

Meeting Agenda – STAMP Committee
 Genesee County Economic Development Center
 Wednesday, February 2, 2023 - 8:00 a.m.
 Location: 99 MedTech Drive, Innovation Zone

Page #'s	Topic	Discussion Leader	Desired Outcome
	1. Call to Order – Enter Public Session	P. Zeliff	
	1a. Executive Session Motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105 for the following reasons: 1. Discussions regarding proposed, pending or current litigation. 2. The medical, financial, credit or employment history of a particular person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation. 3. The proposed acquisition, sale or lease of real property or the proposed acquisition of securities, or sale or exchange of securities held by such public body, but only when publicity would substantially affect the value thereof. 1b. Enter Public Session	P. Zeliff	
2-4	2. Chairman's Report & Activities 2a. Agenda Additions / Deletions / Other Business 2b. Minutes: January 11, 2023	P. Zeliff	Vote
5-42	3. Discussions / Official Recommendations to the Board: 3a. SEQR Resolution	M. Masse	Disc / Vote
43-49	3b. Authorizing Resolution for Edwards Vacuum, LLC	M. Masse	Disc / Vote
50-64 65-81	3b1. PSA 3b2. Ground Lease Agreement		
82-94	3c. Option Agreement for Scannell Properties	M. Masse	Disc / Vote
95, 97-98	3d. Phillips Lytle 2023 Fees	M. Masse	Disc / Vote
96-98	3e. Phillips Lytle – Additional Legal Services	M. Masse	Disc / Vote
99	3f. Easement Agreements	M. Masse	Disc / Vote
	4. Adjournment	P. Zeliff	Vote



GCEDC STAMP Committee Meeting
Wednesday, January 11, 2023
Location: 99 MedTech Drive, Innovation Zone
8:00 a.m.

MINUTES

ATTENDANCE

Committee Members: P. Zeliff, C. Kemp, M. Clattenburg
Staff: M. Masse, J. Krencik, S. Hyde, L. Casey, L. Farrell, C. Suozzi, P. Kennett
Guests: R. Crossen (Town of Alabama Supervisor), Craig Leslie (Phillips Lytle/Video Conference), A. Walters (Phillips Lytle/Video Conference)
Absent: C. Yunker

1. Call to Order / Enter Public Session

P. Zeliff called the meeting to order at 8:01 a.m. in the Innovation Zone.

1a. Executive Session

M. Clattenburg made a motion to enter executive session under the Public Officers Law, Article 7, Open Meetings Law Section 105, at 8:02 a.m., for the following reasons:

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

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

Craig Leslie left the meeting at 8:38 a.m.

1b. Re-Enter Public Session

M. Clattenburg made a motion to enter back into public session at 8:57 a.m., seconded by C. Kemp and approved by all.

2. Chairman's Report & Activities

2a. Agenda Additions / Other Business –

P. Zeliff added 3b – Phillips Lytle Waiver request to the agenda.

2b. Minutes: November 30, 2022

M. Clattenburg made a motion to approve the November 30, 2022 minutes; the motion was seconded by C. Kemp. Roll call resulted as follows:

P. Zeliff - Yes
C. Yunker - Absent
M. Clattenburg – Yes
C. Kemp - Yes

The item was approved as presented.

3. Discussions / Official Recommendations to the Board:

3a. Saratoga Associates Proposal for STAMP Site Visualization Services – In conjunction with the March 2021 Letter of Resolution between NYSDEC, SHPO and the GCEDC, any project at STAMP that requires a discharge permit for stormwater from NYSDEC must complete an assessment of potential impacts to the Nation's Territory. This proposal will be to prepare a visual assessment for the construction of the substation. This will include photo simulations along with line-of-sight profiles. This will also include the visual assessment for the GCEDC in connection with certain proposed and future infrastructure improvements and facilities at STAMP.

Fund Commitment: \$4,750 from the \$33 million.

C. Kemp made a motion to recommend to the full Board the approval of the Saratoga Associates proposal for STAMP Visualization Services not to exceed amount of \$4,750 as presented; the motion was seconded by M. Clattenburg. Roll call resulted as follows:

P. Zeliff - Yes
C. Yunker - Absent
M. Clattenburg – Yes
C. Kemp - Yes

The item was approved as presented.

3b. Phillips Lytle Waiver Request – Plug Power asked Phillips Lytle to assist with permitting associated with the development of hydrogen production on the STAMP campus. Because Phillips Lytle has represented the agency since 2009, it cannot represent Plug Power without the GCEDC's consent. Phillips Lytle asked Plug Power to waive any conflict of interest relative to the representation of the GCEDC in relation to any matters related to STAMP. If a dispute should arise between Plug Power and the GCEDC with matters related to STAMP 1) Phillips Lytle will no longer represent Plug Power and 2) Phillips Lytle will continue to represent the GCEDC on such matters and Plug Power will be represented by other counsel.

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

P. Zeliff - Yes
C. Yunker - Absent
M. Clattenburg – Yes
C. Kemp - Yes

DRAFT

The item was approved as presented.

4. Adjournment

As there was no further business, C. Kemp made a motion to adjourn at 8:59 a.m., seconded by M. Clattenburg and passed unanimously.

2b

SEQR for STAMP for Certain Proposed Infrastructure Projects

Discussion: See the attached resolution for the timeline and record of previous action taken on SEQR by the GCEDC as Lead Agency. The attached resolution also describes the scope of the items analyzed under this SEQR review.

Having considered the Environmental Information, STAMP Environmental Record, and having considered the relevant environmental impacts, associated with the Current Proposed STAMP Development, and having weighed and balanced the relevant impacts with social, economic and other considerations, the Agency recertifies that:

- (i) The requirements of 6 N.Y.C.R.R. Part 617 have been met; and
- (ii) Consistent with the social, economic and other essential considerations from among the reasonable alternatives available, the Project remains one which avoids or minimizes adverse environmental effects to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

Fund commitment: None.

Committee action request: Recommend to the full Board that the Agency adopt by a majority vote the Negative Declaration (as defined in 6 N.Y.C.R.R. 617.2(y)), and is issued by the Agency pursuant to and in accordance with SEQRA, shall take effect immediately.

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT
AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER TO
AMEND A NEGATIVE DECLARATION PURSUANT TO THE STATE
ENVIRONMENTAL QUALITY REVIEW ACT CONCERNING CURRENT PROPOSED
STAMP DEVELOPMENT THE WESTERN NEW YORK SCIENCE & TECHNOLOGY
ADVANCED MANUFACTURING PARK

Project Name: Current Proposed STAMP Development at the Western New York Science & Technology Advanced Manufacturing Park
Location: Town of Alabama, Genesee County, NY; Town of Shelby, Orleans County, NY ("**Site**")

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

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

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

WHEREAS, in 2010, the Agency, acting as Lead Agency conducting a coordinated environmental review, commenced preparation of a generic environmental impact statement for STAMP consisting of the Draft Generic Environmental Impact Statement (“**DGEIS**”) accepted by the Agency on April 14, 2011 and the Final Generic Environmental Impact Statement (“**FGEIS**”) accepted by the Agency on January 19, 2012

WHEREAS, the GCEDC, as lead agency, issued a written Findings Statement (“**2012 GCEDC Findings**”) on March 12, 2012 approving the Project and committing to undertake it (collectively, the DGEIS, the FGEIS and the 2012 GCEDC Findings are referred to as the “**STAMP GEIS**”); and

WHEREAS, the purposes of the STAMP GEIS were to identify and evaluate the potential significant adverse environmental impacts of STAMP, compare the reasonable alternatives, and, where applicable, to identify reasonable mitigation measures to reduce the effect of those impacts to the maximum extent practicable, while weighing the substantial potential social and economic benefits of STAMP; and

WHEREAS, the STAMP GEIS analyzed the impacts from full build out of STAMP consisting of the rezoning the entire STAMP Site from agricultural/residential use to industrial/advanced manufacturing use, and with constructing and operating 6,130,000 square feet of advanced technology manufacturing uses at full build-out, providing direct employment for over 9,000 people and certified that, consistent with social, economic and other essential considerations from among reasonable alternatives evaluated, STAMP avoided or minimized adverse environmental impacts to the maximum extent practicable; and

WHEREAS, the Agency prepared a smart growth impact statement (“**SGIS**”) pursuant to the State Smart Growth Public Infrastructure Policy Act separately from the GEIS in February, 2012; and

WHEREAS, in 2016, a number of changes were made to the Project including changes to the STAMP master plan including an expansion of the footprint of STAMP, demolition of additional houses along Crosby Road, construction of a new municipal water system to serve the residents of the Town of Alabama, and construction of a new sewer force main to discharge wastewater from STAMP to the Village of Medina wastewater treatment plant (“**Medina Force Main**”), twelve miles north of the STAMP Site, as well as the reroute of on-Site powerlines to the western edge of the STAMP Site (“**Powerline Reroute**” and together with the Medina Force Main, the “**2016 Project Modifications**”); and

WHEREAS, the 2016 Project Modifications necessitated further environmental review and such review was undertaken by the Agency to determine whether the 2016

Project Modifications would result in any significant adverse environmental impacts not previously addressed in the FGEIS; and

WHEREAS, in July of 2016 the Agency adopted an Amended Findings Statement to the FGEIS ("**2016 Amended Findings**") approving the 2016 Project Modifications in accordance with the requirements of the GEIS and SEQR; and

WHEREAS in August of 2019, the Agency again considered certain infrastructure modifications to the Project and the Agency circulated a notice of intent to re-establish itself as lead agency pursuant to SEQR; and

WHEREAS, the Project modifications reviewed in 2019 and 2020 included all actions necessary to undertake the construction of the STAMP wastewater treatment facility, force main, water line, and substation (collectively, the "**Project Infrastructure**"); and

WHEREAS, in August of 2020, the Agency adopted an Amended Findings Statement to the FGEIS ("**2020 Amended Findings**") approving the 2020 Project Modifications in accordance with the requirements of the GEIS and SEQR; and

WHEREAS, in February of 2021, the Agency adopted a SEQR determination ("**2021 SEQR Determination**") that the proposed use of a portion of the STAMP Site for a hydro-powered electrolysis hydrogen production facility ("**Project Gateway**") would be carried out in conformance with the conditions and thresholds set forth in the STAMP GEIS, as amended; and

WHEREAS, in June of 2021 the Tonawanda Seneca Nation ("**Nation**") commenced a lawsuit against the Agency with respect to the Agency's 2021 SEQR Determination that was ultimately dismissed by the Genesee County Supreme Court ("**Gateway Litigation**"); and

WHEREAS, the Nation and Agency entered into a Stipulation of Settlement ("**Plug Power Settlement Agreement**"); and

WHEREAS, GCEDC has signed on to a 2018 Programmatic Agreement ("**Programmatic Agreement**") between the United States Army Corps of Engineers ("**USACE**") and the New York State Office of Parks, Recreation and Historic Preservation State Historic Preservation Office ("**SHPO**"), SHPO, the New York State Department of Environmental Conservation ("**NYSDEC**") as an Invited Signatory; and

WHEREAS, the Nation was invited to sign the Programmatic Agreement as an Invited Signatory but has declined to do so; and

WHEREAS, the Programmatic Agreement governs USACE's compliance with Section 106 of the National Historic Preservation Act and, at the request of the Nation, sets forth that the Nation shall undertake an investigation of the Nation's Territory as a Traditional Cultural Property ("TCP") to evaluate the eligibility of the Nation's Territory for listing on the National Register as a property of religious and cultural significance and to guide evaluation of potential adverse effects to the Nation's Territory as a TCP; and

WHEREAS, to date, the Nation has declined to share any results from the TCP investigation with the GCEDC other than such information as was disclosed by the Nation's members in certain affidavits submitted in connection with the Gateway Litigation; and

WHEREAS, the Programmatic Agreement also details the extensive archaeological investigation undertaken for the STAMP Site, including a detailed and comprehensive plan for those areas of the STAMP Site requiring further investigation; and

WHEREAS, because the Programmatic Agreement's provisions governing the evaluation of potential impacts to the Nation as a TCP only apply to those STAMP-related projects which are subject to USACE permitting authority, NYSDEC, SHPO, and GCEDC have entered into a 2021 Letter of Resolution ("LOR") which governs how SHPO and NYSDEC consider impacts of the Project on the Nation's Territory as a TCP; and

WHEREAS, the LOR requires the Agency to prepare an initial assessment of each project at STAMP that requires any permitting from NYSDEC for potential impacts to the Tonawanda Seneca Nation's ("Nation") Territory as a potential property of religious and cultural significance based on the National Register Criteria for eligibility; and

WHEREAS, the LOR further provides that such initial assessment is provided to the Nation for a 30 day review and comment period, after which NYSDEC and SHPO must then make a determination of whether there are adverse impacts to the Nation's Territory as a potential property of religious and cultural significance based on the National Register Criteria for eligibility from the undertaking described in such initial assessment; and

WHEREAS, for the purpose of analyzing impacts on the Nation as a TCP in accordance with SEQR, the Agency assumes that the Nation's Territory would be eligible for the National Register; and

WHEREAS, the Agency provides the Nation with weekly written email updates on the status of development at STAMP and participates in monthly calls with the Nation and NYSDEC to help keep the Nation fully informed on development of the STAMP Site; and

WHEREAS, the Agency elected to undertake an updated review of, certain Project Infrastructure with respect to additional environmental analysis to determine if a supplemental GEIS is warranted under the circumstances (the "**2022 SEQR Update**"); and

WHEREAS, on July 21, 2022, upon the Agency's review of the Environmental Information and investigations of the potential environmental impacts associated with the Project Infrastructure, considering both the magnitude and importance of each potential environmental impact indicated, and upon the Agency's knowledge of the STAMP Site and surrounding area and such further investigations of the Project Infrastructure and its environmental effects as the Agency has deemed appropriate, the Agency determined that, while the Project Infrastructure was not addressed or not adequately addressed in the STAMP GEIS, and the Project Infrastructure exceeds thresholds set forth in the STAMP GEIS, the Environmental Information demonstrates that the Project Infrastructure will not result in any potential significant adverse environmental impacts, and, pursuant to the STAMP GEIS, a Negative Declaration was issued pursuant to 6 N.Y.C.R.R. § 617.10(d)(3) ("**2022 Negative Declaration**"); and

WHEREAS, pursuant to 6 N.Y.C.R.R. § 617.7(e)(1) at any time prior to its decision to undertake, fund or approve an action, a lead agency, at its discretion, may amend a negative declaration when new information is discovered and the lead agency determines that no significant adverse environmental impacts will occur; and

WHEREAS, at its meeting on August 4, 2022, the Agency resolved to amend the 2022 Negative Declaration to include responses to substantive comments received from The Tonawanda Seneca Nation ("**Nation**"), to provide further clarification, and to document the Agency's hard look at the concerns raised by the Nation ("**2022 Amended Negative Declaration**"); and

WHEREAS, on September 3, 2022, NYSDEC issued various permits relating to the Project, including a certain Incidental Take Permit pursuant to Part 182 ("**Take Permit**") which authorized the Agency to construct the STAMP substation and laydown area past November 1, 2022 including the incidental take of certain species ("**Winter Raptors**") as described therein; and

WHEREAS, due to the issuance of the Take Permit so late in the construction season, construction of the Powerline Reroute necessarily included construction past November 1, 2022 which activity was not originally authorized by the Take Permit;

WHEREAS, the Agency filed, and NYSDEC has approved, an application to amend the Take Permit to authorize continuing construction of the Powerline Reroute past November 1st; (**"Take Permit Modification"**); and

WHEREAS, in connection with the Take Permit Modification, the Agency, as part of its on-going obligations under SEQRA, evaluated the significance of potential environmental impacts associated with continuing construction of the Powerline Reroute past November 1st, particularly any potential impacts upon winter raptors which may use the STAMP Site during colder season months (November through March/ April); and

WHEREAS, at its meeting on October 6, 2022, the Agency resolved to further amend the 2022 Amended Negative Declaration to include the Take Permit Modification (**"2022 Second Amended Negative Declaration"**); and

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

WHEREAS, in connection with the Project, by letter dated September 30, 2022, the Agency circulated a notice of intent to re-establish itself as lead agency for STAMP to all potentially Interested and Involved Agencies (**"Notice"**) in conjunction with the Scannell Development project which involves the development of approximately 22.76 acres of a 87.7-acre site located within the STAMP Site at 6840 Crosby Road (SBL: 10.-1-43.12; 10.-1-39.-11; 10.-1-39.12) and the construction of up to three distribution and/or manufacturing buildings for commercial and/or industrial purposes; and

WHEREAS, no interested or involved agency objected within 30 days to the re-establishment of the GCEDC as lead agency and thus, the GCEDC has properly been re-established as the lead agency for STAMP; and

WHEREAS, since the circulation of the Notice in late September, 2022, Edwards Vacuum LLC (**"Edwards Vacuum"**) has selected the STAMP Site for the location of its proposed 255,000 sq. ft. machining and assembly hall together with office building space, together with a future phase in which Edwards Vacuum is anticipated to construct a 255,000 sq. ft. addition to its proposed development, all located on approximately 80 acres of land east of Crosby Road and north of STAMP Drive; and

WHEREAS, the Agency is also considering a number of additional infrastructure projects at STAMP, all as described in the Notice, (collectively with the Scannell Project and Edwards Vacuum, the "**Current Proposed STAMP Development**"); and

WHEREAS, the Plug Power Settlement Agreement requires that GCEDC provide notice of any new tenants of the STAMP Site sixty days prior to the adoption of a SEQR determination with respect to a new tenant; and

WHEREAS, in addition to prior notices provided in weekly updates to the Nation, by letter dated December 2, 2022, the Agency circulated an update to the Notice to all potentially Interested and Involved Agencies addressing the Current Proposed STAMP Development, including the Nation ("**Updated Notice**"); and

WHEREAS, the Plug Power Settlement Agreement requires that GCEDC circulate an Initial Assessment prior to the adoption of a SEQR determination with respect to a new tenant; and

WHEREAS, on January 3, 2023, the Agency circulated to the Nation, NYSDEC, and SHPO an Initial Assessment prepared for the Current Proposed STAMP Development pursuant to the LOR ("**Initial Assessment**"); and

WHEREAS, to aid the Agency in evaluating the significance of potential environmental impacts associated with the Current Proposed STAMP Development, the Agency has completed, received and/or reviewed:

- 1) the STAMP Environmental Record;
- 2) an Environmental Assessment Form Part I prepared by Edwards Vacuum ("**Edwards EAF**");
- 3) an Environmental Assessment Form Part I prepared by Scannell ("**Scannell EAF**");
- 4) an Environmental Assessment Form Part I prepared by the Agency ("**Infrastructure EAF**");
- 5) a Memorandum prepared by the STAMP Tech Team dated January 3, 2023, and updated January 27, 2023 ("**Tech Team Memo**");
- 6) the Notice, including all attachments thereto;
- 7) the Updated Notice, including all attachments thereto;
- 8) an Evaluation of Traffic Data prepared by CPL dated December 20, 2022 ("**Traffic Evaluation**");
- 9) the Initial Assessment prepared by kta preservation specialists;
- 10) a visibility assessment prepared by Saratoga Associates ("**Visual Study**");
- 11) an Emergency Preparedness Plan prepared by Edwards Vacuum and reviewed by the Town of Alabama and Genesee County ("**Emergency Plan**");
- 12) a letter from the Nation's counsel dated November 3, 2022 ("**Nation Letter**"); and

13) other relevant environmental information (collectively, 1-11, together with all analysis and supporting documentation referenced therein or relied upon thereby, are incorporated by reference herein in their entirety and shall be referred to as the “**Environmental Information**”); and

WHEREAS, while the Agency is not a “state agency” within the meaning of the Climate Leadership and Community Protection Act (“**CLCPA**”), the Agency has nevertheless evaluated potential environmental impacts on disadvantaged communities and air emissions as set forth more fully below; and

WHEREAS, a thorough analysis of the Environmental Information and potential environmental impacts reveals that it is appropriate that the Agency issue a negative declaration pursuant to 6 N.Y.C.R.R. § 617.10(d)(3) for the Current Proposed STAMP Development with respect to potential environmental impacts associated with short-eared owl and northern harrier; and

WHEREAS, a thorough analysis of the Environmental Information and potential environmental impacts reveals that the Current Proposed STAMP Development will not have any potentially significant adverse environmental impacts that were not addressed in the STAMP Environmental Record.

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

Section 1. Based upon a thorough review and examination of the Current Proposed STAMP Development and the Environmental Information, and upon the Agency’s knowledge of the area surrounding the STAMP Site and such further investigation of the Current Proposed STAMP Development and its environmental effects as the Agency has deemed appropriate, the Agency makes the following findings with respect to the Current Proposed STAMP Development:

- (A) The Project remains a Type I Action;
- (B) The Agency, as Lead Agency for the Project, has undertaken a coordinated review of the Current Proposed STAMP Development in accordance with SEQR and the STAMP GEIS, as amended; and

Section 2. Based upon the Agency’s review of the Environmental Information and investigations of the potential environmental impacts associated with the Current Proposed STAMP Development, considering both the magnitude and importance of such potential environmental impact, and upon the Agency’s knowledge of the STAMP Site and surrounding area and such further investigations of the Current Proposed

STAMP Development and its environmental effects as the Agency has deemed appropriate, the Agency has determined that, while the potential environmental impacts associated with the Current Proposed STAMP Development on Winter Raptors was not addressed or not adequately addressed in the STAMP GEIS, the Environmental Information demonstrates that potential environmental impacts associated with the Current Proposed STAMP Development will not result in any potential significant adverse environmental impacts, and thus, issuance of a negative declaration pursuant to 6 N.Y.C.R.R. § 617.10(d)(3) with respect to such potential impacts is appropriate. Further, with respect to other potential adverse environmental impacts, the Agency has determined that there are no significant adverse environmental impacts associated with the Current Proposed STAMP Development that were not analyzed and addressed in the STAMP Environmental Record. The Agency bases this determination upon the following findings with respect to the Current Proposed STAMP Development:

A. Impact on Land:

i. Edwards Vacuum Project

The Edwards Vacuum Project entails two phases of construction of two approximately 255,000 sq. ft. machining and assembly halls which will create 35 acres of impervious surfaces such as building roofs, parking areas, and access drives. The Edwards Vacuum Project is located on undeveloped farmland. Stormwater runoff will be generated by construction of the Edwards Vacuum Project but all stormwater runoff will be managed onsite, consistent with the stormwater controls identified in the Tech Team Memo.

The Edwards Vacuum Project site contains a majority of poorly drained (88%) and some moderately well drained (12%) soils. Furthermore, the Edwards Vacuum Project site does not involve construction on slopes greater than 10%. The average depth to bedrock at the Edwards Vacuum Project site is greater than 6.5 feet and there are no bedrock outcroppings. Additionally, no mining, dredging, or excavation will be required during construction.

The construction of the Edwards Vacuum Project will be completed in two phases. Phase I will begin in 2023, with Phase II scheduled to begin in 2025 and last approximately 18 months. Phase I is the initial build of the Edwards Vacuum Project site entailing the 255,000 sq. ft. machining and assembly hall, as mentioned above. Phase II will be an expansion of the original site that would double the size of the machine shop area identified on the proposed site plan. Both Phase I and Phase II are anticipated to utilize the full 80-acre parcel for construction staging purposes, as well as adjacent space on the STAMP Site as-needed.

Construction will be in controlled areas within the Edwards Vacuum Project which is

generally a sufficient distance from the surrounding communities to minimize disturbance. Construction will generally take place Monday to Friday from 7:00 a.m. to 5:00 p.m. At this time, there are no plans for weekend or holiday work to be executed.

Furthermore, the Edwards Vacuum Project site will not result in increased erosion. The Edwards Vacuum Project site is not located in a coastal erosion hazard area. As mentioned above, the proposed action will add 35 acres of impervious surfaces out of the 80-acre site. In addition, all required soil and erosion control measures during construction will be implemented.

ii. Scannell Project

The Scannell Project entails the construction of three buildings, to be constructed based upon future tenant demand. The three buildings are conceptually designed to total approximately 623,000 SF, approximately 157,500 SF, and approximately 211,000 SF. Collectively, the Scannell Project will create 22.76 acres of impervious surfaces such as parking lots, internal roadways, and concrete pads. The site where the Scannell Project is located is currently undeveloped farmland. Stormwater runoff will be generated by construction of the Scannell Project will be managed onsite, consistent with the stormwater controls identified in the Tech Team Memo.

The Scannell Project site contains a majority of poorly drained (88%) and some moderately well drained (12%) soils. Furthermore, the Scannell Project site does not involve construction on slopes greater than 10%. The average depth to bedrock at the Scannell Project site is greater than 6.5 feet and there are no bedrock outcroppings. Additionally, no mining, dredging, or excavation will be required during construction.

The construction of the Scannell Project site will be completed in three independent phases. The timing of the phases will be based on tenant demand. Construction will be in controlled areas within the Scannell Project which is generally a sufficient distance from the surrounding communities to minimize disturbance. Construction will generally take place Monday to Saturday from 7:00 a.m. to 6:00 p.m. At this time, there are no plans for Sunday or holiday work to be executed.

The Scannell Project site will not result in increased erosion. The Scannell Project site is not located in a coastal erosion hazard area. As mentioned above, the proposed action will add 22.76 acres of impervious surfaces out of the 87.7-acre site. In addition, all required soil and erosion control measures during construction will be implemented.

iii. Various Infrastructure Updates

The Various Infrastructure Updates entail improvements to the roadways, water, sewer, natural gas, and power of the STAMP Site which will create 1.2 acres of impervious

surfaces such as of roof tops, water storage tanks, roadways, and driveways. The site where the Various Infrastructure Updates are located is currently a combination of undeveloped farmland and existing roadways (including roadway shoulders). Stormwater runoff will be generated by construction of the Various Infrastructure Updates but all stormwater runoff will be managed onsite, consistent with the stormwater controls identified in the Tech Team Memo.

The Various Infrastructure Updates site contains all poorly drained soils (100%). Furthermore, the Various Infrastructure Updates site does not involve construction on slopes greater than 10%. The average depth to bedrock at the Various Infrastructure Updates is greater than 30 feet and there are no bedrock outcroppings. The Various Infrastructure Updates consists of several improvements to the STAMP Site, which are described in depth in the Tech Team Memo, none of which require mining or dredging during construction.

The construction of the Various Infrastructure Updates will be completed in 6 phases. Each phase of construction is independent on the other and may begin at any time based on tenant need. Some phases may be delayed depending on the development progress at the STAMP Site.

Construction will be in controlled areas within Various Infrastructure Updates which are generally a sufficient distance from the surrounding communities to minimize disturbance. Construction will generally take place Monday to Sunday from 7:00 a.m. to 7:00 p.m. At this time, there are plans for holiday work to be executed.

Furthermore, the Various Infrastructure Updates will not result in increased erosion. The Various Infrastructure Updates are not located in a coastal erosion hazard area. As mentioned above, the proposed action will add 1.2 acres of impervious surfaces on the STAMP Site. In addition, all required soil and erosion control measures during construction will be implemented.

iv. Conclusion:

The Current Proposed STAMP Development does not include any new potentially significant adverse impacts to land resources or land use that were not analyzed in the STAMP GEIS. Overall, the Current Proposed STAMP Development will involve a significant amount of construction to an undeveloped portion of the STAMP Site. Regardless of this significant construction, the Current Proposed STAMP Development has been contemplated exactly this in the STAMP GEIS to have a full build out of 6,130,000 SF. Here, the build out of the Current Proposed STAMP Development totals 1,501,500 SF. The approved Plug Power project is projected to total approximately 240,000 SF, which, combined with the Current Proposed STAMP Development, totals 1,741,500 SF of STAMP building development, far less than what is contemplated in the

STAMP GEIS. Based on these facts, the Current Proposed STAMP Development will not have any significant adverse impacts on land that were not analyzed in the STAMP GEIS.

B. Impact on Geological Features:

The STAMP Site does not contain, and is not adjacent to, any unique geologic features or National Natural Landmarks, nor will the additional construction of the Current Proposed STAMP Development pass through or near any unique geologic features or National Natural Landmarks off-Site. Accordingly, the Current Proposed STAMP Development infrastructure is not anticipated to create any potentially significant adverse impacts to geological features that were not analyzed in the STAMP GEIS.

C. Impact on Surface Water:

i. Edwards Vacuum Project

The Edwards Vacuum Project lies within the Whitney Creek watershed. On the Edwards Vacuum Project site there are two wetlands, Wetland 34 and Wetland 48, which are collectively 3.86 acres. Neither wetland is listed on the New York State water quality-impaired waterbody list. Furthermore, there is one stream located on the Edwards Vacuum Project site, Tributary 3. Tributary 3 is a class C stream and is not listed on the New York State water quality-impaired waterbody list.

The Edwards Vacuum Project will not disturb Tributary 3 or any of the other wetland resources on the STAMP Site. The Edwards Vacuum Project will result in the creation of a stormwater retention pond consistent with best stormwater management practices.

ii. Scannell Project

The Scannell Project lies within the Whitney Creek watershed. While surface water resources surround the Scannell Project site (including Tributary 6 and Whitney Creek), there are no streams or wetlands on the Scannell Project site itself. Accordingly, the Scannell Project will not disturb any surface water resources, and all stormwater discharge will be managed on-site consistent with the requirements of a NYSDEC General SPDES permit.

iii. Various Infrastructure Updates

The Various Infrastructure Updates lie within the Whitney Creek watershed. The Various Infrastructure Updates will include the filling of Wetland 33 for roadway infrastructure as well as improvements for a redesigned culvert for Tributary 3 to accommodate roadway improvements to Crosby Road. The scope of wetland impacts totals approximately 0.3 acres, primarily confined to the filling of Wetland 33. Wetland

33 is a small, isolated pocket wetland surrounded by existing agricultural fields. Wetland 33 does not fall under either USACE or NYSDEC jurisdiction due to its limited size and lack of connectivity to other wetland or waterway resources.

The Various Infrastructure Updates will not disturb any other USACE or NYSDEC-jurisdictional wetlands, as water and gas lines will be directionally drilled and temporary log mats will be used for power line construction through wetland areas. Any non-jurisdictional wetlands will be filled to fulfill the Various Infrastructure Updates' needs.

i. Conclusion:

The Current Proposed STAMP Development does not include any new potentially significant adverse impacts to surface waters that were not analyzed in the STAMP GEIS. Overall, the STAMP GEIS has contemplated an impact of 9.54 acres to low-medium quality wetlands across the STAMP Site, which is far more than what is proposed compared to the Current Proposed STAMP Development acreage. The impact to approximately 0.3 acres of wetlands has been contemplated by the STAMP GEIS in the past. Furthermore, a full build out of the STAMP Site contemplated approximately 460 acres of impervious surfaces, whereas the Current Proposed STAMP Development contemplate a total of approximately 58.96 acres of total impervious surfaces. Based on these facts, the Current Proposed STAMP Development will not have any significant adverse impacts on surface water that were not previously considered in the STAMP GEIS.

D. Impact on Groundwater:

i. Edwards Vacuum Project

The Edwards Vacuum Project will create a new demand for water--30,000 gallons/day from the existing water supply servicing the STAMP Site. The only extension needed to serve the Edwards Vacuum Project is the extension of the 2,000 linear feet of 12 inches or less water main that will extend from the existing onsite water main to the project site boundary. As the STAMP Site sources its water supply from existing water works facilities rather than groundwater, this increase in demand will not result in any impacts to groundwater.

The Edwards Vacuum Project will not require wastewater to be discharged to groundwater as the Edwards Vacuum Project will utilize the STAMP Wastewater Treatment Facility which will be located on the STAMP Site. The amount of sanitary waste anticipated is approximately 5,000 gallons/day. The STAMP Wastewater Treatment Facility will have the capacity to serve the Edwards Vacuum Project.

The Edwards Vacuum Project will not use any pesticides, herbicides, or insecticides

during construction or operation. Additionally, the Edwards Vacuum Project is not located over an aquifer and does not include any underground storage containers that hold hazardous wastes. Further, the Edwards Vacuum Project does not entail the types of activities, such as the storage of hazardous materials, which would pose a risk to groundwater.

ii. Scannell Project

The Scannell Project will create a new demand for water--28,910 gallons/day from the existing water supply servicing the STAMP Site. The only extension needed to serve the Scannell Project is the extension of a new water line from the Plug Power site to the Scannell Project site to Crosby Road. As the STAMP Site sources its water supply from existing water works facilities rather than groundwater, this increase in demand will not result in any impacts to groundwater.

The Scannell Project will not require wastewater to be discharged to groundwater as the Scannell Project will utilize the STAMP Wastewater Treatment Facility which will be located on the STAMP Site. The amount of sanitary waste anticipated is approximately 28,910 gallons/day. The STAMP Wastewater Treatment Facility will have the capacity to serve the Scannell Project.

The Scannell Project will not use any pesticides, herbicides, or insecticides during construction or operation. Additionally, the Scannell Project is not located over an aquifer, and does not include any underground storage containers that hold hazardous wastes. Further, the Scannell Project does not entail the types of activities, such as the storage of hazardous materials, which would pose a risk to groundwater.

iii. Various Infrastructure Updates

The Various Infrastructure Updates do not create a new demand for water, rather, the water line extensions proposed enable the previously-reviewed capacity upgrades to the STAMP Site to bring up to 6,000,000 gallons/day of water and sewer capacity to the STAMP Site. The only extension needed to serve the Various Infrastructure Updates are the extension of a 12-inch or 16-inch water main along Crosby Road and proposed bypass roads and the creation of onsite water storage tanks. Furthermore, there is no need for a new water supply district or service area to be formed for the project site.

The Various Infrastructure Updates will not require wastewater to be discharged to groundwater as the Scannell Project will utilize the STAMP Wastewater Treatment Facility which is located on site. The amount of sanitary waste anticipated is approximately 1,000,000 gallons/day and was previously reviewed by the GCEDC pursuant to SEQRA. The STAMP Wastewater Treatment Facility has the capacity to serve the Various Infrastructure Updates as long as there is a line extension of the sewer lines

on site, including a 15-inch sanitary sewer gravity, and 6-inch or 8-inch force main to convey sanitary sewer to the STAMP Wastewater Treatment Facility and a 24-inch process water gravity main, 8-inch or 12-inch force main to convey process water to the STAMP Wastewater Treatment Facility.

The Various Infrastructure Updates will not use any pesticides, herbicides, or insecticides during construction or operation. Additionally, the Various Infrastructure Updates are not located over an aquifer. The Various Infrastructure Updates site do not contain any underground storage containers that hold hazardous wastes.

iv. Conclusion:

The Current Proposed STAMP Development does not include any new potentially significant adverse impacts to ground water that were not analyzed in the STAMP GEIS. No groundwater will be withdrawn; excavations for buildings will not extend substantially into the groundwater table; and no groundwater discharge is associated with the Project. In addition, stormwater management for each specific use shall be required to manage surface water flow and allow groundwater infiltration. Furthermore, the Current Proposed STAMP Development construction shall follow the best management regarding stormwater runoff practices laid out in the GEIS.

Lastly, the STAMP GEIS contemplated a maximum of 7,000,000 gallons/day of water capacity demand and 6,000,000 gallons/day of wastewater (sanitary and process) capacity demand. Combined with the existing demand of Plug Power (280,000 gallons/day of water and 60,500 gallons/day of sewer), the Edwards Vacuum Project and Scannell Project's demand will stay well below the thresholds set forth in the STAMP GEIS. Based on these facts, the Current Proposed STAMP Development will not have any significant adverse impacts on groundwater that were not analyzed in the STAMP GEIS.

E. Impact on Flooding:

The STAMP Site does not contain, and is not adjacent to, a designated floodway, a 100-year floodplain, and a 500-year floodplain. Accordingly, the Current Proposed STAMP Development infrastructure is not anticipated to create any potentially significant adverse impacts to flooding that were not analyzed in the STAMP GEIS. Additionally, as outlined in the STAMP GEIS there are stormwater management controls that will replace existing untreated water discharge under an existing SPDES permit. These controls consist of working in periods of low flow conditions, working within continuous operation, practices to minimize erosion, the use of flume pipes to divert water flow during construction, being careful to store debris outside of the stream corridor, utilizing temporary bridges, and locating construction staging areas 50 feet away from all streams. Based on these facts, the Current Proposed STAMP Development will not have any

significant adverse impacts on flooding that were not analyzed in the STAMP GEIS.

F. Impact on Air:

i. Edwards Vacuum Project

The Edwards Vacuum Project will likely require a State Facility Permit due to the inclusion of paint booths located within the machine shop, however, the Edwards Vacuum Project will not require a NYSDEC Title V air permit. Additionally, the Edwards Vacuum Project does not include the use of natural gas for heating of the facility. Further, the STAMP Site is not located in a nonattainment zone. Workers travelling to and from the Edwards Vacuum Project site will generate new mobile sources of greenhouse gases, which are an indirect source of air pollution. Notably, Edwards Vacuum has informed the Agency that domestic production, which will be enabled by the Edwards Vacuum Project, will eliminate the need to utilize air cargo transport services for domestic sales, thereby significantly reducing emissions related to such services.

Furthermore, in addition to air pollution from vehicles transporting workers to and from the Edwards Vacuum Project, the construction vehicle emissions will result in temporary minor increases in greenhouse gas emissions.

ii. Scannell Project

The Scannell Project will not require any federal or state air emission permits. Workers and trucks travelling to and from the Scannell Project site in conventional petroleum fueled vehicles will generate minor amounts of new mobile sources of greenhouse gases, which are an indirect source of air pollution.

No individual furnace is anticipated to exceed 10 million BTU/hour permitting threshold set forth in 6 N.Y.C.R.R. 201-3.2(1)(i). Accordingly, the structures will not require an air permit from NYSDEC. Following further internal discussions with the developer, it is understood that the end-users of the facilities are not anticipated to require an air permit from NYSDEC.

Furthermore, in addition to air pollution from vehicles transporting workers to and from the Scannell Project, the construction vehicle emissions will result in minor temporary increases in greenhouse gas emissions.

iii. Various Infrastructure Updates

The Various Infrastructure Updates will not require any federal or state air emission permits, and in and of themselves, will not be a significant source of greenhouse gas emissions. The Various Infrastructure Updates are not in a nonattainment zone.

Construction vehicle emissions will result in minor temporary increases in greenhouse gas emissions.

iv. Conclusion

As outlined in the GEIS, the amount of mobile sources added to the STAMP Site is not to such a degree to jeopardize the National and New York State Ambient Air Quality Standards. The GEIS contemplated the increases in heavy vehicle traffic and traffic from day to day travel to and from the site as well as stationary sources, including regulated sources not exceeding Title V permitting thresholds. Furthermore, the GEIS also contemplated the temporary air impacts that are likely to occur during the construction phases of the Projects--mainly in the form of dust and removal of vegetation.

With respect to mobile sources resulting from truck trips, the GEIS also includes a microscale air quality analysis of potential impacts on air prepared pursuant to the Department's Environmental Procedures Manual ("EPM") (adopted from the NYSDOT) based on the Clean Air Act and associated regulatory guidance. Specifically, the air quality analysis evaluated impacts on air quality resulting from peak traffic conditions studied in the Traffic Impact Study ("TIS"). A microscale air quality analysis is typically performed to determine carbon monoxide concentrations at various worst-case receptors adjacent to the roadways in a project area. Based on the procedures outlined in the EPM, worst case receptors are typically chosen at signalized intersections where a level of service ("LOS") D, E, or F exists for the built conditions. Unsignalized intersections do not typically warrant a detailed air quality analysis since the major-street high volume approaches at these intersections operate as free flow conditions. Any intersection requiring a detailed air quality analysis based on the LOS criteria undergoes additional screenings based on an analysis of the site conditions with respect to the reduction in source-receptor distances, traffic volume increases, vehicle emission increases, and speed reduction. The screening process is used to pinpoint locations where vehicle emissions will be the highest and will contribute to the background air quality. As detailed in the GEIS, the LOS for the various intersections analyzed in the TIS meet necessary criteria post-70% build-out of STAMP such that further microscale air quality analysis is not needed. In addition, the GEIS included a summary of the mesoscale analysis of impacts from mobile sources. A mesoscale air quality analysis is conceptually similar to a microscale air quality analysis, however, it covers a larger geographic area, typically larger than the immediate project area. In addition to carbon monoxide (CO), a mesoscale air quality analysis monitors for volatile organic compounds (VOC) and nitrogen oxides (NOx). As detailed in the STAMP GEIS, STAMP does not meet the criteria for a more detailed mesoscale air quality analysis.

Based on these facts, the Current Proposed STAMP Development will not have any significant adverse impacts on air that were not analyzed in the STAMP GEIS.

G. Impact on Plants and Animals

i. Edwards Vacuum Project

The Edwards Vacuum Project Site is largely undeveloped farmland at this point in time. There are no significant natural habitats or natural communities. The Edwards Vacuum Project Site contains communities of white-tailed deer, common songbirds, and small mammals. The Edwards Vacuum Project Site is mapped by NYSDEC as potentially occupied habitat for two New York State threatened or endangered species: the northern harrier and the short-eared owl. The Edwards Vacuum Project Site does not contain any New York State rare or species of special concern. The Edwards Vacuum Project Site is not currently used for hunting, trapping, fishing, or shell fishing.

There have been a limited observances of a New York Threatened or Endangered Species at the Edwards Vacuum Site, specifically the northern harrier. The presence of the northern harrier triggered the issuance of a Take Permit issued pursuant to Part 182 due to the presence of them on a portion of the STAMP Site.

ii. Scannell Project

The Scannell Project Site is largely undeveloped farmland at this point in time. There are no significant natural habitats or natural communities. The Scannell Project Site contains communities of white-tailed deer, common songbirds, small mammals, squirrels, and other mammals. The Scannell Project Site is mapped by NYSDEC as potentially occupied habitat for two New York State threatened or endangered species: the northern harrier and the short-eared owl. The Scannell Project Site does not contain any New York State rare or species of special concern. The Scannell Project Site is not currently used for hunting, trapping, fishing, or shell fishing.

There have been a limited observances of New York Threatened or Endangered Species at the Scannell Site, specifically the northern harrier and short-eared owls. The presence of these species triggered the issuance of a Take Permit issued pursuant to Part 182 due to the presence of them on a portion of the STAMP Site.

iii. Various Infrastructure Updates

The Various Infrastructure Updates Sites are largely undeveloped farmland or are previously developed roadways. There are no significant natural habitats or natural communities. The Various Infrastructure Updates Sites contains communities of white-tailed deer, common songbirds, and small mammals. The Various Infrastructure Updates Sites contain four mapped New York State threatened or endangered species: the northern harrier, pied-billed grebe, sedge wren, and the short-eared owl. There is no habitat for pied-billed grebe within the STAMP Site, thus there will be no impacts from

these infrastructure projects. Surveys for sedge wren during 2022 did not document any occurrences of breeding. The Various Infrastructure Updates Sites contain one mapped New York State rare or species of special concern, the heart-leaved plantain. The occurrence of this species on the STAMP Site has been mapped, with no populations occurring within the vicinity of any infrastructure projects. The Various Infrastructure Updates Sites are not currently used for hunting, trapping, fishing, or shell fishing.

The majority of Infrastructure Updates will be occurring within or adjacent to existing roadways, which do not provide habitat to New York Threatened or Endangered Species. The planned but not yet constructed bypass road, along with water, sewer, power, and gas lines along it, is passing through an area with limited observances of the New York Threatened northern harrier. The Genesee County Water Tanks will be placed within an area previously used by both northern harrier and New York Endangered short-eared owl. The Plug Power parking area will be placed within an area previously used by both northern harrier and New York Endangered short-eared owl.

iv. Conclusion

Any potential impacts to terrestrial and aquatic ecologies shall be avoided and/or minimized to the maximum extent practicable by implementation of the Land Management Plan associated with the STAMP Site as well as the Best Management Practices and the Stormwater Mitigation Measures.

Due to the status of the STAMP Site as occupied habitat for the Winter Raptors referenced above, GCEDC will be required to implement a Net Conservation Benefit Plan for any threatened/endangered species which could be impacted by the Current Proposed STAMP Development. Since NYSDEC's initial determination that portions of the STAMP Site constitute potentially occupied habitat for the species in question, the STAMP Site has seen significant changes to the on-the-ground conditions of the area considered by the NYSDEC to be occupied habitat. Specifically, the majority of the open space on the STAMP Site (consisting of approximately 665 acres) is now in row crops while a relatively small portion remains as hay or fallow fields. The approximately 170 acres of hay fields that were primarily used by both species during the previous winter were converted to row crops (by way of the Ag. Exemption) or developed in 2022. In total, four short-eared owls and five northern harriers (winter raptors) were documented at STAMP during the "wintering season" which is November through April. These birds have only been observed foraging on the STAMP Site, and no breeding activity has ever been observed on the STAMP Site (as confirmed by separate, breeding season surveys undertaken pursuant to NYSDEC guidance). Furthermore, there has been monitoring and surveying for the wintering raptors regularly at the STAMP Site since the STAMP Site was granted a Take Permit under Part 182.

GCEDC is currently in the process of preparing an application for a Take Permit under

Part 182 for the remaining developable acreage of the STAMP Site. GCEDC has developed a Net Conservation Benefit Plan which would include permanent protection of sufficient acreage of suitable habitat for Winter Raptors for a sufficient period of time, with a NYSDEC-approved monitoring and habitat restoration plan.

Based on these facts, the Current Proposed STAMP Development will not have any significant adverse impacts on plants or animals not previously considered in the STAMP GEIS.

H. Impact on Agricultural Land Resources:

i. Edwards Vacuum Project

The Edwards Vacuum Project consists of 80 acres of agricultural land, but the project site is not located in a designated agricultural district nor are any highly productive soils present.

ii. Scannell Project

The approximately 88-acre Scannell Project site consists of approximately 30 acres of agricultural land, however, the project site is not located in a designated agricultural district, nor are there are not any highly productive soils present.

iii. Various Infrastructure Updates

The Various Infrastructure Updates Site is located on a mix of agricultural and previously-developed land, but the project site is not located in a designated agricultural district however there are highly productive soils present on the site.

iv. Conclusion

The GEIS contemplated that full development of the STAMP Site will result in a loss of agricultural use at the Project Site. The potential loss of future agriculture use of the Project Site represents less than 1% of the total crop land acres located in Genesee County (i.e., 0.65%), and approximately 1.7% of total cropland acres located in Agricultural District No. 2. There are approximately 148,584.30 acres of crop land located in Genesee County, with approximately 120,365 acres of this total classified as prime farmland. Agricultural District No. 2 encompasses 55,143.18 acres of land located in the Towns of Alabama, Batavia, Elba, Oakfield, and Pembroke. Based on the available information, approximately 950 acres of the STAMP Site are currently being used for farming. The total area of prime farmland located within the STAMP Site is approximately 275 acres, representing 0.23% of the total prime farmland located in Genesee County and 0.49% of the total prime farmland acreage located in Agricultural District No. 2.

Here, the Current Proposed STAMP Development is proposing the development of approximately 76.05 acres which is less than what was contemplated in the STAMP GEIS. Based on these facts, the Current Proposed STAMP Development will not have any significant adverse impacts on agricultural land resources that were not analyzed in the STAMP GEIS.

I. Impact on Aesthetic Resources:

i. Edwards Vacuum Project

The Edwards Vacuum Project (both phases) will contain two structures which will be approximately 40' tall, 500' wide, and 1,750' long. The nearest officially designated and publicly accessible federal, state, or local scenic or aesthetic resources (Iroquois National Wildlife Refuge and the John White Game Farm), as well as the Tonawanda Seneca Nation's Territory are separated from the proposed development by substantial buffers as well as significant existing vegetative screening. The Edwards Vacuum Project will include outdoor lighting on approximately 10' to 20' tall light posts, which is 20' less than the tallest portion of the proposed structure for the Edwards Vacuum Project. The outdoor lighting will consist of perimeter lighting on 10' to 20' poles, lighting on equipment skids and at building exits, and parking area lighting. Additionally, all lighting will be downward-facing, high-efficiency LED lights and be dark sky compliant. In order to assess the potential visual impacts of the Current Proposed STAMP Development, Saratoga Associates has prepared a set of visual simulations ("2023 Visual Simulations") which include all current and proposed development associated with STAMP. As depicted in the 2023 Visual Simulations, the above-ground components of the Various Infrastructure Updates will be well-screened by the substantial existing vegetation on the STAMP Site as well as the significant setbacks to adjacent land uses.

ii. Scannell Project

The Scannell Project will contain three structures which will be approximately 110' tall, 511' wide, and 1,219' long. The 110' height limit established in the underlying zoning district that was created in connection with the requirements set forth in the GEIS. As noted above, the Iroquois National Wildlife Refuge, John White Game Farm, and Tonawanda Seneca Nation are separated from the proposed development by substantial buffers as well as significant existing vegetative screening. Furthermore, the project will have outdoor lighting that is downward facing and dark sky compliant. As depicted in the 2023 Visual Simulations, the Scannell Project will be well-screened by the substantial existing vegetation on the STAMP Site as well as the significant setbacks to adjacent land uses.

iii. Various Infrastructure Updates

The Various Infrastructure Updates will contain at least five structures. The water storage tanks will be approximately 110-feet in diameter and 35-feet tall, water distribution pump station buildings will be approximately 70 feet long, 50 feet wide and 25 feet tall, sanitary sewer pump stations will be approximately 10 feet wide, 15 feet long and 10 feet tall. The structures will consist of underground water and sewer lines, a water tower, and power lines. The Force Main and Water Main will be buried underground, and the remainder of the Various Infrastructure Updates will be near a well-developed commercial and industrial area, and along existing and proposed roadsides.

As above, the Iroquois National Wildlife Refuge, John White Game Farm, and Tonawanda Seneca Nation are separated from the proposed development by substantial buffers as well as significant existing vegetative screening. Metering equipment will be installed in all sanitary sewer force main systems and water main systems to detect leakage within the system. Additionally, all lighting will be downward-facing, high-efficiency LED lights and be dark sky compliant. As depicted in the 2023 Visual Simulations, the above-ground components of the Various Infrastructure Updates will be well-screened by the substantial existing vegetation on the STAMP Site as well as the significant setbacks to adjacent land uses.

iv. Conclusion

Although the Projects will create new structures on the STAMP Site, development has been designed in a low-density campus setting, meaning that development is respectful and complements the STAMP Site's natural landscape. The STAMP Site as a whole is surrounded by foliage that creates a natural barrier to visual impacts. To further complement this, larger technology manufacturing structures are located on the lower western portion of the STAMP Site while small-scale supporting structures are located on the lower western portion of the STAMP Site to provide a scaled transition to neighboring farmland. Additionally, with the 400-foot perimeter that will be maintained around the perimeter of the STAMP Site to mitigate any aesthetic impacts. Lastly, a minimum 500-foot buffer will be maintained along the STAMP Site' boundary adjoining the John White Wildlife Management Area, in addition to the minimum 500' (and in some places extending up to approximately 1,200') buffer surrounding the border of the western boundary of the STAMP Site where it abuts the Tonawanda Seneca Nation's Territory. These buffers have been put in place to mitigate any aesthetic impacts the development of the STAMP Site may have. Regarding the Projects, the STAMP GEIS has planned for STAMP's development and has contemplated the possible aesthetic impact to the surrounding communities. Notably, none of the projects referenced above will exceed the height limitation set forth in the STAMP GEIS (110').

Additionally, a study regarding the visual impacts of the Current Proposed STAMP Development has been prepared by kta to aid in examining the possible impact on the

surrounding communities due to this round of development. As described therein, the visual impact study confirms that the Current Proposed STAMP Development will be well-screened by the substantial existing vegetation on the STAMP Site as well as the significant setbacks to adjacent land uses.

Based on these facts, the Current Proposed STAMP Development will not have any significant adverse impacts on aesthetic resources that were not analyzed in the STAMP GEIS.

J. Impact on Historic and Archeological Resources:

The STAMP Site does not contain, nor is it adjacent to, a building, or district which is listed on, or that has been nominated to the State or National Register of Historic Places. The Current Proposed STAMP Development does include an area designated as sensitive for archeological sites by the NYS Historic Preservation Office, however, the Agency has historically coordinated with the NYS Historic Preservation Office on the development of the STAMP Site, with such coordination continuing for the Current Proposed STAMP Development. Impacts to historic and archaeological resources are analyzed extensively in the STAMP Environmental Record, and the Programmatic Agreement comprehensively cleared the STAMP Site of Archaeological resources.

The Agency has engaged in extensive consultation with the Nation with respect to STAMP, including weekly written updates to the Nation and monthly consultation conference calls. Further, as required by the LOR that was negotiated between NYSDEC, GCEDC, SHPO, and the Nation, the Agency has prepared the Initial Assessment for the Current Proposed STAMP Development in order to evaluate whether the Current Proposed STAMP Development will have any adverse impact upon the Nation's Territory as a potential property of religious and cultural significance based on the National Register Criteria for eligibility. The Initial Assessment's analysis and findings are incorporated herein by reference. The Initial Assessment provides an extensive analysis of the Nation's history, including a detailed understanding of the Nation's usage of the Nation's Territory as explained by the Nation. The IAs have historically been updated whenever specific feedback is provided by the Nation. To the extent the Nation believes that information or perspective is missing from the Initial Assessment, the LOR process provides the Nation the opportunity to comment substantively on each Initial Assessment, and the Nation's input is a valued part of the review process for the Agency.

i. Edwards Vacuum Project

The Edwards Vacuum Project Site is located in or adjacent to an area designated as sensitive for archeological sites by the State Historic Preservation Office. In order to analyze potential impacts of the Edwards Vacuum Project upon historic and archeological resources, a Phase 1-3 Cultural Resource Investigation has been undertaken

at the Edwards Vacuum Project Site. The Cultural Resource Investigation documents that the Edwards Vacuum Project Site is not near or contains an archeological site or district which is listed on the national or state register of historic places or that has been determined by the commissioner of the New York State Office of Parks, Recreation and Historic Preservation to be eligible for listing on the state register of historic places. Further, as detailed in the Initial Assessment, the Edwards Vacuum Project will not result in significant adverse impacts to the Nation's Territory, for the reasons described both in the Initial Assessment and herein.

ii. Scannell Project

The Scannell Project Site is located in or adjacent to an area designated as sensitive for archeological sites by the State Historic Preservation Office. In order to analyze potential impacts of the Scannell Project upon historic and archeological resources, a Phase 1B Cultural Resource Investigation has been undertaken at the Scannell Project Site. The Cultural Resource Investigation documents that the Scannell Project Site is not near or contains an archeological site, district which is listed on the national or state register of historic places or that has been determined by the commissioner of the New York State Office of Parks, Recreation and Historic Preservation to be eligible for listing on the state register of historic places.

Further, as detailed in the Initial Assessment, the Scannell Project will not result in significant adverse impacts to the Nation's Territory, for the reasons described both in the Initial Assessment and herein.

iii. Various Infrastructure Updates

The Various Infrastructure Updates are located in or adjacent to an area designated as sensitive for archeological sites by the State Historic Preservation Office. In order to analyze potential impacts of the Various Infrastructure Updates upon historic and archeological resources, a shovel test has been undertaken at the Various Infrastructure Updates. The shovel test documents that the Various Infrastructure Updates are not near or contains an archeological site, district which is listed on the national or state register of historic places or that has been determined by the commissioner of the New York State Office of Parks, Recreation and Historic Preservation to be eligible for listing on the state register of historic places.

Further, as detailed in the Initial Assessment, the Various Infrastructure Updates will not result in significant adverse impacts to the Nation's Territory, for the reasons described both in the Initial Assessment and herein.

iv. Conclusion

In order to address any potential impacts associated with the future development of a specific use at the Project Site, the GCEDC is a part to both a Programmatic Agreement and Letter of Resolution with the USACE, NYSDEC, and SHPO in accordance with the STAMP GEIS. Pursuant to these agreements, GCEDC has undertaken the above-referenced archaeological investigation in order to clear the STAMP Site of archaeological resources.

In addition, the Programmatic Agreement and Letter of Resolution provide for procedures for USACE or NYSDEC (depending on permitting authority) to assess potential impacts on the Nation's Territory as a property of religious and cultural significance pursuant to the National Historic eligibility criteria. As detailed herein, the Current Proposed STAMP Development is not anticipated to be appreciably seen, heard, smelled, or otherwise have any impact on the Nation's Territory, all as documented in Environmental Information.

Based on these facts, the Current Proposed STAMP Development will not have any significant adverse impacts on cultural resources.

K. Impact on Open Space and Recreation:

i. Edwards Vacuum Project

The Edwards Vacuum Project Site will not result in a loss of recreational opportunities or a reduction in open space sources because the site is not currently used for hunting, fishing, trapping, or shell trapping.

In terms of off-site recreational resources, the closest is the Iroquois National Wildlife Refuge (federal) and the John White Game Farm (New York State wildlife management area) which are both approximately 2 miles away, and, also will be unaffected by the Edwards Vacuum Project.

ii. Scannell Project

The Scannell Project Site will not result in a loss of recreational opportunities or a reduction in open space sources because the site is not currently used for hunting, fishing, trapping, or shell trapping.

In terms of off-site recreational resources, the closest is the Iroquois National Wildlife Refuge (federal) and the John White Game Farm (New York State wildlife management area), which are both approximately 2 miles away, the Tonawanda Seneca Nation Territory (approximately 0.12 mi away), and the Tonawanda Wildlife Management Area (approximately 3 mi away) and, also will be unaffected by the Scannell Project.

iii. Various Infrastructure Updates

The Various Infrastructure Updates Sites will result in a loss of recreational opportunities or a reduction in open space sources. The Various Infrastructure Updates Sites are currently used for hunting, fishing, trapping, or shell trapping.

In terms of off-site recreational resources, the closest is the Iroquois National Wildlife Refuge (federal) and the John White Game Farm (New York State wildlife management area) which is approximately 2 miles away, and, also will be unaffected by the Various Infrastructure Updates.

iv. Conclusion

Although there is hunting that takes place directly to the west of the STAMP Site on the Tonawanda Seneca Nation's land, there will be minimal impacts to this area due to the precautions the Current Proposed STAMP Development has contemplated such as the boundary buffer, dark sky compliant lighting, noise limitations (discussed below) and lack of odors emanating from the Current Proposed Development (it is also noted that prevailing winds carry odors away from the Nation's Territory rather than to it from the STAMP Site).

The Current Proposed STAMP Development will not result in a loss of recreational opportunities or a reduction in open space sources because the STAMP Site is not open to the public or utilized by public for any outdoor activities. Based on these facts, the Current Proposed STAMP Development will not have any significant adverse impacts on open spaces and recreation that were not analyzed in the STAMP GEIS.

L. Impact on Critical Environmental Areas:

There are no Critical Environmental Areas as described in subdivision 6 NYCRR 617.14(g) on the STAMP Site or in proximity to the STAMP Site. Accordingly, the Current Proposed STAMP Development will not have a significant adverse impacts upon Critical Environmental Areas that were not analyzed in the STAMP GEIS.

M. Impact on Transportation:

i. Edwards Vacuum Project

The Edwards Vacuum Project will increase traffic or create a new demand for transportation facilities or services with the peak traffic being in the morning and the evening. Furthermore, there will be an increase of approximately 20 trucks per day that will be loading and unloading at the Edwards Vacuum Project. Furthermore, the Edwards Vacuum Project will bring 600 jobs to the STAMP Site. Between the employee

vehicles and the trucks that will be loading/unloading there will be a total of 620 vehicle trips coming to and from the Edwards Vacuum Project a day during operation. Assuming that all 620 vehicle trips occur over an 8-hour period (a worst-case assumption, and unlikely to occur), that averages 78 vehicles per hour.

There will be an increase from 0 to 500 parking spaces to serve the Edwards Vacuum Project, including shared parking. The Edwards Vacuum Project includes the modification of roads and creation of new roads by extending the roadway access off of STAMP Drive and the reconstruction of Crosby Road from STAMP Drive heading north to the Edwards Vacuum Project parcel. Furthermore, there are no public/private transportation services available within ½ mile of the parcel.

ii. Scannell Project

The Scannell Project will increase traffic or create a new demand for transportation facilities or services with the peak traffic being in the morning and the evening. Furthermore, there will be an increase of approximately 45-60 trucks per 100,000 sq. ft. of building space per day that will be loading and unloading at the Scannell Project. There will be an increase from 0 to 1/1,000 sq. ft. parking spaces to serve the Scannell Project, giving a net increase of 991 parking spaces. The Scannell Project includes the modification of roads and creation of new roads by utilizing access roads and internal STAMP roads. Furthermore, there are public/private transportation services available within ½ mile of the Scannell Project.

Even assuming worst case traffic projections for the Scannell Project, maximum vehicle trips over the course of an entire day would be 1,422 vehicle trips (596 trucks and 826 employees). This is an average of 60 vehicles per hour. Assuming that all 1,422 vehicle trips occur over an 8-hour period, that averages 178 vehicles per hour.

iii. Various Infrastructure Updates

The Various Infrastructure Updates will not appreciably increase traffic or create a new demand for transportation facilities or services with the peak traffic being in the morning and the evening. The Various Infrastructure Updates includes the modification of roads and creation of new roads by widening and reconstructing Crosby Road. Furthermore, there are no public/private transportation services available within ½ mile of the Various Infrastructure Updates.

iv. Conclusion

The GEIS analyzed a full build out of the STAMP Site regarding traffic and peak congestion of the surrounding roads. Although the continual build out of the STAMP Site will increase traffic, the STAMP GEIS contemplated this when it was completed in

2012, thus a partial build out will be within the parameters of the STAMP GEIS. The TIS analyzed the traffic impacts at STAMP at various phases of development up to full development which includes 6,130,000 sq. ft. of floor space with over 9,000 employees. The TIS notes that Phase 1 of STAMP includes 1,000,000 square feet of development and 1,282 employees. Trip generation for Phase 1 was calculated to generate 403 new AM peak hour trips and 402 new PM peak hour trips. The TIS also calculated that at 70% of build out, STAMP would generate 1,424 new AM peak hour trips and 1,924 PM peak hour trips. Finally, at full build out, STAMP will generate 2,034 new AM peak hour trips and 2,749 PM peak hour trips. Based on the TIS, the STAMP GEIS sets forth specific clear numeric thresholds which must be exceeded to trigger traffic improvements as well as updates to traffic analysis. Specifically, the STAMP GEIS (as well as the GCEDC Findings Statement) provide that no additional traffic study need be prepared until the development of the site has resulted in over 1,925 trips during the peak PM hour. Again, the STAMP GEIS calculated that Phase 1 would result in 403 new AM peak hour trips and 402 new PM peak hour trips and full build out of STAMP would result in 1,424 new AM peak hour trips and 1,924 PM peak hour trips. Thus, the combined vehicle trips of Plug Power, Edwards Vacuum Project, and the Scannell Project equal 87 vehicle trips per every 24 hours or 259 vehicle trips per every 8 hours, all which are below the STAMP GEIS threshold of 1,424 vehicle trips. Notably, as detailed in the STAMP GEIS, access to the STAMP Site will be provided from a Main Access Road (STAMP Drive), from Route 63/77. Additionally, based on trip generation estimates and projected trip distribution patterns, it is not expected that developments at STAMP would add significant traffic volumes to NY Route 77 or NY Route 63 north and west of the site. Accordingly, traffic associated with STAMP will not be directed towards or through the Nation's Territory.

In order to assess the potential impact of traffic from the Current Proposed STAMP Development, CPL prepared an evaluation of traffic data based upon the 2016 update to the STAMP GEIS Traffic Study ("Traffic Study Update"). As detailed in the Traffic Study Update, the recommendations and conclusions of the STAMP GEIS (as amended over time) are consistent with the traffic needs created by the Current Proposed STAMP Development as outlined in 2016. Specifically, the traffic counts associated with the Current Proposed STAMP Development mirror the traffic counts analyzed in 2016, with corresponding mitigation proposed now consistent with the STAMP GEIS. Accordingly, the Current Proposed STAMP Development will not have a significant adverse impacts upon Transportation that were not analyzed in the STAMP GEIS.

N. Impact on Energy:

i. Edwards Vacuum Project

The Edwards Vacuum Project will generate a new demand for energy. More specifically, during Phase I of construction, the project will need 4 MW of energy. For Phase II of construction, the grid will need to deliver an additional 3 MW of energy to the site. No

update to the substation is required for the Edwards Vacuum Project. Additionally, the source of the power will be the New York Power Authority which will be delivered by National Grid.

ii. Scannell Project

The Scannell Project will generate a new demand for energy. More specifically, during operations the project will need 10 MW of energy. The source of the energy will be the previously proposed STAMP substation.

iii. Various Infrastructure Updates

The Various Infrastructure Updates will not generate a significant new demand for energy. More specifically, during construction the project will need 0.50 MW of energy. The source of the energy will be the existing grid that is already associated with the STAMP Site.

iv. Conclusion

The full build-out of the STAMP Site will result in the Projects utilizing on a permanent basis certain energy resources including electricity and natural gas. However, the estimated consumption is well within the capacity of the energy sources. In addition, the Project lies within the Niagara Hydro Power Zone which will provide a low-cost renewable source of energy for the Projects. A partial build out of the STAMP Site will utilize less energy than the full build out contemplated in the GEIS from 2012 which is approximately 185 MW which has since be updated to hold 535 MW after the construction of the STAMP substation. The Current Proposed STAMP Development is estimated to consume approximately 17 MW of energy, along with 225 MW from Plug Power, which totals 354 MW which is still far below the GEIS threshold of 535 MW. The impacts of minor expansions to the STAMP Site have been contemplated in the 2022 Amended SEQRA Determination Notice and the GEIS. Accordingly, the Current Proposed STAMP Development will not have a significant adverse impacts upon energy that were not analyzed in the STAMP GEIS.

O. Impact on Noise, Odor, and Light:

i. Edwards Vacuum Project

The Edwards Vacuum Project will have minor impacts on noise. More specifically, during construction the Edwards Vacuum Project will exceed the ambient noise levels during construction because of typical construction noises such as trucks and excavators. The Edwards Vacuum Project operations are not anticipated to appreciably increase ambient noise conditions at the border of the STAMP Site or exceed the STAMP Boundary

noise limits set in the GEIS.

The Edwards Vacuum Project will not have an effect on odor on the STAMP Site because the project does not include any processes or substances that result in odors migrating off the site.

The Edwards Vacuum Project will have an effect on light due to the outdoor lighting plans associated with the project plans. As mentioned above, there will be outdoor lighting that is 10' to 20' tall, which is 20' less than the tallest portion of the proposed structure for the Edwards Vacuum Project. The outdoor lighting will consist of perimeter lighting on 10' to 20' poles, lighting on equipment skids and at building exits, and parking area lighting. Additionally, all lighting will be downward-facing, high-efficiency LED lights and be dark sky compliant.

ii. Scannell Properties

The Scannell Project will have minor impacts on noise. More specifically, during construction the Scannell Project will exceed the ambient noise levels during construction because of typical construction noises such as trucks entering and leaving the project site. The Scannell Project operations are not anticipated to appreciably increase ambient noise conditions at the border of the STAMP Site or exceed the STAMP Boundary noise limits set in the GEIS.

The Scannell Project will not have an effect on odor on the STAMP Site because the project does not include any processes or substances that result in odors migrating off the site.

The Scannell Project will have an effect on light due to the outdoor lighting plans associated with the project plans. As mentioned above, all lighting fixtures will be downward facing and dark sky compliant.

iii. Various Infrastructure Updates

The Various Infrastructure Updates will have minor and temporary impacts on noise. More specifically, the construction of roads and industrial support infrastructure will create noise on the STAMP Site.

The Various Infrastructure Updates will not have an effect on odor on the STAMP Site because the project does not include any processes or substances that result in odors migrating off the site. The Various Infrastructure Updates will not have an effect on light. All lighting for the water storage tanks, water distribution pump station and sanitary and process water pump stations will be downward facing, dark sky compliant LED lighting.

iv. Conclusion

Potential impacts during construction and operation of the Project to noise have been assessed according to NYSDEC guidelines. The Town of Alabama does not have a noise control ordinance that applies to STAMP. NYSDEC's published guidance "Assessing and Mitigating Noise Impacts" (NYSDEC, 2001) establishes a basis to assess the Project's potential for those impacts.

Taking the NYSDEC guidelines into consideration, the Project will limit noise at the STAMP boundary to an LEQ of 65 dBa during the day and 45 dBa at night. NYSDEC guidelines state that noise sources should not increase levels above 65 dBa in non-industrial areas. The proposed property line requirement of 65 dBa during the day and 45 dBa at night will ensure that the 65 dBa level referenced by NYSDEC for non-industrial areas is not exceeded. The resulting maximum Project level of 65 dBa generally does not exceed maximum existing average baseline noise levels documented within the vicinity of the Project, which range from 63 dBa to 73 dBa.

Accordingly, the Current Proposed STAMP Development will not have a significant adverse impacts upon noise, odor, and light that were not analyzed in the STAMP GEIS.

P. Impact on Public Health:

i. Edwards Vacuum Project

The construction of the Edwards Vacuum Project will take place over two years. As mentioned above, Phase I will begin in 2023 and last approximately 3 months. Phase II will begin in 2025 and last approximately 3 months. Phase I is the initial build of the Edwards Vacuum Project site entailing the 255,000 sq. ft. machining and assembly hall, as mentioned above. Phase II will be an expansion of the original site that would double the size of the machine shop area identified on the proposed site plan.

During the construction phases of the Edwards Vacuum Project, construction personnel are likely to encounter a number of physical hazards that are typically associated with commercial construction. All Edwards Vacuum Project construction will take place within the boundaries of the Edwards Vacuum Project. Because it is located within the STAMP Site, the general public's exposure to any hazards will be limited. Additional fencing signs and barriers will be utilized around the Edwards Vacuum Project construction area and, where necessary, will delineate excavations and prevent the entry to the Edwards Vacuum Project of unauthorized personnel. Appropriate signs will be posted to inform those entering the Edwards Vacuum Project of potential construction hazards and appropriate actions to be taken while on the Edwards Vacuum Project. Additionally, the Edwards Vacuum Project will minimize risks to construction personnel by fully complying with applicable OSHA and New York State Labor Law requirements. Thus, it is anticipated that the construction work associated with the Project will not have

a significant impact on public health and safety.

Furthermore, there will be no commercial generation, treatment, or disposal of hazardous waste at the Edwards Vacuum Project site. Additionally, there will be no pesticides used during construction or operation of the Edwards Vacuum Project site.

No construction of, or modification to, any solid waste management facility will be necessary to accommodate the Edwards Vacuum Project. While hazardous waste is not anticipated to be unearthed during construction or operation of the Edwards Vacuum Project, any such materials (if unearthed) will be disposed of in accordance with all applicable federal, state, and local rules and regulations.

ii. Scannell Project

The construction of the Scannell Project will take place over a period of time depending on the needs of the tenants. During the construction phases of the Scannell Project, construction personnel are likely to encounter a number of physical hazards that are typically associated with commercial construction. All Scannell Project construction will take place within the boundaries of the Scannell Project. Because it is located within the STAMP Site, the general public's exposure to any hazards will be limited. Additional fencing signs and barriers will be utilized around the Scannell Project construction area and, where necessary, will delineate excavations and prevent the entry to the Scannell Project of unauthorized personnel. Appropriate signs will be posted to inform those entering the Scannell Project of potential construction hazards and appropriate actions to be taken while on the Scannell Project. Additionally, the Scannell Project will minimize risks to construction personnel by fully complying with applicable OSHA and New York State Labor Law requirements. Thus, it is anticipated that the construction work associated with the Project will not have a significant impact on public health and safety.

Furthermore, there will be no commercial generation, treatment, or disposal of hazardous waste at the Scannell Project site. Additionally, there will be no pesticides used during construction or operation of the Scannell Project site.

No construction of, or modification to, any solid waste management facility will be necessary to accommodate the Scannell Project. While hazardous waste is not anticipated to be unearthed during construction or operation of the Scannell Project, any such materials (if unearthed) will be disposed of in accordance with all applicable federal, state, and local rules and regulations.

iii. Various Infrastructure Updates

The construction of the Various Infrastructure Updates will take place over a few years.

As mentioned above, each phase of construction is independent of the other and may begin at any time. Some phases may be delayed depending on the development of the STAMP Site.

During the construction phases of the Various Infrastructure Updates, construction personnel are likely to encounter a number of physical hazards that are typically associated with commercial construction. All Various Infrastructure Updates construction will take place within the boundaries of Various Infrastructure Updates. Because it is located within the STAMP Site, the general public's exposure to any hazards will be limited. Additional fencing signs and barriers will be utilized around the Various Infrastructure Updates construction area and, where necessary, will delineate excavations and prevent the entry to the Various Infrastructure Updates of unauthorized personnel. Appropriate signs will be posted to inform those entering Various Infrastructure Updates of potential construction hazards and appropriate actions to be taken while on the Various Infrastructure Updates. Additionally, the Various Infrastructure Updates will minimize risks to construction personnel by fully complying with applicable OSHA and New York State Labor Law requirements. Thus, it is anticipated that the construction and demolition work associated with the Various Infrastructure Updates will not have a significant impact on public health and safety.

Furthermore, there will be no commercial generation, treatment, or disposal of hazardous waste at the Various Infrastructure Updates. Additionally, there will be no pesticides used during construction or operation of the Various Infrastructure Updates.

No construction of, or modification to, any solid waste management facility will be necessary to accommodate the Various Infrastructure Updates. While hazardous waste is not anticipated to be unearthed during construction or operation of the Various Infrastructure Updates, any such materials (if unearthed) will be disposed of in accordance with all applicable federal, state, and local rules and regulations.

iv. Conclusion

In order to ensure that emergency service responders are adequately prepared for the potential unique needs of a future use, a facility-specific emergency services impact study shall be prepared for each actual technology manufacturing facility to be located at the STAMP Site and submitted to an informal committee composed of local and county emergency response representatives to review and provide input on such studies. Moreover, to ensure the adequacy of these future studies, a baseline study shall be completed to determine the current baseline levels of services provided by local and county emergency service providers. With implementation of these mitigation measures, GCEDC determines that potential impacts to community services based on a future specific use shall be minimized and/or avoided to the maximum extent practicable.

Depending on the specific needs of actual facilities that may locate at the STAMP Site, it is possible that additional fire and ambulatory resources and/or training may be required. In order to prepare for that possibility, a preliminary study to determine the existing baseline levels of emergency services currently provided by the Town of Alabama Fire Department, the Genesee County Emergency Services, and the Genesee County Sheriff's Department shall be completed. In addition, a facility-specific emergency services impact study shall be prepared for each actual technology manufacturing facility to be located at the Project Site and submitted to an informal committee composed of local and county emergency response representatives to review and provide input on such studies. Each study will identify mitigation measures that may be required for the following factors:

- Potential for increase in police calls
- Potential for increase in court services
- Potential for increase in EMS calls
- Potential for increase in motor vehicle accident calls
- Potential for increase in hazardous materials calls
- Potential for increase in fire calls
- Potential need for fire apparatus
- Potential incentives to attract additional volunteers for the fire department

Edwards Vacuum has already prepared an Emergency Preparedness Plan that has been reviewed by the Town and County, which ensures adequate arrangements for dealing with potential emergencies at the site. Accordingly, the Current Proposed STAMP Development will not have a significant adverse impacts upon public health that were not analyzed in the STAMP GEIS.

Q. Impact on Character and Community Plans:

i. Edwards Vacuum Project

The Edwards Vacuum Project is in line with the Genesee County Smart Growth Plan. Furthermore, the land use plan for the STAMP Site contemplates industrial and commercial growth such as the construction of the Edwards Vacuum Project. The plot of the STAMP Site where the Edwards Vacuum Project is going to be built is zoned as Technology District 1 ("TD-1"), and the project is consistent with the underlying zoning designation of TD-1. Further, as detailed above, the project is not anticipated to be appreciably seen, heard, or smelled from neighboring properties.

ii. Scannell Project

As above, the plot of the STAMP Site where the Scannell Project is going to be built is zoned as TD1, and the project is consistent with the underlying zoning designation.

Further, as detailed above, the project is not anticipated to be appreciably seen, heard, or smelled from neighboring properties.

iii. Various Infrastructure Updates

The plots of the STAMP Site where the Various Infrastructure Updates are going to be built are zoned as TD1, 2, and 3, as the infrastructure spans the entirety of the STAMP Site. All of the infrastructure is consistent with the land use controls set forth in the underlying zoning designations of the properties. Further, as detailed above, the project is not anticipated to be appreciably seen, heard, or smelled from neighboring properties.

iv. Conclusion

The STAMP GEIS extensively analyzes the development of STAMP and potential impacts on surrounding communities. As the Current Proposed STAMP Development is otherwise entirely consistent with the thresholds and mitigation measures set forth in the STAMP GEIS, there are no inconsistent or significant impacts associated with the same that were not previously analyzed in the STAMP GEIS.

R. Impact on Disadvantaged Communities

New York's Climate Justice Working Group ("CJWG") in its draft map of Disadvantaged Communities ("DACs") has identified the Nation's Territory (Census Tract 36037940100) and large portions of Genesee County (including the Town of Alabama, Census Tract 36037950300) as DACs. As early as 2012, the GCEDC Findings Statement which followed the issuance of the GEIS included a detailed explanation of the public need and benefit achieved through the development of STAMP. As detailed in the 2012 Findings Statement:

The Project's central purpose is to play a significant role in reversing a trend of economic stagnation that has affected the Western New York region in recent years. The need for reversing this trend may be seen locally in 2010 US Census figures indicating declines in population for both the Town of Alabama and Genesee County over the past ten (10) years. STAMP will result in a number of benefits that have the potential to mitigate this trend in a substantial way.

While not specifically called out as such in the GEIS, all mitigative measures associated with STAMP are inherently geared towards achieving the benefits of STAMP while reducing any potential adverse impacts on surrounding DACs to the maximum extent practicable.

Section 3. Having considered the Environmental Information, STAMP Environmental Record, and having considered the relevant environmental impacts,

associated with the Current Proposed STAMP Development, and having weighed and balanced the relevant impacts with social, economic and other considerations, the Agency recertifies that:

- (i) The requirements of 6 N.Y.C.R.R. Part 617 have been met; and
- (ii) Consistent with the social, economic and other essential considerations from among the reasonable alternatives available, the Project remains one which avoids or minimizes adverse environmental effects to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the decision those mitigative measures which were identified as practicable.

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

Section 5. This Resolution, which is adopted by a majority vote of the Agency, shall serve as a Negative Declaration (as defined in 6 N.Y.C.R.R. 617.2(y)), and is issued by the Agency pursuant to and in accordance with SEQRA, shall take effect immediately.

Section 6. For further information on this Determination of Significance/ Amended Negative Declaration contact:

Mark Masse
99 MedTech Drive, Suite 106
Batavia, New York 14020
Phone: 585-343-4866
Email: mmasse@gcedc.com

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

The foregoing Resolution was thereupon declared duly adopted.

max
1/27/23

AUTHORIZING RESOLUTION

(Purchase and Sale of Real Property – Edwards Vacuum, LLC)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, _____, 2023.

The following resolution was duly offered and seconded, to wit:

Resolution No. ___/2023 - _____

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE "AGENCY") AUTHORIZING (i) THE SALE OF A PORTION OF CERTAIN AGENCY-OWNED REAL PROPERTY TO EDWARDS VACUUM, LLC, (ii) THE LEASE OF AN ADDITIONAL PORTION OF AGENCY-OWNED REAL PROPERTY TO EDWARDS VACUUM, LLC FOR USE AS A CONSTRUCTION STAGING AND PARKING AREA AND (iii) THE EXECUTION OF A PURCHASE AND SALE AGREEMENT, A DEED, ANY EASEMENT AGREEMENTS IN CONNECTION THEREWITH, A GROUND LEASE, AND ANY RELATED DOCUMENTS IN CONNECTION THEREWITH.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the "Act"), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (the "Agency") was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, among other property, the Agency owns approximately 208.8 acres of vacant land located at Crosby Road and Alleghany Road, in the Town of Alabama, Genesee County, New York known as tax account numbers 10.-1-13.1 and 10.-1-15.11 (collectively, the "Land"); and

WHEREAS, **EDWARDS VACUUM, LLC and its permitted assigns** (the "Company") has offered to purchase a portion of the Land (approximately 50 acres) in connection with a certain project to be undertaken by the Company thereon pursuant to the terms and conditions of that certain Purchase and Sale Agreement, the form of which is attached hereto as Exhibit A (the "Purchase and Sale Agreement"); and

WHEREAS, the Company has also offered to lease a portion of the Land (approximately 30 acres) to use as a construction staging and parking area pursuant to the terms and conditions of that certain Ground Lease Agreement, the form of which is attached hereto as Exhibit B (the "Ground Lease"); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and 6 N.Y. C.R.R. Part 617 (collectively, "SEQR") the Agency, as lead agency pursuant to SEQR, has conducted a "coordinated review" (as such term is defined in SEQR) of the Purchase and Sale

3b

43

Agreement and the Ground Lease Agreement (collectively, the "Project"). The Agency, having reviewed the materials presented by the Company, including, but not limited to, the Full Environmental Assessment Form, the Environmental Information and the STAMP Environmental Record (each as defined in the hereinafter defined Negative Declaration), issued a Negative Declaration on February 2, 2023 (the "Negative Declaration"), determining that the Project does not pose a potential significant adverse environmental impact not previously analyzed by the Agency in the STAMP Environmental Record. A copy of the Negative Declaration issued by the Agency is attached hereto as Exhibit C; and

WHEREAS, the Agency desires to adopt a resolution authorizing (i) the sale of the Land to the Company, (ii) the authorization of a Ground Lease in favor of the Company and (iii) the execution of the Purchase and Sale Agreement, a deed, any easement agreements in connection therewith, the Ground Lease, and any related documents reasonably necessary to carry out the transactions contemplated pursuant to the terms and conditions of the Purchase and Sale Agreement and/or the Ground Lease; and

WHEREAS, the Purchase and Sale Agreement, the deed, the Ground Lease and related documents in connection therewith have been negotiated and are presented to this meeting for approval and execution.

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

Section 1. The Agency is hereby authorized to sell the Land to the Company pursuant to the terms and conditions of the Purchase and Sale Agreement. The Agency is also hereby authorized to accept the Ground Lease pursuant to the terms and conditions set forth therein.

Section 2. The Chairman, Vice Chairman, President/CEO and/or Senior Vice President of Operations of the Agency are hereby authorized to execute the Purchase and Sale Agreement, the deed, any easement agreements in connection therewith, the Ground Lease, and any related documents reasonably necessary to carry out the transactions contemplated pursuant to the terms and conditions of the Purchase and Sale Agreement and/or the Ground Lease, if any.

Section 3. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 4. Harris Beach PLLC shall be entitled to attorney fees, exclusive of third party costs (i.e. recording costs, survey, etc.) not to exceed \$25,000.00 based upon time and billing and subject to no title, governmental approval and/or environmental issues and no litigation arising in connection with the Purchase and Sale Agreement and the Ground Lease and the transactions contemplated therein.

Section 4. These Resolutions shall take effect immediately.

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

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Peter Zeliff	[]	[]	[]	[]
Matthew Gray	[]	[]	[]	[]
Paul Battaglia	[]	[]	[]	[]
Craig Yunker	[]	[]	[]	[]
Todd Bender	[]	[]	[]	[]
Chandy Kemp	[]	[]	[]	[]
Marianne Clattenburg	[]	[]	[]	[]

The Resolutions were thereupon duly adopted.

CERTIFICATION

(Purchase and Sale of Real Property – Edwards Vacuum, LLC)

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

I, the undersigned Secretary of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on _____, 2023, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this ____ day of _____, 2023.

Secretary

3b

46

EXHIBIT A

Form of Purchase and Sale Agreement

(Attached Next Page)

EXHIBIT B

Form of Ground Lease

(Attached Next Page)

EXHIBIT C

Copy of Negative Declaration

(Attached Next Page)

Review of Purchase and Sale Agreement for STAMP Property

Discussion: The GCEDC has received a Purchase and Sale Agreement from a potential project to acquire approximately 50 acres for portions of tax parcel 10.-1-13.1 and part of 10.-1-15.11 for \$3,750,000.

Fund Commitment: Legal fees to Harris Beach not to exceed \$25,000.00 based on time and billing for the transaction.

Committee Action Request: Recommend approval of Purchase and Sale Agreement with right of first refusal and payment of legal fees in connection with closing.

**PURCHASE AND SALE CONTRACT
FOR VACANT LAND (the "Contract")**

Contract Date: _____, 2023 (the "Effective Date")

PURCHASER(S): **Edwards Vacuum LLC**, a Delaware limited liability corporation with an address at 6416 Inducon Dr. W., Sanborn, New York 14132,

SELLER(S): **Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center**, a New York public benefit corporation with an address at 99 MedTech Drive, Batavia, NY 14020 (also referred to herein as the "GCIDA")

Purchaser offers to purchase the property described below from Seller, and on the Effective Date, Seller agrees to sell the property described below to Purchaser, on the following terms:

1. **PROPERTY DESCRIPTION:** Part of land owned by the Seller, approximate size of 50 acres. The land included in the sale is depicted per attached Exhibit "A" and consists of part of tax parcel 10.-1-13.1 and part of 10.-1-15.11 situated in the Town of Alabama (the "Land"). The actual acreage to be purchased by the Purchaser from the Seller shall be determined based on the Instrument Survey Map (as hereinafter defined). The Property consists of (a) the Land, (b) all improvements, fixtures and attachments located on the Land, if any, (c) all rights, privileges, easements and appurtenances related thereto, and (d) any permits, approvals or other rights relating to the ownership, use and operation of the Land and improvements, fixtures and attachments located on the Land.

2. **PRICE; AMOUNT AND HOW IT WILL BE PAID:** The purchase price to be paid by the Purchaser to the Seller (the "Purchase Price") shall be \$75,000 per acre, which shall be prorated for each 100th of a partial acre and will be determined based on the actual acreage Purchaser wishes to acquire as depicted on the Instrument Survey Map (as hereinafter defined). The maximum purchase price will be \$3,750,000, and shall apply if the size of the Property exceeds 50 acres.

The Purchaser shall receive a credit at closing for any deposit made hereunder. The balance of the Purchase Price, as adjusted pursuant to this Contract, shall be paid as follows: (Check and complete applicable provisions.)

- (A) By official bank draft, wire or certified check at closing.
 (B) Other

3. **CONTINGENCIES:** Purchaser makes this offer subject to the contingencies set forth in this Section 3 of the Contract. Purchaser will have a period of six (6) months after the Effective Date (as extended pursuant to this Contract, the "Contingency Period") to inspect the Premises and to confirm the contingencies set forth in Section 3 of the Contract. Purchaser may, at its sole discretion, cancel this Contract or extend the Contingency Period for an additional two (2) months by providing the Seller with written notice of the extension of the Contingency Period at anytime, so long as the such notice is provided to the Seller prior to the expiration of the initial six (6) month Contingency Period. If the Contingency Period expires (including an extension of the Contingency Period as exercised by the

Purchaser pursuant to the preceding sentence), then either Purchaser or Seller may cancel this Contract by written notice to the other. If Purchaser shall not have notified Seller of its satisfaction of the contingencies set forth in this Section 3 of the Contract prior to the expiration of the Contingency Period (including any extension by the Purchaser), then the Contingency Period shall be extended until the fifth (5th) business day following Purchaser's receipt of Seller's written notice requesting Purchaser to waive the contingency set forth herein and to proceed to closing. Should Purchaser fail to waive this contingency at the end of the Contingency Period, as extended per the preceding sentence, this contingency shall be deemed to have not been satisfied and the Contract shall terminate and neither party shall have any further liability hereunder. Subject to Section 16 of the Contract, the Seller expressly agrees to allow Purchaser and/or its agents, consultants and employees with access to the Property for the purpose of any non-invasive testing activities the Purchaser determines are necessary during the contingency periods as defined in this Section 3 of the Contract.

Purchaser acknowledges that Seller has delivered to Purchaser and/or to Avison Young-New York, LLC copies of certain (a) contracts or agreements affecting or relating to the Property; (b) warranties, guarantees, indemnities and claims inuring to the benefit of Seller with respect to the Property; (c) tax receipts, certificates of occupancy, licenses, permits or similar documents affecting or relating to the Property; (d) surveys, plans, drawings, specifications, appraisals, engineering reports, archeological reports, environmental studies, environmental impact statements and other technical descriptions affecting or relating to the Property; and (e) documentation owned by or in the possession of Seller that relates to the title, ownership, use, leasing, maintenance, service or operation of all or any portion of the Property (collectively, the Documents"). Seller represents and warrants that the Documents constitute all of the records and documents in Seller's possession or control related to the Premises.

X (A) **Development Approvals.** This offer and Purchaser's obligations are contingent upon Purchaser obtaining all requisite approvals and permits, exclusive of a building permit, from any governing body having jurisdiction with respect to the zoning, construction, development and use of the Property for the Purchaser's intended use of the Property in size, capacity and other characteristics satisfactory to Purchaser (the "Required Approvals"). Purchaser shall have until the last day of the Contingency Period, to obtain the Required Approvals in final, non-appealable form, upon conditions acceptable to the Purchaser, in its sole discretion. Purchaser and Seller agree to make joint application(s) during the Contingency Period and diligently pursue such application(s) in a cooperative manner but at Purchaser's sole cost and expense.

X (B) **Subdivision / Land Separation Approval.** This offer and Purchaser's obligations are contingent upon Seller obtaining all requisite approvals from any governing body having jurisdiction for subdivision or land separation approval of the Property, including approval of the Land to be designated as a separate tax parcel for real estate taxes which shall be effectuated upon the filing of the subdivision plat map (the "Subdivision Approval"). Purchaser and Seller agree to promptly make joint application for Subdivision Approval and diligently pursue the application. The final approval, upon conditions acceptable to Purchaser and Seller, shall be obtained on or before the last day of the Contingency Period.

X (C) **Financing Contingency.** This offer and Purchaser's obligations are subject to Purchaser obtaining and accepting financing suitable to its intended use, in its sole discretion, during the Contingency Period. For purposes of the Financing Contingency, acceptable financing shall include, but not be limited to assistance, if any, from the GCIDA for property tax abatement, mortgage tax exemption and such other governmental incentives and grants that the Purchaser determines are necessary, in its sole discretion.

X (D) **Environmental Contingency.** This Contract and Purchaser's obligations are expressly subject to the completion of an environmental audit to the satisfaction of the Purchaser, including a Phase I Environmental Site Assessment at Purchaser's expense, within the Contingency Period, and the results of such environmental audit being satisfactory in the Purchaser's sole discretion. The Seller shall provide the Purchaser with complete copies of any documentation it possesses relating to the environmental conditions of the Property upon request.

X (F) **Project Level Contingencies.**

This offer, and Purchaser's obligations, are subject to the Title Company agreeing to insure title to the Property, at Purchaser's sole cost and expense, in an amount not less than the value of the Property after completion of Purchaser's improvements thereon by standard ALTA Forms and at ordinary premiums, free and clear of all encumbrances and other matters other than Permitted Exceptions, in the name of Purchaser (or its designee) after delivery of the Deed, which title insurance policy shall contain such affirmative insurance and endorsements as Purchaser shall reasonably require.

This offer, and Purchaser's obligations, are subject to all representations and warranties of Seller in this Contract being true when made and as of the Closing Date.

This offer, and Purchaser's obligations, are subject to: (1) following the date of the Title Evidence, there shall have occurred no change in (i) the marketability of title, (ii) title to the Property or survey matters not previously disclosed in the Title Evidence, or (iii) any other fact or condition which would, in Purchaser's reasonable judgment, prohibit or impair the development, maintenance and operation of the Property dry vacuum pump production facility of a size, capacity and other characteristics satisfactory to Purchaser with direct, contiguous access (ingress and egress) from and to the Land and the adjacent public ways and necessary infrastructure; and (2) no reports or studies obtained by Purchaser disclosed the presence of threat of Hazardous Materials at, or in the vicinity of, the Property; and (3) Seller having performed all covenants and obligations required by this Contract to be performed by Seller on or prior to the Closing Date. Items (1)(iii) and (2) shall either be deemed either satisfied or waived by Purchaser on or before the expiration of the Contingency Period should the Purchaser fail to exercise its right to terminate this Contract prior thereto.

At expiration of the Contingency Period, as may be extended as set forth herein, the Deposit shall become non-refundable in the event Purchaser breaches its obligation to close but applicable to the Purchase Price in the event the transaction closes.

Purchaser may elect, in its sole and absolute discretion, but shall not be obligated to, to waive any contingencies set forth in this Contract.

4. CLOSING DATE, PLACE, AND POSSESSION: Transfer of title shall take place at the Genesee County Clerk's Office or at the offices of the Seller's attorney on the date selected by Purchaser and set forth in a written notice to Seller which is no less than ten (10) days after delivery of such notice to Seller (the "Closing Date"); provided that Closing Date designated by Purchaser is no later than the date that is thirty (30) days following the last day of the Contingency Period. Notwithstanding the foregoing, Purchaser may elect by delivering notice to Seller to conduct the transfer of title and delivery of the balance of the Purchase Price (the "Closing") through an escrow with the title insurance company selected by Purchaser to insure the Property (the "Title Company")

so that it will not be necessary for any party to physically attend the Closing (in which event the items to be delivered by Seller or Purchaser in accordance with this Contract for Closing shall be delivered to Title Company on or before the Closing Date).

5. TITLE AND RELATED DOCUMENTS: Seller shall provide the following documents in connection with the sale:

- A. **Deed.** Seller will deliver to Purchaser at closing a properly signed and notarized Bargain and Sale Deed with covenant against grantor's acts and subject to trust fund provisions of Section 13 of the Lien Law, in form and substance reasonably satisfactory to the parties.
- B. **Bill of Sale and General Assignment.** Seller will deliver to Purchaser at closing a properly signed bill of sale and general assignment instrument transferring all of Seller's right, title and interest in any Property other than the Land, in form and substance reasonably satisfactory to the parties.
- C. **Abstract, Bankruptcy and Tax Searches.** Seller will furnish and deliver to Purchaser or Purchaser's attorney at least thirty (30) calendar days from the Effective Date, at Seller's expense, fully guaranteed tax, title and United States Court Searches dated or re-dated after the date of this Contract with a local tax certificate for Town, Village or City and School District taxes, if any (collectively, with the Instrument Survey Map, the "Title Evidence"). Purchaser will pay for continuing such searches to and including the day of closing.
- D. **Instrument Survey Map.** The Seller shall furnish, at Purchaser's cost, an instrument survey of the Property being purchased and shall have markers placed on the angle points and pins on the corners (the "Instrument Survey Map"). Seller agrees and acknowledges that it shall reimburse Purchaser for up to \$2,500.00 for the cost of the Instrument Survey Map incurred by Purchaser; provided, however, it is expressly agreed and acknowledged that in the event that the actual cost for the Instrument Survey Map is less than \$2,500.00, Seller shall only be obligated to reimburse Purchaser for the same. The Instrument Survey Map shall be prepared by a licensed surveyor and dated or re-dated after the date of this Contract. The Instrument Survey Map shall show acreage inclusive of the rights of way, if any, show all recorded encumbrances, meet all of the Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys and be certified as an ALTA/NSPS survey, and shall be furnished to the parties and their attorneys within forty-five (45) calendar days from the date of this Contract. The Instrument Survey Map shall be certified to meet the standard requirements of the Genesee County Bar Association and, if applicable, meet the filing standards for subdivision as set forth by the responsible agency of the county in which the Property is located.
- E. **Corporate Documents.** Seller will furnish and deliver to Purchaser or Purchaser's attorney at least thirty (30) calendar days before the Closing Date, at Seller's expense, a current Certificate of Good Standing and shall deliver at or prior to Closing evidence reasonably satisfactory to Purchaser and the Title Company of Seller's authority to convey the Property.
- F. **Tax Bills.** Seller shall furnish copies of receipted real estate tax bills for the Property for the past twelve (12) months within twenty (20) calendar days from the Effective Date.
- G. **Lease Agreement.** Seller shall deliver an executed Ground Lease Agreement by and between Seller and Purchaser with respect to a portion of that certain real property located at _____.

- H. **Business Park Estoppel.** Seller shall deliver an estoppel certificate dated no earlier than ten (10) days prior to Closing from the association or community or other organization constituting the Business Park certifying (a) that neither Seller nor the Property is in default under the documents creating, governing or relating to the Business Park, (b) the amount of the common area charges, association fees or other community fees or assessments for the Property, and (c) that all outstanding common area charges, association fees or other community fees or assessments have been paid in full.
- I. **Other Closing Documents.** Seller shall deliver such other documents or items reasonably necessary to facilitate the Closing, including customary affidavits sufficient for the Title Company to delete any exceptions for parties in possession, mechanics' or materialmen's liens or other items which do not constitute Permitted Exceptions from Purchaser's title insurance policy.

6. **MARKETABILITY OF TITLE:**

- A. The Deed and other documents delivered by Seller shall be sufficient to convey good marketable title to the Property in fee simple, free and clear of all liens and encumbrances. However, Purchaser agrees to accept title to the Property subject to: (i) restrictive covenants of record common to the tract or subdivision of which the Property is a part, provided these restrictions have not been violated and would not be violated by the Purchaser's anticipated improvements or uses; (ii) the lien of current real estate taxes not due and payable; and (iii) public utility easements along lot lines as long as the Purchaser has determined those easements do not interfere with any buildings now on the Property or with any improvements Purchaser may construct (the "Permitted Exceptions"). Seller agrees to furnish any documents required by federal or state laws for transfer of title to the Property.
- B. THE PURCHASER ACKNOWLEDGES AND AGREES THAT THE PROPERTY IS BEING CONVEYED BY SELLER IN "AS-IS" CONDITION, AND THAT PURCHASER IS BUYING THE PROPERTY BASED SOLELY ON PURCHASER'S KNOWLEDGE OF THE PROPERTY AND NOT IN RELIANCE ON ANY REPRESENTATION MADE BY SELLER OR ANY EMPLOYEE OR AGENT OF SELLER, EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS CONTRACT. SELLER EXPRESSLY DISCLAIMS, AND PURCHASER ACKNOWLEDGES SUCH DISCLAIMER OF ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING THE PROPERTY EXCEPT AS EXPRESSLY SET FORTH HEREIN, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES REGARDING THE PHYSICAL CONDITION OR ENVIRONMENTAL COMPLIANCE OF THE PROPERTY NOT EXPRESSLY SET FORTH HEREIN. THE REPRESENTATIONS AND DISCLAIMER CONTAINED IN THIS CONTRACT SHALL SURVIVE CLOSING.

7. **OBJECTION TO TITLE:** If Purchaser raises a valid written objection to Seller's title, other than Permitted Exceptions, within thirty (30) days of receipt of all Title Evidence, which indicates that the title to the Property is unmarketable or is subject to any encumbrances or restrictions not constituting Permitted Exceptions, Seller may cancel this Contract by giving prompt written notice of cancellation to Purchaser and Purchaser's Deposit shall be returned. However, if Seller is able to and agrees in writing to cure the title objection on or before the Closing Date, then this Contract shall continue in force until the Closing Date, subject to the Seller curing the title objection at Seller's

expense. If Seller fails to cure the title objection on or before the Closing Date, Purchaser may cancel this Contract by giving prompt written notice of cancellation to Seller, Purchaser's Deposit shall be returned and the parties shall have no further obligation to one another except for those obligations which explicitly survive termination of this contract.

8. RECORDING COSTS, MORTGAGE TAX, TRANSFER TAXES AND CLOSING ADJUSTMENTS: Seller will pay the real property transfer tax and real property gains tax, if applicable. Purchaser will pay for recording the deed, the mortgage, and for the entire mortgage tax subject to any terms contained in an incentive package, if any, from GCIDA. The parties agree to cooperate in the execution and timely filing of all necessary documentation to determine any real property transfer gains tax. The following, as applicable, will be prorated and adjusted between Seller and Purchaser as of the date of closing, excluding any delinquent items, interest and penalties: current taxes or special district fees computed on a fiscal year basis, rent payments, fuel oil on the Property, water charges, pure water charges, sewer charges, current common charges or assessments. If there is a water meter at the Property, Seller shall furnish an actual reading to a date not more than 30 days before the closing date set forth in this Contract. At closing, the water charges and any sewer rent shall be apportioned on the basis of such actual reading.

9. ZONING: Seller represents and warrants that the Property is zoned for use as a Technology District I.

10. RISK OF LOSS: Risk of loss or damage to the Property by fire or other casualty until transfer of title shall be assumed by the Seller. If damage to the Property by fire or such other casualty occurs prior to transfer, Purchaser may cancel this Contract without any further liability to Seller. If Purchaser does not cancel but elects to close, then Seller shall transfer to Purchaser any insurance proceeds, or Seller's claim to insurance proceeds payable for such damage.

10.A CONDEMNATION. If, prior to the Closing Date, any portion of or interest in the Property shall be taken or is in the process of being taken by exercise of the power of eminent domain, or if any governmental authority notifies Seller prior to the Closing Date of its intent to take or acquire any portion of or interest in the Property (each a "Taking"): (a) Seller shall promptly give Purchaser written notice of such event; and (b) Purchaser shall have the option to terminate this Contract by providing notice to Seller to such effect on or before the date which is sixty (60) days from Seller's notice to Purchaser of such Taking (and, if the Closing is scheduled to occur prior to the expiration of such sixty (60) day period, Purchaser shall have the right to an extension to the date that is sixty (60) days following Seller's notice to Purchaser of such Taking in order to make its election). If Purchaser elects to terminate in accordance with this Section, Escrow Agent shall return the Deposit to Purchaser, this Contract shall terminate, and neither Seller nor Purchaser shall have any recourse against the other (except to the extent such recourse arises in connection with a provision of this Contract which is intended to survive termination). If Purchaser does not timely notify Seller of its election to terminate this Contract in the event of a Taking, Purchaser shall purchase the Property and pay the Purchase Price, and Seller shall pay over or assign to Purchaser on delivery of the Deed, awards recovered or recoverable by Seller on account of such Taking.

11. DEPOSIT TO SELLER: Purchaser shall make a \$375,000.00 deposit ("Deposit") within two (2) business days of the Effective Date, to be held in escrow by Seller's attorney Harris Beach PLLC, 99 Garnsey Road, Pittsford, NY 14534. Such Deposit shall be refundable until the expiration of the Contingency Period, as may be extended as set forth herein, at which time it shall become non-refundable unless the Closing fails to occur for any reason other than the default of Purchaser and shall

be credited against the Purchase Price at Closing. Should this Contract be terminated by Purchaser prior to the expiration of the Contingency Period, as may be extended as set forth herein, the Deposit shall be refunded to the Purchaser. In the event of Seller's default under this Purchase and Sale Contract, or if prior to Closing any one or more of Seller's representations or warranties are breached in any material respect, Purchaser may, in its sole and absolute discretion, elect to (i) terminate this Contract by giving Seller timely written notice of such election prior to or at Closing and recover the Deposit, (ii) pursue any of its remedies at law or in equity, including specific performance, or (iii) waive said failure or breach and proceed to Closing.

By signing a copy of this Contract, Harris Beach PLLC ("Escrow Agent") agrees to be bound by the terms of this Section 11. The Deposit shall be held by Escrow Agent and disbursed in accordance with the following terms:

(a) Escrow Agent shall invest the Deposit in an interest bearing account at a federally insured bank. The interest earned on the Deposit, if any, shall be held with the Deposit and applied as set forth below.

(b) Escrow Agent will deliver the Deposit to Seller or to Purchaser, as the case may be, under the following conditions:

(i) To Seller on the Closing Date if the Closing occurs, with all interest earned thereon credited against the balance of the Purchase Price due from Purchaser to Seller at Closing (or, at Seller's election, if such amount is not credited against the balance of the Purchase Price due from Purchaser to Seller at Closing, the interest shall be delivered to Purchaser by check at Closing);

(ii) Subject to the provisions of subparagraph (c) hereof, to Seller upon receipt of written demand therefor, such demand stating that Seller is entitled to the Deposit or any portion thereof pursuant to this Contract and specifically setting forth the facts and circumstances underlying the same; or

(iii) Subject to the provisions of subparagraph (c) hereof, to Purchaser upon receipt of written demand therefor, such demand stating that Purchaser is entitled to the Deposit or any portion thereof pursuant to this Contract and specifically setting forth the facts and circumstances underlying the same.

(c) Upon the filing of a written demand for Deposit by Purchaser or Seller pursuant to subsections (ii) or (iii) of subparagraph (b) of this Section, Escrow Agent shall promptly deliver or mail a copy thereof to the other party. The other party shall have the right to object to the delivery of the Deposit by filing written notice to such objection with Escrow Agent at any time within ten (10) business days after the delivery of such copy to it, but not thereafter. Such notice shall set forth the basis for objecting to the delivery of the Deposit. Upon receipt of such notice, Escrow Agent shall promptly deliver or mail a copy thereof to the party who filed the written demand.

(d) In the event that Escrow Agent shall have received the notice of objection provided for in clause (c) above and within the time therein prescribed, Escrow Agent shall continue to hold the Deposit until (i) Escrow Agent receives written notice from Seller and Purchaser directing the disbursement of said Deposit, in which case, Escrow Agent shall then disburse said Deposit in accordance with said direction, or (ii) in the event of litigation or any other action between Seller and

Purchaser, Escrow Agent shall deliver the Deposit to the court in which said litigation, or the court or other forum in which the action is pending, or (iii) Escrow Agent takes such affirmative steps as the Escrow Agent may, in the Escrow Agent's reasonable opinion, elect in order to terminate the Escrow Agent's duties including, but not limited to, deposit in court and an action for interpleader, the costs thereof to be borne by whichever of Seller or Purchaser is the losing party.

(e) Escrow Agent shall comply with all reporting requirements under the Internal Revenue Code of 1986, as amended, or any other legal requirement. Escrow Agent shall not charge a fee for its services as Escrow Agent. Notwithstanding the foregoing, in the event Escrow Agent shall deposit the Deposit in court in an action for interpleader, the non-prevailing party in such action shall be required to pay Escrow Agent's reasonable legal fees and court costs in connection with such action.

(f) Purchaser acknowledges that Harris Beach PLLC is currently representing Seller as legal counsel in connection with the transactions contemplated by this Contract. Neither the agreement by the parties hereto that Harris Beach PLLC shall act as Escrow Agent, nor any other term of this Contract, nor any other agreement or understanding between or among the parties hereto shall prevent or inhibit, or be construed or interpreted so as to prevent or inhibit, Harris Beach PLLC from serving at any time as legal counsel to Seller or any agent or affiliate of Seller, whether in connection with this Contract or otherwise. Escrow Agent shall be responsible for holding, and disbursing the Escrow Funds pursuant to this Contract, but in no event shall it be liable for any exemplary or consequential damages hereunder when its acts, taken or omitted, are in good faith. The duties and responsibilities of Escrow Agent hereunder shall be determined solely by the express provisions of this paragraph 11 and no other or further duties or responsibilities shall be implied. Escrow Agent shall not have any liability under, nor duty to inquire into the terms and provisions of any agreement or instructions, other than outlined in this paragraph 11.

12. REAL ESTATE BROKER: Seller and Purchaser acknowledge that no broker other than Avison Young-New York, LLC and its co-broker Hunt Commercial Real Estate brought about this transaction and will be compensated by Purchaser pursuant to a separate agreement. Seller and Purchaser warrant and represent that they have not dealt with any other brokers in connection with the sale embraced in this Contract and agree to indemnify and hold each other harmless from the claims of any other brokers for commissions.

13. RESPONSIBILITY OF PERSONS UNDER THIS CONTRACT; ASSIGNABILITY: If more than one person signs this Contract as Purchaser, each person and any party who takes over that person's legal position will be responsible for keeping the promises made by Purchaser in this Contract. If more than one person signs this Contract as Seller, each person or any party who takes over that person's legal position, will be fully responsible for keeping the promises made by Seller. Purchaser shall not have the right to assign its rights, duties and obligations pursuant to this Contract or any of its rights hereunder without prior written consent of Seller, which consent shall not be unreasonably conditioned, withheld or delayed; provided, however, Purchaser shall be permitted to assign this Contract to an affiliate, parent or subsidiary of Purchaser herein ("Permitted Assigns") without obtaining Seller's consent so long as the Purchaser named herein remains fully responsible for the performance of all of Purchaser's obligations under this Contract. No assignment shall be effective unless and until Purchaser provides Seller with a notice of assignment together with a copy of the applicable assignment and assumption agreement.

14. ENTIRE CONTRACT: This Contract when signed by both Purchaser and Seller will be the record of the complete agreement between the Purchaser and Seller concerning the purchase of the Property. No verbal agreements or promises made by either the Seller or the Purchaser shall be binding.

15. NOTICES. All notices under this Contract shall be in writing and shall be deemed validly given if sent by certified mail or by overnight delivery via a commercial courier to the addresses specified below or if sent by e-mail to the e-mail address below by either party or its counsel. Any notice issued by or on behalf of the Seller or Purchaser with respect to this Contract must also simultaneously be provided to the counsel for the receiving party to be effective as follows:

Seller:

Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center
Attn: Steven G. Hyde, President and CEO
99 MedTech Drive
Suite 106
Batavia, New York 14020
E-Mail: shyde@gcedc.com

Counsel for Seller:

Harris Beach PLLC
Michael E. Condon
99 Garnsey Road
Pittsford, New York 14534
Tel: 585.419.8603
E-mail: mcondon@harrisbeach.com

Purchaser:

Edwards Vacuum LLC
c/o Atlas Copco North America LLC
6 Century Drive, Suite 310
Parsippany, NJ 07054
Attention: Ms. Machel Morey
E-Mail: machelle.morey@atlascopco.com

with a copy to:

Andy Marsh
Project Manager
Edwards Vacuum, LLC
6416 Inducon Dr. W.,
Sanborn, NY 14132
E-Mail: andy.marsh@edwardsvacuum.com

Counsel for Purchaser:

Hodgson Russ LLP
140 Pearl Street, Suite 100
Buffalo, NY 14202
Attn: Sujata Yalamanchili
Tel: (716) 848-1657
E-Mail: syalaman@hodgsonruss.com

Any notice so delivered shall be deemed given (i) when delivered or refused by hand during regular business hours, (ii) three (3) days after being sent by United States registered or certified mail, (iii) the next business day if sent by overnight courier service, or (iv) when sent if sent by e mail. Any notice given by a party to Escrow Agent shall be simultaneously given to the other party. Any notice given by a party to the other party relating to its entitlement to the Deposit shall be simultaneously given to the Escrow Agent. Any party may change its address(es) for receiving notices hereunder by delivering ten (10) days' prior written notice to Escrow Agent and the other party in accordance with this Section.

16. ACCESS TO PROPERTY/DUE DILIGENCE. At any time after the Effective Date, Purchaser may inspect, survey, examine and/or test the Property and conduct such tests thereon as it deems appropriate, including any such non-invasive inspection, surveying, examination, and/or testing required to conduct such activities in support of locating the planned economic development project at the site to and including any activities necessary for the SEQR process, by agent or otherwise. Purchaser acknowledges and agrees that it shall have no right to conduct drilling, soil boring or other invasive testing on the Property without first obtaining Seller's prior written consent, which consent shall not be unreasonable withheld, conditioned or delayed, but shall be predicated upon Purchaser presenting Seller with a detailed map of the location of where such invasive testing shall be conducted, a description of the nature of such invasive testing and whatever environmental or engineering reports¹ upon which Purchaser is basing its request for such drilling, soil boring or other invasive testing. Purchaser and/or its agents and employees shall have access to the Property at any reasonable time for purposes of making the foregoing inspections. Unless otherwise agreed to in writing between the Purchaser and Seller, Purchaser shall bear all costs associated with the foregoing inspections and associated activities of the Property performed or conducted by Purchaser, or at the request of Purchaser, by its agent(s) or otherwise. Purchaser agrees to indemnify, defend and hold Seller harmless from all third party actual suits, causes of action, losses, payments and expenses (including, but not limited to, reasonable attorneys' fees) arising from: (a) any personal injury or property damage to the extent caused by the negligence of Purchaser and/or its representatives, agents, employees and contractors during the inspection of the Property; and (b) any and all mechanics', laborers', materialmen's or other liens asserted against the Property resulting from Purchaser's foregoing inspections, which indemnity shall survive closing or the earlier termination of this Contract. Purchaser agrees to return the Property in as near as possible its condition prior to Purchaser's entry thereon. Additionally, prior to permitting any contractor, agent, person or entity to enter onto the Property for any purposes, Purchaser shall deliver to Seller evidence of commercial general liability insurance and automobile liability insurance coverage maintained by such contractor, agent, person or entity, with each such policy having a combined single limit per occurrence for personal injury and property damage of not less than Five Million Dollars (\$5,000,000); provided, however, no such certificates shall be required of any subcontractor of an environmental engineer and/or contractor

¹ Seller wants copies of Purchaser's environmental reports before granting permission for Purchaser to proceed with more invasive testing. Is this acceptable, or would Purchaser like us to strike that requirement?

which has provided Seller with the requisite certificate. All policies required by this section shall name Seller as an additional insured thereon. Each such insurance policy shall be maintained with an insurer that is reasonably acceptable to Seller, and the form and scope of coverage shall be reasonably acceptable to Seller. Each such contractor shall also maintain workers compensation insurance, if required by applicable law, in no less than the minimum statutory amount.

17. INTEREST IN PROPERTY. Seller represents and warrants that, except for the Seller, there are no persons in possession or occupancy of the Property or any part thereof, nor are there any persons who have possessory rights in respect to the Property or any part thereof. Any possessions, occupancy and/or possessory rights of any persons other than Seller, shall be terminated by Seller on or prior to the closing date.

18. COMMON AREA CHARGES; COMMUNITY FEES. The common area charges, association fees or other community fees or assessments (including, but not limited to, any charges, dues or fees due in connection with the Business Park) shall be calculated on the amount of developable acres purchased divided by the total developable acres on the site multiplied by the total expenses attributable to the common areas. Seller represents and warrants that all documents creating, governing or relating to the association or community or other organization constituting the Business Park will be provided to Purchaser prior to the expiration of the Contingency Period.

19. APPLICABLE LAW. This Contract shall be governed by, and construed in accordance with, the laws of the State of New York. The parties further agree that for the purposes of litigation arising between the parties, venue shall be laid in Genesee County Supreme Court. The prevailing party shall be entitled to attorney fees.

20. COUNTERPARTS. This Contract may be signed in several counterparts, and/or by execution of counterpart signature pages which may be attached to one or more counterpart, each of which shall be deemed an original, and all such counterparts shall constitute one and the same instrument. Any counterpart to which is attached the signatures of all parties shall constitute an original of this Contract. Any counterpart delivered by electronic mail or facsimile transmission shall have the same force and effect as an original thereof.

21. AUTHORITY. Purchaser certifies to Seller that the execution, delivery and performance by Purchaser of this Contract and the performance of the Purchaser of the transactions contemplated hereunder have been duly authorized by Purchaser and that the individual signing this Contract on behalf of Purchaser has the full authority of Purchaser to enter into this Contract. Seller certifies to Purchaser that the execution, delivery and performance by Seller of this Contract and the performance of the Seller of the transactions contemplated hereunder have been duly authorized by Seller and that the individual signing this Contract on behalf of Seller has the full authority of Seller to enter into this Contract.

22. ENVIRONMENTAL. Seller represents and warrants to the best of its actual knowledge without independent investigation or inquiry that (a) it has not received written notice that the Property is in violation of any federal, state, local or administrative agency ordinance, law, rule, regulation, order or requirement relating to environmental conditions or Hazardous Materials ("Environmental Laws") and (b) Seller has not generated, stored or disposed of any Hazardous Materials at the Property, and Seller has no actual knowledge of any previous or present generation, storage, disposal or existence of Hazardous Materials at the Property. As used herein, the term "Hazardous Materials" means each and every element, compound, chemical, mixture, contaminant, pollutant, material, waste or other

substance which is defined, determined or identified as hazardous or toxic under any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision.

[REMAINDER OF PAGE HAS BEEN LEFT INTENTIONALLY BLANK; SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Seller and Purchaser have caused this Contract to be executed as of the Effective Date.

GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER

By: _____
Name: _____
Title: _____

EDWARDS VACUUM LLC

By: _____
Name: _____
Title: _____

ESCROW AGENT:

Harris Beach PLLC

By: _____
Name: _____
Title: _____
Date: _____, 2023

EXHIBIT "A"

Land

See attached.

Review of Ground Lease Agreement for STAMP Property

Discussion: The GCEDC has received a Ground Lease Agreement with a right of first refusal from a potential project to lease approximately 30 acres for portions of tax parcel 10.-1-13.1 and part of 10.-1-15.11 in exchange for certain improvements made to the property.

Fund Commitment: None.

Committee Action Request: Recommend approval of Ground Lease Agreement with right of first refusal.

GROUND LEASE AGREEMENT

This GROUND LEASE AGREEMENT (this "Lease") is made and entered into as of the ___ day of _____, 2023 (the "Effective Date") by and between GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER, a New York public benefit corporation with an address at 99 MedTech Drive, Batavia, New York 14020 ("Landlord"), and EDWARDS VACUUM LLC, a Delaware limited liability company with an address at 6416 Inducon Dr. W., Sanborn, New York 14132 ("Tenant").

WITNESSETH:

For and in consideration of the mutual covenants hereinafter contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby formally covenant, agree and bind themselves as follows:

1. PREMISES; CONDITION OF PREMISES

1.1 Premises. Upon and subject to the conditions and limitation set forth herein, Landlord hereby leases to Tenant, and Tenant leases from Landlord, a portion of that certain real property located at _____, bearing part of tax account number _____ and consisting of approximately 30 acres, as more particularly depicted and described on Exhibit A attached hereto and made a part hereof (the "Premises").

1.2 Condition of Premises. Tenant will be entitled to inspect the Premises during the Contingency Period (as the same may be extended) provided for under that certain Purchase and Sale Contract for Vacant Land dated the date hereof (the "PSA") related to property known as tax parcels 10.-1-13.1 and part of 10.-1-15.11 (the "Adjoining Property"), to determine whether the Premises are suitable for Tenant's purposes. Tenant will be entitled to enter onto the Premises during such Contingency Period to review and to inspect the Premises. If Tenant isn't satisfied with the Premises, for any reason, Tenant will be entitled to terminate this Lease at any time during the Contingency Period. Unless Tenant terminates this Lease during the day immediately following such six (6) month period or the earlier date on which Tenant expressly waives this inspection contingency will be considered the Lease Commencement Date. Except as otherwise expressly provided in this Lease, Tenant has full responsibility for the repair, alteration, maintenance, and replacement of the Premises. Tenant expressly acknowledges and agrees that Landlord has not made and is not making, and Tenant is not relying upon, any warranties or representations regarding the Premises, except to the extent the same are expressly set forth in this Lease.

2. TERM; POSSESSION AND USE

2.1 Initial Term. The term of this Lease (the "Term") shall commence on the Lease Commencement Date. The Term shall expire on the day (the "Expiration Date") immediately prior to the second anniversary of the Lease Commencement Date. Notwithstanding anything contained herein to the contrary, Tenant will be entitled to renew the Term for two additional periods of one year each, on the same terms and conditions, except as to the number of renewal

terms remaining, by providing Landlord notice at least 60 days prior to the end of the then current term.

2.2 Permitted Use. Tenant shall have the right to use the Premises for purposes of staging of construction activities on property adjacent to the Premises, including without limitation, parking, construction activities, site preparation, grading, and infrastructure installation, and for no other purposes (the "**Permitted Use**").

3. RENT

3.1 Tenant shall pay to Landlord rent for the Premises during the Term ("**Rent**"). The Rent shall be due and payable in advance prior to the commencement of each lease year. Rent shall mean One and No/100 Dollar (\$1.00) per annum.

3.2 All checks for Rent are to be made payable to the order of Landlord and mailed to 99 MedTech Drive, Suite 106, Batavia, New York 14020 or to such other address as designated by Landlord in writing upon not less than 30 days' notice.

3.3 Any Rents remaining unpaid 30 days after receipt of written notice from Landlord specifying such failure, shall be subject to a \$50.00 late charge in order to compensate Landlord with respect to the processing of late payments. Such sum shall be due and payable as additional Rent on the first day of the immediately succeeding month.

4. REPAIRS AND OBLIGATIONS

4.1 Tenant Obligations. Tenant shall at all times during the Term of this Lease, at its sole cost and expense, maintain and repair the Premises, in good and sightly condition. If Tenant fails to keep and maintain the Premises as required by this Lease, Landlord may (but shall not be required to) perform and satisfy same, and Tenant hereby agrees to reimburse Landlord, as additional rent, for the reasonable cost thereof promptly upon demand. Tenant shall not permit any material waste of the Premises. Unless otherwise expressly provided in this Lease, Landlord is not required to maintain, repair, clean, alter, improve, or to provide any services to the Premises.

5. ALTERATIONS.

5.1 Tenant may, at its cost and expense make permanent alterations or installations to the Premises ("Structural Alterations") to facilitate Tenant's use of the Premises as a construction staging area, provided Tenant obtains Landlord's prior consent, which will not be unreasonably withheld, conditioned or delayed. Alterations or installations which are not permanent or structural in nature, such as, by way of example only, installation of fencing, gravel areas or dirt roads, are not deemed Structural Alterations and may be made by Tenant to the Premises, without Landlord's prior approval. Prior to commencing any Structural Alterations, Tenant shall provide Landlord with: (i) the name of the general contractor completing the work; (ii) the plans and specifications for the such Structural Alterations; (iii) copies of all required permits that have been obtained prior to the Structural Alterations, if any; and (iv) certificates of insurance of the general contractor hired for Structural Alterations naming Landlord as an additional insured. Additionally, any Structural

Alterations shall (i) be made in compliance with all local, state, and federal laws; and (ii) be completed in a good and workmanlike and lien free manner. At the time that Landlord provides its consent to any Structural Alterations, it shall notify Tenant whether it will be required to remove the same and restore the Premises after expiration or the earlier termination of the Lease.

6. UTILITIES

6.1 From and after the Commencement Date, Tenant shall pay before delinquency all usage charges for water, sanitary sewer, gas, heat, air cooling, electricity, power, telephone and other utility services used by Tenant on the Premises during the Term. Tenant shall maintain all pipes, mains, conduits, wires and cables that serve the Premises, if any.

7. INSURANCE

7.1 Tenant's Insurance. At all times throughout the Term of this Lease, the Tenant shall maintain or cause to be maintained insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Workers' compensation insurance, disability benefits insurance, and each other form of insurance which the Tenant is required by law to provide, covering loss resulting from injury, sickness, disability or death of employees of the Tenant who are located at or assigned to the Premises.

(b) General liability insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the property of others caused by any accident or occurrence at the Premises, with limits of not less than \$2,000,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$2,000,000 per accident or occurrence on account of damage to the property of others, excluding liability imposed upon the Tenant by any applicable workmen's compensation law; and a blanket excess liability policy in the amount not less than \$5,000,000, protecting the Tenant against any loss or liability or damage for personal injury or property damage.

All insurance required by herein shall name the Landlord as a named insured and all insurance shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Tenant and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Tenant is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses of the Tenant and the Landlord as their respective interest may appear, and (ii) at least thirty (30) days' written notice of the cancellation thereof to the Tenant and the Landlord.

All such certificates of insurance of the insurers that such insurance is in force and effect, shall be deposited with the Landlord on or before the commencement of the term of this Lease. Prior to expiration of the policy evidenced by said certificates, the Tenant shall furnish the Landlord evidence that the policy has been renewed or replaced or is no longer required by this Lease Agreement.

7.2 Landlord's Insurance. Landlord shall at all times during the Term and any extensions thereof keep in force a policy or policies of commercial general liability insurance with a \$1,000,000 combined single limit on an occurrence basis, which may be through an endorsement on a blanket liability insurance policy.

7.3 Miscellaneous Requirements. Landlord and Tenant agree to deliver to the other ACORD certificate of insurance Form 28, evidencing the existence in force of the policies of insurance described in this Article. Each of the certificates shall provide that such insurance shall not be canceled or materially amended unless 30 days' prior written notice of such cancellation or amendment is given to the party designated on such certificate as the holder thereof.

7.4 Waiver of Claims and Waiver of Subrogation. Notwithstanding any of the provisions of this Lease to the contrary, the parties release each other, and their respective authorized representatives, from any claims for damage to any person or to property in or on the Premises to the extent covered by or required to be covered by the insurance of the parties under this Lease. Landlord and Tenant shall each have their insurance policies issued in such form as to waive any right of subrogation that might otherwise exist. If either party elects to self-insure for any of the insurance required hereunder then such party shall be deemed to have released the other party from all claims or loss or damage to the such party which would otherwise have been covered by such insurance, whether or not caused by the other party's act or negligence.

8. END OF TERM

8.1 At the expiration of this Lease, Tenant shall surrender the Premises in broom clean condition, subject to normal wear and tear and damage by the elements and subject to Article 5 of this Lease.

9. EMINENT DOMAIN

9.1 Taking Defined. The term "Taking" means any governmental act whereby the owner of property is divested of ownership of such property or any of the incidents thereof (or any transfer in lieu thereof).

9.2 Rights and Obligations Following Taking.

(a) If as a result of a Taking any portion of, or interest in, the Premises is taken which, in Tenant's reasonable discretion, materially interferes with Tenant's use of the Premises, then within thirty (30) days following the date of such Taking, Tenant may terminate this Lease upon written notice to Landlord. If Tenant does not terminate this Lease, Tenant shall promptly and diligently restore the Premises to as near its condition as existed prior to such Taking as is

reasonably possible. During the course of restoration and thereafter, Tenant's obligation for Rent shall be equitably adjusted and/or abated, and any such proceeds of Taking shall be given to Tenant.

(b) The parties waive such rights of Lease termination as may be granted them in the event of condemnation by the laws of the state wherein the Premises are located.

(c) Nothing in this Lease shall prohibit Tenant from asserting any rights or claims to damages that Tenant may have against the applicable authority and under applicable law for such Taking. Tenant's ROFR (as hereinafter defined) to acquire the remainder of the Premises shall not be affected by any such Taking or earlier termination of this Lease.

(d) If this Lease is terminated pursuant to the provisions of this Article 9, then all Rent payable by Tenant to Landlord hereunder shall be paid up to the date on which possession shall be taken by the condemning authority and any Rent theretofore paid by Tenant which is applicable to any period subsequent to the date possession is taken shall be repaid to Tenant by Landlord, and the parties shall thereupon be released from all further liability hereunder.

(e) All compensation regarding solely the value of the land for a Taking of the Premises, whether for the whole or a part of the Premises, shall belong to and be the property of Landlord, whether such damages shall be awarded as compensation for diminution in value of the leasehold or for the fee of the Premises. Nothing herein contained shall prevent Tenant from making a claim for loss or damage to Tenant's removable personal property. Tenant shall not be entitled to any award for the value of any unexpired Term of this Lease. Any portion of the award attributable to the value of the land only comprising the Premises shall be paid solely to Landlord.

10. RIGHT OF ACCESS

10.1 Landlord and its authorized agents and representatives shall be entitled to enter the Premises at reasonable times upon reasonable notice (which shall be at least 48 hours unless emergency circumstances reasonably require a shorter notice), and in a manner that does not interfere with Tenant's business operations, for the purposes of inspecting same or showing the Premises to prospective purchasers, mortgagees or lessees.

11. AUTHORITY AND QUIET ENJOYMENT

11.1 Each of Landlord and Tenant represents and warrants to the other that it has full right and lawful authority to execute this Lease in the manner, and upon the conditions and provisions herein contained. Landlord covenants and agrees that Tenant shall have quiet and peaceful possession of the Premises and shall enjoy all of the rights herein granted without interference so long as Tenant is not in default of the Lease following the applicable cure period for such default.

12. WARRANTIES OF LANDLORD

12.1 Landlord represents and warrants to Tenant that as of the Effective Date:

- (a) There are no third parties in possession or entitled to possession of the Premises.
- (b) Landlord has not received any notice, nor is it aware of any pending Taking of all or any portion of the Premises.
- (c) There is no litigation and, to Landlord's actual knowledge, no other proceedings are pending or threatened relating to the Premises or its use.
- (d) This Lease is and shall be binding upon and enforceable against Landlord in accordance with its terms, and the transaction contemplated hereby will not result in a breach of, or constitute a default or permit acceleration and maturity under any indenture, mortgage, deed of trust, loan agreement or other agreement to which Landlord or the Premises are subject or by which Landlord or the Premises are bound.
- (e) Tenant shall peaceably and quietly hold and enjoy the Premises for the Term without hindrance or interruption by Landlord or any other person or persons lawfully or equitably claiming by, through or under the Landlord, subject, nevertheless, to the terms and conditions of this Lease.

13. **DEFAULT**

13.1 Tenant Default. The occurrence of any of the following shall constitute a default by Tenant pursuant to this Lease (any such occurrence, an "**Event of Default**"):

- (a) a failure by Tenant to timely pay any Rent that continues for more than 10 days after Tenant's receipt of written notice from Landlord specifying such failure;
- (b) a failure by Tenant to perform obligations pursuant to this Lease within 30 days after Tenant's receipt of written notice from Landlord specifying such failure or, if it reasonably would require more than 30 days to cure such failure, within a time reasonably necessary to cure such failure after Tenant's receipt of such written notice (provided Tenant has undertaken procedures to cure the default within such 30 day period and diligently pursues such cure to completion); or
- (c) the occurrence of any of the following events: (i) the making by Tenant of any general arrangement or assignment for the benefit of creditors; (ii) Tenant's becoming a "debtor" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph (c) is contrary to any applicable law, such provision shall be of no force, and not affect the validity of the remaining provisions.

13.2 Landlord Remedies.

(a) Upon an Event of Default by Tenant, in addition to any other remedies available to Landlord at law or in equity, Landlord may, upon delivery of Notice to Tenant (provided the default has not been cured on or before the date such Notice is delivered):

(i) declare the Term hereof terminated, reenter the Premises by summary proceedings, take possession of the Premises, and remove all persons therefrom; or

(ii) without declaring the Term hereof terminated, reenter the Premises by summary proceedings and occupy the whole or any part thereof; or,

(iii) even though it may have reentered the Premises, thereafter elect to terminate this Lease and all of the rights of Tenant in or to the Premises.

(b) If Landlord reenters the Premises under the provisions above, Landlord shall not be deemed to be terminating this Lease, or to be terminating Tenant's liability for damages under any of the provisions hereof, by any such reentry or by any action in unlawful detainer or otherwise to obtain possession of the Premises, unless Landlord notifies Tenant in writing that it has so elected to terminate this Lease.

(c) If Landlord repossesses the Premises hereunder, then Landlord agrees to use its commercially reasonable efforts to relet the Premises at market rent reasonably obtainable, Landlord may recover from Tenant as damages: (i) all of Landlord's reasonable out-of-pocket expenses incurred in obtaining possession of the Premises (including reasonable attorney's fees), outside brokerage commissions incurred to relet the Premises, and the cost of any repairs to the Premises which are required to be made and which are Tenant's obligations hereunder, and (ii) the difference between Rent thereafter becoming due under this Lease, and the proceeds from reletting the Premises, such deficiency to be computed and paid monthly at the times that Rent is payable hereunder.

(d) If Landlord terminates this Lease, then Tenant shall be liable for (in addition to the items set forth in Section 13.2(c) all Rent payable to the date of termination (the "Lease Termination Date").

13.3 Landlord Default.

(a) If Landlord should be in default in the performance of any of its covenants, warranties or obligations under this Lease and the default continues for a period of more than 30 days after receipt of written notice from Tenant specifying such default, or if such default is of a nature to require more than 30 days for remedy and continues beyond the time reasonably necessary to cure (provided Landlord has undertaken procedures to cure the default within such 30-day period and diligently pursue such efforts to cure to completion) then Tenant may, in

addition to availing itself of any other remedies available at law and in equity, at its option, upon written notice, terminate this Lease.

(b) Tenant acknowledges that the liability of Landlord under this Lease shall be limited to Landlord's interest in the Premises and any judgments rendered against Landlord shall be satisfied solely out of the rents received and any proceeds of sale of Landlord's interest in the land and improvements making up the Premises. No personal judgment shall be against Landlord or Landlord's partners or officers or members upon extinguishment of Landlord's rights in the Premises and any judgment so rendered shall not give rise to any right of execution or levy against Landlord's assets or those of Landlord's partners or officers or members. The foregoing provisions are not intended to relieve Landlord from the performance of any of Landlord's obligations under this Lease, but only to limit the personal liability of Landlord and its partners or officers or members in the event of recovery against Landlord; nor shall the foregoing be deemed to limit Tenant's rights to obtain injunctive relief or specific performance or to avail itself of any other right or remedy which may be awarded to Tenant by law or under this Lease.

14. ASSIGNMENT AND SUBLETTING

14.1 Landlord Consent. Tenant shall not assign this Lease, or sublet the Premises, or any portion thereof, without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned, or delayed. Failure of Landlord to disapprove in writing within 30 days following Tenant's delivery of a written request for Landlord's consent to a proposed assignment or sublease shall constitute Landlord's consent to the proposed assignment or sublease. Notwithstanding the foregoing, Tenant may assign this Lease or sublet all or a portion of the Premises, without Landlord's prior, written consent, to an affiliate of Tenant. Following any assignment made pursuant to this Section 14.1, Tenant shall remain liable for all of Tenant's obligations under this Lease.

14.2 Landlord Assignment. Landlord may assign Landlord's interest in this Lease without the consent of Tenant (a) to any entity to which Landlord transfers its fee interest in the Premises or (b) subject to Section 18, as security for any mortgage of Landlord.

15. HOLDING OVER

15.1 If Tenant remains in possession of the Premises without Landlord's consent after the expiration of the Term, including any extension thereof, such continued possession shall create a tenancy from month to month upon the same terms and conditions contained herein so far as applicable, provided that monthly Rent shall equal 125% of the monthly Rent for the last month of the Term of this Lease.

16. MECHANICS' LIENS

16.1 Neither Landlord nor Tenant will permit any mechanics', materialmen's or other similar lien to be filed or claimed against the Premises or Landlord's or Tenant's interest therein by reason of any work, labor, materials, services or supplies furnished or purportedly furnished to or for the Premises. If any such mechanics' or materialmen's lien should be filed and/or claimed

against the Premises, then the party through whom such lien was filed and/or claimed shall within 30 days after receiving notice of same fully discharge and release the lien from the Premises by posting bond or otherwise.

17. **NOTICES**

17.1 - Any notice to be given in connection with this Lease shall be in writing and may be served by personal delivery or be sent by certified mail, or by reputable courier service that provides written evidence of delivery, or by email, addressed as specified below or to such other address as requested by either party in writing. All notices given in the manner specified herein shall be effective upon actual receipt or upon refusal to accept delivery.

Landlord's Address:

Genesee County Industrial Development Agency d/b/a Genesee County
Economic Development Center
Attn: Steven G. Hyde, President and CEO
99 MedTech Drive
Suite 106
Batavia, New York 14020
E-mail: shyde@gcedc.com

With a copy to:

Harris Beach PLLC
Attn: Michael E. Condon
99 Garnsey Road
Pittsford, New York 14534
E-mail: mcondon@harrisbeach.com

Tenant's Address:

Edwards Vacuum LLC
Attn: Andy Marsh
6416 Inducon Dr. W.
Sanborn, New York 14132
E-Mail: andy.marsh@edwardsvacuum.com

With a copy to:

Hodgson Russ LLP
140 Pearl Street, Suite 100
Buffalo, NY 14202
Attn: Sujata Yalamanchili
E-Mail: syalaman@hodgsonruss.com

18. **SUBORDINATION, NON-DISTURBANCE, ATTORNMENT AND ESTOPPEL CERTIFICATES**

18.1 Future SNDA. Tenant shall, upon Landlord's request, subordinate this Lease in the future, to any first lien Mortgagee, provided that such lien holder executes a subordination, non-disturbance and attornment agreement ("SNDA").

18.2 Estoppel Certificates. Within 30 days after receipt of request therefor, either party shall deliver to the other a written statement acknowledging the commencement and termination dates of this Lease, that this Lease is in full force and effect (if the same be true), that this Lease has not been modified (or if it has, stating such modifications), and providing any other pertinent information that the requesting party might reasonably request with respect to the status of this Lease or the Premises.

18. **MEMORANDUM OF LEASE**

18.1 Landlord and Tenant will, contemporaneously with the execution of this Lease, execute a memorandum of lease or as otherwise required by applicable law or procedures of the official charged with recordation duties for the county in which the Premises are located (a "Memorandum"), which Memorandum shall include reference to Tenant's ROFR (as hereinafter defined). Tenant may record the Memorandum at Tenant's cost with the official charged with recordation duties for the county in which the Premises are located, with directions that it be returned to Tenant.

19. **BROKERAGE COMMISSIONS**

19.1 Landlord and Tenant each represents and warrants to the other that it has not authorized or employed, or acted by implication to authorize or employ, any real estate broker or salesman to act for it in connection with this Lease other than Avison-Young New York, LLC and its co-broker, Hunt Commercial Real Estate (collectively, the "Brokers"), each of whom will defer receipt of a commission on account of this Lease, in accordance with a separate written agreement with Tenant. Landlord shall and Tenant shall each indemnify, defend and hold the other party harmless from and against any and all claims by any real estate broker or salesman whom the indemnifying party authorized or employed, or acted by implication to authorize or employ, to act for the indemnifying party in connection with this Lease. The foregoing indemnifications shall survive the expiration of the Term or sooner termination of this Lease.

20. **HAZARDOUS MATERIALS**

20.1 Representations and Warranties. Landlord represents and warrants to Tenant to the best of its actual knowledge without independent investigation, that as of the Effective Date:

(a) No Hazardous Substance (defined below) is located on, in, or under the Premises.

(b) There has been no Release (defined below) of any Hazardous Substance in, on, or under the Premises.

(c) Neither Landlord nor tenants or subtenants have ever used the Premises for the storage, manufacture, disposal, handling, transportation or use of any Hazardous Substance, nor, to the best of Landlord's actual knowledge, has the Premises ever been used for the storage, manufacture, disposal, handling, transportation or use of any Hazardous Substance.

(d) There is no, nor, has there ever been any investigation, administrative proceeding, litigation, regulatory hearing or other action proposed, threatened or pending, relating to the Premises and/or alleging non-compliance with or the violation of any Environmental Law (defined below).

(e) Landlord has disclosed to Tenant all assessments, studies, sampling results, evaluations, reports and investigations commissioned by Landlord or within Landlord's possession or control relating to the environmental condition of the Premises and has delivered true and correct copies thereof to Tenant.

(f) There are not now and were not at any time during which Landlord has had any interest in the Premises, nor to the best of Landlord's knowledge, have there ever been, any above-ground or underground storage tanks located in, on or under the Premises.

20.2 Definitions. For purposes of this Lease:

(a) The term "Environmental Law" shall mean any federal, state, county, municipal, local or other statute, ordinance, rule, regulation, permit, judgment, order, writ, decree, award or injunction, which relates to or deals with the protection of the environment or wildlife and/or human health and safety, including all regulations promulgated by a regulatory body pursuant to any such statute, ordinance, or regulation, including, the Comprehensive Environmental Response and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §9601 et. seq., the Resource Conservation and Recovery Act ("RCRA"), as amended, 42 U.S.C. §6901, et. seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. §1251 et. seq., and the Clean Air Act, as amended, 42 U.S.C. §7401 et. seq.

(b) The term "Hazardous Substance" shall mean and refer to asbestos, urea formaldehyde, mold, radon, lead paint, polychlorinated biphenyls, nuclear fuel or materials, radioactive materials, explosives, known carcinogens, petroleum products and by-products (including crude oil or any fraction thereof), and any pollutant, contaminant, chemical, material, substance or waste, defined as hazardous, toxic or dangerous or as a pollutant or a contaminant in, or the use, manufacture, generation, storage, treatment, transportation, release or disposal of which is regulated by, any Environmental Law.

(c) The term "Release" shall mean and refer to any spilling, leaking, pumping, pouring, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment, including the abandonment or discarding of barrels, drums, containers, tanks, or other receptacles containing or previously containing any Hazardous Substance.

20.3 Covenants and Indemnity. Landlord and Tenant each agree not to cause a Release or otherwise violate any Environmental Law with respect to the Premises. Landlord and Tenant shall each defend, indemnify and hold harmless the other and the parties to whom the other is responsible from and against any and all costs, expenses, claims, suits, causes of action, liabilities, losses, fines, penalties, charges, judgments, injuries and damages, including, without limitation, reasonable attorney's fees and costs resulting from, related to or arising out of third party claims with respect to Landlord's or Tenant's (as the case may be) breach of the covenants set forth in this Section 20.3.

21. RIGHT OF FIRST REFUSAL AND PURCHASE OPTION

21.1 Subject to all applicable laws and rules under the Public Authorities Law and subject to the subdivision of the Premises, Landlord also grants Tenant a continuing right of first refusal to purchase the Premises (the "ROFR") together with all rights, privileges, easements and appurtenances related thereto, and any permits, approvals or other rights relating to the ownership, use and operation of the Premises (collectively, the "ROFR Premises"). If at any time during the ROFR Term (defined below) Landlord receives a bona fide purchase offer for all or any portion of the ROFR Premises on terms acceptable to Landlord and the Landlord intends to accept such offer (the "Third Party Offer") and the Landlord conditionally accepts such offer subject to this ROFR, Landlord will give a complete written copy of the Third Party Offer to Tenant. Tenant will have the right to elect to purchase the ROFR Premises that is the subject of the Third Party Offer at the price and on the terms contained in the Third Party Offer by written notice to Landlord given within fifteen (15) days after Tenant's receipt of the Third Party Offer. If Tenant fails to elect to purchase the ROFR Premises that is the subject of the Third Party Offer within such fifteen (15) day period, Landlord shall be free to sell the ROFR Premises that was the subject of the Third Party Offer to the purchaser identified in the Third Party Offer for a purchase price of not less than 90% of the purchase price set forth in the Third Party Offer and otherwise upon the terms and conditions set forth in the Third Party Offer (or other terms and conditions no more favorable to the purchaser). In all other events, Landlord must again comply with the provisions of this Section 21.1 before selling such ROFR Premises to any party. Notwithstanding the foregoing, Tenant's right of first refusal under this Section 21.1 shall only apply to any Third Party Offer received by Landlord during the Lease Term and for the three (3) year period following the expiration or earlier termination of this Lease (the "ROFR Term"). Any exercise of Tenant's ROFR shall be accompanied by payment of a deposit, if any, as provided for in the Third Party Offer submitted to the Landlord. On the expiration of the ROFR Termination Date, the ROFR, and any and all rights hereunder, shall automatically terminate and Landlord may record, in the office of the clerk of the county where the Land is located, a statement under oath that the ROFR has terminated. The recording of such a statement shall be conclusive proof that the ROFR has terminated and is of no further force and effect.

21.2 Tenant will also have the right to purchase the Premises on the same economic terms and conditions as the PSA, including the price per acre of land, until the later of the Expiration Date or the first anniversary of the date of completion of the improvements to be constructed by Tenant or its affiliate on the property covered by the PSA, which completion will be evidenced by issuance of a final certificate of Occupancy for such improvements. This purchase option will continue, despite purchase of the Premises by any party, pursuant to the ROFR.

Notwithstanding the foregoing, it is expressly agreed and acknowledged that the Tenant's option to purchase shall not be exercised by Tenant if Landlord has provided Tenant with notice of a Third Party Offer and, instead, the provisions of Section 21.1 of this Lease shall be the applicable provisions.

22. MISCELLANEOUS

22.1 Attorneys' Fees. In the event either party hereto brings or commences legal proceedings to enforce any of the terms of this Lease, the successful party shall then be entitled to receive from the other of said parties, in every such action commenced, a reasonable sum as attorneys' fees and costs, including all fees and costs incurred upon any appeals, to be fixed by the court in the same action.

22.2 No Partnership or Joint Venture. It is understood and agreed that this Lease is not intended to create any relationship between the parties hereto other than that of Landlord and Tenant, and neither party hereto shall represent to any third party that any relationship other than the foregoing exists.

22.3 Entire Instrument. All of the agreements heretofore and contemporaneously made by the parties are contained in this Lease, and this Lease cannot be modified in any respect except by a writing executed by Landlord and Tenant.

22.4 Successors and Assigns. This Lease shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of each party. The covenants made by Landlord in this Lease are covenants running with the land for the benefit of the Premises. Thus, all covenants made by Landlord in this Lease, whether affirmative or negative in nature, are intended to and shall bind Landlord and each successive owner of the Premises, and its respective heirs, successors and assigns.

22.5 Remedies Cumulative. The various rights, elections and remedies of Landlord and Tenant contained in this Lease shall be cumulative and no one of them shall be construed as exclusive of any of the others or of any right, priority or remedy allowed or provided for by law.

22.6 Waiver of Default. The waiver by either party of any default in the performance, or failure to insist on strict performance, by the other of any covenant contained herein shall not be construed to be a waiver of any preceding or subsequent default of the same or any other covenant contained herein.

22.7 Interpretation. The captions by which the paragraphs of this Lease are identified are for convenience only and shall have no effect upon the interpretation of this Lease.

22.8 Construction. Wherever the context so requires, the singular number shall include the plural, the plural shall refer to the singular, the neuter gender shall include the masculine and feminine genders, and the words "Landlord," "Tenant," and "person" shall include corporations, partnerships, limited liability companies, associations and individuals. If either party consists of more than one person, each such person shall be jointly and severally liable hereunder. If any

provision of this Lease shall be held to be invalid by a court, the remaining provisions shall remain in effect and shall in no way be impaired thereby. This Lease shall be governed by the law of the state in which the Premises are situated.

22.9 Good Faith. Whenever in this Lease the consent, approval or satisfaction of either party is required or a judgment or discretion is to be made or exercised, it is understood and agreed that such consent, approval or satisfaction will be made in good faith; provided that such good faith obligation shall in no event (a) require either party to take an action that contradicts either party's reasonable business judgment or (b) negates a contrary standard or right set forth in this Lease.

22.10 Exhibits. All exhibits to this Lease are incorporated herein by this reference.

22.11 Governing Law; Jurisdiction; Waiver of Jury Trial. This Lease and the rights and obligations of the Tenant and Landlord hereunder shall be construed in accordance with the internal substantive laws of the State of New York without regard to choice of law principles. Tenant and Landlord each consent to and hereby submit to the exclusive jurisdiction of any state or federal court located in the State of New York for the purpose of any legal or equitable relief arising out of or relating to this Lease. The exclusive venue for any legal or equitable relief arising out of this Lease shall be the state or federal courts located in the county where the Premises is located, and Tenant and Landlord each irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of the venue of any such proceeding brought in such a court and any claim that any such proceeding brought in such a court has been brought in an inconvenient forum. **TENANT AND LANDLORD EACH HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

22.12 Time of the Essence; Calculation of Dates and Time Periods. Time is of the essence of this Lease in all respects. Any time period providing for the performance of the parties' obligations herein which would otherwise end on a Saturday, Sunday or national holiday shall be extended to the next succeeding business day.

22.13 This Lease may be executed in a number of identical counterparts, each of which for all purposes is to be deemed as original, and all of which constitute, collectively, one agreement. Any party may execute this Lease by facsimile, portable document format, or other electronic means and the other party shall be entitled to rely on any counterpart executed and delivered by such electronic means as evidence that this Lease has been duly executed by such party.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be executed as of the Effective Date.

LANDLORD:

**GENESEE COUNTY INDUSTRIAL DEVELOPMENT
AGENCY D/B/A GENESEE COUNTY ECONOMIC
DEVELOPMENT CENTER**

By: _____
Name:
Title:

TENANT:

EDWARDS VACUUM LLC

By: _____
Name: _____
Title: _____

EXHIBIT A
Premises Legal Description

Review of Letter of Intent for Option Agreement for STAMP Property

Discussion: The GCEDC has received an Option Agreement with a right of first refusal from a potential project to lease approximately 88 acres for portions of tax parcel 10.-1-39.11, 10.-1-39.122, and 10.-1-43.12.

Fund Commitment: None.

Committee Action Request: Recommend approval of Letter of Intent for Option Agreement.



Offices

Indianapolis
Washington DC
San Francisco
Denver
Minneapolis

294 Grove Lane East
Suite 140
Wayzata, MN 55391

January 24, 2023

Genesee County Economic Development Center
c/o Chris Suozzi
99 MedTech Drive, Suite 106
Batavia, NY 14020

RE: Letter of Intent to Option +/- 87.7 Acres along Crosby Road.

Dear Mr. Suozzi:

The purpose of this letter is to describe general terms and conditions under which Scannell Properties, LLC, an Indiana limited liability company, or its nominee (the "**Buyer**"), would have an interest in purchasing certain property and any improvements thereon consisting of approximately 87.7 acres along Crosby Road (the "**Property**") (All or a portion of PID #s 10.-1-39.11, 10.-1-39.122, and 10.-1-43.12) (Exhibit "A" illustrates the property), located in the Town of Alabama, NY, from Genesee County Economic Development Center (the "**Seller**"). This letter is intended to provide a general description of a proposed transaction to facilitate further negotiations and the preparation of a definitive agreement for the phased purchase and sale of the Property (herein referred to as the "**Option Agreement**"). This letter is not intended to fully describe (i) all of the terms and conditions upon which Buyer is willing to purchase the Property, or (ii) all of the terms and conditions upon which Seller is willing to sell the Property. In this regard, please acknowledge by signing this letter in the space provided below your agreement on behalf of Seller to negotiate in good faith with Buyer with respect to the purchase and sale of the Property on the following terms:

- A. Term:** 1-year option term with four (4) separate one (1) year extension options. The option term (the "**Option Term**") will commence after the satisfaction of the inspection period referenced below.
- B. Term Extensions:** Year 2, 3, 4, and 5 of the Option Term are extension options. Buyer will have the option to extend the initial one (1) year term with ninety (90) days' notice for each one-year extension. Buyer will have the exclusive option to either extend or terminate the agreement for any reason in their sole discretion.
- C. Purchase Price:** Buyer shall be entitled to close on the Property in multiple phases which will be more particularly set forth in the Option Agreement. The purchase price for the Property (the "**Purchase Price**") will be based upon the final use of the tenant that will be occupying the building. The purchase price will be \$120,000 per useable acre, as determined by a final ALTA-ASCM survey of the Property, for end

users whose primary business is manufacturing. The purchase price will be \$75,000 per useable acre, as determined by a final ALTA-ASCM survey of the Property, for end users whose primary business is distribution. The definitions of these uses will be further defined in the lease.

“Usable” shall be defined as the gross acreage of the Property net of areas identified as drainage, wetlands, waters of jurisdiction, buffers to wetlands or waters of jurisdiction, right of way, or easements that cannot be developed (over, through, or under) affecting the Property.

This pricing is subject to Genesee County EDC funding and completing the necessary utility extensions to the east side of the site (Exhibit A) along Crosby Road.

D. Earnest Money:

\$50,000 to be deposited in escrow with First American Title Insurance Company within three (3) business days after execution of a mutually acceptable Option Agreement. Such deposit shall remain fully refundable throughout the Term of the Option Agreement.

E. Option Consideration:

Buyer will make the following option consideration payments for the respective year in the Option Term.

Year 1: None

Year 2: \$10,000.

Year 3: \$20,000 unless Buyer has acquired over 10 acres through the End of Year 2 in which case such option consideration shall be reduced to \$10,000.

Year 4: \$20,000 unless Buyer has acquired over 20 acres through the End of Year 3 in which case such option consideration shall be reduced to \$10,000.

Year 5: \$20,000 unless Buyer has acquired over 75 acres through the End of Year 4 in which case such option consideration shall be reduced to \$10,000.

All option consideration will be paid at the commencement of the applicable year of the Option Term and will be applicable to any purchase.

F. Seller Termination:

If the Buyer has not closed on at least 20 acres within the first two years of the Option Term, the Seller will have an option to terminate the Option Agreement at any time after Year 2 until such time that Buyer has closed on at least 20 acres. If Seller terminates the Option Agreement the Earnest Money will be returned to Buyer. Notwithstanding the foregoing, if Buyer and Seller have a closing scheduled that they are proceeding to in accordance with the Option Agreement such termination right shall not apply.

G. Option Agreement:

Buyer shall cause a draft of the Option Agreement to be prepared and delivered to Seller within ten (10) business days after the execution of this letter. Buyer and Seller shall work in good faith to negotiate and execute the final Option Agreement based upon the terms of this letter within twenty (20) days after the execution of this letter.

H. Inspection Period:

Buyer will have a one hundred eighty (180) day inspection period following the execution by both Buyer and Seller of the Option Agreement (the "**Inspection Period**") to satisfy the Conditions (as listed below) prior to the commencement of the Option Term. If the Buyer determines, prior to the expiration of the Inspection Period, that the Conditions have not been satisfied, in its sole discretion, then the Buyer will have the right to terminate the Option Agreement without liability and receive a full refund of the Earnest Money.

I. Extensions:

Buyer shall have the right to extend the Inspection Period for up to two (2) additional ninety (90) day extensions with the deposit of an additional \$5,000.00 into escrow for each extension beyond the initial one hundred eighty (180) day period. Any such additional deposit for any such Extension will be non-refundable in favor of the Seller, but will remain applicable to any Option Consideration owed to Seller.

J. Conditions to Commence:

Buyer's obligations to proceed under the Option Agreement shall be subject to satisfaction, in Buyer's sole discretion and at Buyer's sole cost, of certain conditions (the "**Conditions**"), including the following, which Conditions will be described in greater detail in the Option Agreement: (i) Title; (ii) ALTA Survey; (iii) Geotechnical and/or hydrological inspections; (iv) Environmental

inspections, including wetlands, habitats of native species, and archaeological inspections; (v) All zoning, permits and approvals, including subdivision, if necessary; (vi) Economic feasibility; (vii) Availability of utilities to Buyer's specifications; and (viii) Adequate access and curb cuts.

K. Property Information:

Seller will provide Buyer with copies of all information in its possession or under its control concerning the Property, including, without limitation, copies of any existing title policies, surveys, recorded or unrecorded declarations of covenants, etc., environmental studies and/or reports, real estate tax bills, geotechnical reports, plans, specifications and/or "as-built" drawings for any improvements on the Property, copies of any permits or approvals pertaining to the Property, copies of any leases, Tenant, copies of all operating manuals, copies of any warranties pertaining to any improvements, copies of all maintenance/service contacts, and any legal notices received by Seller from any governmental authority or private authority under covenants. Seller to provide relevant environmental background information.

L. Representations and Warranties

Seller will agree to make standard representations and warranties concerning: (i) Rights to possession; (ii) Pending or, to Seller's knowledge, threatened condemnation; (iii) Pending or, to Seller's knowledge, threatened assessments; (iv) Seller's knowledge as to compliance with any applicable legal requirements; (v) Access and availability of utilities; (vi) Authority to sell the Property free and clear of all third-party rights; and (vi) Seller's knowledge as to environmental compliance.

M. Brokers:

The Buyer is not being represented by a broker in connection with this transaction. The Seller is not being represented by a broker in connection with this transaction. Upon Closing, the Seller shall pay all brokerage fees and shall indemnify and hold Buyer harmless from any liability with respect thereto.



If you agree with the terms outlined in this letter, please email a signed copy of this letter to Jack Kelly. Delivery in .PDF format by e-mail to JackK@scannellproperties.com would be acceptable. If not accepted and executed by Seller and returned to Buyer prior to 5:00 p.m. on the 10th day following the date of this letter, the proposal described in this letter will expire.

This letter will not be construed as an obligation by Seller to transfer the Property or by Buyer to purchase the Property. The parties acknowledge and agree that the terms described herein will be incorporated into a definitive Option Agreement and that until such a definitive Option Agreement is executed and delivered by both Buyer and Seller, neither party shall have any rights or obligations with respect to the purchase and sale of the Property except as provided herein. Buyer and Seller each agree to pursue the execution of a definitive Option Agreement in good faith, based upon the terms and conditions outlined in this letter. Either party may terminate negotiations on this transaction without liability or obligation to the other party hereunder until such time as a definitive Option Agreement is executed as contemplated herein. Notwithstanding the foregoing, Seller covenants and agrees that, during the period following the date of execution of this letter, that it will not market, offer for sale or attempt to sell the Property to any other prospective buyer, so long as the Buyer is negotiating the terms of the definitive Option Agreement in good faith and is otherwise in compliance with the terms of this letter.

SCANNELL PROPERTIES, LLC

By: Jack Kelly
Printed: Jack Kelly
Title: Development Associate
Phone: 612.801.9311
E-mail: JackK@scannellproperties.com

AGREED TO AND ACCEPTED this _____ day of _____, 2023.

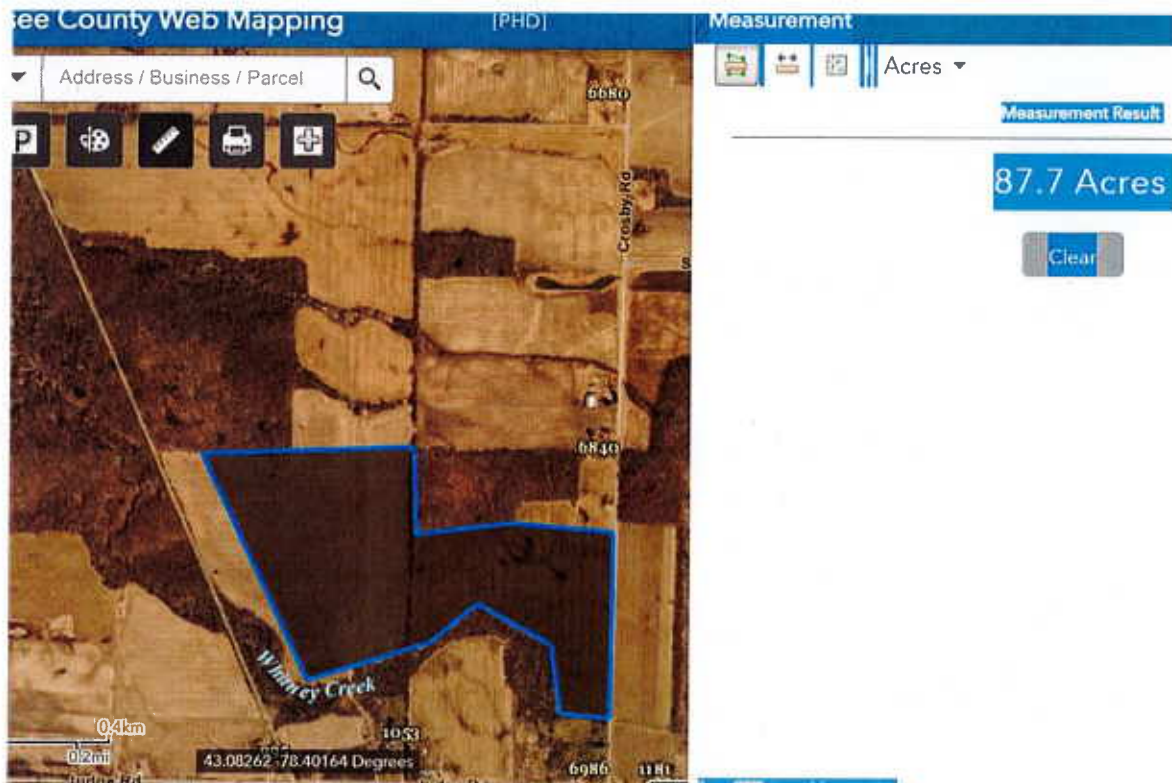
GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER

By: _____
Printed: _____
Title: _____
Phone: _____
Email: _____

3c

87

EXHIBIT "A"
PROPERTY BELOW IN SHADED AREA
(All or a portion of PID #s 10.-1-39.11, 10.-1-39.122, and 10.-1-43.12)



AUTHORIZING RESOLUTION

(Purchase and Sale of Real Property – Scannell Properties, LLC)

A regular meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center was convened on Thursday, _____, 2023.

The following resolution was duly offered and seconded, to wit:

Resolution No. ___/2023 - _____

RESOLUTION OF THE GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY D/B/A GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER (THE “AGENCY”) AUTHORIZING (i) THE OPTION TO PURCHASE CERTAIN AGENCY-OWNED REAL PROPERTY GRANTED TO SCANNELL PROPERTIES, LLC (THE “COMPANY”), OR ITS PERMITTED ASSIGNS (ii) THE EXECUTION OF AN OPTION TO PURCHASE BY AND BETWEEN THE AGENCY AND THE COMPANY.

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 565 of the Laws of 1970 of the State of New York, as amended (hereinafter collectively called the “Act”), the **GENESEE COUNTY INDUSTRIAL DEVELOPMENT AGENCY d/b/a GENESEE COUNTY ECONOMIC DEVELOPMENT CENTER** (the “Agency”) was created with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act; and

WHEREAS, among other property, the Agency owns approximately 256.9 acres of vacant land located at Crosby and Judge Roads, in the Town of Alabama, Genesee County, New York designated with tax account numbers 10.-1-39, 10.-1-39.122 and 10.-1-43.12 (together, the “Land”); and

WHEREAS, the Company and its permitted assigns has an interest in the future purchase of a portion of the Land (87.7± acres) in connection with a certain project to be undertaken by the Company (the “Project”) thereon pursuant to the terms and conditions of that certain Letter of Intent to Option dated January 24, 2023 from the Company to the Agency (the “Option LOI”), a copy of which is attached hereto as Exhibit A, which Option LOI contemplates the Agency and the Company entering into a definitive agreement for the phased purchase and sale of the Land pursuant to an Option Agreement (the “Option”); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and 6 N.Y. C.R.R. Part 617 (collectively, “SEQR”) the Agency, as lead agency pursuant to SEQR, has conducted a “coordinated review” (as such term is defined in SEQR) of the Project. The Agency, having reviewed the materials presented by the Company, including, but not limited to, the Full Environmental Assessment Form, the Environmental Information and the STAMP Environmental Record (each as defined in the hereinafter defined Negative Declaration), issued a Negative Declaration on February ___, 2023 (the “Negative Declaration”), determining that the Project does

not pose a potential significant adverse environmental impact not previously analyzed by the Agency in the STAMP Environmental Record. A copy of the Negative Declaration issued by the Agency is attached hereto as Exhibit B; and

WHEREAS, the Agency desires to adopt a resolution authorizing the execution of the Option LOI, the Option, and other related documents in connection with the Option (the "Closing Documents"); and

WHEREAS, the Option LOI in connection therewith has been negotiated and is presented to this meeting for approval and execution.

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

Section 1. The above recitals are incorporated herein and made a part hereof.

Section 2. The Agency is hereby authorized to execute the Option LOI and the Option contemplated therein with regard to the Land.

Section 3. The Chairman, Vice Chairman, President/CEO and/or Senior Vice President of Operations of the Agency are hereby authorized to execute the Option LOI and the Option contemplated therein and the Closing Documents in connection therewith.

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

Section 5. Harris Beach PLLC shall be entitled to attorney fees, exclusive of third party costs (i.e. recording costs, survey, etc.) based upon time and billing and subject to no title, governmental approval and/or environmental issues and no litigation arising in connection with the phased purchase and sale of the Land pursuant to the Option LOI and the Option contemplated therein.

Section 6. These Resolutions shall take effect immediately.

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

	<i>Yea</i>		<i>Nay</i>		<i>Absent</i>		<i>Abstain</i>	
Peter Zelif	[]	[]	[]	[]
Matthew Gray	[]	[]	[]	[]
Paul Battaglia	[]	[]	[]	[]
Craig Yunker	[]	[]	[]	[]
Todd Bender	[]	[]	[]	[]
Chandy Kemp	[]	[]	[]	[]
Marianne Clattenburg	[]	[]	[]	[]

The Resolutions were thereupon duly adopted.

CERTIFICATION

(Purchase and Sale of Real Property – Scannell Properties, LLC.)

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

I, the undersigned Secretary of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, DO HEREBY CERTIFY:

That I have compared the annexed extract of minutes of the meeting of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (the "Agency"), including the resolution contained therein, held on _____, 2023, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

I FURTHER CERTIFY, that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with such Article 7.

I FURTHER CERTIFY, that there was a quorum of the members of the Agency present throughout said meeting.

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

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Agency this _____ day of _____, 2023.

Secretary

EXHIBIT A

Option LOI

(Attached Next Page)

EXHIBIT B

Negative Declaration

(Attached Next Page)

\$8 million approval:

Phillips Lytle 2023 additional contract for STAMP related work

Discussion: Phillips Lytle has prepared a proposal to cover the scope of work for the first six months of 2023 as it relates to Tech Team support for the off site sewer permitting and wetland permitting, the wastewater treatment facility permitting, and force main installation.

Fund Commitment: Not to exceed \$100,000 to be included in the \$8 million.

Board Action Request: Recommend approval to the full Board of Phillips Lytle contract not to exceed \$100,000.

Phillips Lytle 2023 additional contract for obtaining easements

Discussion: Phillips Lytle has prepared a proposal to cover the scope of work related to assistance in obtaining up to ten easements for the force main installation.

Fund Commitment: Not to exceed \$90,000.

Board Action Request: Recommend approval to the full Board of Phillips Lytle contract not to exceed \$90,000.



Phillips Lytle LLP

**VIA EMAIL
PRIVILEGED & CONFIDENTIAL**

January 27, 2023

Mark A. Masse
Senior Vice President of Operations
Genesee County Economic Development Center
99 MedTech Drive, Suite 106
Batavia, NY 14020

Re: Proposed Supplement to Engagement Letter for STAMP Project -
Scope of Work for STAMP Project Support for the First Half of 2023 and Eminent Domain Assistance

Dear Mark:

Thank you very much for the opportunity to continue to assist the Genesee County Economic Development Center (and Genesee Gateway Local Development Corporation) with the STAMP Project. The purpose of this letter is to supplement our existing engagement letters (collectively, the "Engagement Letter") relating to STAMP. This supplement describes generally work for STAMP Project Support for the first half of 2023 as well as legal assistance relating to Eminent Domain Procedure Law. Estimated legal fees for same are set forth on the attached "Updated Scope of Work". Upon receipt of your approval, we will bill you on a monthly basis for such work as fees are incurred, consistent with our existing engagement. As described on the attached "Updated Scope of Work", the estimated legal fees assume that litigation is not pursued by the property owners with respect to each easement taken.

If you are in agreement with the foregoing, please confirm same by signing and returning a copy of this letter to me. Of course, if you have any questions, please let me know. Thanks again.

Sincerely,

Phillips Lytle LLP

By */s/ Douglas W. Dimitroff*

Douglas W. Dimitroff, Esq.

cc: Adam S. Walters, Esq.
Matthew J. Fitzgerald, Esq.
Steve Hyde
Lezlie Farrell

Genesee County Economic Development Center has reviewed and agreed to the above terms of engagement of Phillips Lytle LLP for the purposes and to the extent described in this letter.

Genesee County Economic Development Center

By _____
Mark A. Masse, Senior Vice President of Operations

Date _____, 2023

ATTORNEYS AT LAW

DOUGLAS W. DIMITROFF, PARTNER DIRECT 716 847 5408 DDIMITROFF@PHILLIPSLYTLE.COM

ONE CANALSIDE 125 MAIN STREET BUFFALO, NY 14203-2887 PHONE 716 847 8400 FAX 716 852 6100
NEW YORK: ALBANY, BUFFALO, CHAUTAUQUA, GARDEN CITY, NEW YORK, ROCHESTER | OHIO: CLEVELAND | WASHINGTON, DC
CANADA: WATERLOO REGION | PHILLIPSLYTLE.COM

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97

STAMP Project - 01/27/2023 Supplement to Phillips Lytle Engagement Letter
Additional "Updated Scope of Work"
STAMP Project Support - 1st Half of 2023
STAMP Eminent Domain Assistance

1. Additional STAMP Support for 1st Half of 2023: GCEDC is involved in various review and approval processes for proposed development at STAMP including construction of the Edwards facility, the Scannell Facilities, the on-site waste water treatment plant and force main, and the new water main from Niagara County. These projects require approvals from various governmental agencies including the U.S. Army Corps of Engineers, the Niagara County Water District, and the New York State Department of Environmental Conservation. In addition, the GCEDC is engaged in on-going consultation to the Tonawanda Seneca Nation and must fulfill various obligations pursuant to a settlement agreement with the Nation related to the Plug Power Project. Phillips Lytle will represent and assist GCEDC relative to the foregoing matters on an as needed basis.

Est. Legal Fees: \$100,000*

* the foregoing scope of work and fees do not include assistance with any formal challenges to or litigation relating to the STAMP Site.

2. Eminent Domain Assistance: GCEDC is evaluating proceeding with an eminent domain taking of certain easements for the construction of the STAMP force main. GCEDC currently requires ten (10) additional easements (5 in Genesee County; 5 in Orleans County). This project would require compliance with New York Eminent Domain Procedure Law, including holding a public hearing, drafting a written determination and findings concerning the taking, obtaining necessary taking orders, and obtaining a determination as to the amount owed to each landowner as a result of the takings. Phillips Lytle will represent and assist GCEDC relative to the foregoing matter on an as needed basis.

Est. Legal Fees for obtaining ten (10) easements: \$70,000 - \$90,000*

* the foregoing scope of work and fees assumes that property owners for each parcel do not commence litigation to challenge the supporting written determination and do not contest the proposed compensation to be paid to them after entry of the taking orders. In the event that a property owner, or property owners, commence(s) a challenge, to challenge the determination or to contest the issue of compensation, we estimate that our fees would increase significantly, and could potentially exceed a total of \$300,000. The scope of work does not include fees of an outside appraiser to provide an initial valuation of each easement.

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98

STAMP Payment for easements

Discussion: In conjunction with the installation of the force main from the STAMP site to the direct discharge point at Oak Orchard Creek, there are a number of easements needed. We are seeking approval of the following easements:

1. Permanent Easement 10 - \$675
2. Permanent Easement 15A, 15B and Temporary Easement 23 – \$2,875
3. Temporary Easement 29 - \$500
4. Permanent Easement 17 - \$850

Fund Commitment: \$4,900 from the \$33 million.

Board Action Request: Approval of payment of \$4,900 to the holders of the easement numbers identified above.