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STANDARD FORM OF AGREEMENT

FOR

PROGRAM MANAGEMENT SERVICES

BETWEEN

ONE BROOKLYN HEALTH SYSTEMS, INC.

AND

FOR

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

AGREEMENT

This Agreement, dated and effective as of the \_\_\_\_ day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_, 2018, is made by and between One Brooklyn Health Systems, Inc., a New York not-for-profit corporation, organized and existing under the laws of the State of New York with its principal place of business at 1545 Atlantic Avenue, Brooklyn, NY 11213 (“Owner”); and                                      , a                        with its principal place of business at                                                                                     , (“Manager”).

In consideration of the mutual covenants and promises herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, Owner and Manager hereby agree as follows:

# BACKGROUND AND INTENT OF AGREEMENT.

## Owner desires to undertake a construction project as part of the Kings County: Health Care Facility Transformation Program and as further outlined in the Request for Proposal (the “RFP”) for Capital Construction Projects Program management Services, which Manager has reviewed and such edits to the RFP as required by the Owner (hereinafter referred to as the “Project”) for which it desires to retain Manager to provide those project management services as are more fully described and specified in Article 2 hereinafter (the “Services”) throughout the design, construction, and post-construction process of the Project, and Manager is willing to perform the Services, upon the terms and conditions set forth hereinafter. The extent of time over which the parties contemplate that the Services will be rendered is projected to be \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_\_) months (the “Projected Duration of Manager’s Services”), commencing upon the date set forth in \_\_\_\_\_\_\_\_\_\_\_\_.

## Manager will provide to Owner its best skill and judgment in the provision of the Services. Manager will cooperate with the architect(s), engineers(s), consultants, vendors, contractor(s) and/or construction manager, and the subcontractors to be utilized by any such contractor, and subcontractors selected for the Project (collectively, the “Project Team”, and each, individually, a “Team Member”), in furthering the interests of Owner and only the Owner. Manager will, with Owner’s approval, represent Owner to whatever extent may be required, in dealings with the Project Team, and with appropriate governmental agencies in obtaining necessary approvals in furtherance of the Project, and, as necessary, portions thereof.

## Owner agrees to exert its best efforts in good faith to cooperate fully with Manager toward the full and expeditious completion of the Project contemplated by this Agreement and will compensate Manager in accordance with the terms and conditions of this Agreement.

# MANAGER’S BASIC SERVICES.

## For the compensation described in Section 5.1, Manager will perform the services listed in Exhibit A relating to the Project, and to this end, will, on behalf of Owner, direct the activities of the Project Team and the Team Members, in order that the duties of each will be performed in a coordinated manner

## Manager will coordinate and schedule comprehensive site investigation services to identify constraints and opportunities with respect to local zoning requirements, availability of utility services and traffic access. Manager will assist Owner in obtaining local zoning board and planning board approvals.

## Manager will assist Owner in defining the basic scope of the architect’s services, and will interview qualified architects and engineers, explain to them the scope of services required of them and solicit proposals on behalf of Owner. Manager will prepare a detailed comparison of such firms, provide a “short list” of those qualified to make a presentation to Owner, and make recommendations concerning the selection of the Architect, and an engineer or engineers (collectively, the “Engineer”).

## Manager will assist Owner in the selection of, and in negotiations with, the Architect and Engineer, and in the preparation of an Architectural and Engineering Services Agreement between the Owner and the Architect.

## Manager will interview qualified contractors and/or construction managers, explain in detail the scope of services required, and solicit proposals on behalf of Owner. Manager will prepare a detailed comparison of firms, provide a “short list” of those qualified to make a presentation to Owner, and make recommendations concerning the selection of a contractor or contractors and/or construction manager (collectively, the “Contractor”). Manager will assist Owner in the selection of, and negotiation with, the Contractor so selected, and in the preparation of an agreement or agreements between the Owner and the Contractor (the “Construction Agreement(s)”).

## Manager will interview qualified equipment planners, explain the scope of services required, and solicit proposals on behalf of Owner. Manager will prepare a detailed comparison of firms, provide a “short list” of those qualified to make a presentation to Owner, and make recommendations concerning the selection of an equipment planner. Manager will assist Owner in the selection of, and negotiation with, the equipment planner so selected (the “Equipment Planner”), and in the preparation of an Equipment Planning Services Agreement.

## Manager will interview qualified interior designers, explain the scope of services required, and solicit proposals on behalf of Owner. Manager will prepare a detailed comparison of firms, provide a “short list” of those qualified to make a presentation to Owner and make recommendations concerning the selection of an interior designer. Manager will assist Owner in the selection of, and negotiation with, the interior designer so selected (the “Interior Designer”), and in the preparation of an Interior Design Services Agreement.

## Manager will coordinate and schedule the major equipment planning services provided by the Equipment Planner; and if that function shall be provided directly by Owner, the term “Equipment Planner” shall refer to Owner.

## Utilizing the Schematic and Design Development documents and the descriptions of the mechanical and electrical systems, Manager will initiate the preparation of a construction cost analysis, prepared by the Contractor and his key Subcontractors, in an effort to reaffirm the Construction Budget. Simultaneously, Manager will participate with the Architect in the required schematic and preliminary design submissions to all appropriate reviewing agencies.

## Based upon approved design development documents and any further adjustments in the scope or quality of the Project or in the Project Budget authorized by Owner, Manager will monitor the Architect in the preparation of the Drawings and Specifications setting forth in detail the requirements for the construction of the Project (the “Construction Documents”). Manager will conduct design meetings with the Project Team to review the Construction Documents for conformity with the original design intent, and will determine if decisions about materials and systems to be used are consistent with the interests of Owner. Manager will review the Construction Documents before the solicitation of bids.

## Manager, on behalf of Owner, will assist the Architect and Contractor in obtaining all necessary approvals, permits and certifications for the Project from local, state and federal governmental agencies and bodies, reimbursement authorities and zoning and land use authorities.

## Manager may require the Contractor or any Subcontractor or other party supplying materials to, or providing services to, or performing work on, the Project, to stop work, and may require special inspection or testing of any materials, services or work not supplied, provided or performed in strict accordance with the requirements of the Contract Documents, whether or not such work has been completed. Manager will have the right, on behalf of Owner, to reject work which does not conform to the requirements of the Contract Documents.

At the completion of each phase of construction, Manager will coordinate the initial start-up, or testing, adjusting and balancing, preparation of operation and/or maintenance manuals, training personnel for operation and/or maintenance, and consultation during operation or maintenance with respect to equipment and systems, project closeout procedures, and move-in activities with Owner, to assure that the move is accomplished with a minimum of disruption to routine operations of Owner.

Manager will maintain or cause to be maintained at the Project site, on a current basis, records of all contracts, shop drawings, samples, purchases, materials, equipment, applicable handbooks, maintenance and operating manuals and instructions, and other related documents and revisions, which arise out of and relate to the Project. At the completion of the Project, Manager will turn over or cause to be turned over all pertinent records and documents to Owner. Manager will review the “as-built” drawings prepared by the Contractor, and will deliver them or cause them to be delivered to Owner.

During the Contractor’s one-year guarantee period, Manager will coordinate the correction of all post-construction problems, defects, deficiencies or omissions by the Contractor.

# OWNER’S OBLIGATIONS, WARRANTIES AND INSURANCE.

## Owner will provide to Manager full and complete information regarding all requirements for the Project, including but not limited to a program which will set forth Owner’s design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems, and site requirements.

## Upon request of the Manager, Owner will furnish to Manager a certified land survey of the site, showing, as applicable, grades, lines of streets, alleys, pavements, adjoining properties, rights of way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site, and any improvements, both public and private, above and below grade, including inverts and depths.

## Upon request of the Manager, Owner will furnish to Manager, to the extent deemed necessary by Manager, the services of a soil engineer and other consultants, including test borings, test pits, the determination of soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations for determining subsoil, air and water conditions, and the preparation of reports, with appropriate professional interpretation and recommendations with respect thereto.

## Owner will furnish all structural, mechanical, chemical and other laboratory tests, inspections and reports deemed necessary by Manager for the proper management of the Project, and/or as required by law or by the Contract Documents, or as otherwise reasonably necessary to complete the Project. “Contract Documents” are any construction agreements, drawings, specifications, addenda issued prior to execution of any constructions agreements and any modifications issued after execution of any construction agreements.

## Owner will furnish all legal, accounting and insurance advisory services as may be necessary at any time for the Project, including such auditing services as the Owner may require to verify Applications for Payment by the Contractor, or to ascertain how and/or for what purposes the Contractor uses the monies paid by or on behalf of the Owner. Such services shall exclude Manager’s internal legal, insurance and accounting services (e.g. legal services for review of this Agreement, audit/accounting for Manager’s business etc...)

## Owner will name Manager as an additional insured on Owner’s General Liability insurance policies, automobile insurance policies and all applicable excess or umbrella insurance policies.

## Owner represents and warrants that Owner is a not-for-profit corporation, duly formed, validly existing and in good standing under the laws of the State of New York, with all requisite power and authority to own, construct and lease property, to borrow funds for such purposes, to give bonds, notes, mortgages, deeds of trust and other evidences of debt, and security or collateral for the same, and to enter into this Agreement and perform Owner’s obligations hereunder.

# MANAGER’S OBLIGATIONS, WARRANTIES AND INSURANCE.

## Manager is a corporation organized and existing under the laws of the State of \_\_\_\_\_\_\_\_\_\_, and has the requisite power and authority to enter into this Agreement and to perform its obligations hereunder. Manager agrees to cooperate in good faith with Owner toward the full and expeditious completion of the Project contemplated by this Agreement.

## Prior to the commencement of its services under this Agreement, Manager will provide to Owner a Certificate or Certificates evidencing the existence of insurance coverages as described in Exhibit B.

## Manager warrants and represents that it maintains all necessary licenses, permits, and/or certifications, as required under federal, state and/or local statutes and regulations to provide the Services herein described.

## Manager warrants and represents that it will perform the Services in accordance with industry standards and utilizing properly trained skilled and licensed personnel.

## Manager acknowledges the Project involves work in and around acute care hospitals which provides health care services to sick and infirm patients 24 hours a day. Accordingly, Manager shall endeavor to cause the Project Team to perform the work in a manner which will not in an unreasonable manner interfere or become unreasonably intrusive to the operations of the hospital. Team Member’s work and the work shall be scheduled with the Owner so as to cause the least interruption possible in the operations or activities of the hospital.

## Manager warrants and represents that neither it nor any of its employees or agents appears on the Department of Health and Human Services, Office of the Inspector General’s List of Excluded Individuals/Entities nor on the General Services Administration List of Debarred Contractors. Manager acknowledges the right of Owner, at its sole discretion to independently verify these facts throughout the term of the contract. Manager warrants and represents that it will promptly disclose to Owner if it or any of its employees and/or agents is placed on either of these lists. Manager acknowledges Owner’s right to immediately terminate this contract, upon written notification, in the event Manager or its employees and/or agents is placed on either the Department of Health and Human Services, Office of the Inspector General’s List of Excluded Individuals/Entities or the General Services Administration List of Debarred Contractors.

## Manager warrants and represents that to the best of its knowledge, neither it nor any of its employees and/or agents are currently under investigation for any violation of the various provisions of laws governing Medicare, Medicaid, any federally funded health care benefits program and/or any private health care benefit program which could lead to exclusion from such programs; and it has never (A) been convicted of (i) any offense related to the delivery of an item or service under Medicare, Medicaid, any private health care benefits programs or any federally funded program; (ii) a criminal offense relating to neglect, or abuse of patients in connection with the delivery of a health care item or service; (iii) fraud, theft, embezzlement or other financial misconduct in connection with the delivery of a health care item or service; (iv) obstructing an investigation or any crime referred to in (i) or (iii) above; or (v) unlawful manufacture, distribution, prescription or dispensing of a controlled substance; (B) been required to pay any civil monetary penalty regarding false, fraudulent, or impermissible claims under, or payments to induce a reduction or limitation of health care services to beneficiaries of any state, federal or private health care benefit program; or (C) been excluded from participation in Medicare, Medicaid, any private health care benefit program or any other federally funded program.

## Manager hereby agrees to indemnify and save harmless Owner, its agents, employees, contractors and subcontractors from and against all liabilities, obligations, claims, losses and expenses arising from personal injury or property damage: (1) caused or created by the negligent act, error or omission of Manager or its agents, employees, subcontractors or consultants and arising out of the Services performed hereunder; or (2) arising out of personal injury or property damage suffered or allegedly suffered by employees or agents of Manager or Manager’s subcontractors or consultants in the performance of the Services hereunder, except to the extent that any such personal injury or property damage is the result of or arises out of the negligent acts or omission or intentional misconduct of Owner, its employees, agents, contractors, subcontractors, architects, consultants or subconsultants (other than Manager), or anyone else (other than the Manager) for whose acts Owner is responsible.

# COMPENSATION AND EXPENSES.

## Compensation for Services.

As compensation for the Services described in Article 2, Owner will pay to Manager the sum of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dollars ($\_\_\_\_\_\_\_\_\_\_), payable as follows:

## Reimbursable Expenses.

The expenses listed below are in addition to Manager’s compensation for Services, and will be reimbursed in the manner set forth in Section 6.4 hereinafter:

Living expenses of employees of Manager incurred when traveling outside the New York City metropolitan area, transportation (other than to and from project site), telegrams and expenses of receipted delivery services in connection with the Project;

Expenses of making or obtaining reproductions, photographic production techniques, postage and handling with respect to drawings, specifications and other documents related to the Project, unless done internally;

Fees and costs incurred or paid by Manager for the purpose of securing approvals of authorities having jurisdiction over the Project;

Expenses of overtime work by employees of Manager requiring higher than regular rates, upon authorization in writing by Owner, unless needed for Manager to comply with Project Schedule;

Expenses of renderings, models and mock-ups requested by Owner; and

Expenses of any and all additional insurance coverages or limits, including professional liability insurance, requested by Owner, in excess of that normally carried by Manager or its Affiliates, or as required by the provisions of this Agreement.

## Manager shall deliver to Owner an itemized invoice on a monthly basis during the Term of this Agreement by the end of each month. Payments for undisputed amounts shall be made to Manager by Owner within ninety (90) days of Owner’s receipt of an invoice from Manager.Final payment constituting the entire unpaid balance due for a particular project shall be paid by Owner to Manager within ninety (90) days after Owner’s receipt of a final invoice from Manager for such services. Manager shall provide a partial waiver of lien with each invoice.

# TERMINATION OF AGREEMENT.

## Either party may terminate this Agreement for cause, upon fourteen (14) calendar days’ prior written notice, if the other party shall have failed substantially to perform its material obligations hereunder, and within such fourteen (14) calendar day period, shall fail to cure or take reasonable steps to cure such failure, or if such cure cannot be reasonably cured within such period, shall fail to commence such cure and diligently pursue the completion thereof within a reasonable time.

## Owner shall have the right to terminate this Agreement for convenience and without cause and without penalty upon thirty (30) days’ notice to the Manager. Manager will be entitled to its compensations for work completed up to the date of termination for the Services and for payment of its Reimbursable Expenses.

# RELATIONSHIP OF THE PARTIES.

## Nothing in the agreement shall in any way constitute a partnership between, or joint venture by, the parties, or so be construed to evidence any intention of the parties to constitute any partnership or joint venture. Neither party shall hold itself out contrary to the terms of this agreement by advertising or otherwise, and neither party shall become a liable or bound by any representation, act, or omission whatsoever of the other party contrary to the provisions of this section.

## Manager at all times will be deemed to be an independent contractor engaged by Owner to provide those Services for the Project as are set forth in this Agreement. Neither party will have any power to bind the other to contractual agreements, except to the extent specifically authorized in this Agreement, and no act of commission or omission of either party will be construed as rendering the other party, its principal, agent, servant, employee, partner, joint venturer or associate.

## For the convenience of the parties, it is agreed that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is hereby designated as the Representative of Owner, in connection with Owner’s relationship with Manager. Said Representative is empowered to take all actions, make all elections, receive and give all notices, compromise and settle all differences between Owner and Manager arising in connection with all matters pertinent to this Agreement or its enforcement, on behalf of Owner. Manager may rely upon, and be guided by the actions, decisions and directions of said Representative, all of which will be binding upon Owner. In its discretion, Owner may designate a different person as its exclusive Representative, and such person will be recognized by Manager as the substituted Representative of Owner, upon written notice to Manager, given in the manner set forth in Section 9.1 hereinafter.

## For the convenience of the parties, it is agreed that \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ is hereby designated as the exclusive Representative of Manager in connection with Manager’s relationship with Owner. Said Representative is empowered to take all actions, make all elections, receive and give all notices, compromise and settle all differences between Owner and Manager arising in connection with all matters pertinent to this Agreement or its enforcement, on behalf of Manager. Owner may rely upon, and be guided by, the actions, decisions and directions of said Representative, all of which will be binding upon Manager. In its discretion, Manager may designate a different person as its exclusive Representative, and such person will be recognized by Owner as the substituted Representative of Manager, upon written notice to Owner, given in the manner set forth in Section 9.1 hereinafter.

## Under no circumstances shall any person provided by Manager be considered an employee, agent or servant of Owner while said individual is performing duties pursuant to this agreement. Neither shall individuals provided by Manager be entitled to any payment from the Owner in the nature of benefits, including without limitation, unemployment, Workers’ Compensation or disability benefits under any state statute by reason of any accident illness or occurrences relating to the performance of his or her duties arising under this Agreement, or to any fringe benefits or other rights and benefits normally afforded employees of Owner.

# OWNERSHIP OF DOCUMENTS.

## All documents prepared by Manager are, and will at all times remain, the property of Owner, whether the Project for which they are made is completed or not. Manager will be permitted to retain copies, including reproducible copies, of such documents for information and reference in connection with Owner’s use and occupancy of the Project. Such documents will not be used by Owner or any other party on other projects, for additions to this Project or for completion of this Project by others, except by agreement in writing, and with appropriate compensation payable to Manager, to be agreed upon between Manager and Owner, which Agreement will also include an appropriate indemnification to Manager from Owner for liability of any kind resulting from the use of such documents.

# NOTICES.

## Each notice, demand, request, consent, report, approval or communication (“Notice”) which is or may be required to be given by either party to the other party in connection with this Agreement and the transactions contemplated hereby, must be in writing, and given by personal delivery, receipted delivery service, or by certified mail, return receipt requested, prepaid and properly addressed to the party to receive such notice, at the address set forth in the Preamble to this Agreement.

## Notices will be effective on the date delivered personally or by receipted delivery service, or three (3) days after the date mailed by Certified Mail.

## Each party may designate by Notice to the other in writing, given in the foregoing manner, a new address to which any Notice may thereafter be so given, served or sent.

# BINDING AGREEMENT.

## The contract is not binding unless ~~as~~signed by an authorized representative of Owner and an authorized representative of Manager.

## The rights and obligations of the parties hereunder will be binding upon their respective successors and assigns, but neither party may assign its rights or obligations under this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld or delayed.

## This Agreement constitutes the final expression of the entire agreement between the parties with respect to the subject matter hereof. It is intended as a complete, integrated and exclusive statement of the terms of their Agreement, and supersedes all prior promises, representations, negotiations, discussions and agreements, written or oral, that may have been made in connection with the Project. No supplement to or modification, waiver or termination of, this Agreement, will be binding unless signed by an authorized representative of each party. No waiver of any provision of this agreement by either party shall constitute a waiver of such provision or of any other provision thereafter.

# VALIDITY.

## If one or more of the provisions contained in this Agreement is found, for any reason, to be invalid, illegal or unenforceable in any respect, then and in any such event, such invalidity, illegality or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed as if such invalid, illegal or unenforceable provisions were not a part hereof.

# STATUTE OF LIMITATIONS.

## As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations will commence to run and any alleged cause of action will be deemed to have accrued not later than the relevant date of substantial completion of the construction work, and as to any acts or failures to act occurring after the relevant date of substantial completion, not later than the date of issuance of the final payment to the Contractor.

# WAIVER OF SUBROGATION.

## Owner and Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages covered by any property or liability insurance (including but not limited to commercial general liability, automobile liability and umbrella coverage), during construction as set forth in the Contract Documents, whether in force as of the date of this Agreement or entered into thereafter. The Owner and the Manager each will require similar waivers from their respective contractors, consultants and agents.

# AVAILABILITY OF BOOKS AND RECORDS.

## If it shall be finally determined that this Agreement is subject to the provisions of Section 952 of the Omnibus Budget Reconciliation Act of 1980 (P.L. 96-499), and further that any services rendered hereunder shall have been rendered by a party hereto or a related organization who shall be finally determined to be a “subcontractor” within the meaning of such section, then and in that event, such subcontractor, upon the written request of the Secretary of Health and Human Services or the Comptroller General of the United States, or the duly authorized representative of either of them, shall make available to such person this Agreement, and such books, documents and records of such subcontractor as shall be necessary to certify the nature and extent of the costs incurred by Owner or any other Provider hereunder; provided, however, that the cost or value of such services provided hereunder shall equal or exceed $10,000.00 over any twelve month period.

## In the event that any request for either parties party’s or related subcontractor’s books, documents, or records is made under the applicable Medicare statutes and regulations, that party or any subcontractor related to that party shall promptly give notice of such request to the other party and provide the other party with a copy of such request, and thereafter consult and cooperate with the other party concerning the proper response to such request. Either party or any subcontractor related to either party also, upon written request, shall provide the other party with a copy of each book, document, and record made available to one or more of the persons and agencies above, or shall identify each such book~~,~~ documents, and record to the other party and shall, upon written request, grant the other party access thereto for review and copying during reasonable business hours.

# TERMS AND DEFINITIONS.

## Terms used in this Agreement which are defined in the General Conditions of the Contract shall have the meanings designated in those Conditions.

## Whenever used in this Agreement or the Construction Documents the term “subcontractor” shall include sub-subcontractors, materialmen and laborers.

# HEADINGS.

## Headings contained in this Agreement or for reference purposes only, and shall not affect in any way, the meaning or interpretation of this Agreement

# GOVERNING LAW.

## This agreement shall be governed by and construed in accordance with the laws of the State of New York, applicable without regard to choice of law principles. Venue shall be in Kings County.

# COMPLIANCE WITH LAWS.

## Each party agrees to comply with all applicable local, state and federal laws which prohibit discrimination based upon race, color, creed, national origin, veterans status, sex, sexual orientation, marital status, age, handicap, or disability.

## Notwithstanding any other provision in this contract, Owner agree remains responsible for ensuring that any service provided pursuant to this contract complies with all pertinent sections of federal, state and local laws and regulations, and the standards of the Joint Commission on Accreditation of Health Care Organizations; provided, however, that nothing in this section shall limit Manager’s obligations under this Agreement.

# SIMULTANEOUS EXECUTION.

## This agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement, and shall become effective when one or more counterparts have been executed by each of the parties hereto and delivered to the other.

# CONFIDENTIALITY.

## Except as may be required by any governmental entity having jurisdiction over Manager and except as may be necessary to perform its services hereunder, Manager shall not disclose to any third party any confidential information that Owner makes available to Manager or which may be deduced from information from Owner (information heard, obtained from observation or otherwise received while Manager is at any of Owner’s facilities is considered information obtained from Owner for the purposes of this Section 20.1). Manager agrees to limit access to such information to those employees reasonably requiring such access for purposes of providing the Services and shall require that its employees maintain the confidentiality of such information in accordance with the terms hereof.

# NEW YORK REQUIREMENT

## In accordance with Section 400.4 of the Regulations of the New York State Commissioner of Health (10 NYCRR), notwithstanding any other provision in this Agreement, Owner remains responsible for ensuring that any service provided pursuant to this Agreement complies with all pertinent sections of Federal, State and local statutes, rules and regulations and the standards of the Joint Commission on Accreditation of the Healthcare Organizations provided however, that nothing in this Section 21 shall relieve Manager of its duties and obligations under this Agreement.

# FORCE MAJEURE.

## Neither party will hold the other liable for failure to comply with any of the terms and conditions of this Agreement which failure results from fire, weather, labor dispute. Strike, war, insurrection, governmental restrictions or acts of God, beyond the reasonable Control of such party; provided that such party failing to comply proceeds with reasonable diligence to cure such failure as promptly as possible.

# MISCELLANEOUS.

## Manager agrees to cooperate with Owner in providing all reasonable necessary documentation, information and assistance in connection with the completion of financing, if applicable and agrees to attend such meetings and closings as shall be necessary in connection therewith and that such services will be provided as additional services required of the Manager pursuant to this Agreement.

## Except as specifically provided for in this Agreement, no amendment or change in the provisions of this Agreement or of any exhibit to this Agreement shall be effective or binding upon either party unless in writing executed by such party.

## If applicable, the Manager shall fully cooperate with the New York State Department of Health, the Owner’s lenders, zoning officials and representatives of other entities with jurisdiction over the Project or the Owner, and shall participate in conference calls and meetings, as necessary.

## Manager hereby represents to the Owner that Manager is familiar with the requirements for New York health care projects. Manager represents that all services provided by the Manager pursuant to this Agreement shall be provided by appropriately licensed professionals in the State of New York.

## In the event that there shall be any mechanics or other lien filed against the Owner’s premises or other claims made on account of the services provided by or through the Manager, the Manager shall immediately satisfy, discharge or bond such lien or claim. The Owner shall have the right to bond the lien or claim or otherwise discharge the same and to retain out of any payment then due or thereafter to become due to the Manager an amount sufficient to completely indemnify the Owner against such lien or claim plus interest together with the expenses incident to discharging such lien or claim or defending any suit to enforce such lien or claim including any premiums charged for a bond any attorney’s fees and disbursements all of which the Manager agrees to pay. Any such lien or other claim, until satisfied or withdrawn, shall preclude any and all claims for any payment whatsoever under or by virtue of this Agreement.

## To the fullest extent permitted by law, Manager will indemnify and hold harmless the Owner, its officers, directors, partners, representatives, agents, employees and affiliates, from and against any and all claims, suits, liens, judgments, damages, losses and expenses or anything else related to the work, including legal fees and all court costs and liability .(including statutory liability) arising in whole or in part and in any manner from injury and/or death of any person or damage to or loss of any property resulting from the acts, omissions, errors, breach or default of Manager, its officers, directors, agents, employees, consultants, vendors, materialmen or subcontractors, or in connection with the performance of any work by or for the Manager pursuant to any contract, agreement, purchase order and/or related proceed order, except those claims, suits, liens, judgments, damages, losses and expenses caused by the sole negligence of Owner. Manager will defend and bear all costs of defending any actions or proceedings brought against the Owner, its officers, directors, partners, representatives, agents, employees and affiliates, arising in whole or in part out of any such acts, omissions, errors, breach or default, or in connection with the performance of any work by or for the Manager pursuant to any contract, agreement, purchase order and/or related proceed order. The foregoing indemnity shall include injury or death of any employee of the Manager, its consultants and vendors, and shall not be limited in any way by an amount or type of damage, compensation, or benefits payable under any applicable workers compensation, disability benefits or other similar employees benefit act. Architect waives the provisions of Workers’ Compensation Law §11 so to permit the Owner, its officers, directors, partners, representatives, agents, employees and affiliates to pursue recovery from the Architect under theories of contribution, common law indemnity and contractual indemnity in the event that the injured party is an employee of the subcontractor who does not sustain a “grave injury”.

IN WITNESS WHEREOF, Manager has caused this Agreement to be executed by its duly authorized officers and its Corporate Seal affixed; and Owner (if a corporation) has caused this Agreement to be executed by its duly authorized officers and its Corporate Seal affixed, or (if a partnership) by its duly authorized representative; in each case, on the day and year first above written.

MANAGER:

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

Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

OWNER:

ONE BROOKLYN HEALTH SYSTEMS, INC.

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

Attest:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

EXHIBIT A – DESCRIPTION OF SERVICES

**Scope of Services Outline**

Services required as part of this Agreement include the following:

Senior Management Reporting

* Meet regularly with Owner’s Representative to review items requiring action, schedule, and budget status. Meet monthly with Project Steering Committee to present monthly status report that contains an Executive Summary, Items Requiring Action, Project Schedule Update, Project Cost Status, and Issues List

Strategic Development of Project

* Assist in Strategic/Financial Assessments
* Prepare Project Scope Definition/Descriptions
* Prepare Budget and Contingencies
* Prepare Master Schedules
* Incorporate Critical Success Factors and Program Sustainability
* Prepare Risk Assessments

Development Budget

* Prepare and update monthly a comprehensive development budget estimate in a format that contains appropriate development costs that are typically incurred through substantial completion of the Project.

Project Schedule

* For each location, develop and maintain a master development schedule which addresses design, construction and owner-related milestones.
* Monitor the Architect, the Contractor and other consultants’ activities. Report schedule deviations.
* Work with the responsible party(ies) to bring their activity back in line with the schedule objectives.

Master Site Facility Plan and Strategy Development

* Land Utilization and Site Optimization
* Placement of Structures
* Conceptual Site Planning
* Development of Phasing and Future Growth
* Movement Systems/Parking Utilities and Infrastructure Regulatory Planning and Zoning

Project/Project Delivery Method Assessment

* Traditional Lump Sum
* Fast-Track GMP at Risk
* Design –Build
* Integrated Project Delivery
* Collaborative Project Delivery

Selection and Coordination of Remaining Development Team Members

* Assist Owner’s management in preparation of a Request for Proposal (“RFP”) for a design firms, construction firms and other consulting firms not currently under contract and required for completion of the Project:
  + Provide criteria for evaluation that will be included in the RFP
  + Prepare and distribute Requests for Proposal
  + To the extent appropriate, field questions from firms during their proposal preparation process and coordinate receipt of responses

● Review RFP proposals:

* + Assist Owner’s management in identifying key criteria for evaluation
  + Review proposals and summarize salient information in a summary format for Owner’s management
  + Assist Owner’s management in selecting a short-list of firms for further review
  + Provide management with input to assist in Owner’s final selection of consulting firms for the Projects

Design Direction and Review

* Review design development documents, construction documents and interior design concepts prepared by the Architect.
* Assist Owner’s senior management in establishing appropriate building quality levels and objectives.
* Recommend a construction bid package breakdown to permit an accelerated construction commencement.

Achieving Optimum Value

* Review design and construction assumptions. Direct the project team’s effort to arrive at the most optimum solution(s) with respect to Owner’s strategic objectives and budgets.
* Establish a process and criteria for evaluating and approving potential value engineering and cost reduction items by Owner’s senior management.

GMP and Construction Buyout

* With Owner’s legal counsel, negotiate the Construction Agreements, Construction Guaranteed Maximum Prices (GMPs), Lump Sum agreements, potential savings provisions, potential change order conditions and responsibility to control or cap general condition expenses.
* Review Contractor’s recommendations regarding potential subcontractor and supplier bidders.
* Participate in the subcontractor/supplier buyout review process. Review all price proposals. Identify potential areas for additional price optimization and savings.

Construction Administration

* Monitor the construction process and progress, including the review and coordination of all work undertaken by other consultants, designers, contractors and OBHS staff to ensure the timeliness, cost effectiveness and quality of execution of the Plan
* Coordinate communication between Owner, the Architect, the Contractor and other design consultants.
* Monitor the submittal and request for information processes.
* Monitor and document, in conjunction with the MWBLE Consultant for the program, the achievement of MWBE and local business participation in all projects.
* Coordinate with Construction Managers and/or Architects working on various program projects
* Assist in the development of Request for Information (RFI), Request for Qualifications (RFQ), Request for Proposals (RFP) and/or Invitation to Bid (ITB) documents as necessary for the projects
* Advise Owner of any observed deficiencies in construction quality and assist with developing recommended corrective action.
* Monitor the quantity, cost impact and schedule impact of change orders. Review the design with the Architect when testing the merits of proposed change orders. Recommend approval/disapproval of additional cost and/or schedule extension requests.
* Monitor the Contractor’s coordination with the Owner’s facilities staff for temporary shut downs, jobsite staging, material deliveries, utility tie-ins, traffic flow disruptions, etc.
* Monitor activities to ensure compliance and recommend corrective courses of action to be taken in the event consultants or contractors fail to satisfy the requirements of their respective contracts.
* Collaborate with Owner and represent Owner’s interests in mediating interpretations between the design consultants (i.e., Architect, engineer, etc.) and the Contractor during the Construction Phase.
* Coordinate regular progress meetings with Owner, the Architect, the Contractor and other consultants as necessary.
* Monitor the Contractor’s adherence to its equipment and material procurement/delivery schedule.
* Monitor the Contractor’s receipt, storage and security of Owner-purchased material and equipment.
* In conjunction with the Architect, review change order costs prior to submittal for approval.
* Review and assist Owner with analyzing the merits of proposed design changes, including an analysis of the cost impact of each proposed change.
* Recommend approval/disapproval of additional costs and/or schedule extension requests.
* Provide Owner with periodic reports relative to design and construction including:
* Agendas and minutes for planning, design and construction meetings
* Monthly reports summarizing construction progress, key issues and upcoming scheduled work
* Evaluate the completion of work at “Substantial Completion”.
* Monitor completion of the Contractor’s punch list.
* Review the submittal of closeout documents such as As-Built, Operation and Maintenance Manuals and Warranties.
* Coordinate and lead Owner, the Architect and Contractor through a review of the Project, ten (10) months following “Substantial Completion”, with the purpose of identifying and resolving any warranty issues.

Safety Administration

* Manage and monitor safety processes including the review and coordination of all work undertaken by other consultants, designers, contractors and OBHS staff to ensure the creation of a clean and safe work environment based upon regulatory and industry codes and standards and best practices as well as the professional experience of the Program manager.
* The implementation of clear communication, clean construction methods, adhering to Infection Control requirements, implementing fire safety plans, performing High Risk Construction Activity Reviews, Pre-Construction Risk Assessments, Site Specific Environmental Health and Safety Plans and staff safety orientations.

Quality Control

* Confirm that Elements of the Quality Assurance Program are Implemented
* Observe, Report, and Make Recommendations, Review Construction Documents and Specifications, Track Submittal Review and Approval Processes, Report Observed Deficiencies in Construction Quality
* Assist with Developing Recommended Corrective Actions
* Track the Scope, Schedule and Cost Activities of the Construction Testing Agencies
* Monitor Contractors’ Receipt, Storage, and Security of Purchased Material and Equipment
* Monitor As-Built Drawings and Specifications
* Evaluate the Completion of Work at Substantial Completion
* Assist in Punch List Inspections and Preparation of Punch Lists

Medical and Other Systems Equipment Coordination

* Coordinate the planning, procurement and installation of medical equipment and other systems (i.e., phone system, computer systems, other) with the selected equipment planner, equipment vendors, the Architects and the Contractors.

Furnishings/Signage/Artwork Coordination

* Coordinate the planning, procurement and installation of furnishings, signage, plantscapes and artwork with the selected interior designers, vendors, the Architects and the Contractors.

Accounting and Cost Control

* Review project costs monthly including construction, soft costs and fees, medical and systems equipment, furnishings, signage, plantscape and artwork.
* Establish a cost report that tracks all projects’ budgeted line items, expenses and changes.
* Manage a pay application process for Owner that includes submittal, review and approval protocols.
* Forecast cash flow for the Projects and adjust as necessary in accordance with the Project’s progress and actual monthly draws.
* Analyze Proposed Design Changes; Review Scope, Cost Impact and Schedule Impact of Change Order Requests; Recommend Disposition of Additional Cost and/or Schedule Extension Requests; Monitor Contractors’ Requests for Information; Manage Cost or Schedule Change Exposure

Certificate of Need

* Manage and prepare site for Department of Health facility survey by assembling the Department of Health survey checklist
* Manage Department of Health Survey and prepare and complete all items identified on the Plan of Correction
* Coordinate as necessary with the Department of Health Operational Survey (Nursing) to allow for occupancy

EXHIBIT b – REQUIRED INSURANCE

# Professional Liability Coverage - minimum insurance requirements are $25 million per occurrence and $25 million in the aggregate.

# Workers' Compensation and Employer's Liability - in accordance with New York State statutory requirements.

# General Liability Coverage - minimum insurance requirements are $1 million per occurrence and $3 million in the aggregate.

# Umbrella Liability - minimum insurance requirements are $10 million per occurrence and $10 million in the aggregate.

# Project Management Protective Liability Insurance - minimum insurance requirements are $5 million per occurrence and $5 million in the aggregate.

# OBHS is to be named as an additional insured on the Manager's liability policies and certificates of insurance will need to be evidenced to ensure coverage is in place. Thirty days written notice will be provided to OBHS prior to any change in coverage or policy cancellation.

# All insurance coverage shall be underwritten by a New York State licensed carrier or have an A.M. Best Rating of A (excellent) or better.