

PROFESSIONAL SERVICES AGREEMENT
BETWEEN THE COUNTY OF ALBANY
AND GILBANE BUILDING COMPANY
FOR CONSTRUCTION MANAGEMENT SERVICES
AT THE CAPITAL DISTRICT JUVENILE SECURE DETENTION FACILITY

PURSUANT TO RES. NO. 500, ADOPTED DECEMBER 6, 2021

This is an Agreement made by and between the County of Albany, a municipal corporation, acting by and through its County Executive, within a principal place of business located at 112 State Street, Albany, New York 12207 (hereinafter, the "County" or "Owner") and Gilbane Building Company, a Rhode Island corporation registered to do business in New York, with a principal place of business located at 7 Southwoods Blvd., Albany, New York 12211 (hereinafter, the "Consultant" or "Contractor," and with the County, may be referred to herein individually as a "[P]arty" and together as the "[P]arties").

WITNESSETH

WHEREAS, the County has issued a request for proposals for construction management services at the Capital District Juvenile Secure Detention Facility, said request having been denominated RFP #2021-124, issued by the Albany County Purchasing Division (hereinafter, the "Purchasing Division") on September 8, 2021 and published on September 16, 2021 (hereinafter, the "RFP"); and

WHEREAS, the Purchasing Division has issued three (3) addenda to the RFP, the first on September 24, 2021 (hereinafter, the "Addendum #1), the second on October 1, 2021 (hereinafter, the "Addendum #2) and the third on October 6, 2021 (hereinafter, the "Addendum #3, and together with the Addendum #1 and Addendum #2, may be referred to herein as the "Addenda"); and

WHEREAS, the Consultant has submitted a proposal on October 8, 2021 to provide the aforesaid construction management services (hereinafter, the "Proposal"); and

WHEREAS, the County has accepted the Proposal of the Consultant to provide the aforesaid construction management services; and

WHEREAS, the Albany County Legislature has authorized the County Executive to enter into this agreement with the Contractor regarding the aforesaid construction management services by Resolution No. 500 for 2021, adopted December 6, 2021; and

WHEREAS, this Agreement sets forth the understanding reached by the parties herein;

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY COVENANT AND AGREE AS FOLLOWS:

ARTICLE 1. THE CONTRACT DOCUMENTS; INTERPRETATION

1.1 The Contract Documents consist of the following: this Agreement; the RFP, which is incorporated by reference and made a part hereof; the Addenda, which are each incorporated by reference and made a part hereof; and the Proposal, which is incorporated by reference and made a part hereof (collectively, “the Agreement” hereinafter).

1.2 In the event of any discrepancy, disagreement or ambiguity among the Contract Documents, the documents shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity: 1) this Agreement; 2) the Addendum #3; 3) the Addendum #2; 4) the Addendum #1; 5) the RFP; 6) the Proposal.

ARTICLE 2. SCOPE OF SERVICES

2.1 The Contractor shall provide all of the services and meet all of the requirements and provisions described in the RFP, in the manner described in the RFP, and consistent with the Addenda (hereinafter, the “work”), including, but not limited to, the services described in SECTION 4: SCOPE OF SERVICES at pages RFP4 through RFP9, and the following:

2.1.1 Coordinating with the Capital District Juvenile Secure Detention Facility Administration and SMRT Architects and Engineers, P.C., the County’s Engineer for the Juvenile Secure Detention Facility Nursing Home Renovation Project (hereinafter, may be referred to as the “Project”), regarding the scope of services, said coordination to occur before, during and after performing the services;

2.1.2 Following all applicable codes, regulations, standards, including, but not limited to, the New York State Building Code and OSHA regulations and standards, including, but not limited to, PART 1926 SAFETY and HEALTH REGULATIONS for CONSTRUCTION, specifically as pertaining to the role of Construction Manager as Agent.

2.1.3 Cooperate with Owner during construction operations to minimize conflicts and facilitate continued usage of the work space, performing the services so as not to interfere with the Owner’s and the public’s day-to-day operations; and

2.1.4 Provide not less than 72 hours’ notice to the County of activities that will affect the County’s operations.

2.2 In addition to, and consistent with, the services described in Paragraph 2.1, and consistent with the services described in the RFP, the Consultant shall provide all of the services described in the Proposal at Section 4 Plan Implementation.

2.3 The Consultant shall not perform any work or services beyond that set forth or described in the RFP and Proposal (hereinafter, the “extra work/services”) unless it has obtained prior written approval from the County.

2.4 The quality of service the Contractor renders shall be subject to inspection by the County at any time.

2.5 The Consultant shall provide all services in a professional manner, comply with all federal, state and local laws and regulations and maintain all licenses and certifications required by law.

2.6 The Consultant is not responsible for the acts, omissions, performance, or non-performance of the construction contractors or design professionals in connection with the Project.

ARTICLE 3. COMPENSATION

In consideration of the terms and obligations of this Agreement, the County agrees to pay, and the Consultant agrees to accept, an amount not to exceed EIGHT HUNDRED SIXTY NINE THOUSAND AND 00/100 DOLLARS (\$869,000.00), as full compensation for all work and services rendered under this Agreement, said dollar amount being the sum of the Pre-Construction Phase compensation in the amount of SEVENTY FOUR THOUSAND, THREE HUNDRED TWENTY EIGHT AND 00/100 DOLLARS (\$74,328.00), plus the Construction Phase compensation in the amount of SEVEN HUNDRED FIFTY THREE THOUSAND, TWO HUNDRED FIFTY THREE AND 00/100 DOLLARS (\$753,253.00), plus a Contingency Allowance in the amount of FORTY ONE THOUSAND, FOUR HUNDRED NINETEEN AND 00/100 DOLLARS (\$41,419.00).

ARTICLE 4. PAYMENT

Payment shall be made to the Consultant by the County on a monthly basis upon the Consultant's submission of a properly executed Albany County Claim Form, plus all supporting documentation, to Albany County Department of General Services. Upon review and approval of the claim form, payment shall be rendered promptly.

ARTICLE 5. TERM OF AGREEMENT

The term of this Agreement shall commence on the execution of this Agreement by the Parties and shall continue in effect through final completion of the Project. The parties anticipate final completion on or before December 31, 2024.

ARTICLE 6. TERMINATION OF AGREEMENT; REMEDY FOR BREACH

6.1 This Agreement may be terminated by the County or the Consultant as follows:

6.1.1 The County may terminate the Agreement if the Consultant if the Consultant is substantially in breach of any of its provisions. Additionally, the County may, without cause, order the Consultant in writing, to suspend, delay or interrupt the services in whole or in part for such period of time as the County may determine.

6.1.2 The Consultant may terminate the Agreement if the County is substantially in breach of it.

6.2 In the event of a breach by the Consultant, the Consultant shall pay to the County all direct and consequential damages caused by such breach, including, but not limited to, all sums expended by the County to procure a substitute consultant to satisfactorily complete the services, together with the County's own costs incurred in procuring a substitute consultant. However, damages shall be capped at the value of this Agreement.

ARTICLE 7. ASSIGNMENT

7.1 The Consultant specifically agrees as required by Section 109 of the N.Y. GENERAL MUNICIPAL LAW that the Consultant is prohibited from assigning, transferring, conveying, subcontracting or otherwise disposing of this Agreement, or of the Consultant's right, title, or interest therein, without the prior written consent of the County.

7.2 The Consultant shall not subcontract for any portion of the services required under this Agreement without the prior written approval of the County. Any such subcontractor shall be subject to the terms and conditions of this Agreement and any additional terms and conditions the County may deem necessary or appropriate.

ARTICLE 8. AVAILABLE DATA

All technical or other data relative to this Agreement in the possession of the County or in the possession of the Consultant shall be made available to the other party to this Agreement without expense to the other party.

ARTICLE 9. COOPERATION

The Consultant shall cooperate with representatives, agents and employees of the County and the County shall cooperate with representatives, agents and employees of the Consultant to the end that work may proceed expeditiously and economically.

ARTICLE 10. NON-DISCRIMINATION

In accordance with Article 15 of N.Y. EXECUTIVE LAW (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Consultant agrees that neither it nor any of its County approved sub-consultants shall, by reason of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or status as a victim of domestic violence, refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment.

ARTICLE 11. RELATIONSHIP

The Consultant is, and shall function as, an independent consultant under the terms of this Agreement and shall not be considered an agent or employee of the County for any purpose. The employees and agents of the Consultant shall not in any manner be, or be held out to be, agents or employees of the County.

ARTICLE 12. INDEMNIFICATION

The Consultant shall defend, indemnify and save harmless the County, its employees and agents, from and against all claims, damages, losses and expenses (including, without limitation, reasonable attorney's fees) arising out of, or in consequence of, any negligent or intentional act or omission of the Consultant, its employees or agents, to the extent of its responsibility for such claims, damages, losses and expenses.

ARTICLE 13. NON-APPROPRIATIONS

Notwithstanding anything contained herein to the contrary, no default shall be deemed to occur in the event no funds or insufficient funds are appropriated and budgeted by or are otherwise unavailable to the County for payment under this Agreement. The County will immediately notify the Consultant of such occurrence and this Agreement shall terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to the County of any kind whatsoever, except as to those portions herein agreed upon for which funds shall have been appropriated and budgeted.

ARTICLE 14. APPLICABLE LAW

The laws of the State of New York shall govern this Agreement. The designated venue is Albany, New York.

ARTICLE 15. RECORDS

Proper and full accounting records shall be maintained by the Consultant which records shall clearly identify the costs of the services/work performed. The records shall be subject to periodic and final audit by the County upon request. Such records shall be accessible to the County for a period of six (6) years following the date of final payment.

ARTICLE 16. INSURANCE

16.1 The Consultant shall procure and maintain for the entire term of this Agreement, without additional expense to the County, insurance policies of the kinds and in the amounts provided in the Schedule A attached hereto and made a part hereof. The insurance policies shall name the County as an additional insured. Such policies may only be changed upon 30 days prior written approval by the County.

16.2 The Consultant shall, prior to commencing any of the services outlined herein, furnish the County with Certificates of Insurance showing that the requirements of this article have been met. The Consultant shall also provide the County with updated Certificates of Insurance prior to the expiration of any previously-issued certificate. No work shall be commenced under this Agreement until the Consultant has delivered the Certificates of Insurance to the County. Upon failure of the Consultant to furnish, deliver and maintain such insurance certificates as provided above, the County may declare this Agreement suspended, discontinued or terminated.

16.3 As required by Section 108 of the N.Y. GENERAL MUNICIPAL LAW, this Agreement shall be of no force and effect unless the Consultant shall secure compensation for the benefit of, and keep insured during the life of this Agreement, all employees engaged thereon in compliance with the provisions of the N.Y. WORKERS' COMPENSATION LAW. The Consultant shall require any subcontractor authorized by the County to do likewise for all of their employees engaged thereon, all in compliance with the provisions of the N.Y. WORKERS' COMPENSATION LAW and of Schedule A of this Agreement.

16.4 The construction contractors the Consultant will be monitoring shall be required to include Gilbane Building Company as an additional insured party on insurance they provide to the County for the Project, and shall indemnify the Consultant to the same extent they do for the County.

ARTICLE 17. NO WAIVER OF PERFORMANCE

Failure of the County to insist upon strict and prompt performance of the provisions of this Agreement, or any of them, and the acceptance of such performance thereafter shall not constitute or be construed as a waiver or relinquishment of the County's right thereafter to enforce the same strictly according to the tenor thereof in the event of a continuous or subsequent default on the part of the Consultant.

ARTICLE 18. MODIFICATION

This Agreement may only be modified by a formal written amendment executed by the parties.

ARTICLE 19. EXECUTION OF DOCUMENTS

This Agreement may be executed in one or more counterparts, each of which shall constitute an original Agreement, but all of which together shall constitute one and the same instrument.

ARTICLE 20. HEADINGS - CONSTRUCTION

The headings appearing in this Agreement are for the purpose of easy reference only and shall not be considered a part of this Agreement or in any way to modify, amend or affect the provisions hereof.

ARTICLE 21. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the parties and no representations or promises have been made except as herein expressly set forth.

ARTICLE 22. COMPLIANCE WITH MacBRIDE PRINCIPLES

The Consultant hereby represents that it is in compliance with the MacBride Principles of Fair Employment as set forth in Albany County Local Law No. 3 for 1993, in that the Consultant either (a) has no business operations in Northern Ireland or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of its compliance with such principles. In the event of a violation of this stipulation, the County reserves all rights to take remedial measures as authorized under section 4 of Local Law No. 3 in 1993, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the Consultant in default and/or seeking debarment or suspension of the Consultant.

ARTICLE 23. EXTRA SERVICES/WORK

If the Consultant is of the opinion that any services/work it has been directed to perform is beyond the scope of this Agreement and constitutes extra services/work, the Consultant shall promptly notify the County of that opinion. The County shall be the sole judge as to whether or not such services/work is in fact beyond the scope of this Agreement and whether or not it constitutes extra services/work. In the event the County determines such services/work does constitute extra services/work, it shall provide extra compensation to the Consultant on a negotiated basis.

ARTICLE 24. IRANIAN ENERGY SECTOR DIVESTMENT

The Consultant hereby represents that said consultant is in compliance with N.Y. GEN. MUN. LAW § 103-g entitled "Iranian Energy Sector Divestment," in that said consultant has not:

- a. Provided goods or services of \$20 Million or more in the energy sector of Iran including but not limited to the provision of oil or liquefied natural gas tankers or products used to construct or maintain pipelines used to transport oil or liquefied natural gas for the energy sector of Iran; or
- b. Acted as a financial institution and extended \$20 Million or more in credit to another person for 45 days or more, if that person's intent was to use the credit to provide goods or services in the energy sector in Iran.

ARTICLE 25. STORMWATER MANAGEMENT PROGRAM

25.1 The Consultant understands that Albany County is a regulated entity subject to the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-0-15-003), and must comply with the terms and conditions of the aforementioned permit. The

Consultant further understands that under the New York State Environmental Conservation Law, it is unlawful for any person to directly or indirectly cause or contribute to a violation of water quality standards, and that Albany County adopted Local Law 7 of 2007 enabling the County to take action against any discharges that cause or contribute to a violation of water quality standards. The Consultant agrees to comply with the terms and conditions of the SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (GP-0-15-003) as well as Albany County Local Law No. 7 for 2007 and any Best Management Practices developed pursuant to the foregoing, as established in Albany County's Stormwater Management Program Plan. The Consultant also agrees to implement any corrective actions identified by Albany County or a representative pursuant to the above regulations, and further understands that any non-compliance by the County will not diminish, eliminate, or lessen Consultant's own liability.

25.2 The Consultant shall execute and deliver to the County a certification statement acknowledging the above provisions prior to providing any services and/or commencing any work.

ARTICLE 26. MISCELLANEOUS PROVISIONS

26.1 In addition to the Iranian Energy Sector Divestment (per N.Y. GEN. MUN. LAW § 103-9) described above, the Consultant also acknowledges that it shall follow and all of the other policies and procedures described in the RFP.

26.2 During the term of this Agreement, the Consultant agrees that, in the event of its reorganization or dissolution as a business entity or change in business, the Consultant shall give the County 30 days written notice in advance of such event.

26.3 The Consultant shall at all times obtain and maintain all licenses and/or certifications required by New York State, or other relevant regulating body, to perform the services required under this Agreement.

26.4 If any term, part, provision, section, subdivision or paragraph of this Agreement shall be held to be unconstitutional, invalid or ineffective, in whole or in part, such determination shall not be deemed to invalidate the remaining terms, parts, provisions, sections, subdivisions or paragraphs.

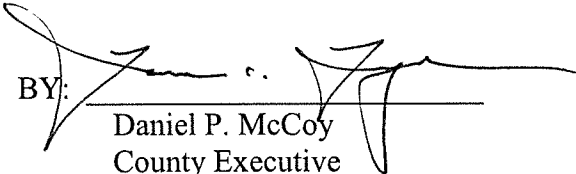
26.5 The County shall bear no responsibility other than that set forth in this Agreement.

26.6 All notices, consents, waivers, directions, requests or other instruments or communications provided for under this Agreement shall be deemed properly given if, and only if, delivered personally, sent by registered or certified United States mail, postage prepaid, or, with the prior consent of the receiving party, dispatched via facsimile transmission.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed the day and year first indicated below.


COUNTY OF ALBANY

DATED: 8/30/2022

BY: 
Daniel P. McCoy
County Executive
or
Daniel C. Lynch
Deputy County Executive

GILBANE BUILDING COMPANY

DATED: 8/1/22

BY:  KEITH LEAL
Name:

VICE PRESIDENT
Title:

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

On the ___ day of _____, 2022, before me, the undersigned, personally appeared Daniel P. McCoy, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC

STATE OF NEW YORK)
COUNTY OF ALBANY) SS.:

On the 30th day of August, 2022, before me, the undersigned, personally appeared ~~Philip Calderone~~, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Daniel C. Lynch

NOTARY PUBLIC

EUGENIA K. CONDON
Notary Public, State of New York
No. 02CO4969817
Qualified in Albany County
Commission Expires July 23, 2022

STATE OF NEW YORK)
COUNTY OF Saratoga) SS.: 01LO6049943

On the 1st day of August, 2022, before me, the undersigned, personally appeared Keith Leal personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]
NOTARY PUBLIC

PAUL W. LOOMIS
Notary Public, State of New York
Reg. No. 01LO6049943
Qualified in Saratoga County
Commission Expires Oct. 30, 2022

SCHEDULE A
INSURANCE COVERAGE

Workers' Compensation and Employers' Liability Insurance: A policy or policies providing protection for employees in the event of job-related injuries.

Automobile Liability Insurance: A policy or policies with the limits of not less than \$500,000 combined for each accident because of bodily injury, sickness, or disease, sustained by any person, caused by accident, and arising out of the ownership, maintenance or use of any automobile for damage because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance, or use of any automobile.

General Liability Insurance: A policy or policies of comprehensive all-risk insurance, including coverage for demolition of structures, with limits of not less than:

Liability For:	Combined Single Limit
Property Damage	\$1,000,000
Bodily Injury	\$1,000,000
Personal Injury	\$1,000,000.

Errors and Omissions Insurance: A policy or policies of professional liability insurance with limits of not less than \$1,000,000.00.