

NOTICE TO PROCEED #1

WHEREAS, Fort Schuyler Management Corporation (“FSMC”) COR Collamer Road Company, LLC (“COR”) and EYP Architecture and Engineering, PC (“EYP”), are working together to locate a building of approximately 83,400 gross square feet in the Collamer Crossing Business Park in Dewitt, New York for the Central New York (CNY) Hub for Emerging Nano Industries (Phase II); and

WHEREAS, COR and FSMC are working with EYP to provide for the design and development of the building, which will include approximately 42,900 SF of manufacturing area, 15,700 SF of mechanical support, 11,350 SF of expansion area and 12,300 SF of office area, as generally shown on the Exhibit A attached hereto; and

WHEREAS, COR and FSMC are working with EYP to provide for the design and development of high-tech LED manufacturing equipment to be installed in the building; and

WHEREAS, the building, and design and development work that will be necessary to complete the building and install high-tech manufacturing equipment in support of the Central New York (CNY) Hub for Emerging Nano Industries (Phase II), are collectively referred to herein as the “Project”; and

WHEREAS, FSMC and COR intend to enter into a real estate purchase agreement for the purchase of the real property upon which the Project will be built and a construction contract for the construction of the building (collectively the “Contracts”), upon terms and conditions that are mutually acceptable to the Parties; and

WHEREAS, the construction Contract shall be in the form of a guaranteed maximum price contract in a form that is mutually acceptable to the Parties, with the Project to be completed on an open-book basis based on cost, plus an eight percent (8%) construction management fee and a six percent (6%) development fee;

WHEREAS, in order to complete the Project in an expeditious manner, EYP has been designated to coordinate the efforts of the design team with COR and FSMC, so that building design can be completed and long lead time high-tech LED manufacturing equipment can be ordered; and

WHEREAS, in advance of negotiating and entering into Contracts and in an effort to expedite the development of the Project, COR shall work with EYP to undertake activities, including design, development and construct; with a not to exceed expenditure of \$ 12,223,772.25; and

WHEREAS, COR’s and EYP’s activities shall include design, development and construction as more particularly described in the scope of work shown on the Exhibit B attached hereto.

NOW THEREFORE, in consideration of the mutual promises contained in this Notice to Proceed ("NTP"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by FSMC and COR (FSMC and COR sometimes referred to in this NTP individually as a "Party and collectively as the "Parties"), the Parties agree as follows:

1. COR is hereby directed to and will proceed with efforts to satisfactorily address the scoping, planning and design necessary to undertake the initial Project activities, as set forth in the scope of work attached to this NTP as Exhibit B ("Work") and in accordance with the schedule of completion attached to this NTP as Exhibit C.
2. For completion of the Work and for reimbursement of all expenses incurred in connection with the scope of work attached as Exhibit B, COR shall be entitled to payments in accordance with the project scoping budget attached to this NTP as Exhibit D ("Budget"), with such payments totaling an amount not to exceed \$12,223,772.25. Expenses not set forth in the Budget shall be reimbursed by FSMC only if such expenses are approved in writing FSMC prior to such expenditures being incurred.
3. COR shall perform the Work in accordance the terms of this NTP.
4. In connection with the Work, but except for portions of the Work that have already been authorized, COR shall: not enter into any subcontracts for such sub-contract work unless such subcontracts are assignable to FSMC. COR agrees, subject to receipt of funds from FSMC, to pay its subcontractor invoices net 30 days during the period covered by this NTP. COR shall develop, design and construct the Project with input from FSMC, and its respective third-party consultants as reasonably appropriate, and with such design and other firm(s) as identified by FSMC. FSMC shall have the right to review and approve all team members and subcontractors used by COR for the development, design and construction of the Project, with such approval to not be unreasonably withheld or delayed.
5. COR may make application for progress payments monthly for Work performed under this NTP in accordance with the cash flow schedule attached to this NTP as Exhibit E by submitting to FSMC, after the end of any month in which such Work is performed, a notarized application in such form and in accordance with such payment procedures as established by FSMC, with payment to be made within thirty (30) days of FSMC's receipt of completed application(s), provided, however, that the total of all amounts expended and committed in performance of the Work under this NTP shall not exceed \$12,223,772.25, including the amounts of signed subcontracts.
6. This NTP may be terminated by FSMC, upon ten (10) days' written notice to COR, in the event (a) the Parties are not able to reach agreement on a mutually acceptable Contracts, (b) a breach of the terms of this NTP by COR and ten (10) days' written notice by FSMC to COR reasonably describing the breach, or (c) insolvency, receivership of assets, or any bankruptcy filing of COR. This NTP shall also automatically terminate upon the Parties' signing of Contracts, with such Contracts governing all rights and responsibilities of the Parties. In the event of termination (other than for signing of the Contracts), COR acknowledges and agrees that it shall not have any claim against FSMC except for reimbursement of any expenses incurred and amounts payable under this NTP prior to termination and that it shall sign and deliver such documents as may be required to assign to FSMC each and every subcontract

entered into by COR pursuant to this NTP. In the event that this NTP is terminated by FSMC in the event of breach by COR, FSMC shall be entitled to set-off any amounts owed to COR by the amount of damages resulting from such breach.

7. A dispute between the Parties relating to this NTP that is not resolved within three (3) business days of the dispute shall be subject to the following additional terms:

Issuance of Stop Work Order ("SWO")

- (i) FSMC may issue a stop work order ("SWO") after such dispute goes unresolved for three (3) business days. FSMC will use reasonable efforts to provide (or cause to be provided) immediate notice to COR in person, by fax or by email and followed with certified, return receipt requested or overnight mail. The SWO must be sent by certified mail, return receipt requested or overnight mail to be effective and will have an effective date of one (1) day after the date overnight mail is sent or three (3) days after the date certified mail is sent. As of the effective date of the SWO, all Work under this NTP will stop.
- (ii) COR will provide immediate notice of a SWO to subcontractors to stop Work accordingly and, as of the effective date of the SWO, no further subcontractor expenses shall be invoiced until recommencement is agreed upon as set forth below.

(a) Within ten (10) business days of effective date of a SWO, COR will provide FSMC with a statement of all expenses incurred from the last invoice date through the date of the SWO. This amount plus all invoiced amounts will be submitted for payment approval. No further payments will be due until the SWO is lifted.

(b) COR may not recommence Work after issuance of a SWO unless and until FSMC agrees to lift the SWO.

(c) If a SWO is issued and COR is at fault (whether by negligence or breach of terms of this NTP), then any additional charges incurred as a result of the SWO and recommencement of Work will be borne by COR.

8. FSMC shall own all designs, plans and other information generated by COR and/or in conjunction with any of its subcontractors as a result of the Work performed under this NTP. In the event of a termination of this NTP, all designs, plans and other information produced prior to the time of such termination shall be solely owned by FSMC and such designs, plans and other information will be delivered to FSMC by COR within a reasonable time after termination.

9. This NTP shall be subject to terms and conditions set forth in Exhibit F of this NTP. COR shall take out and maintain, without interruption throughout the term of this NTP, and shall cause its subcontractors to take out and maintain, such general liability and property damage insurance as will protect COR and FSMC from claims for personal injury and/or property damage which may arise from operations under this NTP, whether such operations are by COR, any subcontractor or by anyone directly or indirectly employed by either of them, as more particularity noted in Exhibit F. Such insurance shall be written for not less than the limits of

liability specified in Exhibit F or required by law, whichever coverage is greater. COR and its subcontractors shall obtain such payment and performance bonds as set forth in Exhibit F.

10. This NTP authorizes COR to commence performance of the Work in accordance with the terms of this NTP. Final contractual commitments and obligations are contingent on receipt by FSMC of funding from New York State.

FORT SCHUYLER MANAGEMENT CORPORATION

By: Walter G Barber
Name: Walter G. Barber
Title: Chairman
Date: ^{September} July 15, 2015

COR COLLAMER ROAD COMPANY, LLC

By: Steven F. Aiello
Name: Steven F. Aiello
Title: General Manager
Date: July _____ 2015

FSMC/ COR CONFIDENTIAL

**EXHIBIT A
SITE PLAN TO BE ATTACHED**

**EXHIBIT B
SCOPE OF WORK**

1. Base Building - Site Design
2. Base Building -Arch-Eng Design
3. Base Building - Ind-Eng Phase 1
4. Base Building – Ind-Eng Phase 2
5. Energy Consultants
6. Base Building -Office & TI Design
7. Special Consultants (Geo.Vib.Testing)
8. On/Off Site Infrastructure Construction
9. General Conditions - Site
10. Site Clearing and Grubbing
11. Erosion Control
12. Topsoil Strip /Cut and Fills
13. Preload Building Pad
14. GC/CM Fee

**EXHIBIT C
SCHEDULE OF COMPLETION**

DATES

1. Base Building - Site Design	September 2014 – June 2015
2. Base Building -Arch-Eng Design	September 2014 – June 2015
3. Base Building - Ind-Eng Phase 1	September 2014 – April 2015
4. Base Building – Ind-Eng Phase 2	September 2014 – June 2015
5. Energy Consultants	September 2014 – April 2015
6. Base Building -Office & TI Design	September 2014 – June2015
7. Special Consultants (Geo.Vib.Testing)	September 2014 – June 2015
8. On/Off Site Infrastructure Construction	April 2015
9. General Conditions - Site	January 2017
10. Site Clearing and Grubbing	February 2015
11. Erosion Control	September 2015
12. Topsoil Strip / Cut and Fills	February 2015
13. Preload Building Pad	February 2015
14. GC/CM Fee	N/A

**EXHIBIT D
PROJECT SCOPING BUDGET**

1. Base Building - Site Design	\$200,000.00
2. Base Building -Arch-Eng Design	\$3,580,500.00
3. Base Building - Ind-Eng Phase 1	\$548,900.00
4. Base Building – Ind – Eng Phase 2	\$2,805,000.00
5. Energy Consultants	\$113,600.00
6. Base Building -Office & TI Design	\$188,500.00
7. Special Consultants (Geo.Vib.Testing)	\$200,000.00
8. On/Off Site Infrastructure Construction	2,976,000.00
9. General Conditions - Site	\$167,812.25
10. Site Clearing and Grubbing	\$77,800.00
11. Erosion Control	\$27,400.00
12. Topsoil Strip and / Cut and FillsStock Pile Topsoil	\$346,040.00
13. Preload Building Pad	\$307,200.00
14. GC/CM Fee	\$685,020.00
15.	
TOTAL NTP #1	\$12,223,772.25

**EXHIBIT E
CASH FLOW SCHEDULE**

		<u>Percentage of Work Completed to Date</u>	
Base Building - Site Design	\$200,000.00	60.50%	\$121,000.00
Base Building -Arch-Eng Design	\$3,580,500.00	67.59%	\$2,420,059.95
Base Building - Ind-Eng Phase 1	\$548,900.00	100.00%	\$548,900.00
Base Building – Ind – Eng Phase 2	\$2,805,000.00	2.13%	\$59,746.50
Energy Consultants	\$113,600.00	100.00%	\$113,600.00
Base Building -Office & TI Design	\$188,500.00	77.98%	\$146,992.30
Special Consultants (Geo. Vib. Testing)	\$200,000.00	16.00%	\$32,000.00
On/Off Site Infrastructure Construction	\$2,976,000.00	100.00%	\$2,976,000.00
General Conditions - Site	\$167,812.25	27.90%	\$46,819.62
Site Clearing and Grubbing	\$77,800.00	100.00%	\$77,800.00
Erosion Control	\$27,400.00	21.00%	\$5,754.00
Topsoil Strip / Cut and Fills	\$346,040.00	100.00%	\$346,040.00
Preload Building Pad	\$307,200.00	100.00%	\$307,200.00
GC/CM Fee	\$685,020.00	49.40%	\$338,399.88
TOTAL NTP #1	\$12,223,772.25		\$7,540,312.2

EXHIBIT F

TERMS AND CONDITIONS

1. Indemnification. To the fullest extent permitted by law, COR shall indemnify, save, hold harmless and defend FSMC, The Research Foundation for the State University of New York, the State University of New York Polytechnic Institute, State of New York, and their respective officers, directors, managers, shareholders, members, employees, agents, and assigns (each individually an "Indemnitee") from and against any and all claims, direct damages, demands, actions, judgments, lawsuits, proceedings, assessments, liabilities, losses, penalties, costs and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses), whether or not subject to litigation, incurred by any Indemnitee in connection with, by reason of, or arising out of (a) the material breach of or the untruthfulness or inaccuracy of any representation of COR that is contained in COR's response to RFP or in this NTP, (b) COR's or its employees', agents', and contractors' negligent acts or omissions in connection with activities undertaken pursuant to this NTP, (c) any negligent act or omission involving fraud of COR or its employees, agents or contractors in connection with the performance of responsibilities under this NTP, (d) any damage or destruction of property, or injury, sickness, disease or death to persons, caused by COR or any of its employees', contractors' or agents' negligence or misconduct in connection with activities undertaken pursuant to this NTP, or (e) any negligent act, omission or violation of statutory duty or regulation by COR or any of its employees, contractors or agents in connection with activities undertaken pursuant to this NTP.
2. No Agency. The signing, delivery and performance of this NTP shall not be construed as creating any agency relationship, partnership, joint venture or similar association among the Parties. Each Party shall be responsible for their own project administration, insurance, employees, taxes and other similar matters. Neither Party shall have the right to bind the other Party to third parties.
3. Confidentiality. Either FSMC or COR (with respect to information disclosed by it, the "Disclosing Party") may disclose Confidential Information (as defined below) to the other (with respect to such information, the "Receiving Party") orally or in writing or by other media or by transfer of materials. When disclosed in writing or by such other media or materials, Confidential Information shall be expressly identified in writing as Disclosing Party's Confidential Information. When disclosed orally, Disclosing Party shall identify the information as confidential at the time of such disclosure, with subsequent written confirmation to Receiving Party within thirty (30) days of such disclosure indicating the date and type of information disclosed. In addition, by example and not in any way limiting, all information pertaining to the design and construction of the Project and the property on which the Project will be constructed shall be deemed to constitute Confidential Information. Receiving Party shall clearly label any of Disclosing Party's Confidential Information reduced to writing by Receiving Party as "XYZ CONFIDENTIAL INFORMATION" where XYZ is replaced with the name of Disclosing Party. For purposes hereof, the term "Confidential Information" shall mean all information that is maintained in confidence by a Party ("Owning

Party") and is disclosed to or obtained by another Party in connection with and during the term of this NTP, including, but not limited to, information that relates to such Owning Party's announcement of this relationship shall be mutually coordinated and agreed upon by the Parties, and (b) a summary of pertinent Sections of this NTP that are reasonably necessary for disclosing and/or licensing under this NTP; provided, that such disclosure is under a written agreement containing restrictions of confidentiality at least as stringent as those contained in this NTP.

4. No Assignment. COR may not assign this NTP other than to a COR entity to be formed for the development of the Project, nor any rights afforded hereunder, without the prior written consent of FSMC, which such consent may be withheld in its sole discretion.
5. Governing Law; No Jury Trial. This NTP shall be construed, governed, interpreted, and applied in accordance with the laws of the State of New York, without regard to the conflict of laws principles thereof. Any legal action or proceeding brought in respect of this NTP may be brought only in a United States Federal District Court located in the State of New York or in any state court of the State of New York. Each Party hereby consents to the exclusive jurisdiction and venue of such courts. The Parties expressly waive any right to a jury trial for any legal action or proceeding brought under this NTP and the Parties agree that any legal action or proceeding under this NTP shall be tried by a judge without a jury.
6. Statutory Compliance. To the fullest extent permitted by law, COR acknowledges and agrees that the Work (including, without limitation, any construction, demolition, reconstruction, excavation, rehabilitation, repair, renovation, alteration or improvement in connection with activities undertaken pursuant to this NTP), or contracts or subcontracts for such Work, shall be performed in a good and workmanlike manner, in compliance with all governmental requirements, and in such manner as to cause a minimum of interference with the transaction of business at the Project site. In addition, COR acknowledges and agrees that it shall undertake all Work and/or shall cause to be undertaken by any contractors or subcontractors, in compliance with Article 15-A of the New York Executive Law pertaining to Equal Employment Opportunities for Minorities and Women and Article 8 of the New York Labor Law pertaining to Wage and Hours, except for those portions of the Work referenced in this NTP, which are to be performed on an expedited basis and/or, that were authorized prior to the date of this NTP. COR agrees to indemnify FSMC and hold FSMC harmless against any loss, liability or damage resulting from such Work or from any violation of any state or federal laws including the New York state laws set forth in this Section 6 in connection with activities undertaken pursuant to this NTP, and COR shall, if requested by FSMC, furnish insurance, bonds or other securities as are mutually agreeable, against any such loss, liability or damage.
7. Entire Agreement. The Parties acknowledge that this NTP integrates all prior understandings and representations of the Parties, and sets forth the entire agreement and understanding of the Parties, on the subject matter hereof, and shall not be subject to any change or modification except by a written instrument signed by both Parties. Neither this NTP nor any of the terms hereof may be changed, waived, or discharged except by an

instrument in writing signed by both Parties.

8. Validity. The provisions of this NTP are separable, and in the event that any provisions of this NTP are determined to be invalid or unenforceable under any controlling body of law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.
9. Notices. All communications, notices and disclosures required or permitted by this NTP shall be in writing and shall be deemed to have been given at the earlier of the date when actually delivered or one day after being deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, by hand delivery, by overnight courier service with signed receipt or by facsimile transmission (with written confirmation of receipt thereof), and addressed as follows, unless and until either party notifies the other party of a change of address:

In the case of COR:

Steven F. Aiello, General Manager
COR Collamer Road Company, LLC
540 Towne Drive
Fayetteville, New York 13066
Tel: 315-663-2100
Fax: 315-663-2109

In the case of FSMC:

Walter G. Barber, Chairman
257 Fuller Road
Albany, New York 12203
Tel: 518-956-7063
Fax: 518-952-2060

10. Insurance. COR shall maintain and shall cause its subcontractors to maintain at a minimum the following insurance coverage, except to the extent otherwise noted below:
 - A) Commercial General Liability ("CGL") with limits of insurance of not less than \$1,000,000 each Occurrence and \$2,000,000 Annual Aggregate. CGL coverage shall be written on ISO Occurrence form CG 00 01 10 93 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contractors, products-completed operations, and personal and advertising injury. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project.

FSMC, The Research Foundation for the State University of New York ("FOUNDATION"), the State University of New York ("SUNY"), including the State University of New York Polytechnic Institute ("SUNY POLY"), and the State of New York ("STATE") shall each be named as Additional Insureds on the CGL policy using ISO Additional Insured endorsement CG 20 10 (11/85) or CG 20 10 (10/93) and CG 20 37 (10/01), or CG 20 33 (10/01) and CG 20 37 (10/01), or an endorsement providing equivalent coverage to the Additional Insureds. This insurance for the

Additional Insureds shall be as broad as the coverage provided for the named insured. This insurance for the Additional Insureds shall apply as primary and non-contributing insurance before any insurance or self-insurance, including any deductible, maintained by, or provided to, the Additional Insureds.

COR shall maintain CGL coverage for itself for the duration of the Project;

- B) Business Automobile Liability (“AL”) with limits of insurance of not less than \$1,000,000 each accident. AL coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles. FSMC, FOUNDATION, SUNY, SUNY POLY and STATE shall each be named as Additional Insureds on the AL policy. This insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured. The AL coverage for the Additional Insureds shall apply as primary and non-contributing insurance before any insurance maintained by the Additional Insureds.
- C) Workers Compensation (“WC”) & Employers Liability (“EL”) with limits of insurance of not less than required by New York State law. This policy shall include an All States endorsement.D) COR, but not its subcontractors, shall maintain Commercial Umbrella Liability (“UL”) with limits of insurance of not less than a limit of \$15,000,000. UL coverage must include as Additional Insureds all entities that are Additional Insureds on the CGL and the AL. The UL insurance for the Additional Insureds shall apply as primary and non-contributing insurance before any insurance or self-insurance, including any deductible, maintained by, or provided to, the Additional Insureds other than the CGL and WC/EL coverage maintained by COR and its subcontractors.
- E) Professional Liability – Architects and Engineers Professional Liability (“AEL”) in the amount of \$1,000,000 shall be maintained by the Project architects and engineers.
- F) COR shall supply FSMC with evidence of Environmental Impairment Liability Insurance (“EIL”), to the extent that it is mutually determined to be necessary, in the form of a certificate of insurance.
- G) COR and its subcontractors waive all rights against FSMC, FOUNDATION, SUNY, SUNY POLY and STATE and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL, AL, WC & EL or UL insurance maintained per the requirements stated above.
- H) Certificate of Insurance acceptable to FSMC must be provided prior to commencement of the Work. A copy of the General Liability Additional Insured endorsement shall be attached to the Certificate of Insurance.
- I) No insurance policy required above shall be cancelled, modified allowed to expire, or reduced in coverage without at least 30 days prior written notice to FSMC.

- J) COR shall maintain builders risk insurance in conjunction with COR's construction of the building, at such time that building construction commences.

11. Payment and Performance Bonds:

- A) COR shall provide labor and material payment and performance bonds only if mutually agreed to and approved by FSMC. If bonds are mutually agreed to, COR will require all subcontractors to be bonded, except:

- Work at or below \$25,000.
- Ancillary work unrelated to the building structure or building systems.
- Contracts solely related to materials or long lead time equipment.

If a bond is provided then Section 11.C) applies.

- B) FSMC and project lender(s), if any, will be named co-obligee on all such bonds. COR shall provide copies of such bonds to FSMC and shall file all such bonds required to be filed pursuant to GOL section 5-322.3, with proof of filing, all given to FSMC at the earlier of the following: i) within fifteen (15) days of the signing of the agreement with the contractor or materialman; ii) not later than fifteen (15) days before said contractor is scheduled to commence work; or iii) when the first order for materials or equipment is placed with the contractor or materialman. In the event that this NTP is terminated before final completion of the Work, at FSMC's election, COR will assign to FSMC contracts of COR with contractors and materialmen, and will assign to FSMC all rights under payment and performance bonds as FSMC shall designate. If bonds are mutually agreed to, COR shall also provide and pay for a labor and materials payment bond and a performance bond in the amount of 100% of the sum of the line items of the Work to be performed by COR 's own forces. The cost of the Work shall not include, directly or indirectly, the cost of any payment or performance bond provided by contractors or materialmen whose contracts with COR to provide work, labor, materials, equipment or services are in an amount less than \$25,000.00.

- C) All bonds shall be in a form satisfactory to FSMC from a surety company authorized to do business in New York State and satisfactory to FSMC with a minimum "A-" rating. COR shall defend and indemnify FSMC from any claim, loss, judgment, damage or liability arising pursuant to New York General Obligations Law section 5-322.3 by reason of COR 's failure to file said bonds as provided for herein, together with FSMC's actual attorneys' fees.

12. COR shall in conjunction with the construction of the building develop a plan for recruiting and employing minority and women owned business enterprises ("WMBE") in the community surrounding the Project, in order to satisfy a WMBE participation goal to be determined in the construction of the building, including the current New York State regional goals for minority owned business enterprise and women owned business enterprise percentages.