

State University of New York at The College at Brockport

Revocable Permit For Non-Commercial Use of University Facilities

THIS REVOCABLE PERMIT, made this _____, day of _____, by and between the STATE UNIVERSITY OF NEW YORK, an educational corporation organized and existing under the laws of the State of New York, and having its principal place of business located at SUNY Plaza, Albany, New York, 12246, by and on behalf of the State University of New York at The College at Brockport, having its principal place of business at 350 New Campus Drive, Brockport, New York 14420, hereinafter referred to as "SUNY Brockport" and the **New York State Canal Corporation**, a public benefit corporation pursuant to Section 1005-b of Public Authorities Law, having its principal offices at **30 South Pearl Street, Albany, New York, 12207**, hereinafter referred to as "the Permittee:" The Permittee and SUNY Brockport may be referred to collectively as "the Parties."

WHEREAS, the Permittee will be conducting an on-campus activity which requires certain facilities; hereinafter referred to as the "Activity"; and

WHEREAS, SUNY Brockport has such facilities; and

WHEREAS, the parties desire to enter into an agreement whereby SUNY Brockport will make such facilities available to the Permittee for the Activity.

NOW, THEREFORE, be it known that a Revocable Permit ("Permit") is hereby granted to the Permittee, subject to the terms and conditions as hereinafter provided, to use the facilities and services designated in **Exhibit B**, attached hereto and made a part hereof, on the date(s) and at the times specified thereon.

1. SUNY Brockport shall supply all ordinary and necessary water, gas, electricity, light, heat and sewerage facilities for the premises. Unless specifically indicated otherwise in **Exhibit B**, no telephone service shall be provided by SUNY Brockport to Permittee.
2. The Permittee shall take good care of the premises, fixtures and appurtenances to preserve the premises in good order and condition.
3. In consideration of the facilities and services to be provided by SUNY Brockport as enumerated herein, the Permittee agrees to reimburse SUNY Brockport in accordance with the costs or services stipulated on **Exhibit C**, attached hereto and made a part hereof, and any other extraordinary costs incurred by SUNY Brockport to meet the requirements of the Permittee. Payment shall be made by the Permittee payable upon receipt of an official billing statement from SUNY Brockport. The form and manner of presentation of the statement shall be mutually agreed upon by the Parties.
4. The Permittee shall be responsible for any and all damages or loss by theft or otherwise of property related to the Permittee's use of the facilities, whether such property shall belong to SUNY Brockport or to others. Permittee shall be responsible for injury to persons (including death) which may in any way result from the operation or conducting of the Activity or by Permittee's use of the facilities, premises, appurtenances and surrounding grounds, or may be caused by any of the persons involved in the Activity, whether or not directly caused by the Permittee.

5. The Permittee shall be responsible for and shall maintain good discipline and proper behavior on the part of all persons in any way involved with the Activity and agrees to remove any personnel involved in the Activity whose actions, or failure to act, shall in the sole judgment of SUNY Brockport, after consulting with the Permittee, be deemed to be detrimental to SUNY Brockport.
6. The Permittee shall be responsible for injury to persons (including death) which may in any way result from the operation or conduction of the Activity, or may be caused by the negligence of willful misconduct of Permittee.
7. If in the judgment of SUNY Brockport the activities of any personnel in any way involved in the Activity should be such that SUNY Brockport, after consultation with the Permittee, shall determine that the continuation of the Activity for the then remaining period covered by this Permit shall be contrary to the best interest of SUNY Brockport, SUNY Brockport may terminate this Permit without liability of any kind whatsoever therefore, and the Permittee and all personnel so involved shall be thereupon removed from SUNY Brockport premises.
8. This Permit shall be interpreted according to the laws of the State of New York. The Permittee shall comply with established State University of New York and SUNY Brockport regulations and policies and with all laws, rules, orders, regulations, and requirements of Federal, State and municipal governments applicable thereto including the provisions contained in the rider attached hereto and made a part hereof as *Exhibit A*. If necessary, Permittee shall obtain and keep in force at its sole cost and expense, any permits or licenses which may be required by any local, State or Federal Governmental body.
9. The Permittee agrees that the issuance of this Permit shall in no way diminish the statutory authority of the State University of New York or SUNY Brockport to possession, pursuant to the Education Law, of the State controlled property to which this Permit relates; nor shall the dominion and control by the State University of New York over the said State property be in any way diminished.
11. The Permittee specifically agrees that this Permit does not create the relationship of landlord and tenant between SUNY Brockport and the Permittee regarding the use of the State controlled property to which this Permit relates. The relationship of the Permittee to State University of New York and the State of New York arising out of this Permit shall be that of licensee.
12. The Permittee specifically agrees that this Permit shall be void and of no further force and effect upon any use of the State controlled property to which this Permit relates which is inconsistent with State Law or which in any way conflicts with the purposes or objectives of SUNY Brockport.
13. Upon removal from said premises, the Permittee shall, at its sole cost and expense, restore the premises as nearly as possible to the condition in which these premises were in when the use by the Permittee began, other than ordinary wear and tear to the premises.
14. The Permittee shall have the right, so long as this Permit shall remain in force, to enter upon said State lands and facilities designated in *Exhibit B* to conduct the Activity.
15. The Permittee specifically agrees not to hold itself out as representing the State of New York or State University of New York in connection with the use of the State-owned property to which this Permit relates, nor shall the name of the State of New York, the State University of New York, or the State University of New York at Brockport be used by Permittee for any purpose without prior approval of the SUNY Brockport.
16. The Permittee assumes all risk incidental to the use of said facilities and shall be solely responsible for any and all accidents and injuries to persons and property (including death) arising out of or in connection with the Activity, the Permittee's use of facilities, its appurtenances and the surrounding grounds and hereby covenants and shall be responsible to and shall fully defend, indemnify, and hold harmless the State of New York and the State University of New York and their respective officers, trustees, directors, agents and employees, from any and all losses, expenses, damages and liabilities, including reasonable attorneys' fees,

or licensees arising out of or relating to the use of the facilities, the premises, its appurtenances and the surrounding grounds or the violation by said Permittee, its agents, employees or contractors of any law, code, order, ordinance, rule or regulation in connection therewith. Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, SUNY Brockport shall hold harmless and indemnify the Permittee, their respective officers, trustees, directors, and employees from any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State University of New York or of its officers or employees when acting within the course and scope of their employment.

17. Permittee agrees to obtain and maintain insurance coverage throughout the term of this Permit as provided in this paragraph and shall deliver Certificates of Insurance for the stated coverage upon execution of this Permit, **or in the alternative provide letters of self-insurance.** The policies of insurance set forth below shall be written by companies authorized by the New York Department of Financial Services to issue insurance in the state of New York ("admitted" carriers) with an A.M. Best company rating of "A-" or better.
- (a) Workers Compensation and Disability Benefits Coverage for the life of this Permit for the benefit of employees required to be covered by the New York State Workers Compensation Law and the New York State Disability Benefits Law. Evidence of coverage must be provided on forms specified by the Commissioner of the Workers Compensation Board.
 - (b) General Liability Insurance with limits no less than Three Million Dollars (\$3,000,000) per claim and Three Million Dollars (\$3,000,000) in the aggregate. Such policy shall name the State University of New York as an additional insured and shall contain a provision that the State University of New York shall receive at least thirty (30) days written notice prior to material change, cancellation or expiration of such policy.

All insurers must be licensed and authorized or permitted to do business in the jurisdiction where the Site is located. The provision of insurance required in this Agreement shall not be construed to limit or otherwise affect the liability of Permittee. The Permittee (but not any of its contractors, subcontractors, or agents) may elect to self-insure these obligations provided that SUNY Brockport consents in writing, which consent may be withheld or withdrawn at any time during the Term in its sole discretion.

Permittee will not do or permit to be done in or about the Premises nor bring or keep or permit to be brought to the Premises anything that SUNY Brockport has disclosed in writing or is or should be reasonably known to Permittee which: (a) is or would be reasonably prohibited by any insurance policy carded by SUNY Brockport covering the Site, and Permittee's User Equipment; (b) will increase the existing premiums for any such policy beyond that contemplated for the addition of Permittee's User Equipment and Facilities.

18. The Permittee specifically agrees that if this permit is cancelled or terminated for any reason, the Permittee shall have no claim against SUNY Brockport, its officers and employees, nor any claim against the State of New York, its officers and employees, and both the State University of New York and the State of New York and their officers and employees shall be relieved from any and all liability.
19. **Permittee Responsibility.** (a) *General Responsibility.* The Permittee shall at all times during the term of this Permit remain responsible. The Permittee agrees, if requested by the SUNY Chancellor 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) *Suspension of Work for Non-Responsibility.* The SUNY Chancellor, in his or her sole discretion, reserves the right to suspend any or all activities under this Permit at any time when he or she discovers information that calls into question the responsibility of the Permittee. In the event of such suspension, the Permittee will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Permittee must comply with the terms of the suspension order. Activity under this Permit may resume at such time as the SUNY Chancellor or his or her designee issues a written notice authorizing a resumption of performance under the Permit. (c) *Termination for Non-Responsibility.* Upon written notice to the Permittee and a reasonable opportunity to be heard with appropriate SUNY

Permittee's expense, where the Permittee is determined by the SUNY Chancellor or his or her designee to be non-responsible. In such event, the SUNY Chancellor or his or her designee may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

19. Any notice to either party hereunder must be in writing signed by the party giving it and shall be served either personally or by certified mail addressed as follows:

TO SUNY Campus: State University of New York at Brockport
Office of Procurement & Payment Services
Mark Stacy, Director Campus Services
350 New Campus Drive
Brockport, New York 14420
585-395-5149

TO THE PERMITTEE: New York State Canal Corporation
Ambrose Barbuto
149 Northern Concourse, Ste. 400
North Syracuse, New York 13212
315-423-2081

Or to such other addressee as may be hereafter designated by notice. All notices become effective only when received by the addressee.

20. This Permit constitutes the entire agreement of the parties hereto and all previous communications between the parties, whether written or oral, with reference to the subject matter of this contract are hereby superseded including the Revocable Permit # [REDACTED] as amended on or about December [REDACTED], 2021. In the event of any inconsistency or conflict among the documents comprising this Permit, such inconsistency or conflict shall be resolved by giving precedence to the documents in the following order:

1. Exhibit A, State University of New York Standard Contract Clauses (To the extent applicable to a New York State Public Benefit Corporation)
2. Exhibit B, Designated Facilities and Services
3. Exhibit C, Costs and Services
4. Exhibit D, Permittee's Letters of Self Insurance
5. Exhibit E, Village & Permittee Commitments to Access Over Boathouse Parcel

21. The permission hereby granted shall be effective upon execution of the Parties and may be revoked at any time without cause. Upon revocation of the permission hereby granted and notice thereof served either in person or by registered mail, return receipt requested, said Permittee shall and will promptly discontinue the use of the premises and shall thereupon remove all of its property from the premises and shall restore the premises to the same condition it was in before use by the Permittee commenced, except that this permit shall terminate twenty (20) years from the date of execution by both Parties in any event, if not sooner revoked. Under no circumstances shall State University of New York be held liable for damages of any kind, either direct or indirect, for termination of this permit. The parties agree to use commercially reasonable efforts to meet periodically during the Term (no less than every two years) to evaluate the relationship and address any issues that have or may arise.

IN WITNESS WHEREOF, the Permittee has caused this instrument to be sealed and signed by its duly authorized officer, and SUNY Brockport has caused this instrument to be executed by its duly authorized officer.

STATE UNIVERSITY OF NEW YORK AT
THE COLLEGE AT BROCKPORT

PERMITTEE
NEW YORK STATE CANAL CORPORATION

By: _____
Mark Stacy
Director, Campus Services

By: _____
Official Representative of Permittee or Authorized Designee

Date: _____

Date: _____

**State University of New York
Notary Acknowledgement**

(ACKNOWLEDGEMENT BY INDIVIDUAL)

STATE OF NEW YORK)
COUNTY OF)SS.:

On this _____ day of _____, 20____, before me personally came _____, to me known and known to me to be the person described in and who executed the forgoing instrument and he/she acknowledged to me that he/she executed the same.

Notary Public

(ACKNOWLEDGEMENT BY UNICORPORATED ASSOCIATION)

STATE OF NEW YORK)
COUNTY OF)SS.:

On this ____ day of _____ 20____, before me personally came _____
To me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for himself/herself depose and say that he/she is a member of the firm of _____
And that he/she executed the foregoing instrument in the firm name of _____
And that he/she had authority to sign same, and he/she did acknowledge to me that he/she executed the same as the act and deed of said firm of _____, for the uses and purposes mentioned therein.

Notary Public

ACKNOWLEDGEMENT BY CORPORATION

STATE OF NEW YORK)
COUNTY OF)SS.:

On this _____ day of _____ 20____, before me personally came _____ to me known, who duly being sworn, did depose and say that he/she resides in _____; that he/she is the _____ of the _____, the corporation described in and which executed the foregoing instrument; that he/she knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal, that was so affixed by the order of the Board of directors of said corporation, and that he/she signed his/her name thereto by like order.

Notary Public

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State or State University of New York, whether a Contractor, licensor, licensee, lessor, lessee or any other party; the State University of New York shall hereinafter be referred to as "SUNY"):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. PROHIBITION AGAINST ASSIGNMENT. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of SUNY and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. SUNY retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with SUNY. The Contractor may, however, assign its right to receive payments without SUNY's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law and Section 355 of the Education Law, if this contract exceeds \$250,000, or, if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State, and the State shall bear no liability, until it has been approved by the State Comptroller and filed in his or her office, or the pertinent pre-audit review period has elapsed. However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State-approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of competitive bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to SUNY a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 *et seq.*) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by SUNY, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as SUNY and any other agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. SUNY shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate SUNY official, in writing, that said Records should not be disclosed; and (ii) said Records shall be sufficiently identified; and (iii) designation of said Records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, SUNY's or the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

(a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to SUNY by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to SUNY or the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of SUNY contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at SUNY's request, Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations 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, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or sub-contractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. SUNY shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, SUNY shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Exhibit A, the terms of this Exhibit A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized) but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165 (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with the approval of the State, otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992.

It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business

Albany, NY 12245
Tel: 518-292-5100
Fax: 518-292-5884
email: opa@esd.ny.gov

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
633 Third Avenue
New York, NY 10017
212-803-2414

email: mwbecertification@esd.ny.gov
<https://ny.newnycontracts.com/frontEnd/ VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to SUNY;

(b) The Contractor has complied with the Federal Equal Employment Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act of 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law

§ 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa; State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal or similar services, then in accordance with Section 163(4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to SUNY, the Department of Civil Service and the State Comptroller.

24. PURCHASES OF APPAREL AND SPORTS EQUIPMENT. In accordance with State Finance Law Section 165(7), SUNY may determine that a bidder on a contract for the purchase of apparel or sports equipment is not a responsible bidder as defined in State Finance Law Section 163 based on (a) the labor standards applicable to the manufacture of the apparel or sports equipment, including employee compensation, working conditions, employee rights to form unions and the use of child labor; or (b) bidder's failure to provide information sufficient for SUNY to determine the labor conditions applicable to the manufacture of the apparel or sports equipment.

25. PROCUREMENT LOBBYING. To the extent this contract is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this contract the Contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the contract by providing written notification to the Contractor in accordance with the terms of the contract.

26. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this contract is a contract as defined by Tax Law § 5-a, if the Contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or SUNY discovers that the certification, made under penalty of perjury, is false, then

such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the contract, if SUNY determines that such action is in the best interests of the State.

27. IRAN DIVESTMENT ACT. By entering into this contract, Contractor certifies in accordance with State Finance Law §165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at:

<https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this contract, it must provide the same certification at the time the contract is renewed or extended. Contractor also agrees that any proposed Assignee of this contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the contract, should SUNY receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, SUNY will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then SUNY shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

SUNY reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

28. ADMISSIBILITY OF REPRODUCTION OF CONTRACT. Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.

THE FOLLOWING PROVISIONS SHALL APPLY ONLY TO THOSE CONTRACTS TO WHICH A HOSPITAL OR OTHER HEALTH SERVICE FACILITY IS A PARTY

29. Notwithstanding any other provision in this contract, the hospital or other health service facility remains responsible for insuring that any service provided pursuant to this contract complies with all pertinent provisions of Federal, state and local statutes, rules and regulations. In the foregoing sentence, the word "service" shall be construed to refer to the health care service rendered by the hospital or other health service facility.

30. (a) In accordance with the 1980 Omnibus Reconciliation Act (Public Law 96-499), Contractor hereby agrees that until the expiration of four years after the furnishing of services under this agreement, Contractor shall make available upon written request to the Secretary of Health and Human Services, or upon request, to the Comptroller General of the United States or any of their duly authorized representatives, copies of this contract, books, documents and records of the Contractor that are necessary to certify the nature and extent of the costs hereunder.

(b) If Contractor carries out any of the duties of the contract hereunder, through a subcontract having a value or cost of \$10,000 or more over a twelve-month period, such subcontract shall contain a clause to the effect that, until the expiration of four years after the furnishing of such services pursuant to such subcontract, the subcontractor shall make available upon written request to the Secretary of Health and Human Services or upon request to the Comptroller General of the United States, or any of their duly authorized representatives, copies of the subcontract and books, documents and records of the subcontractor that are necessary to verify the nature and extent of the costs of such subcontract.

(c) The provisions of this section shall apply only to such contracts as are within the definition established by the Health Care Financing Administration, as may be amended or modified from time to time.

31. **Hospital Retained Authority:** Hospital Retained Authority: The Hospital retains direct, independent authority over the appointment and/or dismissal, in its sole discretion, of the facility's management level employees (including but not limited to, the Facility/Service Administrator/Director, the Medical Director, the Director of Nursing, the Chief Executive Officer, the Chief Financial Officer and the Chief Operating Officer) and all licensed or certified health care staff. The Hospital retains the right to adopt and approve, at its sole discretion, the facility's operating and capital budgets. The Hospital retains independent control over and physical possession of the facility's books and records. The Hospital retains independent control over and physical possession of the facility's operating policies and procedures. The Hospital retains full authority and responsibility for, and control over, the operations and management of the facility. The Hospital retains the right and authority to independently adopt, approve and enforce, in its sole discretion, policies affecting the facility's delivery of health care services. The Hospital retains the right to independently adopt, approve and enforce, at its sole discretion, the disposition of assets and authority to incur debts. The Hospital retains the right to approve, at its sole discretion, contracts for administrative services, management and/or clinical services. The Hospital retains the right to approve, at its sole discretion, any facility debt. The Hospital retains the right to approve, at its sole discretion, settlements of administrative proceeding or litigation to which the facility is a party. No powers specifically reserved to the Hospital may be delegated to, or shared by, the Contractor or any other person. In addition, if there is any disagreement between the parties to this Agreement regarding control between the Hospital and the Contractor, the terms of this Section shall control.

EXHIBIT B

Designated Facilities and Services State University of New York at The College at Brockport

New York State Canal Corporation

Permittee Name

Additional Information, Terms and Conditions:

As per the attached drawing, Civil - Crane Access Agreement - South Abutment - CIV – 101 of 10/06/2021, the Permittee will be allowed access from Holley Street north through campus property for the purposes of maintenance, construction and rehabilitation of the Guard Gate, canal embankment near Erie and Perry Streets and new pedestrian bridge. Working hours are to be coordinated and approved in writing by SUNY Brockport. In the event there is a Monroe County travel restriction or SUNY Brockport is closed, access will be unavailable.

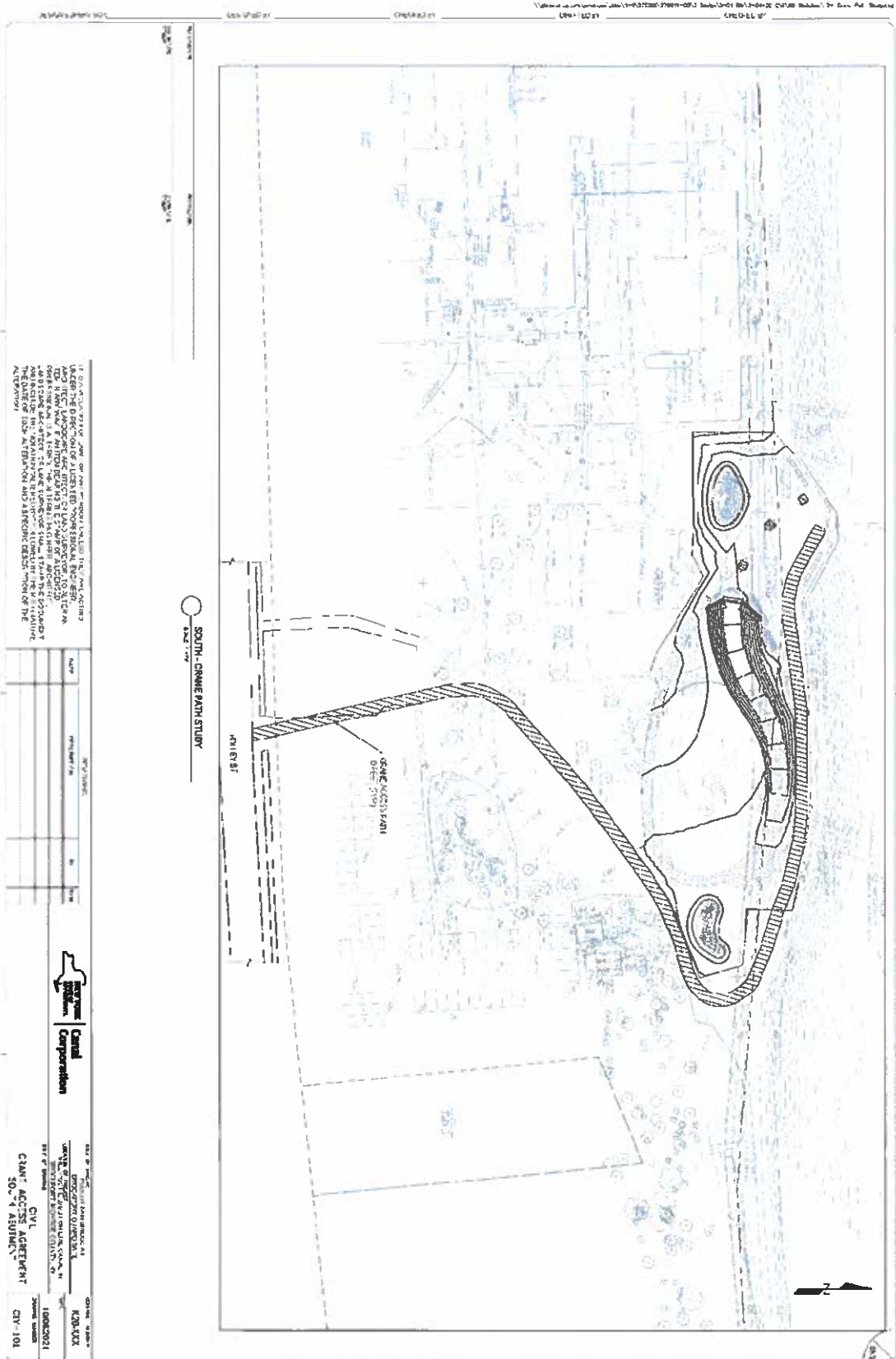
Please contact the Director of Facilities Maintenance and Operations to schedule and coordinate access:

Kevin Rice, 585-643-1221, krice@brockport.edu

Anticipated Equipment and Materials:

Various heavy construction equipment including, but not limited to, mobile cranes, excavators, dump trucks, semi-trailers, etc.

1. Access by Permittee, its employees, contractors and sub-contractors shall be restricted to the areas at the Site(s) owned or under the jurisdiction of SUNY Brockport. Prior to entry to the Site, Permittee and/or its contractors shall provide SUNY Brockport at least five (5) days' notice and a detailed scope of work for the planned activities including the general location of construction. In the event of an emergency, the Permittee shall contact SUNY Brockport to arrange for immediate access to the site. Permittee, its employees and contractors shall use best efforts to minimize disruption to current activities on and prevent damage to any personal property and structures located at the Site.
2. Permittee and/or its contractors and subcontractors shall maintain for the term of this Permit insurance as required in Paragraph 17 hereof. If Permittee is permitted to self-insure any insurance requirements, it will not permit any of its contractors or subcontractors to visit, use or otherwise access the premises unless and until that contractor or subcontractor has obtained the necessary insurance coverage and submitted documentation of such coverage to SUNY Brockport.
3. All wastes and materials the Permittee, its employees and contractors and sub-contractors generate on the Site shall become the sole property of the Permittee.
4. After the construction has been completed, Permittee or its authorized representatives shall repair and restore those portions of the Site, or surrounding areas, roadways, sidewalks, trees, etc., which are in any way affected, damaged or disturbed due to the performance of the construction to a condition nearly identical to the condition that existed before the commencement of the construction. This permit does not authorize any tree removal or damages and any work that will result in such damage or disturbance must first be disclosed to SUNY Brockport and is subject to prior written consent.
5. Permittee shall obtain all necessary state, federal and local approvals and/or permits prior to conducting any of the activities described in this section.



IT IS THE POLICY OF THE CITY OF ASHEVILLE TO PROVIDE ACCESS TO ALL PUBLIC AREAS AND FACILITIES. THE CITY OF ASHEVILLE HAS REVIEWED THIS PLAN AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY OF ASHEVILLE POLICY AND HAS GRANTED THE NECESSARY PERMITS FOR THE CONSTRUCTION OF THE PROJECT. THE CITY OF ASHEVILLE HAS REVIEWED THIS PLAN AND HAS DETERMINED THAT IT IS IN ACCORDANCE WITH THE CITY OF ASHEVILLE POLICY AND HAS GRANTED THE NECESSARY PERMITS FOR THE CONSTRUCTION OF THE PROJECT.

NAME	PROJECT #	DATE	STATUS



 LUND CORPORATION

1000 W. MAIN ST. SUITE 100

 ASHEVILLE, NC 28801

 TEL: 704.259.1234

 FAX: 704.259.1235

 WWW.LUND.COM

CIVIL

 CANNING ACCESS AGREEMENT

 SOUTH-CANNING PATH STUDY

 CITY-101

EXHIBIT C

COMPENSATION

State University of New York at The College at Brockport

New York State Canal Corporation

Permittee Name

The Permittee is not required to compensate the College for the site access provided in this permit.

Exhibit D

Letters of Self-Insurance



**NY Power
Authority**

**Canal
Corporation**

KATHY HOCHUL
Governor

JOHN R. KOELMEL
Chairman

JUSTIN E. DRISCOLL
Interim President and Chief Executive Officer

BRIAN U. STRATTON
Director, Canal Corporation

December 9, 2021

The College at Brockport,
State University of New
York 350 New Campus
Drive Sweden, NY

RE: Southern Crane Access Agreement

Pursuant to your request for insurance information, New York Canal Corporation (NYCC), NYCC is self-insured with the appropriate coverages and limits.

This self-insured retention covers any liability imposed upon NYCC and its subsidiaries with respect to all operations and obligations assumed by NYCC pursuant to the terms of the agreements. NYCC represents that such programs provide the additional insureds with all rights, immunities and protections that would be provided by traditional independent insurance required under the agreement, including, but not limited to, the defense obligations that insurers are required to undertake in liability policies pursuant to the terms of the agreements.

Sincerely,

Elizabeth Clarke-Pilgrim

Elizabeth Clarke-Pilgrim
Manager Corporate
Insurance New York Power
Authority 123 Main Street
White Plains, NY 10601
M: (914) 582-0985 | Elizabeth.Clarke-Pilgrim@nypa.gov



ANDREW M. CUOMO
GOVERNOR

CLARISSA M. RODRIGUEZ
CHAIR

**Office of the Secretary
Compliance With Workers' Compensation Law**

I, Kim McCarroll, Secretary for the Workers' Compensation Board, DO HEREBY Certify that:

Name: New York State Canal Corporation
WCB #: W847750
Tax ID #: 141753231
Qual Date: 1/1/2018

has secured compensation to its employees as a self-insurer in the following manner:

Pursuant to Section 50, subdivisions 3 and 4 of the Workers' Compensation Law. (County, city, village, town, school district, fire district or other political subdivision)

The status of the self-insurer was effective as noted above and remains in full force.

IN WITNESS WHEREOF, I have hereunto set
my hand and affixed the seal of the Workers'
Compensation Board this 12th day of January
2021.


KIM MCCARROLL
SECRETARY

Status Confirmed By
Krystie Freedman
1/12/2021

Exhibit D

**Village of Brockport & Permittee (Canal Corporation) Commitments to
Access Over Boathouse Parcel**



NY Power Authority | Canal Corporation

KATHY HOCHUL
Governor

JOHN R. KOELMEL
Chairman

JUSTIN E. DRISCOLL
Interim President and Chief Executive Officer

BRIAN U. STRATTON
Director, Canal Corporation

May __, 2022

Honorable Mayor Blackman
Village of Brockport, New York
Village Hall
127 Main Street
Brockport, NY 14420

Re: Construction Access Permit Acknowledgement – Boathouse Property

Dear Mayor:

As you are aware, the State University of New York at the College of Brockport (SUNY-Brockport) will be issuing a revocable permit to the New York State Canal Corporation to permit access over and through certain designated SUNY-Brockport properties for the purpose of maintenance, construction and rehabilitation of the Canal Corporation Guard Gate, canal embankments and the future pedestrian bridge. The access route is depicted in Exhibit B of the permit. A portion of the access route is anticipated to cross over and through a corner of the property commonly referred to as the “Boathouse Property” which is anticipated to be transferred from SUNY-Brockport to the Village of Brockport (Village). The Canal Corporation agrees to be bound by the same commitments as set forth in Exhibit B of the permit when utilizing the Boathouse Property, including, but not limited to proper notice, repair and restoration obligations and waste management.

By countersigning this letter, the Village of Brockport, upon acquiring ownership, agrees to provide reasonable access over and through the Boathouse property as depicted on Exhibit B of the permit to the Canal Corporation or its contractors and subcontractors for the duration of the permit.

A fully executed copy of this acknowledgement letter shall be attached to the permit as Exhibit D.

Sincerely,

Counter signature

Ambrose A. Barbuto
Director of Waterways Maintenance

Margaret B. Blackman
Mayor, Village of Brockport



**NEW YORK STATE CANAL CORPORATION,
VILLAGE OF BROCKPORT and STATE UNIVERSITY OF NEW YORK AT THE
COLLEGE AT BROCKPORT**

PEDESTRIAN BRIDGE MAINTENANCE AGREEMENT

This Agreement, ("Agreement") is made this _____ day of _____, 2022, by and between the New York State Canal Corporation ("Corporation"), a subsidiary public benefit corporation of the New York Power Authority ("Authority"), a public benefit corporation organized and existing pursuant to Article 2, Title 9 of the New York State Public Authorities Law, as amended, whose principal office is located at 30 South Pearl Street, Albany, New York 12209 (mailing address: P.O. Box 189, Albany, New York 12207), the Village of Brockport ("Village"), a municipality duly organized and existing under the laws of the State of New York ("State"), having its principal office at Village Hall, 127 Main Street, Brockport, New York, 14420 and The State University of New York by and on behalf of SUNY College at Brockport ("College"), an educational corporation duly organized and existing under the laws of the State of New York ("State"), having its principal office at 350 New Campus Drive, Brockport, New York, 14420 (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Corporation proposes to construct a pedestrian bridge and recreational area (the "Bridge") over the Erie Canal west of the Smith Street Bridge and located in the Village and adjacent to the College, and

WHEREAS, the Corporation's Board during its meeting on January 29, 2020 authorized funding for Reimagine the Canal projects to benefit the Canal System and canal communities, and

WHEREAS, the Bridge will benefit the Canal trail users, the Village and College by serving as a destination for recreation, and water front public access, and

WHEREAS, the Village pursuant to Resolution No. [REDACTED], authorized the Village's Mayor to enter into and bind the Village to this Agreement for the Village's assumption of routine operations and management responsibilities for the Bridge, and

NOW, THEREFORE, the parties hereto, for the consideration hereinafter named, do agree as follows:

ARTICLE I - SCOPE OF WORK

Section 1.1 - Routine Maintenance

The College and Village, as outlined below, shall be responsible for the performance of those routine maintenance activities and the repair and/or replacement costs associated with the following items as they relate to the Bridge. For avoidance of doubt, the parties agree that the College will have no obligations whatsoever under this Agreement unless and until the Corporation's Bridge is fully completed and operational as determined by mutual agreement of the parties.

Commented [LK1]: 2/23/22 Added clarification

College - The following on the Southern side of the Bridge.

- Asphalt surface pavements that connect to the Bridge (not including timber bridge deck) – routine maintenance (such as re-sealing and minor pothole repair as required) not caused by improper construction or activities by or at the direction of the Corporation that damages or destroys those areas (e.g., damage caused by large vehicle access or license/permits issued to third parties by the Corporation).
- Wood Seating benches
- Litter cleanup excluding litter resulting from special events and activities authorized at the site by the Corporation which shall be the responsibility of the Corporation or its licensees/permittees. Trash receptacles meeting mutually agreed upon specifications will be initially provided by the Corporation and the College will arrange for routine trash removal. Event coordinators are responsible for removal of trash generated by special events. NYPA shall supply one trash receptacle for SUNY, per SUNY's specifications, for SUNY to locate and maintain at the public open space located by the Bridge for daily use subject to the aforementioned exclusion.

- The following electrical maintenance activities: replacing non-functioning light bulbs, wiring and conduits, ancillary electrical equipment for all lighting on the top-side walkway of the Bridge, light poles located at north and south bridge abutments and open public spaces.
- Planting, pruning, and mowing, including along the southern canal embankment east and west of the Bridge (for a distance of three-hundred feet (300) feet in each direction) and around the public open space plaza. This responsibility does not include weeding or application of any herbicide or pesticides.
- Security System: Provide ongoing data coordination to deliver continuous 24 x 7 security coverage and integration into College's existing video surveillance system. Specifically, University Police will store the unmonitored video feed from the Corporation's surveillance system as specified for up to 30 days and, upon request of the Corporation, the College will commission, maintain and replace the security cameras initially installed by the Corporation with replacement cameras on an as needed basis.
- The removal of graffiti on the southern half of the inside walls of the Bridge, bridge abutments / ramps and public space amenities. (i.e., wood benches).
- Routine maintenance consisting of mowing and debris removal, as required, of two (2) bio retention ponds as specified in the Project's "as built" drawing to be completed and added to this Agreement as an Exhibit, without need to amend, upon completion of Project Construction (herein after "As Built Drawing". Long-term maintenance, inspections and repairs will be provided by the Corporation as noted below.

- Maintenance, as required on an as needed basis, of the two (2) southern bio-retention ponds located on SUNY property.

Village - Northern side of the Brockport Pedestrian Bridge.

- Asphalt surface pavements that connect to the Brockport Bridge (not including timber bridge deck).
- Wood benches
- Litter cleanup
- The removal of graffiti on the northern half of the Bridge, bridge abutments / ramps and public space amenities (i.e., wood benches)
- Signage on the north side of the bridge.
- Winter barriers and signage at all access points on both the Northern and Southern sides of the Bridge closing the Bridge during winter months between (November 1 and March 31).
- In season bi-weekly grass mowing along the northern canal embankment and along the perimeter of the Empire State Trail, that is 50 feet adjacent east and west of the Brockport Pedestrian Bridge and the public open space plaza as specified in the As Built Drawing.
- The Village of Brockport will take responsibility for the new electric meter and associated energy costs that will supply the electricity for all the lighting and security camera options.

The College and Village shall use commercially reasonable efforts to provide all resources, personnel, equipment and supplies necessary to perform the services set forth in this Section 1.1 except as specifically provided above. All materials and/or services shall be provided in accordance with standards customarily adhered to by an experienced and competent provider of such materials and/or services and the degree of care and skill ordinarily exercised by such party with respect to its own property. Work conducted by the College or Village contractors, consultants, invitees or agents on property under the control and jurisdiction of the Corporation shall be done pursuant to a Corporation issued Work Permit, which said permit shall not be unreasonably withheld.

Section 1.2 - Long Term Maintenance

The Corporation shall be responsible for all activities and costs associated with the Bridge not specifically listed in Section 1.1 including, but not limited to, the long-term maintenance activities and the repair and/or replacement costs associated with the following items:

- Periodic inspections of the bridge.
- Repairs and or replacement of the bridge's structural timber deck.
- Repairs to the superstructure and substructure, including painting.
- Maintenance of stone dust trail surface along the Empire State Trail passing under the bridge, adjacent public open space and at the ramp base terminus.
- Maintenance, as required, of the one (1) stormwater retention pond.
- Bridge navigational regulatory signage
- Bridge navigational lights including changing light bulbs

- Removal of graffiti from the outer sides and underside of the Bridge over navigational water and any other areas of the Bridge that cannot safely accessed and removed by the College or Village without special equipment such as lifts, safety harnesses, barges, etc.

The Corporation shall provide all resources, personnel, equipment and supplies necessary to perform the services set forth in this Section 1.2. All materials and/or services shall be provided in accordance with standards customarily adhered to by an experienced and competent provider of such materials and/or services and the degree of care and skill ordinarily exercised by reputable providers of such goods and/or services. Work conducted by the Corporation's contractors, consultants, invitees or agents on property under the control and jurisdiction of either the College or Village shall be done pursuant to a work permit issued by the appropriate Party (College or Village), which said permit shall not be unreasonably withheld provided that, with respect to the College, said permit is in a form substantially similar to the College's then-current standard form of revocable permit.

Section 1.3 — Access

The Parties agree to provide the other Party's employees and staff access to property under the control and jurisdiction of each Party for the exclusive purpose to effectuate the obligations set forth herein. Access by any third party (including contractors engaged to carry out a Party's responsibilities) shall be pursuant to the requirements of Sections 1.1 or 1.2.

ARTICLE II - TIME AND MANNER OF PERFORMANCE

Section 2.1 - Term

The term of this agreement shall be 50 years. By mutual agreement the parties may

choose to renew this agreement for an additional 50-year term. The parties agree to meet regularly, at least every two (2) years, to review their respective obligations and to address any issues and necessary adjustments.

Section 2.2 - Suspension, Abandonment and Termination

Upon (10) ten days written notice, a Party shall have the right to terminate this Agreement at any time and for any reason, and such action shall in no event be deemed a breach of contract by the other Parties. Following termination of this Agreement, responsibility for maintaining the Bridge and all personal and real property owned by, or under the jurisdiction of, the Corporation shall revert to the Corporation.

Section 2.3— Independent Contractor

The Parties are and shall be, in all respects, an independent contractor in relation to the work that is the subject of this Agreement. In accordance with its status as an independent contractor, the Parties covenant and agree that neither it nor its agents and/or employees will hold itself or themselves out as or claim to be an officer or employee of the other Parties, and that neither the Party nor its agents and employees shall make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the other Parties, including, but not limited to Workers' Compensation coverage, Unemployment Insurance benefits, Social Security coverage or Retirement System membership or credit.

ARTICLE III - INSURANCE CONDITIONS

Section 3.1 - Insurance

- A. General Requirements: Parties to this Agreement are self-insured, governmental entities and shall provide letters of self-insurance to the other Party upon reasonable request.

B. Parties' Contractors Insurance Requirements

Any contractors engaged by any of the Parties to perform work contemplated herein, will keep in force at their own cost, until final termination of contractor's engagement for services subject to this Agreement, the insurance coverages listed herein. The Parties shall ensure that all contractors comply with these requirements, and that these requirements are expressly incorporated in each of their contractor's and sub-contractor's agreements.

All coverages, except Workers' Compensation (see b).i., below), should be evidenced on an Acorid form accompanied by the following two (2) endorsements: **Additional Insured** with the identifying policy number, specifically naming the New York State Canal Corporation (Corporation), Power Authority of the State of New York, the State of New York with respect to work performed on Corporation property and specifically naming the State University of New York and the State of New York with respect to work performed on College property and any and all Additional Insureds named in the contract documents as additional insureds to the policy and **Waiver of Subrogation** endorsement. The insurance afforded to the additional insureds shall be at least as broad as that afforded the first named insured.

The form and sufficiency of each insurance policy required to be obtained herein will be subject to the Corporation's approval and with insurance companies acceptable to the Corporation. Contractors shall notify the Corporation or College, or Village as applicable, no later than 30 days prior to the effective date of a change to or cancellation of insurance policies required herein. The Corporation, College the Village, shall require their contractors to deliver or cause to be delivered to the

Corporation, Village, or College as applicable, upon request, a copy of each contractor's insurance policy.

C. Any and all deductibles or self-insured retentions, in or relating to the below described contractor's insurance policies shall be assumed by and be for the account of, and at the sole risk of the contractor.

i) Workers' Compensation Insurance for statutory obligations imposed by Workers' Compensation/Occupational Disease Laws, including Employer's Liability Insurance with a minimum limit of \$1,000,000. When applicable, coverage shall include The United States Longshoreman's and Harbor Workers' Compensation Act (44 U.S.Stat 1424) and the Jones Act (41 U.S. Stat 988). Under Sections 57 & 220 Subd. 8 of the New York State Workers' Compensation Law, it is required that Contractors doing business with a Municipal or State entity evidence proof of workers' compensation coverage on approved forms, as listed below:

1. If coverage is with a private insurance carrier, the entity must provide evidence of coverage on a completed C105.2 form. The C105.2 form is supplied and completed by the insurance carrier or its authorized agent.
2. If coverage is with the State Insurance Fund, the entity must provide a completed U-26.3 form provided by the Fund.
3. If the business entity has been approved by the Workers' Compensation Board's Office of Self Insurance as a qualified self-insurer, a completed SI-12 form is required. The SI-12 form is provided by the Board's Office of Self Insurance.

4. Or Form CE-200, Certificate of Attestation of Exemption, if the business is not required to carry NYS specific workers' compensation insurance.
- ii) Commercial General Liability Insurance, which includes Contractual Liability and Products/Completed Operations Liability coverages covering all operations required to complete the Work where applicable coverage for damage caused by any explosion, underground or collapse with a minimum limit of at least \$10,000,000 per occurrence for bodily injury and property damage. Excess/Umbrella Liability Insurance may be combined with Primary Commercial General Liability Insurance to achieve the \$10,000,000 per occurrence coverage only if such policies are written on a follow form basis or are at least as broad in coverage as all underlying policies and "drop down" for defense and indemnity in the event of the exhaustion of the underlying insurance.
1. The limits contained on the Insurance Policies Declaration page must be equal to or greater than the limits stated herein.
 2. The Corporation, Power Authority of the State of New York, the State of New York and any and all additional insureds named in the contract documents, must be named and scheduled as additional insureds to the contractor's policy and, if applicable, each subcontractor's policy, including cross-liability coverage evidenced on the certificate(s) furnished to the Corporation. The policy must contain an endorsement stating that the insurer will have no right of recovery or subrogation against the Corporation, Power Authority of the State of New York, the State of New York and any and all additional insureds named in the contract documents. The contractor must submit evidence

satisfactory to the Corporation of its compliance with this requirement. It is the intent of the parties that the insurance placed in accordance with the provisions of this paragraph will be primary and non-contributory insurance and will protect the Contractor, the Corporation, Power Authority of the State of New York, the State of New York and any and all additional insureds named in the contract documents for all losses arising from all operations, activities, work, services, items or performance relating to the contract. The insurance afforded to the additional insureds shall be at least as broad as that afforded the first named insured.

3. If Additional insured coverage is afforded by blanket endorsement it is required to be on ISO form CG 20 38 04 13.
 4. The Products/Completed Operations Liability coverage will be provided for a period of at least two (2) years after the completion of the Work.
 5. The Contractual Liability Insurance coverage will insure the performance of the contractual obligations of the Contractor contained in this Contract, including, without limitation, all contractual indemnity obligations.
- iii) A Business Automobile Policy protecting the contractor and each subcontractor for automobile bodily injury and property damage liability, including coverage for liability arising out of owned, hired, or non-owned vehicles. Such insurance will cover all vehicles bearing or required to bear by the motor vehicle laws of the state of registry, licenses or registration plates in limits of at least \$1,000,000 each accident.

- iv) If the Work requires professional services, such as, but not limited to, accounting, architectural, engineering, legal, medical, and surveying, a standard professional liability insurance policy with a minimum limit of \$3,000,000. If applicable, the policy is to be endorsed to include "fee for service" coverage and evidence of endorsement must be furnished to the Authority. An additional insured endorsement is not required for the professional liability policy.
- v) If the Work requires activity on navigable waterway using barges or other watercraft or the work is connected to water related activities, Marine Protection & Indemnity and Hull and Machinery coverage is required. Hull and Machinery coverage shall be provided for the total value of the watercraft or equipment. The Contractor shall obtain Protective and Indemnity Liability insurance for all marine operations under the contract with a minimum limit of \$3,000,000 per occurrence including marine pollution coverage.
- vi) If the Work requires the use of an unmanned aircraft systems (UAS), UAS Liability Insurance with a minimum limit of \$1,000,000 per occurrence is required. The Contractor warrants that each UAS pilot or operator, either as a direct employee of the Contractor or as an independent contractor or subcontractor, will have all necessary current licenses and/or certificates to properly operate the UAS being used.
- vii) If the Work poses an environmental risk, known or suspected, the Contractor shall procure and maintain, either through an endorsement to a commercial general liability policy or through a separate policy, insurance protecting the contractor, corporation,

Power Authority of the State of New York and the State of New York from the liability and financial loss relating to contractor's contamination of soil including but, not limited to, the accidental release of petroleum products, chemicals and/or toxic gases from broken pipelines, utilities and stationary and mobile fuel tanks that can result from contractors operations. Such coverage shall be written on policy form providing coverage for contamination both on and off the premises and shall provide coverage with minimum limits of \$3,000,000 per occurrence is required.

- viii) If the Work requires the use of scaffolding, derrick or a crane, Riggers Liability Insurance is required with a minimum limit of \$10,000,000 per occurrence.
- ix) If the Work requires commercial divers, then either an endorsement to the Watercraft policy or a Marine & Diving Contractor's CGL Policy is required. Limits will be evaluated based upon exposure.
- x) If the work requires asbestos abatement, then an endorsement to the contractors Pollution policy to include asbestos coverage is required.
- xi) If the work involves construction of a structure a Builders Risk policy must be maintained from the inception of the work until a permanent certificate of occupancy is issued. The coverage is to extend to the building being constructed (including additions, fixtures, machinery and equipment) and temporary structures (on-site offices), materials, equipment and supplies.
- xii) Care, Custody and Control: All Corporation material/equipment while in the care custody and control of the Contractor must be

insured through the contractor's property insurance policy for full replacement cost value; or the Contractor may have the "care, custody and control" exclusion removed from their Commercial General Liability Policy.

- xiii) For Work affecting railroads, the Contractor shall maintain Railroad Protective Liability insurance in the name of the affected railroad and with limits of coverage as specified in the Special Notes of Railroad Insurance or if no limits of coverage are specified, the limits shall be not less than \$5,000,000 combined bodily injury liability and/or property damage for each occurrence. Policy shall be subject to the approval of the railroad and comply with 23 CFR 646 Subpart A.
- xiv) The contractor shall be responsible for obtaining insurance it deems necessary to cover its own risks, including without limitation: business interruption, such as gross earnings, extra expense, or similar coverage, and/or property damage.

D. In lieu of Commercial General Liability Insurance, at the Corporation's discretion, it may agree to accept an Owners and Contractors Protective Liability Policy naming the Corporation, Power Authority of the State of New York, and the State of New York as the named insureds, and with the following minimum limits:

Bodily Injury Liability occurrence	\$10,000,000 per
Property Damage Liability occurrence	\$10,000,000 per

This policy, the cost of which will be borne by the contractor, will cover the liability of the Corporation, Power Authority of the State of New York and

the State of New York with respect to the Work, services, or items to be furnished hereunder, or contract to be performed, including omissions or supervisory acts of the Corporation, if any.

Such insurance will contain provisions which state that the policy will also respond to claims or suits by employees of the contractor or subcontractor against the Corporation, Power Authority of the State of New York, the State of New York and any and all additional insureds named in the contract documents, or by the Corporation, Power Authority of the State of New York, the State of New York and any and all additional insureds named in the contract documents, against the contractor or any other insured thereunder.

- E. Depending on the scope of work/services, contractor must meet all applicable requirements and limits in the aforementioned. Certain insurance coverage may be removed or added based on the scope of work/ services to be provided.
- F. All contractors conducting services pursuant to this Agreement shall remit proof of insurance to the Corporation at: insuranceinfo@nypa.gov.

ARTICLE IV - LIABILITY

Section 4.1 — Liability

The Corporation and Village, as applicable, shall be responsible to and shall fully defend, indemnify, and hold harmless the State of New York and the State University of New York and their respective officers, trustees, directors, agents and employees, from any and all losses, expenses, damages and liabilities, including reasonable attorneys' fees, arising out of the intentional or negligent acts or omissions of the

Commented [LK2]: Proposed alternative based on business in the same scope permit as discussed

Corporation and Village, as applicable, its officers, employees, agents or licensees arising out of or relating to this Agreement.

Subject to the availability of lawful appropriations and consistent with Section 8 of the State Court of Claims Act, SUNY Brockport shall hold harmless and indemnify the Permittee, their respective officers, trustees, directors, and employees from any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of the State University of New York or of its officers or employees when acting within the course and scope of their employment.

ARTICLE V - MISCELLANEOUS

Section 5.1 — Environmental Review

The Corporation reserves the right to be "lead agency" for any compliance with the New York State Environmental Quality Review Act (SEQRA) and/or the National Environmental Policy Act (NEPA), as may be required for the Bridge project. Nothing herein shall be deemed a waiver of College's right to serve as lead agency under applicable law and the Corporation agrees to provide all necessary notices to the College and the Village as stakeholders.

Section 5.2 — Interchange of Data

Upon reasonable request, all available information and documentation relating to the performance of services described in Article I shall be made available to the other Parties to this Agreement without expense to such other party.

Section 5.3 — Damages for Delay

Unless this Agreement (or another agreement between the parties) expressly provides that time is of the essence with respect to a particular obligation, the Parties agree that

Commented [LK3]: 2/23/2016 10:00 AM
Please review this section for delay

they shall not make any charges or claims for damages against the other Parties for any delays or hindrances from any cause whatsoever during the progress of any portion of this Agreement.

Section 5.4 — Notices

Any notices permitted or required to be given hereunder shall be in writing and shall be delivered personally, or sent by overnight couriers or by registered or certified mail, return receipt requested, and addressed to the persons specified below. Any party may change their notice address by providing each other party with written notice:

Corporation: Director of Waterways Maintenance
New York State Canal Corporation
30 Pearl Street
Albany, New York 12207

Village: Margaret B. Blackman, Mayor
Village of Brockport
Village Hall
127 Main Street
Brockport, NY 14420

College: State University of New York at Brockport
Office of Procurement & Payment Services
Mark Stacy, Director of Campus Services, 350 New Campus Drive
Brockport, New York 14420

Section 5.5 — Intentionally omitted

Section 5.6 - Standard Contract Clauses and Appendices Incorporated by Reference

The Parties agree to comply with all the terms and conditions set forth in the following exhibits/attachments which are attached hereto and expressly made a part of this Agreement as fully as if set forth at length herein:

Exhibit A, State University of New York Standard Contract Clauses (To the extent applicable to a New York State Public Benefit Corporation)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written:

NEW YORK STATE CANAL CORPORATION

Ambrose Barbuto, Director of Waterways Management

Date

THE VILLAGE OF BROCKPORT

Margaret B. Blackman, Mayor

Date

STATE UNIVERSITY OF NEW YORK AT BROCKPORT

Mark Stacy Director of Campus Services

Date



