




ERIE COUNTY WATER AUTHORITY

INTEROFFICE MEMORANDUM

November 7, 2024

To: Terrence D. McCracken, Secretary to the Authority

From: Michael J. Quinn, PE, Senior Distribution Engineer 

Subject: Contract MP-086
Ball Pumping Station Improvements
Updated Revocable Permit – State University of New York at Buffalo
ECWA Project No. 202000177

Contract MP-086 is for design and construction of improvements to the Ball Pumping Station. Due to the size of the existing Erie County Water Authority (ECWA) owned property as it relates to the existing facility, infrastructure replacements, and associated site improvements, additional property is needed temporarily for construction staging.

After a review of the adjacent properties, a small section of vacant land currently owned by the State of New York/State University of New York at Buffalo (SUNY Buffalo) was identified on the basis of its size and proximity to the project.

Since the property is owned by the State of New York, ECWA obtained a Revocable Permit for Non-Commercial Use of University Facilities (Permit) from SUNY Buffalo. This Permit was developed by the State of New York and reviewed by both the Engineering and Legal Departments. The ECWA Board approved the Permit at the July 21, 2022 meeting. The original Permit duration was from October 1, 2022 through September 30, 2024 with an option to renew for one additional year.

Due to unexpected delays with the design of the project and budgeting constraints, the existing duration will not be adequate. As such, the ECWA Engineering Department and SUNY Buffalo Staff have determined that the existing Permit be revised to reflect the current project schedule and extended to June 30, 2027. This will be accomplished by Updated Revocable Permit (Updated Permit).

Attached is a copy of the Updated Permit for the Board's consideration and, if approved, for the Chairman to execute. Following approval by the Board, this Updated Permit must first be executed by the Chairman and executed copies be returned to the State of New York. There is no fee associated with this Updated Permit.

Please feel free to contact me if you have any questions.

MJQ:jmf

Attachments

cc: L.Kowalski, PE

M.Carney

K.Gillette

CONT-MP-086-2001-X-11

ERIE COUNTY WATER AUTHORITY
AUTHORIZATION FORM
For Approval/Execution of Documents
(check which apply)

Contract: MP-086 **Project No.:** 202000177
Project Description: Ball Pumping Station Improvements

Item Description:





- | | | | |
|--|--|---|---------------------------------------|
| <input type="checkbox"/> Agreement | <input type="checkbox"/> Professional Service Contract | <input type="checkbox"/> Amendment | <input type="checkbox"/> Change Order |
| <input type="checkbox"/> BCD | <input type="checkbox"/> NYSDOT Agreement | <input type="checkbox"/> Contract Documents | <input type="checkbox"/> Addendum |
| <input type="checkbox"/> Recommendation for Award of Contract | <input type="checkbox"/> Recommendation to Reject Bids | | |
| <input type="checkbox"/> Request for Proposals | | | |
| <input checked="" type="checkbox"/> Other <u>Revocable Permit Extension - State University at Buffalo Staging Area</u> | | | |

Action Requested:

- | | |
|---|--|
| <input checked="" type="checkbox"/> Board Authorization to Execute | <input type="checkbox"/> Legal Approval |
| <input type="checkbox"/> Board Authorization to Award | <input checked="" type="checkbox"/> Execution by the Chairman |
| <input type="checkbox"/> Board Authorization to Advertise for Bids | <input type="checkbox"/> Execution by the Secretary to the Authority |
| <input type="checkbox"/> Board Authorization to Solicit Request for Proposals | |
| <input type="checkbox"/> Other _____ | |

Approvals Needed:

APPROVED AS TO CONTENT:

<input checked="" type="checkbox"/> Sr. Production Engineer		Date: <u>11/7/2024</u>
<input checked="" type="checkbox"/> Chief Operating Officer		Date: <u>11/08/2024</u>
<input checked="" type="checkbox"/> Executive Engineer		Date: <u>11/12/2024</u>
<input type="checkbox"/> Director of Administration	_____	Date: _____
<input type="checkbox"/> Risk Manager	_____	Date: _____
<input type="checkbox"/> Chief Financial Officer	_____	Date: _____
<input checked="" type="checkbox"/> Legal		Date: <u>11/08/2024</u>

APPROVED FOR BOARD RESOLUTION:

<input checked="" type="checkbox"/> Secretary to the Authority		Date: <u>11/12/2024</u>
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Remarks: _____

Resolution Date: _____

Item No: _____

State University of New York at Buffalo

Revocable Permit For Non-Commercial Use of University Facilities

THIS REVOCABLE PERMIT, made this _____ day of _____, 2024, 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 Buffalo, having its principal place of business at 506 Capen Hall, Buffalo, New York 14260 hereinafter referred to as "SUNY Buffalo" and Erie County Water Authority, a local public authority organized and existing under the laws of the State of New York, and having its principal place of business located at 295 Main Street, Room 350, Buffalo, New York 14203, hereinafter referred to as "the Permittee." The Permittee and SUNY Buffalo may be referred to collectively as "the Parties."

WHEREAS, the Permittee will be conducting an on-campus activity which requires certain facilities; and

WHEREAS, SUNY Buffalo has such facilities; and

WHEREAS, the parties desire to enter into an agreement whereby SUNY Buffalo will make such facilities available to the Permittee for on-campus activity.

NOW, THEREFORE, in consideration of the mutual covenants and conditions herein set forth the parties hereto agree as follows:

1. 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 described in **Exhibit B**, attached hereto and made a part hereof, on the date(s) and at the times specified thereon ("Premises").
2. The term of this Permit shall commence on October 1, 2024 through June 30, 2027 with an option to renew for one additional year, at the pleasure of SUNY Buffalo and may be revoked at any time without cause prior to the commencement of construction, or by cause during the period of construction. In the event of such revocation, payments by the Permittee shall continue throughout the period of actual occupancy by the Permittee, after which time the Permittee shall have no further payment obligation. Upon revocation, Permittee shall promptly discontinue the use of the Premises.
3. In consideration of the facilities be provided by SUNY Buffalo as enumerated above, the Permittee agrees to reimburse SUNY any extraordinary costs incurred by SUNY Buffalo to meet the requirements of the Permittee. Payment shall be made by Permittee upon receipt of an invoice from SUNY Buffalo. All space payments for reimbursement shall be mailed directly to: Kevin Ragland, Financial Services 418 Crofts Hall, Buffalo, New York 14260-7011. If Permittee is making electronic payments, send via Automated Clearing House (ACH) to: ACH UPIC Account Number: 95064849 ACH UPIC Routing Number: 021052053; and email Kevin Ragland at ragland@buffalo.edu with notice of your ACH payment.
4. The Permittee shall take good care of the Premises, fixtures, and appurtenances to preserve the Premises in good order and condition. Upon revocation of this Permit, 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.
5. The Permittee is a local public water authority, created by special enabling legislation by the State of New York, codified as Article 5, Title 3 of the Public Authorities Law.
6. The Permittee shall be responsible for any and all damages or loss by theft or otherwise of property whether such property shall belong to SUNY Buffalo 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 Permittee's business, Permittee's use of the Premises, including facilities, appurtenances and surrounding grounds, or that may be caused by Permittee's agents, or any persons involved in the Permittee's business, whether or not directly caused by the Permittee. Permittee is responsible to securing staging area including all equipment and trailers at their own expense.

7. 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 Permittee's business or Permittee's use of the facilities, and agrees to remove any personnel whose actions, or failure to act, shall in the sole judgment of SUNY Buffalo, after consulting with the Permittee, be deemed to be detrimental to SUNY Buffalo.
8. The Parties agree that if in the judgment of SUNY Buffalo the activities of Permittee, or its agents, should be such that SUNY Buffalo, after consultation with the Permittee, shall determine that the continuation of the Permittee's activities for the then remaining period covered by this Permit shall be contrary to the best interest of SUNY Buffalo, SUNY Buffalo may terminate this Permit without liability of any kind whatsoever therefor, and the Permittee and its agents shall be thereupon removed from SUNY Buffalo Premises.
9. 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 Buffalo regulations and policies and with all laws, rules, orders, regulations, and requirements of Federal, State and municipal governments applicable thereto, including the SUNY Standard Contract Clauses, attached hereto, incorporated 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 that may be required by any local, State or Federal Governmental body.
10. 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 Buffalo 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 Buffalo 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 Buffalo.
13. The Permittee shall have the right, so long as this Permit shall remain in force, to enter upon said State lands for the purpose of maintaining, operating and using the Premises described in **Exhibit B**.
14. 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 Buffalo be used by Permittee for any purpose without prior approval of the SUNY Buffalo.
15. The Permittee assumes all risk incidental to the use of the Premises 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 Permittee's use of the Premises, including facilities, its appurtenances and the surrounding grounds and hereby covenants and agrees to indemnify and hold harmless the State of New York and the State University of New York from any and all claims, suits, actions, damages and costs of every nature

and description arising out of or relating to the use of the Premises, any facilities, 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. The Permittee further agrees, upon being requested to do so, to assume the defense and to defend, at its own cost and expense, any action brought at any time against the State of New York and/or the State University of New York in connection with the claims, suits, and losses, as aforesaid. Notwithstanding the foregoing, Permittee shall not be liable for any consequential, indirect, or special damages of any kind that may result directly or indirectly from its use of said facilities, including, without limitation, damages resulting from loss of use or loss of profit by SUNY or others.

16. The Permittee agrees to obtain and maintain insurance coverage through 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. 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. Permittee agrees to provide notice to SUNY Buffalo of any cancellation of such policies, renewal policies, or new policies. If subcontractors are used and will be coming onto the space they also need to provide liability insurance as well.
 - a. General Liability insurance of one million dollars (\$1,000,000) for each occurrence and two million dollars (\$2,000,000) in the aggregate. Such policy shall name the State of New York and 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.
 - b. New York State Workers' Compensation, Disability Benefits and Paid Family Leave coverage during the term of the Permit for the benefit of Permittee's employees required to be covered under the NYS Workers' Compensation Law and the NYS Disability Benefits and Paid Family Leave Laws. Evidence of coverage must be provided on forms specified by the Commissioner of the Workers Compensation Board.
17. The Permittee specifically agrees that if this Permit is cancelled or terminated for any reason, the Permittee shall have no claim against SUNY Buffalo, 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.
18. Executive Order No. 177. In accordance with Executive Order No. 177, Permittee hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.
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 officials or staff, this Permit may be terminated by the SUNY Chancellor or his or her designee at the 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.

20. 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, or otherwise as specified below, addressed as follows:

TO SUNY Buffalo: State University of New York at Buffalo
Bethany Scibetta
224 Crofts Hall, Buffalo, New York 14260
716-645-4512
bmsscibet@buffalo.edu

TO THE PERMITTEE: Erie County Water Authority
Michael J. Quinn, P.E.
Senior Distribution Engineer
3030 Union Road, Cheektowaga, New York 14227-1097
716-685-8203
mquinn@ecwa.org

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

21. 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. 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
2. This Revocable Permit
3. Exhibit B, Designated Facilities and Services
4. Exhibit C, Costs and Services
5. Exhibit D, IT Support Services
6. Exhibit E, SUNY Buffalo's Child Protection Policy
7. Exhibit F, Environmental, Health and Safety Guidelines
8. Exhibit G, Building-Specific Memorandum

22. Permittee agrees to abide by all requirements of **Exhibit E**, SUNY Buffalo's Child Protection Policy.
23. Permittee agrees to abide by all requirements of **Exhibit F**, Environmental, Health and Safety Guidelines.
24. Permittee agrees to abide by all requirements of **Exhibit G**, Building-Specific Memorandum. Any fees associated with Exhibit G shall be billed separately by SUNY Buffalo's building management staff, and shall be paid no later than fifteen (15) days after invoice is received.

25. The Permit hereby granted may be revoked at any time without cause prior to the commencement of construction, or by cause during the period of construction. Notice of revocation will be served either in person or by certified mail, or, by other mutually acceptable means in exceptional circumstances. Upon receipt of Notice of revocation, Permittee shall and will promptly discontinue the use of the Premises and shall thereupon remove all of its property from the Premises and shall, at Permittee's own cost and expense, restore the Premises to the same condition it was in before use by the Permittee commenced. 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.
26. Force Majeure. A Party shall not be deemed in default of this permit, nor shall it hold the other Party responsible for any cessation, interruption or delay in the performance of its obligations (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, disease outbreak, epidemic, or pandemic, an act of war whether declared or undeclared, acts or threats of terrorism, contamination by radioactivity, pressure waves from devices travelling at supersonic speeds or damages caused by any aircraft or similar device, armed conflict, labor strike, lockout, boycott, or other unforeseeable circumstances beyond the control of the Parties against which it would have been unreasonable for the affected Party to take precautions and which the affected Party cannot avoid even by using its best efforts, provided that the Party relying upon this provision: (i) gives prompt written notice thereof to the other Party; and (ii) takes all steps reasonably necessary to mitigate the effects of the force majeure event. If a force majeure event extends for a period in excess of 30 days in the aggregate, either Party may immediately terminate this permit upon written notice.
27. Data Security. In addition to the data breach notification requirements provided for in Exhibit A, the Permittee agrees at all times to maintain network security which at a minimum includes: network firewall provisioning, intrusion detection, and regular (three or more annually) at least one by a third party, vulnerability scans, and share assessment results with SUNY Buffalo. Further, Permittee agrees to maintain network security that conforms to generally recognized industry standards and best practices that the Permittee applies to its own network. Generally recognized industry standards include, but are not limited to, the current standards and benchmarks set forth and maintained by the Center for Internet Security available at this link: <http://www.cisecurity.org> or Payment Card Industry/Data Security Standards (PCI/DSS) available at this link: <http://www.pcisecuritystandards.org>.
28. New York Information Breach and Notification Requirements. Permittee hereby acknowledges and agrees to use commercially reasonable efforts to maintain the security of private information (as defined in the New York State Information Security Breach and Notification Act, as amended "ISBNA" (General Business Law § 889-aa; State Technology Law § 208) that it creates, receives, maintains or transmits on behalf of SUNY Buffalo and to prevent unauthorized use and/or disclosure of that private information; and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic private information that it creates, receives, maintains or transmits on behalf of SUNY Buffalo ("SUNY Data"). Permittee hereby acknowledges and agrees to fully disclose to SUNY Buffalo pursuant to the ISBNA, and any other applicable law any breach of the security of a system where Permittee creates, receives, maintains or transmits private information on behalf of SUNY Buffalo following discovery or notification of the breach in the system as to any resident of New York State whose private information was, or is reasonably believed to have been acquired by a person without valid authorization ("Security Incidents"). The disclosure shall be made in the most expedient time possible and without unreasonable delay, consistent with the legitimate needs of law enforcement or any measures necessary to determine the scope of the breach and restore the reasonable integrity of the system. Permittee shall be liable for the costs associated with such breach if caused by Permittee's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Permittee's agents, officers, employees or subcontractors. In the event of a Security Incident involving SUNY Data pursuant to the ISBNA, SUNY Buffalo has an obligation to notify every individual whose private information has been or may have been compromised. In such an instance,

Permittee agrees that SUNY Buffalo will determine the manner in which such notification will be provided to the individuals involved pursuant to the ISBNA and agrees to indemnify SUNY Buffalo against any cost of providing any such legally required notice. Upon termination or expiration of this Agreement, Permittee will follow SUNY Buffalo's instructions relating to any SUNY Data remaining in Permittee's possession. Upon authorization from SUNY Buffalo, Permittee will use data and document disposal practices that are reasonable and appropriate to prevent unauthorized access to or use of SUNY Data and will render the information so that it cannot be read or reconstructed.

29. Financial Products/Services. In performing under this Agreement, Permittee may receive, maintain, process or otherwise will have access to confidential information on students and/or customers of SUNY Buffalo. Pursuant to the Gramm-Leach-Bliley Act (P.L. 106-102) and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314), Permittee must implement and maintain a written Information Security Program in order to protect such customer information. Customer Information is defined in relevant part under the Safeguards Rule as any record containing nonpublic personal customer information as defined in 16 CFR § 313(n) (the FTC's Privacy Rule) about a customer of a financial institution, whether in paper, electronic, or other form (16 CFR § 314.2). Examples of nonpublic personal customer information include, but are not limited to, name, address, phone number, social security number, bank and credit card account numbers and student identification numbers. The safeguards that Permittee implements under the Program must comply with the elements set forth in 16 CFR § 314.4 and must achieve the objectives enunciated in 16 CFR § 314.3, namely to: (a) insure the security and confidentiality of student and/or campus customer records and information; (b) protect against any anticipated threats or hazards to the security or integrity of such records; and (c) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any student and/or campus customer. If Permittee subcontracts with a third party for any of the services that Permittee is required to undertake in furtherance of this Agreement, Permittee must ensure that such third parties implement practices which protect nonpublic personal information of students and/or campus customers with which they receive, maintain, process or otherwise permitted access. Permittee is required to return or destroy, as directed by SUNY Buffalo at SUNY Buffalo's election, all customer information in Permittee's possession within a reasonable time, not to exceed thirty (30) days, following the termination or expiration of this Agreement. Furthermore, the safeguarding requirements set forth above shall survive the termination or expiration of this Agreement for so long as Permittee retains any Customer Information.

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

STATE UNIVERSITY OF NEW YORK AT BUFFALO ERIE COUNTY WATER AUTHORITY

By: _____

Bethany Scibetta
Senior Buyer

By: _____

Print Name: Jerome D. Schad

Print Title: Chair

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 foregoing instrument and he/she acknowledged to me that he/she executed the same.

Notary Public

(ACKNOWLEDGEMENT BY UNINCORPORATED 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 ERIE) SS.:

On this _____ day of _____ 2022, before me personally came JEROME D. SCHAD to me known, who duly being sworn, did depose and say that he/she resides in the Town of Amherst; that he/she is the Chair of the Board of Commissioners for the Erie County Water Authority, the corporation described in and which executed the foregoing instrument; that he 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 Commissioners of said corporation, and that he signed his 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.** (a) In accordance with Section 112 of the State Finance Law, the State Comptroller's approval is required for the following contracts: (i) goods, services, construction, and construction-related services for State University hospital or healthcare facilities which exceed \$150,000; (ii) purchases utilizing an Office of General Services (OGS) centralized contract which exceed \$200,000 (iii) goods, services, construction, and construction-related services not described in (i) or (ii) and which exceed \$75,000;

(b) If this contract exceeds the threshold amounts listed above in Paragraph 3(a), or, if this is an amendment for any amount to a contract which, as so amended, exceeds said threshold amounts, 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.

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, citizenship or immigration status, 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 12236.

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 and Technology Development
625 Broadway
Albany, NY 12245
Telephone: 518-292-5100

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 33rd Floor
New York, NY 10017
646-846-7364
email: mwbebusinessdev@esd.ny.gov
<https://ny.newnycontracts.com/FrontEnd/searchcertifieddirectory.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 May 2023, 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, § 899-bb, and State Technology Law § 208).

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/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.

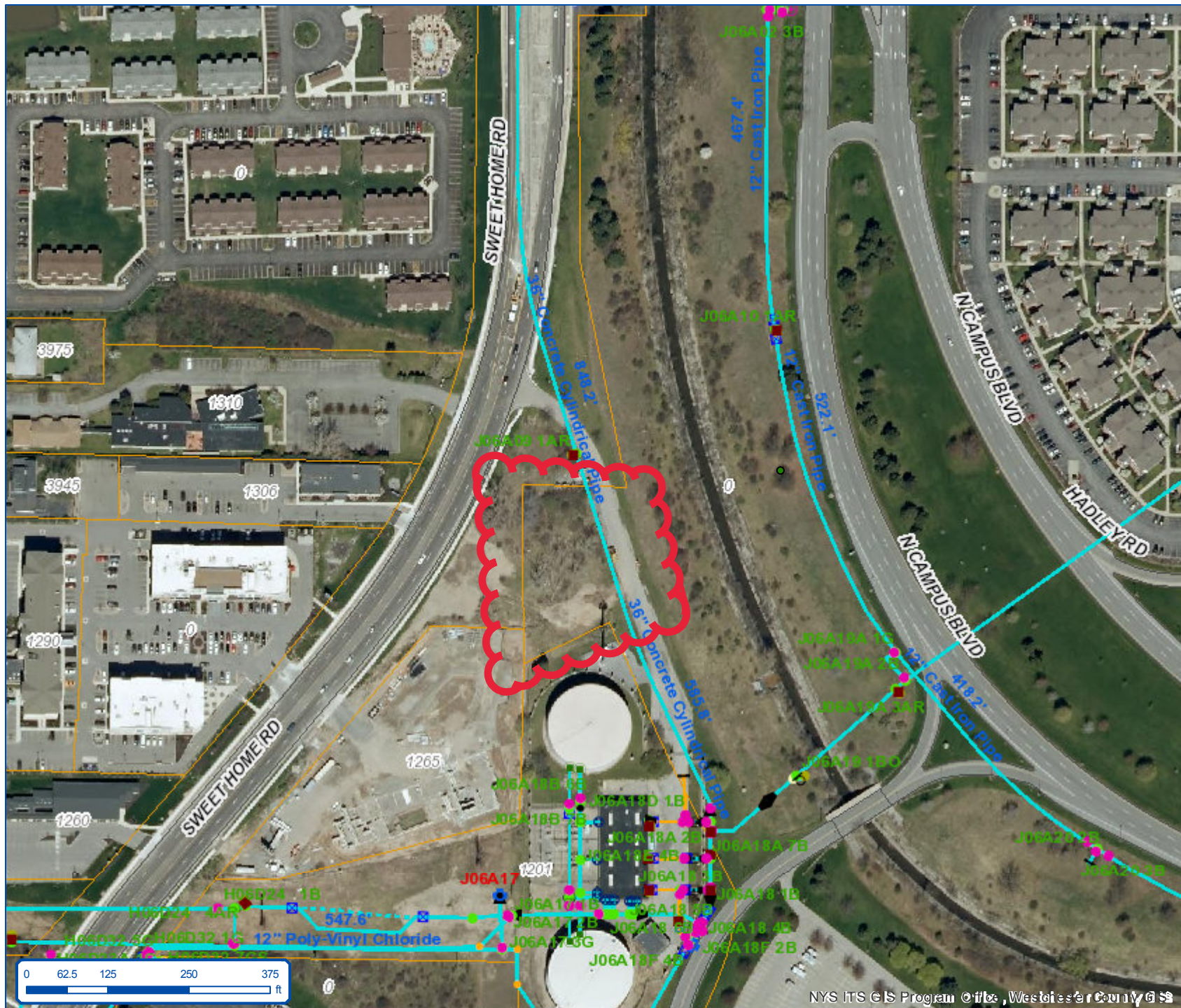
EXHIBIT B

Designated Facilities and Services

The Permittee is in the process of designing significant upgrades to the existing public water facility known as the Ball Pumping Station located adjacent to the SUNY Buffalo (UB) Amherst Campus. It is anticipated that the Permittee's work will begin in the Fall of 2024 and be completed by the middle of 2027.

While the physical footprint of the station will not change, the project will include replacement of virtually all of the large diameter underground transmission piping as well as replacement of much of the existing site pavement. Due to the extensive site work required, coupled with the lack of additional property for construction staging, the Permittee is requesting temporary use of roughly 0.8 acres of vacant property owned by UB located north of the Ball facility property. Figure 1 (attached) shows the location of the property.

It is the Permittee's intention to use this property only for construction staging including the storage of materials, contractor/engineer field trailers, worker parking and other related surface usage. No permanent structures or piping will be constructed on the parcel and the area will be returned to preconstruction condition following completion of construction.



BALL PUMP STATION

November 17, 2021



**ERIE COUNTY WATER
AUTHORITY**
BUFFALO, NEW YORK

NYS ITS GIS Program Office, Westchester County, NY

EXHIBIT C
Costs and Services

The Permittee agrees to pay SUNY Buffalo the amount of \$0.00 (\$0.00) per square foot for use of the facilities. Standard fees includes use of common spaces/corridors. Annual rate does not include network fees through SUNY Buffalo's Office of the Vice President and Chief Information Officer or monthly phone costs to third parties. Partial months are pro-rated. Payments are due on the first of the month.

Payment is determined on the following basis:

<u>Office</u>	<u>Effective Date</u>	<u>Term Date</u>	<u>Sq/ Ft.</u>	<u>Rate/sf</u>	<u>Annual Total</u>	<u>Monthly Total</u>
<u>Ball Pumping station grounds</u>	<u>10/1/24</u>	<u>6/30/27</u>			<u>\$0.00</u>	

Additional Rent:

Disposal of Refuse. As provided for in Exhibit F, base rent includes "a reasonable amount of waste disposal." In the event Permittee produces, at the sole discretion of SUNY Buffalo, a significant amount of waste, the Permittee shall be responsible for the cost of transportation and legal disposal of same from SUNY Buffalo's facilities and properties.

Disposal of Hazardous Waste. As provided for in Exhibit F, Section 4, Permittee is responsible for the costs of hazardous waste disposal. In the event, at the sole discretion of SUNY Buffalo, SUNY Buffalo is to be reimbursed for any such costs pursuant to Exhibit F, SUNY Buffalo will invoice the Permittee.

EXHIBIT D
IT Support Services

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EXHIBIT E, CHILD PROTECTION POLICY

[UNIVERSITY AT BUFFALO POLICY LIBRARY](#)

Summary

Individuals must conduct themselves appropriately with children who are on campus and/or who participate in university-related programs, take reasonable measures to ensure their safety, and report instances or suspicion of inappropriate conduct or child abuse.

POLICY INFORMATION

Date Established: 3/9/2012

Date Last Revised: 7/6/2016

Category:

Health and Safety

Responsible Office:

Equity, Diversity and Inclusion

Responsible Executive:

Vice President for Finance and Administration

Policy Statement

The University at Buffalo (UB, university) is committed to protecting the safety and well-being of children who are on university premises, and/or who participate in university-related programs and activities, both on and off campus, including but not limited to:

- Day care
- Sport camps
- Academic enrichment programs
- Research studies

The participation of children in these activities requires an increased level of care, and an expectation that individuals will conduct themselves appropriately in the presence of children on campus and/or in university-related programs and activities.

Individuals must report instances of inappropriate conduct to the Responsible UB Official under which the activity occurred. Persons who witness, receive a report of, or reasonably believe an instance of child abuse has occurred must immediately report such abuse to University Police and the Office of Equity, Diversity and Inclusion (EDI).

Individuals may report inappropriate conduct or child abuse anonymously. While due process considerations may limit the ability to investigate anonymous reports, the university will take appropriate action to ensure the safety of children in response to an anonymous report.

Retaliation

Retaliatory action against anyone acting in good faith who has reported inappropriate conduct/child abuse in accordance with this policy, or who has been involved in reporting, investigating, or responding to inappropriate conduct or child abuse, is a violation of this policy. Retaliatory acts may include, but are not limited to:

- Employment actions affecting salary, promotion, job duties, work schedules, or work locations

POLICY CONTENTS

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- [Policy Statement](#)
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- Actions negatively impacting a student's academic record or progress
- Any action affecting the campus environment, including harassment and intimidation

Individuals are to report allegations of retaliation under this policy to EDI.

Supervision of Children

Authorized adult supervision is required for all children participating in a Covered Activity, where the custody, control, and supervision of children is entrusted to the university or a vendor, licensee, or permittee.

Two or more authorized adult supervisors must be present at activities involving children, unless one-on-one contact is warranted by the activity and approved by the Responsible UB Official for the Covered Activity.

Designation of Responsible UB Officials

Senior university administrators (president, provost, vice presidents, vice provosts, deans, and athletic director) will designate one or more Responsible UB Official(s) for any Covered Activities within that person's unit or area. The designated Responsible UB Official will effectively address instances of inappropriate conduct, report any suspected child abuse to University Police and EDI immediately, and ensure compliance with this policy for Covered Activities.

Conduct Requirements

University employees, students, volunteers, and visitors must conduct themselves appropriately in the presence of children. Child abuse and inappropriate conduct, including but not limited to the following, is prohibited:

- Engaging in any form of physical (e.g., striking, hitting, shaking, administering corporal punishment) or emotional abuse of a child
- Engaging in sexually inappropriate conduct of any kind toward or in the presence of a child, including but not limited to:
 - Sexual abuse of a child
 - Touching a child in an inappropriate or illegal manner
 - Making pornography or other sexually inappropriate materials in any form available to a child or assisting a child in gaining access to such materials
- Neglecting the duty of care for a child under the adult's supervision, including but not limited to:
 - Failing to protect children's health and safety (e.g., exposure to unreasonable risk of injury or extreme weather)
 - Failing to ensure the use of appropriate protective equipment (e.g., in laboratory or athletic participation)
 - Failing to meet children's basic needs (e.g., food, clothing, shelter, emotional needs)
 - Leaving children consistently unsupervised
 - Using inappropriate language (e.g., curse words or words discriminatory in nature) in the presence of children
- Engaging in the use of alcohol or illegal drugs, or being under the influence of alcohol or illegal drugs during programs or activities for children
- Enabling, facilitating, or failing to appropriately address a child's use of alcohol or illegal or non-prescribed drugs
- Contacting a child through electronic media, including social media, for the purpose of engaging in any prohibited conduct, including sexual conduct
- Offering or making a gift to a child for the purpose of engaging in any prohibited conduct, including sexual conduct
- Participating in a sleepover under the auspices of the program or activity, unless (1) one of the child's parents or legal guardians is present or (2) one of the child's parents or legal guardians has provided written consent and there is at least one other adult, and the two adults remain in each other's presence at all times

- Engaging in one-on-one contact with a child unless authorized by the Responsible UB Official for the Covered Activity
- Picking up or dropping off children from their homes (except the driver's child or children) before, during, or after the program or activity
- Releasing a child from a Covered Activity without a written authorization from the child's parent or guardian

The conduct requirements listed above apply to registered university students under the age of seventeen years to the extent that the provisions are reasonable and appropriate when considering the student's age and student status.

Access to University Premises

All children participating in a program taking place on university premises are permitted in the general use facilities (e.g., athletic fields, public spaces, libraries, academic buildings, food service areas) but may be restricted from certain areas of the facilities or from utilizing certain equipment.

Children are permitted at events and venues open to the public. However, the university reserves the right to determine whether selected events or venues are appropriate for unescorted or unsupervised children.

Development of Reporting Procedures

UB employees in charge of programs and activities that include children will develop procedures regarding reporting instances of inappropriate conduct and child abuse, consistent with this policy.

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Background

Compliance with this policy establishes a framework of reasonable precautions to protect the safety and well-being of children and the reporting obligations should an incident occur.

This policy is consistent with the State University of New York (SUNY) *Child Protection Policy* and legal obligations pursuant to the *Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act*, *Title IX of the Education Amendments of 1972*, *New York State Social Services Law*, *New York State Education Law*, *New York State Penal Law*, and other applicable laws and regulations protecting the welfare of children.

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Applicability

This policy applies to:

- All employees of the university or university-affiliated organizations (e.g., state, Research Foundation, University at Buffalo Foundation, Campus Dining and Shops, Alumni Association), regardless of the funding source, and individuals and entities with contractual relationships with the university
- All students, with respect to conduct requirements. The reporting requirements of this policy apply to all students who interact with children as part of their work-related duties or academic program, whether on or off university premises
- Visitors, including vendors, licensees, permittees, volunteers, and guests on university premises

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Definitions

Authorized Adult

University personnel assigned to teach or otherwise perform work in a program as part of their official

job duties, or a representative of a group that has obtained permission to use campus facilities from a university department or employee authorized to grant such permission.

Child

An individual under the age of seventeen years. For the purposes of this policy a matriculated UB student or a person accepted for matriculation at UB is not considered a child.

Child Abuse

Serious physical or emotional mistreatment of a child, and/or engaging in sexual activity with a child. Included are one or more physical acts (i.e., punching, beating, shaking, throwing, kicking, biting, burning) which cause serious physical injury to a child; acts likely to result in the emotional trauma of a child; intentionally or recklessly engaging in conduct which creates a substantial risk of such physical or emotional mistreatment; any behavior which results in touching of the sexual or other intimate parts of a child for the purpose of sexual gratification of the child and/or adult, including touching by the child and/or adult with or without clothing; and conduct toward children that is otherwise prohibited by Article 130, 235, or 263 of the New York Penal Law.

Children's Camp

A camp defined under New York Public Health Law §1392.

Covered Person

A person who is responsible for the custody, control, or supervision of children participating in the Covered Activity and who is: (i) an employee of the university or university-affiliated organization; (ii) a university student; (iii) a volunteer of the university or university-affiliated organization; or (iv) a vendor, licensee, permittee, or other person who is given permission to come onto campus or to use university facilities for Covered Activities; or (v) an employee, agent, or volunteer of (iv) above.

Duty of Care

The obligation to take reasonable steps to ensure the safety and well-being of a child under an individual's supervision.

Facilities Use Agreement

An agreement between the Research Foundation (RF) and a non-UB entity for use of specialized university space/facilities which must include a documented research component and expectations. The agreement may be for a maximum of two years, and revenue must be deposited into an RF account. Language regarding liability insurance may also need to be included. These agreements require approval by Real Estate and Property Management (REPM) and Procurement Services. Procurement Services executes the *Facilities Use Agreement* and is the office of record.

Inappropriate Conduct

Actions or omissions which do not rise to the level of child abuse, but are otherwise prohibited under this policy (see Conduct Requirements).

Responsible UB Official

UB employees who have been designated by the president, provost, vice president, or dean to ensure compliance with one or more Covered Activities in their respective areas.

Revocable Permit/Occasional User Revocable Permit

An agreement between the state and a non-UB entity for use of university space/facilities. Language regarding liability insurance may also be included. Revenue must be deposited into an Income Fund Reimbursable (IFR) account.

- The *Revocable Permit* is utilized when university space/facilities is to be occupied for more than thirty

days or the anticipated revenue is equal to or greater than \$10,000. This agreement requires prior approval by Real Estate and Property Management (REPM) and Procurement Services. Procurement Services executes the *Revocable Permit*, and is the office of record.

- The *Occasional User Revocable Permit* is utilized when space/facilities is to be occupied for less than thirty days and anticipated revenue is less than \$10,000. The *Occasional User Revocable Permit* is initiated and approved at the department level and the department is the office of record.

Visitor

For the purposes of this policy, visitor includes anyone, other than a student or employee, who sets foot on campus (e.g., vendors, licensees, permittees, volunteers, guests). A visitor who uses university property to participate in programs responsible for the custody, control, and supervision of children is a Covered Person.

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Responsibility

All members of the university community, including visitors, vendors, licensees, permittees, volunteers, and guests

- Comply with the conduct requirements in this policy.

University employees, students who interact with children as part of their work-related duties or academic program, and visitors using university property who participate in programs responsible for the custody, control, and supervision of children

- Engage in appropriate conduct when working with children.
- Remove a child from a dangerous situation immediately.
- Report inappropriate conduct to the Responsible UB official who approved the activity.
- Report suspected child abuse to University Police and EDI immediately. When working in an off-campus location, suspected child abuse should be reported to local law enforcement officials and EDI.
- Wear a lanyard or other identification with the individual's title, photo, and/or role in the program when participating in a Covered Activity.
- Complete training on this policy on a biennial basis when participating in a Covered Activity.

Individuals engaged in managing or supervising programs where children are present

- Implement procedures related to the duty of care including:
 - Appropriate supervision at all times
 - Protection of children's health and safety
 - Appropriate use of protective equipment
- Complete a written report of all allegations of inappropriate conduct and submit to the Responsible UB official.
- Report suspected child abuse to University Police and EDI immediately.
- Campus units that are required to maintain state licenses (e.g., UB Child Care Center) must keep such licenses current and prominently displayed.

Responsible UB Officials

- Ensure compliance with this policy in their respective areas.
- Determine, on a limited basis, which Covered Activities in their areas require one-on-one contact with children (e.g., tutoring, lessons, speech therapy, medical/dental services).
- Obtain New York Sex Offender Registry and National Sex Offender Public Registry searches for Covered Persons who are employees, volunteers, students, or agents of the university or a university-affiliated organization. Complete a review of such searches not more than ninety (90) days prior to the

commencement of a Covered Activity.

- Confidentially maintain records of New York Sex Offender Registry and National Sex Offender Public Registry searches for a period of six (6) years.
- Communicate the requirements of this policy to Covered Persons.
- Ensure that Covered Persons in their area receive training on this policy on a biennial basis.
- Obtain the completed *Acknowledgement of the UB Child Protection Policy and Conduct Requirements* form from Covered Persons and non-UB entities.
- Provide non-UB entities with copies of the State University of New York (SUNY) *Child Protection Policy (Document 6505)*, *SUNY Policy on Mandatory Reporting and Prevention of Child Sexual Abuse (Document 6504)*, and *UB Child Protection Policy*.
- Ensure that a visitor conducting a Covered Activity on campus does so in accordance with a *Revocable Permit, Occasional User Revocable Permit, or Facilities Use Agreement* that includes the terms set forth in the section, "Visitor Use of University Facilities for Events and Programs for Children."
- Complete a written report for each allegation of inappropriate conduct and provide a copy to EDI.
- Address instances of inappropriate conduct effectively.
- Report suspected child abuse to University Police and EDI immediately.

Office of Equity, Diversity and Inclusion (EDI)

- Review reports regarding allegations of inappropriate conduct and confirm that appropriate actions are taken.
- Notify and coordinate with appropriate university offices to ensure allegations of suspected child abuse are handled appropriately.

Senior Administrators (President, Provost, Vice Presidents, Vice Provosts, Deans, and Athletic Director)

- Designate a Responsible UB Official for any Covered Activities within that person's unit or area.
- Communicate the requirements of this policy to all staff.
- Develop departmental procedures regarding the reporting of inappropriate conduct and child abuse consistent with this policy.

University Police

- Investigate all allegations of suspected child abuse.
- Complete a written report for all allegations of suspected child abuse.

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Contact Information

Contact An Expert

Contact	Phone	Email
Equity, Diversity and Inclusion	716-645-2266	diversity@buffalo.edu
James Jarvis, University Counsel	716-645-4468	jjjarvis@buffalo.edu

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Related Information

Procedures

1. An individual who believes that a child is in immediate danger must take steps to remove the child from that situation and notify University Police and the Office of Equity, Diversity and Inclusion (EDI) when child

- abuse or a crime is suspected. Child abuse that has occurred off-campus should be reported to local law enforcement officials and EDI.
2. All employees and students who interact with children as part of their work-related duties or academic program, and visitors to the university who have contact with children must be familiar with and abide by this policy.
 3. Senior administrators (president, provost, vice presidents, vice provosts, deans, and athletic director) will designate one or more Responsible UB Officials to implement the requirements of this policy for any Covered Activities.
 4. The Responsible UB Official will obtain New York Sex Offender Registry and National Sex Offender Public Registry searches for Covered Persons in their areas who are employees, volunteers, students, or agents of the university or a university-affiliated organization and complete a review of such searches not more than ninety (90) days prior to the commencement of a Covered Activity.
A search of the New York Sex Offender Registry means:
 - A search of the file of persons required to register pursuant to Article 6-C of the Correction Law maintained by the New York Division of Criminal Justice Services (DCJS) pursuant to New York Correction Law § 168-b for every level of sex offender (Level 1 through Level 3), which requires an email, CD, or hard copy submission of names and identifiers to DCJS as described on the [DCJS website](#) ☐ ☐; and
 - Retention of the records of the results of such search; an internet search alone will not meet the requirements of this policy.A search of the National Sex Offender Public Registry means:
 - A search by first and last name of the [National Sex Offender Public Website \(NSOPW\)](#) ☐ ☐ maintained on the United States Department of Justice website; and
 - Retention of the records of the results of such searchThe Responsible UB Official will retain the results of the searches in a confidential file for a period of six (6) years.
 5. The Responsible UB Official will ensure that Covered Persons in their area receive training on this policy on a biennial basis. Confirming the individual's participation in the university's online training meets this requirement.
 6. Individuals must report **inappropriate conduct** to the Responsible UB Official in their area. The Responsible UB Official will address the inappropriate conduct effectively, to ensure that the conduct is not repeated. In addition to addressing the conduct, the Responsible UB Official must complete a written report that includes the name of the child involved; name of the child's parent(s); identity of the person making the allegation and their relationship to the child; name of the person against whom the allegation was made; and the specific details describing the inappropriate conduct for each allegation of inappropriate conduct. The Responsible UB Official will provide a copy of the report to EDI. If the Responsible UB Official reasonably believes that such conduct constitutes child abuse, the abuse must be reported to University Police/local law enforcement and EDI immediately.
 7. Individuals who witness or receive a report of **child abuse**, or who reasonably believe such abuse has occurred must report the abuse to University Police/local law enforcement immediately, and to EDI. University Police will conduct a prompt investigation, and/or coordinate with other law enforcement channels in response to the report. University Police will complete a written report including the name of the child alleged to be abused; name of the child's parent(s); identity of the person making the allegation and their relationship to the child; name of the person against whom the allegation was made; and details describing the allegation. This report will be kept confidential to the extent allowed by law; however, there may be situations where the university is legally obligated to ensure the matter is investigated regardless of the individual's willingness to proceed. In this event, the individual will be notified, and steps identified to protect the complainant against retaliation.
EDI will take such actions as necessary to ensure that the university offices responsible in each instance are notified and respond appropriately. For example, in addition to coordination with University Police, claims alleging child abuse by university employees would be referred to the Office of Employee Relations; claims alleging child abuse by university students would be referred to the Office of Judicial Affairs, in addition to the student's decanal area or program.

Visitor Use of University Facilities for Events and Programs for Children

University employees who grant visitors permission to access university facilities for events or activities in which the visitor is entrusted with the custody, control, and supervision of children (i.e., Covered Activity) must notify their area's Responsible UB Official prior to granting use of UB facilities. The Responsible UB Official must provide the visitor with copies of the SUNY *Child Protection Policy (Document 6505)*, SUNY *Policy on Mandatory Reporting and Prevention of Child Sexual Abuse (Document 6504)*, and UB *Child Protection Policy*. In addition, the Responsible UB Official must obtain the visitor's completed *Acknowledgement of the UB Child Protection Policy and Conduct Requirements* form.

Field trips and similar visits to campus of a short duration are not considered Covered Activities. In the case of a field trip or similar activity, the visitor requesting access to the campus must complete the *Acknowledgement of the UB Child Protection Policy and Conduct Requirements* form and provide it to the UB employee granting permission to access the campus.

A visitor's use of UB facilities for a Covered Activity may only be granted pursuant to the terms of a *Revocable Permit, Occasional User Revocable Permit, or Facilities Use Agreement* and must include the following:

- A specific definition of the areas accessible to the Covered Activity. For example, a *Revocable Permit, Occasional User Revocable Permit, or Facilities Use Agreement* for sporting events held on athletic fields should include the athletic field, as well as any ancillary areas or structures where minors will be permitted, such as adjacent grounds, parking lots, rest rooms, locker rooms, accessory structures, etc.
- Provisions requiring insurance coverage naming the university as an insured, and requiring evidence of such insurance be provided to the university within five (5) business days of execution of the *Revocable Permit, Occasional User Revocable Permit, or Facilities Use Agreement* or at minimum two weeks (14 days) prior to the scheduled use of university facilities. This insurance must include both:
 - General Liability insurance in the amount of two million dollars (\$2,000,000) per each occurrence and two million dollars (\$2,000,000) in the aggregate
 - New York State Workers' Compensation insurance during the term of the revocable permit for the benefit of permittee's employees required to be covered under the New York State Workers' Compensation Law.
- For those instances in which a campus believes that the activity is so long or substantial and that obtaining such insurance will not unduly preclude beneficial use of the campus' facilities, the campus should require additional insurance in the form of Sexual Abuse and Molestation insurance, either under the above-described general liability policy or in a separate policy, with coverage not less than one million dollars (\$1,000,000). Any insurance coverage for sexual abuse and molestation insurance written on a claims made basis shall remain in effect for a minimum of six (6) months following the use of university facilities.
- If the Covered Activity is a children's camp, a provision requiring permittee to provide the university with a copy of its camp operator permit issued by the New York State Commissioner of Health, either upon execution of the permit or not later than two weeks (14 days) before the scheduled use of university facilities.
- A representation and warranty from permittee that for all of its employees and volunteers, and employees and volunteers of its sub-permittees, who shall enter upon university facilities for purposes related to the Covered Activity, permittee has conducted within the ninety (90) day period preceding the use of university facilities (i) a search of the New York Sex Offender Registry; and (ii) a search of the National Sex Offender Public Website.
- A representation and warranty from permittee that for all Covered Activities: (i) it shall adhere to the American Camp Association standards for minimum staff-to-child supervision ratios, minimum staff age and minimum staff accreditation requirements (available at: <http://www.acacamps.org/accreditation/stdsglance>); and (ii) that the overall supervisor for each Covered Activity is an adult with certification or documented training and experience in the Covered Activity.
- A representation and warranty from permittee that any transportation it provides for participating minors to and from the university grounds will conform to the [American Camp Association's transportation standards](#) □ □.
- A provision requiring written acknowledgement from permittee that it has received a copy of the university's *Child Protection Policy* and agrees to abide by all of its terms, including its requirement that any suspected physical or sexual abuse be immediately reported to University Police.

University Links

- [Equity, Diversity and Inclusion](#) □ □
- [Frequently Asked Questions – Child Protection Policy](#) □ □
- [UB Alert Emergency Information](#) □ □
- [Workplace Violence Prevention Policy](#) □ □

Forms

- ▢ [Acknowledgement of the UB Child Protection Policy and Conduct Requirements](#) ▢ ▢
- ▢ [University Police Sexual Assault Anonymous Report Form](#) ▢ ▢

Related Links

- ▢ [American Camp Association Standards at a Glance](#) ▢ ▢
- ▢ [Children's Camp definition under New York Public Health Law §1392](#) ▢ ▢
- ▢ [New York State Department of Labor Division of Safety and Health](#) ▢ ▢
- ▢ [New York State Department of Labor Workplace Violence Prevention Information](#) ▢ ▢
- ▢ [New York State Division of Criminal Justice Services – Sex Offender Registry Searches](#) ▢ ▢
- ▢ [New York State Penal Law](#) ▢ ▢
- ▢ [State University of New York Child Protection Policy](#) ▢ ▢
- ▢ [State University of New York Child Protection Policy, Document 6505](#) ▢ ▢
- ▢ [State University of New York Mandatory Child Sexual Abuse Reporting and Prevention Policy](#) ▢ ▢
- ▢ [State University of New York Policy on Mandatory Reporting and Prevention of Child Sexual Abuse, Document 6504](#) ▢ ▢
- ▢ [United States Department of Justice National Sex Offender Public Website](#) ▢ ▢

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History

Policy Revision History

July 2016	Full review. Update the policy to include requirements to: <ul style="list-style-type: none">• Conduct New York State and national sex offender registry searches for individuals who are responsible for children• Issue a <i>Revocable Permit or Facilities Use Agreement</i> to visitors who use UB facilities for events and programs for children• Comply with the State University of New York <i>Child Protection Policy</i>
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Presidential Approval

Signed by President Satish K. Tripathi

7/6/2016

Satish K. Tripathi, President

Date

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EXHIBIT F

Environmental, Health and Safety Guidelines

Note: Refer to Schedule G: Building Specific Memorandum for information associated with assigned Premises Location.

1. University Wide Smoke-Free Policy

SUNY Buffalo supports an environment where its students, employees, and visitors are not exposed to secondhand smoke. Therefore, smoking (including electronic cigarettes) is prohibited on all SUNY Buffalo-managed property, both indoors and outdoors. This includes but is not limited to:

- a. All buildings on the North, South, and Downtown campuses, classrooms, lecture halls, residences, residence halls, apartments, laboratories, offices, work areas, study areas, reception areas, meeting rooms, lobbies, hallways, stairwells, elevators, eating areas, lounges, and restrooms.
- b. Off-site locations such as the Jacobs Executive development Center Carriage House, NYS Center of Excellence in Bioinformatics & Life Sciences (COE), UB Gateway Building, Clinical & Translational Research Center (CTRC), Jacobs Institute, Buffalo Niagara Medical Campus (BNMC), Institute for Healthcare Informatics (IHI), Baird Research Center, Hauptman-Woodward Medical Research Institute (HWI), Roswell Park Cancer Institute, Former Educational Opportunity Center, Z-80 Incubator Labs (Buffalo News Plaza), 847 Main Street, and 73 High Street.
- c. Fields, open land areas, parking lots and garages, athletic fields, tracks, bleachers/grandstands, outdoor paths and roads.
- d. All partially enclosed areas including, but not limited to, covered and uncovered walkways, breezeways, bus stop shelters, loading docks, building entrances, and exterior stairways and landings.

Please reference SUNY Buffalo's Smoke Free Policy available by link at:

<http://policy.business.buffalo.edu/Policy%20Library/Smoke-Free%20Policy.pdf>

2. Use of Elevators

- a. The Permittee (and its Contractor, if applicable) shall be permitted to make temporary use of elevator(s) designated by SUNY Buffalo, provided such use does not interfere with the normal activities of SUNY Buffalo or exceed the capacity of the elevator(s).
- b. Large and heavy items shall not be placed in elevators, and suitable padding shall be provided whenever a cab is used for build-out purposes.
- c. Use of the top of the elevator is not permitted. Transport of hazardous materials and nitrogen Dewar flasks must be in accordance with SUNY Buffalo's Chemical Hygiene Plan which

can be viewed by link at:

http://www.buffalo.edu/content/dam/www/facilities/ehs/forms/hazwaste/CHP_9-25-13.pdf

In general, freight elevators, rather than personnel elevators shall be used to transport such materials when available. Contact SUNY Buffalo's Environment Health and Safety (EHS) Department at 829-3301 for additional information.

3. Disposal of Refuse

The Permittee is billed as part of the Base Rent payment for what is considered to be a reasonable amount of waste disposal. In the event that the Permittee produces a significant amount of waste, as determined in the sole discretion of SUNY Buffalo, the Permittee shall be responsible for the cost of transportation and legal disposal of same from SUNY Buffalo's property.

4. Hazardous Materials

- a. "Hazardous Materials" means any explosives, radioactive materials, biologically hazardous materials, infectious materials, toxins, hazardous wastes, or hazardous substances, including without limitation substances defined as "hazardous substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 9657; the Hazardous Materials Transportation Act of 1975, 49 U.S.C. §§ 1801 1812; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901 6987; or any other federal, state, or local statute, law, ordinance, code, rule, regulation, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning hazardous materials, waste, or substances now or at any time hereafter in effect (collectively, "Hazardous Materials Laws").
- b. Permittee will not allow space covered by the revocable permit or any other SUNY Buffalo-owned property ("Facilities") to be used or operated in any manner that may cause the Facilities to be contaminated by any Hazardous Materials in violation of any Hazardous Materials Laws and regulations. Chemical, biological, or radioactive hazardous materials owned by the Company shall not be transferred to University laboratories in the building or co-mingled with SUNY Buffalo-owned hazardous materials. Chemical hazardous waste must be generated, handled and accumulated in accordance with applicable US EPA, NYS DEC regulations and SUNY Buffalo EH&S Policies.
- c. Permittee will be solely responsible for any and all claims, costs, and liabilities, including attorneys' fees and costs, arising out of or in connection with the removal, cleanup, and restoration work and materials necessary to return the Facilities, and any other affected University property of whatever nature located in and on the Facilities, to their condition existing prior to the appearance of Company's Hazardous Materials in or on the Facilities.
- d. Shipment, delivery, storage, use, and disposal of all products containing hazardous material must be in compliance with all regulatory agency's rules regulations, and laws. Unless otherwise provided for in the lease agreement, disposal costs associated with the transportation and disposition of hazardous waste generated by the Permittee are to be paid for by Permittee. Permittee must report the use of Hazardous Materials at the Facilities and, in some cases, prior

written authorization is required. Contact SUNY Buffalo's Department of Environment, Health and Safety at 716-829-3301 for additional information and assistance.

- e. All chemical hazardous wastes will be manifested under SUNY Buffalo's EPA Identification number for the site. Chemical hazardous waste that is properly labeled can be maintained in designated Permittee "satellite accumulation areas" for no greater than one (1) year, at which point it must be transferred to SUNY Buffalo for processing. Permittee is responsible for contacting SUNY Buffalo's EHS when disposing of any/all Hazardous Materials. This includes but is not limited to hazardous wastes, reagents, and most other chemicals. If/when Permittee vacates SUNY Buffalo's property, Permittee must make arrangements for all Hazardous Materials to be properly disposed of in a manner approved by SUNY Buffalo. If any Hazardous Materials are left on premises after the Permittee vacates the Premises, SUNY Buffalo may make arrangements for the safe and proper disposal of such materials and, in such an event, the Permittee will be responsible for all costs associated with the cleanout and removal of these materials. The Permittee's "satellite accumulation area" shall be managed by Permittee and all Hazardous Materials, including hazardous chemical wastes, shall be labeled and handled according to procedures established in SUNY Buffalo's "Hazardous Waste Guidebook" which can be viewed online at <http://www.buffalo.edu/content/dam/www/facilities/ehs/forms/hazwaste/HCWGB.pdf>
- f. Any licensing or registrations required for the use of radioactive materials or radiation generating equipment (x-ray machines) shall be the responsibility of the Permittee and Permittee will provide SUNY Buffalo with evidence of its compliance with such requirements upon request. The Permittee shall inform SUNY Buffalo's EHS of the proposed use of radioactive materials and radiation generating equipment and ensure an appropriate radiation safety program is instituted and SUNY Buffalo approval has been obtained prior to using any such materials or equipment. The Permittee is responsible for arranging and the costs of disposal of radioactive materials and waste.
- g. Any licensing or registrations required for the use of biological materials, infectious agents, or toxins shall be the responsibility of the Permittee and Permittee will provide SUNY Buffalo with evidence of its compliance with such requirements upon request. Any mixed waste (i.e. chemical-radioactive, chemical-RMW) with a chemical component shall be reported prior to generation to SUNY Buffalo's Hazardous Materials Manager (currently Tony Oswald phone 716-829-5681 email acoswald@buffalo.edu) who will determine the appropriate regulated disposal method. Unless otherwise provided for in the lease agreement, the Permittee shall reimburse SUNY Buffalo for the cost of the mixed hazardous waste disposal.
- h. The Permittee shall not handle or dispose of any used fluorescent light bulbs. Permittee will report any failed fluorescent light bulbs to custodial services who will replace the light bulb and dispose of them following the procedures in SUNY Buffalo's Universal Waste Program.
- i. The Permittee (and its contractors, where applicable) shall maintain a SUNY Buffalo-approved Safety Data Sheets library ("SDS Library") for all chemicals, solvents, and materials specified or proposed to be used on or about the Leased Premises. The SDS Library will be maintained in a readily-available conspicuous location and in the manner prescribed by applicable law.

- j. Whenever and wherever the Permittee, or its Contractors during the course of performing any work discovers the presence of asbestos or suspects that asbestos is present, the Permittee or its Contractors shall stop work immediately and contact the University's EHS at 716-829-3301. Work shall not continue until SUNY Buffalo's EHS provides written notice to continue.
- k. The Permittee shall be prohibited from using Centers for Disease Control and Prevention (CDC) defined biological Select Agents, and Toxins unless written approval is granted from SUNY Buffalo's EHS.
- l. The Permittee shall inform SUNY Buffalo's EHS of their use of Risk Group 2 (or above) organisms, blood borne pathogens as defined by OSHA standard C.F.R. 1910.1030, including human blood, blood products, tissues, and cell culture (primary cell lines and/or immortalized lines), and/or recombinant or synthetic Nucleic Acids prior to beginning activities. The Permittee shall also prepare, maintain and comply with (and make available to SUNY Buffalo's EHS upon request) Standard Operating Procedures and Safety Documentation with respect to the use of any such materials.
- m. The Permittee shall not bring any equipment on University premises that have oils containing polychlorinated biphenyl (PCB: CAS number 1336-36-3).
- n. Inventory of Hazardous Materials Requirement. The Permittee shall submit an inventory of all Hazardous Materials used on or about the Premises to SUNY Buffalo's EHS on a quarterly basis (January 1, April 1, July 1, October 1). Inventory list shall include the identity of the Hazardous Material present at the time the inventory is completed as well as those used during the previous quarter and not included on the previous inventory, the chemical abstract service (CAS) number, the volume present and the Premises room location. The inventory must be maintained and updated on a daily basis and available on demand for inspections and emergency situations.

5. Use of Pesticides and Other Chemicals

The Permittee shall not apply pesticides or other chemicals on SUNY Buffalo's premises. Any pest problems should be reported to SUNY Buffalo's EHS and the issue will be addressed under SUNY Buffalo's pest management program.

6. Building Safety Systems

- a. Permittee shall not alter or in any way hinder the operation of Fire Protection and Suppression Systems including alarms, sprinklers, audible devices and fire extinguishers. Permittee shall report any system trouble condition or any discharge of a fire extinguisher.
- b. SUNY Buffalo will provide automated external defibrillators (AED) accessible in the corridors. If there is access security features in the Permittee's space that hinder access to the nearest (AED), then the Permittee shall provide additional AEDs within their space as necessary to service their employees.

- c. The Permittee is responsible for the proper use of any laboratory fume hoods or other local exhaust ventilation for contaminant control. SUNY Buffalo shall provide testing and maintenance of these systems. The Permittee shall not modify any ventilation systems without written permission from SUNY Buffalo's EHS. The Permittee's use of perchloric acid is prohibited in fume hoods. Any problems or alarms on these systems shall be immediately reported to SUNY Buffalo's EHS.
- d. The Permittee is responsible for having Biological Safety Cabinets (BSC) in place at all times and BSC must be certified by a qualified firm minimally on an annual basis, a copy of which shall be submitted to SUNY Buffalo's EHS. BSC shall not be connected to a building ventilation system.
- e. The Permittee is responsible for conducting regular activation testing for any eyewashes or safety showers within the Premises. SUNY Buffalo shall provide annual performance testing and inspection services. The Permittee shall not block, hinder or modify any eyewash or safety shower.

7. Safety and Environmental

- a. The Permittee is responsible for conducting its business and all work in or about the Premises and any SUNY Buffalo property in accordance with all applicable federal, state and local regulations. If any Permittee's activities result in potential safety and health risks to the public, to SUNY Buffalo personnel, to other occupants of the building in which the Premises are located, any SUNY Buffalo-owned property, and/or to the environment, SUNY Buffalo may issue a stop work order to the Permittee or take other actions as authorized by the Permit.
- b. The Permittee and their employees must evacuate the building when fire alarms sound or when an evacuation order is given. The Permittee must participate in any SUNY Buffalo fire evacuation drills related to compliance with NY State Fire Code.
- c. The Permittee shall report any inspections from the following regulatory agencies as soon as possible to SUNY Buffalo's EHS and prior to permitting any inspectors on SUNY Buffalo property: The Occupational Safety and Health Administration (OSHA), The NYS Public Employees Safety and Health Bureau (PESH), The NYS Office of Fire Prevention and Control (OFPC), The Environmental Protection Agency (EPA), the NYS Department of Environmental Conservation (DEC), the NYS Department of Health (DOH), the NYS Department of Labor (DOL), the Buffalo Sewer Authority (BSA). The Permittee shall provide SUNY Buffalo with copies of any inspection requests and/or reports provided by these regulatory agencies and allow SUNY Buffalo officials to accompany the inspection where SUNY Buffalo interests are involved.
- d. The Permittee shall not disturb any building materials which may contain asbestos or lead based paint without written permission from SUNY Buffalo's EHS. Prior to any renovation, all affected building materials shall be tested for asbestos, lead based paint and/or PCB (depending on the type of material) by EPA certified testing personnel. Such testing shall be performed by SUNY Buffalo-approved contractor at Permittee's expense. The Permittee shall provide SUNY Buffalo with a copy of any report generated from such testing.

- e. The Permittee shall maintain the premises and conduct house-keeping in a manner which does not cause undue risk of fire and maintains required egress paths from the building.
- f. The Permittee shall immediately report any accidental releases of Hazardous Materials to the SUNY Buffalo's Police at 716-645-2222. For downtown properties, the Permittee shall also report the release to building security and call 911.
- g. The Permittee will not file any environmental permits with the DEC or the EPA without first obtaining written approval from SUNY Buffalo's EHS. SUNY Buffalo is to be provided with copies of all environmental permits obtained.

8. Allowing Access for Emergency and Safety Purposes

- a. The Permittee may not install a separate security system without first obtaining written approved from SUNY Buffalo's EHS. If the Permittee installs or maintains a separate security system, written provisions shall be submitted to SUNY Buffalo's EHS to allow for readily available access by SUNY Buffalo's Police and other officials and/or local response agencies during an emergency or otherwise agreed.
- b. Permittee shall allow SUNY Buffalo access to the Premise including for maintenance, testing and inspection of safety related building systems.
- c. Permittee shall allow SUNY Buffalo access to the Premises, and accompany SUNY Buffalo if requested, for inspection of hazardous waste satellite accumulation areas and associated waste handling and labeling practices.
- d. Permittee shall allow SUNY Buffalo access to the Premises for the investigation of fires.

9. Additional Safety Related Reporting Requirements

- a. Reporting Fires, Injuries and Accidental Releases of Hazardous Materials. Permittee will immediately report any fires that result in visible flame, building damage, injury or death to SUNY Buffalo's EHS at 716-829-3301. The Permittee shall also immediately report any accidental releases of Hazardous Materials to SUNY Buffalo's Police at 716-645-2222. For downtown properties, the Permittee shall also report the release to building security and call 911. In such an event, the Permittee must also report to SUNY Buffalo's EHS at 716-829-3301. IN THE EVENT OF AN EMERGENCY ALWAYS CONTACT EMERGENCY PERSONNEL IMMEDIATELY FOR ASSISTANCE. ON UB NORTH OR SOUTH CAMPUS CONTACT THE UNIVERSITY POLICE AT 716-645-2222. AT ALL OTHER LOCATIONS, CALL 911.
- b. Permittee will promptly respond to and accurately report via periodic surveys conducted by SUNY Buffalo, the use of any chemicals on the Department of Homeland Security Chemical Facility Anti-Terrorism Standard (CFATS) list, the quantities used and the location stored.

- c. Permittee will report to SUNY Buffalo's EHS any use of an automated external defibrillator (AED) on the Premises or within SUNY Buffalo's space.
- d. Lab Hazard Door Posting. On or before occupying or using any lab space in or about the Premises, the Permittee must submit a general lab description and 24-hour emergency contact information to SUNY Buffalo's EHS. This submission may be made online at the EHS website: <http://www.buffalo.edu/facilities/ehs/lab-safety/lab-door-signs.html>. SUNY Buffalo's EHS will use the information to create a laboratory door sign posting. The Permittee must use SUNY Buffalo-provided lab door sign posting and shall not use any additional door signs to describe the hazards of the lab unless written approval is granted by SUNY Buffalo. If the information on the door sign must be updated, it is the Permittee's responsibility to request an updated door sign and provide SUNY Buffalo's EHS with any information required to prepare the sign.

10. Storage of Permittee's Supplies

- a. Security for stored materials shall be the responsibility of the Permittee.
- b. Storage of materials is not permitted on the roof of any building.
- c. Access to the Premises for delivery of large materials and equipment must be pre-approved by SUNY Buffalo and the delivery date, time and location shall be conveyed to the vendor prior to arrival at SUNY Buffalo. Temporary parking for the loading and unloading of the same shall be arranged with prior approval of SUNY Buffalo.

EXHIBIT G
Building-Specific Memorandum

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