



Genesee Gateway Local Development Corp.
Meeting Agenda
Thursday, August 6, 2020
Location: Electronically

PAGE#

- 1.0 Call to Order 5:05pm**
Because of the Novel Coronavirus (COVID-19) Emergency and State and Federal bans on large meetings or gatherings and pursuant to Governor Cuomo's Executive Order 202.1 issued on March 12, 2020 suspending the Open Meetings Law, this Meeting is being held electronically via conference call / video conference instead of a public meeting open for the public to attend in person.

- 2.0 Chairman's Report and Activities 5:05pm**
 - 2.1 Upcoming Meetings:
Next Scheduled Board Meeting: Thursday, September 3rd at 4:00 p.m.
Audit & Finance Committee Meeting: Tuesday, September 1st at 8:30 a.m.
 - 2.2 Agenda Additions/ Deletions / Other Business ****Vote**

- 3.0 Report of Management 5:10pm**
 - 3.1 Nothing at this time.

- 4.0 Audit & Finance Committee – D. Cunningham 5:10pm**
 - 4.1 June 2020 Financial Statements ****Vote**
 - 4.2 John Jakubowski Contract ****Vote**
 - 4.3 MTC – Adecco Lease Buyout ****Vote**
 - 4.4 Parking Lot Resealing & Restriping Contract ****Vote**

- 5.0 Governance & Nominating Committee – S. Noble-Moag 5:20pm**
 - 5.1 Nothing at this time.

- 6.0 Other Business 5:20pm**
 - 6.1 Nothing at this time.

- 7.0 Adjournment 5:20pm**

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5-9
10-13
14-17

**Genesee Gateway Local Development Corp.
June 2020 Dashboard
Balance Sheet - Accrual Basis**

	<u>6/30/20</u>	<u>5/31/20</u>	<u>[Per Audit]</u> <u>12/31/19</u>
ASSETS:			
Cash - Unrestricted	\$ 371,097	\$ 327,589	\$ 303,219
Cash - Restricted ^{(1) (A)}	481,454	487,100	934,626
Cash - Reserved ^(B)	1,142,458	1,117,187	1,158,480
Cash - Subtotal	1,995,009	1,931,876	2,396,325
Grants Receivable ⁽²⁾	4,646	4,646	4,646
Accounts Receivable	2,650	69	69
Loans Receivable - Current Portion	344,216	360,812	358,874
Other Current Assets ⁽³⁾	3,488	3,924	872
Total Current Assets	2,350,009	2,301,327	2,760,786
Land Held for Dev. & Resale	3,489,954	3,489,954	3,489,854
Buildings & Improvements	7,202,120	7,202,120	7,202,120
Furniture, Fixtures & Equipment	43,600	43,600	43,600
Total Property, Plant & Equip.	10,735,674	10,735,674	10,735,574
Less Accumulated Depreciation	(1,858,687)	(1,842,279)	(1,760,244)
Net Property, Plant & Equip.	8,876,987	8,893,395	8,975,330
Loans Receivable - Noncurrent Portion ^(Net of \$202,125 Allow for Bad Debt)	977,990	984,815	847,445
Equity Investment in Genesee Agri-Business, LLC ⁽⁴⁾	3,220,240	3,220,240	3,220,240
Other Assets	4,198,230	4,205,055	4,067,685
Total Assets	15,425,226	15,399,777	15,803,801
LIABILITIES:			
Accounts Payable ⁽⁵⁾	95,121	63,501	16,915
Unearned Revenue ⁽⁶⁾	68,462	31,683	44,457
Security Deposits	108,680	108,680	108,680
Loans Payable - Current Portion	78,297	78,037	76,749
Bonds Payable - Current Portion	120,043	119,937	115,205
Total Current Liabilities	470,603	401,838	362,006
Loans Payable - Noncurrent Portion	2,301,920	2,308,565	2,341,460
Bonds Payable - Noncurrent Portion	2,782,716	2,792,935	2,850,337
Total Noncurrent Liabilities	5,084,636	5,101,500	5,191,797
Total Liabilities	5,555,239	5,503,338	5,553,803
EQUITY	\$ 9,869,987	\$ 9,896,439	\$ 10,249,998

Significant Events:

1. Cash Restricted - CBA funds were used for Corfu Wastewater Treatment Facility expenses; \$218K OCR loan was disbursed to Freightliner in May.
2. Grants Receivable - OCR will reimburse for H. Sicherman grant consulting services.
3. Other Current Assets - prepaid D & O Insurance.
4. Equity Investment in Genesee Agri-Business, LLC - ties to corresponding GAB, LLC financial statements.
5. Accounts Payable - Grant for continuing Economic Development Program Support and MedTech Centre Property Management.
6. Unearned Revenue - Rent / interest received in advance; LeRoy/Bergen America's Best Community grant funds received, but not yet expended/earned; MedTech Centre insurance claim for roof repairs received in advance.

(A) Restricted = Community Benefit Agreement (CBA) Funds, Security Deposits, USDA Debt Sinking Fund, Grant Funds

(B) Reserved = OCR loan repayments, Strategic Investment Funds, Economic Development Loan Funds, Batavia Micropolitan Area Redevelopment Loan Funds, Grant Funds

**Genesee Gateway Local Development Corp.
June 2020 Dashboard
Profit & Loss - Accrual Basis**

	Month to Date		YTD		2020	2020
	6/30/20	6/30/19	2020	2019	Board Approved Budget	YTD % of Budget
<u>Operating Revenues:</u>						
Grants (1)	\$ -	\$ 227,801	\$ 218,000	\$ 721,990	\$ 924,615	24%
Interest Income on Loans	2,474	2,588	11,017	13,969	24,986	44%
Rent	59,610	58,236	344,194	340,701	724,855	47%
Common Area Fees - Parks	-	-	500	-	500	100%
Fees	-	-	2,900	4,675	-	N/A
Other Revenue	-	1,372	2,544	1,872	-	N/A
Total Operating Revenues	62,084	289,997	579,155	1,083,207	1,674,956	
<u>Operating Expenses:</u>						
Operations & Maintenance	12,515	12,498	70,522	56,434	161,169	44%
Professional Services	6,707	9,300	58,479	64,131	155,483	38%
Econ. Dev. Prog. Support Grant	25,000	25,000	150,000	150,000	300,000	50%
Site Development Expense	7,350	-	465,498	-	727,612	64%
Grant Expense	-	-	-	-	819,648	0%
Real Estate Dev. (Capitalized)	-	-	-	60,634	-	N/A
Balance Sheet Absorption	-	-	-	(60,634)	-	N/A
Depreciation	16,408	16,397	98,443	98,382	196,788	50%
Total Operating Expenses	67,980	63,195	842,942	368,947	2,360,700	
Operating Revenue (Expense)	(5,896)	226,802	(263,787)	714,260	(685,744)	
<u>Non-Operating Revenues (Expenses):</u>						
Other Interest Income	450	2,448	8,020	9,325	9,250	87%
Interest Expense	(21,006)	(20,625)	(124,244)	(138,469)	(245,105)	51%
Total Non-Operating Exp.	(20,556)	(18,177)	(116,224)	(129,144)	(235,855)	
Change in Net Assets	(26,452)	208,625	(380,011)	585,116	\$ (921,599)	
Net Assets - Beginning	9,896,439	10,049,444	10,249,998	9,672,953		
Net Assets - Ending	\$ 9,869,987	\$ 10,258,069	\$ 9,869,987	\$ 10,258,069		

Significant Events:

1. Grant Revenue YTD - \$218K OCR grant supports loan to Freightliner.

Genesee Gateway Local Development Corp.
June 2020 Dashboard
Statement of Cash Flows

	June 2020	YTD
CASH PROVIDED (USED) BY OPERATING ACTIVITIES:		
Grant Income	\$ -	\$ 218,000
Interest Income on Loans	2,468	10,495
Rental Income	93,745	336,667
Common Area Fees - Parks	-	500
Fees	-	2,900
Other Revenue	-	31,948
Operations & Maintenance	(12,097)	(73,791)
Professional Services	-	(54,551)
Economic Development Program Support Grant	-	(75,000)
Site Development Expense	(7,350)	(465,498)
Improvements of Land Held for Dev. & Resale	-	(100)
Issuance of Loans	-	(338,000)
Repayment of Loans	23,421	222,113
Net Cash Provided (Used) By Operating Activities	100,187	(184,317)
CASH FLOWS USED BY CAPITAL & RELATED FINANCING ACTIVITIES:		
Principal Payments on Bonds & Loans	(16,498)	(100,775)
Interest Paid on Bonds & Loans	(21,006)	(124,244)
Net Cash Used By Capital & Related Financing Activities	(37,504)	(225,019)
CASH FLOWS PROVIDED BY INVESTING ACTIVITIES:		
Interest Income	450	8,020
Net Cash Provided By Investing Activities	450	8,020
Net Change in Cash	63,133	(401,316)
Cash - Beginning of Period	1,931,876	2,396,325
Cash - End of Period	\$ 1,995,009	\$ 1,995,009
RECONCILIATION OF OPERATING EXPENSE		
TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES:		
Operating Expense	\$ (5,896)	\$ (263,787)
Adjustments:		
Depreciation Expense	16,408	98,443
Increase in Land Held For Dev. & Resale	-	(100)
Increase in Grants/Accounts Receivable	(2,581)	(2,581)
Decrease (Increase) in Other Current Assets	436	(2,616)
Decrease (Increase) in Loans Receivable	23,421	(115,887)
Increase in Operating Accounts Payable	31,620	78,206
Increase in Unearned Revenue	36,779	24,005
Total Adjustments	106,083	79,470
Net Cash Provided (Used) By Operating Activities	\$ 100,187	\$ (184,317)

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Mark Masse

Audit & Finance Committee

August 4, 2020

Workforce Development: John Jakubowski Consultant contract

Discussion: John Jakubowski has provided a consulting agreement for the period of August 15, 2020 through August 14, 2021 to perform the following:

1. Perform consulting services to assist in the development and implementation of workforce development programs and training initiatives relative to the goals of the Company and its affiliates.
2. Consult with the VP of Business Development of the GCEDC and staff relative to the application, development and deployment of its workforce programs.
3. Consult with educational institutions who may serve as partnership the development, implementation and delivery of training programs. Specifically, interface with Genesee Community College and its BEST Center, other institutions of higher learning, the Genesee Valley Educational Partnership and local secondary schools as appropriate.
4. Provide consulting services as requested by the GCEDC.

Total contract is not to exceed \$29,800 in total between GGLDC and GCEDC.

Fund commitment: \$29,800 to be covered under strategic investments.

Board Action Request: Approval of consulting contract

ENGAGEMENT LETTER / CONSULTING AGREEMENT

This Agreement is made this August 6, 2020, for the period August 15, 2020 through August 14, 2021, between the **Genesee Gateway Local Development Corporation/Genesee County Economic Development Center**, collectively (the "Company"), having its principal place of business at 99 MedTech Drive, Batavia, NY 14020 and **John P. Jakubowski**, (the "Consultant"), having a principal place of business at 22 Haverford Lane, Williamsville, NY 14221 (collectively, the "Parties").

COMPENSATION AND SERVICES RENDERED:

The Consultant hereby agrees to perform the following services, as required:

1. Perform consulting services to assist in the development and implementation of workforce development programs and training initiatives relative to the goals of the Company and its' affiliates.
2. Consult with the Company staff relative to the application, development and deployment of its' workforce programs.
3. Consult with educational institutions who may serve as partners in the development, implementation and delivery of training programs. Specifically, interface with Genesee Community College and its' BEST Center, other institutions of higher learning, the Genesee Valley Educational Partnership and local secondary schools as appropriate.
4. Provide consulting services as requested by the Company.

For the services provided to the Company, the Company, agrees to pay the Consultant based upon presentation of a monthly invoice based on the following fee schedule and conditions:

Fee Schedule:

1. A maximum of Three Hundred and Fifty Dollars (\$350.00) per day. Partial days will be billed at an hourly rate of Fifty Dollars (\$50.00) per hour.
2. Mileage expense is to be reimbursed at the prevailing IRS rate per mile.
3. Total remuneration is not to exceed Twenty-Nine Thousand Eight Hundred Dollars (\$29,800.00), for the period August 15, 2020 through August 14, 2021.

The Consultant understands and agrees that the Company may provide a 1099 to the Consultant which shall include all compensation as well as expenses paid by company and it will be the responsibility of the Consultant to maintain adequate records to substantiate all business-related expenses for tax purposes.

TERM

This Agreement shall remain in effect through **August 14, 2021** or until terminated by providing a thirty (30) day written notice of termination with the date of receipt by the recipient party indicating the initiation of the notice period, by either party to this Agreement. This Agreement contains the entire understanding of the parties and may not be amended without the specific written consent of both parties.

If the Parties have failed to renew, modify or terminate this Agreement, for any reason, prior to the Termination Date, then this Agreement shall continue in force until such time as it is terminated in accordance with its provisions.

WARRANTIES BY THE CONSULTANT

The Consultant represents and warrants to Company that Consultant will provide services to Company in a professional, competent and timely manner; that the Consultant has the power to enter into and perform this Agreement, and that the Consultant's performance of this Agreement shall not infringe or violate any federal,

state, or municipal laws. The Consultant shall make no promise or warranty concerning Company's business activity, service or product outside the scope of their responsibilities and the Consultant acknowledges that it has no authority to bind Company to any such promise or warranty made by the Consultant.

INDEPENDENT CONTRACTOR / CONFLICTS OF INTEREST

The Consultant acknowledges that the services rendered under this Agreement shall be solely as an independent contractor. The Consultant further acknowledges that the Consultant is not to be considered an employee of Company, is not entitled to any employment rights or benefits, and that this undertaking is not a joint venture.

The Consultant understands that Company shall not provide employment related insurance, including but not limited to worker's compensation insurance, and agrees to provide adequate insurance coverage for his own activities.

NON-DISCLOSURE OF CONFIDENTIAL INFORMATION AND COVENANT NOT TO COMPETE

The Consultant acknowledges that in and as a result of its association with Company, Consultant will be making use of and acquiring confidential information of a special and unique nature and value relating to such matters as

1. Company's patents, copyrights, proprietary information, trade secrets, systems, procedures, manuals, confidential reports, customer lists and price lists (which are deemed for all purposes confidential and proprietary), as well as the nature and type of products and services rendered by Company; and
2. The equipment, business practices and methods used and preferred by Company's customers, and the fees paid by them.

As a material inducement to the Company to enter into this Agreement and to pay to the Consultant the compensation stated in Paragraph 1, Consultant covenants and agrees that the Consultant shall not, at any time during or following the term of this Agreement for a period of two (2) years:

1. Directly divulge or disclose for any purpose whatsoever any confidential information that has been obtained by, or disclosed to, it as a result of its association with Company **other than that information specifically required as a part of this consulting engagement to individuals only and expressly with a need to know;**

Or

2. Make use of any such confidential information to compete, either directly or indirectly, with Company.

The Parties further agree that the Consultant shall not be requested or required to, and shall not, divulge or disclose any information available to the Consultant in violation of any valid and enforceable confidentiality agreement between the Consultant and any other Party.

OWNERSHIP OF WORK PRODUCT

The Consultant agrees that the Consultant's work product produced in the performance of this Agreement shall remain the property of Company, and that the Consultant will not sell, transfer, publish, disclose or otherwise make the work product available to third parties without Company's prior written consent.

ARBITRATION

Any controversies or claims relating to any aspect of the Agreement, or to its breach, or the relationship created between the Parties shall be settled by arbitration under the rules of the American Arbitration Association. The Parties agree to abide by the arbitrator's decision and also agree that a judgment may be entered upon the award in any court having jurisdiction.

The Parties agree that neither Party shall act to terminate or modify the nature of the parties' course of performance under this Agreement during the pendency of an arbitration, it being the parties' intent to preserve the status quo so as not to jeopardize the rights of either party for the period from the commencement of an arbitration to the entry of the arbitration award.

NOTICES

All notices between the Parties shall be in writing and effective when sent by certified mail to the addresses above stated, unless such addresses are changed by written notification to the other Party.

WAIVER

No failure of either party to exercise any power hereunder or to insist upon strict compliance by the other party with any obligation or provisions hereunder, and no custom or practice of the parties at variance with the terms hereunder shall constitute a waiver of the right to demand exact compliance with the terms hereof.

INDEMNIFICATION

Company will indemnify and hold harmless the Consultant from and against all liabilities and expenses, including reasonable attorneys' fees ("Liabilities"), arising out of any claim by anyone not a party to this Agreement, including third parties, considering (i) Company's material breach or default, (ii) violation of law or regulation applicable to Company, and (iii) representations, guarantees or warranties provided by Company, excluding Liabilities arising out of, or in connection with any gross negligence or willful misconduct of the Consultant.

The Consultant shall indemnify and hold Company and its affiliates and their agents, employees, officers, managers, successors and assigns from and against all Liabilities arising out of, or in connection with, any (i) Consultant's material breach or default, or (ii) violation of law or regulation applicable to the Consultant, excluding Liabilities arising out of, or in connection with, any negligence or willful misconduct of Company.

This indemnity shall survive the termination of this Agreement. The obligation of either party to indemnify the other shall not apply to the extent the loss is due to either party's: a) failure to adhere to the terms of this Agreement; b) failure to comply with any applicable government requirements; or c) negligence or willful misconduct of a party, its directors, officers, agents or employees.

ABILITY TO ENTER AGREEMENT

The parties executing this Agreement hereby covenant and warrant that each respective company has full right and authority to enter into this Agreement, and that each of the persons signing on behalf of the corporation are duly authorized to do so.

RELATIONSHIP OF PARTIES

This Agreement is not intended to constitute or create a joint venture, pooling arrangement, partnership, agency or business organization of any kind. John P. Jakubowski and Company shall be independent contractors for all purposes and neither party shall act as or hold itself out as agent for the other or create or attempt any obligations or liabilities on behalf of the other party.

SEVERABILITY

If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected thereby.

ASSIGNMENT

Neither party may assign this Agreement or its obligations hereunder to any entity, except a corporate subsidiary, without the prior written consent of the other party, which consent shall not be unreasonably withheld.

Neither party shall be liable to the other for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by acts of God, war, Internet or electrical power disruptions, terrorism, civil disorder or disturbance, riot, labor disputes, acts or omissions of the other party or acts or omissions of any third party.

GOVERNING LAW

This Agreement will be governed by the laws of the state of New York, excluding application of its conflict of laws provision.

ENTIRE AGREEMENT

This Agreement contains the Parties' entire understanding and may not be modified except in written form signed by both.

IN WITNESS WHEREOF, Genesee Gateway Local Development Corporation and John P. Jakubowski have duly executed this Agreement as of the day and year first written above.

Dated: **Consultant: John P. Jakubowski**

By: _____
John P. Jakubowski
Consultant

Dated: **Company: Genesee Gateway Local Development Corporation**

By: _____
Donald Cunningham
President

MedTech Centre Building lease termination request

Discussion: In March of 2020, the GGLDC entered into a three year lease agreement with Adecco USA, Inc. to lease 820 square feet of office space within the MedTech Centre. As a result of Covid-19 and some corporate restructuring, they are requesting to cancel their lease with the GGLDC. Section 35 of the lease agreement states the following:

35. Termination, Modifications and Amendments – Landlord and Tenant agree not to terminate, materially modify or materially amend this Lease Agreement or any of the term thereof, or to grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of the Landlord and Tenant. Any attempted termination, modification or amendment of this Lease Agreement without such written consent shall be null and void.

Adecco USA, Inc. has sent, via email, a written request for the GGLDC to terminate the lease. They have agreed to pay the GGLDC the full amount of the base rent (not including CAM charges), that would have been due over that three year period. The base rent is \$15.50 per square foot, so the three year total amounts to \$38,130.

Under Section 20 of the Lease (attached) the GGLDC is entitled to any items in space that the Tenant leaves behind. They have offered the GGLDC any of the furniture in the space. Upon inspection, there are three desks, chairs, and filing cabinets that would be useful to have and create almost a turnkey office. If another tenant decides to lease the space and does not want the furniture, the GGLDC would have to remove it.

Fund commitment: None.

Board Action Request: Approval of terminating lease agreement with Adecco USA, Inc. for the payment of \$38,130.

aforesaid. Neither the failure or refusal of Landlord to re-let the Leased Premises or any part or parts thereof nor, in the event that the Leased Premises are re-let, the failure of Landlord to collect the rent under such re-letting shall release or affect Tenant's liability for damages, and Landlord shall not in any way be liable for same, but, if Landlord fails to collect such rent, Tenant is hereby authorized to collect the same and apply the same to any indebtedness owing to Landlord. Any such damages shall be paid in monthly installments by Tenant on the rent days specified in this Lease Agreement and any suit brought to collect the amount of the deficiency for any month or months shall not prejudice in any way the rights of Landlord to collect the deficiency for any subsequent month or months by a similar proceeding. Any such action may be an action for the full amounts of all rents then due or to be due to, and all damages then suffered or to be suffered by, Landlord. Mention in this Lease Agreement of any particular remedy shall not preclude Landlord from resorting to any other remedy, in law or in equity. The foregoing remedies and rights of Landlord are cumulative. Tenant expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant's eviction or dispossession for any cause. Notwithstanding the foregoing, Landlord hereby covenants and agrees with Tenant to make commercially reasonable efforts to mitigate Landlord's damages in connection with any Event of Default under this Lease.

(e) Upon the occurrence of an Event of Default by Landlord, Landlord shall cure said default with thirty (30) days of receipt of notice from Tenant. In the event the default cannot be reasonably cured within the said thirty (30) day period the Landlord shall not be considered in default by reason of non-compliance of the thirty (30) day timeframe requirement. In the event Landlord does not timely cure said default then Tenant shall have all remedies available at law and in equity.

19. Failure to Insist on Strict Performance. The failure of Landlord to insist, in any one or more instances, upon a strict performance of any covenant, term, provision or agreement of this Lease Agreement shall not be construed as a waiver or relinquishment thereof, but the same shall continue and remain in full force and effect, notwithstanding any law, usage or custom to the contrary. The receipt by Landlord of rent with knowledge of the breach of any covenant or agreement hereunder shall not be deemed a waiver of the rights of Landlord with respect to such breach, and no waiver by Landlord of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Landlord.

20. Surrender of Leased Premises.

(a) Tenant shall, upon the termination of this Lease Agreement, by lapse of time or otherwise, return the Leased Premises to Landlord in as good condition as when received, loss by fire or other unavoidable casualty and reasonable wear and tear excepted. It is understood and agreed that the exception made as to "loss by fire or other unavoidable casualty" does not include damages, fires or casualties caused or contributed to by the act or neglect of Tenant, its servants, agents, employees, invitees or licensees, and not compensated for by insurance. Tenant shall surrender all keys to the Leased Premises and inform Landlord of all combinations on locks, safes and vaults therein.

(b) All installations, additions, fixtures, and improvements in or upon the Leased Premises, whether placed there by Landlord or Tenant, including, without limitation, paneling, decoration, partitions, railings, carpeting and flooring, shall, at Landlord's option,

become the property of Landlord and shall remain upon the Leased Premises at the termination of this Lease Agreement without compensation, allowance or credit to the Tenant; provided, however, Tenant shall have the option of removing any trade fixtures which it installed in or upon the Leased Premises prior to the expiration of, or within thirty (30) days after the termination of, this Lease Agreement, but Tenant shall remain responsible for repairing any damage caused to the Leased Premises by such removal.

(c) Any furniture, equipment, machinery or movable property owned by Tenant and brought onto the Leased Premises during Tenant's occupancy thereof and not removed prior to the expiration of, or within thirty (30) days after the termination of, this Lease Agreement shall be deemed to have been abandoned by Tenant and shall, without any further act by Tenant, be conclusively deemed to have been conveyed by Tenant to Landlord as by bill of sale without further payment or credit by Landlord to Tenant and may be sold by Landlord or disposed of by Landlord as it sees fit. Any amount realized upon any such a sale shall be the property of Landlord. If Landlord has directed Tenant to remove any or all of such property, Tenant shall remain liable for the cost of its removal and for the cost of restoring the Leased Premises after such removal.

21. Holding Over. Should Tenant fail to vacate the Leased Premises at the termination hereof, such holding over shall operate and be construed to be a tenancy from month to month only, at a base monthly rental equal to the base monthly rental paid for the last month of the term of this Lease Agreement plus fifty percent (50%) of such amount, plus additional rent as provided herein and subject to the conditions, obligations and provisions of this Lease Agreement. No such holding over or payment or acceptance of rent resulting therefrom shall constitute or be deemed reconfirmation or renewal of this Lease Agreement. Nothing in this Section 21 shall be construed as a consent by Landlord to the possession of the Leased Premises after the expiration or termination of this Lease Agreement.

22. Expenses and Attorneys' Fees. In any litigation arising from the default in the performance of any of the provisions of this Lease Agreement by either Tenant or Landlord, each party shall bear the cost and expense of its own legal fees, disbursements and payment of expert witnesses incurred in connection with such litigation. In the event that either Landlord or Tenant shall be made a party to such litigation commenced by a person other than the parties hereto, then such party performing the act or suffering the omission which is alleged to be the subject of the litigation shall pay all costs, expenses and reasonable attorneys' fees incurred by the other party which arise from or in connection with such litigation. Notwithstanding the foregoing, this Lease is intended for the exclusive benefit of the parties hereto and shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

Lease (including, but not limited to, water, gas, electric, cable, telephone and sewer (storm and sanitary); and

5. Tenant will not be prevented from or restricted in conducting any part of its primary business in or from the Leased Premises or in exercising any of the rights granted with respect to the common areas of the Building because of any zoning ordinance, private restriction, covenant, lease, encumbrance, or agreement entered into by any person having or having had an interest in the Property, the Building or any portion of the Business Park.

The foregoing representations and warranties are a material inducement to Tenant to enter into this Lease and shall survive the expiration and/or earlier termination of the Lease.

34. Consent of Mortgagee. In the event that the Property is or becomes encumbered by a mortgage and such mortgage requires the consent of the Mortgagee to leases of the Property, this Lease Agreement shall not become effective unless and until the Mortgagee has consented to it. Landlord will use its best efforts to obtain the Mortgagee's consent but shall not be liable in the event that the Mortgagee does not consent. The parties agree that they will modify or amend this Lease Agreement if required by the Mortgagee as a condition to its consent, provided that such modification does not substantially alter the financial terms hereof or the rights or obligations of the parties hereunder. Tenant agrees to cooperate with Landlord in obtaining such consent.

Whenever the consent of Landlord is required hereunder, the consent of the Mortgagee shall also be required if the mortgage so requires. The Mortgagee shall also have such rights of the Landlord (e.g., to access) as may be provided in the mortgage.

35. Termination, Modifications and Amendments. Landlord and Tenant agree not to terminate, materially modify or materially amend this Lease Agreement or any of the term thereof, or to grant any concessions in connection therewith, either orally or in writing, or to accept a surrender thereof, without the prior written consent of the Landlord and Tenant. Any attempted termination, modification or amendment of this Lease Agreement without such written consent shall be null and void.

36. Non-recourse to Landlord. This Lease Agreement shall be non-recourse to Landlord, and Tenant shall look only to Landlord's equity in the Leased Premises in the event of any damages or claims which Tenant may assert against Landlord arising out of or in connection with this Lease Agreement.

37. Tenant's Personal Property; No Lien. Landlord waives any statutory liens, and any rights of distraint, with respect to Tenant's personal property and trade fixtures ("Personal Property"). This Lease does not grant a contractual lien or any other express or implied security interest to Landlord with respect to Tenant's Personal Property.

Parking lot resealing and restriping at MedTech Centre.

Discussion: The GGLDC sealed and striped the parking lot in 2016. The GGLDC is trying to do this every three to four years. The GGLDC Received three proposals for resealing and restriping the parking lot at the MedTech Centre. The amounts received were as follows:

1. Monroe Sealers - \$14,200.00
2. Yasses Trucking & Construction – Did not respond to inquiry
3. Pro Seal - \$9,000.00
4. Western NY Sealing & Paving - \$9,397.00

The GGLDC had included a budget amount of \$17,750 in the 2020 budget for this work.

Fund commitment: \$9,000 from operational funds of MedTech Centre. The amount included in the 2020 GGLDC budget that was approved by the Board was \$17,750.

Board action request: Approval of sealing and striping contract for \$9,000 with Pro Seal.

Monroe Sealers – PROPOSAL

1776 COOMER RD. BURT, NY 14028 P-585-663-7325 F-585-663-6309

**GCEDC
99 Med Tech Dr.
Batavia, NY 14020
Attn: Bill Lawrence**

**585-409-1988
Sealcoat - Crack Fill - Stripe
Area: 108,000 sq.ft.
July 30th, 2020**

This Estimate includes:

- Cleaning of the entire area, making it free from all loose material, dirt and debris as part of the preparation before sealer is applied
- *One Step*, an oil spot treatment, applied to all gasoline and oil spots prior to sealing
- Seal major cracks and seams with a rubberized hot pour crack filler (cracks are filled at contractors discretion)
- Application of rubberized coal tar emulsion sealer which meets federal government specification RP-355e, with additions of:
 - Silica sand, providing an anti-skid surface and acting as a filler coat
 - Latex additive that provides the sealant with extra flexibility and greater wear
 - Layout and restripe as is

We hereby propose to furnish material and labor completely in accordance with the above specifications for the sum of: Fourteen Thousand Two Hundred and no/100-----Dollars **\$14,200.00**

Sales Tax not included.

Payment to be made as follows: Upon Completion

All material is guaranteed to be as specified. All work will be completed in a workman-like manner according to standard practice. Guarantee includes workmanship and material except cracks, oil spots, and wear from plowing/sanding/salting. Our workers are covered by workmen's compensation. Any alteration or deviation necessary from the above specifications involving extra costs will become an extra charge over and above the estimate.

✓ **Authorized Signature: Jim Bewley – C-716-622-3035**

Acceptance of Proposal - The above prices, specifications and conditions are satisfactory and are hereby accepted. Monroe Sealers of Rochester is authorized to do the work as specified. Payment will be made as outlined above.

✓ **Authorized Signature:**

Mark Masse

From: josh <josh@prosealandpaint.com> on behalf of josh
Sent: Friday, July 31, 2020 3:31 PM
To: mmasse
Subject: estimate

Sorry got caught up at office.

Sealing, crack fill and line stripe would be \$9000.

Let me know if you want me to send you a completed work up of it.

Thank you
Kelly

WESTERN NY SEALING & PAVING

**DRIVEWAY SEALING & PAVING
COMMERCIAL/RESIDENTIAL**

Jay Bassett, Owner
cell: 585.330.1362
office: 585.247.8466
email: jay@wnysealers.com

955 Buffalo Rd. • Rochester, NY 14624

Submitted To: Upstate Medtech Center Phone: 409-1988 Date: 7/29/20
Street: 99 Medtech dr Job Name: Bill
City/State/Zip: Batavia email: Blawrence839266mail

SEALING ESTIMATE

Seal Coat Parking lot with coal tar sealer, applied by hand for maximum protection and coverage.

All Prepwork Includes:

TOTAL SQ. FT.: _____

SEALCOAT: \$ 6,699-

CRACKFILL: \$ 1,999-

PARKING LINES: \$ 699-

ASPHALT REPAIRS: \$ _____

TOTAL: \$ 9,397-

COMMENTS

Prevailing Wage

Saturday Aug 22nd
our next opening

Description: _____

All material is guaranteed to be as specified. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practices. Any alteration or deviation from above specifications involving extra costs will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance.

Acceptance of Proposal The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to make payment will be made as outlined above.


WNY Sealers, Authorized Signature

Signature / Date

Signature / Date

4.4