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COUNTY OF ERIE

MARK C. POLONCARZ

COUNTY EXECUTIVE

July 9, 2013

Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Memorandum of Understanding – New ECC Academic Building

Dear Honorable Members:

Enclosed please find a memorandum and proposed resolution concerning execution of a Memorandum of Understanding between Erie County and Erie Community College (ECC). The document pertains to the new academic building for ECC.

Should your honorable body require further information, I encourage you to contact Thomas J. Dearing at the Department of Environment and Planning. Thank you for your consideration on this matter.

Sincerely yours,

Mark C. Poloncarz, Esq.
Erie County Executive

MCP/cw
Enclosure

cc: Maria R. Whyte, Commissioner

MEMORANDUM

To: Honorable Members of the Erie County Legislature
From: Environment and Planning
Re: Memorandum of Understanding – New ECC Academic Building
Date: June 27, 2013

SUMMARY

It is recommended that the County Legislature approve the attached resolution authorizing the County Executive to enter into a Memorandum of Understanding (MOU) with Erie Community College (ECC). The MOU outlines the role and responsibilities of both parties, timeline, and other matters associated with the construction of a new academic building for ECC.

FISCAL IMPLICATIONS

The MOU is a non-binding agreement and does not involve a formal commitment of funds. It does refer to the use of \$7.5 million in County funds set aside for building construction in 2012. The Legislature approved the commitment of County funds via resolution Comm. 8E-21 (2012), dated May 10, 2012.

REASONS FOR RECOMMENDATION

The MOU ensures clarity between the County and ECC relative to the many tasks that must be undertaken during the construction process. It avoids confusion about who is responsible for what and establishes a general timeline for completion.

BACKGROUND INFORMATION

The recently completed ECC Program Needs Analysis and Space Utilization Report prepared by JMZ Architects recommended construction of a new building at ECC North. It would provide state of the art space for the College's science, technology, engineering, and math programs. State, County, and ECC funds have been committed totaling \$30,000,000 for building construction.

CONSEQUENCES OF NEGATIVE ACTION

Should approval of the attached resolution not occur, the project would be delayed indefinitely.

STEPS FOLLOWING APPROVAL

The MOU will be executed by the County Executive and used as a guiding document during the design and construction of the new building.

**A RESOLUTION SUBMITTED BY:
ENVIRONMENT AND PLANNING**

**RE: Memorandum of Understanding –
New ECC Academic Building**

WHEREAS, Erie Community College and Erie County are desirous of working cooperatively to construct a new academic building for Erie Community College; and

WHEREAS, the building will provide classroom, laboratory, and ancillary space for science, technology, engineering, and math (STEM) programs; and

WHEREAS, the preferred location for the STEM building is on the ECC North Campus as recommended in the Program Needs Assessment and Space Utilization Report prepared by JMZ Architects in May, 2013; and

WHEREAS, construction of the building requires completion of numerous tasks ranging from compliance with the New York State Environmental Quality Review regulations to engaging a qualified project architect; and

WHEREAS, ECC and Erie County are desirous of entering into a non-binding Memorandum of Understanding (MOU) which describes the responsibilities of both parties, estimated timeline, and other matters relating to the project; and

WHEREAS, said MOU is attached to this resolution.

NOW, THEREFORE, BE IT

RESOLVED, that the County Executive is hereby authorized to execute a non-binding MOU with ECC regarding construction of a new academic building for ECC; and be it further

RESOLVED, that the County Executive is hereby authorized to execute minor adjustments to the attached MOU where and if necessary; and be it further

RESOLVED, that certified copies of this resolution shall be forwarded to the County Executive's Office; the Comptroller's Office; the Director of the Division of Budget and Management; the County Attorney; the Commissioner of the Department of Environment and Planning, Rath Building, 10th Floor; and Jack Quinn, President, Erie Community College, 121 Ellicott Street, Buffalo, New York 14203.

ATTACHMENT

MEMORANDUM OF UNDERSTANDING BETWEEN ERIE COMMUNITY COLLEGE AND COUNTY OF ERIE

This memorandum, which is entered into this ____ day of _____, 2013 between the COUNTY OF ERIE (the "County"), and ERIE COMMUNITY COLLEGE ("ECC") sets forth the principal understandings of the parties and the actions planned by each regarding construction of an academic building for ECC.

I. INTRODUCTION

A. It is the desire of the County and ECC that the educational needs of County residents continue to be served by ECC and that programs offered reflect the workforce skills required by area employers.

B. ECC has been an important part of the region's education system for 65 years, having evolved from former New York State Institute of Applied Arts and Sciences of Buffalo.

C. The County and ECC maintain a cooperative relationship concerning budgeting, capital improvements, governance and other matters important to the furtherance of ECC's mission.

D. In 2011 ECC, the County, and the State University of New York ("SUNY") agreed to provide \$30,000,000 for construction of a new academic building on the North Campus. New York State agreed to provide \$15,000,000 and the County and ECC each committed to providing an equal share of the balance.

E. Prior to proceeding with building design, the County and ECC agreed in 2012 that a detailed program needs analysis and space utilization report for the College as a whole was necessary to better inform the parties concerning site location and program needs. The cost of the approximately \$185,000 study was equally shared by the County and College.

F. In October, 2012 the County engaged JMZ Architects to undertake the program and space report. The effort was overseen by a Steering Committee comprised of ECC, County, and a private sector representative.

G. JMZ planners worked collaboratively with representatives from the Western New York Regional Economic Development Council ("REDC") and their consultants who were assembling workforce needs data and preparing the Buffalo Billion report. This insured that the recommendations contained in the ECC report were in alignment with those brought forward by area economic development organizations.

H. The Brookings Institution and McKinsey & Company, who served as consultants for the REDC determined that workforce development is one of the areas three highest priorities for economic development. When the REDC accepted the findings of its consultants it noted that manufacturing is the third largest sector of the local economy by the size of the workforce with approximately 55,000 direct employees and another 6,000 to 10,000 support employees in this sector, that it is expected that 17,000 of these employees will retire by the year 2020 and that there is a need to provide training to replace the retiring employees. It also noted that there are an insufficient number of training opportunities currently available, particularly in advanced manufacturing to meet these needs. Failure to properly address the need for highly trained workers jeopardizes this important sector of the economy.

I. As a part of its response to the workforce needs identified in its studies, the REDC and New York State announced on May 2, 2013 plans to construct a Regional Workforce Advancement Center ("RWAC") in the City of Buffalo. The RWAC will be part of a continuum of training and educational programs stretching from high school or GED to four year and post graduate education. ECC and the RWAC will, working together, fill important needs for students who do not plan to seek a four year bachelor's degree or to only do so after working for a time.

J. JMZ issued their final report on May 24, 2013 and recommended that the new building be located at ECC North to provide needed space for Science, Technology, Engineering, and Math (STEM) programs.

K. The JMZ report contained numerous other programming proposals for consideration by ECC to insure that the College maintains a strong role in workforce development, including recommendations for improved programing at all three campuses.

L. A new STEM Building at ECC North in combination with new certificate offerings and programs as well as furtherance of a Regional Workforce Advancement Center in the City of Buffalo as proposed by REDC will provide a comprehensive strategy for workforce training in the region.

M. The parties hereto desire to move forward with the necessary reviews, permitting, financing, design, and other requirements associated with constructing the new academic building.

II. ECC NORTH SITE – PREFERRED ALTERNATIVE

The parties agree to classify the ECC North location, identified conceptually in the May 24, 2013 JMZ report, as the preferred alternative (see Attachment 1) with an initial size of approximately 56,700 gross square feet with a possible future expansion to an approximate total of 111,000 gross square feet. The parties understand that final approval of the building location, its size and configuration cannot occur until full compliance with the provisions of the New York State Environmental Quality Review Act has been completed.

III. BUILDING IMPROVEMENTS

A. The cost of constructing the Building (“Construction Work”), including the Program Needs Analysis and Space Utilization Assessment, pre-construction work, environmental analyses, design, engineering, management, and other soft costs is estimated to be \$30,000,000 (the “Project Budget”). The estimated cost breakdown of the Construction Work is generally set forth on Attachment 2 attached hereto. The parties shall contribute capital to pay for work put in place toward completion of the Construction Work, pro-rata to their fifty percent share of the investment which is agreed to be as follows:

County:	\$7,500,000
ECC:	\$7,500,000

B. The parties understand that the balance of funds needed to complete the project will be provided by New York State on a reimbursable basis up to \$15,000,000.

C. Following any and all necessary approvals by the Erie County Legislature and ECC Board of Trustees, the County and ECC will make their pro rata shares of funding available to a County account to fund all work related to the completion of the Construction Work. It is understood that the County shall be responsible for all necessary reimbursement requests to the State University of New York Construction Fund as pertains to the New York State share of the Construction Work.

IV. MISCELLANEOUS CONDITONS

A. The Construction Work shall be performed in accordance with all applicable laws (including, without limitation, the Americans with Disabilities Act), and will comply with the affirmative action plan (including minority and women owned business goals) agreed upon by SUNY, the County and ECC. The party responsible for any given item of the Construction Work shall be responsible for ensuring such aforementioned compliance.

B. Use, hours of operation, insurance, security, vendors, maintenance and other functions associated with the building’s daily operation and management shall be the responsibility of ECC.

V. BUILDING REVIEW COMMITTEE

The County and ECC will form a Building Review Committee (the “Committee”). The Committee shall be comprised of members appointed by each of the parties hereto. The Committee shall meet on a regular basis during all phases of construction, but at least bi-monthly, to discuss progress and regulatory and legislative matters affecting the building’s construction. The Committee or a subcommittee thereof shall serve as the review committee for the purposes of recommending project management, environmental, design, and construction management consultants to the County.

VI. ROLE OF THE COUNTY

The County shall be the lead party responsible for the following construction related tasks:

- A. Establishing appropriate capital budget accounts for disbursement of County and ECC funds.
- B. Selection of and contracting with qualified project management, environmental, architectural/engineering, and construction management firms necessary to complete all required environmental reviews, plans/ specifications for the new building, and construction oversight.
- C. Preparation and submittal of bi-monthly reports to the ECC Board of Trustees and Erie County Legislature.
- D. Preparation and submittal of reimbursement requests to the State University of New York – Construction Fund.
- E. Obtaining all necessary permits, including building permits associated with the building.
- F. Bidding, award, and contracting with construction trade firms qualified to undertake the required building elements.
- G. Management of any and all other components of the Construction Work including but not limited to tasks associated with Project Labor Agreements, MBE/WBE, Affirmative Action, Local Workforce Participation, Apprenticeship Programs, and LEED requirements.

VII. ROLE OF THE COLLEGE

ECC shall be the lead party responsible for the following construction related tasks:

- A. Assemble and provide to the County available space, enrollment, and other data needs necessary for proper building design.
- B. Provide to the County information concerning desired building layout, furnishings, interior signage and other related building elements.
- C. Serve on all committees including the Building Review Committee.
- D. In conjunction with the County Executive, review recommendations from the Building Review Committee concerning selection of an environmental analysis firm, building architect, and if necessary, project management company.

VIII. PROJECT MANAGEMENT

With respect to the Construction Work, the County shall have the right to utilize a Project Management Firm/Agency such as, but not limited to the Dormitory Authority of the State of New York (DASNY) in a manner similar to that which occurred during the construction of the ECC Flickinger Center.

IX. APPROVAL OF CONSTRUCTION WORK

The County shall have the right to approve all construction bids, documents and the construction schedule.

X. ENVIRONMENTAL MATTERS

The County shall be designated as the lead agency under the New York State Environmental Quality Review Act ("SEQRA") and responsible for coordinating review of all permits and approvals required under SEQRA, and any applicable state or local building codes and zoning ordinances. The County shall also be the responsible party to coordinate any non-environmental permitting, regulatory and construction matters.

XI. COMPETITIVE BIDDING

All Construction Work shall be subject to the competitive bidding rules of the County, including appropriate provisions for the participation of qualified MBE/WBE subcontractors. The County will develop an MBE/WBE Plan for the Construction Work that is similar in scope to the MBE/WBE plan for Ralph Wilson Stadium.

XII. CALENDAR OF ACTIVITIES

Attachment 3 attached hereto reflects the calendar of key dates and activities necessary for each of the parties to secure appropriate approvals for the commitments they intend to make. The information noted on the calendar reflects likely tasks to be undertaken and estimated completion dates. Where appropriate certain tasks could be combined to expedite the project.

XIII. NON-BINDING AGREEMENT

The foregoing does not constitute a binding agreement between the County and ECC because certain (a) studies, including environmental studies, must be completed, b) approvals and consents must be obtained and (c) agreements containing terms and conditions not mentioned herein must be negotiated and executed. Nothing herein shall be construed as committing the County or ECC to approve the construction, equipping or financing of the Construction Work and other construction matters contemplated hereunder until such time as all of the requirements of SEQRA have been satisfied. Further, the foregoing does not constitute a final agency action for the purposes of the SEQRA and all relevant environmental laws will be complied with as appropriate. Nevertheless, this memorandum will serve as the basis upon which all of the parties intend to proceed to expend time and resources to obtain such necessary approvals and

consents and to negotiate and execute the agreements required to accomplish the tasks outlined herein.

XIV. COUNTY AND ECC ACTION OBLIGATIONS

A. Upon execution of this Agreement, the County and ECC shall use reasonable efforts to secure all legislative, executive and regulatory approvals and budgetary allocations from, and similar actions of, the applicable governmental authorities as are necessary to meet the County's and ECC's respective obligations hereunder, including the State of New York. It is anticipated that construction will commence not later than September 2015.

XV. COUNTERPARTS

This Agreement may be executed in counterparts, and each counterpart, once executed, shall have the efficacy of a signed original. True and correct copies of signed counterparts may be used in place of originals for any purpose. A facsimile or a PDF copy of an original signature transmitted to the other party is effective as if it was an original.

COUNTY OF ERIE

ERIE COMMUNITY COLLEGE

By: _____
Mark Poloncarz/Richard Tobe
County Executive/Deputy County Executive
Dated: _____

By: _____
Jack Quinn
President
Dated: _____

Approved as to Content

Approved as to Form

By: _____
Maria R. Whyte, Commissioner
Department of Environment and Planning
Dated: _____

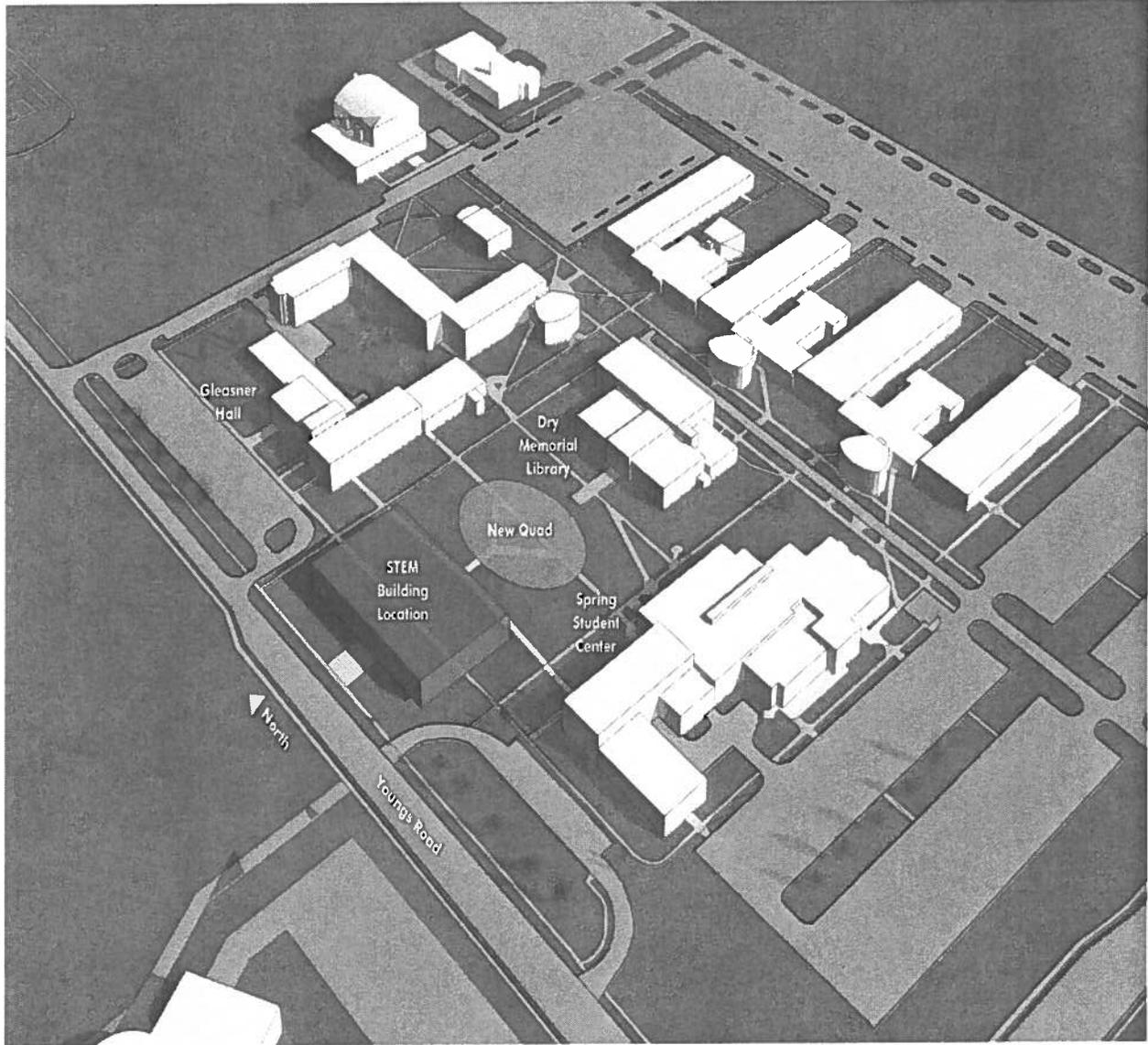
By: _____
Kristen M. Walder
Assistant County Attorney
Dated: _____

Doc. No.: _____

ATTACHMENT 1

PREFERRED BUILDING LOCATION

ECC North Campus



ATTACHMENT 2

ESTIMATED BUILDING PROGRAM COST

STEM Building – Full Program

67,320	NASF
1.65	Grossing Factor
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111,000	GSF
\$380	per Square Foot
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\$42,180,000	Raw Building Construction Cost
\$2,109,000	5% Site Work
\$6,327,000	15% Construction Contingency
\$2,952,600	7% Design Fee
\$2,530,800	6% Escalation to Mid-Point of Construction(2015)
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\$56,099,400	
\$2,800,600	FF&E
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\$58,900,000	Total Project Cost

STEM Building – Reduced Program

34,360	NASF
1.65	Grossing Factor
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56,700	GSF
\$380	per Square Foot
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\$21,500,000	Raw Building Construction Cost
\$1,075,000	5% Site Work
\$3,225,000	15% Construction Contingency
\$1,505,000	7% Design Fee
\$1,290,000	6% Escalation to Mid-Point of Construction (2015)
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\$28,595,000	
\$1,405,000	FF&E
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\$30,000,000	Total Project Cost

ATTACHMENT 3

CALENDAR

The following items and corresponding completion dates are intended to serve as a general guide. They are not binding and where appropriate certain items might be combined where possible to expedite the project.

1. ECC Submittal to SUNY – Community College Capital Project Finance Application for Design Costs – June, 2013.
2. Acceptance of Building Review Committee’s Recommendation RE: Consultant for Environmental Review (County Executive and ECC Board of Trustees) – August, 2013.
3. Approval of Contract with Consultant for Environmental Review and Establishment of Capital Budget Account (Action by Erie County Legislature Required) – September, 2013.
4. Completion of Environmental Review (Action by ECC Board of Trustees and Erie County Legislature) – March, 2014.
5. Acceptance of Building Review Committee’s Recommendation RE: Project Manager, if necessary (County Executive and ECC Board of Trustees) – April, 2014.
6. Selection of and Contract with Project Manager, if necessary (Action by Erie County Legislature Required) – May, 2014.
7. Acceptance of Building Review Committee’s Recommendation RE: Building Architect/Engineer and Construction Manager (County Executive and ECC Board of Trustees) – June, 2014.
8. Selection of and Contract with Building Architect/Engineer, Construction Manager (Action by Erie County Legislature Required) – July, 2014.
9. ECC Submittal to SUNY – Community College Capital Project Finance Application for Construction Cost – June, 2014 or before.
10. Design Complete and Project Bidding Occurs – July, 2015.
11. Selection of and Agreement with Appropriate Building Contractors (Action by Erie County Legislature Required) – September, 2015.
12. Construction Substantially Complete – December, 2016.
13. Building Opens – Semester Beginning January, 2017.