



Meeting Agenda – STAMP Committee
 Genesee County Economic Development Center
 Wednesday, May 1, 2024 - 8:00 a.m.
 Location: 99 MedTech Drive, Innovation Zone

Page #'s	Topic	Discussion Leader	Desired Outcome
	1. Call to Order – Enter Public Session	P. Zeliff	
	1a. Executive Session Motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105 for the following reasons: <ol style="list-style-type: none"> 1. Discussions regarding proposed, pending or current litigation. 2. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation. 3. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof. 1b. Enter Public Session	P. Zeliff	
2-3	2. Chairman’s Report & Activities 2a. Agenda Additions / Deletions / Other Business 2b. Minutes: March 27, 2024	P. Zeliff	Vote
4-9	3. Discussions / Official Recommendations to the Board: 3a. SEQR Lead Agency Resolution	M. Masse	Disc / Vote
10-14	3b. MOU with the Village of Oakfield	M. Masse	Disc / Vote
15-20	3c. LOR Termination Resolution	M. Masse	Disc / Vote
21-70	3d. ESD GDA FAST NY Approval	M. Masse	Disc / Vote
	4. Adjournment	P. Zeliff	Vote



GCEDC STAMP Committee Meeting

Wednesday, March 27, 2024

Location: 99 MedTech Drive, Innovation Zone

8:00 a.m.

MINUTES

ATTENDANCE

Committee Members: M. Clattenburg, C. Kemp, C. Yunker (Video Conference*), P. Zeliff
 Staff: M. Masse, L. Farrell, P. Kennett, J. Krencik, E. Finch, S. Hyde, C. Suozzi
 Guests: R. Crossen (Town of Alabama Supervisor), M. Fitzgerald (Phillips Lytle)
 Absent:

*Attending from a physical location identified in the meeting notice as open to the public.

1. Call to Order / Enter Public Session

P. Zeliff called the meeting to order at 8:02 a.m. in the Innovation Zone.

1a. Executive Session

M. Clattenburg made a motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105, at 8:04 a.m., for the following reasons:

1. Discussions regarding proposed, pending, or current litigation.
2. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation.
3. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such a public body, but only when publicity would substantially affect the value thereof.

The motion was seconded by C. Kemp and approved by all members present.

1b. Re-Enter Public Session

M. Clattenburg made a motion to enter back into public session at 8:37 a.m., seconded by C. Kemp and approved by all.

2. Chairman’s Report & Activities

2a. Agenda Additions / Deletions/ Other Business – Nothing at this time.

2b. Minutes: March 6, 2024

C. Kemp made a motion to approve the March 6, 2024, minutes; the motion was seconded by M. Clattenburg. Roll call resulted as follows:

P. Zeliff - Yes

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- C. Yunker - Yes (Video Conference*)
- M. Clattenburg – Yes
- C. Kemp - Yes

The item was approved as presented.

3. Discussions / Official Recommendations to the Board:

3a. Access Agreement Discussion: Phillips Lytle has reviewed for the GCEDC an Access License Agreement to allow Project Emporium and their agents to enable their due diligence on GCEDC owned property for their proposed facility until that work is complete or a Purchase and Sale Agreement is executed. Any contractors would be required to sign indemnity agreements, provide proof of insurance, and list the GCEDC as an additional insured on their policy with the applicable coverage limits as set forth by the GCEDC.

Fund Commitment: None.

Committee Action Request: Recommend approval of Access License Agreement.

M. Clattenburg made a motion to recommend to the full Board the approval of the Access Agreement as presented; the motion was seconded by C. Kemp. Roll call resulted as follows:

- P. Zeliff - Yes
- C. Yunker - Yes (Video Conference*)
- M. Clattenburg – Yes
- C. Kemp - Yes

The item was approved as presented.

4. Adjournment

As there was no further business, M. Clattenburg made a motion to adjourn at 8:38 a.m., seconded by C. Kemp and passed unanimously.

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency" or "GCEDC") was convened in public session at the offices of the Agency located at 99 MedTech Drive, Suite 106, City of Batavia, County of Genesee, New York, on May 2, 2024, at ___:00 __p.m., local time.

The meeting was called to order by the _____ and, upon roll being called, the following members of the Agency were:

PRESENT:

Peter Zeliff, Chairman
Matthew Gray
Craig Yunker
Paul J. Battaglia
Chandy Kemp
Kathleen Manne
Marianne Clattenburg

ABSENT:

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Steve Hyde	President & CEO
Mark Masse	Senior Vice President of Operations
Matthew Fitzgerald	Legal Counsel

The attached resolution no. ____ was offered by _____, seconded by _____:

RESOLUTION DECLARING THE INTENT OF THE GENESEE COUNTY
ECONOMIC DEVELOPMENT CENTER TO ACT AS LEAD AGENCY
PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT

Project Name: Western new York Science and Technology Advanced
Manufacturing Park ("STAMP") - 2024 Modifications

Location: 6840 Crosby Road, Town of Alabama, NY 14013 ("Site")

WHEREAS, the Genesee County Industrial Development Agency d/b/a the Genesee County Economic Development Corporation ("GCEDC"), in conjunction with the Genesee Gateway Local Development Corporation ("GGLDC"), the non-profit real estate affiliate of the GCEDC, STAMP Sewer Works, Inc. ("SSW"), and STAMP Water Works, Inc. ("SWW"), have been working on the development of the Western New York Science & Technology Advanced Manufacturing Park ("STAMP" or the "Project"), an advanced manufacturing technology campus on approximately 1,262 acres located on the west side of New York State Route 63/77, approximately five miles north of the I-90/New York State Thruway ("Site") in the Town of Alabama, New York ("Town"); and

WHEREAS, the Agency is authorized and empowered by the provisions of the Chapter 1030 of the Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 71 of the 1972 Laws of New York, as amended, constituting Section 895-e of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, renovating, improving, maintaining, equipping and furnishing of commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, development of STAMP has undergone comprehensive review of potential environmental impacts pursuant to the State Environmental Quality Review Act

("SEQRA"), resulting in the completion of Final Generic Environmental Impact Statement ("FGEIS") and the issuance of a written Findings Statement ("2012 Findings") on March 12, 2012 (collectively, the FGEIS and the 2012 Findings are referred to as the "STAMP GEIS"); and

WHEREAS, subsequent development and modifications to STAMP have undergone additional SEQRA review including a smart growth impact statement ("SGIS"); a 2016 Amended Findings Statement to the FGEIS ("2016 Amended Findings"); a 2020 Amended Findings Statement to the FGEIS ("2020 Amended Findings"); a 2021 a SEQRA determination ("2021 SEQR Determination"); a 2022 SEQR update ("2022 SEQR Update"); a negative declaration issued in 2022 ("2022 Negative Declaration"); an amendment to the 2022 Negative Declaration ("2022 Second Amended Negative Declaration"); and an additional negative declaration in 2023 (the "February 2023 Negative Declaration"); and

WHEREAS, together, the GEIS, the 2012 Findings, the SGIS, the 2016 Amended Findings, the 2020 Amended Findings, the 2021 SEQR Determination, 2022 SEQR Update; 2022 Negative Declaration, 2022 Amended Negative Declaration, 2022 Second Amended Negative Declaration, and the February 2023 Negative Declaration constitute the prior environmental reviews for STAMP (collectively, these documents, including each and every supporting document referenced therein, are referred to as the "STAMP Environmental Record"); and

WHEREAS, in connection with the Project, the Agency has received an application from Project Emporium to acquire approximately 331 acres of land at STAMP for the purposes of constructing and operating an approximately 800,000 square foot data center on the STAMP Site ("Project Emporium"); and

WHEREAS, the Agency is considering additional and/or modified infrastructure at STAMP consisting of:

- (1) 0.50 Million gallon concrete onsite water storage tank, approximately 48 feet in diameter and 50 feet high at the center of the dome with additional related infrastructure, including an access driveway, control vault, and water main installation ("Water Tank");
- (2) Main Pump Station located at the STAMP Site, an Intermediate Pump Station in the Town of Alabama and 47,000 LF, 12 inch diameter force main to the Village of Oakfield (the "Oakfield Force Main")
- (3) a new traffic roundabout located at the northern end of Crosby Road ("Roundabout") (collectively, Project Emporium, the Water Tank, the Oakfield

Force Main, and the Roundabout are hereinafter referred to as the “**2024 Modifications**”) and;

WHEREAS, in light of the 2024 Modifications, and pursuant to SEQRA, the Agency must satisfy the requirements contained in SEQRA to determine whether the 2024 Modifications will result in any significant adverse environmental impacts that were not addressed in the STAMP Environmental Record; and

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. The Agency, having served as the Lead Agency for all development related to STAMP since its inception, proposes to conduct a coordinated review for this Type I action and believes, as the entity with primary responsibility for the 2024 Modifications, that it is in the best position to investigate all potential impacts associated with the 2024 Modifications (in close cooperation with relevant regulatory authorities), and has the authority to impose any and all appropriate mitigation measures. Thus, the Agency declares its intent to act as Lead Agency for the 2024 Modifications.

Section 2. The Agency requests that all involved agencies have the appropriate personnel within each agency review Part 1 of the Environmental Assessment Form (“EAF”) and provide the Agency with any comments the Agency should consider concerning Lead Agency status for the 2024 Modifications.

Section 3. The President CEO and the Senior Vice President of Operations of the Agency are hereby authorized and directed to distribute appropriate notice of this Resolution to all potential interested and/or involved agencies and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 4. This Resolution, which was adopted by a majority vote of the Agency on May 2, 2024, shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Peter Zeliff	VOTING	_____
Matthew Gray	VOTING	_____
Paul Battaglia	VOTING	_____
Marianne Clattenburg	VOTING	_____
Chandy Kemp	VOTING	_____
Kathleen Manne	VOTING	_____
Craig Yunker	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK

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) SS.:
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COUNTY OF GENESEE

I, the undersigned (Assistant) Secretary of the Genesee County Industrial Development Agency d/b/a the Genesee County Economic Development Center (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the Agency, including the Resolution contained therein, held on May 2, 2024 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this ___th day of May, 2024.

(Assistant) Secretary

MOU with Village of Oakfield

Discussion: The GCEDC, STAMP Sewer Works Corp. and the Village of Oakfield are willing to work together on the possible design, construction and operation of a new force main sewer line from the STAMP Site to the Village of Oakfield Waste Water Treatment Facility (“Oakfield WWTF”) to provide wastewater treatment services to STAMP.

Fund Commitment: None at this time. Any costs will be brought forward prior to approval for payment.

Committee Action request: Recommend approval of executing the MOU with Village of Oakfield.

May __, 2024

VIA EMAIL

The Honorable David Boyle
Mayor, Village of Oakfield
39 Main Street
Oakfield New York 14125

Re: Development of Western New York Science & Technology Advanced Manufacturing Park ("STAMP") Wastewater Services, located on approximately 1,250 Acres Located in the Town of Alabama, New York located along the west side of New York State Highway 77/63 (north of Judge Road) approximately five miles north of the I-90/New York State Thruway (the "STAMP Site")

Dear Mayor Boyle:

Please allow this letter of intent ("LOI") to summarize some of the key terms upon which the Village of Oakfield, with offices at 37 Main Street Oakfield, New York 14125 ("Village") on behalf of the Village Trustees, the Genesee County Economic Development Center ("GCEDC"), an industrial development agency formed under Section 18-A of the New York State General Municipal Law, and STAMP Sewer Works, Inc. ("SSW"), a domestic transportation corporation, SSW together with GCEDC with offices located at 99 MedTech Drive, Suite 106, Batavia, New York 14020, (collectively as the "Parties" and individually as a "Party") would be willing to work together on the possible design, construction and operation of a new force main sewer line from the STAMP Site to the Village of Oakfield Waste Water Treatment Facility ("Oakfield WWTF") to provide wastewater treatment services to STAMP.

Please note, this LOI constitutes a non-binding expression of intent by the Parties and any final and binding agreements shall be subject to the preparation, negotiation and execution of definitive binding legal documents (hereinafter called the "Definitive Agreement"). Subject to the foregoing limitations, it is the Parties' intention that the Definitive Agreement will contain the following terms and conditions:

1. Plan. SSW currently intends to build an wastewater treatment plant at the STAMP Site and associated force main to discharge post-treated sanitary effluent and post-treated process water to Oak Orchard Creek in the Town of Shelby. For various reasons, GCEDC and SSW are exploring other solutions to provide permanent wastewater treatment services to the first two tenants at STAMP, one of whom is currently under construction and the other of whom is expected to start construction in the next few weeks. The Parties will explore and work together on the possible design, construction and operation of a new force main sewer line (the "Sewer Line") to facilitate the transport of wastewater from the STAMP Site for treatment at the Oakfield WWTF prior to discharge (the "Project").

2. Sewer Route. The GCEDC and SSW will work together with the Village to evaluate and present routing options for the Sewer Line. After consultation, the GCEDC and SSW will present a preferred route of the Sewer Line to the Village, upon which GCEDC and SSW and the Village will work to finalize the route of the Sewer Line.
3. Oakfield WWTF Initial Allocation of Treatment Capacity to STAMP. The Village will reserve an initial treatment capacity of twenty thousand (20,000) gallons per day within the Oakfield WWTF for current and future tenants at the STAMP Site. The Parties will work together to confirm that the Oakfield WWTF has sufficient existing capacity to handle the initial treatment capacity without substantial upgrades and undue additional stress to the Oakfield WWTF. To the extent upgrades or improvements are required, GCEDC and SSW shall be responsible for all costs associated with same and will pay the Village of Oakfield for invoices submitted within 30 days for reasonable engineering costs that the Village might incur relative to evaluating and/or making improvements to meet the initial treatment capacity.
4. Oakfield WWTF Future Allocation of Treatment Capacity to STAMP. The Parties will monitor and evaluate the overall capacity at the Oakfield WWTF and will work together to determine whether the Oakfield WWTF can provide additional treatment capacity to STAMP including any necessary additional improvements relative to same. To the extent upgrades or improvements are required, GCEDC and SSW shall be responsible for all costs associated with same and will pay the Village of Oakfield for invoices submitted within 30 days for reasonable engineering costs that the Village might incur relative to evaluating and/or making improvements to meet the initial treatment capacity.
5. Phosphorous Treatment. In connection with the proposed initial allocation of treatment capacity, GCEDC and SSW will propose to design and install, improvements to the WWTF to provide for facilities to reduce phosphorus levels in post-treated effluent. GCEDC and SSW shall be responsible for all costs associated with same and will pay the Village of Oakfield for invoices submitted within 30 days for reasonable engineering costs that the Village might incur relative to evaluating and/or making improvements to accommodate the phosphorus reduction.
6. Project Implementation; Ownership and Maintenance of the Sewer Line. The GCEDC and SSW will be responsible for implementing the Project. The Village will not have the ability to connect into the Sewer Line or otherwise utilize the Sewer Line to transport sewage to the Oakfield WWTF. The SSW will be responsible for maintaining the Sewer Line up to the point that the Sewer Line connects into the Oakfield WWTF system.
7. STAMP Service Agreement. In conjunction with the development of Definitive Agreements, SSW and the Village will enter into a service agreement to provide the STAMP Site with the wastewater treatment services contemplated under this LOI.
8. Consultation and Cooperation. The Parties will attend periodic meetings at mutually agreeable times to confer about the progress of the Parties' activities in connection to the Plan identified in Section 1 of this LOI. The Parties will cooperate with one another, in

good faith, to effectuate the Plan, and each Party will take such, and to execute and deliver to one another such documents, as one Party may reasonably request of the other, so as to carry out more effectively and completely the purposes of the Definitive Agreement. Each Party will bear its own costs in consulting and cooperating with the other.

9. Definitive Agreements Required. This LOI reflects the preliminary non-binding concepts with respect to certain terms. No Party will have any legal obligation arising out of this LOI or otherwise, to any other Party or any other person or entity by reason of this LOI or any other matter contemplated hereby or giving rise hereto, unless and until the parties execute Definitive Agreements and then only to the extent set forth in the Definitive Agreements. If so executed, the Definitive Agreements shall supersede the terms and conditions of this LOI to the extent therein provided, and will contain such terms, conditions, covenants, representations and warranties related to the matters contemplated under this LOI as the Parties may mutually agree upon. The Parties hereby acknowledge that the Definitive Agreements must make provision for a number of matters which are material to the matters contemplated under this LOI and to which the Parties have not yet agreed.
10. Not a Contract or an Option. This LOI shall not be deemed a contract or an option and shall not be binding on the Parties. The purpose of this LOI is to identify preliminary areas of agreement to enable the Parties to work together on the possible design, construction and operation of a new force main sewer line from the STAMP Site to the Oakfield WWTF to provide wastewater treatment services to STAMP and the preparation of a more complete document between the parties containing all of the terms of binding Definitive Agreements.
11. This LOI shall terminate at the earlier of April 15, 2025 or within Sixty (60) days after written notice by either party to terminate this LOI is received.

If the foregoing meets with your approval, kindly so signify by signing and returning the enclosed duplicate copy of this LOI, whereupon this LOI shall constitute a letter of intent between the Parties in accordance with the terms and provisions set forth above.

ACCEPTED AND AGREED TO:

Genesee County Economic Development Center

By: _____
Name: _____
Title: _____
Date: _____, 2024

STAMP Sewer Works, Inc.

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By: _____
Name: _____
Title: _____
Date: _____, 2024

The Village of Oakfield, New York

By: _____
Name: _____
Title: _____
Date: _____, 2024

DRAFT

Resolution to terminate the Letter of Resolution

Discussion: The GCEDC has a Letter of Resolution in place for projects looking to locate at the STAMP site. This agreement was signed by SHPO and NYSDEC. GCEDC finds that, despite good-faith efforts to resolve the dispute, NYSDEC has been unable to resolve the dispute as required by Section 4(a) of the LOR.

Fund Commitment: None.

Committee Action Request: Recommend to full Board authorization to terminate the LOR.

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency" or "GCEDC") was convened in public session at the offices of the Agency located at 99 MedTech Drive, Suite 106, City of Batavia, County of Genesee, New York, on May 2, 2024, at ____:00 __p.m., local time.

The meeting was called to order by the _____ and, upon roll being called, the following members of the Agency were:

PRESENT:

Peter Zeliff, Chairman
Matthew Gray
Craig Yunker
Paul J. Battaglia
Chandy Kemp
Kathleen Manne
Marianne Clattenburg

ABSENT:

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Steve Hyde	President & CEO
Mark Masse	Senior Vice President of Operations
Matthew Fitzgerald	Legal Counsel

The attached resolution no. ____ was offered by _____, seconded by _____:

Resolution No. ___ - ___ - ___

RESOLUTION TO TERMINATE THE LETTER OF RESOLUTION BETWEEN THE NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION, THE NEW YORK STATE OFFICE OF PARKS, RECREATION, AND HISTORIC PRESERVATION, AND THE GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER REGARDING THE WESTERN NEW YORK SCIENCE & TECHNOLOGY ADVANCED MANUFACTURING PARK, TOWN OF ALABAMA, GENESEE COUNTY, NEW YORK

WHEREAS, the Genesee County Industrial Development Agency d/b/a the Genesee County Economic Development Corporation (“GCEDC”), in conjunction with the Genesee Gateway Local Development Corporation (“GGLDC”), the non-profit real estate affiliate of the GCEDC, STAMP Sewer Works Inc. (“SSW”), and STAMP Water Works Inc. (“SWW”), have been working on the development of the Western New York Science & Technology Advanced Manufacturing Park (“STAMP” or the “Project”), an advanced manufacturing technology campus on approximately 1,262 acres located on the west side of New York State Route 63/77, approximately five miles north of the I-90/New York State Thruway in the Town of Alabama, New York; and

WHEREAS, in order to facilitate the New York State Department of Environmental Conservation’s (“NYSDEC”) compliance with the New York State Historic Preservation Act (“SHPA”), GCEDC executed a Letter of Resolution dated March 23, 2021 (“LOR”) with NYSDEC and the New York State Office of Parks, Recreation, and Historic Preservation (“SHPO”) agreeing that the Project will be implemented in accordance with certain stipulations that consider the impacts of the Project on historic properties; and

WHEREAS, pursuant to the LOR, if any signatory to the LOR determines that its terms will not or cannot be carried out, that signatory shall immediately confer with the others to attempt to resolve the dispute through the LOR’s dispute resolution procedure or through an amendment; and

WHEREAS, the LOR’s dispute resolution procedure provides that if any signatory to the LOR objects to the way the terms of the LOR are implemented, the NYSDEC shall consult with others it deems appropriate to resolve the objection, prepare a written response that considers any timely advice or comments from the signatories regarding the dispute and provide each with a copy of this written response, and then proceed according to its final decision; and

WHEREAS, pursuant to the LOR, if within thirty (30) days a dispute cannot be resolved or an agreement on an amendment cannot be reached, any signatory may terminate the LOR upon written notification to the other signatories; and

WHEREAS, GCEDC emailed a letter to NYSDEC, SHPO, and the Tonawanda Seneca Nation (“Nation”) on March 29, 2024 (“**Objection Letter**”) objecting to the way the terms of the LOR are being implemented and asking NYSDEC to consult with all parties it deems appropriate to resolve GCEDC’s objections; and

WHEREAS, over thirty (30) days have elapsed since the GCEDC sent its Objection Letter to NYSDEC, SHPO, and the Nation, and NYSDEC has failed to resolve the dispute giving rise to the Objection Letter.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER AS FOLLOWS:

Section 1. Based upon a thorough review and examination of the LOR, including all of the information and arguments raised in the Objection Letter, the GCEDC affirms that a dispute exists as to the interpretation of the LOR. Specifically, GCEDC finds that, while NYSDEC and SHPO have previously accepted and approved five (5) different Initial Assessments for five (5) major projects at STAMP without requiring GCEDC to complete portions of the Nation’s Traditional Cultural Property study, NYSDEC has nevertheless fundamentally altered its interpretation of the requirements of the LOR in such a way as to now require GCEDC to do so. For the reasons set forth in the Objection Letter, NYSDEC’s new interpretation of the LOR is inconsistent with the clear language of the LOR, the requirements of SHPA, and the longstanding practice of the parties in implementing the requirements of the LOR.

Section 2. GCEDC finds that, despite good-faith efforts to resolve the dispute, NYSDEC has been unable to resolve the dispute as required by Section 4(a) of the LOR.

Section 3. Consistent with Section 7(a) of the LOR, the GCEDC hereby terminates the LOR.

Section 4. The officers, employees and agents of the GCEDC are hereby authorized and directed for and in the name and on behalf of the GCEDC to do all other acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the GCEDC with all of the terms, covenants and provisions of the documents executed for and on behalf of the GCEDC.

Section 5. This Resolution, which is adopted by a majority vote of the GCEDC shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

Peter Zeliff	VOTING	_____
Matthew Gray	VOTING	_____
Paul Battaglia	VOTING	_____
Marianne Clattenburg	VOTING	_____
Chandy Kemp	VOTING	_____
Kathleen Manne	VOTING	_____
Craig Yunker	VOTING	_____

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK)
) SS.:
COUNTY OF GENESEE)

I, the undersigned (Assistant) Secretary of the Genesee County Industrial Development Agency d/b/a the Genesee County Economic Development Center (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the Agency, including the Resolution contained therein, held on May 2, 2024 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this ___ the day of May, 2024.

(Assistant) Secretary

Acceptance of Draft Grant Disbursement Agreement (GDA) with New York State Empire State Development for \$56 million

Discussion: The GCEDC has received the draft GDA for that spells out the terms and conditions for the disbursement of the \$56 million FAST NY award for site infrastructure at STAMP. These terms and conditions are consistent with previous GDA's and discussions with NYS ESD.

Fund Commitment: None.

Committee Action Request: Recommend to full Board authorization to sign the final GDA upon receipt.

DRAFT 4-16-24

CAPITAL GRANT

This **GRANT DISBURSEMENT AGREEMENT (“Agreement”)** includes all exhibits and attachments hereto and is made on the terms and by the parties listed below and relates to the Project described below:

**NEW YORK STATE
URBAN DEVELOPMENT
CORPORATION d/b/a
EMPIRE STATE DEVELOPMENT
 (“ESD” or “GRANTOR”):**

95 Perry Street, Suite 500
Buffalo, NY 14203
Contact: Jean Williams, Sr. Director, WNY Projects
Phone: (716) 846-8243
E-mail: jean.williams@esd.ny.gov

THE GRANTEE:

Genesee County Industrial Development Agency
99 MedTech Drive, Suite 106
Batavia, NY 14020
Contact: Mark A. Masse, SR VP of Operations
Phone: (585) 343-4866
E-mail: gcedc@gcedc.com
Federal Taxpayer ID#: 16-1139027

PROJECT NAME: Genesee Co IDA/GCEDC FAST NY - Track C Capital

PROJECT LOCATION: 6758 Alleghany Road, Basom

PROJECT NUMBER: 137,587

GRANT AMOUNT: \$56,000,000

FUNDING SOURCE: FAST NY (New York Works EDF 2022-23)

ESD APPROVAL DATE: March 28, 2024

PACB APPROVAL DATE: PACB approval to be obtained prior to the execution of the Grant Disbursement Agreement

EXPIRATION DATE: December 31, 2028

TERMS AND CONDITIONS

1. The Project

The Grantee shall:

- (a) complete the project as set forth in the ESD General Project Plan attached hereto as Exhibit A (the "Project").
- (b) comply with the design and construction requirements attached hereto as Exhibit B.

2. Employment Goals & Reporting

- (a) The Grantee represents and warrants that it currently employs not less than the Baseline Employment (as hereinafter defined) set forth in Exhibit C to this Agreement and that it shall (i) achieve the employment goals as set forth in Exhibit C by retaining existing or hiring new Full-time Permanent Employees or (ii) repay a portion of the Grant as set forth in Exhibit C.
- (b) For purposes of this Agreement, a Full-time Permanent Employee shall mean (i) a full-time, permanent, private-sector employee on the Grantee's payroll, who has worked at the Project Location for a minimum of thirty-five hours per week for not less than four consecutive weeks and who is entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties; or (ii) two part-time, permanent, private-sector employees on Grantee's payroll, who have worked at the Project Location for a combined minimum of thirty-five hours per week for not less than four consecutive weeks and who are entitled to receive the usual and customary fringe benefits extended by Grantee to other employees with comparable rank and duties. Baseline Employment shall mean the number of Full-time Permanent Employees set forth in Exhibit C.
- (c) Grantee shall submit, by February 1 of each year during the term of this Agreement, the Employment Reporting Form attached hereto as Exhibit H, indicating the average number of Grantee's Full-time Permanent Employees for the 12 month period ending as of December 31 of the prior year. Full-time Permanent Employee Count, for each calendar year during the term of this Agreement, shall mean the greater of (i) the average number of Full-time Permanent Employees for the prior calendar year, computed by adding the number of Full-time Permanent Employees as of the Grantee's last payroll date in the months of March, June, September and December and dividing that sum by 4, or (ii) the number of Full-time Permanent Employees as of the Grantee's last payroll date in December of such year.

3. Conditions Precedent to Disbursement of the Grant

No grant funds shall be disbursed unless the Grantee is in compliance with the Terms and Conditions of this Agreement, including, but not limited to, Exhibit E (Disbursement Terms), and the following conditions have been satisfied (and as to 3(d) and 3(e) below continue to be satisfied prior to each disbursement):

- (a) If the Grant Amount exceeds \$100,000, or if, as described in Exhibit A, it is expected that there will be additional grants that in the aggregate exceed \$100,000, ESD has received an opinion of Grantee's counsel, in substantially the form appended to this Agreement as Exhibit D.
- (b) Any necessary approval has been issued by the Director of the Budget of the State of New York, and the Grant funds have been received by ESD.
- (c) ESD has received a commitment fee, plus out-of-pocket expenses incurred by ESD in the making of the Grant, if any, as set forth in Exhibit E.
- (d) There have been no materially adverse changes in the financial condition of the Grantee since the date of submission of its application to ESD.
- (e) The Grantee employs at least the Baseline Employment as evidenced by the Employment Reporting Form attached hereto as Exhibit H.

4. Disbursement and Recapture Terms

Subject to the terms and conditions contained in this Agreement, ESD shall disburse the Grant to the Grantee as follows:

- (a) ESD shall reimburse the Grantee for Project expenditures incurred by the Grantee as set forth in Exhibit E to this Agreement. Disbursements will be made upon submittal to ESD of a Payment Requisition Form, together with such supporting documentation as ESD may require, in the form attached to this Agreement as Exhibit F and its attachments, and Exhibit H.
- (b) In no event will ESD make any payment which would cause ESD's aggregate disbursements to exceed the Grant Amount.
- (c) The Grant, or a portion thereof, may be subject to recapture by ESD as provided in Exhibit C.

5. Non Discrimination and Contractor & Supplier Diversity

The Grantee will comply with ESD's Non-Discrimination and Contractor & Supplier Diversity policies set forth in Exhibit G to this Agreement.

6. No Liability of ESD

ESD shall not in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the Project and the Grantee hereby agrees to defend, indemnify and hold harmless ESD, the State and their respective agents, officers, employees and directors (collectively, the "Indemnitees") from and against any and all such liability other than that caused by the gross negligence or the willful misconduct of the Indemnitees.

7. Responsibility Provisions

- (a) The Grantee shall at all times during the Agreement term remain responsible. The Grantee agrees, if requested by the President and Chief Executive Officer of ESD or his or her designee, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.
- (b) The President and Chief Executive Officer of ESD or his or her designee, in his or her sole discretion, reserves the right to suspend any or all activities under this Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Grantee. In the event of such suspension, the Grantee will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Grantee must comply with the terms of the suspension order. Activities under this Agreement may resume at such time as the President and Chief Executive Officer of ESD or his or her designee issues a written notice authorizing a resumption of performance under this Agreement.
- (c) Upon written notice to the Grantee, and a reasonable opportunity to be heard with appropriate ESD officials or staff, this Agreement may be terminated by the President and Chief Executive Officer of ESD or his or her designee at the Grantee's expense where the Grantee is determined by the President and Chief Executive Officer of ESD or his or her designee to be non-responsible. In such event, the President and Chief Executive Officer of ESD or his or her designee may complete the requirements of this Agreement in any manner he or she deem advisable and pursue available legal or equitable remedies for breach.

8. Representations, Warranties and Covenants

The Grantee represents, warrants and covenants that:

- (a) It has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder.
- (b) This Agreement was duly authorized, executed and delivered by the Grantee and is binding and enforceable against the Grantee in accordance with its terms.
- (c) It is a duly organized corporation, validly existing and in good standing under the laws of the State of its incorporation, has the corporate power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged and is duly qualified as a foreign corporation and in good standing under the laws of each other jurisdiction in which such qualification is required and shall maintain its corporate existence in good standing in each such jurisdiction.
- (d) There are no actions, suits or proceedings or, to the knowledge of Grantee, threatened against, or affecting Grantee before any court, governmental entity or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties or business of the Grantee, except as may have been disclosed in writing to ESD.
- (e) Grantee is in compliance and shall continue to comply in all material respects with all material applicable laws, rules, regulations and orders.
- (f) The information contained in the application submitted by the Grantee in connection with the project and the Grant, as such application may have been amended or supplemented (the "Application"), is incorporated herein by reference in its entirety. In the event of an inconsistency between the descriptions, conditions, and terms of this Agreement and those contained in the Application, the provisions of this Agreement shall govern. The Grantee hereby acknowledges that ESD has relied on the statements and representations made by the Grantee in the Application in making the Grant. The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Application or otherwise in connection with the Grant and, except as otherwise disclosed in writing to ESD, there has been no adverse material change in the financial condition of Grantee from the date of submission of the Application to the date hereof and that all other the information contained in the Application continues on the date hereof to be materially correct and complete.
- (g) The Grantee covenants that it will neither hold itself out as, nor claim to be an officer, employee, agent or representative of ESD or the State by reason hereof, and that it will not by reason thereof, make any claim, demand or application for any right or privilege applicable to an officer, employee, agent or representative of ESD or the

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State, including without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

- (h) Neither the Grantee nor any of the members of its Board of Directors or other governing body or its employees have given anything of value to influence any official act or the judgment of any person in the award of the Grant or the performance of any of the terms of this Agreement.
- (i) It shall maintain business operations at the Project Location for the term of this Agreement.
- (j) The Grant shall be used solely for Project expenses in accordance with the terms and conditions of this Agreement.
- (k) The Grantee is solely responsible and has sufficient funding for all Project costs in excess of the Grant.
- (l) Grantee will use ESD grant funds, and submit payment requisitions, exclusively for eligible expenses related to capital works or purposes in accordance with IRS rules and regulations relating to ESD's bonds and in accordance with the New York Debt Reform Act. Grantee acknowledges that grant funds must be used solely for authorized capital purposes and not for operating expenses or other working capital items or non-capital purposes, irrespective of whether the funds are still used for the benefit of the Project. Grantee acknowledges that the consequences of breaching this covenant could result in violations of state law and/or large bond issuances being treated as taxable instead of tax exempt for federal and state tax purposes, loss of certain federal subsidies to the state, adverse ratings changes for such bonds, and disproportionate negative financial consequences to the state and bondholders. Grantee recognizes its financial obligations, risks and liabilities for breach of this covenant. ESD may, from time to time, request information from Grantee to confirm its compliance with this covenant and Grantee acknowledges its obligation under Section 9 (a) (ii) of the GDA to provide information upon request to ESD.
- (m) The Grant shall not be used in any manner for any of the following purposes:
 - (i) political activities of any kind or nature, including, but not limited to, furthering the election or defeat of any candidate for public, political or party office, or for providing a forum for such candidate activity to promote the passage, defeat, or repeal of any proposed or enacted legislation;
 - (ii) religious worship, instruction or proselytizing as part of, or in connection with, the performance of this Agreement;
 - (iii) payments to any firm, company, association, corporation or organization

in which a member of the Grantee's Board of Directors or other governing body, or any officer or employee of the Grantee, or a member of the immediate family of any member of the Grantee's Board of Directors or other governing body, officer, or employee of the Grantee has any ownership, control or financial interest. For purposes of this paragraph, "ownership" means ownership, directly or indirectly, of more than five (5) percent of the assets, stock, bonds or other dividend or interest bearing securities; and "control" means serving as a member of the board of directors or other governing body, or as an officer in any of the above; and

(iv) payment to any member of Grantee's Board of Directors or other governing body of any fee, salary or stipend for employment or services, except as may be expressly provided for in this Agreement.

(n) Grantee is in compliance and shall continue to comply with Section 7 of this Agreement.

9. Default and Remedies

(a) Each of the following shall constitute a default by the Grantee under this Agreement:

- (i) Failure to perform or observe any obligation or covenant of the Grantee contained herein, other than an employment default as set forth in (iv) below, to the reasonable satisfaction of ESD and within the time frames established under this Agreement.
- (ii) Failure to comply with any request for information reasonably made by ESD to determine compliance by the Grantee with the terms of this Agreement or otherwise reasonably requested by ESD in connection with the Grant.
- (iii) The making by the Grantee of any false statement or the omission by the Grantee to state any material fact in or in connection with this Agreement or the Grant.
- (iv) Failure of the Grantee, for any time period, to meet the minimum employment goals required by Exhibit C.
- (v) A default beyond any applicable grace period by the Grantee, or any entity which Grantee directly or indirectly controls, is controlled by, or is under common control with, under any other agreement with ESD.
- (vi) Any manifestation, on the part of the Grantee, of an intention either: (x) to terminate and/or (y) to restructure, under the terms of any bankruptcy or insolvency statute or law, its business at the Project Location. This includes, without limitation, the announced or actual cessation of business activities at

the Project Location, the initiation of proceedings under any dissolution statute, or the execution of an assignment for the benefit of creditors, or the solicitation of any composition and/or arrangement with creditors, or the issuance of "closing" or "termination" notices to employees under any state or federal statute, or the filing of any voluntary petition under any chapter of the United States Bankruptcy Code, or the failure by the Grantee to obtain the dismissal, within sixty (60) days of filing, of any involuntary proceeding brought under any chapter of the United States Bankruptcy Code.

- (vii) If the number of the Grantee's Full-Time Permanent Employees, as that term is defined in this Agreement, that are situated at the Project Location as of the Grantee's last payroll date on or prior to the end of any quarter (with the quarters being those the quarterly dates of March 31, June 30, September 30 and December 31, as set forth in the Report of Employment that is annexed as Exhibit H to this Agreement) is less than fifty percent (50%) of the number of Full Time-Permanent Employees, situated at the Project Location, required in accordance with the Employment Goals that are to be achieved as of the next Reporting Date, as specified in Exhibit C.
 - (viii) Failure by the Grantee, for any period of time, to comply with Section 7 of this Agreement.
- (b) Upon the serving of notice to the Grantee of the occurrence of a default (which notice shall specify the nature of the default), ESD shall have the right to terminate this Agreement, provided however, that if the default is pursuant to paragraph 9(a)(i) or 9(a)(ii), no default shall be deemed to have occurred if Grantee cures such default within ten (10) days of notice of default from ESD, or if the default pursuant to paragraph 9(a)(i) or 9(a)(ii) cannot be reasonably cured within such ten day period, Grantee commences to cure such default within the ten day cure period and cures the default within ninety (90) days thereafter, provided further that ESD shall not be obligated to make any disbursements during any such cure period. Defaults occurring under the terms and provisions of paragraph 9(a)(iii), 9(a)(iv), 9(a)(v), 9(a)(vi) and 9(a)(vii) are not subject to the cure provisions provided herein.
- (c) Upon termination of this Agreement, ESD may (i) withhold any Grant proceeds not yet disbursed and (ii) require repayment of Grant proceeds disbursed to the Grantee in accordance with Exhibit C of this Agreement. Notwithstanding the foregoing, if ESD determines that any Grant proceeds had previously been released based upon fraudulent representations or other willful misconduct, ESD may require repayment of all funds and may refer the matter to the appropriate authorities for prosecution. ESD shall be entitled to exercise any other rights and seek any other remedies provided by law.

10. Term

The term of this Agreement shall commence on the date hereof and expire on the Expiration Date, as set forth on the first page of this Agreement.

11. Books and Records; Project Audit

- (a) The Grantee will maintain accurate books and records concerning the project for the term of this Agreement and for three (3) years from the expiration or earlier termination of this Agreement and will make those books and records available to ESD, its agents, officers and employees during Grantee's business hours upon reasonable request.
- (b) ESD shall have the right, upon reasonable notice, to conduct, or cause to be conducted, one or more audits, including field inspections, of the Grantee to assure that the Grantee is in compliance with this Agreement. This right to audit shall continue for three (3) years following the expiration or earlier termination of this Agreement.

12. Maintenance of Insurance

Grantee shall maintain in full force and effect insurance, including, but not limited to, the insurance described hereafter, in such amounts and covering such risks as Grantor may require from time to time.

- (a) The Grantee shall keep the buildings at the Project Location and the building equipment insured against: (i) loss by fire, (ii) additional perils customarily covered under an all-risk policy and (iii) flood hazard, if the Project Location is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended. The insurance required in this paragraph (a) shall provide coverage for an amount not less than the full replacement value of the buildings at the Project Location and the building equipment, or such other amount as the Grantor may reasonably require, provided that (i) the amount of insurance coverage shall be in an amount sufficient to satisfy, at all times, any co-insurance requirements, and (ii) the amount of any flood hazard insurance shall not exceed the maximum amount of coverage available under the National Flood Insurance Act.
- (b) When and to the extent required by the Grantor, the Grantee shall maintain in full force and effect insurance against (i) loss of rental income, (ii) loss of business income, (iii) damages to boiler, and (iv) any other risk as is customary in the industry of the Grantee. The insurance required in this paragraph (b) shall provide coverage in an amount satisfactory to Grantor.

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- (c) The Grantee shall maintain Commercial General Liability Insurance providing both bodily injury (including death) and property damage insurance in a limit not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate and Three Million Dollars (\$3,000,000) umbrella. In addition, if the grant contemplates the purchase, construction or renovation of any buildings or equipment, the Recipient shall keep the buildings at the Project Location and the building equipment insured against: (i) loss by fire, (ii) additional perils customarily covered under an all-risk policy and (iii) flood hazard, if the Project Location is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended.
- (d) All insurance required in this Section shall be issued by companies authorized to do business in the State of New York, satisfactory to Grantor pursuant to policies satisfactory to Grantor in form and substance. Without limiting the generality of the foregoing, the policies of insurance required hereby shall provide for thirty (30) days, or ten (10) days for non-payment, prior written notice of cancellation to Grantor.
- (e) The Grantee shall give prompt written notice to the Grantor in the event of substantial damage to the Project Location by reason of fire or other hazard or casualty.
- (f) Notwithstanding the provisions of Subdivision 4 of Section 254 of the Real Property Law, the Grantor shall be entitled to retain and apply the proceeds of any insurance required hereby to the payment of any obligations or, in the sole discretion of the Grantor, apply any or all such proceeds to the cost of restoration of the Project Location, in which case the Grantee shall proceed with reasonable diligence to repair, replace or rebuild the Project Location to substantially their condition prior to such damage in full compliance with all legal requirements.
- (g) The Grantee shall provide the Grantor with copies of all certificates for the required insurance coverages in form and substance satisfactory to the Grantor. In addition, the Grantee shall provide the Grantor with copies of renewal certificates or temporary binders in the event renewal policies have not been issued, in a timely manner. The Grantee must, in any event, provide Grantor with satisfactory confirmation of renewal coverage by the renewal date.
- (h) In the event that the Grantee fails to maintain the insurance required hereby, the Grantor may obtain such insurance and pay the premiums therefor and the Grantee shall, on demand, reimburse the Grantor for any insurance premiums paid, together with interest thereon computed at the highest rate per annum allowable under New York State law.
- (i) The Grantee will not take any action, or permit any condition to exist, with respect to the Project Location which may, in any manner, partially or wholly invalidate the insurance on the Project Location required hereby.

13. Survival of Provisions

It is agreed that: (a) the provisions of Sections 6, 8(g), (j) and (l) and 9, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 22 (except insofar as any of the aforesaid Sections have been waived in accordance with the terms of Exhibit I to this Agreement) shall survive the expiration or early termination of this Agreement; and (b) such expiration or early termination shall not serve to limit, alter or modify any of the Grantee's obligations or responsibilities under the aforesaid Sections, and/or ESD's rights under such Sections, referenced in subsection (a) of this Section 13 of this Agreement. It is further agreed, moreover, that notwithstanding the expiration or early termination of this Agreement, ESD shall nevertheless retain the right to pursue, through and until the expiration of any applicable period of limitations established under the statutory or common law of the State of New York, any claim or claims arising from any Section of this Agreement, including but not limited to the above referenced Sections 6, 8(g), (j) and (l) and 9, 11, 12, 13, 14, 15, 16, 17, 18, 21 and 22 of this Agreement, and the expiration or early termination of this Agreement shall not constitute a defense to any such timely filed claim or cause of action that is asserted on ESD's behalf.

14. Notices

- (a) All notices, demands, requests or other communications permitted or required hereunder shall be in writing and shall be transmitted either:
 - (i) via certified or registered United States mail, return receipt requested;
 - (ii) by facsimile transmission;
 - (iii) by personal delivery;
 - (iv) by expedited delivery service; or
 - (v) by e-mail.

Such notices shall be addressed as follows or to such different addresses as the parties may from time-to-time designate:

Empire State Development

Name: Jean Williams
Title: Senior Director, WNY Projects
Address: 95 Perry Street, Suite 500, Buffalo, NY 14203
Telephone Number: (716) 846-8243
E-Mail Address: jean.williams@esd.ny.gov

With a copy to:

Title: General Counsel
Address: 633 Third Avenue, 34th Floor, New York, NY 10017
Telephone Number: (212) 803-3750
Facsimile Number: (212) 803-3975

Genesee County Industrial Development Agency

Name: Mark A. Masse
Title: SR VP of Operations
Address: 99 MedTech Drive, Suite 106, Batavia, NY 14020
Telephone Number: (585) 343-4866
E-Mail Address: gcedc@gcedc.com

- (b) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of mailing to the address provided herein, or in the case of facsimile transmission or email, upon receipt of a record, by the sender, that such a transmission has been completed.
- (c) The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The parties agree to mutually designate individuals as their respective representatives for the purposes of receiving notices under this Agreement. Additional individuals may be designated in writing by the parties for purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

15. No Assignment

The Grantee may not assign or transfer this Agreement or any of its rights hereunder.

16. No Waiver

No waiver of any ESD's rights arising under this Agreement, or any other source, can occur unless such waiver shall be in writing and signed by ESD and such written document manifests a clear and unequivocal intent by ESD to waive its contractual or other legal rights. The term "waiver" as used herein is a term of art as used in the legal profession. ESD may not be estopped from asserting any of its legal rights, including but not limited to its rights under this agreement, unless ESD has signed a written document that clearly and unequivocally states that the other party may detrimentally rely upon the terms of such written document. Absent such written document, there shall be no estoppel against ESD and the other parties' alleged detrimental reliance shall be deemed to be unreasonable. The term "estoppel" is used herein is a term of art as used in the legal profession.

17. Integration/Modification

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements or statements relating to

such subject matter. In addition, this Agreement may be modified only by a written instrument executed by the party against whom enforcement of such modification is sought.

18. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall be construed without the aid of any presumption or other rule of law regarding construction against the party drafting this Agreement or any part of it. In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such provision(s) had never been contained herein. In the event of a conflict between the Directors' materials attached hereto as Exhibit A and any other term or condition of this Agreement, then the term or condition of this Agreement shall govern.

19. Confidentiality of Information

Information contained in reports made to ESD or otherwise obtained by ESD relating to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, provided that such information is clearly marked "Confidential" by the Grantee, will be kept confidential by ESD, to the extent such information is determined by ESD to be exempt from public disclosure under the Freedom of Information Law and not otherwise required by law to be disclosed. Notwithstanding the foregoing, ESD will not be liable for any information disclosed, in ESD's sole discretion, pursuant to the Freedom of Information Law or other applicable law, or which ESD is required to disclose pursuant to legal process.

20. Special Provisions

The Grantee shall comply with the special provisions, if any, set forth in Exhibit I.

21. Litigation Costs

The Grantee shall pay, in any action or proceeding that is commenced to enforce and/or involves the enforcement of the terms and conditions of this Agreement, all of ESD's costs including, without limitation, ESD's attorneys' fees. The Grantee shall also pay any and all of ESD's collection costs including, without limitation, its attorneys' fees.

22. Waiver

The Grantee knowingly and expressly waives the right to a trial by jury and the right to interpose any counterclaims in any action brought by ESD under the terms of this Agreement.

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Genesee Co IDA/GCEDC FAST NY - Track C Capital, Project Number 137,587

This agreement is entered into as of the latest date written below:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d/b/a EMPIRE STATE DEVELOPMENT

(Signature) Glendon McLeary, Vice President and Director, Loans and Grants

(date)

Genesee County Industrial Development Agency

DRAFT: do not sign this version

(Signature)

(Printed name and title)

(date)

Rev. 2/26/24

ESD CAPITAL GRANT DISBURSEMENT AGREEMENT

EXHIBITS

EXHIBIT A	General Project Plan
EXHIBIT B	Reports – Design & Construction Requirements
EXHIBIT C	Employment Goals & Recapture Terms
EXHIBIT D	Opinion of Counsel
EXHIBIT E	Disbursement Terms
EXHIBIT F	Payment Requisition Form
EXHIBIT F-1	Grant Utilization Request Form
EXHIBIT F-2	Financial Condition Documentation
EXHIBIT F-3	Documentation of Project Costs
EXHIBIT F-4	Capital Project Cost Affidavit
EXHIBIT G	Non-Discrimination and Contractor & Supplier Diversity – Requirements and Procedures
EXHIBIT G-1	M/WBE Participation / Equal Opportunity Policy Statement
EXHIBIT G-2	Staffing Plan
EXHIBIT G-3	Workforce Employment Utilization Report
EXHIBIT G-4	M/WBE Utilization Plan
EXHIBIT G-5	Waiver Request Form
EXHIBIT G-6	M/WBE Contractor Compliance and Payment Report
EXHIBIT H	Employment Reporting Form
EXHIBIT I	Special Provisions
EXHIBIT I-1	ESD Investment Regulations

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EXHIBIT A: GENERAL PROJECT PLAN

See Materials Attached

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EXHIBIT B: REPORTS – DESIGN & CONSTRUCTION REQUIREMENTS

See Materials Attached

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EXHIBIT C: EMPLOYMENT GOALS AND RECAPTURE TERMS

Intentionally Deleted

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EXHIBIT D: OPINION OF COUNSEL

[Letterhead of Counsel to the Grantee]

[Date]

Empire State Development
95 Perry Street, Suite 500
Buffalo, New York 14203

Attn: Jean Williams, Sr. Director, WNY Projects

Re: Genesee County Industrial Development Agency/GCEDC FAST NY - Track C Capital,
Project #137,587

Ladies and Gentlemen:

We have acted as special counsel to Genesee County Industrial Development Agency, a corporation (the "Grantee"), in connection with the execution and delivery of the Grant Disbursement Agreement dated [Date of Agreement] (the "Agreement") between New York State Urban Development Corporation d/b/a Empire State Development ("ESD") and the Grantee.

This opinion letter is being furnished to you at our client's request pursuant to Section 3(a) of the Agreement. Capitalized terms used but not defined herein shall have the meanings assigned thereto in the Agreement.

In rendering the opinions set forth herein, we have examined originals, or copies certified or otherwise identified to our satisfaction, of such documents, corporate records and other instruments as we have deemed necessary or appropriate for the purposes of this opinion letter, including (a) the Agreement, (b) the certificate of incorporation of the Grantee and (c) the by-laws of the Grantee. We have also examined and relied upon such other matters of law, documents, certificates of public officials and representations of officers and other representatives of the Grantee as we have deemed relevant, appropriate or necessary to the rendering of our opinions.

In rendering the opinions expressed below, we have assumed the legal capacity of all natural persons signing documents and that the signatures of persons signing all documents in connection with which this opinion letter is rendered are genuine, all documents submitted to us as originals or duplicate originals are authentic and all documents submitted to us as copies, whether certified or not, conform to authentic original documents. Additionally, we have assumed and relied upon the accuracy and completeness of all certificates and other statements, documents, records, financial statements and papers reviewed by us, and the accuracy and completeness of all representations, warranties, confirmations, schedules and exhibits contained in the Agreement, with respect to the factual matters set forth therein.

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As to any facts material to the opinions expressed herein that we did not independently establish or verify, we have relied upon written statements and representations of officers and other representatives of the Grantee and of certain public officials. We have also assumed and relied upon the accuracy and completeness of all certificates and other statements, representations, documents, records, financial statements and papers reviewed by us, and the accuracy and completeness of all representations, warranties and exhibits contained in the Agreement with respect to the factual matters set forth therein.

Based upon the foregoing and subject to the assumptions, qualifications and other matters set forth herein, we are of the opinion that:

1. The Grantee is validly existing and in good standing under the laws of the State of New York and has full power and authority to execute and deliver the Agreement and to perform its obligations thereunder.
2. The Agreement has been duly authorized, executed and delivered by the Grantee and (assuming its due authorization, execution and delivery by ESD) is binding on and enforceable against the Grantee in accordance with its terms, subject to applicable bankruptcy, insolvency reorganization, arrangement, liquidation, moratorium, fraudulent conveyance or transfer and other similar laws relating to or affecting creditors' rights generally from time to time in effect and to general principles of equity (regardless of whether enforcement is sought in a proceeding in equity or at law), and except as rights under the Agreement to indemnity and contribution may be limited by federal or state laws.

We are admitted to practice in the State of New York and we express no opinion as to any matters governed by any laws other than the laws of the State of New York. The opinions expressed herein that are based on the laws of the State of New York are limited to the laws generally applicable in transactions of the type covered by the Agreement.

This opinion letter is for the benefit solely of ESD and not for the benefit of any other person. We are opining herein only as of the date hereof and we undertake no, and disclaim any, obligation to advise you of any changes in any matter set forth herein, regardless of whether changes in such matters come to our attention after the date hereof. No attorney-client relationship exists or has existed with ESD by reason of our preparation, execution and delivery of this opinion letter. By providing this opinion letter and permitting reliance hereon by you, we are not acting as your counsel and have not assumed any responsibility to advise you with respect to the adequacy of this opinion letter for your purposes. This opinion letter may not be relied upon by any other person or for any other purpose or used, quoted or otherwise referred to for any other purpose.

Very truly yours,

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EXHIBIT E: DISBURSEMENT TERMS

Genesee Co IDA/GCEDC FAST NY - Track C Capital, Project #137,587

Disbursement

Subject to the terms and conditions of this Agreement and receipt of the fees as set forth below, ESD shall disburse the Grant to the Grantee as follows:

Fees due:

Commitment Fee:	\$560,000	(One percent (1%) of grant amount)
Reimbursement for out-of-pocket expenses	\$ _____	(To be determined)
TOTAL due:	\$ _____	(To be determined)

Up to \$56,000,000 will be deposited, in increments based on a 12 month cash flow projection, into an account (the "Imprest Account") at a bank mutually acceptable to ESD (as set forth in Exhibit I-1). Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require, in the form attached to this Agreement as Exhibit F and its attachments. Expenses must be incurred on or after June 1, 2023, to be considered eligible project costs. These funds will be invested as per ESD's Directors approved investment guidelines. Interest earned on the funds deposited in the Imprest Account must be returned to ESD quarterly along with copies of all bank statements, starting when the funds are deposited and continuing until all funds have been disbursed provided the Grantee is otherwise in compliance with the terms and conditions of this Agreement.

The Grantee may, no more frequently than monthly, unless otherwise approved by ESD, seek authorization to disburse funds from the Imprest Account, to pay for eligible project costs (planning, design, administration, engineering, construction/renovation, infrastructure/site work and other capital expenditures), as evidenced by invoices previously paid or due and payable, in compliance with ESD Design and Construction Requirements, and in proportion to ESD's funding share, assuming all project approvals have been completed and funds are available. Each subsequent request will include the current month's invoices and proof of payment for invoices submitted for the previous month.

Subsequent Advances, beyond the Initial Advance, are expected to be deposited into the Imprest Account based on full documentation of eligible expenses of approximately 75% of the preceding Advance and 100% of any previous Advance(s).

Any funds not utilized for eligible project costs within 24 months of the Final Advance must be returned to ESD. Also, within 24 months of the Final Advance, ESD will require full documentation of project costs minus any portion of the grant returned to ESD.

Grantee must submit all documentation for the final disbursement of the Grant by no later than April 1, 2026.

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Genesee Co IDA/GCEDC FAST NY - Track C Capital, Project # 137,587

ESD reserves the right to require additional documentation to support draw down requests.

Wire Transfer Information:

If ESD assistance is \$10,000 or greater, please provide a letter from a financial officer of the Grantee certifying to the accuracy of the following information:

Bank Name: _____

ABA #: _____

Acct. Name: _____

Acct. #: _____

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EXHIBIT F: CAPITAL GRANT PAYMENT REQUISITION FORM

Genesee Co IDA/GCEDC FAST NY - Track C Capital, Project #137,587 Disbursement Request Amount: \$ _____

ESD funds may be applied by Grantee in payment or reimbursement of the following costs:

Eligible Expenses	A: Actual Costs Incurred (this request)	B: ESD Share (this request)	C: Cumulative Amount Previously Received from ESD	D: Grant Amount (Cumulative if multi-year grant)	E: (D-C-B) Grant Balance Remaining
Planning, Design, Administration, Engineering, Construction/Renovation, Infrastructure/Site Work, Other Project Costs				\$56,000,000	
TOTAL				\$56,000,000	

CERTIFICATION

I hereby warrant and represent to Empire State Development ("ESD") that:

- 1) To the best of my knowledge, information and belief, the expenditures for which Genesee County IDA is seeking payment and/or reimbursement comply with the requirements of the Agreement between ESD and Genesee County IDA, are eligible expenses, and that the payment and/or reimbursement of expenditures for which it is seeking payment and/or reimbursement from ESD does not duplicate reimbursement or disbursement of costs and/or expenses from any other source. These findings will be subject to audit by ESD's Internal Audit Department.
- 2) I have the authority to submit this invoice on behalf of Genesee County IDA. The project, or portion thereof for which this invoice relates, has been completed in the manner outlined in the Agreement.
- 3) I hereby attach the following documents for ESD approval, in support of this requisition (note N/A if not applicable for this request):
 - Exhibit B: Design & Construction Requirements
 - Exhibit F-2: Financial Condition Documentation
 - Exhibit F-3: Project Cost Documentation
 - Exhibit G-2: Staffing Plan
 - Exhibit G-3: Workforce Employment Utilization Report
 - Exhibit G-4: M/WBE Utilization Plan
 - Exhibit G-5: Waiver Request Form
 - Exhibit G-6: M/WBE Contractor Compliance and Payment Report
 - A copy of all current policies of insurance (or certificates thereof) in full compliance with the terms and conditions of Section 12 of the Agreement
- 4) There have been no materially adverse changes in the financial condition of the Grantee, except as disclosed in writing to ESD, from the date of submission of the Application to the date hereof.
- 5) The Grantee has acted responsibly from the date of submission of the Application to the date hereof in full compliance with the terms and conditions of Section 7 of the Agreement.
- 6) Representations, Warranties and Covenants made in Section 8 of the Agreement are still true, complete and accurate, unless waived in Exhibit I of the Agreement.

Signature: _____ Print Name: _____

Title: _____ Date: _____

At any point in the course of your project, ESD would appreciate feedback regarding this ESD program. Please comment on the application, project approval, and/or payment reimbursement process or any other interactions with ESD related to the project. You may submit your feedback under separate cover to Glendon McLeary, Vice President and Director of Loans and Grants, 633 Third Avenue, NY, NY 10017. Please include your Project Number and Project Name which are listed at the top of this exhibit on your submission.

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EXHIBIT F-1: Grant Utilization Request Form ("GURF")
Withdrawal of Funds from Imprest Account
Genesee Co IDA/GCEDC FAST NY - Track C Capital, Project #137,587 (Attn: Jean Williams)

Grant Utilization of Funds Request # _____ for \$ _____

ESD funds may be applied by Grantee in payment or reimbursement of the following costs for the above-referenced project; Submit a separate form for each withdrawal request and attach current invoices due and payable.

SUMMARY OF INVOICES DUE & PAYABLE: [An Excel spreadsheet template of Exhibit F-3: Documentation of Project Cost will be provided by ESD and will be required to be attached to this form]

Table with 8 columns: GURF #, Item #, Invoice Date, Vendor, Description, Amount, Check or Wire #, Date Paid. Includes a row for [SEE ATTACHED SPREADSHEET PROVIDED BY GRANTEE] and a TOTAL row.

FUNDING STATUS

Table with 3 rows: 1 Total Project Costs, per Exhibit E (\$61,270,000); 2 Total Eligible Expenses Incurred to Date (including this request); 3 Balance to be Expended (Line 1 minus Line 2)

CERTIFICATION

I hereby warrant and represent to Empire State Development ("ESD") that:

- 1) To the best of my knowledge, information and belief, the expenditures for which the Genesee County IDA is seeking authorization comply with the requirements of the Agreement between ESD and the Genesee County IDA are Eligible Expenses, and that the payment, reimbursement, and/or approval of expenditures for which Grantee is seeking payment, reimbursement, or approval from ESD does not duplicate reimbursement or disbursement of costs and/or expenses from any other source.
2) I have the authority to submit this request on behalf of the Genesee County IDA. The required information has been submitted to ESD in the manner outlined in the Agreement.
3) I hereby attach the following documents for ESD approval, in support of this requisition.
Exhibit B: Design & Construction Requirements
Exhibit F-2: Financial Condition Documentation
Exhibit F-3: Project Cost Summary
Exhibit F-4: Capital Project Cost Affidavit
A copy of all current policies of insurance (or certificates thereof) in full compliance with the terms and conditions of Section 12 of the Agreement
4) There have been no materially adverse changes in the financial condition of the Grantee, except as disclosed in writing to ESD, from the date of submission of the Application to the date hereof.
5) Grantee is current on all reporting required by ESD, including proof of payment and submittal of earned interest and bank statements. If Grantee is not current on reporting, this request will not be considered.
6) The Grantee has acted responsibly from the date of submission of the Application to the date hereof in full compliance with the terms and conditions of Section 7 of the Agreement.

**EXHIBIT F-1: Grant Utilization Request Form ("GURF"), Continued
Withdrawal of Funds from Imprest Account**

- 7) Representations, Warranties and Covenants made in Section 8 of the Agreement are still true, complete and accurate, unless waived in Exhibit I of the Agreement.
- 8) If a capital expenditure, the Grantee is in full compliance with Section 8(l) of the Agreement.

Signature: _____ Date: _____
Genesee County Industrial Development Agency

Print Name: _____ Title: _____

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EXHIBIT F-2: FINANCIAL CONDITION DOCUMENTATION

Genesee County Industrial Development Agency's most recent financial statements dated not more than 90 days prior to the disbursement date.

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Exhibit F-3: DOCUMENTATION OF PROJECT COSTS

Project Cost Summary: Planning, Design, Administration and Engineering

**PLEASE SUBMIT EXCEL VERSION VIA EMAIL WITH EACH GURF REQUEST AND SUBSEQUENT PROOF OF PAYMENT

Genesee Co IDA/GCEDC FAST NY - Track C Capital, Project #137,587

GURF #	Item #	Invoice Date	Invoice #	Vendor	Description	Amount	Check or Wire #	Date Paid
					TOTAL:			

* Items shall be numbered 1, 2, 3, etc. Also indicate the corresponding item number clearly on any supporting documentation such as cancelled checks, bank statements and invoices. If construction is being documented with AIA forms, please be sure that all applicable sections are completed, signed & notarized. Please email the electronic version of this form to Jean.Williams@esd.ny.gov. A hard copy of this form is not required when submitting an Excel Version.

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EXHIBIT F-4: EQUITY EXPENDITURES* AND PROJECT COST** AFFIDAVIT
Genesee Co IDA/GCEDC FAST NY - Track C Capital, Project Number 137,587

*Project Cost should correspond to the total stated in Exhibit F-3

STATE OF NEW YORK)
) ss.:
COUNTY OF)

The Undersigned, being duly sworn, deposes and says:

1. I, _____, am the _____ of _____ (the "Organization"), a corporation that is duly organized and validly existing under the laws of _____, and is authorized to do business and is in good standing in the State of New York.

2. I have read and know the contents of a certain Grant Disbursement Agreement (the "Agreement") executed by and between New York State Urban Development Corporation d/b/a Empire State Development ("ESD") and the Organization dated the _____ day of _____, 20____.

3. After having read and reviewed the Agreement, invoices and payments relating thereto, statements of cost and equity, and such other documents as I consider necessary to render the certifications contained herein, I do certify, on the Organization's behalf, that the **equity* expenditures** by the Organization were incurred in the manner set forth in the Agreement and such expenditures to date were equal to or greater than _____ Dollars (\$_____).

After having read and reviewed the Agreement, invoices and payments relating thereto, statements of cost and equity, and such other documents as I consider necessary to render the certifications contained herein, I do further certify, on the Organization's behalf, that the costs for the project were incurred in the manner set forth in the Agreement, that all such costs are capital expenses in accordance with applicable state and federal law, and the **total cost of the project**** to date was equal to or greater than _____ Dollars (\$_____).

4. I make this affidavit and the certifications contained herein to induce ESD to disburse the grant under the terms of the Agreement, knowing that ESD will rely on the statements contained herein. I am aware that the swearing of a false oath is a Class A misdemeanor and may be a Class E felony.

By:
Name:
Title:

Subscribed and sworn to before me
this ____ day of _____, 20__

Notary Public

**EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH
RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

I. General Provisions

- A. Empire State Development (ESD) is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 142-144 ("MWBE Regulations") for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Recipient of the subject Grant Disbursement Agreement (the "Recipient" and the "Contract," respectively) agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to ESD, to fully comply and cooperate with the ESD in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women ("EEO") and contracting opportunities for certified minority and women-owned business enterprises ("MWBEs"). Recipient's demonstration of "good faith efforts" pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the "Human Rights Law") or other applicable federal, state or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to Section VII of this Appendix or enforcement proceedings as allowed by the Contract.

II. Contract Goals

- A. For purposes of this Contract, the ESD hereby establishes an overall goal of **30%** for Minority and Women-Owned Business Enterprises ("MWBE") participation based on the current availability of qualified MBEs and WBEs.
- B. For purposes of providing meaningful participation by MWBEs on the Contract and achieving the Contract Goals established in Section II-A hereof, Recipient should reference the directory of New York State Certified MWBEs found at the following internet address:

<http://www.esd.ny.gov/mwbe.html>

Additionally, Recipient is encouraged to contact the Division of Minority and Woman Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

- C. Where MWBE goals have been established herein, pursuant to 5 NYCRR §142.8, Recipient must document "good faith efforts" to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the Contract. In accordance with Section 316-a of Article 15-A and 5 NYCRR §142.13, the Recipient acknowledges that if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals set forth in the Contract, such a finding

**EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH
RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

constitutes a breach of contract and the Recipient shall be liable to the ESD for liquidated or other appropriate damages, as set forth herein.

III. Equal Employment Opportunity (EEO)

- A. Recipient agrees to be bound by the provisions of Article 15-A and the MWBE Regulations promulgated by the Division of Minority and Women's Business Development of the Department of Economic Development (the "Division"). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
- B. Recipient shall comply with the following provisions of Article 15-A:
1. Recipient and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.
 2. The Recipient shall submit an EEO policy statement to the ESD with the executed Contract.
 3. If Recipient or subcontractor does not have an existing EEO policy statement, the ESD may provide the Recipient or subcontractor a model statement (see EXHIBIT G-1: M/WBE Participation/Equal Employment Opportunity Policy Statement).
 4. The Recipient's EEO policy statement shall include the following language:
 - a. The Recipient will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.
 - b. The Recipient shall state in all solicitations or advertisements for employees that, in the performance of the Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
 - c. The Recipient shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Recipient's obligations herein.
 - d. The Recipient will include the provisions of Subdivisions (a) through (c) of this Subsection 4 and Paragraph "E" of this Section III, which provides for relevant

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

provisions of the Human Rights Law, in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

C. EXHIBIT G-2: Staffing Plan

To ensure compliance with this Section, the Recipient shall submit a staffing plan to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and Federal occupational categories. Recipients shall complete the Staffing plan form and submit it as part of the executed Contract.

D. EXHIBIT G-3: Work Force Employment Utilization Report ("Workforce Report")

1. Once a contract has been awarded and during the term of Contract, Recipient is responsible for updating and providing notice to the ESD of any changes to the previously submitted Staffing Plan. This information is to be submitted on a quarterly basis during the term of the contract to report the actual workforce utilized in the performance of the contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Workforce Report must be submitted to report this information.
2. Separate forms shall be completed by Recipient and any subcontractor performing work on the Contract.
3. In limited instances, Recipient may not be able to separate out the workforce utilized in the performance of the Contract from Recipient's and/or sub's total workforce. When a separation can be made, Recipient shall submit the Workforce Report and indicate that the information provided related to the actual workforce utilized on the Contract. When the workforce to be utilized on the contract cannot be separated out from Recipient's and/or subcontractor's total workforce, Recipient shall submit the Workforce Report and indicate that the information provided is Recipient's total workforce during the subject time frame, not limited to work specifically under the contract.

- E. Recipient shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. Recipient and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

- A. The Recipient represents and warrants that Recipient has submitted an MWBE Utilization Plan (EXHIBIT G-4) either prior to, or at the time of, the execution of the Contract.

EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES

- B.** Recipient agrees to use such MWBE Utilization Plan for the performance of MWBEs on the Contract pursuant to the prescribed MWBE goals set forth in Section II-A of this Exhibit.
- C.** Recipient further agrees that a failure to submit and/or use such MWBE Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, ESD shall be entitled to any remedy provided herein, including but not limited to, a finding of Recipient non-responsiveness.

V. Waivers

- A.** For Waiver Requests Recipient should use the Waiver Request Form (EXHIBIT G-5).
- B.** If the Recipient, after making good faith efforts, is unable to comply with MWBE goals, the Recipient may submit a Request for Waiver form documenting good faith efforts by the Recipient to meet such goals. If the documentation included with the waiver request is complete, the ESD shall evaluate the request and issue a written notice of acceptance or denial within twenty (20) days of receipt.
- C.** If the ESD, upon review of the MWBE Utilization Plan and updated Quarterly MWBE Contractor Compliance Reports determines that Recipient is failing or refusing to comply with the Contract goals and no waiver has been issued in regards to such non-compliance, the ESD may issue a notice of deficiency to the Recipient. The Recipient must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

Recipient is required to submit a Quarterly MWBE Contractor Compliance and Payment Report (EXHIBIT G-6) to the ESD by the 10th day following each end of quarter over the term of the Contract documenting the progress made towards achievement of the MWBE goals of the Contract.

VII. Liquidated Damages/Recapture - MWBE Participation

- A.** Where ESD determines that Recipient is not in compliance with the requirements of the Contract and Recipient refuses to comply with such requirements, or if Recipient is found to have willfully and intentionally failed to comply with the MWBE participation goals, Recipient shall be obligated to pay to the ESD liquidated damages or be subject to recapture of grant proceeds ("Recapture").
- B.** Such liquidated damages or Recapture shall be calculated as an amount equaling the difference between:
 - 1.** All sums identified for payment to MWBEs had the Recipient achieved the contractual MWBE goals; and
 - 2.** All sums actually paid to MWBEs for work performed or materials supplied under the Contract.

**EXHIBIT G: PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH
RESPECT TO STATE CONTRACTS: REQUIREMENTS AND PROCEDURES**

- C. In the event a determination has been made which requires the payment of liquidated damages (and such identified sums have not been withheld by the ESD) or Recapture, Recipient shall pay such liquidated damages or Recapture to the ESD within sixty (60) days after they are assessed by the ESD unless prior to the expiration of such sixtieth day, the Recipient has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated damages or Recapture shall be payable if Director renders a decision in favor of the ESD.



EXHIBIT G-1: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

M/WBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

I, _____ (REPRESENTATIVE), of the _____ (AWARDEE/CONTRACTOR)
agree to adopt the following policies with respect to the project being developed or services rendered at
_____.

M/WBE PARTICIPATION (M/WBE)

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participations goals set by the State for that area in which the State-funded project is located, by taking the following steps:

- (1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State certified MBEs or WBEs, including solicitations to M/WBE contractor associations.
- (2) Request a list of State-certified M/WBEs from ESD's Office of Contractor and Supplier Diversity and solicit bids from them directly.
- (3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.
- (4) Where feasible, divide the work into smaller portions to enhance participations by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.
- (5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.
- (6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

EQUAL EMPLOYMENT OPPORTUNITY POLICY (EEO)

- (a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on state contracts.
- (b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.
- (c) At the request of the contracting agency, this organization shall request each employment

3d

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EXHIBIT G-1: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

M/WBE PARTICIPATION / EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT

agency, labor union, or authorized representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of this organization's obligations herein.

- (d) This organization will include the provisions of sections (a) through (c) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed on this ___ day of ___, 20__.

By: _____
(SIGNATURE)

Print Name: _____

Title: _____

Minority Business Enterprise Liaison

_____ (Name of Designated Liaison) is designated as the Minority Business Enterprise Liaison responsible for administering the Minority and Women-Owned Business Enterprises- Equal Employment Opportunity (M/WBE-EEO) program.

M/WBE Contract Goals

30% Minority and Women Business Enterprise Participation

EEO Contract Goals

___ % Minority Labor Force Participation

___ % Female Labor Force Participation

(Authorized Representative)

Print Name: _____

Title: _____

Date: _____



EXHIBIT G-2 - STAFFING PLAN

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

Submit with Bid or Proposal – Instructions on page 2

Contract/Project No.:	Contract/Project Title:	Report includes Contractor's/Subcontractor's: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Total work force <input type="checkbox"/> Offeror <input type="checkbox"/> Subcontractor Subcontractor's name _____
Contractor/Grantee Name:		
Contractor/Grantee Address:		

Enter the total number of employees for each classification in each of the EEO-Job Categories identified.

EEO-Job Category	Total Work force	Work force by Gender			Work force by Race/Ethnic Identification																				
		Total	Total	Total	White			Black			Hispanic			Asian			Native American			Disabled			Veteran		
		Male (M)	Female (F)	X (X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)	(M)	(F)	(X)
Officials/Administrators																									
Professionals																									
Technicians																									
Sales Workers																									
Office/Clerical																									
Craft Workers																									
Laborers																									
Service Workers																									
Temporary /Apprentices																									
Totals																									

PREPARED BY (Signature):	TELEPHONE NO.:	EMAIL ADDRESS:	DATE:
---------------------------------	-----------------------	-----------------------	--------------

NAME AND TITLE OF PREPARER (Print or Type):



EXHIBIT G-2 - STAFFING PLAN

(REQUIRED ONLY OF CONTRACTS VALUED AT \$250,000 OR MORE)

OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

General Instructions: All Contractors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (Form OCSD-2) and submit it as part of the bid or proposal package. Where the work force to be utilized in the performance of the State contract can be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form only for the anticipated work force to be utilized on the State contract. Where the work force to be utilized in the performance of the State contract cannot be separated out from the contractor's and/or Subcontractor's total work force, the Contractor shall complete this form for the contractor's and/or Subcontractor's total work force.

Instructions:

- 1. Enter the Contract or Solicitation number that this report applies to along with the name and address of your company or organization.
2. Check off the appropriate box to indicate if the Contractor completing the report is the contractor or a subcontractor.
3. Check off the appropriate box to indicate work force to be utilized on the contract or the Contractor's total work force.
4. Enter the total work force by EEO job category.
5. Break down the anticipated total work force by gender and enter under the heading 'Work force by Gender'
6. Break down the anticipated total work force by race/ethnic identification and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Permissible contact(s) for the solicitation if you have any questions.
7. Enter information on disabled or veterans included in the anticipated work force under the appropriate headings.
8. Enter the name and contact details of the person completing the form. Sign and date the form in the designated boxes.

RACE/ETHNIC IDENTIFICATION:

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- WHITE (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
BLACK a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
HISPANIC a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
ASIAN & PACIFIC ISLANDER a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE) a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES:

- DISABLED INDIVIDUAL any person who: - has a physical or mental impairment that substantially limits one or more major life activity(ies)
- has a record of such an impairment; or
- is regarded as having such an impairment.
VIETNAM ERA VETERAN a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
GENDER Male, Female, or "X"

**EXHIBIT G-3: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
WORKFORCE EMPLOYMENT UTILIZATION REPORT**

Contract No.:	Reporting Entity: <input type="checkbox"/> Contractor <input type="checkbox"/> Subcontractor	Reporting Period: <input type="checkbox"/> January 1, 20 - March 31, 20 <input type="checkbox"/> July 1, 20 - September 30, 20 <input type="checkbox"/> April 1, 20 - June 30, 20 <input type="checkbox"/> October 1, 20 - December 31, 20			
Contractor's Name:		Report includes: <input type="checkbox"/> Work force to be utilized on this contract <input type="checkbox"/> Contractor/Subcontractor's total work force			
Contractor's Address:					

Enter the total number of employees in each classification in each of the EEO-Job categories identified.

EEO - Job Category	Total Work Force	Work force by Gender		Work force by Race/Ethnic Identification														
		Male (M)	Female (F)	White (M) (F)		Black (M) (F)		Hispanic (M) (F)		Asian (M) (F)		Native American (M) (F)		Disabled (M) (F)		Veteran (M) (F)		
Officials/Administrators																		
Professionals																		
Technicians																		
Sales Workers																		
Office/Clerical																		
Craft Workers																		
Laborers																		
Service Workers																		
Temporary / Apprentices																		
Totals																		

EXHIBIT G-3: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
WORKFORCE EMPLOYMENT UTILIZATION REPORT

Submit the above completed form to:

Empire State Development
Office of Contractor and Supplier Diversity
633 Third Avenue, 33rd Floor
New York, NY 10017

General Instructions: The work force utilization (M/WBE 102) is to be submitted on a quarterly basis during the life of the contract to report the actual work force utilized in the performance of the contract broken down by the specified categories. When the work force utilized in the performance of the contract can be separated out from the contractor's and/or subcontractor's total work force, the contractor and/or subcontractor shall submit a Utilization Report of the work force utilized on the contract. When the work force to be utilized on the contract cannot be separated out from the contractor's and/or subcontractor's total work force, information on the total work force shall be included in the Utilization Report. Utilization reports are to be completed for the quarters ended 3/31, 6/30, 9/30 and 12/31 and submitted to the M/WBE Program Management Unit within 15 days of the end of each quarter. If there are no changes to the work force utilized on the contract during the reporting period, the contractor can submit a copy of the previously submitted report indicating no change with the date and reporting period updated.

Instructions for completing:

1. Enter the number of the contract that this report applies to along with the name and address of the Contractor preparing the report.
2. Check off the appropriate box to indicate if the entity completing the report is the contractor or a subcontractor.
3. Check off the box that corresponds to the reporting period for this report.
4. Check off the appropriate box to indicate if the work force being reported is just for the contract or the Contractor's total work force.
5. Enter the total work force by EEO job category.
6. Break down the total work force by gender and enter under the heading 'Work force by Gender'
7. Break down the total work force by race/ethnic background and enter under the heading 'Work force by Race/Ethnic Identification'. Contact the M/WBE Program Management Unit at (518) 474-5513 if you have any questions.
8. Enter information on any disabled or veteran employees included in the work force under the appropriate heading.
9. Enter the name, title, phone number and email address for the person completing the form. Sign and date the form in the designated boxes.

**EXHIBIT G-3: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
WORKFORCE EMPLOYMENT UTILIZATION REPORT**

RACE/ETHNIC IDENTIFICATION

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group. The race/ethnic categories for this survey are:

- **WHITE** (Not of Hispanic origin) All persons having origins in any of the original peoples of Europe, North Africa, or the Middle East.
- **BLACK** a person, not of Hispanic origin, who has origins in any of the black racial groups of the original peoples of Africa.
- **HISPANIC** a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race.
- **ASIAN & PACIFIC ISLANDER** a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.
- **NATIVE INDIAN (NATIVE AMERICAN/ALASKAN NATIVE)** a person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

OTHER CATEGORIES

- **DISABLED INDIVIDUAL** any person who:
 - has a physical or mental impairment that substantially limits one or more major life activity(ies)
 - has a record of such an impairment; or
 - is regarded as having such an impairment.
- **VIETNAM ERA VETERAN** a veteran who served at any time between and including January 1, 1963 and May 7, 1975.
- **GENDER** Male or Female



OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

MWBE AND SDVOB UTILIZATION PLAN

Exhibit G-4

INSTRUCTIONS: This form must be submitted with any bid, proposal, or proposed negotiated contract or within a reasonable time thereafter, but prior to contract award. This MWBE and SDVOB Utilization Plan must contain a detailed description of the supplies and/or services to be provided by each certified Minority and Women-owned Business Enterprise (M/WBE) and/or Service Disabled Veteran Owned Business (SDVOB) under the contract. Attach additional sheets if necessary.

* indicates mandatory fields

*Contractor Name:

Address:

*Representative Name: Town, State & Zip:

*Phone:

*ESD Contract/Project Number:

*Fax:

RFP/RFQ/Solicitation Number:

*Email:

*MWBE Goal: MBE ___% + WBE ___% = MWBE GOAL ___%

*Total Dollar Value of Contract/Grant: \$ _____

*SDVOB Goal: ___%

1. * Certified MWBE or SDVOB Firm Name, Contact Person's Name, Address, Phone and Email.	2. * Check All That Apply	3. * Federal ID No.	4. *Detailed Description of Work (Attach additional sheets, if necessary, Attach Contract if available)	5. *Check Firm Type That Applies for Work Completed on this Project	6. *Dollar Value of Contract (if unavailable or yet undetermined, indicate \$1)
A.	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Materials Supplier <input type="checkbox"/> Trade Agents/Brokers	
B.	<u>NYS CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB			<input type="checkbox"/> Subcontractor <input type="checkbox"/> Subconsultant <input type="checkbox"/> Materials Supplier <input type="checkbox"/> Trade Agents/Brokers	

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Exhibit G-4

7. If unable to fully meet the MWBE and/or SDVOB goals set forth in the contract, the Contractor must submit a Waiver Request form, which may be obtained from the Office of Contractor and Supplier Diversity, at OCSD@ESD.NY.GOV.

PREPARED BY (Signature): _____ DATE: _____

Preparer's Name (Print or Type): _____

Preparer's Title: _____

Date: _____

SUBMISSION OF THIS FORM CONSTITUTES THE CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE MWBE AND SDVOB REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW ARTICLES 15-A AND 17-B, 5 NYCRR PART 143, 9 NYCRR PART 252, AND THE ABOVE-REFERENCED SOLICITATION. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND POSSIBLE TERMINATION OF YOUR CONTRACT.

The MWBE Certification status of the firms listed on this form **MUST** be verified using the New York State Contract System's Directory of Certified Minority and Women-owned Business Enterprises.

This directory is available at <https://ny.newnycontracts.com>.

The SDVOB Certification status of the firms listed on this form **MUST** be verified using the Directory of New York State Certified Service-Disabled Veteran-Owned Businesses.

This directory is available at <https://online.ogs.ny.gov/SDVOB/search>.

TELEPHONE NO.:

EMAIL ADDRESS:

Policy Regarding Use of MWBE Suppliers and Brokers

Only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal.

FOR CONSTRUCTION/CAPITAL PROJECTS – The portion of a contract with an MWBE serving as a supplier that shall be deemed to represent the commercially useful function performed by the MWBE shall be 60% of the total value of the contract. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be the monetary value for fees, or the markup percentage, charged by the MWBE.

FOR ALL OTHER PROJECTS - The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25% of the total value of the contract.

**** FOR OCSD USE ONLY ****

REVIEWED BY:

DATE:

UTILIZATION PLAN APPROVED?

YES PARTIAL NO Date:



EXHIBIT G-5: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
WAIVER REQUEST FORM

Waiver Applicant
Offeror / Contractor Name: Fed ID No.:
Address: Solicitation/Contract No.:
City, State, Zip Code: M/WBE Goals:
MBE: % WBE: %
By submitting this form and the required information, the offeror / contractor certifies that every "Good Faith Effort" has been taken to promote M/WBE participation pursuant to the M/WBE requirements set forth under the contract. Review 5 NYCRR §142.8, Contractor's Good Faith Efforts, on page 2 of this form for the precise definition of "Good Faith Effort".
Contractor is requesting a:
1. MBE Waiver - A waiver of the MBE Goal for this procurement is requested.
2. WBE Waiver - A waiver of the WBE Goal for this procurement is requested.
3. Waiver Pending ESD Certification - (Check here if subcontractors or suppliers of Contractor are not certified M/WBE, but an application for certification has been filed with Empire State Development).
Date of such filing with Empire State Development Corporation:
PREPARED BY (Signature): Date:
SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR/CONTRACTOR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A AND 5 NYCRR PART 143. FAILURE TO SUBMIT COMPLETE AND ACCURATE INFORMATION MAY RESULT IN A FINDING OF NONCOMPLIANCE AND/OR TERMINATION OF THE CONTRACT.
Name and Title of Preparer (Printed or Typed): Telephone Number: Email Address:
***** FOR M/WBE USE ONLY *****
REVIEWED BY: DATE:
Submit with the bid or proposal or if submitting after award submit to:
Empire State Development
Office of Contractor and Supplier Diversity
633 Third Avenue, 33rd Floor
New York, New York 10017
Waiver Granted: YES MBE: WBE:
Total Waiver Partial Waiver
ESD Certification Waiver *Conditional
Notice of Deficiency Issued
* Comments:

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EXHIBIT G-5: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY**WAIVER REQUEST FORM****5 NYCRR §142.8 - Contractor's Good Faith Efforts**

- (a) The contractor must document its good faith efforts toward meeting certified minority and women-owned business enterprise utilization plans by providing, at a minimum:
- (1) Copies of its solicitations of certified minority and women-owned business enterprises and any responses thereto;
 - (2) If responses to the contractor's solicitations were received, but a certified minority or woman-owned business enterprise was not selected, the specific reasons that such enterprise was not selected;
 - (3) Copies of any advertisements for participation by certified minority and women-owned business enterprises timely published in appropriate general circulation, trade and minority or women-oriented publications, together with the listing(s) and date(s) of the publication of such advertisements;
 - (4) Copies of any solicitations of certified minority and/or women-owned business enterprises listed in the directory of certified businesses;
 - (5) The dates of attendance at any pre-bid, pre-award, or other meetings, if any, scheduled by the State agency awarding the State contract, with certified minority and women-owned business enterprises which the State agency determined were capable of performing the State contract scope of work for the purpose of fulfilling the contract participation goals;
 - (6) Information describing the specific steps undertaken to reasonably structure the contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified minority and women-owned business enterprises.
- (b) In addition to the information provided by the contractor in paragraph (a) above, the State agency may also consider the following to determine whether the contractor has demonstrated good faith efforts:
- (1) Whether the contractor submitted an alternative utilization plan consistent with the subcontract or supplier opportunities in the contract;
 - (2) The number of certified minority and women-owned business enterprises in the region listed in the directory of certified businesses that could, in the judgment of the State agency, perform work required by the State contract scope of work;
 - (3) The actions taken by the contractor to contact and assess the ability of certified minority and women-owned business enterprises located outside of the region in which the State contract scope of work is to be performed to participate on the State contract;
 - (4) Whether the contractor provided relevant plans, specifications or terms and conditions to certified minority and women-owned business enterprises sufficiently in advance to enable them to prepare an informed response to a contractor request for participation as a subcontractor or supplier;
 - (5) The terms and conditions of any subcontract or provision of suppliers offered to certified minority or women-owned business enterprises and a comparison of such terms and conditions



OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY

MWBE AND SDVOB COMPLIANCE AND PAYMENT REPORT

Exhibit G-6

CONTRACTOR/GRANTEE:

ADDRESS:

TOWN/COUNTY/ZIP:

CONTACT PERSON:

TELEPHONE:

EMAIL:

ESD OCSD REPRESENTATIVE:

CONTRACT/PROJECT NAME:

CONTRACT/PROJECT #:

PROJECT START DATE:

PERCENT COMPLETE:

ACTUAL COMPLETION DATE:

REPORTING PERIOD: Monthly for the Month of: (Month) (Year)

Quarterly (Check Applicable): Quarter 1 (4/1-6/30) | Quarter 2 (7/1-9/30) | Quarter 3 (10/1-12/31) | Quarter 4 (1/1-3/31)

Attach MWBE and SDVOB executed contracts, wire transfer confirmations and cancelled checks as proof of payment to the identified MWBEs and SDVOBs. This report should be completed and signed by an officer of the Reporting Company. Attach additional sheets if necessary.

PRIME CONTRACTOR, if different from above (Name, Address, Contact Person, Title and Phone # with area code)	PRIME CONTRACT AMOUNT	MWBE or SDVOB SUBCONTRACTOR (Name, Address, Contact Person, Title and Phone # with area code)	NYS CERTIFICATION (Check One)	DESCRIPTION OF SERVICES	CONTRACT AMOUNT	PAYMENTS PREVIOUSLY REPORTED	PAYMENTS ON CURRENT REPORT	TOTAL PAYMENTS TO DATE
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$	\$	\$	\$
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$	\$	\$	\$
	\$		<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVOB		\$	\$	\$	\$

CERTIFICATION: I, _____ (Print Name), the _____ (Title) of the Reporting Company above, do certify that (i) I have read this Compliance Report and (ii) to the best of my knowledge, information and belief, the information contained herein is complete and accurate.

SIGNATURE: _____

DATE: _____

Submission of this form constitutes the Contractor's acknowledgement as to the accuracy of the information contained herein. Failure to submit complete and accurate information may result in a finding of noncompliance, non-responsibility, suspension and/or termination of the Contract.

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Exhibit G-6

SUBMIT REPORT TO: Office of Contractor and Supplier Diversity
 Empire State Development
 633 Third Avenue, 35th Floor
 New York, NY 10017

Completed forms may be emailed directly to OCSD at ocsd@esd.ny.gov. All email submissions must include ESD's project/contract number(s), and the name and contact information of the individual or firm submitting the information.

QUESTIONS? Please contact the OCSD's Compliance Managers or email the office at ocsd@esd.ny.gov.

Monique Campbell	Kelly Forsey	Jordan Kaplan	Denise Ross	Ami Shipley
(212) 803-3571	(716) 846-8238	(212) 803-3659	(212) 803-3226	(212) 803-3222
monique.campbell@esd.ny.gov	Kelly.forsey@esd.ny.gov	Jordan.kaplan@esd.ny.gov	Denise.ross@esd.ny.gov	Ami.shipley@esd.ny.gov
R E G I O N S :				
Long Island North Country New York City (Bronx, Brooklyn, Queens)	Capital District Finger Lakes Western New York ESD Subsidiaries – USA Niagara	Central NY Mohawk Valley Southern Tier ESD Subsidiary – AYCDC	Mid-Hudson NYC (Manhattan, Staten Island)	Dept. of Economic Development ESD Procurement Contracts ESD Subsidiaries – CCDC, QWDC, LMDC, ESNMC, HCDC, MSDC

DRAFT

EXHIBIT H: REPORT OF EMPLOYMENT

Intentionally Deleted

DRAFT

EXHIBIT I: SPECIAL PROVISIONS

Genesee Co IDA/GCEDC FAST NY - Track C Capital, Project Number 137,587

In the event of any conflict between Exhibit A of this Agreement and any other provisions of this Agreement, the terms of such other provisions shall govern.

Neither the Grant, nor any equipment or facility funded in part or whole by the Grant, shall be used at any time or in any manner for religious worship, instruction or proselytizing.

The following sections of the Terms and Conditions of this Agreement are waived: Section 2; Section 3(e); the reference to "Exhibit H" in Section 4(a); Section 4(c); Section 9(a)(iv) and Section 9(a)(vii).

DRAFT

**EXHIBIT I-1: ESD INVESTMENT REGULATIONS
(With respect to funds in the Imprest Accounts)**

Permissible Investments

The Corporation may invest its Investment Funds in any and all of the following, if and to the extent permitted by statutes, regulations and bond resolutions applicable at the time of investment of such Investment Funds:

- 1) Any bonds and other obligations which as to principal and interest constitute direct obligations of, or are unconditionally guaranteed by the United States of America;
- 2) Any bonds and other obligations which as to principal and interest constitute direct obligations of the State or the Corporation or which are unconditionally guaranteed by the State as to payment of principal and interest;
- 3) Bonds and other obligations of governmental authorities, political subdivisions, Federal Agencies, Government Sponsored Enterprises (GSE's) or public authorities of the State or of the United States of America, which are securities in which the Corporation lawfully may invest pursuant to applicable statutes, regulations and bond resolutions including but not limited to Federal National Mortgage Association (FNMA), Federal Farm Credit Bank (FFCB), Federal Home Loan Bank (FHLB), Federal Home Loan Mortgage Corporation (FHLMC-"Freddie Mac"), and Student Loan Marketing Association (SLMA-"Sallie Mae");
- 4) Prime Commercial Paper issued by domestic banks, corporations and financial companies rated "A-1" or "P-1" by Standard & Poor's Corporation or Moody's Investors Service, Inc.;
- 5) Certificates of Deposit of banks or trust companies authorized to do business in this State, including commercial banks who participates in New York State Excelsior Linked Deposit programs and are authorized program depositories, which certificates of deposit are fully insured by the Federal Deposit Insurance Corporation or fully secured, as required by Section 4.3.1 below, by securities of the character described in clauses (1), (2) or (3) of this paragraph;
- 6) Units, shares or interest in a mutual fund or money market fund of regulated investment companies which seek to maintain a constant net asset value per share of \$1.00 and have been rated in one of the two highest categories by at least one nationally recognized ratings organization and invests in instruments described in clauses (1), (2) or (3) of this paragraph.