all copyrights and trademarks and owns all rights, benefits and privileges appurtenant to the Software. Licensor has licensed the Software to Funding Recipient pursuant to the License Agreement.

Funding Recipient has further advised Licensor that it is a condition of the Funding that, among other things, for a period commencing on the date that the City makes the first disbursement of the Funding for the Equipment to Funding Recipient, and ending five (5) years from the date that the City makes the final disbursement of such Funding to Funding Recipient, Funding Recipient grant to the City a first priority lien on the Equipment, and that Funding Recipient collaterally pledge, transfer and assign to the City and/or the City's designee the rights, benefits and privileges of Funding Recipient with respect to the Software under the License Agreement. Accordingly, upon the occurrence of an Event of Default under the Funding Agreement, the City may avail itself of all of its rights against the Equipment under the Security Agreement, and the City and/or its designee shall be vested with all of the rights, benefits and privileges of Funding Recipient with respect to the Software under the License Agreement.

At the request of Funding Recipient, Licensor hereby consents to the pledge, transfer and assignment to the City and/or the City's designee of the rights, benefits and privileges of Funding Recipient with respect to the Software under the License Agreement for the remaining term of the License, provided that prior to exercising its rights with respect to the Software as collateral assignee of the License Agreement: (i) the City shall give notice to Licensor of the occurrence of an Event of Default under the Funding Agreement; and (ii) the City shall identify to Licensor the person or entity that will make use of the Software, including, name and address and such other information as Licensor shall reasonably request.

Licensor further agrees that the pledge, transfer and assignment to the City and/or the City's designee of the rights, benefits and privileges of Funding Recipient with respect to the Software, and the use thereof by the City and/or the City's designee during the Performance Term shall be at no cost whatsoever to the City and/or the City's designee.

Very truly yours,

[LICENSOR]

By: \_\_\_\_\_

Name:

Title:

Funding Recipient hereby collaterally pledges, transfers and assigns to the City and/or the City's designee all the rights, benefits and privileges of Funding Recipient with respect to the Software under the License Agreement. Accordingly, upon the occurrence of an Event of Default under the Funding Agreement and notice of the occurrence thereof by the City to Licensor as provided above, the City and/or its designee shall be vested with all of the rights benefits and privileges of Funding Recipient with respect to the Software under the License Agreement.

[FUNDING RECIPIENT]

By: \_\_\_\_\_

Name:

Title:

10) **Equipment Systems & IT Systems (Including Medical Equipment):**

A. For information technology (IT)/computer and other Equipment Systems (see the definition of "Equipment System or Moveable Property System" in the Glossary of Terms), respond to the following question 10(A):

1. How are the individual components of the system related, physically connected and **networked**, and how do they function interdependently as a system? Please provide as much detail as possible about each component item specified in Attachment C.10 Moveable Property List.

2. In addition, please provide responses to the following if applicable:

- a. If in multiple locations, is the connection based only on the Internet or is it part of a larger enterprise network? (Please note that the minimum cost of the Moveable Property must be \$35,000 per site).

- b. What applications will be used/shared over the network, and how will they be used/shared?

c. Are these shared applications unique to the Organization?

d. Will the shared applications be available to the public, or can they only be accessed by people affiliated with the Organization?

e. Is the system replacing or upgrading an existing system that was previously funded by the City? If so, when was the existing system purchased and installed?

B. Provide a diagram of all components of the Moveable Property showing how they are physically connected and networked, and how they function interdependently as a system and/or as a single medical treatment/diagnostic unit as **Attachment C.17 Equipment System/Medical Equipment Diagram**. (For reference, see the sample diagram in Exhibit 7D (Sample Diagram - Equipment System)).

- C. If the Moveable Property is intended for medical treatment and/or diagnostic services for patients, describe the general function of each item below.

11) **Software:**

Review the Guidelines (Exhibit 1) for requirements for software licenses and the Form of Assignment of Software License and Consent (Exhibit 5).

Any software license(s) associated with Moveable Property purchases will need to be purchased for a term of at least five years up front.

Any software license(s) for Moveable Property purchases must be transferrable to the City and/or the City's designee, and the City's Assignment of Software License and Consent (see Exhibit 5) will need to be executed by the software licensor(s), if the license is not transferrable by its terms.

Note that many items of Moveable Property in addition to computers contain software, including medical Moveable Property and telephone systems.

Does the Organization understand and agree to these software license requirements?

Yes  No

12) **Installation and Related Soft Costs:**

If there are any consultant or design fees, installation or installation-related costs, or other soft costs for the Moveable Property (as indicated in **Attachment C.10 Moveable Property List**), then attach a detailed description of the scope of work for the consulting, design and/or installation, the estimated hours to perform the consulting, design and/or installation, and the hourly rates to be paid for the consulting, design and/or installation as **Attachment C.18 Design, Installation and Other Soft Costs**.



# Memo

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**DATE:** April 26, 2013

**TO:** Funding Recipients (Hospital Organizations Only)

**FROM:** Discretionary Program Director, Bruce Rudolph

**SUBJECT:** Legal Requirements for the City's Reimbursement of Equipment Projects that Consist of Major Medical Equipment Systems

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Funding Recipient hospitals that seek reimbursement for major medical Equipment System(s) from the City, acting by and through its New York City Department of Design and Construction (hereinafter referred to as "DDC" or the "Agency"), need to provide the Agency with a signed letter from a duly authorized representative of the hospital (i.e., either a hospital doctor or knowledgeable professional that will utilize the medical equipment) that affirmatively states that the Equipment System purchase will comply with the capital eligibility requirements of New York City Accounting Directive 10 ("A.D. 10").

Section 6.1 of A.D. 10 delineates the requirements for "Equipment Systems," and specifically states that: "To be capital eligible, equipment systems must be composed of a group of related elements. The elements are considered related if they are mutually dependent upon each other, and physically connected or connected through a wireless network."

Accordingly, Funding Recipients that seek reimbursement from DDC for major medical Equipment System(s) must include the following factual representations to the agency:

- That the intended purchase consists of an "Equipment System," which means that the elements of the equipment system are "mutually dependent upon each other" and that all items are either "physically connected" or "connected through a wireless network";
- The useful life of the Equipment System is at least five (5) years;
- That the Equipment System contains no consumable or disposables items; and
- That the Equipment System contains no spare parts or supplies.

**NOTE:** The letter should be: on hospital letterhead, in a narrative format (not in a bullet points) and addressed to Bruce Rudolph, Discretionary Funding Program Director at DDC.

**SAMPLE:** As an example, please see the sample language below and add any additional information as applicable to your organization's letter to the Agency:

- "The ABC Hospital's Radiology Department is requesting to purchase the new CT Scanner 590 Model equipment. This machine comes in its typical configuration with all components integrating into one CT Scanner machine. There are no spare parts, disposable items or consumables involved. The useful life of the scanner is over 5 years. This piece of equipment is intended to work together as a system."

If you should have any questions and/or concerns, please contact DDC's Program Director, Bruce Rudolph, and/or the specific Project Manager assigned to your organization's equipment project. Thank you.



Funding Recipient's Full Name (as indicated on its Certificate of Incorporation):

\_\_\_\_\_

Address where City funded equipment will be located:

\_\_\_\_\_

Funding Recipient hereby affirms that it has read all of the provisions provided in the Funding and Security Agreements of the City of New York ("City" or "NYC") and acknowledges its obligation to abide by the terms and requirements of the NYC Comptroller's Internal Control and Accountability Directive No. 10, which defines Initial Outfitting as the outfitting of a defined area that (i) has been newly acquired, leased or constructed or (ii) is the subject of a comprehensive upgrade or betterment. Directive No. 10 further states that orders for initial outfitting must be placed within six (6) months of the date that the building, structure, facility or other Capital Asset is placed into service.

Accordingly, Funding Recipient recognizes that an initial outfitting designation requires a newly purchased, constructed, reconstructed or leased space. A space that has a renewed and/or amended lease does not qualify for initial outfitting.

In addition, the Funding Recipient hereby acknowledges that all equipment purchased pursuant to an initial outfitting project (i) must be ordered within six (6) months of date the premises is placed into service, and (ii) must remain at the premises indicated in the City's Funding and Security Agreements for a period of five (5) years without exception.

Please also provide the following information regarding the initial outfitting project, as provided below (please fill out all sections that are applicable):

• Space information:

- Property newly purchased?

Yes \_\_\_ No \_\_\_

If yes, then provide:

Date of purchase: \_\_\_\_\_

Move-in date: \_\_\_\_\_

Please provide a copy of the purchase contract.

- Newly leased space?

Yes \_\_\_ No \_\_\_

If yes, then provide:

Lease term: \_\_\_\_\_ yrs.

Date lease term begins: \_\_\_\_\_

Date lease term ends: \_\_\_\_\_

Move-in Date: \_\_\_\_\_

Please provide a copy of the lease.

- Property newly constructed?

Yes \_\_\_ No \_\_\_

If yes, then provide:

Start date of the project: \_\_\_\_\_



**NEW YORK CITY DEPARTMENT OF  
DESIGN + CONSTRUCTION**

Date of completion: \_\_\_\_\_

Please provide a copy of the certificate of occupancy.

- o Comprehensive renovation / upgrade of Property?  
Yes \_\_\_ No \_\_\_

If yes, then provide:

Start date of the project: \_\_\_\_\_

Date of completion: \_\_\_\_\_

Move-in date: \_\_\_\_\_.

• Construction information:

For reconstruction or comprehensive renovation/upgrade, a detailed scope of work of such reconstruction or upgrade and delineation of the affected space(s) must be provided. In general, a comprehensive upgrade involves demolition and construction work which involves at least three trades. Thus, the detailed scope must include delineation of the affected areas, the specific work undertaken by trade and work type and cost (including breakouts for surface treatments such as carpeting, painting, other finishes). Please note that surface treatments on their own do not qualify a space for initial outfitting.

- o Scope of Work (prepared by an architect/engineer) : Please Attach
- o Floor Plan of Space attached?  
Yes \_\_\_ No \_\_\_ (Must be provided in order for this affirmation to be complete.)

• Equipment purchase information:

- o Order date(s), purchase date(s) and installation date(s) of equipment:
  - Please provide copies of quotations/invoices and an equipment list (Exhibit A to the Funding Agreement).
  - For each item of equipment on the equipment list, please provide the order date, purchase date, and installation date in separate columns in the equipment list.

SIGNATURE OF FUNDING RECIPIENT'S  
DULY AUTHORIZED REPRESENTATIVE:

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

State of New York )

ss:

County of \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, 200\_\_ before me personally came \_\_\_\_\_ (Name), who being by me duly sworn, did depose and say that s/he is the \_\_\_\_\_ (Position) of \_\_\_\_\_ (Name of Funding Recipient), the non-profit organization / corporation described in and which executed the foregoing instrument, and s/he duly acknowledged to me that s/he executed the same for and in behalf of the said non-profit organization / corporation for the uses and purposes mentioned therein.

\_\_\_\_\_  
Notary Public  
(Stamp or Seal)



DIRECT DIAL NUMBER

E-MAIL ADDRESS

VIA U.S. MAIL

October 20, 2006



Attention: 

Ladies and Gentlemen:

We understand that 

 has received a capital grant from the City of New York whereby the City of New York will purchase and place on permanent loan to  new seating for its theatres. You have requested our view as to whether the theatre seats to be installed in  premises are trade fixtures and therefore not permanent fixtures.

Determination of a Trade Fixture

It is a "well-established principle of law that when chattels are affixed or annexed to real property, they generally become part of the realty and are construed to be permanent fixtures." In the Matter of County of Nassau, 40 Misc.2d 384 (1963). The general question becomes whether the equipment or chattel in question is a permanent "fixture." The court set forth a three-factor determination of test: "Firstly, there must be annexation to the realty. Secondly, there must be adaptability of the article affixed to the use of the freehold. Thirdly, the intention of the party creating the annexation is to make the article a permanent accession to the freehold." Id.



“Although all three factors should be considered, the definite tendency in modern times is to accord less significance to the manner of annexation and more to the intention of the person making it.” Marine Midland Trust Co. of Binghamton v. Ahern, 16 N.Y.S.2d 656 (1939). The court went on to state that: “[a]n owner is much more likely to intend permanency than one in possession of premises temporarily, as for example a tenant...The importance of the relationship to the property of the person making the attachment is never to be minimized. Indeed, in a doubtful case it may well become decisive.” Id. at 660. The Court of Appeals of New York, in Potter v. Cromwell, 40 N.Y. 287 (1869), also emphasized the importance of intent by stating “[t]he question of intention enters into and makes an element of each case. The circumstances are to be taken into account, to show whether the erections were made for the permanent improvement of the freehold, or for the temporary purposes of trade.” Id. at 293.

Also crucial to an analysis of whether an article is a permanent “fixture” is whether the article is used for the purposes of trade. The Eastern District in, Arista Devices Corp. v. Deam Associates, 94 B.R. 26 (1998), defined trade fixtures as: “those articles of personal property which a tenant annexes to the freehold for the purposes of trade or business carried on by him or for the ornamentation of the premises, or for the convenience of his occupation.” Id. at 29. The court went on to state: “in order for the trade fixture status to attach, removal of the fixtures must be accomplished without substantial injury to the freehold. The justification for the trade fixture rule is that it encourages the efficient use of the leased premises by the tenant.” Id. at 30. The court also drew a distinction between

October 20, 2006

trade fixtures and permanent improvements: “[p]ermanent improvements are, by definition, improvements that the annexor intends to make an enduring part of the realty...By contrast, trade fixtures are items that are annexed to or put on the realty for the purpose of the annexor’s business and are thus, by operation of law, removable. Consequently, they are anything but permanent.”

For example, the Arista court held that an air conditioning system and mezzanine were trade fixtures and not permanent improvements. Id. at 32. The court in Arista found that, “the air conditioning and mezzanine were installed for the purpose of carrying on Arista’s trade. The Court also found that removal of those items, as well as the inner walls which had to be installed along with the air conditioning system, would cause no substantial damage to the building.” Id.

Considerations Relating to the Theatre Seats

We have assumed, without independently verifying, that the seating, once installed, can be readily removed without significant damage to the premises. We have also assumed that [REDACTED] would provide sufficient notice in advance to the City of New York so that it may remove the seating purchased by the City of New York in the event the premises were to be vacated for any reason by [REDACTED]

We have reviewed (i) the Memorandum dated May 18, 2006 between [REDACTED] and the City of New York [REDACTED] setting forth the terms and conditions regarding use of the seating by [REDACTED]; (ii) the Lease (the “Lease”) dated [REDACTED] as amended, between [REDACTED] and [REDACTED]

October 20, 2006

[REDACTED] with respect to a portion of the Ground Floor and Mezzanine at [REDACTED]  
[REDACTED]; and (iii) the Letter dated as of [REDACTED] from  
[REDACTED] on behalf of the Landlord, in which the Landlord waived any claim  
to the seating.

In addition, we have relied as to matters of fact upon originals, duplicates and  
other instruments and such certificates or comparable documents of public officials and of  
officers and representatives of [REDACTED]

Conclusion

Based upon the foregoing, and subject to the qualifications and limitations  
stated herein, we believe that a court would conclude that the seating to be purchased by the  
City of New York and used by [REDACTED] are trade fixtures and not a permanent fixture.

This letter is rendered to you in connection with the above-described  
transaction and is limited to the law of the State of New York. This letter may not be relied  
upon by you for any other purpose, or relied upon, or furnished to any other person, firm or  
corporation without our prior written consent.

Very truly yours,  
[REDACTED]



NYC  
Department of Design + Construction  
Capital Discretionary Program Seminar:  
Non-Profit Organization Project Overview

*Part III*

**Forms Required for  
Certificate to Proceed  
("CP") and Legal Approval**

**Please contact your DDC  
Project Manager for the  
most the most recent  
forms and templates.**

**DDC cannot obtain final  
approval of the Funding  
and Security Agreements  
and formal issuance of  
the CP document without  
the required submissions.**

■ **"Group 1" Documents**

1. Non-Discrimination Affirmation\*
2. Initial Outfitting Affirmation (if applicable)
3. List of City Operating Contracts
4. List of all applicable DASNY and HUD security interests/liens
5. List of all parties holding real estate property interests that may apply to the project

*"Group 1" Documents should be provided to DDC's  
Project Manager as soon as possible.*

■ **"Group 2" Documents**

6. Useful Life Statement\*
7. Personalty Agreement (if applicable)\*
8. Subordination Agreement (if applicable)\*
9. Software Acknowledgement Letter\*

*Await confirmation of final budget approval from the  
Project Manager before providing "Group 2" Documents.*

*\*Template and/or sample attached.*



**CP CHECKLIST:**

Funding Recipient: \_\_\_\_\_

**NOTE: DDC cannot process your project without these submissions.** Additional documents will be required later in the Discretionary Funding process.<sup>1</sup> **Please include this checklist as a cover sheet with all of the below-requested documents included as attachments (incomplete submissions will not be accepted.)**

The following required City's templates are available online on DDC's Non-Profit website at: < [www.nyc.gov/html/ddc/html/business/nfp\\_forms.shtml](http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml) > under the "Project Approval Submissions" tab.

**GROUP 1 DOCUMENTS**

The "Group 1" Documents listed below should be provided to DDC's Project Manager as soon as possible as these documents do not require OMB's approval of the organization's budget (i.e., the organization's equipment and/or vehicle listing).

<input type="checkbox"/> <b>Non-Discrimination Affirmation</b>	<ul style="list-style-type: none"> <li>● Please follow the directions found on the City's template form.</li> </ul>
<input type="checkbox"/> <b>Initial Outfitting Affirmation, (if applicable)</b>	<ul style="list-style-type: none"> <li>● Please follow the directions found on the City's template form. <u>The form must include all of the required attachments.</u></li> <li>● [Note: This form should have already been submitted to the agency as part of the Pre-CP budget scope review submission process.]</li> </ul>
<input type="checkbox"/> <b>List of City Operating Contract that relate to the City-funded equipment and/or vehicles</b>	<ul style="list-style-type: none"> <li>● This letter must be on the funding recipient's letterhead along with a copy of the Operating Contract(s) that relate to the City-funded asset(s) (or a statement that there are no Operating Contracts that relate to the City-funded Equipment and/or Vehicle(s).) Please do not include discretionary grants from elected official for expense dollars.</li> </ul>
<input type="checkbox"/> <b>List of all applicable DASNY and HUD-related security interests / liens, (if applicable)</b>	<ul style="list-style-type: none"> <li>● Keep in mind that for each such security interest / lien, the City will require an acknowledgement letter from each such party that indicates the willingness to agree to the following, as applicable:             <ul style="list-style-type: none"> <li>- For HUD-related liens, the City will specifically require a Subordination and Personalty Agreement from HUD and the private HUD-insured lender(s) (along with the required UCC-3 amendment statements) before the City may release payments; and/or</li> <li>- For DASNY only liens, the City will need an amendment financing statement (i.e., UCC-3 filing) before the City may release payments.</li> </ul> </li> <li>● Please refer to the <u>DDC UCC Guidelines</u> for more information.</li> </ul>
<input type="checkbox"/> <b>Listing of all the parties that hold real estate property interests that may apply to the project, such as commercial landlords, mortgagees or other creditors, etc., (if applicable)</b>	<ul style="list-style-type: none"> <li>● For projects that include equipment minimally attached to real property covered by a commercial lease or mortgage, etc., the City will need approval of the City's template Personalty Agreement (i.e., an acknowledgement letter that the City-funded equipment will not be considered to be fixtures.)</li> <li>● [Note: This listing should have already been submitted to the agency as part of the Pre-CP budget scope review submission process if the project includes minimally attached equipment.]</li> </ul>

**GROUP 2 DOCUMENTS**

Please do not provide any "Group 2" submissions in until OMB / DDC approves the final budget for your organization's project. DDC's Project Manager will advise when the documents listed in Group 2 should be provided to the agency.

<input type="checkbox"/> <b>Useful Life Statement(s)</b>	<ul style="list-style-type: none"> <li>● Please follow the directions found within the City's template sample letter.</li> </ul>
<input type="checkbox"/> <b>Personalty Agreement(s) (i.e., the Non-Fixture Agreement)(if applicable)</b>	<ul style="list-style-type: none"> <li>● This document should include the final City-approved budget as an exhibit. Please verify the final budget to use with DDC.</li> </ul>
<input type="checkbox"/> <b>Subordination Agreement(s) from HUD and HUD-Insured Lenders, (if applicable)</b>	<ul style="list-style-type: none"> <li>● This document must include the final City-approved budget as an exhibit. Please verify the final budget with DDC.</li> </ul>
<input type="checkbox"/> <b>Software Assignment Acknowledgment(s), (if applicable)</b>	<ul style="list-style-type: none"> <li>● Licensors of non-transferrable software applicable to a project must agree to approve the City's template software assignment agreement.</li> </ul>

<sup>1</sup> For a detailed explanation of the City's discretionary funding process and for a copy of DDC's additional checklists, please see DDC's NFP website.



[Note: This letter must be placed on your organization's official letterhead.]

[Insert date]

Attn.: [insert name of Agency Project Manager]  
NYC Department of Design + Construction  
30-30 Thomson Avenue, Law Division, 4<sup>th</sup> Floor  
Long Island City, NY 11101

Re: Useful Life Period Statement

Dear [insert name of Agency Project Manager]:

I, [Insert Name of Organization staff person<sup>3</sup>], am the [title] of [organization] which is seeking to receive capital funds from the City of New York for its [describe item; note that if multiple items are being acquired, we must receive this certification for each item<sup>4</sup>].

I hereby certify that the expected useful life of the item(s) is [\_\_\_\_\_] <sup>5</sup> from the date of acquisition. I arrived at this estimated useful life as follows: [Select one or more of the below-mentioned options.]

The manufacturer provided a written statement of the expected useful life, which is attached;

I reviewed the history of use of this type of item by our organization and determined that this type of item has historically been used, on average, for the period specified above; or

Other: [explain] \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I further certify that our organization expects to use the item for at least the expected useful life identified above.

(2012 Updated version)

<sup>1</sup> The City may require varied useful life statement letters from each organization based on the details and requirements of each project.

<sup>2</sup> This letter serves as a sample of what your organization will need to submit to the agency. Please remove all bracketed references and footnotes in the final version of your letter.

<sup>3</sup> This person must have an expertise with the procurement of the item(s) referred to in this letter (i.e., this person should be a company purchasing manager or an IT specialist for computer and software equipment, etc.)

<sup>4</sup> Please note that this sample letter relates to a situation where it is practical for an organization to refer to the useful life period of individual items being reimbursed by the City. However, if your organization has an extensive list of equipment and/or if multiple items of equipment are being purchased from one vendor (that are similar in nature), then please contact DDC to see whether your organization may group all such equipment together for the purposes of stating a useful life period for all such equipment within one letter.

<sup>5</sup> The useful life period is typically five (5) years; however, if an item has a longer useful life period, please include the most extensive period of time in this letter.

Sincerely,  
[Handwritten Signature of CEO/Authorized Representative]  
[Printed Name]  
[Title]  
[Date of signature]

[Handwritten Signature of Staff Person providing useful life estimate]  
[Printed Name]  
[Title]  
[Date of signature]

SAMPLE

**Personalty Agreement**  
**(sample language)**

**For non-HUD cases:**

The undersigned [name of entity] is the [Landlord/Creditor/Mortgagee] to [Owner or Funding Recipient] pursuant to that certain [Lease dated \_\_\_\_\_, by and between Owner and Funding Recipient] [Loan Agreement/Mortgage dated \_\_\_\_\_, by and between Creditor/Mortgagee and Owner or Funding Agreement] and holds [title to or describe lien with respect to] the premises located at \_\_\_\_\_ (“Premises”).

The undersigned agrees that the equipment funded by the City pursuant to that certain Funding Agreement between the City and [Funding Recipient] dated \_\_\_\_\_ (the “Funding Agreement”), as described in the Funding Agreement and on Exhibit A hereto, and installed in the Premises, shall not be (i) deemed a fixture or an item of real estate, or (ii) subject to the [claim of Owner] [lien of Creditor/Mortgagee] on the Premises; but, rather such equipment shall be deemed solely items of personalty which may be removed by [Funding Recipient] in its sole and absolute discretion.

In Witness Whereof, the undersigned does hereby acknowledge and agree to the foregoing this \_\_\_\_ day of \_\_\_\_\_, 201\_.

[Followed by Signature block(s) for the Owner/Creditor/Mortgagee]  
 [Exhibit A to be attached]

**For HUD-insured liens:**

The undersigned [name of entity] is the [Creditor/Mortgagee] to [Owner or Funding Recipient] pursuant that certain [Loan Agreement/Mortgage] dated \_\_\_\_\_, by and between [Creditor/Mortgage and Owner or Funding Recipient] and holds a [describe lien] with respect to the premises located at \_\_\_\_\_ (“Premises”).

The undersigned agrees that the equipment funded by the City pursuant to that certain Funding Agreement between the City and [Funding Recipient] dated \_\_\_\_\_ (the “Funding Agreement”), as described in the Funding Agreement and on Exhibit A hereto, and installed in the Premises, shall not be (i) deemed a fixture or an item of real estate, or (ii) subject to the [Creditor’s/Mortgagee’s] lien on the Premises; but, rather such equipment shall be deemed solely items of personalty which may be removed by [Funding Recipient] by the expiration or earlier termination of the Loan Agreement or at any time in the City’s sole and absolute discretion, with ninety (90) days’ prior written notice to the [Creditor/Mortgagee], upon a violation of the City Purpose Covenant as defined in the Funding Agreement.

In Witness Whereof, the undersigned does hereby acknowledge and agree to the foregoing this \_\_\_\_ day of \_\_\_\_\_, 201\_.

[Followed by Signature block(s) for the Creditor/Mortgagee]  
 [Exhibit A to be attached]

## SUBORDINATION AGREEMENT

8

This **SUBORDINATION AGREEMENT** (the “**Agreement**”) is made as of \_\_\_\_\_, 201\_, by [INSERT NAME OF MORTGAGEE], a [Delaware] Corporation having its office and place of business at [INSERT ADDRESS] and the SECRETARY OF THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT of Washington D.C. (collectively, the “**Federal Secured Parties**”) and THE CITY OF NEW YORK, a New York municipal corporation acting by and under its DEPARTMENT OF DESIGN AND CONSTRUCTION having an office at 30-30 Thomson Avenue, Long Island City, New York 11101.

### PRELIMINARY STATEMENT

1. The Federal Secured Parties and [INSERT NAME OF FUNDING RECIPIENT] (“**Debtor**”) entered into a Security Agreement dated as of [\_\_\_\_\_] (the “**Federal Security Agreement**”) pursuant to which Debtor granted to the Federal Secured Parties a security interest (“**Federal Security Interest**”) in certain collateral (as more fully described in Exhibit A hereto, the “**Federal Collateral**”) as security for certain obligations of Debtor to the Federal Secured Parties more fully described in said Federal Security Agreement.

2. The Federal Secured Parties perfected their Federal Security Interest under Article 9 of the Uniform Commercial Code in New York by filing a Uniform Commercial Code Financing Statement (Form UCC-1) with each of the New York Secretary of State and the Office of the City Register for [\_\_\_\_\_] County (the “**Federal UCC-1s**”).

3. Debtor has applied to the City of New York (“**City**”) for City Capital funds (“**Funding**”) to reimburse Debtor for costs and expenses incurred by Debtor for the acquisition of certain items of machinery and equipment that Debtor will use in connection with the operation of [INSERT NAME OF FUNDING RECIPIENT] (as more fully described in Exhibit B hereto, the “**City Collateral**”).

4. The Federal Collateral includes a broad scope of the Debtor’s assets, including, without limitation, certain assets of the Debtor “now owned or hereafter from time to time acquired,” and, by definition, the Federal Collateral comprises the assets of the Debtor that constitute the City Collateral.

5. It is a condition of the Funding that, among other things, Debtor dedicate the City Collateral to a bona fide City purpose determined by the City and that Debtor execute and deliver to the City a Security Agreement (“**City Security Agreement**”) granting the City a first priority security interest in the City Collateral (“**City Security Interest**”) as security for the obligations of Debtor to the City in connection with the Funding.

6. The City intends to perfect its City Security Interest in the City Collateral under Article 9 of the Uniform Commercial Code in New York by filing a Uniform Commercial Code Financing Statement (Form UCC-1) with each of the New York Secretary of State and the Office of the City Register for [\_\_\_\_\_] County (the “**City UCC-1s**”).

7. It is also a condition of the Funding that the Federal Secured Parties subordinate their Federal Security Interest in the City Collateral to the City Security Interest.

8. To facilitate the grant of the Funding by the City to Debtor, the Federal Secured Parties are willing to subordinate the Federal Security Interest in the City Collateral to the City pursuant to this Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Federal Secured Parties agree as follows:

1. The Federal Security Interest in those items of the City Collateral shall be subject and subordinate to City Security Interest in the City Collateral irrespective of the order in which the Federal Security Agreement and the City Security Agreement may have been executed and delivered by the Debtor, the Federal Security Interest and the City Security Interest may have been granted by the Debtor, and the Federal UCC-1s and the City UCC-1s may have been filed with the New York Secretary of State and the Office of the City Register for [ ] County.

2. The Federal Secured Parties agree that the City Security Interest shall have the same validity, priority, and effect as if Debtor had executed and delivered the City Security Agreement, granted the City Security Interest to the City and filed or caused to be filed the City UCC-1s with the New York Secretary of State and the Office of the City Register for [ ] County prior to the date that Debtor executed and delivered the Federal Security Agreement, granted the Federal Security Interest to the Federal Parties and filed or caused to be filed the Federal UCC-1s with the New York Secretary of State and the Office of the City Register for [ ] County.

3. The Federal Secured Parties acknowledge that the City is relying on this instrument in its determination to make the Funding available to Debtor.

4. The City understands and agrees that nothing in this instrument shall in any way alter, change, or modify the terms and conditions of the Federal Security Agreement, or in any way release or affect the attachment, validity, perfection, or priority of the Federal Security Interest, except with respect to the City Security Interest as provided herein.

5. The terms, covenants, and agreements of this Agreement shall inure to the benefit of the City and its successors, assigns and transferees and shall be binding upon the Federal Secured Parties and their respective successors, assigns and transferees.

[INSERT NAME[S] OF MORTGAGEE[S]]

U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:



**EXHIBIT A**

**FEDERAL COLLATERAL**

(SEPARATE ATTACHMENT)

[All building materials, equipment, furniture, furnishings, accounts receivable or other property installed or to be installed or used in and about the building or buildings now erected or hereafter to be erected upon the lands secured by the FHA Mortgage from Debtor to Secured party dated as of [\_\_\_\_\_] herewith situated in the Borough of [\_\_\_\_\_] , County of [\_\_\_\_\_] and State of New York, being FHA Project No. [\_\_\_\_\_] (the "Project") which are necessary to complete the comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including, but not limited to, all gas and electric appliances and fixtures; all engines, motors, dynamos, elevators, and machinery; all boilers, radiators, heaters, furnaces, stoves, heating equipment; all stoves, ranges, and cooking equipment; all bathtubs, sinks, basins, pipes, hot-water boilers, faucets, and other plumbing fixtures; all mantels; cabinets; all washing machines, laundry tubs, and ironers; all lighting, air-conditioning and ventilating equipment; all awnings, shades, screens and venetian blinds; and all incinerating equipment, together with appurtenances thereto; all equipment used in the diagnosis and treatment of patients; and all building material and equipment now or hereafter delivered to the premises and intended to be installed therein, such goods, equipment, chattels and personal property as are commonly used in the fully furnishing of and the equipping of a hospital, whether personal property, inventory or fixtures, whether now owned or hereafter from time to time acquired by the Debtor, together with all substitutions, replacements, additions, attachments, accessories, accretions, their component parts thereto or thereof, all other items of like property installed or to be installed or used therein and any and all proceeds thereof whether now in existence or hereafter arising.

EXCEPTING AND EXCLUDING THEREFROM any property or fixtures as described above which are now subject to security interests, but only so long as such security interests remain outstanding, and further excepting any personal property or fixtures now or hereafter held or used by Debtor as lessee, but only so long as the Debtor is the lessee, and further excepting and excluding, any property as described above acquired or to be acquired by Debtor, other than items in replacement of those covered by the Security Agreement of which this Schedule is a part, during the time when said items are covered by purchase money security interests in third parties as evidenced by the filing of Uniform Commercial Code Financing Statements in the appropriate filing offices.

Nothing in this Schedule "A" shall relieve Debtor of its obligations under the Regulatory Agreement between Debtor and the Secretary of Housing and Urban Development as the same may be amended from time to time.]

Exhibit A-1

**EXHIBIT B**

**CITY COLLATERAL**

(SEPARATE ATTACHMENT)

**Preliminary Approval Letter of NYC Software License Assignment**

[Note: This letter must be on the Licensor’s letterhead.]

Date

Company Name [FUNDING RECIPIENT]

Address

City, State, ZIP

Re: [LICENSOR] Quotation No. \_\_\_\_\_ dated \_\_\_\_\_, 20\_\_ (the "Quotation")

Ladies and Gentlemen:

[LICENSOR] has provided the above-referenced Quotation to \_\_\_\_\_ (“Customer”). [LICENSOR] understands that the New York City Form of Assignment of Software License and Consent (attached hereto as Exhibit A) must be executed in the event that the City of New York (the “City”) provides funding for the purchase of a non-transferrable software license associated with a medical device.

In the event that a funding agreement is executed between the City and Customer for the purchase of a non-transferrable software license that has been sold by [LICENSOR], and [LICENSOR] has been paid in full for the software license and associated medical equipment, [LICENSOR] shall execute the attached Assignment of Software License and Consent for that software license and associated medical equipment.

Regards,

[LICENSOR]

By: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT A

---



NYC  
Department of Design + Construction  
Capital Discretionary Program Seminar:  
Non-Profit Organization Project Overview

*Part IV*

**Forms Required for  
Registration**

**DDC cannot register the project without the submission of the required documents.**

**NOTE: A Public Hearing must also be held prior to Registration.**

- **Fully Executed Funding and Security Agreement (3); including:**
  1. Opinion of Counsel Letter (3)\*
  2. Tax Affirmation Form (3)\*
- **Insurance Certificate**
  - Including Workers Compensation
- **Vendex Forms**
  3. Certificate of No Change (if applicable)\*
- **Doing Business Data Form\***
- **Division of Labor Services (DLS) Employment Report Requirements and supporting documents**
- **CHAR500 and Charity Bureau letter**

*These documents should be sent directly to the DDC  
Project Manager.*

*\*Template and/or sample attached.*



# REGISTRATION CHECKLIST:

**NOTE:** These documents must be sent directly to the DDC Project Manager handling your organization's project. Please include this checklist as a cover sheet with all of the below-requested documents included as attachments (incomplete submissions will not be accepted.) DDC cannot register your project with the New York City Comptroller's Office without these submissions. Payments cannot be made prior to registration.

## Three (3) Fully Executed Legal Agreements

<ul style="list-style-type: none"> <li>The DDC Attorney Assigned to your project will email your organization with a PDF copy of the necessary agreements for your organization's project. Please completely print out three (3) original copies for notarized signature of each legal document by your organization's duly authorized representative.</li> <li><b>Please also ensure to provide the following Exhibits within each Funding Agreement:</b></li> </ul>	<input type="checkbox"/> <b>Opinion of Counsel Letter (3 originals)</b>
	<ul style="list-style-type: none"> <li>Please note that this letter MAY NOT BE MODIFIED. For a Word version of this document, please see the City's template letter under the "Legal Documents" tab available at: <a href="http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml">http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml</a>.</li> <li>This letter must be placed on your counsel's letterhead.</li> <li>The agreement dates referenced in the letter should refer to the date when DDC's Commissioner signs off on the agreements. [NOTE: The DDC attorney assigned to your project will include this date once the agreements are executed by the agency. (However, if your counsel requires a date, then your organization may refer to the date when your duly authorized representative executed the agreements.)]</li> <li>Please include an original letter as an exhibit within each Funding Agreement where indicated (i.e., three (3) originals in total.)</li> </ul>
	<input type="checkbox"/> <b>Tax Affirmation Form</b>
<ul style="list-style-type: none"> <li>Please include a fully completed original as an exhibit within each Funding Agreement (i.e., three (3) originals in total.) A copy of this form is included as an exhibit to the Funding Agreement.</li> </ul>	

## Insurance Certificate

- Please see Exhibit B of the Funding Agreement for the required policies and details. The City must be listed as: "The City of New York, acting by and through its Department of Design and Construction."
- The City must be listed as an "Additional Insured" (note: insurance submissions that list the City only as a "Certificate Holder" are INCORRECT and will be returned.)
- Worker's Compensation Insurance must also be included.

## VENDEX Affidavit of No Change

- Please see the City's template Affidavit of No-Change online under the "Forms Required for Registration" tab at: [www.nyc.gov/html/ddc/html/business/nfp\\_forms.shtml](http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml). For additional VENDEX Information and forms, please visit the Mayor's Office of Contract Services at: <http://www.nyc.gov/html/mocs/html/research/vendex.shtml>.
- Before preparing this paperwork, please check with DDC's Project Manager for your project, because this documentation must be submitted within three (3) months of DDC's submission of a project for registration.

## Doing Business Data Form

- Please see the City's template Doing Business Data Form online under the "Forms Required for Registration" tab at: [www.nyc.gov/html/ddc/html/business/nfp\\_forms.shtml](http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml) >.

## Division of Labor Services ("DLS") Employment Report & Certification

- Please see DLS' website at: <http://www.nyc.gov/html/sbs/html/procurement/dls.shtml>, and go to the section on the webpage for "Supply and Services Contractors." Specific forms must be submitted to DLS for contracts over \$100K, depending on whether your non-profit organization has more or less than 50 employees. If your organization has never filed with DLS, then your organization will need to complete and submit the entire employment report form to DLS. However, if your organization has previously submitted the necessary DLS form and have received a certificate from DLS, then your organization will only need to complete the 1<sup>st</sup> part of the form, as per DLS' online instructions.
- Once your organization receives a three (3) month clearance from DLS, please make sure to maintain compliance, because extensions from DLS may be necessary depending on how long the discretionary funding process takes for your organization's particular project.

NYC TEMPLATE OPINION OF COUNSEL LETTER FOR  
EQUIPMENT AND/OR VEHICLE PROJECTS

1

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

, 20\_\_

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

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

Ladies and Gentlemen:

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

In delivering this opinion, we have examined the organizational documents of Funding Recipient, including, but not limited to, Funding Recipient's certificate of incorporation and by-laws, a certificate of good standing issued by the Secretary of State of the State of New York, as well as resolutions of the Board of Directors of Funding Recipient authorizing the execution and delivery of the Funding Agreement and the Security Agreement by Funding Recipient and the performance by Funding Recipient of its obligations under each thereof. In addition, we have examined such other certificates of public officials, such other documents and matters of law as we have deemed necessary under the circumstances. In such examination, we have assumed the genuineness of all signatures by persons other than representatives of Funding Recipient on original documents and the conformity to original and certified documents of all copies submitted to us as conformed or purporting to be photostatic or telecopied copies. On the basis of the foregoing examination and assumptions and in reliance thereon, we are of the opinion that, as of this date:

1. Funding Recipient is duly formed and validly existing as a not-for-profit corporation under the laws of the State of New York and is duly qualified to conduct business in the State of New York.
2. Funding Recipient has the power and authority to execute and deliver the Funding Agreement and the Security Agreement and the related documents and to perform and do all acts to be performed by it under each thereof.

3. The execution and delivery of the Funding Agreement and the Security Agreement and the related documents have been duly authorized by all necessary corporate action on the part of Funding Recipient and do not and will not: (a) contravene the certificate of incorporation or by-laws of Funding Recipient; (b) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Funding Recipient, except such filings, registrations, consents and approvals as have been made and/or secured by Funding Recipient and are in effect on the date of this Agreement or (c) cause Funding Recipient to be in violation of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award.
4. The Agreement and the Security Agreement and the related documents constitute legal, valid and binding obligations of Funding Recipient enforceable against Funding Recipient in accordance with their respective terms.

The foregoing opinions are subject to the following qualifications:

- (a) No person or entity other than the City and its successors or their counsel may rely or claim reliance on the opinions expressed herein.
- (b) The rights and remedies set forth in the Agreement and the related documents may be limited by bankruptcy, reorganization, insolvency, fraudulent conveyance, moratorium and other laws of general application and equitable principles relating to or affecting the enforcement of creditors' rights.
- (c) Certain remedies under the Agreement and the related documents may require enforcement by a court of equity and such enforcement is subject to principles of equity as courts having jurisdiction may impose, including, by way of example, but not by way of limitation, the right of a court of equity to refuse to specifically enforce obligations of Funding Recipient and/or grant equitable relief to the City.
- (d) We are licensed to practice law in the State of New York and our opinion is therefore limited to the laws of the State of New York and the federal laws of the United States.
- (e) The effect of laws hereinafter passed or court decrees hereinafter issued may limit or render unenforceable certain of your rights and remedies.

We assume no obligation to update or supplement this opinion to reflect any changes in any laws or court decisions which may hereafter occur. We do not render any opinion with respect to any matter other than those expressly set forth above.

Very truly yours,

principles of equity, including (without limitation) concepts of materiality, reasonableness, good faith and fair dealing (regardless of whether considered in a proceeding in equity or at law).

The availability of certain remedies under the Funding Agreement is subject to principles of equity as courts having jurisdiction may impose, including (for example but not by way of limitation) the right of a court of equity to refuse to specifically enforce obligations of Funding Recipient and/or grant equitable relief to the City.

We are licensed to practice law in the State of New York and our opinion is therefore limited to the laws of the State of New York and the federal laws of the United States.

We assume no obligation to update or supplement this opinion to reflect any changes in any laws or court decisions which may hereafter occur. We do not render any opinion with respect to any matter other than those expressly set forth above.

Very truly yours,

**TAX AFFIRMATION**

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

**SIGNATURE OF INSTITUTION/VENDOR**

\_\_\_\_\_  
**Full Name (Company)**

\_\_\_\_\_  
**Address**

\_\_\_\_\_  
**EIN**

By: \_\_\_\_\_  
**Signature**

\_\_\_\_\_  
**Title**

**Subscribed and sworn to before me**

**This \_\_\_ day of \_\_\_\_\_ 20\_\_**

\_\_\_\_\_  
**Notary Public**

**Commission Expires: \_\_\_\_\_ 20\_\_**

**DIRECTIONS: Please execute two originals (both with original signature).  
Please forward directly to the agency (not M.O.C.S.).**

3

CERTIFICATION OF NO CHANGE

A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS CERTIFICATION, AND/OR THE FAILURE TO CONDUCT APPROPRIATE DUE DILIGENCE IN VERIFYING THE INFORMATION THAT IS THE SUBJECT MATTER OF THIS CERTIFICATION, MAY RESULT IN RENDERING THE SUBMITTING ENTITY NON-RESPONSIBLE FOR THE PURPOSE OF CONTRACT AWARD, AND A MATERIALLY FALSE STATEMENT WILLFULLY OR FRAUDULENTLY MADE IN CONNECTION WITH THIS CERTIFICATION MAY SUBJECT THE PERSON MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES.

Submitting entity _____	
Are you submitting this Certification as a parent? <input type="checkbox"/> Yes   / <input type="checkbox"/> No	
EIN/TIN _____	
Address _____	
Agency _____	

I, \_\_\_\_\_, being duly sworn, state that I have read and understand all the items contained in the \_\_\_\_\_ questionnaire, dated \_\_\_\_\_ [if applicable: and the submission(s) dated \_\_\_\_\_, updating the information in that questionnaire]; and that, to the best of my knowledge, information and belief, the answers contained in the \_\_\_\_\_ questionnaire [if applicable: as modified by the submission(s) dated \_\_\_\_\_,] are full, complete, and accurate; and that, to the best of my knowledge, information, and belief, those answers continue to be full, complete, and accurate. I further certify on behalf of the **submitting vendor** that the information contained in the **principal questionnaires** for \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_, dated \_\_\_\_\_, \_\_\_\_\_, dated \_\_\_\_\_, [if applicable: and the submission(s) dated \_\_\_\_\_, updating the information in those questionnaires] has been verified and continues to the best of my knowledge to be full, complete and accurate. I understand that the City of New York will rely on the information supplied in this certification as additional inducement to enter into a contract with the submitting entity.

Sworn to before me this _____ day of _____ 20_____	
_____ Notary Public	_____      _____ County License Issued      License Number
BY _____ Print name	
_____ Title	
_____ Signature	_____ Date
ON BEHALF OF _____ Name of submitting entity	

# Doing Business Data Form

To be completed by the City Agency prior to distribution	
Agency: _____	Transaction ID: _____
<b>Check One:</b> <input type="checkbox"/> Proposal <input type="checkbox"/> Award	<b>Transaction Type (check one):</b> <input type="checkbox"/> Concession <input type="checkbox"/> Contract <input type="checkbox"/> Economic Development Agreement <input type="checkbox"/> Franchise <input type="checkbox"/> Grant <input type="checkbox"/> Pension Investment Contract

Any entity receiving, applying for or proposing on an award or agreement must complete a Doing Business Data Form (see Q&A sheet for more information). Please either type responses directly into this fillable form or print answers by hand in black ink, and be sure to fill out the certification box on the last page. **Submission of a complete and accurate form is required for a proposal to be considered responsive or for any entity to receive an award or enter into an agreement.**

This Data Form requires information to be provided on principal officers, owners and senior managers. The name, employer and title of each person identified on the Data Form will be included in a public database of people who do business with the City of New York; no other information reported on this form will be disclosed to the public. **This Data Form is not related to the City's VENDEX requirements.**

**Please return the completed Data Form to the City Agency that supplied it.** Please contact the Doing Business Accountability Project at [DoingBusiness@cityhall.nyc.gov](mailto:DoingBusiness@cityhall.nyc.gov) or 212-788-8104 with any questions regarding this Data Form. Thank you for your cooperation.

## Section 1: Entity Information

Entity Name: \_\_\_\_\_  
 Entity EIN/TIN: \_\_\_\_\_

### Entity Filing Status (select one):

- Entity has never completed a Doing Business Data Form. *Fill out the entire form.*
- Change from previous Data Form dated \_\_\_\_\_. *Fill out only those sections that have changed, and indicate the name of the persons who no longer hold positions with the entity.*
- No Change from previous Data Form dated \_\_\_\_\_. *Skip to the bottom of the last page.*

Entity is a Non-Profit:     Yes     No

Entity Type:     Corporation (any type)     Joint Venture     LLC     Partnership (any type)  
                    Sole Proprietor     Other (specify): \_\_\_\_\_

Address: \_\_\_\_\_  
 City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
 Phone : \_\_\_\_\_ Fax : \_\_\_\_\_  
 E-mail: \_\_\_\_\_

Provide your e-mail address and/or fax number in order to receive notices regarding this form by e-mail or fax.

**Section 2: Principal Officers**

Please fill in the required identification information for each officer listed below. If the entity has no such officer or its equivalent, please check "This position does not exist." If the entity is filing a Change Form and the person listed is replacing someone who was previously disclosed, please check "This person replaced..." and fill in the name of the person being replaced so his/her name can be removed from the *Doing Business Database*, and indicate the date that the change became effective.

**Chief Executive Officer (CEO) or equivalent officer** This position does not exist

The highest ranking officer or manager, such as the President, Executive Director, Sole Proprietor or Chairperson of the Board.

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

This person replaced former CEO: \_\_\_\_\_ on date: \_\_\_\_\_

**Chief Financial Officer (CFO) or equivalent officer** This position does not exist

The highest ranking financial officer, such as the Treasurer, Comptroller, Financial Director or VP for Finance.

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

This person replaced former CFO: \_\_\_\_\_ on date: \_\_\_\_\_

**Chief Operating Officer (COO) or equivalent officer** This position does not exist

The highest ranking operational officer, such as the Chief Planning Officer, Director of Operations or VP for Operations.

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

This person replaced former COO: \_\_\_\_\_ on date: \_\_\_\_\_

**Section 3: Principal Owners**

Please fill in the required identification information for all individuals who, through stock shares, partnership agreements or other means, **own or control 10% or more of the entity**. If no individual owners exist, please check the appropriate box to indicate why and skip to the next page. If the entity is owned by other companies, those companies do **not** need to be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals who are no longer owners at the bottom of this page. If more space is needed, attach additional pages labeled "Additional Owners."

**There are no owners listed because (select one):**

- The entity is not-for-profit
- There are no individual owners
- No individual owner holds 10% or more shares in the entity
- Other (explain): \_\_\_\_\_

**Principal Owners (who own or control 10% or more of the entity):**

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

**Remove the following previously-reported Principal Owners:**

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

**Section 4: Senior Managers**

Please fill in the required identification information for all senior managers who oversee any of the entity's relevant transactions with the City (e.g., contract managers if this form is for a contract award/proposal, grant managers if for a grant, etc.). Senior managers include anyone who, either by title or duties, has substantial discretion and high-level oversight regarding the solicitation, letting or administration of any transaction with the City. **At least one senior manager must be listed, or the Data Form will be considered incomplete.** If a senior manager has been identified on a previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list individuals who are no longer senior managers at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Senior Managers."

**Senior Managers:**

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

First Name: \_\_\_\_\_ MI: \_\_\_\_\_ Last: \_\_\_\_\_

Office Title: \_\_\_\_\_

Employer (if not employed by entity): \_\_\_\_\_

Birth Date (mm/dd/yy): \_\_\_\_\_ Home Phone #: \_\_\_\_\_

Home Address: \_\_\_\_\_

**Remove the following previously-reported Senior Managers:**

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

Name: \_\_\_\_\_ Removal Date: \_\_\_\_\_

**Certification**

**I certify that the information submitted on these four pages and \_\_\_\_\_ additional pages is accurate and complete. I understand that willful or fraudulent submission of a materially false statement may result in the entity being found non-responsible and therefore denied future City awards.**

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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

Title: \_\_\_\_\_ Work Phone #: \_\_\_\_\_

**Return the completed Data Form to the agency that supplied it.**

For information or assistance, call the Doing Business Accountability Project at 212-788-8104.





# Division of Labor Services

## SUPPLY AND SERVICES EMPLOYMENT REPORT

### GENERAL INFORMATION

1. Your contractual relationship in this contract is: Prime contractor \_\_\_\_\_ Subcontractor \_\_\_\_\_
2. This Employment Report is for: Headquarters \_\_\_\_\_ Operating Facility \_\_\_\_\_
3. Would your firm like information on how to certify with the City of New York as a:
  - \_\_\_ Minority Owned Business Enterprise \_\_\_ Locally Based Business Enterprise
  - \_\_\_ Women Owned Business Enterprise \_\_\_ Emerging Business Enterprise
4. Please indicate if you would like assistance from SBS in identifying certified M/WBEs for contracting opportunities: Yes \_\_\_ No \_\_\_

### PART I: CONTRACTOR/SUBCONTRACTOR INFORMATION

5. \_\_\_\_\_  
Employer Identification Number or Federal Tax I.D. (Nine (9) Numbers)
6. \_\_\_\_\_  
Company Name
7. \_\_\_\_\_  
Facility Address and Zip Code Fax Number
8. \_\_\_\_\_  
Chief Operating Officer Telephone Number
9. \_\_\_\_\_  
Designated Equal Opportunity Compliance Officer Telephone Number  
(Or name of person to contact concerning this report)
10. \_\_\_\_\_  
Name of Prime Contractor and Contact Person (If same as Item #6, write "same")

FOR OFFICIAL USE ONLY: File No. \_\_\_\_\_  
Revised 12/09



NYC  
Department of Design + Construction  
Capital Discretionary Program Seminar:  
Non-Profit Organization Project Overview

*Part V*

Lien Clearance  
Requirements

**DDC cannot register the project without the submission of the required documents.**

- **HUD Subordination Agreement\***
- **UCC-1 Financing Statement Forms**
  1. UCC-1 Financing Statement\*
  2. UCC-1 Addendum\*
  3. UCC-1 Exhibit A\*
- **UCC-3 Amendment Statement\***
  4. UCC-3 Financing Statement\*
  5. UCC-3 Exhibit A\*
- **Attorney Equipment Lien Attestation\***

*NOTE: HUD Liens must be cleared via UCC-3  
Amendment Statement*

*\*Template and/or sample attached.*

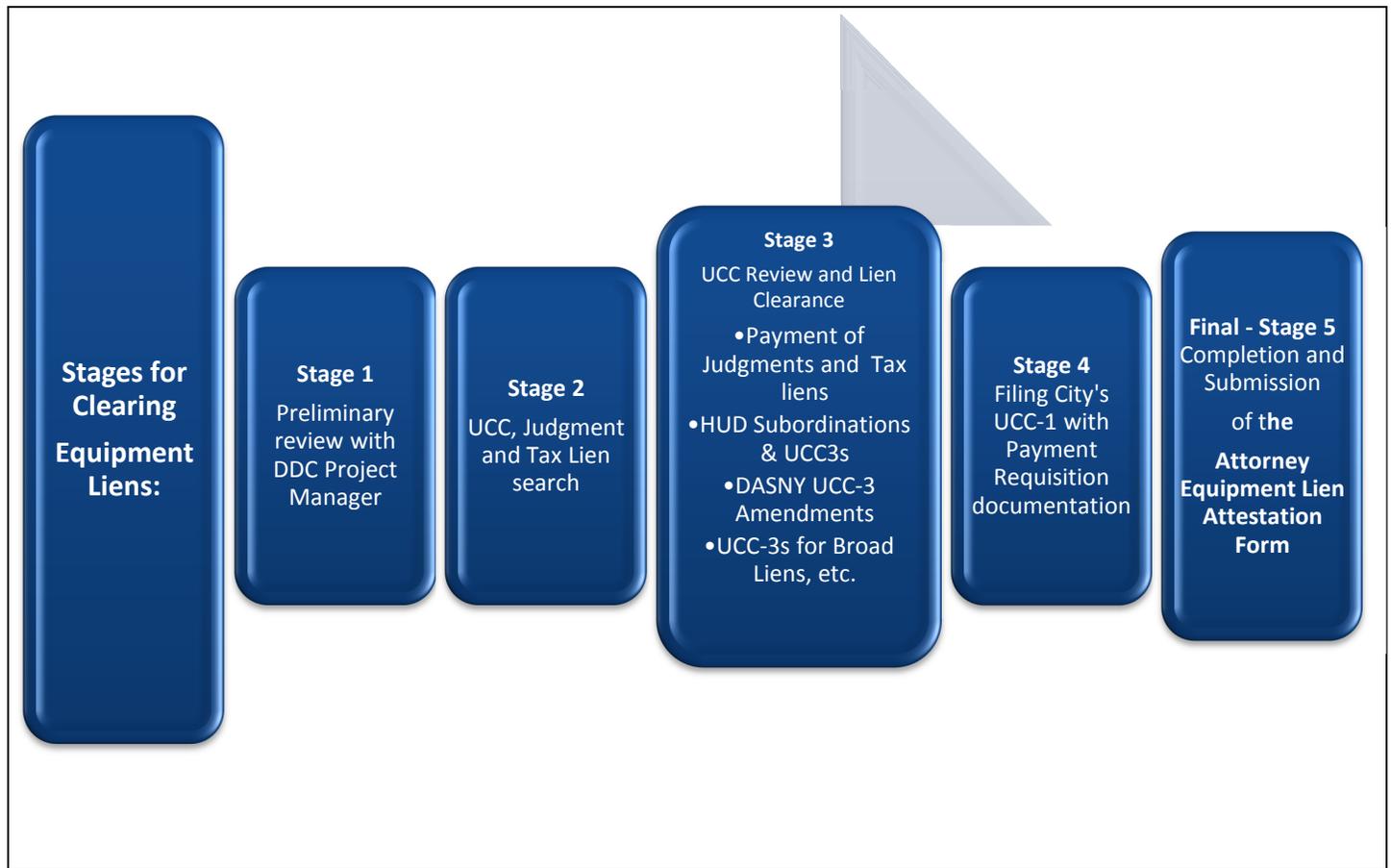
**NEW YORK CITY DEPARTMENT OF DESIGN AND CONSTRUCTION (“DDC”)**

**EQUIPMENT LIEN CLEARANCE GUIDELINES FOR SECURING THE  
CITY’S FINANCIAL INTEREST IN DISCRETIONARY FUNDED EQUIPMENT PURCHASES PURSUANT TO THE CITY’S  
FUNDING / SECURITY AGREEMENTS AND ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE (“UCC”)  
(THE “UCC GUIDELINES”)**

The City’s template Funding and Security Agreements for the reimbursement of capably eligible equipment purchases require Funding Recipients that receive discretionary City funding for such projects from elected officials to secure the City’s financial interests in the City-funded equipment before the City may make any reimbursements on a project.<sup>1</sup>

This legal process requires the Funding Recipient’s attorney to take certain steps to ensure the perfection of the City’s security interest in the City-funded equipment, as defined by Article 9 of the UCC. The City’s requirements for this purpose are delineated in these UCC Guidelines. Basic background information regarding the UCC and secured transactions can be found in Attachment 1 of the UCC Guidelines.

**Overview of the Lien Review & UCC Process for DDC Discretionary Funded Equipment Projects:**



<sup>1</sup> Capitalized terms included in the UCC Guidelines are defined in the City’s Funding and Security Agreement.

## Legal Requirements

To comply with the City's legal requirements, as delineated in the City's Funding and Security Agreements, DDC requires the following steps before the City may make any payments on a discretionary funded equipment project:

### **STAGE 1: PROVIDE ADVANCE NOTICE TO DDC PROJECT MANAGER REGARDING SPECIAL CIRCUMSTANCES:**

Prior to commencing the equipment UCC / Lien review process, **the Funding Recipient and its attorney must determine whether there are any issues that may require additional review and/or attention by the City.**

Please immediately advise your DDC Project Manager if the equipment reimbursement project includes or may include any of the following three (3) preliminary items of concern:

#### 1. Fixtures:

Fixtures are not capitably eligible for reimbursement as items of equipment. A "fixture" consists of a piece of equipment that is attached to real property and cannot be removed without causing a non-negligible amount of damage to the property.

- (a) **If it is unclear whether an item of equipment falls under the category of a "fixture,"** then the City will need to review the details of such equipment item(s) to determine whether such an item(s) will be eligible for City reimbursement.
- (b) **If "fixture-like" equipment are included in a project's budget,** then please let your DDC Project manager know from the onset, because the City will need more information in order to make a determination on the matter.

**If the City concludes that the "fixture-like" equipment in question does not actually consist of a fixture,** then the Funding Recipient and its attorney will need to inform DDC's Project Manager at the onset of an equipment project about any and all applicable landlord(s) and/or mortgagee(s) that may have a legal interest in the specific property where the "fixture-like" City-funded equipment will be located.

- **This information must be determined based on:** 1) the legal entity that owns the property where the "fixture-like" City-funded equipment will be located (e.g., if the Funding Recipient leases the property where the "fixture-like" equipment will be located, then the lessor's information will be relevant); and/or 2) whether there are any mortgages for that particular property on file with the Office of the New York City Register in the County where the property is located.
- **The Funding Recipient and its attorney will need to provide DDC's Project Manager with two (2) submissions when a project involves "fixture-like" equipment:**

- (1) **A listing of any and all applicable landlord(s) or mortgagee(s)** that may have a legal interest in the specific property where the “fixture-like” equipment will be located. This information will be necessary for a required attachment that will be included in the Funding Recipient’s Funding Agreement with the City for the City-funded equipment project.
- (2) **“Personalty Agreement letter” (i.e., a Non-Fixture Agreement Letter)** to ensure that the applicable landlord(s) and/or mortgagee(s) also agree, in writing, with the City’s determination that the City-funded “fixture-like” equipment do not actually consist of fixtures.

The City’s template letters for such matters can be found in the exhibit section of the City’s Capital Funding Application, and consist of the following:

- (i) Exhibit 6A Form -- Landlord Letter regarding Attached Moveable Property; and/or
- (ii) Exhibit 6B Form -- Mortgagee or Creditor Letter regarding Attached Moveable Property.

2. **Complex Lien(s):**

Additional documentation may be required for Liens that relate to loan arrangements with:

- (a) **Private lender loans insured by the U.S. Department of Housing and Urban Development (“HUD”); or**
- (b) **Liens based on financing arrangements with the Dormitory Authority of the State of New York (“DASNY”).**

If your organization has any such Liens on file with the New York State Department of State (“NYS DOS”), then please refer to Stage 3 of these UCC Guidelines for the next steps necessary.

3. **Vehicle Reimbursement Projects and Vehicle-related Equipment / Attachment(s):**

**The UCC (and these UCC Guidelines) do not apply to vehicle reimbursement projects.** However, if your organization seeks reimbursement for both vehicle(s) and *unattached* equipment to be included within the City-funded vehicle(s), then these UCC Guidelines may apply to the equipment portion of the project.

- (a) If, however, your organization has a vehicle reimbursement project that will include will certain items of equipment that will be *permanently attached to the City-funded vehicle(s)*, please let DDC’s Project Manager know, and the City will advise whether a UCC lien will be necessary.

**STAGE 2 - ORDER A UCC, JUDGMENT  
AND TAX LIEN SEARCH REPORT:**

The attorney that represents the Funding Recipient must order an up-to-date **UCC, judgment and tax lien search report (the “Lien Search Report”)** [not older than twelve (12) months] from a reputable title search company.

1. **When obtaining a Lien Search Report** for the preparation and completion of DDC’s Attorney Equipment Lien Attestation Form (as provided in Attachment 6 of the UCC Guidelines), **the Funding Recipient’s attorney must ensure that the Lien Search Report:**
  - (a) **Covers the complete and official corporate name of the Funding Recipient, as found on file with the New York State Department of State (“NYSDOS”).** (This information is specifically listed on the Funding Recipient’s Certificate of Incorporation or on official corporate amendments filed with the NYSDOS.)
  - (b) **Includes a chronological list of all active financing statements on file with the NYSDOS** (this list must reference each financing statement’s lapse date and UCC file number); and
  - (c) **Provides clear and readable copies of all active financing statements, continuation statements and amendments statements** found on file with the NYSDOS regarding the Funding Recipient.

Note: The City is only concerned about active UCC liens, as UCC financing statements automatically lapse after five (5) years from the date of their filing unless a continuation financing statement is filed.

**STAGE 3 - CLEAR ANY AND ALL LIENS:**

The Funding Recipient's attorney must ensure that **all competing liens** found on the Funding Recipient's Lien Search Report are cleared by the Funding Recipient.

**Step 1**

- The Funding Recipient must **pay any and all outstanding tax liens** and obtain proof of such payment, if applicable.

**Step 2**

- The Funding Recipient must **resolve and pay any and all judgment liens** and submit proof of such payment, if applicable.

**Step 3**

- The Funding Recipient's attorney must determine **whether there are any other secured parties on file with the NYSDOS that have UCC liens that may compete with the City's lien over the City-funded equipment** with respect to the Funding Recipient's equipment project with DDC.
- The below-listed UCC Liens pose concern for the City and must be addressed by the Funding Recipient and its attorney -- before -- the preparation of the Attorney Equipment Lien Attestation Form** (as included in Attachment 6 attached hereto).

There are **four (4) types of UCC-related Liens that require extra action by the Funding Recipient's attorney, and these UCC Liens are as follows:**

**1. HUD Liens:**

The Funding Recipient's attorney must ensure that **any and all Liens that relate to loan arrangements with the HUD and HUD-approved private lenders are formally subordinated and that UCC-3 amendment statements are filed** to indicate the subordination agreement arrangements with the City.

- For the City's detailed procedures for such Liens, please see Attachment 2 entitled "Procedures for Liens Insured by HUD" within these UCC Guidelines.

**2. DASNY Liens:**

The Funding Recipient's attorney must ensure that DASNY terminates its security interest over the City-funded equipment, unless the DASNY lien relates to a loan insured by HUD.

- **If the DASNY lien is insured by HUD**, please see Attachment 2 entitled "Procedures for Liens Insured by HUD" within these UCC Guidelines.)

- **If DASNY has a lien that is not HUD-insured** and that may somehow relate to the City-funded equipment (e.g., covers “any and all equipment,” etc.), **then two (2) steps are required:**

- 1) **Step 1:** As previously noted in Stage 1 of the UCC Guidelines, at the beginning of the equipment project, the Funding Recipient must inform DDC’s project manager about any and all applicable DASNY lien(s).

The Funding Recipient must also submit a letter to DDC from DASNY whereby DASNY agrees, in writing, to terminate its security interest over the City-funded equipment, and also agrees to allow the Funding Recipient’s attorney to file a UCC-3 amendment statement in the City’s favor with the NYSDOS.

- 2) **Step 2: The Funding Recipient’s attorney must ensure that any and all competing DASNY lien(s) are amended with UCC-3 amendment statements** to carve-out the City’s security interest in the City-funded equipment.

- The procedures on how to file UCC-3 amendment statements are delineated in Attachment 3 of the UCC Guidelines.

### 3. **Broad UCC liens:**

Liens that cover “**any and all equipment**” typically relate to mortgages, bond-related financing and/or loans that may have overreaching security interests in a Funding Recipient’s assets and, as such, can potentially include the City-funded equipment.

- Any such Liens require that **the Funding Recipient’s attorney file a UCC-3 amendment statement** to carve-out the City’s security interest in the City-funded equipment.
- The procedures on how to file UCC-3 amendment statements are delineated in Attachment 3 of the UCC Guidelines.

### 4. **Miscellaneous Equipment Financing Arrangements:**

**UCC financing statements on file with the NYSDOS that relate to financing arrangements with vendors, distributors or manufacturers** that sell commercial, medical or office-related equipment must be reviewed individually. The Funding Recipient’s attorney must address equipment listings for these types of UCC financing statements **based on the following categories:**

- **Equipment listings completely different than the City-funded equipment:**  
If the UCC lien on file with the NYSDOS includes equipment that does not relate to the Funding Recipient’s City-funded equipment project, then no further action is necessary with respect to that particular UCC-1 financing statement.
- **Equipment listings identical to the City-funded equipment:**  
If the UCC Lien(s) cover the **same equipment as those included in the Funding Recipient’s City-funded equipment reimbursement project, please note that the City**

does **NOT** allow for financing arrangements where other creditors have a superior security interest over the equipment paid for with City funds. These Liens require that the Funding Recipient's attorney file a UCC-3 amendment statement.

- The procedures on how to file UCC-3 amendment statements are delineated in Attachment 3 of the UCC Guidelines.

- **Equipment listings similar to the City-funded equipment, but distinguishable:**

If the UCC lien(s) consist of different items of equipment that are not in any way related to the City-funded equipment and do not consist of replacements or attachments and can somehow be distinguished from the City-funded equipment (either with different model types or serial numbers, etc.), then a written acknowledgement letter that the equipment is distinguishable may suffice from any such secured parties or equipment lessors.

- **DDC's template Secured Party Disclaimer letter is available in Attachment 4 of the UCC Guidelines.**

(Note: The Funding Recipient's attorney must have this information on file before completing the Attorney Equipment Lien Attestation form.)

- **Equipment listings that relate to true equipment lease arrangements that do not relate to the City-funded equipment:**

If the UCC filing(s) consist of true equipment lease(s) filed solely for precautionary reasons and do not relate to the City-funded equipment, (as the City does not allow for the financing or reimbursement of leased equipment, etc.), then a written acknowledgement letter may suffice from secured parties or equipment lessors to provide, in writing, that the equipment differentiates from the City-funded equipment.

- **DDC's template Secured Party Disclaimer letter is available in Attachment 4 of the UCC Guidelines.**

(Note: The Funding Recipient's attorney must have this information on file before completing the Attorney Equipment Lien Attestation form.)

**STAGE 4 – FILE THE CITY’S UCC-1  
FINANCING STATEMENT:**

**The Funding Recipient’s attorney must file the City’s UCC-1 Financing Statement with the NYSDOS along with a copy of the Funding Recipient’s payment requisition.**

**1. The Filing of the City’s UCC-1 financing statement:**

Once all of the Liens mentioned in Stage 3 of the UCC Guidelines are addressed by the Funding Recipient and its attorney, the Funding Recipient’s attorney must prepare and file a UCC-1 financing statement with the NYSDOS on behalf of the City/DDC.

- **For detailed instructions on how to file the City’s UCC-1 financing statement, please see Attachment 5 of the UCC Guidelines.**

**FINAL STAGE 5 – SUBMIT ATTORNEY  
EQUIPMENT LIEN ATTESTATION FORM:**

**The Funding Recipient’s attorney must prepare and submit the Attorney Equipment Lien Attestation form.**

**1. Completion of the DDC Attorney Equipment Lien Attestation form.**

When Stages 1-4 of the UCC Guidelines are completed by the Funding Recipient and its attorney, the Funding Recipient’s attorney must complete and sign DDC’s Attorney Equipment Lien Attestation form.

- The Funding Recipient’s attorney may only complete the DDC’s Attorney Equipment Lien Attestation form once the City’s UCC-1 financing statement and all the UCC-3 amendment statements, as applicable, have been filed with the NYSDOS. The Funding Recipient’s attorney must either:
  - Receive official confirmation from the NYSDOS that the City’s UCC-1 financing statement and UCC-3 amendment statements, as applicable, have been filed with the NYSDOS; and/or
  - The City’s UCC-1 financing statement and UCC-3 amendment statements, as applicable, must be viewable online on the NYSDOS’ website as UCCs on file with the Funding Recipient.
- **For a copy of DDC’s Attorney Equipment Lien Attestation form, please see Attachment 6 of the UCC Guidelines.**

## Attachment 1

### Basic UCC Background Information

The term “UCC” is short for Uniform Commercial Code. The Uniform Commercial Code consists of a uniform set of rules that govern commercial transactions. Pursuant to the City’s Standard Funding/Security Agreements and Article 9 of the UCC, Funding Recipients of City Discretionary capital funding for equipment projects need to submit certain lien information and documentation to DDC prior to receiving any funding reimbursement from the City. As such, the attorneys that represent Funding Recipients specifically need to: 1) perform a UCC lien search, 2) address any competing UCC liens (if applicable), and 3) file a UCC lien to protect the City’s interests in the City-funded equipment.

The reason for this legal requirement is that prior to the City’s reimbursement of the equipment, DDC must obtain a security interest in the City-funded equipment. A “security interest” is a legal term used to describe the right a “secured party” has to pledged assets (i.e., in this case the City-funded equipment) or to the proceeds of the pledged assets if the debtor fails to perform its obligations to the secured party. A “secured party” is a creditor, seller or lender who holds a security interest in the pledged assets of a debtor. DDC’s Security Agreement grants the City such a security interest over the equipment paid for with City funds. The Security Agreement establishes what will happen to the equipment if the funding is not spent as directed in the Funding Agreement, or if the equipment not used in the manner described therein. DDC must obtain a lien on the equipment (also referred to as “collateral” in UCC terms), so that if a Funding Recipient *does not properly use the City funding, or does not use the City-funded equipment as stated in its Funding Agreement with the City*, then the City will be legally able to initiate a legal process to retrieve any such City-funded equipment.

In order for a UCC lien to have legal force, a secured party’s security interest must be “perfected” to protect against other possible creditors and lienholders. “Perfection” consists of a legal UCC term for recording a lien that has first priority over all other creditors pursuant to Article 9 of the UCC. Under the UCC, the standard way to perfect a lien for equipment is to first address any competing liens by searching and recording UCC-3 amendment statements against conflicting liens and then to file a UCC-1 Financing Statement with the NYSDOS for the collateral / equipment covered by the secured party’s security interest. Accordingly, UCC-3 amendment statements apply, and are filed, whenever UCC-1 financing statement(s) already on file with the NYSDOS need to be modified, amended, subordinated or terminated to protect another secured party’s security interests. The UCC-1 financing statement gives a description of the secured party’s UCC lien, and serves to notify all other creditors of the secured party’s interest in the collateral covered under the UCC-1 lien. UCC-1 financing statements have an effective duration of five (5) years.

- All NYSDOS UCC forms are available online at: <http://www.dos.ny.gov/corps/uccforms.html>.
- The financing statement consists of a public record that is publically available online on the NYSDOS’ website at: [http://appext20.dos.ny.gov/pls/ucc\\_public/web\\_search.main\\_frame](http://appext20.dos.ny.gov/pls/ucc_public/web_search.main_frame).
- The costs associated with the filing of the documents with the NYSDOS are provided at: [http://www.dos.ny.gov/corps/fees\\_ucc.html](http://www.dos.ny.gov/corps/fees_ucc.html).
- To view the necessary DDC template agreements and UCC-related documents, please see DDC’s web pages for non-profit reimbursement projects at: [http://www.nyc.gov/html/ddc/html/business/nfp\\_forms.shtml](http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml).

For more information on the UCC, please contact DDC or an attorney familiar with secured transactions.

## Attachment 2

### Procedures for UCC Liens that Relate to Loans Insured by the U.S. Department of Housing and Urban Development (“HUD”)

#### 1. Liens relating to loan arrangements with HUD and HUD-approved lenders:

##### a. **Background:**

- HUD-related UCC liens typically relate to hospitals, medical centers, and residential care facilities that have financing arrangements with private lenders insured by HUD. These types of loans usually require broad security interests in any and all of the Funding Recipient’s property and collateral, which often also includes equipment, etc.
- The City requires that HUD and HUD-insured private lenders subordinate their security interests over City-funded equipment for duration of the Funding Agreement’s Performance Term (i.e., 5 years.)
- For this reason, if there are any HUD-related liens on file with the NYSDOS, then the Funding Recipient must submit evidence to DDC that the HUD UCC lien(s) will be subordinated to the City’s UCC lien over the City-funded equipment.

##### b. **There are three (3) steps necessary to address HUD-related UCC liens:**

- **1<sup>st</sup> Step:**

- At the onset of the project, the Funding Recipient must provide DDC’s project manager two submissions:

(1) **A brief listing of any and all HUD-related Liens, as applicable.** This preliminary information is necessary, because this listing will consist of a required exhibit within the City’s Funding Agreement with the Funding Recipient for the equipment project.

(2) **Letter(s) of subordination approval from HUD and the HUD-insured private lender.**

- This letter needs to indicate HUD and the HUD-insured private lender’s approval to execute a subordination agreement to formally subordinate their security interests over the City-funded equipment for the duration of the Funding Agreement’s Performance Term.<sup>2</sup>

- **2<sup>nd</sup> Step:**

- Prior to receiving any reimbursement funds from the City, the Funding Recipient’s attorney will need to get HUD and the HUD-insured private lender(s) to **execute the City/HUD approved template subordination agreement for equipment projects.**
- Note: The City/HUD approved **subordination agreement template is attached hereto** for reference purposes and may also be obtained on DDC’s webpages for Non-Profits.

- **3<sup>rd</sup> Step:**

- Once the City/HUD approved template subordination agreement is signed by both HUD and the HUD-insured private lender(s), then the **Funding Recipient’s attorney must file a UCC-3**

<sup>2</sup> Please note this requirement is also indicated in the City’s “Capital Funding Request Form for Not-for-Profit Organizations” within the sections that relate to: “Standalone Equipment and/or Equipment System Application” (see Question 5A and B on pages 9 and 10), the “Initial Outfitting Application” (see Question 6A and B on page 11) and the “City Requirements & Covenants” section of each application (see Question 1D).

**amendment statement against the applicable HUD-related UCC financing statement(s).** This UCC-3 amendment statement will simply need to be filed for information purposes.

- **Important Note:** The UCC-3 amendment statement for HUD-related UCC liens differ from the UCC-3 amendment statements noted in Attachment 3 of the UCC Guidelines for broad UCC financing statements, because the HUD-related UCC-3 amendment statement simply serves to inform other creditors about the executed subordination agreement. The UCC-3 amendment statement for HUD-related liens subordinates, but does not -- delete -- the City-funded equipment from the HUD-related lien on file with the NYSDOS.

**c. HUD Contacts:**

- **Hospitals and medical centers:** Funding Recipients that are hospitals and medical centers should direct all of their initial requests and inquiries regarding HUD-related liens to Steven Wang at the HUD Office of Hospital Facilities, NY Division, who may be reached at 212-542-7875.
- **Residential care facilities:** Funding Recipients that are residential care facilities, such as nursing homes or assisted living facilities, should direct all of their initial requests and inquiries regarding HUD liens to the HUD Office of Residential Care Facilities, NY Division.

**d. Important notices:**

- **The Funding Recipient's attorney must have all HUD-related liens subordinated and the applicable UCC-3 amendment statement(s) filed with the NYSDOS, as above delineated, before finalizing and signing DDC's Attorney Equipment Lien Attestation form.**
- Please note that obtaining both the letter agreeing to lien subordination and the lien subordination agreement from HUD and the HUD-insured private lenders consists of a very lengthy and time consuming process. Accordingly, DDC advises the attorneys that represent Funding Recipients begin to work with HUD and the HUD-insured lender(s) at the onset of a discretionary City-funded equipment project to help ensure that their client obtains the necessary paperwork in a timely manner.

## SUBORDINATION AGREEMENT

This **SUBORDINATION AGREEMENT** (the “**Agreement**”) is made as of \_\_\_\_\_, 201\_, by [INSERT NAME OF MORTGAGEE], a [Delaware] Corporation having its office and place of business at [INSERT ADDRESS] and the SECRETARY OF THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT of Washington D.C. (collectively, the “**Federal Secured Parties**”) and THE CITY OF NEW YORK, a New York municipal corporation acting by and under its DEPARTMENT OF DESIGN AND CONSTRUCTION having an office at 30-30 Thomson Avenue, Long Island City, New York 11101.

### PRELIMINARY STATEMENT

1. The Federal Secured Parties and [INSERT NAME OF FUNDING RECIPIENT] (“**Debtor**”) entered into a Security Agreement dated as of [\_\_\_\_\_] (the “**Federal Security Agreement**”) pursuant to which Debtor granted to the Federal Secured Parties a security interest (“**Federal Security Interest**”) in certain collateral (as more fully described in Exhibit A hereto, the “**Federal Collateral**”) as security for certain obligations of Debtor to the Federal Secured Parties more fully described in said Federal Security Agreement.

2. The Federal Secured Parties perfected their Federal Security Interest under Article 9 of the Uniform Commercial Code in New York by filing a Uniform Commercial Code Financing Statement (Form UCC-1) with each of the New York Secretary of State and the Office of the City Register for [\_\_\_\_\_] County (the “**Federal UCC-1s**”).

3. Debtor has applied to the City of New York (“**City**”) for City Capital funds (“**Funding**”) to reimburse Debtor for costs and expenses incurred by Debtor for the acquisition of certain items of machinery and equipment that Debtor will use in connection with the operation of [INSERT NAME OF FUNDING RECIPIENT] (as more fully described in Exhibit B hereto, the “**City Collateral**”).

4. The Federal Collateral includes a broad scope of the Debtor’s assets, including, without limitation, certain assets of the Debtor “now owned or hereafter from time to time acquired,” and, by definition, the Federal Collateral comprises the assets of the Debtor that constitute the City Collateral.

5. It is a condition of the Funding that, among other things, Debtor dedicate the City Collateral to a bona fide City purpose determined by the City and that Debtor execute and deliver to the City a Security Agreement (“**City Security Agreement**”) granting the City a first priority security interest in the City Collateral (“**City Security Interest**”) as security for the obligations of Debtor to the City in connection with the Funding.

6. The City intends to perfect its City Security Interest in the City Collateral under Article 9 of the Uniform Commercial Code in New York by filing a Uniform Commercial Code Financing Statement (Form UCC-1) with each of the New York Secretary of State and the Office of the City Register for [\_\_\_\_\_] County (the “**City UCC-1s**”).

7. It is also a condition of the Funding that the Federal Secured Parties subordinate their Federal Security Interest in the City Collateral to the City Security Interest.

8. To facilitate the grant of the Funding by the City to Debtor, the Federal Secured Parties are willing to subordinate the Federal Security Interest in the City Collateral to the City pursuant to this Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Federal Secured Parties agree as follows:

1. The Federal Security Interest in those items of the City Collateral shall be subject and subordinate to City Security Interest in the City Collateral irrespective of the order in which the Federal Security Agreement and the City Security Agreement may have been executed and delivered by the Debtor, the Federal Security Interest and the City Security Interest may have been granted by the Debtor, and the Federal UCC-1s and the City UCC-1s may have been filed with the New York Secretary of State and the Office of the City Register for [\_\_\_\_\_] County.

2. The Federal Secured Parties agree that the City Security Interest shall have the same validity, priority, and effect as if Debtor had executed and delivered the City Security Agreement, granted the City Security Interest to the City and filed or caused to be filed the City UCC-1s with the New York Secretary of State and the Office of the City Register for [\_\_\_\_\_] County prior to the date that Debtor executed and delivered the Federal Security Agreement, granted the Federal Security Interest to the Federal Parties and filed or caused to be filed the Federal UCC-1s with the New York Secretary of State and the Office of the City Register for [\_\_\_\_\_] County.

3. The Federal Secured Parties acknowledge that the City is relying on this instrument in its determination to make the Funding available to Debtor.

4. The City understands and agrees that nothing in this instrument shall in any way alter, change, or modify the terms and conditions of the Federal Security Agreement, or in any way release or affect the attachment, validity, perfection, or priority of the Federal Security Interest, except with respect to the City Security Interest as provided herein.

5. The terms, covenants, and agreements of this Agreement shall inure to the benefit of the City and its successors, assigns and transferees and shall be binding upon the Federal Secured Parties and their respective successors, assigns and transferees.

[INSERT NAME[S] OF MORTGAGEE[S]]

U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:



**EXHIBIT A**

**FEDERAL COLLATERAL**

(SEPARATE ATTACHMENT)

[All building materials, equipment, furniture, furnishings, accounts receivable or other property installed or to be installed or used in and about the building or buildings now erected or hereafter to be erected upon the lands secured by the FHA Mortgage from Debtor to Secured party dated as of [\_\_\_\_\_] herewith situated in the Borough of [\_\_\_\_\_] , County of [\_\_\_\_\_] and State of New York, being FHA Project No. [\_\_\_\_\_] (the "Project") which are necessary to complete the comfortable use and occupancy of such building or buildings for the purposes for which they were or are to be erected, including, but not limited to, all gas and electric appliances and fixtures; all engines, motors, dynamos, elevators, and machinery; all boilers, radiators, heaters, furnaces, stoves, heating equipment; all stoves, ranges, and cooking equipment; all bathtubs, sinks, basins, pipes, hot-water boilers, faucets, and other plumbing fixtures; all mantels; cabinets; all washing machines, laundry tubs, and ironers; all lighting, air-conditioning and ventilating equipment; all awnings, shades, screens and venetian blinds; and all incinerating equipment, together with appurtenances thereto; all equipment used in the diagnosis and treatment of patients; and all building material and equipment now or hereafter delivered to the premises and intended to be installed therein, such goods, equipment, chattels and personal property as are commonly used in the fully furnishing of and the equipping of a hospital, whether personal property, inventory or fixtures, whether now owned or hereafter from time to time acquired by the Debtor, together with all substitutions, replacements, additions, attachments, accessories, accretions, their component parts thereto or thereof, all other items of like property installed or to be installed or used therein and any and all proceeds thereof whether now in existence or hereafter arising.

EXCEPTING AND EXCLUDING THEREFROM any property or fixtures as described above which are now subject to security interests, but only so long as such security interests remain outstanding, and further excepting any personal property or fixtures now or hereafter held or used by Debtor as lessee, but only so long as the Debtor is the lessee, and further excepting and excluding, any property as described above acquired or to be acquired by Debtor, other than items in replacement of those covered by the Security Agreement of which this Schedule is a part, during the time when said items are covered by purchase money security interests in third parties as evidenced by the filing of Uniform Commercial Code Financing Statements in the appropriate filing offices.

Nothing in this Schedule "A" shall relieve Debtor of its obligations under the Regulatory Agreement between Debtor and the Secretary of Housing and Urban Development as the same may be amended from time to time.]

**EXHIBIT B**

**CITY COLLATERAL**

(SEPARATE ATTACHMENT)

### **Attachment 3**

#### **UCC-3 Amendment Statements for Competing Liens on file with the NYSDOS**

This attachment serves to delineate the specific steps that are required by Stage 3 of the UCC Guidelines.

If another creditor holds a UCC security interest / Lien that may impact the City-funded equipment, then the Funding Recipient's attorney must file a UCC amendment statement (also referred to as "UCC-3") to address each potential competing UCC lien. The UCC-3 amendment statement filed with the NYSDOS for each competing UCC financing statement helps ensure that the City's lien on the City-funded Equipment has a first priority lien.

All creditors, mortgagees and other lien holders must exclude (i.e., "carve-out") the City-funded equipment from their Liens if their UCC financing statements in any way may impact the City's lien over the City-funded equipment.

- The Funding Recipient's attorney may either get conflicting UCC lien-holders to:
  - file the UCC-3 amendment statement(s) on their own on behalf of the Funding Recipient; or
  - provide permission to the Funding Recipient's attorney to directly file the necessary UCC-3 amendment statements with the NYSDOS (in order to help expedite the process.)
- **The UCC-3 amendment statement(s) filed with the NYSDOS with respect to the City-funded equipment must attach:**
  - 1) The most up-to-date **UCC-3 amendment statement form** as provided by the NYSDOS:
    - Note: The UCC-3 form should be completed in the same manner as provided in the sample UCC-3 amendment statement attached hereto;
  - 2) **DDC's "UCC-3 Exhibit A"**<sup>3</sup> (which defines the term "deleted Collateral"):
    - DDC's UCC-3 Exhibit A attachment is available on DDC's website at: [http://www.nyc.gov/html/ddc/html/business/nfp\\_forms.shtml](http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml); and
  - 3) **The equipment budget found in Schedule I of the Funding Recipient's Security Agreement with the City.**
- For more information on how to file UCC amendment statements with the NYSDOS, please see the NYSDOS' website at: <http://www.dos.ny.gov/corps/uccforms.html>.

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<sup>3</sup> Please be careful to use the appropriate UCC Exhibit A. The UCC-1 Exhibit A provides for the definition of "collateral" and the UCC-3 Exhibit A is almost identical, but it instead refers to the "deleted" collateral.

**UCC FINANCING STATEMENT AMENDMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

---

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**Duval & Stachenfeld LLP**  
**Third Floor**  
**300 East 42nd Street**  
**New York, NY 10017**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1a. INITIAL FINANCING STATEMENT FILE #  
**200301290204901 Dated January 29, 2003 (the "Financing Statement")**

1b. This FINANCING STATEMENT AMENDMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS.

2.  **TERMINATION:** Effectiveness of the Financing Statement identified above is terminated with respect to security interest(s) of the Secured Party authorizing this Termination Statement.

3.  **CONTINUATION:** Effectiveness of the Financing Statement identified above with respect to security interest(s) of the Secured Party authorizing this Continuation Statement is continued for the additional period provided by applicable law.

4.  **ASSIGNMENT (full or partial):** Give name of assignee in item 7a or 7b and address of assignee in item 7c; and also give name of assignor in item 9.

5. **AMENDMENT (PARTY INFORMATION):** This Amendment affects  Debtor or  Secured Party of record. Check only one of these two boxes.

Also check one of the following three boxes and provide appropriate information in items 6 and/or 7.

**CHANGE** name and/or address: Please refer to the detailed instructions in regards to changing the name/address of a party

**DELETE** name: Give record name to be deleted in item 6a or 6b.

**ADD** name: Complete item 7a or 7b, and also item 7c; also complete items 7e-7g (if applicable).

6. **CURRENT RECORD INFORMATION:**

6a. ORGANIZATION'S NAME  
**The Young Women's Christian Association of the City of New York**

OR

6b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7. **CHANGED (NEW) OR ADDED INFORMATION:**

7a. ORGANIZATION'S NAME

OR

7b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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7c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY
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7d. **SEE INSTRUCTIONS**  
Not Applicable

ADD'L INFO RE ORGANIZATION DEBTOR

7e. TYPE OF ORGANIZATION

7f. JURISDICTION OF ORGANIZATION

7g. ORGANIZATIONAL ID #, if any  NONE

8. **AMENDMENT (COLLATERAL CHANGE):** check only one box.

Describe collateral  deleted or  added, or give entire  restated collateral description, or describe collateral  assigned.

**See Exhibit A and Schedule I attached hereto**

9. **NAME OF SECURED PARTY OF RECORD AUTHORIZING THIS AMENDMENT** (name of assignor, if this is an Assignment). If this is an Amendment authorized by a Debtor which adds collateral or adds the authorizing Debtor, or if this is a Termination authorized by a Debtor, check here  and enter name of DEBTOR authorizing this Amendment.

9a. ORGANIZATION'S NAME  
**CIT Technology Financing Services, Inc.**

OR

9b. INDIVIDUAL'S LAST NAME	FIRST NAME	MIDDLE NAME	SUFFIX
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10. OPTIONAL FILER REFERENCE DATA

## EXHIBIT A

### **COLLATERAL DELETED**

The **deleted** collateral (“Collateral”) shall include each and every one of the following:

1. All machinery, equipment, furniture and fixtures listed in Schedule I attached hereto, and all machinery, equipment, furniture and fixtures purchased, or paid for, or financed with the proceeds of certain funding (“Funding”) made available or intended to be made available by the City of New York, acting by and through its Department of Design and Construction, (the “City”) to Debtor pursuant to that certain Funding Agreement by and between the City and Debtor, including, without limitation, any such machinery, equipment, furniture and fixtures paid for by the City or for which Debtor was reimbursed with the proceeds of the Funding, wherever located and whenever acquired, whether now owned or existing or hereafter acquired or created, together with all accessions thereto and all substitutions and replacements thereof and parts therefor;
2. All ledger sheets, files, records, documents, and instruments (including, but not limited to, computer programs, tapes, and related electronic data processing software) relating to any Collateral; and
3. All cash or non-cash proceeds of the sale or other disposition of any Collateral and, to the extent not otherwise included, all amounts paid or payable under any policy of insurance (whether or not the City is named as a loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage, or otherwise with respect, to any Collateral.

SCHEDULE I

LIST OF CERTAIN ITEMS OF  
MACHINERY, EQUIPMENT, FURNITURE AND FIXTURES

(SEPARATE ATTACHMENT)

YWCA OF THE CITY OF NEW YORK

52 Broadway 4th floor

New York, New York 10004

Item Description	QTY	Unit Price	Amount	Date
3300 MX secure console server	1	6,764	6764	2/15/05
Network License link	1	2782	2782	2/15/05
NEC 2200 DLP projector	2	2080	4160	5/26/05
3300 IP phone	16	150	2400	2/15/05
5220 IP phone	11	354	3894	2/15/05
5301 IP conference Unit	1	1802	1802	2/15/05
Global Halton Series Desks	12	738	8856	4/12/05
Global Halton 30X66 desk	1	629	629	4/12/05
Halton u-shape credenza	1	1077	1077	4/12/05
Halton desk with box file	3	348	1044	4/12/05
Overhead hutch units	10	493	4930	4/12/05
Overhead 66" hutch units	3	482	1446	4/12/05
Steel laminate tops	16	255	4080	4/12/05
Set of Station & reception chairs	46	214	9844	4/12/05
Versteel performance tables	6	618	3708	4/12/05
			0	
			0	
Grand Total			57416	

**DDC Reimbursement Amount Not to Exceed:.....\$57,000.00**

**Attachment 4**

**Secured Party Disclaimer Letter**

(Template letter for secured parties or lessors of equipment  
that have security or lease interests in equipment similar  
but distinguishable to the City-funded equipment)

(Please see documentation attached.)

**[Template Secured Party Disclaimer Letter]**

[Note: This letter must be on the Funding Recipient's Letterhead]

[date]

[name of authorized representative]

[creditor's/lender's name]

[address]

[address]

Re: [name of funding recipient/debtor] ("Funding Recipient")

Dear [authorized representative]:

The City of New York has financed the equipment, goods or personal property (the "Equipment") listed on the attached Attachment A by way of a capital funding agreement for the above-referenced Funding Recipient.

The City of New York will have a security interest in the Equipment.

This letter is to serve as your confirmation and agreement that (1) you do not claim any lien, claim, title or security interest in or to the Equipment, (2) you will not in the future claim any lien, claim, title or security interest in or to the Equipment that is or will be perfected pursuant to any financing statement currently on file, and (3) no other person has any lien, claim, title or security interest in or to the Equipment which such person has acquired or claims through you. Copies of your financing statements relating to Funding Recipient are also attached.

Please sign below to acknowledge your disclaimer of interest in the Equipment, and return to my attention at \_\_\_\_\_, or by fax to \_\_\_\_\_, or by e-mail to \_\_\_\_\_ as soon as possible, or call me with questions at \_\_\_\_\_. This disclaimer shall be binding on and inure to the benefit of you, the City of New York, and each party's respective successors and assigns.

Thank you.

**[FUNDING RECEIPIENT]**

\_\_\_\_\_, [Title]

ACKNOWLEDGED AND AGREED BY THE UNDERSIGNED (through an authorized representative)

**[LENDER/CREDITOR/SECURED PARTY]**

By: \_\_\_\_\_

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attachment (Equipment List)

## Attachment 5

### Procedures on How to File the City's UCC-1 Financing Statement for the City-Funded Equipment

This attachment serves to delineate the specific steps that are required by Stage 4 of the UCC Guidelines.

**The Funding Recipient's attorney must prepare and file a UCC-1 financing statement ("UCC-1") with the NYSDOS on behalf of the City/DDC.** Once all competing Liens are addressed (as delineated in Stage 3 of the UCC Guidelines), the filing of the UCC-1 financing statement serves to grant the City with a first priority interest in the City-funded equipment.

- **The UCC-1 financing statement filed on behalf of the City with respect to the City-funded equipment MUST include:**
  - 1) The most up-to-date **UCC-1 financing statement form**, as provided by the NYSDOS.
    - Note: The UCC-1 form should be completed in the same manner as provided in the sample UCC-1 amendment statement attached hereto.
  - 2) **DDC's "UCC-1 Exhibit A" attachment** (which serves to define the term "Collateral").
    - DDC's UCC-1 Exhibit A attachment is available on DDC's website at:  
<[http://www.nyc.gov/html/ddc/html/business/nfp\\_forms.shtml](http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml)>.
  - 3) **A copy of the payment requisition** that lists the *exact* equipment that the Funding Recipient purchased and submitted to DDC for reimbursement.
    - Note: The items listed in the payment requisition form should match the items of equipment listed in Schedule I of the Funding Recipient's Security Agreement with the City for the equipment project.
  
- **Important Notices:**
  - Please keep in mind that pursuant to the Funding Agreement, **Funding Recipients may only seek reimbursement for the City-funded equipment** covered under a specific Funding and Security Agreement **within twelve (12) months of the date when the Funding Agreement is registered with the New York City Comptroller's Office.**
  
  - Once the Funding Recipient's attorney files the necessary UCC-1 financing statements and clears any and all competing liens, then **the Funding Recipient's attorney will need to complete and sign DDC's Attorney Equipment Lien Attestation form before the agency may begin the reimbursement process** for equipment purchases made by the Funding Recipient.
  
  - A copy of DDC's Attorney Equipment Lien Attestation form is available in Attachment 6 of the UCC Guidelines.

SAMPLE

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

Dan Alcott, Esq.  
 Duval & Stachenfeld LLP  
 Third Floor  
 300 East 42nd Street  
 New York, NY 10017

*Your contact info - (whoever files the UCC)*

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME  
 The Young Women's Christian Association of the City of New York

OR

1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
 52 Broadway, 4th Floor New York NY 10004 USA

1d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION 1f. JURISDICTION OF ORGANIZATION 1g. ORGANIZATIONAL ID #, if any  
 [Redacted] Corporation New York [ ] NONE

*Your organization's information with full legal corp. name included.*

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. TAX ID #: SSN OR EIN ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any  
 [ ] NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME  
 The City of New York, acting by and through its Department of Design and Construction

OR

3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
 30-30 Thomson Avenue Long Island City NY 11101 USA

4. This FINANCING STATEMENT covers the following collateral:  
 See Exhibit A and Schedule I attached hereto .

*MUST USE THIS INFO AS SHOWN.*

5. ALTERNATIVE DESIGNATION [if applicable]:  LESSEE/LESSOR  CONSIGNEE/CONSIGNOR  BAILEE/BAIOLR  SELLER/BUYER  AG. LIEN  NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum [if applicable] 7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [ADDITIONAL FEE] [optional]  All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA

\* Required Attachment

EXHIBIT A

COLLATERAL

The collateral ("Collateral") shall include each and every one of the following:

1. All machinery, equipment, furniture and fixtures listed in Schedule I attached hereto, and all machinery, equipment, furniture and fixtures purchased, or paid for, or financed with the proceeds of certain funding ("Funding") made available or intended to be made available by Secured Party to Debtor pursuant to that certain Funding Agreement by and between Secured Party and Debtor, including, without limitation, any such machinery, equipment, furniture and fixtures paid for by Secured Party or for which Debtor was reimbursed with the proceeds of the Funding, wherever located and whenever acquired, whether now owned or existing or hereafter acquired or created, together with all accessions thereto and all substitutions and replacements thereof and parts therefor;

2. All ledger sheets, files, records, documents, and instruments (including, but not limited to, computer programs, tapes, and related electronic data processing software) relating to any Collateral; and

3. All cash or non-cash proceeds of the sale or other disposition of any Collateral and, to the extent not otherwise included, all amounts paid or payable under any policy of insurance (whether or not Secured Party is named as a loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage, or otherwise with respect, to any Collateral.

\* Copied from  
Schedule I  
of the Security  
Agreement

SCHEDULE I

LIST OF CERTAIN ITEMS OF  
MACHINERY, EQUIPMENT, FURNITURE AND FIXTURES

(SEPARATE ATTACHMENT)

DEPARTMENT OF DESIGN AND CONSTRUCTION  
DIVISIONS OF STRUCTURES AND TECHNICAL SUPPORT  
**PAYMENT REQUISITION: Part A**

(For Contract Work-Contractor)

ESTIMATE FOR PAYMENT NO. 1 FOR CONTRACT WORK FROM 3/1/13 TO 6/1/13 INCLUSIVELY TASK ORDER # N/A  
(Please use sequential numbers for all payments on this Contract including Contract Change Work; for Requirements Contracts, number payments sequential to each Task Order.)  
CONTRACT REG. NO. 2013000011111 TITLE OF CONTRACT Discretionary Funding and Security Agreement CONTRACT REG. DATE 5/2/13  
ORDER TO COMMENCE DATE 3/27/13 ORIG. CONTR. COMPLETION DATE 10/29/13 ORIG. CONTR. SUM \$84,900 FMS (CAPIS) ID(S) PWM11SAMPLE  
PROJECT Discretionary Funded Equipment Reimbursement Project for the purchase of computers for "Sample Non-Profit, Inc."  
ADDRESS "Sample Non-Profit, Inc." at 111 Sample Rd., Long Island City, New York 11101  
BORO. Queens

(Except for Technical Support Service Contracts, use separate sheet for each Task Order associated with this Contract. Task Order requisitions must list all registered Supplemental Task Orders.)

CONTRACTOR'S NAME "Sample Non-Profit, Inc." ADDRESS 111 Sample Rd., Long Island City, New York 11101 TEL. (718) 111-1111 FAX (718) 111-1112

**Comment [K11]:** All of the information highlighted on this payment requisition form will need to be filled-out by your organization before the UCC-1 financing statement may be filed with the NYS Dept. of State.

Please also remember to first confirm with the Project Manager assigned to your organization's project that the payment requisition form has been reviewed for sufficiency by DDC.

**Comment [K12]:** The address noted on this section of the payment requisition form should reflect the specific location of the equipment.

If multiple locations relate to your organization's equipment project, then please use multiple payment requisition forms, and note the multiple sheets in the form's above-right corner.

**Comment [K13]:** Please note that the City's Funding Agreement only allows for the submission of one (1) payment requisition to the agency for each discretionary funded project. Accordingly, please make sure to include all of the eligible equipment within one Payment Requisition request (your organization may use multiple sheets, if necessary, depending on the amount of equipment covered under the project.)

A * ITEM NO.	B * DESCRIPTION * (include unit price if applicable)	C * QUANTITY/ UNITS	D * TOTAL SCHEDULED VALUE	E WORK COMPLETED		F THIS PERIOD	G MATERIALS PRESENTLY STORED (NOT IN E OR F)	H TOTAL COMPLETED AND STORED TO DATE (E + F + G)	I BALANCE TO FINISH (D - H)	J RETAINAGE (IF VARIABLE RATE)
				FROM PREVIOUS APPLICATIONS (E + F)	% (H/D)					
1	PowerEdge Server	1	\$7,918			\$7,918		\$7,918		
12	Pentium 4 PCs	12	\$7,740			\$7,740		\$7,740		
	Consulting Implementation		\$15,000			\$15,000		\$15,000		
	IMA User License		\$4,500			\$4,500		\$4,500		
	Pentium 4 PC (3/27/13)	20	\$13,247.00			\$13,247.00		\$13,247.00		
	(5/20/13)	20	\$19,188.75			\$19,188.75		\$19,188.75		
	(10/10/13)	5	\$3,600.00			\$3,600.00		\$3,600.00		
	(10/29/13)	20	\$13,806.25			\$13,806.25		\$13,806.25		
	Network Laser Printer	2	\$2,742.02			\$2,742.02		\$2,742.02		
	Overhead projectors	2	\$3,099.98			\$3,099.98		\$3,099.98		
	SUBTOTALS (THIS SHEET)		\$85,000.00			\$85,000.00		\$85,000.00		
	TOTALS (LAST SHEET)									

\* AS SHOWN IN DETAILED ESTIMATE

RECEIVED FROM CONTRACTOR \_\_\_\_\_ DATE: \_\_\_\_\_  
\*\* SIGNATURE SIGNIFIES RECEIPT (NOT APPROVAL) OF PAYMENT (RE/PM SIGNATURE)\*\* (Pilot Receipt Date) Rev. 05/15/01

**Attachment 6**

**DDC's Attorney Equipment Lien Attestation Form**

(Please see documentation attached.)



**ATTORNEY EQUIPMENT LIEN ATTESTATION FORM**  
 RE: THE RECORDATION AND PERFECTION OF THE CITY'S SECURITY INTEREST IN  
 THE CITY-FUNDED EQUIPMENT PURSUANT TO THE FUNDING / SECURITY  
 AGREEMENTS & ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE ("UCC")

**PROJECT INFORMATION:**

- **FUNDING RECIPIENT:** \_\_\_\_\_
- **FUNDING AGREEMENT DATED AS OF** \_\_\_\_\_, 20\_\_ **/ SECURITY AGREEMENT DATED AS OF** \_\_\_\_\_, 20\_\_
- **EQUIPMENT FUNDING AMOUNT:** \$ \_\_\_\_\_

**BACKGROUND INFORMATION & INSTRUCTIONS:**

This form requires the Funding Recipient's attorney to attest that the Funding Recipient has complied with the requirements set forth in the Funding and Security Agreement in order to secure a perfected security interest for the City pursuant to Article 9 of the UCC with respect to the City-Funded Equipment and other Collateral covered by the Security Agreement.

- Capitalized terms included in this form are defined in the City's Funding and Security Agreement.

**\*\*IMPORTANT NOTICE\*\*:**

The City's UCC lien filing and security interest perfection requirements are delineated in DDC's UCC Guidelines available upon request or at: <[http://www.nyc.gov/html/ddc/html/business/nfp\\_forms.shtml](http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml)>.

**FUNDING RECIPIENT'S ATTORNEY DETAILS:**

- Attorney's Name: \_\_\_\_\_

CONTACT DETAILS	
LAW FIRM OR COMPANY:	_____
ADDRESS:	_____
TELEPHONE:	_____
EMAIL:	_____

**ATTESTATION:**

As the attorney that has assisted the above-mentioned Funding Recipient with the compliance of the UCC condition precedent requirements to the City's disbursement of Funding pursuant to Section 6.02 of the Funding Agreement, I attest, in reliance on the Funding Recipient's UCC, tax and judgment lien search report and the Funding Recipient's representations relating to its UCC liens, tax liens and judgments, that: **(Check all applicable.)**

\_\_\_\_\_ **Judgments and Tax Liens, as applicable:** The Funding Recipient has addressed and satisfied any and all pending judgments and tax liens. As such, the Funding recipient has properly filed the necessary paperwork to remove any such Liens with the court and/or has submitted the requisite payment(s) to the appropriate Federal, State and/or City government offices.

\_\_\_\_\_ **UCC-3 Amendment Statement(s), as applicable:** The Funding Recipient has properly filed with the appropriate office of the New York State Department of State ("NYS DOS") the necessary UCC amendment financing statement form(s) ("UCC-3") required to terminate or record any Liens on the City-Funded Equipment and other Collateral covered by the Security Agreement, except Liens in favor of the City and Permitted HUD Liens. The amendment statement(s) utilized the City's required provisions and template exhibit (as noted in DDC's UCC Guidelines), and will serve to carve-out the City's security interest in the City-Funded Equipment and ensure the perfection of the City's security interest. Moreover, any and all competing liens with the Dormitory Authority of the State of New York ("DASNY") have also been amended with UCC-3 amendment statements.

\_\_\_\_\_ **Permitted HUD Lien Subordination Agreement(s), as applicable:** The Funding Recipient has executed the template HUD and City approved subordination agreement with HUD and the HUD-insured lender(s) (as noted in DDC's UCC Guidelines.) The Funding Recipient has also ensured that the subordination agreement(s) has/have been properly filed as an UCC-3 amendment statement(s) against the competing HUD-related UCC lien(s) on file with the NYSDOS.

\_\_\_\_\_ **Mandatory UCC-1 Financing Statement:** Upon first clearing any and all competing Lien interests, the Funding Recipient has properly filed with the appropriate office of the NYSDOS a Financing Statement Form ("UCC-1") with respect to City-Funded Equipment covered by the Reimbursement Request and other Collateral covered by the Security Agreement. The UCC-1 filing utilized the City's required provisions and template exhibit (as noted in DDC's UCC Guidelines.) As required by the City's Funding and Security Agreements, this UCC-1 filing will serve to perfect the City's security interest in the City-Funded Equipment, as any and all competing Liens on file with the NYSDOS have either been satisfied, amended or subordinated as above-noted.

As checked-off above, I hereby attest that the following items have been properly addressed, recorded and/or validly executed: the UCC-1 financing statement; satisfaction of judgment(s) (as applicable); release or withdrawal of tax lien(s) (as applicable); Permitted HUD Lien subordination agreement(s) (as applicable); and/or UCC-3 amendment statement(s) (as applicable). I certify under penalty of perjury that the foregoing information is true and correct.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Attorney Name: \_\_\_\_\_ Attorney Signature: \_\_\_\_\_



NYC  
Department of Design + Construction  
Capital Discretionary Program Seminar:  
Non-Profit Organization Project Overview

*Part VI*

**Forms Required for  
Payment**

**DDC cannot submit the  
project for payment  
reimbursement without  
the required submissions.**

■ **Equipment Projects**

1. Attorney Equipment Lien Attestation Form\*
2. Software License Assignment Agreement(s) (if applicable)\*
3. Procurement Affirmation\*
4. Payment Requisition Forms
  - Forms A & C\*

■ **Vehicle Projects**

1. Judgment and Tax Lien Search
2. Proof of DMV Lien in Favor of the City
3. Motor Vehicle Registration with the DMV

*\*Template and/or sample attached.*



## PAYMENT CHECKLIST FOR EQUIPMENT: Documents To Be Provided within One (1) Year of Registration

All items listed below must be provided to DDC in order to receive reimbursement. Please include this checklist as a cover sheet with all of the below-requested documents. Incomplete submissions will not be accepted.

**\*\*All items listed below must be provided to the DDC Project Manager assigned to your organization's project.\*\***

### Legal Documents Required

All the forms mentioned below can be found under the "Lien Recording Documents" tab at:  
< [http://www.nyc.gov/html/ddc/html/business/nfp\\_forms.shtml#recording](http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml#recording) >.

#### Attorney Equipment Lien Attestation Form

- Before the Funding Recipient's attorney may complete DDC's required Attorney Equipment Lien Attestation form, the Funding Recipient must make sure to provide its attorney with DDC's UCC Guidelines for a detailed explanation of the agency's lien review and UCC filing requirements.
- Once all of the requirements mentioned in DDC's UCC Guidelines are complete, then the Funding Recipient's attorney must prepare and sign-off on DDC's Attorney Equipment Lien Attestation form after the necessary UCC-1 financing statement and any UCC-3 amendment statements, as applicable, are filed with the New York State Department of State.

#### Software License Assignment(s), (if applicable)

- Submit the final versions of all applicable software license assignment agreement(s) for each vendor.

### Payment Reimbursement Forms

DDC's Procurement Forms can be found under the "Payment Requisition Forms" tab at:  
< [http://www.nyc.gov/html/ddc/html/business/nfp\\_forms.shtml#recording](http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml#recording) >.

#### Procurement Affirmation

- This form must be fully completed and all attachments must be included.

#### Electronic Funds Transfer (EFT) Form

- The EFT Form is located in **Schedule I** of the Funding Agreement. Send directly to the Department of Finance.

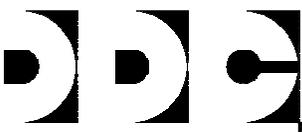
#### Payment Requisition Forms

- Please complete both DDC Payment Requisition Forms A & C.
- These forms must be accompanied with copies of all receipts and proof(s) of payment.

### Compliance and Inventory Reporting

**\*\* Note: Pursuant to the Equipment Funding Agreement, all Funding Recipients that receive reimbursement from the City must also remember to submit: 1) a yearly Compliance Report; and 2) an Inventory of the City-funded Equipment, to the City at the following address:**

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



**ATTORNEY EQUIPMENT LIEN ATTESTATION FORM**  
RE: THE RECORDATION AND PERFECTION OF THE CITY'S SECURITY INTEREST IN THE CITY-FUNDED EQUIPMENT PURSUANT TO THE FUNDING / SECURITY AGREEMENTS & ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE ("UCC")

**PROJECT INFORMATION:**

- FUNDING RECIPIENT: \_\_\_\_\_
- FUNDING AGREEMENT DATED AS OF \_\_\_\_\_, 20\_\_ / SECURITY AGREEMENT DATED AS OF \_\_\_\_\_, 20\_\_
- EQUIPMENT FUNDING AMOUNT: \$ \_\_\_\_\_

**BACKGROUND INFORMATION & INSTRUCTIONS:**

This form requires the Funding Recipient's attorney to attest that the Funding Recipient has complied with the requirements set forth in the Funding and Security Agreement in order to secure a perfected security interest for the City pursuant to Article 9 of the UCC with respect to the City-Funded Equipment and other Collateral covered by the Security Agreement.

- Capitalized terms included in this form are defined in the City's Funding and Security Agreement.

**\*\*IMPORTANT NOTICE\*\*:**

The City's UCC lien filing and security interest perfection requirements are delineated in DDC's UCC Guidelines available upon request or at: <[http://www.nyc.gov/html/ddc/html/business/nfp\\_forms.shtml](http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml)>.

**FUNDING RECIPIENT'S ATTORNEY DETAILS:**

- Attorney's Name: \_\_\_\_\_

CONTACT DETAILS	
LAW FIRM OR COMPANY:	
ADDRESS:	
TELEPHONE:	
EMAIL:	

**ATTESTATION:**

As the attorney that has assisted the above-mentioned Funding Recipient with the compliance of the UCC condition precedent requirements to the City's disbursement of Funding pursuant to Section 6.02 of the Funding Agreement, I attest, in reliance on the Funding Recipient's UCC, tax and judgment lien search report and the Funding Recipient's representations relating to its UCC liens, tax liens and judgments, that: **(Check all applicable.)**

\_\_\_\_\_ **Judgments and Tax Liens, as applicable:** The Funding Recipient has addressed and satisfied any and all pending judgments and tax liens. As such, the Funding recipient has properly filed the necessary paperwork to remove any such Liens with the court and/or has submitted the requisite payment(s) to the appropriate Federal, State and/or City government offices.

\_\_\_\_\_ **UCC-3 Amendment Statement(s), as applicable:** The Funding Recipient has properly filed with the appropriate office of the New York State Department of State ("NYS DOS") the necessary UCC amendment financing statement form(s) ("UCC-3") required to terminate or record any Liens on the City-Funded Equipment and other Collateral covered by the Security Agreement, except Liens in favor of the City and Permitted HUD Liens. The amendment statement(s) utilized the City's required provisions and template exhibit (as noted in DDC's UCC Guidelines), and will serve to carve-out the City's security interest in the City-Funded Equipment and ensure the perfection of the City's security interest. Moreover, any and all competing liens with the Dormitory Authority of the State of New York ("DASNY") have also been amended with UCC-3 amendment statements.

\_\_\_\_\_ **Permitted HUD Lien Subordination Agreement(s), as applicable:** The Funding Recipient has executed the template HUD and City approved subordination agreement with HUD and the HUD-insured lender(s) (as noted in DDC's UCC Guidelines.) The Funding Recipient has also ensured that the subordination agreement(s) has/have been properly filed as an UCC-3 amendment statement(s) against the competing HUD-related UCC lien(s) on file with the NYSDOS.

\_\_\_\_\_ **Mandatory UCC-1 Financing Statement:** Upon first clearing any and all competing Lien interests, the Funding Recipient has properly filed with the appropriate office of the NYSDOS a Financing Statement Form ("UCC-1") with respect to City-Funded Equipment covered by the Reimbursement Request and other Collateral covered by the Security Agreement. The UCC-1 filing utilized the City's required provisions and template exhibit (as noted in DDC's UCC Guidelines.) As required by the City's Funding and Security Agreements, this UCC-1 filing will serve to perfect the City's security interest in the City-Funded Equipment, as any and all competing Liens on file with the NYSDOS have either been satisfied, amended or subordinated as above-noted.

As checked-off above, I hereby attest that the following items have been properly addressed, recorded and/or validly executed: the UCC-1 financing statement; satisfaction of judgment(s) (as applicable); release or withdrawal of tax lien(s) (as applicable); Permitted HUD Lien subordination agreement(s) (as applicable); and/or UCC-3 amendment statement(s) (as applicable). I certify under penalty of perjury that the foregoing information is true and correct.

Executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Attorney Name: \_\_\_\_\_ Attorney Signature: \_\_\_\_\_

**[NYC TEMPLATE ASSIGNMENT OF SOFTWARE LICENSE AGREEMENT]**

[Note: This letter must be on the Licensor's letterhead and all bracketed references must be removed to include the necessary information.]

\_\_\_\_\_, 20\_\_\_\_

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

Dear Sirs and Madams:

Re: Funding Agreement dated as of \_\_\_\_\_, 20\_\_ (“Funding Agreement”) by and between The City of New York acting by and through its Department of Design and Construction (the “City”) and \_\_\_\_\_ (“Funding Recipient”); Security Agreement dated as of \_\_\_\_\_, 20\_\_ (“Security Agreement”) by Funding Recipient in favor of the City; and License Agreement dated as of \_\_\_\_\_, 20\_\_ (the “License Agreement”) by and between the undersigned (“Licensor”) and Funding Recipient.

Funding Recipient has advised Licensor that the City has provided funding (“Funding”) to Funding Recipient pursuant to the Funding Agreement to finance the acquisition of certain equipment (“Equipment”) and software (“Software”) necessary to operate said Equipment. Licensor is the holder of all copyrights and trademarks and owns all rights, benefits and privileges appurtenant to the Software. Licensor has licensed the Software to Funding Recipient pursuant to the License Agreement.

Funding Recipient has further advised Licensor that it is a condition of the Funding that, among other things, for a period commencing on the date that the City makes the first disbursement of the Funding for the Equipment to Funding Recipient, and ending five (5) years from the date that the City makes the final disbursement of such Funding to Funding Recipient, Funding Recipient grant to the City a first priority lien on the Equipment, and that Funding Recipient collaterally pledge, transfer and assign to the City and/or the City's designee the rights, benefits and privileges of Funding Recipient with respect to the Software under the License Agreement. Accordingly, upon the occurrence of an Event of Default under the Funding Agreement, the City may avail itself of all of its rights against the Equipment under the Security Agreement, and the City and/or its designee shall be vested with all of the rights, benefits and privileges of Funding Recipient with respect to the Software under the License Agreement.

At the request of Funding Recipient, Licensor hereby consents to the pledge, transfer and assignment to the City and/or the City's designee of the rights, benefits and privileges of Funding Recipient with respect to the Software under the License Agreement for the remaining term of the License, provided that prior to exercising its rights with respect to the Software as collateral assignee of the License Agreement: (i) the City shall give notice to Licensor of the occurrence of an Event of Default under the Funding Agreement; and (ii) the City shall identify to Licensor the person or entity that will make use of the Software, including, name and address and such other information as Licensor shall reasonably request.

Licensor further agrees that the pledge, transfer and assignment to the City and/or the City's designee of the rights, benefits and privileges of Funding Recipient with respect to the Software, and the use thereof by the City and/or the City's designee during the Performance Term shall be at no cost whatsoever to the City and/or the City's designee.

Very truly yours,

[LICENSOR]

By: \_\_\_\_\_

Name:

Title:

Funding Recipient hereby collaterally pledges, transfers and assigns to the City and/or the City's designee all the rights, benefits and privileges of Funding Recipient with respect to the Software under the License Agreement. Accordingly, upon the occurrence of an Event of Default under the Funding Agreement and notice of the occurrence thereof by the City to Licensor as provided above, the City and/or its designee shall be vested with all of the rights benefits and privileges of Funding Recipient with respect to the Software under the License Agreement.

[FUNDING RECIPIENT]

By: \_\_\_\_\_

Name:

Title:



**NEW YORK CITY DEPARTMENT OF  
DESIGN + CONSTRUCTION**

**Procurement Affirmation**

**3**

**Insert Funding Recipient's Full Corporate Name Here:**

Funding Recipient hereby affirms that it has read all of the provisions provided in the Funding and Security Agreements (the "Agreements") of the City of New York (the "City"), and acknowledges its obligation to abide by the terms and requirements set forth in the Agreements with respect to the procurement of the City-Funded Equipment and/or Vehicles.

Funding Recipient shall purchase City-Funded Equipment, Vehicles and/or procure other services for the costs of which Funding Recipient intends to seek reimbursement from the City from the vendor(s) whose bid(s) provide the most advantageous combination of price, quality and fitness for the intended purpose. Before purchasing the City-Funded Equipment or procuring services for the costs of which Funding Recipient intends to seek reimbursement from the City, as authorized by the Project Budget approved by the City, Funding Recipient shall make a reasonable effort to obtain bids from three (3) vendors and shall accept the lowest bid for all items to be reimbursed by the City.

1) **Bid Requirement:** Has your organization received bids from at least three (3) vendors with respect to all of the City-Funded Equipment and/or Vehicles noted in the Project Budget?

Yes \_\_\_ No \_\_\_

- a. If Yes, please attach a list with the names of at least three (3) vendors and prices. (Please label as Attachment 1.)
- b. If No, please attach a written explanation why your organization does not have three (3) vendors.

2) **Vendor Selection Rationale:** Has your organization accepted the lowest bid with respect to all of the City-Funded Equipment and/or Vehicles noted in the Project Budget?

Yes \_\_\_ No \_\_\_

- a. If No, please select the reason below that best matches your organization's rationale and also attach a written explanation why your organization did not choose the lowest bidder. (Please label as Attachment 2.)
  - \_\_\_ Product specification(s) best met organization's needs.
  - \_\_\_ Needed to match compatibility with existing equipment and/or vehicles.
  - \_\_\_ Sole provider or manufacturer of necessary item.
  - \_\_\_ Pursuant to a City, State or National Purchasing Contract.
  - \_\_\_ Other reason: \_\_\_\_\_

3) **Vendor Identification:** Please identify the vendors that your organization has chosen or intends to select for the project.

- a. **Note: Must attach a list of all the vendors** your organization has chosen to use with this affirmation. (Please label as Attachment 3.)

4) **Vendor Affiliation:** Are the selected vendors affiliated to your organization and/or any of your organization's staff?

Yes \_\_\_ No \_\_\_

- a. If Yes, did you first obtain the City's written approval? If so, please explain how the transaction consists of an arms-length transaction. (Please label as Attachment 4.)

I solemnly declare and affirm under penalties of perjury that the contents of this affirmation and its attachments are true and correct to the best of my knowledge and information. I also hereby affirm that I am the Chief Financial Officer of the Funding Recipient and that I possess the legal authority to make this affirmation on behalf of the Funding Recipient.

FUNDING RECIPIENT'S  
CHIEF FINANCIAL OFFICER:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Subscribed and sworn to before me:

This \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
Notary Public

Commission Expires: \_\_\_\_\_ 20\_\_







## PAYMENT CHECKLIST FOR VEHICLES: Documents To Be Provided within One (1) Year of Registration

All items listed below must be provided to the **DDC Project Manager** assigned to your organization's project in order to receive reimbursement. Please include this checklist as a cover sheet with all of the below-requested documents included as attachments -- incomplete submissions will not be accepted.

### DMV Lien Filing Required Forms + Judgment and Tax Lien Search

\*\*All DMV/Title Forms can be found under the "Lien Recording Documents" Tab at:  
< [http://www.nyc.gov/html/ddc/html/business/nfp\\_forms.shtml#recording](http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml#recording) >.

### A Judgment and Tax Lien Search

- Funding Recipients must provide an updated judgment and tax lien search with respect to your organization from an independent lien search company.
- Funding recipient must address all open judgment and tax liens before DDC may proceed with reimbursement.

### File Lien in Favor of the City on the Original Certificate of Title for Each Vehicle

- There are two approaches for filing the City's lien on a vehicle to be reimbursed by the agency:

Approach #1: (Recommended)	Approach #2:
<ul style="list-style-type: none"> <li>● Request that the dealership and/or manufacturer of each vehicle include the City's lien on the vehicle's certificate of title upon purchase. <u>DDC's Lien Filing code is: 67975.</u></li> <li>● The lien must state: "City of New York, acting by and through its Department of Design and Construction."</li> <li>● Your organization will need to submit proof of the lien on the certificate of title of each vehicle.</li> </ul>	<ul style="list-style-type: none"> <li>● Provide DDC with <u>the original certificate of title</u> for each vehicle to DDC's Project Manager and <u>retain a copy of the certificate.</u></li> <li>● Complete New York State Department of Motor Vehicles ("DMV") form MV-900 for each vehicle and submit an original signed copy to DDC (DMV will not accept photocopies or faxes of this document.)</li> <li>● The DMV MV-900 form can be found on the DMV's website or on DDC's NFP website under the "Lien Recording Documents" tab at: <a href="http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml#recording">http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml#recording</a></li> <li>● Once DMV files the City's lien on the certificate of title of each vehicle and returns the certificate of title(s) back to DDC, the agency will return the original certificate(s) to your organization. (Note that this process may take a few months to complete.)</li> </ul>

### Motor Vehicle Registration with the DMV

- DDC must be able to check find the lien on each vehicle on the DMV's website using the Vehicle Identification Number (VIN), model year and make of each vehicle at: < <https://transact.dmv.ny.gov/TitleStatus/> >.

### Payment Reimbursement Forms

DDC's Procurement Forms can be found under the "Payment Requisition Forms" tab at:  
< [http://www.nyc.gov/html/ddc/html/business/nfp\\_forms.shtml#recording](http://www.nyc.gov/html/ddc/html/business/nfp_forms.shtml#recording) >.

### Procurement Affirmation

- This form must be fully completed and all attachments must be included.

### Electronic Funds Transfer (EFT) Form

- The EFT Form is located in **Schedule I** of the Funding Agreement.

### Payment Requisition Forms

- Please complete both DDC Payment Requisition Forms A & C.
- These forms must be accompanied with copies of all receipts and proof(s) of payment.

### Compliance and Inventory Reporting

**\*\* Note:** Pursuant to the Vehicle Funding Agreement, all Funding Recipients that receive reimbursement from the City must also remember to submit: 1) a yearly Compliance Report; and 2) an Inventory of the City-funded Vehicles, to the City at the following address:

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