

21CP030301R0X00

AGREEMENT dated as of July 1, 2020 (“Agreement” or “contract”) between the CITY OF NEW YORK (“City”) acting by and through its **Department of Health and Mental Hygiene** (“Department” or “DOHMH”) having its principal office located at 42-09 28TH Street, Long Island City, New York 11101 and **NYC HEALTH + HOSPITALS** (“NYC H+H” or “Contractor”), a public benefit corporation having its principal office located at 125 Worth Street, New York, New York 10013 on behalf of **HARLEM HOSPITAL CENTER**, a health-care facility with offices located at 506 Lenox Avenue, New York, New York 10037.

W I T N E S S E T H

WHEREAS, the Department is charged with the authority and responsibility to promote or provide public health education programs and services designed to prevent and control chronic diseases, such as heart disease, cancer and diabetes and to address the risk factors underlying these conditions; and

WHEREAS, the Contractor/Harlem Hospital Center is capable of delivering the services required under this Agreement through its Hip Hop H.E.A.L.S. (Healthy Eating and Living in Schools) Program (“the Project”); and

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

P A R T I

TERM, SCOPE OF SERVICES, FINANCIAL PROVISIONS, OTHER SPECIFICATIONS

I. TERM

The term of this Agreement shall be from July 1, 2020 through June 30, 2021. This contract shall be deemed executory only to the extent of the monies appropriated and made available for the purpose of this contract, and no liability on account thereof shall be incurred by the City beyond the amount of such monies. It is understood that neither this contract nor any representation by any public employee or officer, creates any legal or moral obligation to request, appropriate or make available additional monies for the purpose of this contract.

II. SCOPE OF SERVICES

The Contractor shall provide services in the manner and at the levels set forth in the Scope of Services, annexed hereto and incorporated herein as Annex A.

III. REIMBURSEMENT AND FINANCIAL REPORTS

a) Maximum Reimbursable Amount

1. The total Maximum Reimbursable Amount for the term of this Agreement shall not exceed \$255,000.00 in accordance with the budget contained in Annex B which is attached hereto and hereby made a part of this Agreement. No liability shall be incurred by the City beyond the amount of such monies.

2. The Department shall have the right, in its sole discretion, to terminate this Agreement in whole or in part, to reduce or re-allocate the Maximum Reimbursable Amount, or to reduce the scope, level, or type of services to be performed or products to be delivered under this Agreement.

3. For contracts funded in whole or in part with City tax levy funds, funds remaining unspent or unobligated at the end of the City fiscal year cannot be used for goods or services performed in subsequent fiscal years. Therefore, all services must be performed and all goods must be received, by the end of each applicable fiscal year in order to obligate the funds for reimbursement.

b) Schedule of Payment

1. Upon receipt and approval of each of the Contractor's monthly invoices, the Department shall remit to the Contractor a payment of its approved charges in accordance with the budget contained in Annex B. Invoices shall be submitted no later than 30 days after the end of the month to which the invoice pertains, excepting only invoices covering the period of time prior to the date on which this Agreement is fully executed. The Department may disqualify from payment any invoice received after that time. Invoices shall identify the task or product being invoiced and the total overall charges. The invoices shall be in a form established by the DOHMH Commissioner or Designate, and shall be accompanied by supporting schedules, documentation, and any other information deemed necessary by the Department. If a final program report is required by the Scope of Services, payment for the last month of the contract shall be contingent upon approval of the final report and bill by the Department.

2. Final Invoice and Payment

(i) The Contractor shall submit to the Department, no later than 30 days after the expiration of this Agreement, a final invoice detailing all cumulative charges applicable to this Agreement in accordance with the budget contained in Annex B. The final invoice must be accompanied by appropriate documentation, including but not limited to the

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documentation required for monthly invoices. No financial reports will be accepted by the Department after this date unless there is prior written approval by the Department.

(ii) Upon receipt and approval of the final invoice submitted pursuant to paragraph (i) above, the Department shall remit to the Contractor an amount equal to the cumulative approved charges in accordance with Annex B, less the cumulative amounts previously remitted to the Contractor. In the event that the cumulative amounts previously submitted to the Contractor exceed the approved cumulative expenses of the Contractor as detailed in the final invoice, the Contractor shall remit by check made payable to the New York City Department of Health and Mental Hygiene, the full amount of such overpayment.

3. Disallowances

The Department shall review the monthly invoices, final invoice and supporting documentation as required, and may disallow for payment any charges or services which were not rendered, documented and/or authorized in accordance with the terms of this Agreement, or for failure to deliver any required service or work product.

c) Budget Modification Requests

A request for a payment schedule modification must be submitted to the Department no later than three (3) months prior to the expiration of this Agreement and prior to any line item being over-expended. However, the Department, at its sole discretion, may agree to a payment schedule modification at any time. In no event shall a budget modification increase the Maximum Reimbursable Amount of this contract as specified in section (a) above. This paragraph shall survive the expiration of this Agreement.

d) Independent Annual Audit Report

In the event that the Contractor is subject to the requirements of the U.S. Office of Management and Budget Circular A-133, Audits of Institutions of Higher Education and Other Non-profit Institutions, an annual audit shall be performed by an independent Certified Public Accounting firm of all federal funds received by the Contractor. The audit(s) shall be performed in accordance with Government Auditing Standards, issued by the Comptroller General of the United States. Such audit(s) shall be submitted to the Department's Director of Financial and Contract Audits in final form no later than nine (9) months after the expiration of each of the Contractor's audit years that fall within the term of this contract.

IV. PROGRAM MONITORING AND EVALUATION

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a) Monitoring Plan

The Department shall develop and implement a monitoring plan for each type of program and service to be provided by the Contractor hereunder. The Monitoring plan shall include all services and contract deliverables to be provided by the Contractor and will specify clear and understandable standards for Contractor's performance. The monitoring plan shall be consistent with this Agreement and shall include a time-frame for all management and oversight functions such as site visits, reporting and similar monitoring and evaluation events. The Contractor shall comply with and fulfill all requirements of the monitoring plan.

b) Evaluation Criteria

The Contractor's performance will be evaluated based on its compliance with this Agreement and the Scope of Services attached hereto as Annex A. The evaluation criteria include, but are not limited to: timeliness of deliverables and reports; timeliness of services; achievement of level of services; staff appropriateness and continuity; program procedures and methods; program record keeping and reporting; physical environment and equipment; timeliness and accuracy of fiscal reports and payment requisition.

c) Evaluation Procedures

1. Cooperation

The Contractor shall cooperate fully with the Department regarding the evaluation of the Project and will advise and consult with employees and officials of the Department and any designated program evaluation agent.

2. Inspections

The Department, its employees, representatives and designees, shall have the right at any time, given reasonable notice, to inspect the site where services are performed and to observe the services being performed by the Contractor. The Contractor shall render all assistance and cooperation to the Department, its employees, representatives and designees in making such inspections and shall assure the Department ready access to the Project site and all medical, financial or other records and reports relating to the Project. The Department shall have the responsibility for determining contract compliance.

3. Program Reviews

The Department will conduct on-site program reviews during the term of the Agreement to evaluate the Contractor and the delivery of the services as set forth in Annex A. The Department may make recommendations to

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the Contractor to remedy problems and/or inadequacies found during such site visit(s). The Contractor shall have the opportunity to offer a revised recommendation and shall implement any such recommendations agreed upon by the Department and the Contractor after discussion between the parties, no later than thirty days from receipt of such recommendations or agreement on revised recommendations. In addition, the Contractor shall participate in meetings conducted by the Department to discuss the services being provided.

d) Work Report Schedule

The Contractor will submit program reports on a monthly basis to the Department describing the activities carried out under this Agreement. The report will be due ten (10) days after the end of the month to which such program report pertains. The final program report for the last month of the Agreement shall be delivered at the same time as the final invoice referred to in Section III (b) (2) above.

e) Work Report Format

The Contractor will establish and maintain reports in the manner specified in the Scope of Services. The format of such report will be agreed upon between the parties within 30 days of the start of this Agreement.

V. MISCELLANEOUS

a) Confidentiality

Any information obtained in the course of performing this Agreement which may be confidential HIV related information as defined in Article 27-F of the New York State Public Health Law, shall be kept confidentially by the Contractor, its agents, employees or volunteers, unless written consent, in a form approved by the State Department of Health, is obtained from the person to whom such information pertains, or except as otherwise authorized by applicable laws. The Contractor represents that it is familiar with Article 27-F of the New York State Public Health Law and the regulations promulgated thereunder with regard to confidentiality of HIV related information.

All other information of a medical nature received by the Contractor in the course of its performance under this agreement shall be kept confidential and shall not be disclosed except as permitted by the applicable law and with the written consent of the DOH.

b) Legal Compliance

Notwithstanding any other provision in this Agreement, the Contractor

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

c) Approval of Literature

1. Procedure

The Contractor shall submit to the Department the final draft copy of each piece of written material, promotional material, educational material, test, brochure, flyer, pamphlet, questionnaire, or video developed by it under this Agreement for review and approval prior to printing. The Department will respond in writing to the Contractor within twenty (20) business days indicating approval or need for modification of the submitted material. Should this response indicate need for modification, specific written guidance will be given to the Contractor. The Contractor shall make the modifications as indicated by the Department, and re-submit the material for the Department's final approval. Should the Contractor disagree with the modifications proposed by the Department, a final determination as to the modifications will be made by the Assistant Commissioner. The format and content of educational programs will also be subject to the approval provision of this Section.

2. Acknowledgements

Certain education materials developed under this Agreement will be required to bear the following text: "Funded (in whole or in part, if applicable) by the New York City Department of Health and Mental Hygiene". The Department will have sole discretion to designate which materials are to bear the aforementioned text.

3. Property

All materials, publications, videos, curricula, reports and other work product produced from this Agreement or with funds provided under this Agreement shall belong to the Department and the Department shall have all rights, title and interest in such materials.

d) Maintenance of Patient Records

With regard to the services rendered hereunder, the Contractor shall be responsible for the appropriate maintenance and custody of medical records of any individual patient and the Department shall not have any responsibility for compliance with or response to, any subpoenas or other requests for individual patient information.

e) Retention and Availability of Reports, Surveys, Audits

Contractor shall maintain for six years copies of all financial and work reports, evaluation surveys and audits which reflect the services rendered hereunder and fiscal accountability of all monies appropriated and spent thereby, make copies thereof available and submit such copies to the Department upon request.

f) Americans with Disabilities Act

The Contractor shall comply with the provisions of the Americans with Disabilities Act of 1990, and shall submit and implement a Compliance plan with such Act in accordance with the Rider annexed to Part I of this Agreement.

g) Emergency Contraception

The Contractor shall comply with the provisions of Section 6-125 of the New York City Administrative code as outlined in the Emergency Contraception rider annexed to this Agreement.

h) Whistleblower Protection Expansion Act

The Contractor shall comply with the requirements of New York City Local Law Nos. 30-2012 and 33-2012, both of which concern the protection of employees for whistleblowing activities, as outlined in the Whistleblower Protection Expansion Act Rider annexed to this Agreement.

i) Electronic Funds Transfer

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

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2. The agency head may waive the application of the requirements herein to payments on contracts entered into pursuant to §315 of the City Charter. In addition, the Commissioner of the Department of Finance and the Comptroller may jointly issue standards pursuant to which the contracting agency may waive the requirements hereunder for payments in the following circumstances: (i) for individuals or classes of individuals for whom compliance imposes a hardship; (ii) for classifications or types of checks; or (iii) in other circumstances as may be necessary in the interest of the City.

j) Referrals

The Contractor agrees that services required to be delivered pursuant to this Agreement will not be denied to any individual referred to the Contractor based on the individual's inability to pay.

k) Notices

All notices and requests hereunder by either party shall be in writing and, except as otherwise specified in this Agreement, directed to the address of the parties as follows:

New York City Department of Health
& Mental Hygiene
42-09 28th Street
Long Island City, New York 11101

Attn.: _____
Title: _____
Bureau: _____

NYC Health & Hospitals
Corporation
160 Water Street, 10th Floor
New York, New York 10038

Attn: Aijaz Ahmed Kahn
Title: Dir. Grants Management

And

Harlem Hospital Center
506 Lenox Avenue
New York, New York 10037

Attn: Deborah Thornhill
Title: Assoc. Executive Director

l) Affirmation

The Contractor shall complete and execute the affirmation form annexed to Part II of this Agreement.

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ATTACHMENTS

Annex A: Scope of Services

Annex B: Budget

[NO FURTHER TEXT ON THIS PAGE]

COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

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

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

EMERGENCY CONTRACEPTION

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

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

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

The Contractor agrees to provide the New York City Department of Health and Mental Hygiene a copy of its protocol for treatment of victims of sexual assault, which hospitals are required to establish pursuant to Section 405.19 of Title 10 of the Codes, Rules and Regulations of the State of New York.

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RIDER

COMPLIANCE WITH WHISTLEBLOWER PROTECTION EXPANSION ACT

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

- (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
- (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
- (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
 - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
 - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.

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- (d) For the purposes of this rider, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation, any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.
- (e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.

Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

A F F I R M A T I O N

The undersigned proposer or bidder Affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contracts except _____.

Full name of proposer or bidder _____

Address _____

City _____ State _____ Zip _____

CHECK ONE AND INCLUDE APPROPRIATE NUMBER:

() A -- Individual or Sole Proprietorship
SOCIAL SECURITY NUMBER

() B -- Partnership, Joint Venture or other unincorporated organization
Employer Identification Number

() C -- Corporation
Employer Identification Number

By: _____
Signature

Title

If a corporation, place seal here:

Must be signed by an officer or duly authorized representative.

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

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IN WITNESS WHEREOF, the City has caused these presents to be executed in triplicate by the _____, and the Contractor has caused these presents to be executed in triplicate by the duly authorized officer and its corporate seal to be hereunto affixed as of the day and year first above written.

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

BY: Judi Rich Soehren

NAME: _____

TITLE: _____

**NEW YORK CITY
HEALTH & HOSPITALS CORPORATION**

BY: Dr. Mitchell Katz

NAME: **Dr. Mitchell Katz**

TITLE: **President**

(Corporate Seal)

Approved as to Form
Certified as to Legal Authority:

Lisa Landau//mdw

Lisa Landau, JD
General Counsel
NYC Department of Health and Mental Hygiene

01-19-2021
Date

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STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On this ____ day of _____, 2021 before me personally came _____,
to me known and known to me to be the _____ of
the Department of Health and Mental Hygiene of the City of New York, the person described
in who, as such _____, executed the foregoing
agreement, and s/he duly acknowledged to me that s/he executed the same on behalf of the
City of New York and the Department of Health and Mental Hygiene for the purpose herein
mentioned.

Notary Public or Commissioner of Deeds

STATE OF NEW YORK)

ss:

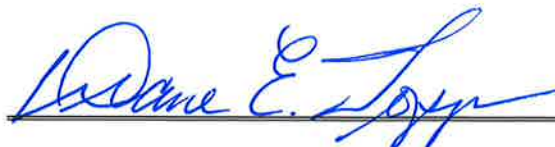
COUNTY OF NEW YORK)

On this 19 day of March, 2021 before me personally came
Mitchell Katz, MD who being by me duly sworn, did depose and say that s/he
resides in the City of New York; that s/he is the
PRESIDENT

NEW YORK CITY HEALTH & HOSPITALS

CORPORATION of the corporation described in and which executed the foregoing
instrument; that s/he knows the seal of said Corporation; that the seal affixed to the said
instrument is such corporate seal; that it was so affixed by order of the Board of Directors
of said Corporation; and that s/he signed his/her name thereto by like order for the
purposes therein mentioned.

Public or Commissioner of Deeds



Notary

Diane E. Toppin
Notary Public, State of New York
No. 01TO4795612
Qualified in Queens County
Commission Expires September 8, 2021