

AGREEMENT
BETWEEN THE COUNTY OF ALBANY
AND NEW YORK STATE INDUSTRIES FOR THE DISABLED, INC.

For Custodial/Janitorial Services to be
Rendered at the Albany County Judicial Center

Resolution No. 435 of 2017

THIS AGREEMENT is made by and between the County of Albany, a municipal corporation organized under the laws of the State of New York, acting by and through its County Executive, with a principal office located at the Albany County Office Building, 112 State Street, Albany, New York 12207 (hereinafter, the "County"), and New York State Industries for the Disabled, Inc., a corporation authorized to do business in the State of New York, with its principal office located at 11 Columbia Circle Drive, Albany, New York 12208 (hereinafter, the "Contractor").

W I T N E S S E T H:

WHEREAS, the County has heretofore requested quotes for custodial/janitorial services to be rendered at the Albany County Judicial Center; and

WHEREAS, the Albany County Purchasing Division (hereinafter called "Purchasing Division") issued a Request for Proposal for Custodial and Janitorial Services, said request having been designated RFB #2017-068, and

WHEREAS, in response thereto, Contractor has submitted a quote to render the requested services, that being the lowest responsible quote submitted on August 24, 2017; and

WHEREAS, the Albany County Legislature has authorized the County Executive through **Resolution No. 435 of 2017** to enter in to an agreement with the Contractor for the performance of janitorial services at the Albany County Judicial Center building in an amount not to exceed \$379,211.00 for a term commencing January 1, 2018 and continuing until December 31, 2020;¹ and

WHEREAS, in furtherance thereof, the parties hereto desire to formalize their understanding and agreement regarding the provision of the aforementioned services, and to execute a fully-integrated agreement with respect thereto;

¹ Resolution No. 435 of 2017 contains a typographical error. This Agreement is intended by both Parties to commence on January 1, 2018 and conclude on December 31, 2020, with two (2), one (1) year renewals for both the Judicial Center and the Family Court.

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, and the RFB, which is incorporated herein and made a part hereof by reference.
- 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 resolve such discrepancy, disagreement or ambiguity: 1) this Agreement; 2) the RFP, 3) the Bid.

ARTICLE 2. SCOPE OF SERVICES TO BE PERFORMED BY CONTRACTOR

During the term of this Agreement, Contractor shall perform the custodial services and provide the necessary materials as described in the contract documents pursuant to its Agreement. These services are particularized in the Contractor's Specifications, attached hereto at Schedule A and made a part hereof.

ARTICLE 3. COMPENSATION

- 3.1 In consideration of the terms and obligations of this Agreement, the County agrees to pay and the Contractor agrees to accept an amount not to exceed THREE HUNDRED SEVENTY-NINE THOUSAND, TWO HUNDRED AND ELEVEN AND 00/100 DOLLARS (\$379,211.00) (US currency) as full compensation for all goods and services rendered under this Agreement.
- 3.2 The County is not subject to federal, state or local taxes.

ARTICLE 4. PAYMENT

Payment shall be made to the Contractor by the County on a monthly basis upon the Contractor's submission of a properly executed Albany County Claim Form, plus all supporting documentation, to the Department of General Services, and acceptance by the County of the claim form.

ARTICLE 5. TERM OF THE AGREEMENT

The term of this Agreement shall commence upon January 1, 2018 and continue in effect until December 31, 2020. At the end of this initial period, the Parties may, by mutual agreement, renew the contract for an additional for a total of

two (2) additional one year terms, with the same compensation and pricing described in the Contractor's Bid.

ARTICLE 6. TERMINATION OF AGREEMENT; REMEDY FOR BREACH

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

6.1.1 The County may terminate this Agreement if the Contractor refuses or fails to supply enough properly skilled workers or proper materials to meet any of its requirements, if the Contractor fails to make payment to County-approved subcontractors for materials or labor, or disregards laws, ordinances or rules and regulations or orders of a public entity having jurisdiction over the work, or if the Contractor is substantially in breach of any of its provisions. Additionally, the County may, without cause, order the Contractor in writing, to suspend, delay or interrupt the work in whole or in part for such period of time as the County may determine.

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

6.2 In the event of a breach by the Contractor, the Contractor 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 Contractor to satisfactorily complete the work, together with the County's own costs incurred in procuring a substitute Contractor.

ARTICLE 7. PROHIBITION OF CONTRACT ASSIGNMENT

7.1 Pursuant to §109 of the General Municipal Law, the Contractor is prohibited from assigning, transferring, conveying, subcontracting or otherwise disposing of this Agreement, or of its right, title or interest therein, to any other person or entity without the prior written consent of the County.

7.2 The Contractor 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 Contractor shall be made available to the other party to this Agreement without expense to the other party.

ARTICLE 9. COOPERATION

Contractor shall cooperate with the agents, representatives and employees of the County and the County shall cooperate with the agents, representatives and employees of the Contractor to ensure that the work delineated herein proceeds and concludes as expeditiously as possible.

ARTICLE 10. PREVAILING WAGE

The Contractor shall at all times remain in compliance with Sections 220.3 and 220-d of the N.Y. Labor Law, which concern the payment of not less than the prevailing hourly wage rate for a legal day's work to each laborer, workman or mechanic employed by the Contractor in the provision of the services required under this Agreement. The Contractor shall submit payroll records to the County every thirty (30) days after issuance of its first payroll in accord with N.Y. Labor Law Section 220 [3-a]a.

ARTICLE 11. NON-DISCRIMINATION

In accordance with Article 15 of the Executive Law (also known as the Human Rights Law), and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor agrees that neither it nor its County-approved subcontractors shall, by reason of age, race, creed, color, national origin, sexual orientation, military status, sex, disability, predisposing genetic characteristics, or marital status 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 12. COMPLIANCE WITH MACBRIDE PRINCIPLES

Contractor 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 Contractor either (a) has no business operations in Northern Ireland or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride 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 § 4 of the said Local Law No. 3 for 1993 including, but not limited

to, imposing sanctions, enforcing compliance, recovering damages, declaring the Contractor in default, and/or seeking debarment or suspension of the Contractor.

ARTICLE 13. IRANIAN ENERGY SECTOR DIVESTMENT

Contractor hereby represents that Contractor is in compliance with New York State General Municipal Law Section 103-g entitled "Iranian Energy Sector Divestment," in that Contractor 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 forty-five 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 14. RELATIONSHIP OF THE PARTIES

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

ARTICLE 15. INDEMNIFICATION

Contractor shall defend, indemnify and save harmless the County, its agents representatives and employees, from and against any and all claims, damages, losses and expenses (including, but not limited to, reasonable attorney's fees) arising out of or in consequence of any negligent or intentional act or omission of the Contractor, its agents or employees, to the extent of its or their responsibility for such claims, damages, losses or expenses.

ARTICLE 16. INSURANCE COVERAGE

- 16.1 Contractor 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 B 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 thirty (30) days prior written approval by the County.

- 16.2 Contractor 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 Contractor shall also provide the County with updated Certificates of Insurance prior to the expiration of any previously-issued Contractor. No work shall be commenced under this Agreement until the Contractor has delivered the Certificates of Insurance to the County. Upon failure of the Contractor 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 Contractor 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 Contractor 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 B of this Agreement.

ARTICLE 17. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (OSHA) CONSTRUCTION SAFETY AND HEALTH COURSE

In compliance with New York State Labor Law Sec. 220-h all laborers, workers and mechanics employed in the performance of the work of this Agreement either by Contractor, sub-Contractor or other person doing or contracting to do the whole or part of the work herein described, shall be certified prior to performing any work as having successfully completed a course in construction safety and health approved by the U.S. Dept. of Labor OSHA that is at least ten hours in duration.

ARTICLE 18. NON-COLLUSIVE BIDDING

By execution of this Agreement, Contractor warrants, under penalty of perjury, that to the best of knowledge and belief; the prices communicated to the County in establishing the costs of goods and services covered in this Agreement have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition. Contractor warrants that it is in compliance with NYS General Municipal Law Sec. 103-d with regard to the prices of goods and services covered in this Agreement.

ARTICLE 19. 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 Contractor.

ARTICLE 20. ACCOUNTING RECORDS

- 20.1 Contractor shall maintain complete and proper accounting records that shall clearly identify all costs associated with and revenue derived from the work performed under this Agreement. Such records shall be subject to periodic and final audit by the County upon request.
- 20.2 Contractor shall provide the County and authorized State and/or Federal personnel access to any and all books, documents, records, charts, software or any other information relevant to performance under this Agreement, immediately upon request.
- 20.3 Contractor shall retain all of the above information for six (6) years after final payment or the termination of this Agreement, and shall make such information available to the County and authorized State and/or Federal personnel during such period.

ARTICLE 21. 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 Contractor 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 22. NON-INTERRUPTION OF WORK

The Contractor agrees that it will not intentionally engage in any course of conduct or activity, or employ for the purposes of performing the public work, any subcontractors, employees, labor or materials which will or may result in the interruption of the performance of the public work due to labor strife or unrest by workmen employed by the Contractor or by any of the trades working in or about the public works and/or premises where the work is being performed.

ARTICLE 23. EXTRA WORK

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

ARTICLE 24. CHANGE IN LEGAL STATUS OR DISSOLUTION

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

ARTICLE 25. LICENSES

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

ARTICLE 26. PARTIAL INVALIDITY

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.

ARTICLE 27. HEADINGS – CONSTRUCTION

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

ARTICLE 28. NOTICES

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.

ARTICLE 29. GOVERNING LAW

ARTICLE 30. ENTIRE AGREEMENT

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

ARTICLE 31. MODIFICATION

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

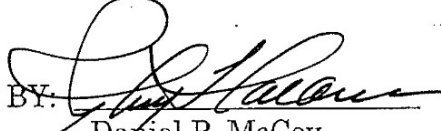
ARTICLE 32. EXECUTION OF DOCUMENTS

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.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date(s) hereunder set forth.

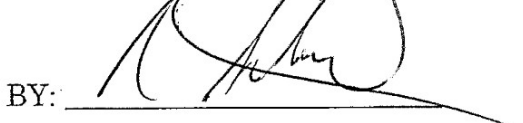
DATED: 10/15/18

COUNTY OF ALBANY

BY: 
Daniel P. McCoy
Albany County Executive
or
Philip F. Calderone
Deputy County Executive

DATED: 9/24/2018

NEW YORK STATE INDUSTRIES
FOR THE DISABLED, INC.

BY: 
Brian Schneider
VP, Contract Administration

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

On the ____ day of _____, 2018, 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 16 day of October, 2018, before me, the undersigned, personally appeared Philip F. 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.

Michael J. Felli
NOTARY PUBLIC

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

On the 24 day of September, 2018, before me, the undersigned, personally appeared Brian Schneider 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 s/he executed the same in her/his capacity, and that by her/his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

DONNA M WITKO
NOTARY PUBLIC-STATE OF NEW YORK
No. 01W15081182
Qualified in Albany County 2021
My Commission Expires September 29, _____

[Signature]
NOTARY PUBLIC

SCHEDULE A
CONTRACTOR'S SPECIFICATIONS



Office of
General Services

ANDREW M. CUOMO
Governor

ROANN M. DESTITO
Commissioner

October 3, 2018

Delivered via e-mail

Mr. Brian Schneider
Vice President, Contract Administration
New York State Industries for the Disabled
11 Columbia Circle Drive
Albany, New York 12203

Re: Application #2376: Albany County – Janitorial, Graffiti Removal, Window Blind Cleaning, Floor Maintenance, and Carpet Cleaning Services at the Judicial Center- 6 Lodge Street, Albany, NY 12207
Member Agency: Second Chance Opportunities, Inc.

Dear Mr. Schneider:

In response to your application received on September 14, 2018, and, revised on September 27, 2018, we are approving the pricing proposed by Second Chance Opportunities, Inc., 255 Orange St., Albany, NY 12203 through the New York State Industries for the Disabled. This Contract is let by Albany County, 112 State St., Albany, NY 12207. The pricing is reasonable and approval is made in accordance with Section 162 of the New York State Finance Law.

NYSID and Albany County are advised that this office has not reviewed the Contract terms and conditions of the existing agreement between the parties and has made no determination with regard to the necessity and appropriateness of the provisions of this Contract.

Approval Terms:

1. Janitorial, Graffiti Removal, Window Blind Cleaning, Floor Maintenance, and Carpet Cleaning Services to be performed at the Judicial Center- 6 Lodge Street, Albany, NY 12207 as specified.
2. Proposed Price: Total estimated contract price, including optional extensions, is \$639,802.91 based on:
Year 1: \$121,705.80
Year 2: \$125,136.20
Year 3: \$130,986.97
Year 4 (Optional Extension): \$130,986.97
Year 5 (Optional Extension): \$130,986.97
Total Direct Labor Hours – 5,804.93/1,950 = 2.98 FTEs
Total Direct Disabled Labor Hours – 5,804.93/1,950 = 2.98 FTEs
The Direct Disabled Labor Ratio is 100%
3. New Term: Three years from date of contract execution with two one-year renewal options

Future increases to Prevailing Wages and Benefits will be determined and become effective as published by the NYS Department of Labor.

This letter serves notice to Albany County that the New York State Office of General Services approves the pricing for this Contract.

Sincerely,

John Normile, Assistant Director of Intergovernmental Relations
NYS OGS Preferred Source Team

TO: Brian Schneider
DATE October 3, 2018

Page 2

Cc: S. Carroll OGS
S. Filburn OGS
J. Dorsman OGS
J. Messina NYSID
M. Hartman NYSID
R. Nadal NYSID
P. O'Neil Albany County
K. Storm Albany County