

**NOTICE TO PROCEED**

**WHEREAS**, on October 1, 2013 Fort Schuyler Management Corporation ("FSMC"), in conjunction with the State University of New York College of Nanoscale Science and Engineering ("CNSE"), issued a Request for Proposals ("RFP") for a Strategic Research, Technology Outreach, Business Development, Manufacturing, and Education and Training Partnership with a Qualified Local Developer in the Greater Syracuse Area; and

**WHEREAS**, COR Development Company, LLC ("COR"), a New York limited liability company having an office located at 540 Towne Drive, Fayetteville, New York, submitted a proposal in response to the RFP; and

**WHEREAS**, CNSE, with FSMC, has established the Central New York Hub for Emerging Nano Industries ("Hub") and, as part of the Hub, CNSE, with its industry collaborator, The Film House, is establishing the a first of its kind accredited Film Nano-School at CNSE in Albany, New York, and in connection with the Film Nano-School is creating a hub in the Greater Syracuse Area for the location of headquarters, production, post-production and distribution operations of an established film/television company; and

**WHEREAS**, FSMC conducted a competitive bidding process under the RFP, and, as a result of such process, FSMC entered into a Memorandum of Understanding ("MOU"), effective March 25, 2014, with COR for COR to develop, design and construct a building consisting of 52,000 square feet in the Collamer Crossings Business Park at 24 Aspen Park Boulevard, Dewitt, New York 13057 ("Building"), to house the location for the headquarters and production, post-production and distribution operations of an established film/television company in support of CNSE's collaboration with The Film House (with the Building and related infrastructure/site work on the property being referred to in this NTP as the "Project"); and

**WHEREAS**, in accordance with the MOU, FSMC intends to negotiate and enter into an Owner Design-Builder Agreement - Guaranteed Maximum Price ("Contract") with COR in a form mutually acceptable to FSMC and COR for the design and construction of the Project; and

**WHEREAS**, FSMC and COR anticipate that the guaranteed maximum price under the Contract for the Project will not exceed \$9,000,000, consisting of (a) estimated maximum total cost of work anticipated not to exceed the cost incurred to construct the building on an open book basis, plus an eight percent (8%) construction management fee and a mutually agreeable development fee, and (b) estimated maximum COR design fees not to exceed \$350,000.00; and

**WHEREAS**, in advance of negotiating and entering into the Contract, FSMC desires for COR to begin various activities, documentation, design, site preparation, and planning for the Project, with a not to exceed expenditure of \$ 1,380,000.00.

**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 (with FSMC and COR sometimes referred to in this NTP individually as a "Party and collectively as the "Parties"), the Parties agree as follows:

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1. COR is hereby directed to and will proceed with efforts to satisfactorily address the scoping, planning and design necessary to advance the initial pre-construction stage of the Project, as set forth in the scope of work attached to this NTP as Exhibit A ("Work") and in accordance with the schedule of completion attached to this NTP as Exhibit B. As part of the Work, COR shall advance designs to the 100% design complete milestone set forth in Exhibit A and shall provide FSMC with an anticipated guaranteed maximum price for the Project. FSMC and COR shall work together during the design phase of the Work to ensure that the anticipated guaranteed maximum price is achieved.
2. For completion of the Work and for reimbursement of all expenses incurred in connection with the scope of work attached as Exhibit A, COR shall be entitled to payments in accordance with the project scoping budget attached to this NTP as Exhibit C ("Budget"), with such payments totaling an amount not to exceed \$1,380,000.00. Expenses not set forth in the Budget shall be reimbursed by FSMC only if such expenses are approved in writing by 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: (a) bid any sub-contract work in excess of \$10,000; (b) subject to FSMC's approval, issue bid proposal documents to subcontractors for such sub-contract work; and (c) not enter into any subcontracts for such sub-contract work unless such subcontracts are assignable to FSMC. COR agrees 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 D 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 \$1,380,000.00, 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 Contract, (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 a Contract, with such Contract governing all rights and responsibilities of the Parties. In the event of termination (other than for signing of the Contract), 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

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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:

(a) 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.

(b) 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.

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

(d) 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.

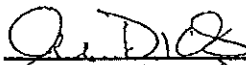
8. FSMC shall own all designs, plans and other information generated by COR and/or in conjunction with any of its subcontractors as a result of the Work performed under this NTP. In the event of a termination of this NTP, all designs, plans and other information produced prior to the time of such termination 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 E 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. Such insurance shall be written for not less than the limits of liability specified in Exhibit E or required by law, whichever coverage is greater. COR and its subcontractors shall obtain such payment and performance bonds as set forth in Exhibit E.

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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:   
Name: Alicia Dicks  
Title: President

Date: May 14, 2014

COR Development Company, LLC

By:   
Name: Steven F. Aiello  
Title: President

Date: May 15, 2014

**EXHIBIT A  
SCOPE OF WORK**

- Obtain governmental development approvals;
- Building pad clearing and grading;
- Construction of site work;
- Building program design, and
- Building design.

**EXHIBIT B**  
**SCHEDULE OF COMPLETION**

**2014**

- |                                      |               |
|--------------------------------------|---------------|
| • Site Design                        | March - April |
| • Building pad clearing and grading  | April         |
| • Construction of site improvements  | April         |
| • Governmental development approvals | May           |
| • Building program design            | May           |
| • Building design                    | May - June    |
| • Building permit                    |               |
| ➤ foundation/steel                   | June          |
| ➤ final drawings                     | August        |

**EXHIBIT C  
PROJECT SCOPING BUDGET**

- **Governmental development approvals, site and building programming / design - \$305,000.00, and**
- **Clearing and grading of building pad and site work to be completed - \$1,075,000.00**

EXHIBIT D  
CASH FLOW SCHEDULE

- Governmental development approvals, site and building programming / design at 35% \$106,750.00
- Clearing and grading of building pad and site work completed at 90% \$967,500.00
- Governmental development approvals, site and building programming / design at 100% \$198,250.00
- Clearing and grading of building pad and site work completed at 100% \$107,500.00



**EXHIBIT E**  
**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 College of Nanoscale Science and Engineering, State University of New York, 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, 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

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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, President  
COR Development Company, LLC  
540 Towne Drive  
Fayetteville, New York 13066  
Tel: 315-663-2100  
Fax: 315-663-2109

In the case of FSMC:  
Alicia Dicks, President  
SUNYIT  
100 Seymour Road  
Utica, New York 13502  
Tel: 315-792-7306  
Fax: 315-

10. Insurance. COR shall maintain and shall cause its subcontractors to maintain at a minimum the following insurance coverage:

- 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 College of Nanoscale Science and Engineering ("CNSE"), 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 and its subcontractors shall maintain CGL coverage for itself and all Additional Insureds for the duration of the Project and shall maintain Completed Operations coverage for itself and each Additional Insured for at least 3 years after completion of the Work.

- 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, CNSE 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) 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. A minimum coverage limit of \$10,000,000 for EIL should be maintained for the duration of this NTP.
- G) COR and its subcontractors waive all rights against FSMC, FOUNDATION, SUNY, CNSE 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.

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.

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- 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 applicable local labor requirements, develop and submit to FSMC a plan to recruit and utilize minority and women owned business enterprises ("WMBE") in the community surrounding the Project, in order to satisfy at least a 23% WMBE participation goal in the Project, including the current New York State regional goals for minority owned business enterprise and women owned business enterprise percentages.