

**HOME DEVELOPER'S AGREEMENT BETWEEN**

**THE CITY OF PASSAIC, NEW JERSEY**

**AND**

**Developer Corporation**

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_, 2019, by and between the City of Passaic, a municipal organization in the State of New Jersey (**the "City"**) whose address is: 330 Passaic Street, Passaic, NJ 07055 and, (**the "Developer"**), whose address is: **123 Main Street**

**WITNESSETH:**

WHEREAS, the City is an entitlement community and has entered into an agreement with the U.S. Department of Housing and Urban Development (**"HUD"**) to execute and implement the HOME Investment Partnerships Program (**"HOME"**) with a goal of expanding the supply of decent, safe, affordable housing for those of very low and low income; and

WHEREAS, the HOME program provides that the City will certify and contract with eligible developers, non-profit developers or Community Housing Development Organization (CHDO) to develop affordable housing in the City of Passaic; and

WHEREAS, the Developer has applied to the City for a grant in the amount of **\$200,000** to **subsidized** the development of **five (5), two (2)- bedroom** affordable rental housing units in the City; and,

WHEREAS, this affordable rental housing project consists of the new construction of four (4) affordable rental units on **Block 1, lot 1 A.K.A 123 Main Street** and made available to households that qualify as low-moderate-income, pursuant to 24 CFR §92.254; and

WHEREAS, the City has agreed to make said grant, pursuant to the authority granted by HUD at 24 CFR Part 92, which establishes the HOME Program;

NOW THEREFORE, in consideration of the mutual covenants promises and obligations herein contained, including the attachments, and subject to the terms and conditions hereinafter stated, the parties hereto understand and agree as follows:

**ARTICLE I**  
**Use of HOME Funds**

1. The total grant amount provided by the City, pursuant to this Agreement is **\$200,000.00** (The **"HOME Funds"**) and is contingent upon a firm bank loan commitment in amount of **\$2,000,000.00** as well as committed developer's equity of **\$2,000,000**. The HOME Funds shall be used to partially finance for the construction of **five (5), two (2)- bedroom affordable rental units of a forty (40) unit project, located on Block 1, lot 1 A.K.A 123 Main Street, Passaic, NJ (the "Project")** and for no other purpose, in compliance with the "Sources and Uses of Funds Statement" attached hereto and made a part hereof as **Exhibit A**. The Development Proforma, attached hereto and made a part hereof as **Exhibit B** details the anticipated development budget and tasks to be performed in completing the Project together with a schedule and budget for the completion of such task. All HOME Funds shall be used in a manner that is consistent with the provisions of 24 CFR Part 92.

**ARTICLE II**  
**Developer Provisions**

2. It is understood that the Developer will maintain compliance with the HOME program for the term of this Agreement in accordance with 24 CFR 92. The Developer agrees to provide information as may be requested by the City to document its continued compliance, including but not limited to annual income certification of its tenants.

- 2.1 Any funds advanced to the Developer as pre-development funds must be in compliance with 24 CFR 92., and are forgivable only under the terms in **part 92**.
- 2.3 Any funds that the Developer is permitted to retain as Developer's fee from this project shall be in compliance with 24 CFR 92. or as specified in this Agreement.
- 2.4 The Developer will create and follow a tenant participation plan as required in 24 CFR 92.

**ARTICLE III**  
**Affordability**

3. The units in the Project financed in whole or in part with HOME Funds (**the "HOME Units"**) will meet the affordability requirements as found in 24 CFR 92.252 for rental housing developments, as outlined below.

- 3.1 The Declaration of Restrictive Covenants (**the "Deed Restrictions"**) in **Exhibit C** requires that the HOME Units meet the affordability requirements of 24 C.F. R. 92.252. Repayment of the HOME Funds will be required if the HOME Units do not meet the affordability requirement for the specified time period. Specifically:

- a. For a period of **twenty (20) years** for the new construction units, commencing on the date of completion of construction and submission of a project completion report by the City (**the "Affordability Period"**), the incomes of all tenants of the HOME Units shall meet the requirements of 24 C.F.R. 92.252, as currently in effect, specifically including 24 C.F.R. 92.252(a),(b),(c),(d),(e). In determining the affordable rents to be charged, the Developer will use the High HOME Rents as defined by HUD at CFR 92.252. The Developer will set the rents at the lesser of the HUD Fair Market Rents (FMR) for Passaic County as periodically revised by HUD or a rent that does not exceed 30 percent of the adjusted income of a household whose income equals 65 percent of the median income for the area, as determined by HUD with adjustments for the number of bedrooms in the unit.

- b. In rental projects with five or more HOME Units, at least 20 percent of the HOME Units must be occupied by very low-income families and meet one of the following rent requirements 1) The rent does not exceed 30 percent of the annual income of a family whose income equals 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. However, if the rent determined under this paragraph is higher than the applicable rent under paragraph (a) of this section, then the maximum rent for units under this paragraph is that calculated under paragraph (a) of this section. 2) The rent does not exceed 30 percent of the family's adjusted income. If the unit receives Federal or State project-based rental subsidy and the very low-income family pays as a contribution toward rent not more than 30 percent

of the family's adjusted income, then the maximum rent (i.e., tenant contribution plus project-based rental subsidy) is the rent allowable under the Federal or State project-based rental subsidy program.

c. **Four (4) two (2) bedroom units** in the Project will be HOME Units and will be designated as **Affordable units** throughout the Project for the duration of the Affordability Period. These units must be rented at the High HOME Rent level or Low HOME Rent level as determined in paragraph b above.

d. This affordability requirement, as outlined in the Deed Restriction, shall remain in effect for the term stated herein irrespective of the sale, conveyance, or other transfer of the property, and irrespective of the termination, satisfaction, release, or other discharge of the mortgage or the lien thereof upon the property, and shall be binding upon the Developer, its successors, assigns and transferees, and all parties having any right, title or interest in the Project provided, however, that upon foreclosure by a loan or other transfer in lieu of foreclosure, the Affordability Period shall be terminated if such foreclosure or other transfer recognizes any contractual or legal rights of public agencies, non-profit investor sponsors, or others to take actions that would avoid the termination of low-income affordability; and further provided that the affordability restrictions shall be revived according to the terms hereof if, during the original affordability period, the Owner of record before the foreclosure or other transfer, or any entity that includes such former owner or those with whom such former owner has or had family or business ties, obtains an ownership interest in any of the Property.

3.2 The Developer shall collect and maintain Project beneficiary information on households residing in the HOME Units pertaining to household size, income levels, racial characteristics, and the presence of Female Headed Households in order to determine low and moderate-income benefit in a cumulative and individual manner. Income documentation shall be in a form consistent with HOME requirements as stated in the HUD ***Technical Guide for Determining Income and Allowances Under the HOME Program, Third Edition***.

#### **ARTICLE IV** **Program Requirements**

4. The Project shall meet the following requirements:

4.1. Environmental Review. No HOME project funds will be advanced, and no costs can be incurred, until the City has conducted an environmental review of the proposed site for the Project as required under 24 CFR Part 58. The environmental review may result in a decision to proceed with, modify or cancel the Project.

Notwithstanding any provision of this Agreement, the parties hereto agree and acknowledge that this Agreement does not constitute a commitment of funds or site approval, and that such commitment of funds or approval may occur only upon satisfactory completion of environmental review and receipt by the Developer of a release of funds from HUD under 24 CFR Part §58.

Further, the Developer will not undertake or commit any funds to physical or choice-limiting actions, including property acquisition, demolition, movement, rehabilitation, conversion, repair or construction prior to the environmental clearance, and must indicate that the violation of this provision may result in the denial of any funds under this Agreement.

- 4.2. Nondiscrimination. In the selection of occupants for the Project units, the Developer shall comply with all nondiscrimination requirements of 24 CFR 92.350. If the Project consists of 5 or more units, the Developer will implement affirmative marketing procedures as required by 24 CFR 92.351. Such procedures are subject to approval of the City.
- 4.3. Relocation. If the Project is occupied at the time of this commitment, the Developer will comply with the relocation requirements of 24 CFR 92.353.
- 4.4. Property Standards. The Developer shall assure compliance with 24 CFR 92.251 as relates to Property Standards and Housing Quality Standards (“**HQS**”), Accessibility Standards under 24 CFR 92.251(a)(3) as applicable, and Lead Based Paint Requirements as found in 24 CFR 92.355 and 24 CFR Part 35.
- 4.5. Match. The Developer will provide any documentation required by the City regarding any matching funds as may be required to document the required match for purposes of the HOME program.
- 4.6. Labor. If any project under this agreement involves the construction or rehabilitation of 12 or more HOME Units, the Developer shall comply with the provisions of the Davis-Bacon Act (40 U.S.C. 276 a to a - 7) as supplemented by Agency of Labor regulations (29 CFR, Part 5), as amended.
- 4.7. Affirmative Marketing. If any project under this Agreement involves the rental of five or more HOME Units, the Developer shall comply with the City’s requirements to affirmatively market any HOME Unit available for rent in a manner to attract tenants without regard to race, color, national origin, sex, religion, familial status or disability, per the Affirmative Marketing Agreement. The Developer agrees, in soliciting tenants, to do the following:
  - a) Use the Equal Housing Opportunity logo in all advertising;
  - b) Display a Fair Housing poster in the rental leasing office;
  - c) Where appropriate, advertise, use media, including minority outlets, likely to reach persons least likely to apply for the housing;
  - d) Maintain files of Developer’s affirmative marketing activities for five (5) years and provide access thereto to the City’s Staff;
  - e) Not refrain from renting to any tenant holding a Section 8 Existing Housing Certificate, except for good cause, such as previous failure to pay rent and/or to maintain a rental unit, or the tenant’s violation of other material terms and conditions of tenancy;
  - f) Comply with Section 8 Existing Housing Regulations when renting to any tenant holding a Section 8 Existing Housing Certificate;
  - g) Exercise affirmative marketing of the units when vacated; and
  - h) Verify all information concerning the applicant, or family members, which may be obtained from any source by the Passaic Housing Authority, or its assignees or designees.

The Affirmative Marketing Agreement and Questionnaire shall be completed prior to unit occupancy and retained in the Developer’s project file.

- 4.8. Expenditure of Funds. The Developer will ensure that any expenditure of HOME Funds will be in compliance with the requirements at 92.206, and acknowledges that HOME Funds will only be provided as reimbursement for eligible costs incurred, including actual expenditures or invoices for work completed.

- 4.9. Monitoring. The Developer will be monitored by the City for compliance with the regulations of 24 CFR 92 for the Affordability Period specified above. The Developer will provide reports and access to project files as requested by the City during the Project and for Five (5) years after completion and closeout of this Agreement.

**ARTICLE V**  
**Other Federal and Program Requirements**

5. The Developer shall comply with all applicable federal laws and regulations as described in 24 C.F.R. Part 92, subpart H.

**ARTICLE VI**  
**Religious Organizations**

6. If the CHDO is or was created by a religious organization, the CHDO agrees that all HOME Funds disbursed under this Agreement shall be subject to the conditions, restrictions, and limitations of 24 CFR 92.257.

**ARTICLE VII**  
**Disbursement of Funds**

7. The Developer may not request disbursement of funds under this Agreement until such time as funds are needed for **reimbursement of eligible costs**. No disbursement shall be made until the work performed has been inspected by the City. The amount of the maximum HOME Funds per unit is set forth in **EXHIBIT B**. The disbursement of funds shall occur according to the Method of Payment, as described by the City.

- 7.1 The Developer shall use the Payment Request Form that has been approved by the City. Eligible costs consist of **construction cost as they apply to the residential portion of the building**.

**ARTICLE VIII**  
**Records and Reports**

8. The Developer shall maintain records sufficient to meet the requirements of 24 CFR 92.508(a)(3). All records and reports required herein shall be retained and made accessible as provided in 24 C.F. R. 92.508(c) and (d). The Developer further agrees to abide by the City and its successors, pertaining to Public Records;

- 8.1 The Developer shall maintain records specific to each individual unit including tenant income eligibility documentation, so that all documents with regard to each unit will be easily retrievable.

- 8.2 All original records pertinent to this Agreement shall be retained by the Developer for a period of five (5) years following the date of termination of this Agreement or of submission of the final close-out report, whichever is later, with the following exceptions:

- a. if any litigation, claim or audit is started before the expiration of the five (5) year period and extends beyond the three (3) year period, the records will be maintained until all litigation, claims or audit findings involving the records have been resolved;
- b. records for the disposition of non-expendable personal property valued at \$1,000 or more at the time of acquisition shall be retained for five (5) years after final disposition;

- c. records relating to real property acquisition shall be retained for the Affordability Period as required under 24 CFR Part 92.
- 8.3 All records, including supporting documentation of all program costs, shall be sufficient to determine compliance with the requirements and the applicable federal laws and regulations and all other applicable laws and regulations.
- 8.4 The Developer, its employees and agents, including all subcontractors or consultants to be paid from HOME Funds provided under this Agreement, shall allow access to its records at reasonable times to the City, its employees and agents, and to HUD. "Reasonable" shall be construed according to the circumstances, but ordinarily shall mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. The term "agents" shall include, but is not limited to, auditors or consultants retained by the City.
- 8.5 The Developer shall submit to the City Monthly Progress Report which is due on the tenth (10<sup>th</sup>) day of each month during the term of this Agreement.
- 8.6 The Developer's failure to submit Monthly Progress Reports shall give cause for future payments to the Developer being withheld until said report(s) are submitted.
- 8.7 The Developer shall provide the City with additional program information as needed.

**ARTICLE XIV**  
**Duration of Agreement**

9. This Agreement shall commence upon its execution by both parties and shall terminate **twenty (20)** years for the new construction units, after the date of final inspection and acceptance by the City and the completion and certification of the HOME Units; provided however, the City may terminate this Agreement at any time, with or without cause, by giving owner **thirty (30)** days advanced written notice at owner's address as stated on the first page hereto.

**ARTICLE X**  
**Time of Performance**

10. The Developer agrees to implement the Project and comply with the timetable set forth in **Exhibit B**

**ARTICLE XI**  
**Indemnification and Insurance**

11. The Developer shall act as an independent contractor, and not as an employee of the City, in completing the aforementioned Project. The Developer shall be liable, and agrees to be liable for, and shall indemnify, defend and hold the City harmless from all claims, suits, judgments, or damages arising from the operating of the services required by this Agreement during the course of the Agreement to the extent allowable under the law and shall comply with the provisions of the attached Hold Harmless Rider

The Developer shall secure and maintain during the life of this contract Builder's Risk Insurance written in the completed value form and shall protect the Developer and Owner against all risk of damage to the buildings, structures, materials and equipment not otherwise covered. The amount of insurance shall be not less than one hundred percent (100%) of the insurable value of the work at completion of this contract. The policy shall provide for losses to be payable to the Contractor and Owner as their interests may appear.

11.1 At all times during this Agreement, the Developer will maintain in force Insurance as set forth in the attached Insurance Rider.

11.2 Such insurance shall be written by a company of companies approved to do business in the State of New Jersey. Such insurance shall be endorsed to provide for a waiver of underwriter's rights and subrogation in favor of the City. Such insurance shall be written by an insurer with an A.M. Best Rating of AX or better. Prior to commencing any work under this Agreement, certificates evidencing maintenance of said insurance may be furnished to the City and are subject to the approval of the Division of Insurance and Risk Management. Neither approval nor failure to disapprove insurance furnished by the Developer shall relieve the Developer from responsibility to provide insurance as required by contract.

**ARTICLE XII**  
**General Provisions**

12. The Developer shall hire an independent certified public accountant to audit the financial records of the Project in accordance with 24 CFR Part 45. The costs for the independent certified public accountant shall not be funded from the proceeds of the HOME Funds. After the project-specific audit is conducted, it must be submitted to the City no later than 120 days after the end of this Agreement. If included in the Developer's overall organizational audit(s) it must be submitted no later than 120 days following the end of each fiscal year which HOME Funds were expended.

**ARTICLE XIII**  
**Conflict of Interest**

13. In the procurement of labor, supplies, equipment, construction and services by the Developer or by any subcontractor, the conflict of interest provisions in 24 C.F.R. 85.36 and 24 C.F.R. Part 84 (the revised OMB Circular A-110) listed in **Exhibit B** shall be adhered to, to the extent applicable.

13.1 No person who is an employee, agent, consultant, officer, or elected official or appointed official of the City, or of any designated public agencies, or subcontractors which are receiving HOME Funds or who exercise or have exercised any functions or responsibilities with respect to HOME-funded activities or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties during their tenure or for one year thereafter. This prohibition includes the following:

- a. Any interest in any contract, subcontract or agreement with respect to any HOME assisted-projects or programs administered by the Developer, or the proceeds thereunder; or
- b. Any unit benefits or financial assistance associated with HOME Funds or programs administered by the Developer including, occupancy of a rental housing unit in a HOME Unit in the Project;

- 13.2 This prohibition does not apply to an employee or agent of the Developer who is income qualified and occupies a HOME Unit in the Project as the on-site project manager or maintenance worker.
- 13.3 In addition, no member of Congress of the United States, official or employee of HUD, or official or employee of the City shall be permitted to receive or share any financial or unit benefits arising from the HOME Funds in the Project.
- 13.4 Prior to the implementation of the Project, exceptions to these provisions may be requested by the Developer in writing to the City. The Developer must demonstrate and certify that the policies and procedures adopted for the activity will ensure fair treatment of all parties, and that the covered persons referenced in this policy will have no inside information or undue influence regarding the award of contracts or benefits of the HOME assistance. The City may grant exceptions or forward the requests to HUD as permitted by 24 CFR 92.356, 85.36 and 84.42, as they apply.

**ARTICLE XIV**  
**Governing Law**

14. This agreement is governed by and shall be construed in accordance with the laws of the State of New Jersey. The Developer and the City consent to the exclusive jurisdiction of the Courts of the State of New Jersey and the City, in all proceedings arising under this Agreement.

**ARTICLE XV**  
**Other City of Passaic Requirement**

15. The Developer shall comply with all provisions contained in Chapter 29, entitled Land Development Procedures, including also but not limited to the following as applicable and those provisions shall be deemed a part of this contract.

Administration of government — See Ch. 5.  
Redevelopment Agency — See Ch. 44.  
Uniform Construction Codes — See Ch. 107.  
Flood damage prevention — See Ch. 143.  
Subdivision of land — See Ch. 263.  
Zoning — See Ch. 317.

**ARTICLE XVI**  
**Entire Agreement**

16. This Agreement represents the entire agreement by and between the parties hereto for the matter specified herein. No statement, representation, writing, understanding or agreement made by either party or a representative of either party shall be binding unless expressed herein. All changes, amendments, modifications or revisions to this Agreement shall be binding only when in writing and signed by both parties hereto, by their respective authorized officers, agents or representatives.

**ARTICLE XVII**  
**Incorporation**

17. The recitals at the beginning of this Agreement are true and correct and, by this reference, are incorporated herein and made a part hereof. All exhibits attached hereto are, by this reference, incorporated herein and made a part hereof.

**ARTICLE XVIII**  
**Program Income Requirements**

18. The Developer, by its acceptance and recordation of the Deed Restriction, does, for the duration of the Affordability Period, hereby agree itself, and its successors and assigns, with the City, its successors and assigns, that the Developer, its successors and assigns, shall fully comply with the restrictive covenants set forth hereinabove and if the Developer, its successors and assigns, fails to comply with any of said covenants, the fee simple title in and to the Project shall, at the option of the City, its successors and assigns, revert to the City, its successors and assigns. Upon request of the City, its successors and assigns, the Developer, its successors and assigns, shall execute and deliver to the City, its successors and assigns, such instruments as are necessary to evidence the reversion of the Project in the public records of Passaic County, New Jersey. Program Income and unexpended funds or other assets will be returned to the City.

**ARTICLE XIV**  
**Incorporation of Recitals**

19. The recitals made at the beginning of this Agreement are true and correct and, by this reference, are incorporated herein and made a part hereof. The exhibits attached to this agreement and mentioned herein are, by this reference, incorporated herein and made a part hereof.

**THE REMAINING PORTION OF THIS PAGE INTENTIONALLY LEFT BLANK**

In WITNESS WHEREOF, the City and the Developer hereto duly execute this Agreement as of the day and year first written above.

WITNESS: CITY OF PASSAIC

\_\_\_\_\_  
BY: \_\_\_\_\_  
Hector C. Lora Date  
Mayor

WITNESS: Developer Corporation

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

State of New Jersey }  
                                  } SS  
County of Passaic }

I certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2019, before me personally appeared Mayor Hector C. Lora, to me known and known to me to be the individual described in and who executed the foregoing instrument on behalf of the City of Passaic, and he acknowledged to me that they executed same.

\_\_\_\_\_  
Amada D. Curling Date  
City Clerk of the City of Passaic

State of New Jersey}  
                                  } SS  
County of Passaic }

I certify that on this \_\_\_\_\_ day of \_\_\_\_\_ 2019, before me personally appeared \_\_\_\_\_, to me known and known to me to be the individual described in and who executed the foregoing instrument on behalf of **Developer Corporation**, and he acknowledged to me that they executed same.

\_\_\_\_\_  
Date

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DEVELOPER INFORMATION

ADDRESS

CONTACT PERSON

NAMES:

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TITLE:

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PHONE:

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Federal Tax Identification Number: \_\_\_\_\_

**EXHIBIT A**  
**SOURCES AND USES OF FUNDS STATEMENT**

**EXHIBIT B  
DEVELOPMENT PROFORMA**

**EXHIBIT C**  
**DECLARATION OF COVENANTS AND RESTRICTIONS**

### Insurance Rider

The Developer shall maintain during the life of the contract, insurance policies of the type and with the minimum limits indicated below and in a form satisfactory to the City of Passaic. The Developer shall provide a certified copy of the policies and/or certificates of insurance prior to commencement of work.

Policy and Limit Guidelines as follows:

- 1) Workers Compensation insurance in accordance with laws of the State of New Jersey and other states where work is being performed.
- 2) Commercial General Liability insurance coverage, written on an occurrence basis, and must not be altered by any endorsements limiting coverage. Limits of liability shall not be less than the following:
  - \$2,000,000 General Aggregate per location/per job
  - \$2,000,000 Products/Completed Operations Limit
  - \$1,000,000 Personal Injury and Advertising Injury Limit
  - \$1,000,000 Each Occurrence Combined Single Limit for Bodily Injury and Property Damage
- 3) Comprehensive Automobile Liability insurance covering the use of all owned, non-owned, hired or leased automobiles with limits of liability not less than \$1,000,000 combined single limit for bodily injury and property damage. Coverage should include uninsured and underinsured motorist at limits no less than the minimum statutory limits.
- 4) Umbrella Liability insurance policy written on an occurrence basis with a minimum combined single limit of “see below” as “Follow Form” excess of the Contractor’s Employer’s Liability, Commercial General Liability and Comprehensive Automobile Liability insurance policies required herein. Coverage to include on site limited pollution.

<u>Project Cost</u>	<u>Umbrella Limit</u>
\$50,000 and Below	\$1,000,000
Over \$50,000 to \$500,000	\$3,000,000
Over \$500,000 to \$1,000,000	\$5,000,000
Over \$1,000,000	\$10,000,000

### **Hold Harmless Rider**

Additional Requirements as follows:

1. Certified copies of all insurance policies provided above or certificates thereof satisfactory to the City of Passaic shall be furnished forthwith. Each such policy or certificate shall contain a provision that it is not subject to change, cancellation or non-renewal unless 30 days prior written notice via certified mail/return receipt shall have been given to the City of Passaic by the Contractor's Insurer. These must be received 30 days prior to commencement of work.
2. The Developer agrees that it will defend, indemnify and save harmless the City of Passaic, its officers, agents and employees from all liability, suits, actions, and demands and all damages, costs or fees on account of injuries to persons or property, including accidental death, arising out of or in connection with the work, or by reason of the operations under this agreement.
3. All insurance purchased and maintained by the Contractor shall designate the City of Passaic, their officers, officials, agents, employees, consultants as additional insureds.