

MEMORANDUM OF UNDERSTANDING

This **Memorandum of Understanding** ("MOU") takes effect on March 20, 2014 ("Effective Date") and is between McGuire Development Company, LLC ("MCGUIRE"), a New York limited liability company with its principal office located at 560 Delaware Avenue, Suite 300, Buffalo, New York 14202, and Fort Schuyler Management Corporation ("FSMC"), a New York not-for-profit corporation having an office located at SUNYIT, 100 Seymour Road, Utica, New York 13502. MCGUIRE and FSMC are sometimes referred to in this MOU individually as a "Party" and together as the "Parties".

I. OVERVIEW

I.1. New York State ("NYS") under the leadership of Governor Andrew Cuomo has led the U.S. in multi-billion dollar strategic investments in high technology programs that cover the entire spectrum of clean energy, medical, smart grid and nanotechnology industry needs, from long-term innovative research and development, to workforce development and education, to product prototyping and supporting the transition to scale-up manufacturing and commercialization.

I.2. NYS' comprehensive job creation and economic growth agenda for NYS provides strategic investments for job creation in emerging high-tech industries across NYS and fosters critical collaborations between NYS government, the private sector and NYS's top-flight universities and research institutions. This agenda is embodied by the commitment of NYS to and the growth of CNSE and the public-private collaborations that CNSE operates throughout NYS with CNSE's public and private university and industry partners.

I.3. Governor Andrew Cuomo has identified economic growth in NYS as a leading focus for NYS government, seeking to invest significant levels of financial support for public-private collaborations throughout the Erie-Mohawk Corridor of NYS by constructing state-of-the art facilities that leverage CNSE's capabilities and partners.

I.4. MCGUIRE is a full service real estate firm specializing in real estate services, property development and management, owner real estate services for new construction and capital projects, brokerage, and redevelopment services.

I.5. FSMC helps facilitate research and economic development activities related to the research and education mission of the State University of New York ("SUNY") by purchasing, constructing, developing and managing facilities and promoting the research therein which support economic development, research activities, and the mission of SUNY.

1.6. FSMC and the SUNY College of Nanoscale Science and Engineering ("CNSE"), are developing comprehensive initiatives through NYS for research, technology outreach, business development, manufacturing, and education and training hubs.

1.7 CNSE is a critical enabling component in maintaining and bolstering NYS' position as a leader in nanotechnology. CNSE has leveraged the experience it has obtained from its success in nano-electronics and has expanded its programs and collaborations throughout NYS into other high technology areas.

1.8. FSMC, in conjunction with CNSE, issued a request for proposals ("RFP") to establish a strategic research, technology outreach, business development, manufacturing, and education and training workforce training collaboration with a qualified developer in the Greater Buffalo Area.

1.9. CNSE, with its industry collaborators, including International Business Machines Corporation ("IBM"), is establishing the Buffalo Information Technologies Innovation and Commercialization Hub ("Hub") in the Greater Buffalo Area to train IT professionals, educate new IT staff through SUNY partnerships, and develop next generation IT software needed to drive state-of-the-art discoveries in the areas of molecular research, genomics, energy efficiency development and defense.

1.10. MCGUIRE responded to the RFP with a proposal and, after a competitive process including the RFP, FSMC is authorized to award to MCGUIRE one or more projects under the RFP, and FSMC now wishes for MCGUIRE to serve as the broker, developer, and construction contractor for location selection and fit-up of the initial facilities of the Hub to house CNSE's collaboration with IBM, as set forth in this MOU.

In view of the foregoing, the Parties set forth in this MOU an expression of interest to engage in good faith negotiations in contemplation of a closer collaboration to establish the objectives set forth below. As the Parties embark upon further negotiations, they wish to express their preliminary understanding of the key issues set forth this MOU. The Parties are bound by the terms of this MOU until the earlier of the expiration of this MOU or such time as the critical issues set forth in this MOU are fully negotiated and documented in a final definitive contract ("Final Contract") signed by FSMC and MCGUIRE.

II. PURPOSE

The purpose of this MOU is to provide a framework for collaboration between FSMC and MCGUIRE to establish certain key terms and conditions under which MCGUIRE will develop, design and fit-up the initial facilities ("IITC Facilities") for the Hub in the Greater Buffalo Area to consist of the IBM Information Technology Innovation Center ("IITC"), as set forth in this MOU.

III. TERMS AND CONDITIONS FOR THE IITC FACILITIES

- III.1 MCGUIRE, in consultation with FSMC, will identify and evaluate potential locations for the IITC Facilities in the Greater Buffalo Area and will assist FSMC in the acquisition of space for the IITC Facilities in the Greater Buffalo Area.
- III.2 MCGUIRE is authorized to act on behalf of FSMC to meet, negotiate, and correspond with owners, developers, brokers, public economic development agencies, and other interested parties to explore real estate options sufficient to accommodate the IITC Facilities needs within the Greater Buffalo Area, provided, however, that MCGUIRE shall notify FSMC prior to engaging a third party and shall not be authorized to enter into an agreement on behalf of FSMC without FSMC's prior written consent. This authorization extends to all sites regardless of any prior knowledge by FSMC, any current co-ownership with FSMC, or any previous relationship with other brokers or landlords. FSMC agrees to refer all inquiries for potential sites to house the IITC Facilities to MCGUIRE and to identify MCGUIRE as FSMC's exclusive broker to those submitting such sites for consideration to FSMC for the IITC Facilities.
- III.3 The IITC Facilities will either be owned and operated or leased and operated by FSMC.
- III.4 The IITC Facilities will consist of, and be subject to, the following:
- III.3.1 The facilities and infrastructure included within the IITC Facilities will be as mutually agreed to by FSMC and IBM and will be in accordance with IBM's specifications to house the IITC Facilities in the Greater Buffalo Area.
- III.3.2 The facilities and infrastructure of the IITC Facilities will include all utilities and infrastructure, including electrical utilities, communications utilities infrastructure, security, cooling and heating and other operational services, which are reasonably necessary for the hardware, software, and services to be provided by IBM for IITC.
- III.3.3 The facilities and infrastructure for the IITC Facilities will be in such space, including office space, as necessary and appropriate for the IITC as mutually agreed to by FSMC and IBM and in accordance with IBM's specifications to house the IITC Facilities.
- III.5 MCGUIRE will use best efforts to develop, design and fit-up the IITC Facilities on or before a date that is mutually agreed to by the Parties.
- III.6 Under no circumstances will the cost to FSMC for all amounts payable for the IITC Facilities, including, without limitation, development, acquisition, fit-up,

equipment, and capital expenses associated with any electrical utilities, communications utilities infrastructure, security or maintenance, exceed \$25 million, unless otherwise agreed to in writing by the Parties.

III.7 MCGUIRE will develop and fit-up the IITC Facilities collaboratively with FSMC's proposed and selected architectural and other firms as FSMC deems appropriate. FSMC shall have the right of prior review and approval for all team members and subcontractors used by MCGUIRE for the development, design, and fit-up of the IITC Facilities.

IV. FUNDS

Each Party shall be responsible for funding its own activities under this MOU. The scope of the activities under this MOU shall be determined by the funds available to each Party for the collaboration under this MOU and by financial assistance as may be obtained by either Party from external sources. No funds of either Party are in any way committed or obligated for any purpose whatsoever by virtue of entering into this MOU. This MOU does not identify or require the transfer of funds between the Parties. This MOU shall not be construed to authorize or guarantee funding for any proposals or applications submitted for funding, nor shall it be construed as a guarantee of future funding nor shall this MOU be construed as an endorsement of any proposal or application submitted by any Party or non-Party.

V. FINAL CONTRACT(S)

The Parties agree and acknowledge that the precise terms and conditions associated with the each project undertaken by the Parties pursuant to this MOU will be governed by one or more Final Contracts that will be separately signed written agreements entered into by MCGUIRE and FSMC. The Parties acknowledge that entry into a Final Contract(s) may be subject to a multitude of material conditions precedent, including, but not limited to, each Party's review and approval of the Final Contract(s) and successful negotiation of related agreements, if any.

VI. TERM AND TERMINATION

This MOU shall be effective for a term ("Term") of 120 days following the Effective Date, unless earlier terminated in accordance with this MOU. The Parties may extend the Term of this MOU by an amendment to this MOU signed by both Parties.

VII. PUBLICATION AND PUBLICITY

Press releases and any publicity or other communication or disclosure by any Party to a non-Party regarding this MOU, the relationship among the Parties, or the negotiation of any proposed Final Contract(s) must be approved by all Parties in writing prior to any such press release, public announcement or other disclosure, excluding any communication to another Party to this MOU, internally within any Party (including with such Party's financial, legal and other advisors).

VIII. CONFIDENTIAL INFORMATION

The Parties agree that the terms and conditions set forth in Schedule A shall govern Confidential Information (as defined in Schedule A) during the Term of this MOU. MCGUIRE agrees to consult and cooperate with FSMC in determining a mutually acceptable plan for the dissemination of information regarding the IITC Facilities to third parties for the purpose of engaging potential brokers, owners, landlords, etc. in locating options for the IITC Facilities, and such plan may include without limitation Schedule B.

IX. USE OF NAME

Nothing contained in this Agreement shall be construed as conferring any right to use in advertising, publicity or other promotional activities any name, trade name, trademark or other designation of either Party (including any contraction, abbreviation or simulation of any of the foregoing).

X. NOTICE

All communications, notices and disclosures required or permitted by this Agreement shall be in writing, shall be provided to the other Party and shall be deemed to have been given at the earlier of the date when actually delivered to the other Party or when 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:

To FSMC:

Alicia Dicks, President
SUNYIT
100 Seymour Road
Utica, New York 13502

To MCGUIRE:

James F. Dentinger, President
560 Delaware Avenue
Suite 300
Buffalo, New York 14202

XI. NO LIABILITY

No Party shall make a claim against, or be liable to, the other Party or its affiliates or agents for any damages, including (without limitation) incidental, consequential, special, direct or indirect, punitive, damages or lost profits or injury to business reputation, resulting from the continuation or abandonment of negotiations. A Party's undertaking to develop information or technology and/or acquire personnel or capital assets or other detrimental reliance in expectation of a Final Contract shall be at its own risk and such Party shall not make a claim against any other Party for any such reliance damages.

XII. GOVERNING LAW AND JURISDICTION

This MOU will be governed by and interpreted exclusively under the laws of the State of New York, without regard to its choice of law rules. The Parties will comply with all applicable federal, state and local laws and regulations with respect to this MOU. In case of any dispute concerning or arising out of this MOU that cannot be resolved by the Parties in good faith, such dispute shall be finally settled and venue shall be exclusively held in any appropriate state or federal court in the County of Albany, State of New York. Each Party consents to exclusive jurisdiction and venue of such courts.

XIII. MISCELLANEOUS

XIII.1 No amendment or modification of this MOU shall be valid or binding upon the Parties unless in a writing signed by both of the Parties.

XIII.2 This MOU may be signed in one or more counterparts, each of which shall be deemed to be an original and all of which when taken together shall constitute the same MOU. Any signed copy of this MOU made by photocopy, facsimile or Adobe PDF format shall be considered an original.

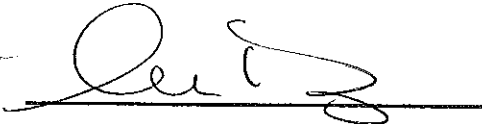
XIII.3 All agreements drafts, term sheets, memoranda, if any, and other communications respecting the agreements or activities related thereto prepared or exchanged in the course of negotiations, even if signed by one or both of the Parties, shall be considered only preliminary and shall not be legally binding unless subsequently incorporated into this MOU by an amendment or into a Final Contract.

XIII.4 This MOU represents the complete understanding between the Parties as it relates to the subject matter in this MOU and supersedes any prior and contemporaneous communications, understandings or agreements, oral or written, between the Parties as it relates to the subject matter.

IN WITNESS WHEREOF, each Party has caused this MOU to be signed by its duly authorized representative as follows:

**MCGUIRE DEVELOPMENT
COMPANY, LLC**

**FORT SCHUYLER MANAGEMENT
CORPORATION**



By: James F. Dentinger

By: Alicia Dicks

Title: President

Title: PRESIDENT, FSMC

Date: March 26, 2014

Date: 3/26/14

Schedule A
CONFIDENTIALITY

Purpose

Each of the Parties may disclose and receive Confidential Information (defined below) from the other Party, for the limited purpose ("Purpose") of evaluating the suitability of entering into one or more Final Contracts as identified in the MOU.

Disclosure of Confidential Information

"Confidential Information" means all information that is maintained in confidence by a Party ("Owning Party") and is disclosed to or obtained by the other Party in connection with and during the Term of this MOU, including, but not limited to, information that relates to such Owning Party's past, present or future research, development, manufacturing, or business activities. Either Party ("Disclosing Party") may disclose its confidential information to the other Party ("Receiving Party") orally, in writing or by other media or transfer of materials including graphic, photographic, recorded, prototype, sample, or other tangible or permanent form clearly and obviously marked "confidential" or "proprietary". Electronic information will be adequately marked if the container is marked and if a proprietary legend displays when the information runs on a computer system and when the information is printed from its data file.

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. All restrictions provided herein regarding use and/or disclosure shall apply during such thirty-day period.

Protecting confidential information

Receiving Party will retain Disclosing Party's Confidential Information in confidence for three (3) years from the date of disclosure. Receiving Party will not disclose, disseminate, or publish any of Disclosing Party's Confidential Information to any person except employees or agents of Receiving Party on a need to know basis. Receiving Party shall ensure that such employees or agents shall be bound by terms at least as protective as the terms of this Schedule A. Each Party warrants that employees or agents shall comply with the terms of this Schedule A. Upon the termination or expiration of this MOU, the Parties shall confer regarding the status of Confidential Information disclosed and/or created under this MOU.

All right, title and interest in patents, copyrights, trademarks, data, designs, drawings, blueprints, tracings, plans, layouts, specifications, formulae and any and all other Confidential Information which are furnished to the Receiving Party shall be and remain

the exclusive property of the Disclosing Party. The Parties recognize and agree that nothing contained in MOU shall be construed as granting any property rights, by implication, license or otherwise, to any Confidential Information of the other Party disclosed pursuant to the MOU, or to any invention or any patent, copyright, trademark, or other intellectual property.

Each Party agrees to not make, use, sell, offer for sale, or have made, any product or service based upon the Confidential Information provided to it without the Disclosing Party authorizing such use in writing. Each Party further agrees not to reproduce in any form (except as required to accomplish the Purpose), analyze, modify, reverse engineer, decompile, create other works from, or disassemble the Confidential Information disclosed to it or any samples of tangible materials included therein.

The Receiving Party shall be held to the same standard of care in protecting such information as the Receiving Party normally employs to preserve and safeguard its own Confidential Information of similar kind.

Exclusions; Required Disclosure

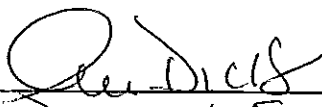
Receiving Party's obligations regarding Disclosing Party's Confidential Information shall not apply to information (a) that was already known to Receiving Party prior to the disclosure of such information to Receiving Party by Disclosing Party, (b) that is or becomes publicly available through no act or fault of Receiving Party, (c) that is rightfully received by Receiving Party from a third-party having no obligation of confidentiality to Disclosing Party, or (d) that is independently developed by Receiving Party.

In the event the Receiving Party is required by law, regulation, or court order to disclose any of the Disclosing Party's Confidential Information, the Receiving Party will notify the Disclosing Party in writing prior to making such disclosure in order to facilitate the Disclosing Party seeking a protective order or other appropriate remedy from the appropriate legal body. The Receiving Party further agrees that if the Disclosing Party is not successful in precluding the requesting legal body from reviewing the Confidential Information, it will furnish only that portion of the Confidential Information which is legally required and will exercise all reasonable efforts to obtain reliable assurances that confidential treatment will be accorded the Confidential Information.

Schedule B
DESIGNATED REPRESENTATIVE

In accordance with a Memorandum of Understanding between McGuire Development Company LLC and Fort Schuyler Management Company, McGuire Development Company, LLC is authorized to act on behalf of Fort Schuyler Management Company to explore real estate options sufficient to accommodate certain facility needs of FSMC within the Greater Buffalo Area.

**FORT SCHUYLER MANAGEMENT
CORPORATION**

By: 
Title: President, FSMC
Date: 3/26/14