

CAPITAL GRANT

This **GRANT DISBURSEMENT 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, New York 14203-3030
Contact: Ms. Jean Williams, Senior Project Manager
Phone: (716) 846-8243
Fax: (716) 846-8260
E-mail: jwilliams@esd.ny.gov

THE GRANTEE:

Fort Schuyler Management Corporation on behalf of
the State University of New York College of Nanoscale
Science and Engineering
100 Seymour Drive
Utica, New York 13502
Contact: Ms. Alicia Dicks, President
Phone: (315) 792-7306
E-mail: adicks@ftsmc.org
Federal Taxpayer ID#: 27-1459023

BENEFICIARIES:

Soraa, Inc.
6500 Kaiser Drive
Fremont, CA 94555
Contact: Mr. Tom Caulfield, President and Chief
Operating Officer
Phone: (510) 456-2200

Silevo, Inc.
45655 Northport Loop East
Fremont, CA 94538
Contact: Mr. Jeff Osorio, Chief Financial Officer
Phone: (510) 771-1360

PROJECT NAME:

Fort Schuyler Management Corporation/RiverBend
Park Capital

PROJECT LOCATION:

1339-1341 South Park Avenue, Buffalo

PROJECT NUMBER:

Y962

GRANT AMOUNT:

\$118,000,000

FUNDING SOURCE:

Buffalo Regional Innovation Cluster

CAPITAL GRANT, continued

ESD APPROVAL DATE:	March 28, 2014
PACB APPROVAL DATE:	April 23, 2014
EXPIRATION DATE:	December 31, 2025

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 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 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) 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 naming Grantor as an additional insured on a primary and non-contributory basis, with full waiver of subrogation.

- (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. For the purposes hereof, the replacement value of the buildings on the Project Location and the building equipment shall be determined by a qualified appraiser satisfactory to the Grantor.

- (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.
- (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 Five Million Dollars (\$5,000,000) umbrella. Grantor and each of its directors, officers, employees, agents and representatives shall be additional insureds and certificate holders, on a primary and non-participatory basis, with full waiver of subrogation (General Liability Additional Insured Endorsement shall be on Insurance Service Office's (ISO) form number CG 20 26 11 85).
- (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 ten (10) days' prior written notice of cancellation and shall be payable to the Grantor pursuant to a New York standard Grantor endorsement.
- (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 policies of insurance (or certificates thereof) 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 policies (or certificates thereof) 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: Ms. Jean Williams
Title: Senior Project Manager
Address: 95 Perry Street, Suite 500, Buffalo, New York 14203-3030
Telephone Number: (716) 846-8243

Facsimile Number: (716) 846-8260
E-Mail Address: jwilliams@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

Fort Schuyler Management Corporation on behalf of the
State University of New York College of Nanoscale Science and Engineering

Name: Ms. Alicia Dicks
Title: President
Address: 100 Seymour Drive, Utica, New York 13502
Telephone Number: (315) 792-7306
E-Mail Address: adicks@ftsmc.org

Soraa, Inc.

Name: Mr. Tom Caulfield
Title: President and Chief Operating Officer
Address: 6500 Kaiser Drive, Fremont, CA 94555
Telephone Number: (510) 456-2200

Silevo, Inc.

Name: Mr. Jeff Osorio
Title: Chief Financial Officer
Address: 45655 Northport Loop East, Fremont, CA 94538
Telephone Number: (510) 771-1360

- (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. Modification

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.

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) Susan Shaffer, Senior Vice President, Loans and Grants

5/20/14

(date)

Fort Schuyler Management Corporation on behalf of
the State University of New York College of Nanoscale Science and Engineering



(Signature)

Alicia Dicks, President

(Printed name and title)
6/12/14

(date)

Soraa, Inc.

(Signature)

(Printed name and title)

(date)

Silevo, Inc.

(Signature)

(Printed name and title)

(date)

ESD CAPITAL GRANT DISBURSEMENT AGREEMENT

EXHIBITS

EXHIBIT A	General Project Plan
EXHIBIT B	Reports
EXHIBIT C	Employment Goals & Recapture Terms
EXHIBIT D	Opinion of Counsel
EXHIBIT E	Disbursement Terms
EXHIBIT F	Payment Requisition Form
EXHIBIT F-1	Financial Condition Documentation
EXHIBIT F-2	Project Cost Documentation
EXHIBIT F-3	Equity Expenditure Documentation
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 H-1	Report of Employment Affidavit
EXHIBIT I	Special Provisions

EXHIBIT A: GENERAL PROJECT PLAN

See Materials Attached

FOR CONSIDERATION

March 28, 2014

TO: The Directors

FROM: Kenneth Adams

SUBJECT: Buffalo Billion Initiative – Buffalo (Western New York Region – Erie County) – Fort Schuyler Management Corporation/RiverBend Park Capital – Buffalo Regional Innovation Cluster (Capital Grant)

REQUEST FOR: Findings and Determinations Pursuant to Section and 10 (g) of the Act; Authorization to Adopt the Proposed General Project Plan; Authorization to Make a Grant and to Take Related Actions

General Project Plan

I. Project Summary

Grantee: Fort Schuyler Management Corporation (the "FSMC") on behalf of the State University of New York ("SUNY") College of Nanoscale Science and Engineering (the "CNSE")

Beneficiary

Companies: Soraa, Inc. ("Soraa")
Silevo, Inc. ("Silevo")
Additional Beneficiaries to be identified in the future

ESD* Investment: A grant of up to \$118 million to be used as reimbursement for design and planning costs and new machinery and equipment.

* The New York State Urban Development Corporation doing business as Empire State Development ("ESD" or the "Corporation")

Project Location: 1339-1341 South Park Avenue, Buffalo, Erie County

Proposed Project: Establish the Buffalo High-Tech Manufacturing Innovation Hub at RiverBend Park ("RiverBend").

Project Type: Business attraction

Regional Council: The Western New York ("WNY") Regional Economic Development Council oversees the implementation of the Buffalo Billion Investment Development Plan. This project is part of Governor Cuomo's Buffalo Billion Initiative to promote advanced technology, manufacturing and smart growth; increase highly-skilled jobs; and maintain and attract young people to the WNY Region.

Employment Goals: Initial employment at time of application to ESD: 0
 Current employment level: 0
 Minimum employment on January 1, 2020: 850*

* Employees will be on the Beneficiaries' payroll including Soraa, Silevo and additional Beneficiaries to be identified in the future.

II. Project Cost and Financing Sources

<u>Financing Uses</u>	<u>Amount</u>	
Planning & Design	\$5,000,000	
Machinery & Equipment	113,000,000	
Personnel	160,000,000	
Operating Expenses	<u>1,340,000,000</u>	
Total Project Costs	<u>\$1,618,000,000</u>	
<u>Financing Sources</u>	<u>Amount</u>	<u>Percent</u>
ESD – Grant	\$118,000,000	7%
Grantee Equity*	<u>1,500,000,000</u>	<u>93%</u>
Total Project Financing	<u>\$1,618,000,000</u>	<u>100%</u>

*Equity will be contributions from FSMC, Soraa, Silevo, and future Beneficiary Companies.

III. Project Description

A. Grantee

Industry: Real Estate Development

Company History: Authorized by Chapter 530 of the Laws of 2010, FSMC was formed by the State University of New York Research Foundation, in partnership with the State University of New York Institute of Technology (“SUNYIT”) to facilitate nanotechnology and semiconductor development. FSMC is authorized to purchase, construct, develop and manage facilities co-located with the SUNYIT educational campus at the SUNYIT Marcy Technology Complex as well as ground sub-lease the property west of Edic Road constituting the Marcy Nanocenter project to Mohawk Valley Economic Development Growth Enterprises (“EDGE”) to attract nanomanufacturing operations by a commercial partner.

The CNSE is a global education, research, development, and technology deployment resource dedicated to preparing the next generation of scientists and researchers in nanotechnology. Since its inception in 2004, it has been leveraging its resources in partnership with business and government to support accelerated high technology education and commercialization, and seeks to create jobs and economic growth for nanotechnology-related industries.

Ownership: The Grantee is a 501(c)(3) not-for-profit organization.

Market: Worldwide advanced technology industries

ESD Involvement: In November 2013, the Governor announced a \$225 million award from the Buffalo Billion Initiative for RiverBend, a \$1.7 billion public and private-sector partnership to convert a vacant former manufacturing site into a state-of-the-art hub campus for high-tech and green energy manufacturing businesses. RiverBend, which will be strategically located in a newly-developed “smart growth” urban commerce park with multi-modal transportation opportunities, will serve as a building block of continued growth in advanced manufacturing, which is a primary focus of the WNY REDC. Initially, two California-based clean energy companies, Soraa and Silevo, will serve as the anchor tenants in the newly-constructed RiverBend complex by relocating major parts of their respective operations to Buffalo. It is expected that once fully constructed, RiverBend will house multiple industry-related companies. \$118 million of the \$225 million award will reimburse FSMC for planning/design costs and machinery and equipment acquisition; the remaining \$107 million will reimburse FSMC with the real estate

acquisition, site and infrastructure development, and facility construction. The balance of \$107 million will be presented for consideration by the ESD Directors at a later time.

Past ESD Support:

Program	Project #	Amount	Date Start (ESD Directors' Approval date)	Date End (Project Completion: Contract Expiration or Job Requirement)	Purpose
Local Assistance	V062	\$2,250,000	October 22, 2009 (\$4M was originally awarded to EDGE on May 17,2007)	May 5, 2011	Working Capital Grant – Advanced rent payment to FSMC for the 15-year ground lease of the Marcy Nanocenter site by EDGE.
New York State Economic Development Assistance Program	W277	\$1,300,000	November 19, 2009 (\$10M was originally awarded to EDGE on September 19, 2008)	March 31, 2013	Capital Grant – \$1.3 M for design and construction of the 300mm wafer clean room for the Computer Chip Commercialization Center (“Quad C”).
Economic Transformation Program	X812	\$15,000,000	November 2003	December 2014	Capital Grant for construction of the 253,000-square-foot Quad C.
State and Municipal Facilities Program	Y728	\$20,000,000	January 2014	December 2014	Capital Grant – Purchase and install new advanced technology semiconductor packaging equipment and construction of the Quad C

B. Beneficiary – Soraa

- Industry: Soraa is the only manufacturer of light-emitting diode (“LED”) products made from pure gallium nitride substrates (GaN on GaN™), which are up to one thousand times more precise than other LEDs.
- History: The Company was formed in 2008 by a team of engineering and semiconductor industry professors to manufacture the new GaN on GaN™ technology.
- Ownership: The Company is privately owned.
- Size: Soraa has one location in Galeta, California.
- Market: The Company markets GaN on GaN™ LED products worldwide primarily to the restaurant, retail, hospitality, homeowners, and museums with need for high-grade, brilliant lighting.
- Past ESD Support: This is Soraa’s first project with ESD.

C. Beneficiary – Silevo

- Industry: Silevo manufactures hybrid solar cells which convert solar energy into electricity, known as photovoltaic (“PV”) applications, ultimately used in high-performance, low-cost solar panels.
- History: The Company was founded in Fremont, California in 2007.
- Ownership: Silevo is privately owned.
- Size: The Company has a headquarters and research and development facility in Fremont, California, with 35 people and a high-volume manufacturing facility in Hangzou, China with approximately 165 employees.
- Market: Silevo’s technology is utilized in industrial solar and semiconductor applications.
- Past ESD Support: This is Silevo’s first project with ESD.

D. The Project

Completion: December 2019

Activity: The \$1.6 billion project involves planning and design costs; the acquisition and installation of specialized machinery and equipment, furniture, fixtures and related equipment; personnel; and operating expenses. The specialized equipment costs will be incurred over a two-year period by FSMC. The personnel and operating expenses will be incurred over a five-year period by Soraa and Silevo and/or future Beneficiaries. FSMC will own the equipment, which will be utilized by Soraa and Silevo, the anchor tenants, initially, and will be offered for use by other industry-related companies expected to relocate or establish operations at RiverBend.

By mid-2014, FSMC will acquire a previously contaminated industrial property owned by the City of Buffalo and immediately begin site and infrastructure development, followed by the construction of an approximate 280,000-square-foot LEED-certified facility, which is expected to be complete in November 2015.

Soraa will relocate its corporate research and development ("R&D") and manufacturing operations to RiverBend, investing \$750 million for the build-out of 50,000-square-feet of space, including 35,000-square-feet of clean rooms. It will also acquire specialized equipment including lithography, deposition, inspection, etching, metallization, and wafer dicing equipment. It is expected that Soraa will employ or cause to employ through the recruitment of suppliers and associated companies, 375 jobs, including engineers, technicians, operators and maintenance and facilities staff.

RiverBend will be the home of Silevo's first North American manufacturing operation, a 200 megawatt production facility. Silevo, will occupy 232,000 square feet, including 212,000 square feet for manufacturing and 20,000 square feet for administration and business offices, and will invest \$750 million in facility build-out and manufacturing equipment. The Silevo plant will focus on the manufacturing of its innovative hybrid solar module technology, Triex, as well as continuing R&D functions to achieve next generation improvements to remain competitive in the marketplace. Silevo will employ or cause to employ through the recruitment of suppliers and associated companies, 475 jobs, including manufacturing engineers, operators, maintenance, and facility staff.

While Soraa and Silevo will be the anchor tenants, establishing operations in the initial 280,000-square-foot facility, it is expected that RiverBend will consist of at least six new structures which will be constructed over time to accommodate approximately 1,200 new manufacturing jobs in the field of biotech, high tech and green energy.

Results:

The project is projected to create 850 jobs by January 1, 2020, and establish Buffalo as a nexus for advanced research and manufacturing for clean energy technologies and attract businesses from around the world. The RiverBend project will promote smart growth by transforming a vacant manufacturing site in a distressed area that was previously owned by Republic Steel into a vibrant hub of technology. Additionally, the project will spur adjacent private-sector investment for consumables, amenities, and services, increase demand for housing, and attract and retain people to the WNY Region by providing highly-skilled and unskilled employment options.

Business Investment

Project:

Benefit-Costs Evaluations are used in evaluating projects that are categorized as Business Investment, Infrastructure Investment, and Economic Growth Investment and that involve 1) job retention and/or creation and/or 2) construction-related activity. For Business Investment projects, benefits typically reflect the impact of both jobs and construction-related activity. For Infrastructure Investment and Economic Growth Investment projects, which generate long-term benefits not captured in the period of analysis and may involve no permanent job commitments, the estimated benefits typically reflect only construction-related activity.

Evaluated over a seven-year period, the following are anticipated project impacts (dollar values are present value):

- Fiscal benefits to NYS government from the project are estimated at \$30,641,862;
- Fiscal cost to NYS government is estimated at \$221,883,495;
- Project cost to NYS government per direct job is \$650,033;
- Project cost to NYS government per job (direct plus indirect) is estimated at \$280,505;
- Ratio of project fiscal benefits to costs to NYS government is 0.14:1;
- Fiscal benefits to all governments (state and local) are estimated at \$53,338,115;
- Fiscal cost to all governments is \$221,883,495;
- All government cost per direct job is \$650,033;
- All government cost per total job is \$280,505;
- The fiscal benefit to cost ratio for all governments is 0.24:1;

- Economic benefits (fiscal plus total net resident disposable income from project employment) are estimated at \$407,424,224, or \$515,066 per job (direct and indirect);
- The economic benefit to cost ratio is 1.84:1;
- Project construction cost is \$107,000,000, which is expected to generate 962 direct job years and 604 indirect job years of employment;
- For every permanent direct job generated by this project, an additional 1.21 indirect jobs are anticipated in the state's economy;
- The payback period for NYS costs is five years.

(See Project Summary Benefit-Cost Evaluation attached for detail and definitions.)

Grantee Contact: Ms. Alicia Dicks, President
100 Seymour Drive
Utica, NY 13502
Phone: (315) 792-7306

Soraa Contact: Mr. Tom Caulfield, President and Chief Operating Officer
6500 Kaiser Drive
Fremont, CA 94555
Phone: (510) 456-2200

Silevo Contact: Mr. Jeff Osorio, Chief Financial Officer
45655 Northport Loop East
Fremont, CA 94538
Phone: (510) 771-1360

ESD Project No.: Y962

Project Team:	Origination	Christina Orsi
	Project Management	Jean Williams
	Legal	Steve Gawlik
	Contractor & Supplier Diversity	Vikas Gera
	Finance	Ross Freeman
	Environmental	Soo Kang

E. Financial Terms and Conditions

1. Upon execution of the grant disbursement agreement, the Company shall pay a commitment fee of 1% of the \$118,000,000 capital grant (\$1,180,000) and reimburse ESD for all out-of-pocket expenses incurred in connection with the project.

2. The Company will demonstrate no materially adverse changes in its financial condition prior to disbursement.
3. Up to \$118 million will be disbursed to the Grantee no more frequently than monthly, for invoices due and payable for planning and design costs and the acquisition and installation of equipment, incurred by FSMC. Requisitions for payment after the initial disbursement must include supporting documentation for the previous disbursement, including proof of payment for previously submitted payable invoices. The Grantee shall submit proof of payment for the final equipment disbursement within ninety (90) days of ESD's disbursement of these funds.

Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require. Expenditures reimbursed by ESD's grant must be incurred on or after June 1, 2013, to be considered eligible project costs. All disbursements must be requested by April 1, 2020.

4. ESD may reallocate the project funds to another form of assistance, at an amount no greater than \$118 million, for this project if ESD determines that the reallocation of the assistance would better serve the needs of the Company and the State of New York. In no event shall the total amount of any assistance to be so reallocated exceed the total amount of assistance approved by the Directors.

IV. Statutory Basis – Buffalo Regional Innovation Cluster

The project was authorized in the 2013-2014 New York State budget. No residential relocation is required as there are no families or individuals residing on the site.

V. Environmental Review

ESD staff has determined that the approval of funding to be used for the costs of design and planning and new machinery and equipment for the proposed RiverBend project constitutes a Type II action as defined in the New York State Environmental Quality Review Act ("SEQRA"), and therefore no environmental review is required in connection with the authorization. The development of the RiverBend project is subject to a review pursuant to SEQRA, which will be completed by a lead agency before it is undertaken, funded or approved by an agency.

VI. Non-Discrimination and Contractor & Supplier Diversity

ESD's Non-Discrimination and Contractor & Supplier Diversity policies will apply to this Project. The Recipient shall be required to include minorities and women in any job opportunities created, to solicit and utilize Minority and Women Business Enterprise ("MWBEs") for any contractual opportunities generated in connection with the Project and shall be required to use Good Faith Efforts (pursuant to 5 NYCRR §142.8) to achieve meaningful MWBE Participation in the project. ESD will review and assign appropriate MWBE goal requirements at a later date as

the details regarding specific project procurements emerge.

VII. ESD Employment Enforcement Policy

ESD's Employment Enforcement Policy will not apply since the project will not directly create or retain jobs.

VIII. ESD Financial Assistance Subject to Availability of Funds and Additional Approval

The provision of ESD financial assistance is contingent upon the availability of funds and the approval of the State Division of the Budget.

IX. Additional Submissions to Directors

Resolutions

New York State Map

Project Finance Memorandum

Benefit-Cost Analysis

EXHIBIT B: REPORTS – DESIGN & CONSTRUCTION REQUIREMENTS

Intentionally Deleted

EXHIBIT C: EMPLOYMENT GOALS AND RECAPTURE TERMS

Fort Schuyler Management Corporation, Project #Y962

Employment Goals

In consideration for the making of the Grant, Grantee has agreed to achieve the Employment Goals set forth in Column B below. 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 its Full-time Permanent Employee Count, as defined in Section 2(c) herein.

Baseline Employment	0
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A	B
Reporting Date	Employment Goals
February 1, 2015	0
February 1, 2016	0
February 1, 2017	0
February 1, 2018	0
February 1, 2019	0
February 1, 2020	850
February 1, 2021	850
February 1, 2022	850
February 1, 2023	850
February 1, 2024	850
February 1, 2025	850

EXHIBIT D: OPINION OF COUNSEL

[Letterhead of Counsel to the Grantee]

[Date]

Empire State Development
95 Perry Street, Suite 500
Buffalo, New York 14203-3030

Attn: Ms. Jean Williams, Senior Project Manager

Re: Fort Schuyler Management Corporation/RiverBend Capital, Project #Y962

Ladies and Gentlemen:

We have acted as special counsel to Fort Schuyler Management Corporation on behalf of the State University of New York College of Nanoscale Science and Engineering, 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.

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,

EXHIBIT E: DISBURSEMENT TERMS

Disbursement

Subject to the terms and conditions of this Agreement and receipt of the fees as set forth below, ESD shall disburse the Grant in installments upon submission of the documentation set forth below:

Fees due:

Commitment Fee:	\$1,180,000.00 (One percent (1%) of grant amount)
Reimbursement for out-of-pocket expenses	\$ <u>923.95</u>
TOTAL due:	\$1,180,923.95

Up to \$118 million will be disbursed to the Grantee no more frequently than monthly, for invoices due and payable for planning and design costs and the acquisition and installation of equipment, incurred by FSMC. Requisitions for payment after the initial disbursement must include supporting documentation for the previous disbursement, including proof of payment for previously submitted payable invoices. The Grantee shall submit proof of payment for the final equipment disbursement within ninety (90) days of ESD's disbursement of these funds.

Payment will be made upon presentation to ESD of an invoice and such other documentation as ESD may reasonably require. Expenditures reimbursed by ESD's grant must be incurred on or after June 1, 2013, to be considered eligible project costs. All disbursements must be requested by April 1, 2020.

ESD reserves the right to require additional documentation to support payment requisitions.

Wire Transfer Information:

If ESD assistance is \$10,000 or greater, please provide:

A letter from a financial officer of the company certifying to the accuracy of the following information:

Bank Name: _____

ABA #: _____

Acct. Name: _____

Acct. #: _____

EXHIBIT F: CAPITAL GRANT PAYMENT REQUISITION FORM

Note to Grantee: **Do not re-type this form.** Fill in only the version included in the executed GDA.

Ms. Jean Williams, Senior Project Manager
 Empire State Development
 95 Perry Street, Suite 500
 Buffalo, New York 14203-3030

RE: Fort Schuyler Management Corporation/RiverBend Capital, Project #Y962

Dear Ms. Williams:

Enclosed please find our request for payment/reimbursement, in the amount of \$ _____.

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

Invoice # _____

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 and Design Costs; Acquisition and Installation of Equipment				\$118,000,000	
TOTAL				\$118,000,000	

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 Fort Schuyler Management Corporation, on behalf of the State University of New York College of Nanoscale Science and Engineering, is seeking payment and/or reimbursement comply with the requirements of the Agreement between ESD and Fort Schuyler Management Corporation, on behalf of the State University of New York College of Nanoscale and Science and Engineering, 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 Fort Schuyler Management Corporation, on behalf of the State University of New York College of Nanoscale Science and Engineering. 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:
 - ___ Exhibit F-1: Financial Condition Documentation
 - ___ Exhibit F-2: 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
 - ___ Exhibit H-1: Report of Employment Affidavit in Lieu of Authorization to View Form NYS-45
 - ___ 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

EXHIBIT F: CAPITAL GRANT PAYMENT REQUISITION FORM, continued

- 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.

Signature: _____ Date: _____

Print Name: _____ Title: _____

EXHIBIT F-3: EQUITY EXPENDITURES AFFIDAVIT

Intentionally Deleted

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 **20%** 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:

<https://ny.newnycontracts.com/>

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

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

comply with the MWBE participation goals set forth in the Contract, such a finding 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

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

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 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.

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

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.
- 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").

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

- 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.
- 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, Alicia Dicks (CONTRACTOR REPRESENTATIVE), the President, Fsmc (AWARDEE/CONTRACTOR) agree to adopt the following policies with respect to the project being developed or services rendered at Riverbend, Buffalo, NY.

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 enhanced 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

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 23 day of July, 2014.

By: [Signature]
(SIGNATURE)

Print Name: Alicia Dicks
Title: President, BSMC

Minority Business Enterprise Liaison

Scott Bateman (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

20% Minority and Women's Business Enterprise Participation

EEO Contract Goals

 % Minority Labor Force Participation

 % Female Labor Force Participation

[Signature]
(Authorized Representative)

Print Name: Alicia Dicks
Title: President
Date: 6/12/14



**EXHIBIT G-2: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
STAFFING PLAN**

Submit with Bid or Proposal – Instructions on page 2

Solicitation No.:	Reporting Entity:	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:
Offeror's Name:		
Offeror's 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 Male (M)	Total Female (F)	White		Black		Hispanic		Asian		Native American		Disabled		Veteran	
		(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)	(M)	(F)
Officials/Administrators																	
Professionals																	
Technicians																	
Sales Workers																	
Office/Clerical																	
Craft Workers																	
Laborers																	
Service Workers																	
Temporary /Apprentices																	
Totals																	

PREPARED BY (Signature):	NAME: TITLE: DATE:	TELEPHONE NO.: ALTERNATE TEL: EMAIL ADDRESS:
---------------------------------	---	---

Submit completed with bid or proposal M/WBE 101 (Rev 04/2012)

General Instructions: All Offerors and each subcontractor identified in the bid or proposal must complete an EEO Staffing Plan (M/WBE 101) 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

**EXHIBIT G-2: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
STAFFING PLAN**

Subcontractor's total work force, the Offeror 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 Offeror shall complete this form for the contractor's and/or Subcontractor's total work force.

Instructions:

1. Enter the Solicitation number that this report applies to along with the name and address of the Offeror.
2. Check off the appropriate box to indicate if the Offeror 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 Offerors' 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, title, phone number and email address for 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 or Female



**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

**EXHIBIT G-4: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE UTILIZATION PLAN**

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 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) under the contract. Attach additional sheets if necessary.

Federal Employer Identification No. (FEIN):

Offeror's Name:

Region/Location of Work:

Offeror's Address:

Solicitation No.:

City, State, Zip Code:

Project No.:

Telephone No.:

M/WBE Goals in the Contract: MBE - % WBE - %

1. Certified M/WBE Subcontractors/Suppliers Federal Employer Identification Number (FEIN), Name, Address, Phone, Fax and Email Address.	2. Classification	3. Federal ID No.	4. Detailed Description of Work (Attach additional sheets, if necessary)	5. Dollar Value of Subcontracts / Supplies / Services and intended performance dates of each component of the contract.
A.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			
B.	<u>NYS ESD CERTIFIED</u> <input type="checkbox"/> MBE <input type="checkbox"/> WBE			

**EXHIBIT G-4: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE UTILIZATION PLAN**

6. IF UNABLE TO FULLY MEET THE MBE AND WBE GOALS SET FORTH IN THE CONTRACT, OFFEROR MUST SUBMIT A WAIVER REQUEST FORM (FORM E4).

PREPARED BY (Signature): _____ DATE: _____

Preparer's Name (Print or Type): _____

Preparer's Title: _____

Date: _____

SUBMISSION OF THIS FORM CONSTITUTES THE OFFEROR'S ACKNOWLEDGEMENT AND AGREEMENT TO COMPLY WITH THE M/WBE REQUIREMENTS SET FORTH UNDER NYS EXECUTIVE LAW, ARTICLE 15-A, 5 NYCRR PART 143, 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.

TELEPHONE NO.:

EMAIL ADDRESS:

**** FOR OCSD-M/WBE USE ONLY ****

REVIEWED BY:

DATE:

UTILIZATION PLAN APPROVED?

YES NO Date: _____

Contract No.: _____

Project No. (if applicable): _____

Contract Award Date: _____

Estimated Date of Completion: _____

Amount Obligated Under the Contract: _____

Description of Work: _____

NOTICE OF DEFICIENCY ISSUED?

YES NO Date of Issue: _____

NOTICE OF ACCEPTANCE ISSUED?

YES NO Date of Issue: _____

**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: ___%	
<p><u>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".</u></p>		
<p>Contractor is requesting a:</p> <p>1. <input type="checkbox"/> MBE Waiver – A waiver of the MBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial</p> <p>2. <input type="checkbox"/> WBE Waiver – A waiver of the WBE Goal for this procurement is requested. <input type="checkbox"/> Total <input type="checkbox"/> Partial</p> <p>3. <input type="checkbox"/> 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).</p> <p> Date of such filing with Empire State Development Corporation: ___</p>		
<p>PREPARED BY (Signature): _____ Date: ___</p> <p>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.</p>		
Name and Title of Preparer (Printed or Typed):	Telephone Number:	Email Address:
<p>Submit with the bid or proposal or if submitting after award submit to:</p> <p>Empire State Development Office of Contractor and Supplier Diversity 633 Third Avenue, 33rd Floor New York, New York 10017</p>	***** FOR M/WBE USE ONLY *****	
	REVIEWED BY:	DATE:
	<p>Waiver Granted: <input type="checkbox"/> YES MBE: <input type="checkbox"/> WBE: <input type="checkbox"/></p> <p><input type="checkbox"/> Total Waiver <input type="checkbox"/> Partial Waiver</p> <p><input type="checkbox"/> ESD Certification Waiver <input type="checkbox"/> *Conditional</p> <p><input type="checkbox"/> Notice of Deficiency Issued ___</p> <p>* <u>Comments:</u></p>	

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

**EXHIBIT G-6: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE CONTRACTOR COMPLIANCE AND PAYMENT REPORT**

PROJECT SPONSOR/DEVELOPER
(or "REPORTING COMPANY"):

FEDERAL EIN #:

ADDRESS:

TOWN/COUNTY/ZIP:

CONTACT PERSON:

TELEPHONE:

EMAIL:

ESD/OCSD REPRESENTATIVE:

PROJECT NAME:

PROJECT #:

PROJECT START DATE:

PERCENT COMPLETE:

ACTUAL COMPLETION DATE:

Attach M/WBE executed contracts, final lien waivers, cancelled checks, etc., or other documentation describing the "Good Faith Efforts" taken to achieve M/WBE program. This report should be completed and signed by an officer of the Reporting Company.

PRIME CONTRACTOR (Federal EIN #, Firm's Name, Address, Contact Person, Title and Phone # with area code)	CONTRACT AMOUNT	M/WBE SUBCONTRACTOR (Federal EIN #, Subcontractor Name, Address, Contact Person, Title and Phone # with area code)	SCOPE OF SERVICES	M/WBE CONTRACT AMOUNT	M/WBE PAYMENTS PREVIOUSLY REPORTED	M/WBE PAYMENTS ON CURRENT REPORT	TOTAL M/WBE PAYMENTS TO DATE

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: _____

EXHIBIT G-6: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
M/WBE CONTRACTOR COMPLIANCE AND PAYMENT REPORT

SUBMIT REPORT TO: OFFICE OF CONTRACTOR AND SUPPLIER DIVERSITY
EMPIRE STATE DEVELOPMENT
633 THIRD AVENUE, 33rd FLOOR
NEW YORK, NY 10017

Completed Exhibits may also be emailed directly to OCSD at ocsd@esd.ny.gov. All email submissions must include the name and contact information of the individual or firm submitting the information.

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

Vikas Gera
Project Manager, OCSD
(212) 803-3244
vgera@esd.ny.gov

Denise Ross
Project Manager, OCSD
(212) 803-3226
dross@esd.ny.gov

Diane Kinnicutt
Dept. of Economic Dev. (DED)
(518) 292-5727
dkinnicutt@esd.ny.gov

Finger Lakes
Western New York
NYC- Brooklyn & Queens
Long Island
All ESD Subsidiaries

Southern Tier
Mohawk Valley
Mid-Hudson Region
NYC-Manhattan, Staten Island
& Bronx

North Country
Capital District
Central New York
DED Procurement

EXHIBIT H: REPORT OF EMPLOYMENT
NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d\b\ a EMPIRE STATE DEVELOPMENT

Fort Schuyler Management Corporation/RiverBend Park Capital, Project Number Y962

EXHIBIT H: REPORT OF EMPLOYMENT (WITH COMPANY'S NYS FORM 45 ATTACHED)

Complete EITHER Table A (as Annual Report*) OR Table B (with every Payment Request)*

* Attach NYS-45 form including cover page and NYS-45-ATT attachment (with blocked out social security numbers and location indicated as necessary. If the reported employment figures on Exhibit H vary materially from those reported to the New York State Department of Labor on NYS-45, please attach an explanation identifying reasons for any difference.

FULL-TIME PERMANENT EMPLOYEES

For purposes of this Agreement, a **Full-time Permanent Employee shall mean**

- (a) 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
- (b) 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.

Table A: Annual Report due every February 1 for prior calendar year*

FULL-TIME PERMANENT EMPLOYEES	As of Grantee's last payroll date on or prior to the end of the designated quarter				ANNUAL AVERAGE (Based on the four quarterly numbers)
	March 31, 20__	June 30, 20__	Sept. 30, 20__	Dec. 31, 20__	
At Project Location					
At Other New York Locations (if applicable)					

Table B: With every Payment Request

FULL-TIME PERMANENT EMPLOYEES	as of ____/____/____ (date of request)
At Project Location	
At Other New York Locations (if applicable)	

The information included herein is correct to the best of my knowledge and belief.

Signature: _____ Date: _____

Print Name and Title: _____

Any false statement herein may cause the borrower or grantee to be in default under its grant disbursement agreement with ESD.

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
d\b\ a EMPIRE STATE DEVELOPMENT CORPORATION
Fort Schuyler Management Corporation/RiverBend Park Capital, Project Number Y962

EXHIBIT H-1
REPORT OF EMPLOYMENT AFFIDAVIT IN LIEU OF AUTHORIZATION
TO VIEW FORM NYS-45

STATE OF NEW YORK)

) ss.:

COUNTY OF ERIE)

The Undersigned, being duly sworn, deposes and says:

1. I, _____, am the _____ of _____ (the "Grantee"), 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 Corporation ("ESD") and the Grantee dated the ____ day of _____, 202__.

3. The Project Location, as set forth in the Agreement is 1339-1341 South Park Avenue, Buffalo.

4. The term "Tenant" used herein is defined as individuals or entities that have entered into a lease with the Grantee and occupy space within the commercial components at the Buffalo High-Tech Manufacturing Innovation Hub. The Grantee shall only rent to Tenants in compliance with the Charter and Code of the City of Buffalo, Chapter 511 (Zoning), Article XVII (Downtown Area Zone), Sections 511-71 (DO Downtown Opportunity District) and 511-75 (Representative permitted and prohibited uses).

5. I have received and reviewed Employment Documentation for this Employment Reporting Year, which has been submitted by Tenants and includes solely job numbers concerning the Project Location. This Employment Documentation reviewed includes, but is not limited to, NYS 45's, payroll registers, and/or payroll records, and, under limited circumstances, Building Access Records. I have attached these Documents to this Affidavit and is hereby incorporated as "Exhibit A," I include a spreadsheet listing the quarter by quarter Full-Time Permanent Employee figure ("FTE") for each Tenant at the Project Location for Employment Reporting Year _____. I also include as part of Exhibit A the FTE figure of Company for this Employment Reporting Year. The term FTE used herein is set forth in the Agreement.

EXHIBIT H-1, continued

6. I certify that information contained in Exhibit A is a clear and accurate representation of the job numbers at the Project Location. I understand that any misrepresentation contained in Exhibit A submitted by the Grantee serves as a default under the terms of the Agreement, and therefore may result in ESD demanding repayment of all or a portion of the Grant.

7. I am aware that the swearing of a false oath is a Class A misdemeanor and may be a Class E felony.

Signature

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

Notary Public

EXHIBIT I: SPECIAL PROVISIONS

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.

The following sections of the Terms and Conditions of this Agreement are waived: Section 3(e); Section 4(c); Section 9(a)(iv) and Section 9(a)(vii).

Paragraph 8(i) shall mean that Grantee and/or Beneficiary shall maintain or cause to be maintained business operations at the Project Location(s) for the term of this Agreement.

Paragraph 23 is added to Terms and Conditions, as follows:

23. Joint and Several Liabilities

- (a) As used herein, the term Grantee shall include all signatories hereto, if more than one, other than ESD. In such event the obligations, representations and warranties of Grantee hereunder shall be joint and several.
- (b) As used herein, the term Beneficiary shall include all signatories hereto, if more than one, other than ESD. In such event the obligations, representations and warranties of Beneficiary hereunder shall be joint and several.

All future Beneficiaries of the Agreement, will be added via an Amendment to this Agreement.

**Exhibit F-2: DOCUMENTATION OF PROJECT COSTS
Project Cost Summary**

Fort Schuyler Management Corporation/RiverBend Park Capital, Project #Y962

Item # *	Check #	\$ Amount	Invoice date	Vendor Name	Description of Item or Service
TOTAL:					

PREPARED BY: _____ DATE: _____

*Indicate item numbers clearly on any supporting documentation such as checks, bank statements and invoices. **Copy form as necessary.**
An Excel version of this form may be utilized. Please provide an Excel version of Exhibit F-2 to Jean Williams at jwilliams@esd.ny.gov

Note: If construction is being documented with AIA forms, please be sure that all applicable sections are completed, signed & notarized.

EXHIBIT F-1: FINANCIAL CONDITION DOCUMENTATION

Fort Schuyler Management Corporation's most recent financial statements dated not more than 90 days prior to the disbursement date.