

AGREEMENT BETWEEN
THE COUNTY OF ALBANY
AND DIGESARE MECHANICAL, INC.
FOR PLUMBING CONSTRUCTION WORK
RE THE CAPITAL DISTRICT JUVENILE SECURE
DETENTION FACILITY CONSTRUCTION PROJECT

PURSUANT TO RES. NO. 521 FOR 2022, ADOPTED DECEMBER 5, 2022

THIS AGREEMENT is made by and between the County of Albany, a municipal corporation, acting by and through its County Executive, with its principal office located at the Albany County Office Building, 112 State Street, Albany, New York 12207-2021 (hereinafter, the "County" or "Owner") and Digesare Mechanical, Inc., a New York corporation, with its principal place of business located at 3434 Carman Road, Schenectady, New York 12303 (hereinafter, the "Contractor," and with the County, may be referred to herein individually as a "[P]arty or together as the "[P]arties").

WITNESSETH:

WHEREAS, the Albany County Department of General Services (hereinafter, "DGS") has a need for plumbing construction work related to the Capital District Juvenile Secure Detention Facility Construction Project; and

WHEREAS, the Albany County Purchasing Division (hereinafter, the "Purchasing Division") has issued a request for bids for the aforesaid plumbing construction work, said request having been denominated RFB #2022-124 (hereinafter, the "RFB"), issued on September 30, 2022, and published on October 6, 2022; and

WHEREAS, the Purchasing Division has issued eight (8) addenda to the RFB, the first on October 13, 2022 (hereinafter, the "Addendum #1"), the second on October 21, 2022 (hereinafter, the "Addendum #2"), the third on October 24, 2022 (hereinafter, the "Addendum #3"), the fourth on October 27, 2022 (hereinafter, the "Addendum #4"), the fifth on October 31, 2022 (hereinafter, the "Addendum #5"), the sixth on November 2, 2022 (hereinafter, the "Addendum #6"), the seventh on November 4, 2022 (hereinafter, the "Addendum #7"), and the eighth on November 7, 2022 (hereinafter, the "Addendum #8," and collectively with Addendum #1 through Addendum #7, may be referred to herein as the "Addenda"); and

WHEREAS, the Contractor has submitted a bid on November 10, 2022 to provide the aforesaid plumbing construction work (hereinafter, the "Bid"); and

WHEREAS, the County has accepted the Bid of the Contractor to provide the aforesaid plumbing construction work as the lowest responsible bidder; and

WHEREAS, the Albany County Legislature has authorized the County Executive to enter into an agreement with the Contractor regarding the aforesaid plumbing construction work by Resolution No. 521 for 2022, adopted December 5, 2022; 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 RFB, including, but not limited to, the Project Manual, Drawings, Plans and Specifications, which is incorporated by reference and made a part hereof; the Addenda, which are incorporated by reference and made a part hereof; and the Bid, which is incorporated by reference and made a part hereof (collectively referred to as “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 Addenda, in the following order: Addendum #8, Addendum #7, Addendum #6, Addendum #5, Addendum #4, Addendum #3, Addendum #2, Addendum #1; 3) the RFB, including the Drawings, Plans and Specifications; 4) the Bid.

ARTICLE 2. SCOPE OF SERVICES

2.1 The Contractor shall provide all of the plumbing construction work described in the RFB, in the manner described and meeting all of the terms, conditions, requirements and provisions contained therein, **including, but not limited to, that described in the Project Manual, Drawings, Plans, and Specifications, consistent with the Addenda,** and as requested by the County (hereinafter, the “work”). The work, includes, but is not limited to, the Contractor:

2.1.1 Providing any and all equipment, supplies, labor, materials and incidentals necessary to perform the work, and, in addition, as requested by the County;

2.1.2 Coordinating the specified scope of work with the County’s Engineer of Record, SMRT Architects and Engineers, P.C. (hereinafter, the “Engineer”), said coordination to occur before, during and after performing the work;

2.1.3 Following the County’s interpretation of the plans, specifications, terms and conditions, said interpretation being final and binding upon the Contractor;

2.1.4 If the County elects to proceed on the basis of a described alternate,

making all modifications to the work required in furnishing and installing the selected alternative, at no additional cost to the County other than as proposed in the Bid;

2.1.5 Following all applicable codes, regulations and 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; and

2.1.6 Ensuring continued use of the facility by both the Owner and its Operator, Berkshire Farm Center & Services for Youth, without interruption during all phases of the project, including, but not limited to, following and complying with the project site security requirements, attached hereto as Schedule A and made a part hereof.

2.2 While providing any of the work/services described above at/on the Project site, the Contractor and its employees, agents, etc., shall follow all Covid-19 and Social Distancing requirements of the County; the State of New York, including, but not limited to, any Governor executive orders and Empire State Development Corporation's guidelines and requirements; and the federal government, and the Contractor shall be subject to the provisions of any County Local Emergency Order re Covid-19 and all supplements/renewals to said order.

2.3 In addition to what is described in paragraph 2.1 above, the Contractor shall:

2.3.1 Start work immediately after receipt of a Notice to Proceed;

2.3.2 Keep all areas of the work site(s) free from debris and the accumulation of waste materials and move construction waste and debris off site in a timely manner;

2.3.3 Limit use of premises to work in areas indicated and not disturb portions of the Project site beyond areas in which the work is indicated;

2.3.4 Maintaining a safe environment for staff and visitors, which shall include, but not be limited to, protecting adjacent areas from dust and debris resulting from construction activities. All adjacent areas shall be left suitable for use and occupancy by the public before and after scheduled construction is complete for that day.

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

2.3.6 Maintain existing exits, unless otherwise indicated, maintain access to existing walkways, corridors, and other adjacent occupied or used facilities, keep

open and unobstructed all walkways, corridors, or other occupied or used facilities unless receiving written permission from Owner or the Construction Manager; and

2.3.7 Provide not less than 72 hours' notice to Owner of activities that will affect Owner's operations.

2.4 As it relates to Project Administration, the parties, including the Engineer, shall use the following, most up to date, American Institute of Architects (AIA) documents:

AIA Document G701 —Change Order;

AIA Document G702 —Application and Certificate for Payment (together with County of Albany Claim Form;

AIA Document G703 —Continuation Sheet;

AIA Document G704 —Certificate of Substantial Completion;

AIA Document G706 —Contractor's Affidavit of Payment of Debts and Claims;

AIA Document G706A—Contractor's Affidavit of Release of Liens;

AIA Document G707 —Consent of Surety to Final Payment;

AIA Document G709 —Work Changes Proposal Request;

AIA Document G710 —Architect's Supplemental Instructions;

AIA Document G714 —Construction Change Directive.

2.5 The Contractor shall obtain necessary permits from Albany County Department of Code Enforcement.

2.6 The Contractor shall not perform any work beyond that set forth or described in the RFB and Addenda (hereinafter called "extra work") unless it has obtained prior written approval from the County and the Engineer, in accordance with the procedure described in Article 28, below.

2.7 The Contractor warrants the labor and materials it provides in accordance with that described in the RFB, consistent with the Standard General Conditions and the Supplemental Conditions, and shall provide the manufacturers' warranties described in the RFB. **The warranty period begins to run from the date of substantial completion, as determined by the County.**

2.8 The quality of service the Contractor renders shall be subject to inspection by the County at any time. Inspection by the County shall not relieve the Contractor of the responsibility for following the Project Manual, Drawings and Plans, meeting all Project Specifications and performing the work in a safe manner.

2.9 The Contractor shall render all work and services in a professional and workmanlike manner.

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 ONE MILLION, SEVEN HUNDRED TWENTY EIGHT THOUSAND, ONE HUNDRED AND 00/100 DOLLARS (\$1,728,100.00), as full compensation for all labor, materials, equipment, supplies and services rendered under this Agreement, said dollar amount being equal to the sum of the following amounts:

LUMP SUM BASE BID: \$1,571,000

10% CONTINGENCY ALLOWANCE: \$ 157,100.

3.2 The parties agree that the compensation dollar amounts described in Paragraph 3.1 shall be adjusted to reflect any and all alternate work that the County selects, and the Contractor performs, and that said adjustments shall be based on the alternate amounts contained in the Bid.

3.3 The dollar amounts and pricing contained in the Bid, including the unit prices, shall remain in effect for the term of the Agreement, including any extensions.

ARTICLE 4. PAYMENT; RETAINAGE

4.1 Payment shall be made to the Contractor by the County upon the Contractor's submission to the County of all properly executed forms, including an Albany County Claim Form, plus all supporting documentation, subject to the Engineer's and County's review and approval.

4.2 Upon approval by the County, and in accordance with the provisions of this Article, the County shall promptly pay Claim Forms/Applications for Payment less an amount necessary to satisfy any claims, liens or judgments against Contractor that have not been suitably discharged. Any claims, liens and judgments referred to in this paragraph shall pertain to the project and shall be filed in accordance with the terms of the applicable contract and/or applicable laws.

4.3 Payment retainage shall be at 5%, and subject to the County's and the Engineer's review, retainage shall be reduced to 2.5% upon the Contractor attaining substantial completion as determined by the County.

4.4 Payments for materials pertinent to the project which have been delivered to the site or off-site by the Contractor and/or its subcontractor and suitably stored and secured as approved by the County are limited to only those materials in short and/or critical supply and materials specially fabricated for the project and which previously have been approved by the County for such payment.

4.5 No Estimate on Contractor's Non-Compliance: It is further agreed that so long as

any lawful or proper direction concerning the work or material given by the County, or its representative, remains in noncompliance, the Contractor shall not be entitled to have any estimate made for the purpose of payment, nor shall any estimate be honored on account of work done or material furnished until such lawful or proper direction has been fully and satisfactorily complied with.

ARTICLE 5. TERM OF AGREEMENT

The term of this Agreement shall commence upon execution of this Agreement by both parties, and shall continue in effect through completion of the work as determined by the County. The parties anticipate completion of the work on or before December 31, 2025.

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. ASSIGNMENT

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

7.2 The Contractor shall inform the Construction Manager, the Engineer and the County of all subcontractors it intends to use on the Project. 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

The Contractor shall cooperate with representatives, agents and employees of the County and the County shall cooperate with representatives, agents and employees of the Contractor 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 Contractor agrees that neither it nor any of 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 11. RELATIONSHIP

The Contractor is, and shall 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 employees and agents of the Contractor shall not in any manner be, or be held out to be, agents or employees of the County.

ARTICLE 12. INDEMNIFICATION

The Contractor shall defend, indemnify and save harmless the County, the Capital District Youth Center, Inc., the Berkshire Farm Center & Services for Youth, and their respective 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 Contractor, 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 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 14. APPLICABLE LAW; DISPUTE RESOLUTION

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

14.2 The parties agree that the Engineer has unlimited discretion to decide any and all questions related to the work required to be provided by the Contractor under this Agreement, and payments required to be made to the Contractor by the County for said work, and that the Engineer's decision shall be binding on all parties.

14.3 The parties also agree that the County has unlimited discretion to determine any and all questions related to additional compensation for extra work as decided by the Engineer, and that the County's determination shall be binding on all parties.

14.3 The parties further agree that judicial review of any decision by the County regarding work or payments, or any determination by the County regarding additional compensation, is limited to:

14.3.1 The commencement of a proceeding under Article 78 of the NEW YORK CIVIL PRACTICE LAWS and Rules, within 21 days of the Engineer's decision, filed in Supreme Court, Albany County, New York, and subject to the procedures and laws applicable in that court (hereinafter, the "Article 78 proceeding"); and

14.3.2 The Article 78 proceeding shall only seek a judicial determination regarding whether or not the Engineer's decision, and/or the County's determination, is arbitrary, capricious or grossly erroneous as to evidence bad faith.

ARTICLE 15. RECORDS

15.1 The 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.

15.2 The 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.

15.3 The 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 16. INSURANCE; BONDS

16.1 The Contractor shall procure and maintain for the entire term of this Agreement, without additional expense to the County, the Capital District Youth Center, Inc. and Berkshire Farm Center & Services for Youth, 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 The 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 certificate. 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.

16.4 In addition to the insurance policies described in Paragraphs 16.1 through 16.3 above, the Contractor shall provide the County with a performance bond and a payment bond, each in the amount of ONE MILLION, SEVEN HUNDRED TWENTY EIGHT THOUSAND, ONE HUNDRED AND 00/100 DOLLARS (\$1,728,100.00), prior to commencing any work described in this Agreement.

ARTICLE 17. PREVAILING WAGE RATES AND SUPPLEMENTS

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 § 220 [3-a]a.

ARTICLE 18. 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 19. MODIFICATION

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

ARTICLE 20. 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 21. 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 22. COMPLIANCE WITH MacBRIDE PRINCIPLES

The 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 the 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 section 4 of Local Law No. 3 in 1993, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the Contractor in default and/or seeking debarment or suspension of the Contractor.

ARTICLE 23. 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 24. 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 25. STORMWATER MANAGEMENT PROGRAM

25.1 The Contractor 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. Contractor also agrees to implement any corrective actions identified by Albany County or a representative pursuant to the above regulations, and understands that any non-compliance by the County will not diminish, eliminate or lessen the Contractor's own liability.

25.2 The Contractor shall execute and deliver to the County a certification statement regarding the County's Stormwater Management Program Plan prior to commencing any work described in this Agreement.

ARTICLE 26. APPRENTICESHIP TRAINING REQUIREMENTS

26.1 Due to its prime contractor role on the Project, an Albany County construction project totaling more than \$250,000, Albany County Res. No. 70 for February 10, 2003 and Res. No. 251-a for September 12, 2011 (hereinafter, the "Apprenticeship Resolutions") required the Contractor to provide, at the time of submitting the Bid, documentation of its participation in an apprenticeship training program(s) approved by the NYS Department of Labor for all work it intends to self-perform. The parties agree that the Contractor provided said apprenticeship documentation regarding work the Contractor intends to self-perform.

26.2 In addition to the apprenticeship requirements for prime contractors, because the Apprenticeship Resolutions would also require all subcontractors, if any, the Contractor uses on the Project to have apprenticeship training programs approved by the NYS Department of Labor, in the event the Contractor uses one or more subcontractors to perform work on the Project, the Contractor shall only use subcontractors that have apprenticeship training programs approved by the NYS Department of Labor (hereinafter, the "apprenticeship subcontractors").

26.3 Any failure by the Contractor to uphold the apprenticeship training requirements required by the Apprenticeship Resolutions, including, but not limited to, using subcontractors to perform work on the Project who do not have apprenticeship training programs approved by the NYS Department of Labor, shall constitute a default under this Agreement and shall result in the County finding the Contractor to be a non-responsible contractor for purposes of future bidding under N.Y. GENERAL MUNICIPAL LAW.

ARTICLE 27. NO DAMAGES FOR DELAY

27.1 Time is of the essence with this Agreement. The Contractor shall meet all completion dates for the Project, as set by the County and/or the Engineer.

27.2 The County shall not be liable to the Contractor and/or any subcontractor for claims or damages of any nature caused by or arising out of delays. The sole remedy against the County for delays shall be the allowance of additional time for completion of the work, the amount of which shall be subject to the Dispute Resolution procedure described in Article 14, above. Except to the extent, if any, expressly prohibited by law, the Contractor expressly agrees not to make and hereby waives any claim for damages for delay, including, but not limited to, those resulting from increased labor or material costs; directions given or not given by the County or any consultant engineer, including scheduling and coordination of the work; the preparation of drawings and specifications or review of shop drawings and requests for instruction(s); or, by the County or any other contractor on the Project, whether or not foreseeable or anticipated. The Contractor agrees that its sole right and remedy therefore shall be an extension of time, if appropriate. IT IS EMPHASIZED THAT NO MONETARY RECOVERY MAY BE OBTAINED BY THE CONTRACTOR FOR DELAY AGAINST THE COUNTY BASED ON ANY REASON AND THAT THE CONTRACTOR'S SOLE REMEDY, IF APPROPRIATE, IS ADDITIONAL TIME.

ARTICLE 28. EXTRA WORK

28.1 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, in writing, of that opinion. Such notice shall be given prior to performing such work that allegedly entitles the Contractor to additional compensation and no later than seven (7) days from when the Contractor knew or should have known of its claim for additional compensation. This notice is in addition to any other notice required under the Contract Documents. In the event that such written notice is not timely given by the Contractor, the Contractor shall not be entitled to any additional compensation for such work.

28.2 The Engineer 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 Engineer decides such work does constitute extra work, the County shall provide additional compensation to the Contractor on a negotiated basis, as determined by the County. Any decision by the Engineer regarding extra work, and any determination by the County regarding additional compensation, shall be binding on the parties.

28.3 The parties agree that any disputes regarding claims for extra work and/or additional compensation for extra work, shall be resolved solely by the Dispute Resolution procedure described in Article 14, above.

ARTICLE 29. SUBCONTRACTORS

Any subcontractor of the Contractor 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 30. MISCELLANEOUS PROVISIONS

30.1 In addition to the policies and procedures described above, the Contractor also acknowledges that it shall follow the Affirmative Action Requirements, Non Interruption of Work Agreement (per Res. No. 298 for 1986), Iranian Energy Sector Divestment (per N.Y. GEN. MUN. LAW § 103-9) and all other policies and procedures contained in the RFB.

30.2 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.

30.3 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.

30.4 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.

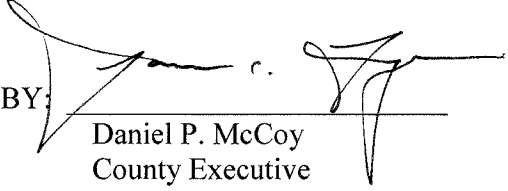
30.5 The County shall bear no responsibility other than that set forth in this Agreement.

30.6 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.

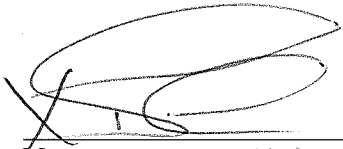
COUNTY OF ALBANY

DATED: 2/15/2023

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

DIGESARE MECHANICAL, INC.

DATED: 1/31/2023

BY: 
Name: Thomas Holmes
Vice President
Title:

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

On the ____ day of _____, 2023, 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 18th day of February, 2023, before me, the undersigned, personally appeared Daniel C. Lynch 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

EUGENIA K. CONDON
Notary Public, State of New York
Registration No: 02CO4969817
Qualified in Albany County
Commission Expires July 23, 2026

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

On the 31 day of January, 2023, before me, the undersigned, personally appeared Thomas Holmes 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.

Nicole Manginelli
Notary Public, State of New York
No. 01MA6421561
Qualified in Montgomery County
Commission Expires September 7, 2025

Nicole Manginelli
NOTARY PUBLIC

SCHEDULE A
PROJECT SITE SECURITY REQUIREMENTS

1.1 SUMMARY

A. This Section includes the following:

- 1) Use of premises.
- 2) Work restrictions.

1.2 USE OF PREMISES

- A. General: This project site is part of a secured, operating secure detention facility owned by Albany County, hereinafter "Owner," and operated by Berkshire Farm Center & Services for Youth, hereinafter "Operator." The majority of the construction will be outside of the secure perimeter. The secure perimeter is defined as any location within the project site that provides for the physical confinement of detained youth. The Owner's and Operator's use of the facilities will continue without interruption during all phases of the project. The Contractor shall have limited use of the premises for construction operations, including use of the Project site, during the construction period. Access shall be limited to the extent necessary for the Owner's continued operation of the existing facility.
- B. Site and building security will be maintained before, during and after construction, at all times of the day or night. The Contractor shall coordinate with the Construction Manager, Owner and Operator on the development of a site and building security plan.
- C. The Contractor shall propose the physical limits of its work area to the Operator and Construction Manager prior to commencing work, and shall not commence work until obtaining approval from the Operator of its work area limits. The Contractor shall confine its work to those areas within the agreed-upon limits, and shall abide by any "Escorted Access" requirement(s) imposed by the Operator. The Contractor's work area shall be maintained in an occupiable condition throughout the construction period. The Contractor shall repair damage caused by construction operations, and take all precautions necessary to protect the building and its occupants during the construction period.
- D. Site Access. The Contractor's access shall be coordinated with the Operator and Construction Manager and shall not be considered as "Free Access." The Contractor shall provide a securable material storage trailer/container for placement outside of the secure fence area. Location of storage container/trailer shall be as directed by the Owner and Construction Manager.

- 1) Keep driveways, loading areas, entrances, etc. serving premises clear and available to Operator, Operator's employees, and emergency vehicles at all times. Do not use these areas for parking or storage of materials.
- E. Vehicle Parking. Contractor vehicle parking will be in designated areas only. Vehicle access within the perimeter fence will be limited and shall be coordinated with the Operator. Any vehicle within the secure perimeter shall be turned-off and locked with all windows tightly closed and keys removed when not occupied. All materials, tools, or other loose items shall be secured when unattended. Vehicles, materials, tools, or loose items not meeting these requirements will be removed at the Owner's expense.
- F. Lost Items. Any missing items including tools, phones, pagers, keys, etc. shall be reported to the Operator immediately. The contractor shall not depart the facility until efforts are made to locate the misplaced or lost item.
- G. Phones. Any lost phone must be reported immediately to the Operator.
- H. There shall be no smoking within the secure perimeter.
- I. Isolation of Work Area: Prevent dust, fumes, and odors from entering occupied areas.
 - 1) Maintain dust partitions during the Work. Use vacuum collection attachments on dust-producing equipment. Isolate limited work within occupied areas using portable dust-containment devices.
- J. Perform daily construction cleanup and final cleanup using approved, HEPA-filter-equipped vacuum equipment.
- K. Snow removal will be performed by the Owner.

1.3 WORK RESTRICTIONS

- A. Construction operations shall be limited to the hours between 7 AM and 4 PM weekdays. Weekend or holiday work shall be by written authorization from the Owner's representative in advance.
 - 1) Permission may be granted for after-hour, weekend, or holiday construction operations if submitted in advance and approved. Submit requests for authorization no less than 72 hours prior to the requested period or more.
- B. Background checks for each person working within the facility's secure perimeter may be required and will be done by, and at the expense of, the Owner. The successful contractor shall provide any and all personnel data required by the Owner to perform this task not less than 21 days prior to the start of work. If an applicant has no criminal record, access will be granted. Should

an applicant be found to have a criminal record sufficient to be deemed inappropriate for entry, access will not be granted. Any questions as to why the worker was denied access to the facility shall be made by the applicant to the Owner in writing.

- C. The Contractor shall provide notice to the Owner, Operator and Construction Manager at least two weeks in advance of the any work scheduled to be performed within the secure perimeter. The Contractor shall coordinate with the Owner, Operator and Construction manager on the development of an access control plan work within the secure perimeter. Escorted access to work areas within the secure perimeter shall be required.
- D. Tool Control
 - 1) It is the policy of the Owner and Operator to prevent the use of tools in escape attempts or in the manufacture of weapons. All tools are to be inventoried daily when entering and departing the facility secure perimeter. Due to the time consuming nature of the inventory process and security concerns, contractors are encouraged to bring all required tools in at one time. A secure room will be provided by the Operator for storage of tools. Any workers bringing tools in and out daily will be detained for inventory procedures both entering and departing the site.
 - 2) Categories of tools have been established to enable workers to effectively supervise all tools without unduly restricting the use of non-critical items. Although it is difficult to classify every specific tool in use in a facility, two general categories for tools are established, as follows:
 - a. Class A tools are items that can themselves be used as weapons or in an escape or can be used to fabricate weapons or facilitate escape.
 - b. Class B tools are those tools that have nominal weapon or escape facilitation potential.
 - 3) Examples of items which are considered tools required to be stored and inventoried in accordance with this policy are as follows:
 - a. Scissors, shovels, rakes, ladders, extension cords (heavy duty type which in any way could be fashioned together for escape paraphernalia), ropes, hoses, etc.
 - b. Cutting tools. Security of specialty cutting tools for masonry and metals is critical. Therefore, the accountability of broken pieces of blades and bits is critical. Broken blade/bits pieces must be collected and returned to inventory to assure the entire broken item is accounted for.
 - c. Freon and other aerosol containers will be considered Class "A" and will not be allowed to be stored in the secure building at any time.
 - d. Ladders or scaffolding shall be chained and padlocked to an immovable object when outside of the work area.
 - e. Hilti gun (or similar) powder driven kits and charges will be stored in a specialty area and inventoried after each use. At no time will

the Hilti gun or charges be approved for storage inside the secure building.

- f. All flammable, hazardous, poisonous and toxic materials will be considered Class "A" items. This includes such items as gasoline, alcohol, acid, glue, insecticides, etc. These items shall be stored in a flammable storage cabinet or other suitable storage cabinet. All flammable and toxic materials, other than gasoline, will be stored in original containers. When original containers are not available the materials shall be in an appropriate secondary use container properly labeled. The manufacturer's material Safety Data Sheets shall be maintained on all items within the storage areas. A copy of the material SDS shall also be maintained in the facility's Medical Unit. Gasoline and other flammables shall be strictly controlled. Gasoline shall not be stored or carried in any type container except an approved safety can.
 - g. All excess oxygen, propane, acetylene, and other gas tanks (full or empty) shall be stored in a safe, secure, upright manner. Under no circumstances shall any gasoline, pressurized tanks, or mixing chambers be stored inside the secure building.
- 4) Weapons:
- a. Weapons are not allowed on site beyond the construction entrance gate.

SCHEDULE B
INSURANCE COVERAGE

1. Workers' Compensation and Employers' Liability Insurance: A policy or policies providing protection for employees in the event of job-related injuries.
2. 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.
3. General Liability Insurance: A policy or policies of comprehensive all-risk insurance, including coverage for demolition of structures, with limits of not less than:

i. Commercial General Liability:

\$4,000,000	General Aggregate Limit (other than products-completed operations);
\$4,000,000	Products-Completed Operations Aggregate Limit;
\$2,000,000	Personal and Advertising Liability;
\$2,000,000	Each Occurrence Limit;
\$1,000,000	Fire Legal Liability;
\$ 10,000	Medical Expense Limit (each person);
\$1,000,000	Employee Benefit Liability;

ii. Excess Umbrella Liability:

\$5,000,000	Per Occurrence;
\$5,000,000	Annual Aggregate.

4. Disability Insurance: A policy or policies providing appropriate disability benefits in accordance with Section 220 Subdivision 8 of the N.Y. DISABILITY BENEFITS LAW (DBL).