

CONSTRUCTION SERVICES AGREEMENT

This Construction Services Agreement ("Agreement") takes effect as of October²⁷ 2014 ("Effective Date") and is between Fort Schuyler Management Corporation ("FSMC"), a not-for-profit corporation organized and existing under the laws of the State of New York, with its office located at 100 Seymour Road, Utica, NY 13502, and McGuire Development Company, LLC ("Contractor"), a limited liability company organized and existing under the laws of the State of New York with offices located at 560 Delaware Avenue, Suite 300, Buffalo, New York 14202. FSMC and Contractor may each be referred to as "Party" and collectively as "Parties".

WHEREAS, pending the acquisition and completion of fit-up of permanent space for the IBM innovation center ("IITC") within the Key Center in Buffalo, New York ("Permanent IITC Space"), FSMC desires to fit-up office space ("Project") for temporary occupancy in the space known as Suite 400 consisting of approximately 12,000 square feet in the building known as Key Center at Fountain Plaza, North Tower, located at 562 and 564 Main Street, Buffalo, New York ("Temporary IITC Space"); and

WHEREAS, Contractor will provide construction services for the Project upon the terms set forth herein; and

WHEREAS, Contractor is knowledgeable, qualified, and expert in skills required for the Project and is capable of performing the services required under this Agreement and desires FSMC to engage its services.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

1. Work and/or Services

- (a) A general description of the work and services ("Work") to be provided is as follows:
1. Contractor will provide construction services for the Project in accordance with the scope of work ("Scope of Work") attached to this Agreement as **Exhibit A**.
 2. Contractor will coordinate all Work with FSMC's facility representative including notification of changes in work plan (dates, times, work methods, etc.).
 3. Contractor shall submit material, equipment data and shop drawings for approval by FSMC prior to commencing work on the Project. Contractor shall coordinate the layout of all equipment, duct and other components with FSMC's facility representative.
- (b) All goods and/or services provided under this Agreement in connection with the Project shall in all respects comply with the descriptions, requirements and specifications set forth in the Scope of Work attached to this Agreement as **Exhibit A**.

2. Designated Contacts/Reports

- (a) Contractor agrees to maintain close liaison with FSMC's designated contact person set forth herein to ensure a well-integrated Project and to achieve the performance goals during this Agreement.
- (b) FSMC's designated contact point for questions which Contractor may have regarding issues relating to this Project is its project manager, Thomas O'Brien. The Contractor's project manager and designated contact person is Danielle Shainbrown.
- (c) Contractor will provide periodic technical status reports upon reasonable request.

3. Term

The term of this Agreement begins on the Effective Date and ends after Final Completion when the Work has been inspected and accepted and Final Payment is made, unless terminated earlier in accordance with Section 4.

4. Termination

- (a) The performance of the Work under this Agreement may be terminated by FSMC, in whole or in part, whenever FSMC shall determine that termination is in the best interest of FSMC. FSMC may terminate this Agreement under this Section 4(a) by delivering notice in writing to the Contractor specifying the date upon which such termination shall become effective, no less than thirty (30) days prior to such effective date, and the extent to which performance of the Agreement shall be terminated. Such termination shall be effective on the date and to the extent specified in said notice.
- (b) Upon receipt of a notice of termination, and except as otherwise directed in writing by FSMC, the Contractor shall:
 - 1. Discontinue all Work and the placing of all orders for materials and facilities otherwise required for the performance thereof;
 - 2. Cancel all existing orders and subcontracts to the extent such orders and subcontracts relate to the performance of work terminated by the notice of termination, to the extent feasible;
 - 3. Take such actions as may be necessary to secure to FSMC the benefits of any rights of the Contractor under orders or subcontracts which relate to the performance of work terminated by the notice of termination, including, but not limited to, the assignment to FSMC, in the manner and to the extent directed by FSMC, all the right, title and interest of the Contractor under the orders or subcontracts so terminated and canceled. In the event of such assignment, FSMC shall have the right, in its discretion; to settle or pay any or all claims arising out of the termination and cancellation of such orders and subcontracts;

4. Transfer title and deliver to FSMC, in accordance with the direction of FSMC, all materials, supplies, work in process, facilities, equipment, machines or tools produced as a part of or acquired by the Contractor in connection with the work terminated by said notice, and all plans, drawings, sketches, specifications, manuals and information for use in connection therewith; and
 5. Take such action as may be necessary or as FSMC may prescribe for the protection and preservation of all property in the possession or control of the Contractor in which FSMC, under the provisions of the Agreement, has or may acquire an interest.
- (c) Notwithstanding the foregoing, should the notice of termination relate to only a portion of the Work covered by the Agreement, the Contractor will proceed with the completion of such portions of the Work as are not terminated.
 - (d) FSMC shall pay the Contractor, and the Contractor shall accept, in full consideration for the performance and completion of the portions of the Work as are not terminated, the actual and reasonable costs and expenses, necessarily incurred by the Contractor for Work performed until the effective date of termination. In no event shall the Contractor be entitled to compensation in the aggregate in excess of the Project Cost.
 - (e) FSMC may, at any time and for any reason, direct the Contractor to suspend, stop or interrupt the Work, or any part thereof, for a period of time. Such direction shall be in writing and shall specify the period during which the Work is to be suspended. Contractor shall resume the Work upon the date specified in such direction or upon such other date as FSMC may thereafter specify in writing. A reasonable suspension, stoppage or interruption of the Work pursuant to this provision shall not give rise to any claim against FSMC for additional compensation.

5. Compensation and Payment

- (a) In full and complete consideration of Contractor's satisfactory performance under this Agreement, FSMC shall pay Contractor for allowable costs incurred in accordance with the terms of this Agreement, each of which shall be pre-approved in writing by FSMC's Project Manager, in the amount not to exceed Two Hundred Sixteen Thousand Two Hundred Fifteen Dollars (\$216,215) (the "Project Cost").
- (b) Contractor may make application for progress payments (each an "Application" or "Application for Payment" or collectively, "Applications") in the form of the application set forth in Exhibit F) monthly by submitting to FSMC, after the end of any month, a notarized Application for Payment, itemized as requested and approved by FSMC, and supported by such data substantiating Contractor's right to payment as FSMC may reasonably require. Contractor's Application for Payment shall be accompanied by applications in a similar form from each contractor and material supplier included in the

Contractor's Application. Without limiting the foregoing, and unless waived by FSMC, each Application shall be accompanied by an affidavit of the Contractor, setting forth all subcontractors and materials suppliers who performed work, or provided labor, materials or equipment relating to the Project, at any time prior to the date of the Application, the total amount of each subcontract, and the amount paid to date on each subcontract, together with waivers from the Contractor and each subcontractor providing work, materials or equipment with a value in excess of \$10,000.00, releasing liens to the extent of payments previously made, which lien releases shall be in the form attached hereto as Exhibit B (Interim Contractor) and Exhibit C (Interim Subcontractor).

1. Each Application may include requests for payment on account of changes in the Work which have been properly authorized by FSMC in its discretion.
 2. Each Application may not include requests for payment of amounts the Contractor does not intend to pay to a subcontractor or material supplier because of a dispute or other reason.
 3. Each Application for Payments must certify that Contractor has complied with all provisions of this Agreement.
- (c) Based on FSMC accepted Applications for Payment by the Contractor and accompanied by acceptable supporting documents, FSMC will make progress payments for the Work performed during the preceding calendar month. FSMC's obligation to make any progress payments shall be subject to receipt of acknowledgments of payment and waivers or releases from the Contractor and each subcontractor for such Work performed and materials furnished through the date of the last preceding disbursement. In the absence of such a release or waiver, FSMC shall reduce the disbursement by the amount of the claim not so waived or released.
- (d) It is expressly understood and agreed that the aggregate of all allowable costs under this Agreement shall in no event exceed the Project Cost, except upon formal modification of this Agreement as provided below.
- (e) Contractor shall maintain appropriate and complete accounts, records, documents, and other evidence showing and supporting all costs incurred under this Agreement. All accounts and records relating to this Agreement shall be subject to inspection by FSMC or its duly authorized representative(s).
- (f) No certification of a progress payment, any progress payment made, or any partial or entire use or occupancy of the Project by FSMC, shall constitute an acceptance of any work not in accordance with this Agreement. No payment for any part of any work not completed, tested and accepted in the preceding calendar month shall be made, except at the reasonable discretion of Owner. Further, and notwithstanding anything to the contrary set forth in this Agreement, no disbursement of funds shall be made unless FSMC, in its reasonable discretion, shall be satisfied that the work covered thereby was

completed to its satisfaction and substantially in accordance with all requirements of this Agreement.

- (g) FSMC may decline to approve payment or withhold from the Contractor any approved payment, in whole or in part, to the extent necessary to reasonably protect FSMC, in an amount not to exceed ten (10%) percent of the Project Cost. FSMC may also decline payment or, because of subsequently discovered evidence or subsequent observations, FSMC may nullify the whole or any part of any previously issued approval for payment to such extent as may be necessary, in FSMC's opinion, to protect FSMC from loss because of:
1. defective Work;
 2. actual or possible third party claims and to assure payment of just claims, then due and unpaid, to persons or entities supplying labor, materials or equipment for the Work;
 3. failure of the Contractor to make payments required by the Agreement;
 4. FSMC's determination that the Work cannot be completed for the unpaid balance of the Project Cost;
 5. damage to FSMC or a third party;
 6. FSMC's determination that the Work is not on schedule or will not be completed by the date required by the Agreement; or
 7. Contractor's failure to carry out the Work in accordance with the Agreement.

FSMC shall have the right to apply any such amounts so withheld in such manner as Owner may deem proper to satisfy such claims or to secure appropriate protection. When the grounds in Subsections (1) – (7) above are removed, the Contractor will so notify FSMC in writing and, if verified by FSMC, payment shall be made within thirty (30) days of such verification for amounts withheld because of them, less amounts expended by FSMC in connection with such withholding.

6. Substantial Completion

- (a) The Substantial Completion Date for Phase I which shall mean the fit out of the Reception and Conference Rooms, shall be no later than October 31, 2014, unless otherwise approved in writing by FSMC. Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Agreement so FSMC can occupy or utilize the Work for its intended purpose.
- (b) When Contractor considers that the Work, or a designated portion thereof that FSMC in its sole discretion agrees to accept separately, is Substantially Complete and only minor items need to be completed or corrected, the Contractor shall prepare a list of such items (also referred to as a punch list) and submit the same to FSMC, meanwhile proceeding to complete and correct those items. Failure to include any incomplete or uncorrected items on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Agreement. FSMC, after receipt of the Contractor's list, shall inspect the Work and add to the list any other items of incomplete or

uncorrected Work which such inspection may disclose and the Contractor shall complete or correct such items upon notification by FSMC.

No Certificate of Substantial Completion shall be issued in which the time allowed for Contractor for Final Completion of the Work is more than seven (7) days.

(c) Upon Substantial Completion of the Work, or designated portion thereof, and upon application by Contractor, FSMC shall make payment for such Work or portion thereof as provided in the Agreement. Provided, however, such payment shall not be made until Contractor has provided the following, all of which shall be dated as of delivery and signed by the Contractor:

1. All required certificates of occupancy;
2. An approval of the entire electrical system by the New York Board of Fire Underwriters;
3. Operating manuals for all mechanical and electrical systems, including parts lists, maintenance schedules, etc.;
4. All devices usual and necessary for the operation of the equipment and systems; and
5. All other documents, products, catalogs and instructions required by this Agreement.

7. Final Completion

(a) The Final Completion Date shall be no later than December 15, 2014. When the Contractor considers the Work ready for final inspection and acceptance including all Work shown on the punch list, the Contractor shall submit written notice to FSMC accompanied by a final Application for Payment. Upon receipt, FSMC will make an inspection within a reasonable time.

(b) Final Payment shall not become due until the Contractor submits to FSMC:

1. an affidavit that all payrolls, bills for materials and equipment, or other indebtedness connected with the Work for which FSMC or FSMC's property might in any way be responsible, have been paid or otherwise satisfied;
2. consent of surety, if any, to Final Payment;
3. if required by FSMC, other data establishing payment or satisfaction of all such obligations, such as receipts, releases and waivers of liens arising out of the Agreement, to the extent and in such form as may be designated by FSMC; and
4. maintenance and operating manuals for all equipment (which manuals shall include without limitation tests or inspections performed and results obtained for all on Project site and off Project site tests or

inspections; and operation and maintenance information, including without limitation in Auto CADD format, schematic diagrams, control diagrams, maintenance charts, and all other similar necessary diagrams and charts, as customarily provided), ii) all warranties in connection with the Work, iii) the record drawings, and iv) any independent inspection required that the Project has been constructed and completed in accordance with the approved Construction Documents (collectively "Operating Manuals").

- (c) If any contractor refuses to furnish a release or waiver required by FSMC, the Contractor shall furnish a bond satisfactory to FSMC to indemnify FSMC against any possible lien. If any lien remains unsatisfied after all payments are made, the Contractor shall refund to FSMC all monies that FSMC may be compelled to pay in discharging such lien, including all costs and attorneys' fees.
- (d) The acceptance by the Contractor of Final Payment shall be and operate as a release of FSMC from all claims and all liability to the Contractor for all things done or furnished in connection with the Work and for every act of neglect of FSMC, its agents or employees or others, relating to or arising out of the Work, including all claims for delay and for any additional payments to the Contractor or by reason of any additional payments to the Contractor or any of the Contractor's subcontractors. The Contractor shall execute, and shall cause each of its subcontractors to execute, a general release and indemnification of FSMC Parties in the forms attached hereto as **Exhibit D** (Final CONTRACTOR) and **Exhibit E** (Final subcontractor).
- (e) Contractor assumes all risk of loss or damage to all Work being constructed hereunder as well as all equipment supplied and installed to be used in the construction of such Work arising for any cause whatsoever through the date of Final Completion of the Work, except for any loss or damage directly caused by the negligence or willful misconduct of an Owner Party. Title and risk of loss to the Work and all equipment, materials and supplies shall pass to Owner upon Final Completion.

8. Assignment of Contractor's Obligations

Contractor shall not assign its obligation to provide materials or services under this Agreement without prior written consent of FSMC.

9. Status of Parties

The parties intend for the relationship of the Contractor with FSMC under this Agreement to be an independent contractor. Contractor is solely responsible for paying income taxes, FICA taxes, and other taxes and assessments which arise from receipt of payments under this Agreement. This Agreement does not authorize Contractor to incur any expense or perform any act on behalf of FSMC.

10. Insurance Requirements

During the Term, Contractor and any of its subcontractors shall comply with all requirements set out in **Exhibit H**. The obligation of Contractor to indemnify any

party shall not be limited in any manner by any limitation of the amount of insurance coverage or benefits including workers' compensation or other employee benefit acts provided by Contractor.

11. Indemnification Requirements

- (a) Contractor shall indemnify, save, hold harmless and defend and shall cause the subcontractors to indemnify, hold harmless and defend each of FSMC, The Research Foundation for the State University of New York, SUNY Polytechnic Institute, State University of New York, State of New York, Key Success, LLC, entities identified as Mortgagees by Key Success, LLC and the agents, directors, trustees, officers, employees, shareholders, members, and assigns of each of them (collectively, "FSMC Parties") from and against any and all claims, including claims for damages or liability arising under any local, state or federal rules, codes, regulations or laws including but not limited to environmental laws and regulations, Articles 7, 8 and 10 of the Labor Law of New York and Article 15-A of the New York Executive Law, 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 (collectively, "Indemnified Claims"), incurred by any FSMC Party in connection with the performance of this Agreement, or for any damage or destruction of property, or injury, sickness, disease or death to persons caused by any acts or omissions of Contractor or its employees, agents, subcontractors, or subcontractors' agents.
- (b) Notwithstanding that joint or concurrent liability is imposed on an Owner Party by statute, law, ordinance, rule, order or regulation, Contractor shall defend and indemnify and shall cause the subcontractors to defend and indemnify FSMC Parties against any liability or expense of any nature arising from the Work or the design of the Work to the fullest extent permitted by law, except the Contractor and subcontractors shall not be liable to indemnify Owner Parties to the extent liability is due to the applicable FSMC Parties' negligence.
- (c) In any and all claims against FSMC by any employee of Contractor, any subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligations hereunder shall apply and Contractor's liability shall not be limited in any way by any limitation on the amount or type of damages, amounts of insurance coverage, compensation or benefits payable by or for Contractor or any subcontractor under worker's compensation acts, disability benefit acts or other employee benefit acts. Enforcement of the indemnification given hereinabove shall not in any manner limit an Owner Party's right or remedies under this Agreement.

12. Representations and Warranties

12.1 Contractor represents and warrants as follows:

- (a) That Contractor has good title to all equipment and materials to be provided and installed by Contractor pursuant to this Agreement and none of the equipment or materials are subject to any mortgage, pledge, lien, conditional sales agreement, security interest, encumbrance, or other charge.
- (b) That all equipment and materials used in connection with the Project are new, in good repair and in working order.
- (c) That the Work will be performed and the equipment and components will operate free from defects in workmanship and materials and will not malfunction, cease to function and shall together perform substantially in accordance with the Scope of Work, specifications, and other information set forth herein and in the Scope of Work for a period of one (1) year from Final Completion.
- (d) That the Work provided hereunder shall be of professional quality and that each of the persons Contractor assigns to perform the Work shall have the proper skill, training and background so as to be able to perform such Work in a competent and professional manner.
- (e) That it meets the requirements set forth in the Scope of Work.
- (f) That it has carefully examined the site of the Work in all particulars and that from its own investigations is satisfied as to the nature and location of the Work, the surface and subsurface materials likely to be encountered, the character of the equipment and other facilities needed for the performance of the Work, the general and local conditions under which the Work is to be performed, and all other things which may affect the construction of the Work.

12.2 FSMC makes no warranty or representation as to conditions not expressly shown on Owner provided information. Contractor shall not be entitled to any adjustment in the Project Cost, the time for Substantial Completion and/or Final Completion unless conditions found to exist are contrary to and in express conflict with the conditions shown on FSMC furnished documents or reasonably inferable therefrom.

13. Confidential Information

Contractor agrees to comply with the confidentiality terms set forth in Exhibit G.

14. Contractor Qualifications

All of Contractor's employees, agents, subcontractors or representatives who are assigned to the Project work site to perform this Work shall be properly trained by Contractor and qualified to perform the requested services of the type and scope described herein prior to their assignment to the Project. Owner reserves the right to remove an employee, agent, subcontractor or representative from the Project site and/or refuse to accept any services from any personnel deemed unqualified or otherwise exhibiting any unsatisfactory behavior during the course of the assignment.

15. Permits and Regulations

- (a) Contractor will submit work permits for all phases of Work for the Project. Work permit policies and procedures can be found at: <http://sunycnse.com/WorldClassResources/ContractorFormsTraining.aspx> and are incorporated by reference into this Agreement.
- (b) Any building permits, licenses and inspections, and other permits and governmental fees necessary for execution of the Work and its use when completed, and required to be obtained from any governmental authority, shall be secured and paid for by Contractor and copies or receipts, as appropriate, shall be provided to Owner.
- (c) Contractor shall review the Agreement for compliance with building codes, laws, ordinances, rules and regulations. If Contractor observes that any parts of the Agreement are at variance therewith in any respect, Contractor shall promptly notify FSMC in writing, and any necessary changes shall be adjusted by appropriate change order. If Contractor performs any Work knowing it to be contrary to such laws, ordinances, rules and regulations, Contractor shall assume full responsibility therefor and shall bear all costs to correct, repair or replace such Work.
- (d) Further, it is Contractor's responsibility that all drawings and other submittals prepared by Contractor, or by any subcontractors, or by any of their agents or employees, complies with all applicable state and local laws, statutes, rules, regulations, ordinances and building codes.

16. Protection of Persons and Property

Contractor shall take every precaution at all times for the protection of persons and property, including the FSMC Parties' employees, students, staff and its own property. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work under this Agreement. Contractor shall continuously maintain adequate protection of all Work from damage and shall protect the FSMC Parties' property from injury or loss arising in connection with this Agreement. The Contractor shall be liable for any such damage, injury, or loss, resulting out of the actions or omissions of their employees arising in the performance of this Agreement.

17. Work Site Conditions

Unless specifically directed otherwise by FSMC, Contractor shall perform the Work under this Agreement in such a manner as not to interrupt or interfere with the operation of any existing activity on the premises or at its location of work.

18. Governing Law

This Agreement shall be construed exclusively under the laws of the State of New York, without regard to the conflict of laws principles thereof. In case of any dispute concerning or arising out of this Agreement that cannot be resolved between Parties

in good faith, such dispute shall be finally settled and venue shall be held exclusively in any appropriate state or federal court in the State of New York. Each Party hereby consents to exclusive jurisdiction and venue of such courts.

19. Compliance with Laws, Regulations and Site Procedures

(a) Contractor shall furnish and install all equipment and materials called for in the Project in accordance with the standards of best practices in the industry and in full compliance with all applicable federal, state and municipal laws and statutes, including federal and state right-to-know laws, codes, regulations, rules, lawful orders of any public authority having jurisdiction, including all OSHA regulations, with particular attention to the following:

- Occupational Safety and Health Administration, (OSHA).
- New York State Uniform Fire Prevention and Building Code, (NYSUFPBC)
- National Electric Code, (NEC).
- Sheet Metal and Air conditioning Contractor's National Association, (SMACNA).
- National Environmental Balancing Bureau, (NEBB) and Association of Air Balancers Council, (AABC).
- National Fire Protection Association, (NFPA).

20. Modifications and Changes

By written notice to Contractor, FSMC may, from time to time make changes within the general scope of the Agreement. Changes that increase or decrease the costs must be submitted and approved in writing by both Contractor and Owner before implementation.

21. Subcontractors

All subcontractors shall be approved by FSMC in advance of Contractor entering in to any subcontract. Any subcontract shall contain all the terms and conditions required herein of Contractor to FSMC Parties plus such other terms and conditions as FSMC may require. It is the obligation of Contractor to pay the subcontractor. Should FSMC withhold payment to Contractor, it shall remain Contractor's obligation to pay all subcontractors, agents, and employees or other parties for goods or services provided in connection with the Work, unless the subcontractor fees are in dispute with Contractor. No subcontractor will be permitted to work at the Project site until it has furnished satisfactory evidence to FSMC of the insurance requirements and has agreed to the terms and conditions herein. No provisions of this Agreement shall create or be construed as creating any contractual relation between Owner and any person, firm or corporation employed by, contracted with, or whose services are utilized by, the Contractor.

22. Severability

The provisions of this Agreement are separable, and in the event any provisions of this Agreement 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.

23. Use of Name

FSMC and Contractor agree not to use each other's names (including names of FSMC Parties), or the names of any staff members or employees thereof, in advertising, sales promotion work, or in any other form of publicity except with the written permission of, and to the extent approved by, the party whose name is to be used.

24. Entire Agreement

This Agreement (including the attached Exhibits, which are hereby incorporated into and made a part of this Agreement) represents and embodies all the agreements and negotiations between the parties hereto and no prior or contemporaneous, oral, or written agreements or correspondence prior to the date of execution of this Agreement shall be held to vary the provisions hereof.

25. Binding Agreement

This Agreement shall inure to the benefit of and shall be binding upon Contractor and FSMC and their respective successors and assigns.

26. Notices

Any notice or other communication required or permitted to be given pursuant to this Agreement shall be deemed to have been duly given if delivered personally or sent by facsimile transmission (confirmed) or by certified mail (postage prepaid, return receipt requested), addressed as provided below. Until another address or addresses or facsimile number shall be furnished in writing by either party, notices to shall be given as follows:

In the case of Contractor:
McGuire Development Company, LLC
560 Delaware Avenue, Suite 300
Buffalo, New York 14202

Attn: Danielle E. Shainbrown, Esq.

Telephone: (716) 829-1558

In the case of Fort Schuyler Management Corporation:

Fort Schuyler Management Corporation
100 Seymour Road
Utica, NY 13502

Attn: Alicia Dicks

27. Order of Precedence

In the event of any inconsistency or conflict in terms between this Agreement and the Exhibits, the order of precedence shall be this Agreement followed by the Exhibits.

28. Signature in Counterparts

This Agreement may be signed in counterparts, each of which shall be deemed to be an original and all of which when taken together will constitute the same Agreement. Any signed copy of the Agreement made by photocopy, facsimile, or PDF Adobe format shall be considered an original.

The parties have, by their duly authorized representatives, signed this Agreement as of the day and year first above written.

FORT SCHUYLER MANAGEMENT CORPORATION

By: 

Name: Alicia Dicks

Title: President

MCGUIRE DEVELOPMENT COMPANY, LLC

By: 

Name: JAMES F. DENTINGER

Title: PRESIDENT

EXHIBIT A

STATEMENT OF WORK

EXHIBIT B

RECEIPT, WAIVER AND RELEASE BY CONTRACTOR

Project: _____
Contractor's Requisition No.: _____
Contractor: _____
Contract No.: _____

_____, ("CONTRACTOR"), with its principal place of business at _____

_____ in connection with _____ (the "Project") and the payment to CONTRACTOR of certain sums requisitioned by the CONTRACTOR pursuant to its Request for Payment No. _____ dated _____, 20__, (the "Requisition") for work performed or materials supplied for the Project to the date of the Requisition, for the benefit of Fort Schuyler Management Corporation ("OWNER"), DOES HEREBY CERTIFY AND ACKNOWLEDGE that it has received all sums due and owing to it in accordance with its agreement with the OWNER dated as of _____, 20__ ("Agreement") with respect thereto, other than sums, if any, withheld by the OWNER in accordance with such Agreement and approved by the OWNER for work performed or materials supplied for the Project to the date of _____, 20__ in the amount of Dollars (\$) _____) and DOES HEREBY FOREVER RELEASE, WAIVE AND DISCHARGE for itself, its successor and assigns any and all rights, claims and demands and causes of action it has or may have against the OWNER, The Research Foundation for the State University of New York, SUNY Polytechnic Institute, the State University of New York, the State of New York, and their respective officers, directors, members, agents and employees (collectively, the "OWNER Parties"), which CONTRACTOR now has, would have or may hereafter have, for materials furnished and or work or labor by CONTRACTOR in connection with the Project, or arising from any act of any contractors, subcontractors, agents or employees of CONTRACTOR, or other persons relating to or affecting the work called for by the Agreement, or arising any way out of or under the Agreement, from the beginning of time to the date hereof, including any and all rights which it has or may have pursuant to the New York Lien Law to file any lien or notice of lien against the Project or any property of the OWNER on account of or deriving from labor performed or materials furnished for the Project to the date of the previously submitted requisition.

CONTRACTOR does hereby (a) covenant and agree that it shall not in any way claim or file a mechanic's lien or other lien against the aforementioned premises of OWNER upon which the Project is located, or any part thereof, or against any funds that are or may be available to OWNER to pay for the Project, for materials furnished by CONTRACTOR and/or for work or labor performed or furnished by CONTRACTOR, directly or through others, in connection with the Project from the beginning of time to the date hereof; (b) indemnify and hold OWNER Parties harmless from and against any losses, costs, expenses and claims (including, without limitation, attorneys' fees and expenses) in connection with or relating to the Project or in connection with the CONTRACTOR's breach of any covenant contained herein from the beginning of time to the date hereof; and (c) agree that any matter relating to this Waiver and Release (including but not limited to its construction, interpretation, validity, and effect), shall be governed exclusively by the internal laws of the State of New York, without regard to conflicts of law.

IN WITNESS WHEREOF, CONTRACTOR has caused this Certificate to be duly signed as of the date of the Requisition by the undersigned duly authorized officer.

CONTRACTOR:

Signed By: _____ Title: _____ Date: _____

STATE OF)
) ss:
COUNTY OF)

On this ___ day of _____, 20__, before me, the undersigned, personally appeared _____, to personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity(ies), and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public
My Commission Expires:
Residence County:

EXHIBIT C
RELEASE, WAIVER AND RELEASE BY SUBCONTRACTOR

Project: _____
Contractor's Requisition No.: _____
Contract No.: _____
Contractor: _____
Owner: Fort Schuyler Management Corporation

_____ ("Subcontractor"), with its principal place of business at _____ in _____ connection with _____

_____ Project, (the "Project") and the payment to CONTRACTOR of certain sums requisitioned by the CONTRACTOR pursuant to the CONTRACTOR's Request for Payment No. _____ dated _____, 20__, (the "Requisition") for work performed or materials supplied for the Project to the date of the Requisition, for the benefit of Fort Schuyler Management Corporation ("OWNER"), DOES HEREBY CERTIFY AND ACKNOWLEDGE that it has received all sums due and owing to it in accordance with its agreement with the CONTRACTOR dated as of _____, 20__ ("Agreement") with respect thereto, other than sums, if any, withheld by the CONTRACTOR in accordance with such Agreement and approved by the OWNER, for work performed or materials supplied for the Project to the date of _____, 20__ in the amount of _____ Dollars (\$ _____) DOES

HEREBY

FOREVER RELEASE, WAIVE AND DISCHARGE for itself, its successor and assigns any and all rights, claims and demands and causes of action it has or may have against the OWNER, The Research Foundation for the State University of New York, SUNY Polytechnic Institute, the State University of New York, the State of New York, and their respective officers, directors, members, agents and employees (collectively the "OWNER Parties"), which the undersigned now has, would have or may hereafter have, for materials furnished and or work or labor by the undersigned in connection with the Project, or arising from any act of any contractors, agents or employees of the undersigned, or other persons relating to or affecting the work called for by the Agreement, or arising any way out of or under the Agreement, from the beginning of time to _____, 20__, including any and all rights which it has or may have pursuant to the New York Lien Law to file any lien or notice of lien against the Project or any property of the OWNER on account of or deriving from labor performed or materials furnished for the Project to the date of the previously submitted requisition.

The undersigned does hereby (a) covenant and agree that it shall not in any way claim or file a mechanic's lien or other lien against the aforementioned premises of OWNER upon which the Project is located, or any part thereof, or against any funds that are or may be available to OWNER or to CONTRACTOR to pay for the Project, for materials furnished by the undersigned, directly or through others, and/or for work or labor performed or furnished by the undersigned in connection with the Project from the beginning of time to _____, 20__; (b) indemnify and hold OWNER Parties harmless from and against any losses, costs, expenses and claims (including, without limitation, attorneys' fees and expenses) in connection with or relating to work furnished by the undersigned pursuant to the Subcontract or in connection with the undersigned's breach of any covenant contained herein through the date hereof; and (c) agree that any matter relating to this Waiver and Release (including but not limited to its construction, interpretation, validity, and

effect), shall be governed exclusively by the internal laws of the State of New York without regard to conflicts of law.

IN WITNESS WHEREOF, Subcontractor has caused this Certificate signed by the undersigned duly authorized officer.

SUBCONTRACTOR:

Signed By: _____ Title: _____ Date: _____

STATE OF)
) ss:
COUNTY OF)

On this ___ day of _____, 20__, before me, the undersigned, personally appeared _____ to personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he or she executed the same in his or her capacity(ies), and that by his or her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

My Commission Expires: _____
Residence County: _____

EXHIBIT D
AFFIDAVIT, FINAL WAIVER AND RELEASE BY CONTRACTOR

STATE OF)
) ss:
COUNTY OF)

The undersigned, who is the _____ (designated title) of _____ ("CONTRACTOR"), with its principal place of business at _____, for the _____ Project, located at _____, declares that his contract with Fort Schuyler Management Corporation ("OWNER") is in the total amount of _____ Dollars (\$ _____) which includes extras and all change orders to the date hereof.

In consideration of the amounts and sums previously received, and the payment of _____ Dollars (\$ _____ being full and final payment amount due, the undersigned does hereby forever waive, release and discharge the OWNER, The Research Foundation for the State University of New York, SUNY Polytechnic Institute, the State University of New York, the State of New York, and their respective officers, directors, members, agents and employees (collectively, the "OWNER Parties") from any and all claims and liens and rights to liens upon the Project and the premises described below (which may be more particularly described by an Exhibit "A" attached), and upon improvements now or hereafter thereon, and upon the monies or other considerations (due or to become due from the OWNER, or from any other person, firm or corporation), said claims and liens and rights to liens being on account of labor, services, materials, fixtures or apparatus heretofore furnished by or which may be furnished at any time hereafter by or at the request of the undersigned. The premises as to which said claims and liens and rights to liens are hereby released are identified as follows:

Project Name:
Address of Project:
City: County: State: NY

The undersigned further represents and warrants: that he is duly authorized and empowered to sign and execute this waiver on his own behalf and on behalf of the CONTRACTOR; that with regard to the Project, CONTRACTOR has properly performed all work and furnished all the materials of the specified quality per plans and specifications and in a good and workmanlike manner, fully and completely; certifies to CONTRACTOR and OWNER that any work or construction on the improvement by the undersigned has been fully completed in accordance with the Agreement, and the final plans and specifications approved by OWNER, and at no additional cost, agrees at CONTRACTOR's own expense, to (i) make good any defects or other faults in the work of CONTRACTOR under the Agreement arising from defective or improper materials or workmanship which may appear within one (1) year (or such longer period as may be specified in the Contract) from the date of Final Payment of the OWNER to CONTRACTOR, and (ii) make any or all repairs or replacements which may be required of CONTRACTOR pursuant to the Agreement, insofar as such requirement affects any of the materials furnished and/or any of the work or labor performed or furnished by CONTRACTOR pursuant to the Contract; that CONTRACTOR has paid all contractors, subcontractors and materialmen for all the labor, materials, equipment

and services; that CONTRACTOR has used or supplied or may hereafter use or supply to the above premises that CONTRACTOR has no other outstanding and unpaid payment applications, invoices, retentions, holdbacks, chargebacks or unbilled work or materials, as of the date of the aforementioned last and final payment application of invoice; and that any materials which have been supplied or incorporated into the above premises were either taken from his fully-paid or open stock or were fully paid for and supplied as stated on the statement accompanying the last and final payment application or invoice.

The undersigned further agrees to reimburse and does hold harmless and fully indemnify OWNER Parties for any losses or expenses should any such claim, lien or right to a lien be asserted (by the undersigned or by any laborer, materialman or subcontractor or the undersigned), including, without implied limitation, attorneys' fees incurred in the defense thereof.

In addition, for and in consideration of the amounts and sums received, the undersigned hereby (a) waives, releases and relinquishes any and all claims, rights or causes of action against the OWNER Parties whatsoever arising out of or in the course of the work performed on the above-mentioned Project; and (b) indemnifies and holds OWNER Parties harmless from and against any losses, costs, expenses and claims (including, without limitation, attorneys' fees and expenses) in connection with or relating to the work performed by CONTRACTOR pursuant to the Agreement or in connection with the undersigned's breach of any covenant contained herein.

The CONTRACTOR agrees that any matter relating to this Final Waiver and Release (including but not limited to its construction, interpretation, validity, and effect), shall be governed exclusively by the internal laws of the State of New York without regard to conflicts of law.

Signed and delivered this ____ day of _____, 20__.

Individual or Corporation Name

By: _____
Title: _____

On the ____ day of _____ in the year _____, before me the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledge to me that he executed that same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

My Commission Expires: _____
Residence County: _____

EXHIBIT E
AFFIDAVIT, FINAL WAIVER AND RELEASE BY SUBCONTRACTOR

STATE OF)
)
COUNTY OF) ss:

The undersigned, who is the _____ (designated title) of _____ ("Subcontractor"), with its principal place of business at _____ which is a Subcontractor for the improvements in connection with the Project located at _____, declares that Subcontractor's contract with _____ ("CONTRACTOR") is in the total amount of _____ Dollars (\$) which includes extras and all change orders to the date hereof (the "Subcontract").

In consideration of the amounts and sums previously received, and the payment of _____ Dollars (\$) being full and final payment amount due, the undersigned does hereby forever waive, release and discharge the Fort Schuyler Management Corporation ("OWNER"), The Research Foundation for the State University of New York, SUNY Polytechnic Institute, the State University of New York, the State of New York, and their respective officers, directors, members, agents and employees (collectively, the "OWNER Parties") from any and all claims and liens and rights to liens upon the Project and the premises described below (which may be more particularly described by a Schedule "A" attached), and upon improvements now or hereafter thereon, and upon the monies or other considerations (due or to become due from the OWNER, or from CONTRACTOR or from any other person, firm or corporation), said claims and liens and rights to liens being on account of labor, services, materials, fixtures or apparatus heretofore furnished by or which may be furnished at any time hereafter by or at the request of the undersigned. The premises as to which said claims and liens and rights to liens are hereby released are identified as follows:

Project Name:
Address of Project:
City: County: State:

The undersigned further represents and warrants: that he is duly authorized and empowered to sign and execute this waiver on his own behalf and on behalf of the Subcontractor; that with regards to the Project, Subcontractor has properly performed all work and furnished all the materials of the specified quality per plans and specifications and in a good and workmanlike manner, fully and completely; certifies to CONTRACTOR and OWNER that any work or construction on the improvement by the undersigned has been fully completed in accordance with the Subcontract, and the final plans and specifications approved by OWNER, and, at no additional cost, agree at the undersigned's own expense, to (a) make good any defects or other faults in the work of the undersigned under the Subcontract arising from defective or improper materials or workmanship which may appear within one (1) year (or such longer period as may be specified in the Agreement for the _____ (the "Contract")) from the date of Final Payment (as defined in the Agreement) of OWNER to CONTRACTOR, and (b) make any or all repairs or replacements which may be required of the undersigned by CONTRACTOR pursuant to the Agreement, or Subcontract, insofar as such requirement affects any of the materials furnished by the undersigned and/or any of the work or labor performed or furnished by the undersigned pursuant to the

Subcontract; that Subcontractor has paid all contractors, subcontractors and materialmen for all the labor, materials, equipment and services; that Subcontractor has used or supplied or may hereafter use or supply to the above premises that Subcontractor has no other outstanding and unpaid payment applications, invoices, retentions, holdbacks, chargebacks or unbilled work or materials, as of the date of the aforementioned last and final payment application of invoice; and that any materials which have been supplied or incorporated into the above premises were either taken from his fully-paid or open stock or were fully paid for and supplied as stated on the statement accompanying the last and final payment application or invoice.

The undersigned further agrees to reimburse and does hold harmless and fully indemnify OWNER Parties, and CONTRACTOR for any losses or expenses should any such claim, lien or right to a lien be asserted (by the undersigned or by any laborer, materialman or subcontractor or the undersigned), including, without implied limitation, attorneys' fees incurred in the defense thereof.

In addition, for and in consideration of the amounts and sums received, the undersigned hereby (a) waives, releases and relinquishes any and all claims, rights or causes of action against the OWNER Parties whatsoever arising out of or in the course of the work performed on the above-mentioned Project; and (b) indemnifies and holds OWNER Parties harmless from and against any losses, costs, expenses and claims (including, without limitation, attorneys' fees and expenses) in connection with or relating to the improvement or in connection with the undersigned's breach of any covenant contained herein.

The undersigned agrees that any matter relating to this Final Waiver and Release (including but not limited to its construction, interpretation, validity, and effect), shall be governed exclusively by the laws of the State of New York without regard to conflicts of law.

Signed and delivered this ____ day of _____, 20__.

Individual

Name: _____

Title: _____

Corporation Name: _____

On the ____ day of _____ in the year _____, before me the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledge to me that he executed that same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

My Commission Expires:

Residence County:

EXHIBIT F
APPLICATION AND CERTIFICATION FOR PAYMENT

EXHIBIT G
CONFIDENTIALITY

Either FSMC or Contractor (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 Agreement.

EXHIBIT H
Insurance Requirements

Contractor and Contractor's subcontractor(s) shall purchase and maintain at a minimum the following types of insurance coverage and limits of liability:

A) Commercial General Liability ("CGL") with limits of insurance of not less than \$5,000,000 each Occurrence. CGL coverage shall be written on ISO Occurrence form CG 00 01 12 07 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.

Fort Schuyler Management Corporation ("FSMC"), The Research Foundation for the State University of New York ("RF"), the State University of New York ("SUNY"), the State of New York ("STATE"), SUNY Polytechnic Institute ("SUNY Poly"), Key Success, LLC ("Key Success") and any mortgagee identified by Key Success, LLC ("Mortgagee") shall each be named as Additional Insureds on the Contractor's CGL policy using ISO Additional Insured endorsement 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 Contractor. 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.

Contractor 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 \$500,000 each accident. AL coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.

The parties named above as Additional Insureds on the Contractor's CGL Policy shall each be named as Additional Insureds on the Contractor's AL policy. This insurance for the Additional Insureds shall be as broad as the coverage provided for the named insured Contractor. 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 and Disability benefit as required by New York State. Detailed information can be obtained by going to the link <http://www.wcb.state.ny.us/> Please note Accord form is NOT acceptable proof of insurance for Workers' Compensation, Employers Liability and Disability insurance.

D) Commercial Umbrella Liability ("UL") with limits of insurance of not less than a limit of \$5,000,000. UL coverage must include as Additional Insureds all entities that are Additional Insureds on the CGL and the AL.

E) Contractor waives all rights against FSMC, FOUNDATION, SUNY, STATE, SUNY Poly, Key Success, Mortgagee and their agents, officers, directors and employees for

recovery of damages to the extent these damages are covered by CGL, AL, WC & EL PI or UL insurance maintained per the requirements stated above.

F) Certificate of Insurance acceptable to FSMC must be provided prior to commencement of the Contractor's work and in no event later than five (5) days prior to commencement of the Contractor's Work. A copy of the General Liability Additional Insured endorsement shall be attached to the Certificate of Insurance.

Certificate Holder: FSMC
 100 Seymour Road
 Utica, NY 13502

G) 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.