

## AGREEMENT

THIS AGREEMENT made the 1<sup>st</sup> day of February, 2017 by and between the CITY OF HUDSON INDUSTRIAL DEVELOPMENT AGENCY hereinafter (the "Agency") a public benefit corporation organized and existing under the laws of the State of New York, with a principal mailing address at 520 Warren Street, Hudson New York 12534; and the COLUMBIA ECONOMIC DEVELOPMENT CORPORATION hereinafter ("CEDC"), a local development corporation organized and existing under the laws of the State of New York with a principal place of business at 4303 Route 9, Hudson, New York 12534-2415.

### WITNESSETH;

WHEREAS, the New York State Industrial Development Agency Act, being Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (hereinafter referred to as the "enabling Act") authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish real and personal property, whether or not now in existence or under construction, which shall be suitable for, among others, manufacturing, warehousing, research, commercial or industrial purposed, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living; and

WHEREAS, pursuant to and in accordance with the provisions of Chapter 1066 of the 1969 laws of the State of New York, CEDC was duly incorporated as a local development corporation; and

WHEREAS, pursuant to and in accordance with the provisions of Chapter 677 of the Laws of the State of New York, the Agency was duly incorporated as an industrial development agency governed by Title 1 of Article 18-A of the General Municipal Law; and

WHEREAS, the Agency desires to avail itself of the administrative support services available from CEDC to further the aforementioned objectives, goals and purposes of the Agency;

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the Agency and CEDC agree as follows:

1. The Agency hereby retains the services of CEDC to perform certain administrative functions for the Agency, as of February 1, 2017 (the "Commencement Date" for the term set forth herein. Such services shall include, but are not necessarily limited to, (a) the

dissemination of applications for financing or other assistance from the Agency to appropriate interested parties, and the receipt and review of completed applications for such financing or other assistance; (b) assisting the Agency with an update of its current Payment in Lieu of Tax uniform policy, its form of application and forms of agreements for financial assistance, and its procedures for review of applications for financial assistance; (c) conducting regular meetings of the Agency and disseminating appropriate information to Agency members for consideration at such regular meeting; (d) coordination of projects which are being considered for financing or other assistance from the Agency in accordance with Agency policies and/or applicable law, including assistance with cost benefit review; (e) preparation and filing of reports filed with the Office of the State Comptroller of the State of New York and the Authorities Budget Office including generation of financial statements; (f) monitoring compliance by projects receiving Agency financial assistance with reporting and transaction document requirements; and (g) promoting and encouraging the Agency's purposes and providing public and media relations for the Agency. The CEDC will provide written reports to the Agency at least quarterly regarding the nature and scope of activities carried out during the prior period including the status of any pending applications. The CEDC will work in cooperation with any other consultants engaged by the Agency from time to time with respect to the operations of the Agency.

2. For such service, the Agency shall pay to CEDC the sum of FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00) for a term of 6 months, commencing on the Commencement Date, payable in installments on a quarterly basis as a base fee. In addition, if there are Agency projects closed during the term of the agreement that result in receipt by the Agency of a payment or payments of a project fee or fees during such term, CEDC shall receive additional compensation equivalent to 10% of such project fee(s), up to the maximum additional amount of \$10,000 as additional compensation during any one year period. The parties may agree in writing to renew the term of this agreement for an additional one year period at a base fee of \$10,000 per annum, payable in installments on a quarterly basis, plus additional compensation at 10% of project fees up to the maximum additional amount of \$10,000 during any one year period, on the same terms and conditions described herein.

3. CEDC shall provide to the Agency all administrative and secretarial support necessary to accomplish CEDC's obligations set forth herein, and shall make available space at its office for regular or special meetings of the Agency, as the case may be.

4. The Agency and CEDC recognize that the provision of administrative and support services to the Agency as set forth herein is not the only function or activity of the CEDC. Accordingly, it is understood that CEDC will also engage in carrying out the business operations of CEDC.

5. CEDC shall use all reasonable efforts to ensure the Agency's compliance with any and all applicable federal, state, local or other governmental or municipal laws, rules, regulations

and/or judicial administrative determinations from courts or administrative bodies having jurisdiction over the Agency or CEDC. CEDC shall not be responsible to pay the costs and/or fees of any consultants hired by the Agency, as authorized by the Agency Board.

6. The Agency and CEDC shall independently provide for each organization's necessary and appropriate insurances, and each shall be responsible for its own premiums for such insurance, including but not necessarily limited to, general liability insurance and errors and omissions insurance for their respective officers, directors and members, as the case may be. CEDC will carry at least the insurance described at **Exhibit B**.

7. In performing the services herein specified, CEDC is acting as an independent contractor. CEDC shall discharge its' responsibilities hereunder, through and under the direction of its' President and CEO, who shall be the Administrative Director of the Agency, and will perform the services provided for herein in an orderly and professional manner. In performing its services provided for herein, CEDC is not authorized to act on behalf of the Agency in order to bind the Agency with respect to any agreements or dealings with any other party of entity.

8. This agreement shall be terminable without cause upon sixty (60) days written notice from either party to the other. In the event of such termination, the fee paid by the Agency to CEDC shall be prorated from the Commencement Date of this Agreement through the date of termination. If the Agency has prepaid compensation to CEDC prior to termination, CEDC shall refund to the Agency the amount so prepaid from the effective date of termination through the date of such payment. In the event that this Agreement is terminated for any reason, then within ten days after such termination, CEDC shall make available to the Agency all records, documents and data pertaining to services rendered under this Agreement.

9. This Agreement shall not be assignable by either party without prior written consent of the other.

10. This Agreement may be renewed from time to time by written agreement between the parties. The compensation of CEDC to be paid by the Agency for any renewal term is to be established by agreement between CEDC and the Agency at least ten (10) days prior to the effective date of such renewal.

11. All books and records maintained by CEDC on behalf of the Agency are the property of the Agency and shall be available for use and also review by the Agency at all times. CEDC shall maintain accurate and complete records of the reports and monitoring required by this Agreement, and shall maintain such documents for a period of six years from document generation or transfer such documents to the Agency for retention. CEDC agrees to cooperate with any audit of this Agreement undertaken by the Agency or any entity with jurisdiction to audit the Agency, including without limitation any granting agency.

12. The Agency shall defend, indemnify and hold CEDC harmless from and against any and all claims, demands, causes of action, administrative actions, demands of governmental agencies, judgments, liabilities, costs and expenses, including, but not limited to reasonable attorney's fees, for damages or losses which are or may be asserted against CEDC on account of any acts or omissions of the Agency, its members, employees, agent or invitees. CEDC shall defend, indemnify and hold the Agency harmless from and against any and all claims, demands, causes of action, administrative actions, demands of governmental agencies, judgments, liabilities, costs and expenses, including, but not limited to reasonable attorney's fees, damages or losses which are or may be asserted against the Agency on account of any acts or omissions of CEDC, its members, employees, agents, or invitees. The provisions of this Section 12 shall survive termination or expiration to the extent of any claims arising prior to the date of termination or expiration.

13. If either party defaults in the observance or performance of any material term of this Agreement, and such default continues for more than thirty (30) days after written notice of such default is received by the defaulting party from the non-defaulting party, such non-defaulting party may take any action available at law or in equity to enforce the terms of this Agreement, and may terminate this Agreement upon written notice to the defaulting party. If either party is required to enforce the terms of this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs. No remedy herein conferred upon or reserved to the Agency is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission in exercising any remedy shall impair any such remedy or construed to be a waiver thereof. No waiver, amendment, release or modification of this Agreement shall be established by conduct, custom or course of dealing.

14. In case any one or more of the provisions of this Agreement shall for any reason be held to be illegal or invalid, such illegality or invalidity shall not affect any other provision of this Agreement, but this Agreement shall be construed and enforced as if such illegal or invalid provision had not been contained therein.

15. All covenants, stipulations, promises, agreements and obligations of the Agency contained in this Agreement shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Agency, and not of any member, director, officer, employee or agent of the Agency in his or her individual capacity, and no recourse shall be had for the payment of any claim based under this Agreement against any member, director, officer, employee or agent of the Agency.

16. The provisions of this Agreement are solely for the benefit of the parties and the parties intend no benefits to third persons. This Agreement contains the entire understanding between

the parties with respect to the subject matter herein and supersedes any prior agreements or understandings, either oral or written. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

17. This Agreement may be modified or amended only by written agreement executed by the parties.

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## EXHIBIT A

### QUALIFICATIONS; ETHICS AND CONFLICTS; INDEPENDENT CONTRACTOR

References to the "Consultant" shall mean CEDC.

a. The Consultant represents and covenants that (i) it is experienced in performing professional work of the types contemplated by the Scope of Services; (ii) at all times during the term of this Agreement the persons assigned to perform services have and will have the experience, knowledge, and licenses necessary to perform the services described herein; (iii) the Consultant is fully qualified to perform the Scope of Services, with capability to perform the Scope of Services and timely deliver a work product as required by this agreement, (iv) the Consultant will procure and maintain all licenses and permits necessary to perform the work described in this Agreement, and (v) the Consultant will comply with the provisions of the Labor Law and all State laws and Federal and local statutes, ordinances and regulations that are applicable to the performance of this Agreement.

b. Unless otherwise authorized in writing in advance by the Agency, the persons primarily responsible for performing work under this Agreement, including any subcontractors, shall be as set forth at **Exhibit C**. Any subcontractors shall be bound by the provisions of this Agreement, such subcontractors and the form of any subcontract shall be subject to prior review and approval by Agency in its discretion.

c. The Consultant represents and warrants that (i) the Consultant has all requisite power and authority to execute, deliver and perform this Agreement; (ii) this Agreement has been duly authorized by all necessary action on the part of the Consultant and has been duly executed and delivered by the Consultant and, assuming due execution and delivery by the Agency, constitutes a legal, valid, binding and enforceable obligation of the Consultant; and (iii) the execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under the organization documents, or any statute, indenture, mortgage, deed of trust or other agreement or instrument to which the Consultant is bound, or to the knowledge of the Consultant, any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Consultant or any of its activities or properties.

d. The Consultant represents and warrants that it has not entered into any agreement for services with any other party with respect to any activities within or relating to the Scope of Services under this Agreement, other than such subcontracts as are specifically set forth at **Exhibit C**. The Consultant shall accept no other compensation, directly or indirectly, from any party, other than the Agency, for any services connected with the work described in the Scope of Services. The Consultant represents that it has read the Ethics Code of the Agency and will comply with

its provisions.

e. The Consultant represents and warrants that it has not employed or retained any company or person, other than a bona fide employee working for the Consultant, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent on or resulting from the award or making of this Agreement. The Consultant further represents and warrants that neither it nor any of its directors, officers, members, partners, associates or employees, has any interest, nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services. In the event of breach of this provision the Agency shall have the option to annul this Agreement without liability, or deduct from the Agreement consideration, or otherwise recover, the full amount of any such fee, commission, percentage, brokerage fee, gift or other consideration. Such remedies shall be in addition to and not in limitation of any other remedies available at law or in equity.

f. The Consultant and their employees, agents, contractors, subcontractors and/or consultants, are independent contractors and not employees of the Agency. In accordance with their status as independent contractors, the Consultant covenants and agrees that neither the Consultant nor its employees or agents will hold themselves out as, nor claim to be, officers or employees of the Agency.

g. Nothing in this agreement shall impose any liability or duty on the Agency for the acts, omissions, liabilities or obligations of the Consultant, or any person, firm, company, agency, association, expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent of the Consultant for the payment of taxes of any nature including but not limited to sales tax, unemployment insurance, workman's compensation, disability benefits and social security, or, except as specifically stated in this Agreement, to any person, firm or corporation.



## **EXHIBIT B**

### **Insurance**

CEDC shall at all times maintain in force during the term of this Agreement, and shall provide evidence satisfactory to the Agency of, the following policies of insurance:

- a. Workers' compensation and other statutory coverage required by New York Law without regard to jurisdiction.
- b. Automobile Liability policies with the limits of not less than \$500,000 caused by accident or arising out of the ownership, maintenance or use of owned, non-owners, or hired automobiles with minimum limits of \$500,000 for damages because of injury or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of owned, non-owned or hired automobiles.
- c. Comprehensive General Liability Insurance shall be furnished with limits not less than \$1,000,000 for each person/each accident and \$2,000,000 Aggregate.

Any policy required to be maintained under this section shall be from a company rated at least A/X by Best's Rating Service and properly licensed in the State of New York, and shall provide that the policy shall not be canceled, materially changed, or not renewed without thirty (30) days' prior notice thereof to the Agency.

Prior to the Commencement Date and as a condition precedent to this Agreement, the Consultant shall furnish the Agency with certificates of insurance listing the Agency as a certificate holder, and upon demand, shall provide such policies to the Agency. At least thirty (30) days prior to expiration of any policy required by this Agreement, the Consultant shall furnish the Agency evidence satisfactory to the Agency of the continuation of such coverage in accordance with this Agreement.

**EXHIBIT C**

Principal Personnel: Michael Tucker, CEDC CEO

Subcontractors: Victoria Storrs, Camoin Associates

Conflicts Disclosure Addendum: The parties acknowledge that CEDC's mission is countywide and that CEDC has been engaged to provide similar services for the Columbia County IDA.