

DRAFT FOR DISCUSSION PURPOSES ONLY
DATED: JUNE 13, 2023

PROFESSIONAL SERVICES AGREEMENT
between
ADVANCE ALBANY COUNTY ALLIANCE LOCAL DEVELOPMENT CORPORATION
and the
ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY

This Agreement ("Agreement"), effective as of _____, 2023, is between the ALBANY COUNTY INDUSTRIAL DEVELOPMENT AGENCY ("IDA"), a public benefit corporation with a place of business at _____ and the ADVANCE ALBANY COUNTY ALLIANCE LOCAL DEVELOPMENT CORPORATION ("AACA"), a not for profit corporation having a place of business at 111 Washington Avenue, Albany, New York, 12210 ("AACA"):

WITNESSETH:

WHEREAS, the AACA has offered to provide professional economic development management and administrative support services to the IDA; and

WHEREAS, the IDA has accepted the offer of the AACA for such professional services; and

WHEREAS, the IDA and the AACA wish to enter into a formal agreement for the provision of and payment for said professional services;

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

ARTICLE 1 -SERVICES TO BE PERFORMED

The AACA shall perform the professional and administrative support services set forth under Article 2 entitled "SCOPE OF PROFESSIONAL SERVICES" during the period commencing on _____, 2023 and, subject to earlier termination as provided below, continuing until December 31, 2025. In the performance and acceptance of the services herein, the parties understand, acknowledge and agree that the AACA is assuming no managerial role, nor undertaking any oversight responsibilities with regard to the powers and duties of the IDA or the actions or non-actions of its Board of Directors. Nothing in this Agreement should be construed to transfer governance, oversight or fiduciary responsibilities from the IDA to AACA.

ARTICLE 2 - SCOPE OF PROFESSIONAL SERVICES

During the period of this Agreement, the AACA agrees to provide staffing, office equipment, utilities, phone and computer networking to perform the administrative, managerial, accounting, marketing, compliance, and project development functions of the IDA, as further described in Article

12 below. AACA shall be responsible for the services described on Schedule A attached. The AACA shall provide professional staff time towards fulfillment of this Agreement, including all administrative clerical, secretarial, accounting, compliance, and information technology support as required.

ARTICLE 3 - PROFESSIONAL SERVICES FEE

In consideration of the terms and conditions of this Agreement, the IDA agrees to pay and the AACA agrees to accept, as full compensation for all services rendered under this Agreement the amount of \$ _____.

ARTICLE 4 - METHOD OF PAYMENT

The IDA will pay AACA its professional services fee referenced under Article 3 of this Agreement in twelve (12) equal monthly installments of \$ _____ due and payable no later than the fifteenth (15th) day of each month.

ARTICLE 5 - TERMINATION

This Agreement may be terminated at any time by either AACA or the IDA for any reason upon thirty (30) days prior written notice to the other party (the "Notice"). In the event of termination, AACA shall be entitled to compensation for all work performed pursuant to this Agreement to the date of termination. For purposes of this Article, the "date of termination" shall be the thirtieth (30th) day following dispatch of the Notice.

ARTICLE 6 – NOTICES

All notices given to either AACA or the IDA pursuant to or in connection with this Agreement shall be in writing, and shall be delivered by hand, by certified or registered mail, return receipt requested, by e-mail, or by Federal Express, Express Mail, or other nationally recognized overnight carrier. Such notices shall be sent to the addresses indicated on the first page of this Agreement, or such other address as either AACA or the IDA may indicate by at least thirty (30) days prior written notice to the other party. Copies of any such notice shall be delivered in writing to counsel to the IDA and AACA.

ARTICLE 7 – INSURANCE

The IDA shall provide to AACA proof of or exemption from statutory workers' compensation and disability coverage, and proof of directors and officers (D&O) liability insurance. Such D&O policy shall name AACA as an additional insured. Upon request by the IDA, AACA shall provide proof of insurance coverage to the IDA and if required, shall name the IDA as additional insured with respect to general liability.

ARTICLE 8 - MUTUAL INDEMNIFICATION

a. AACA shall defend, indemnify and hold harmless the IDA and its members/directors, officers and employees from and against claims, damages, losses, liabilities, costs and expenses, including, but not limited to reasonable attorneys' fees and costs of litigation and/or settlement, whether incurred as a result of a claim by a third party or any other person or entity, arising out of or resulting from AACA's performance of the tasks detailed in this Agreement, except if such claims, damages, losses or expenses are caused by IDA's negligence or willful misconduct.

b. IDA shall defend, indemnify and hold harmless AACA and its members/directors, officers and employees from and against claims, damages, losses, liabilities, costs and expenses, including, but not limited to reasonable attorneys' fees and costs of litigation and/or settlement, whether incurred as a result of a claim by a third party or any other person or entity, arising out of or resulting from IDA's performance of the tasks detailed in this Agreement, except if such claims, damages, losses or expenses are caused by AACA's negligence or willful misconduct.

ARTICLE 9 – INDEPENDENT CONTRACTOR

Each of AACA and the IDA Agrees to be solely responsible for all matters relating to compensation of its employees, including compliance with local, state and federal laws governing its personnel, including workers' compensation, Social Security, withholding and payment of any and all federal, state and local personal income taxes, disability insurance, unemployment, and any other taxes for such persons, including any related employer assessment or contributions required by law, and all other regulations governing such matters, and the payment of all salary, vacation and other employee benefits.

ARTICLE 10 - EQUAL EMPLOYMENT OPPORTUNITY

AACA shall comply with all Federal, State, and Local equal employment opportunity laws, rules, and regulations relating, to all matters contained in this Agreement.

ARTICLE 11 - ACCOUNTING AND IDA RECORDS

Proper and full accounting records, including time sheets, shall be maintained by AACA for all services provided pursuant to this Agreement. All IDA records held by AACA shall be available for inspection or audit by the IDA if required by applicable law or if requested by the IDA.

ARTICLE 12 –IDA OFFICE AND OFFICE FACILITIES

On or before _____, 2023, the IDA shall move its office to be co-located with the AACA offices at 111 Washington Avenue, Albany, New York. AACA shall be responsible for the provision of office facilities described on Schedule B attached.

ARTICLE 13 – NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by both AACA and the IDA, but must instead only be heard in the Supreme Court of the State of New York (the “State”), with venue in Albany County or, if appropriate, in the Federal District Court with venue in the Northern District of New York, Albany Division.

ARTICLE 14 – NO ASSIGNMENT

Neither AACA nor the IDA may assign its rights, interests, and/or obligations under this Agreement.

ARTICLE 15 – GOVERNING LAW

This Agreement and the performance of AACA and the IDA hereunder shall be governed by and construed in accordance with the laws of the State. AACA and the IDA agree to comply with all applicable federal, state and local laws and regulations.

ARTICLE 16 – MODIFICATIONS TO BE IN WRITING

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by both AACA and the IDA. Changes in the Scope of Professional Services, identified on Schedule A attached hereto, shall not be binding, unless prior to the performance of any such services, AACA and the IDA execute an amendment or modification to this Agreement, which amendment or modification shall specifically set forth the scope of such extra or additional services, the amount of compensation, and extension of time for performance, if any, for any such services. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such amendment or modification.

ARTICLE 17 – DUTY OF LOYALTY/NO CONFLICTS

AACA agrees that it owes a duty of loyalty to the IDA and it will not disclose any confidential information obtained in connection with the performance of its duties to the IDA under this Agreement to any other parties, including any parties it has or enters into contracts with. AACA agrees to enter into a non-disclosure agreement with the IDA, if requested by the IDA, and to meet with the Governance Committee of IDA to disclose any interests that may create an appearance of competition or a conflict of interest.

ARTICLE 18 – RETURN OF FILES

Upon the termination of this Agreement, the AACA will return all files, documents and client records to the IDA. Such files, documents and client records will be returned to the IDA in the format that they currently exist, namely, hard copies of materials will be returned in hardy copy format and electronic copies of materials will be returned in electronic copy format. AACA will return such files,

documents and client records within thirty (30) days of such termination, together with a certificate, in a form satisfactory to the IDA, containing an inventory detailing and describing the materials held by AACA on behalf of the IDA, together with an index providing for access to such materials, and confirming the delivery of such materials to the IDA.

ARTICLE 19 – TRANSITION

Upon termination of this Agreement, AACA will provide for and cooperate with the IDA to ensure an orderly transition of the operations of the IDA back to the IDA and/or the successor to AACA. All files, documents and client records will be returned in accordance with the provisions of Article 18 above. Regarding the operations of the IDA, AACA will make available to the IDA, and/or the successor to AACA, the primary staff person providing the services under this Agreement. Such staff person will be made available for transition questions and to address transition issues for a period not to exceed two (2) hours/week for a four (4) week period following the termination of this Agreement. The IDA may, in its absolute discretion, withhold the final payment due to AACA pursuant to Article 4 above and instead make such payment following the completion of the transition period described in this article.

ARTICLE 20 – ENTIRE AGREEMENT

The rights and obligations of AACA and the IDA and their respective agents, successors and assignees shall be subject to and governed by this Agreement, which supersedes any other understandings or writings between or among AACA and the IDA.

[remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

ADVANCE ALBANY COUNTY ALLIANCE
LOCAL DEVELOPMENT CORPORATION

By: _____
Name: Kevin O'Connor
Title: Chief Executive Officer

ALBANY COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: _____
Name: William M. Clay
Title: Chairman

SCHEDULE A DESCRIPTION OF SERVICES

1. Implementation, execution and compliance with all IDA Policies and Procedures, and provide advice on amendments and revisions to existing policies and creation of new policies to advance the mission of the IDA.
2. Provide for the deposit and investment of the funds of IDA in accordance with the IDA Investment Policy.
3. Provide for the preparation of reports of the deposit and investment of the funds of IDA in the IDA Investment Policy.
4. Ensure that procurement of goods or services complies with the IDA Procurement Policy.
5. Prepare an annual budget of IDA and the filing of such budget in accordance with the Public Authorities Law.
6. Provide for the preparation of financial statements and reports of the IDA, including the PARIS Report, and the filing of such materials with appropriate State offices in accordance with the Public Authorities Law.
7. Report on questions involving potential conflicts of interest under the IDA Code of Ethics.
8. Consult with IDA Counsel regarding membership and proper appointment of IDA members.
9. In consultation with IDA Counsel, act as Records Access Officer with regard to any requests for information pursuant to the Freedom of Information Law.
10. Consult with IDA Counsel regarding proper notice of IDA meetings.
11. Prepare, organize, and distribute minutes, agendas, resolutions and related meeting materials of each IDA meeting (in consultation with IDA Counsel) in accordance with IDA Policies and Procedures and State law including the Open Meetings Law.
12. Coordinate the scheduling and noticing of public hearings and the delivery of notification letters in accordance with the Open Meetings Law and the IDA Statute.
13. Organize and maintain files relating to SEQRA compliance.
14. Maintain and update the IDA's website.
15. Monitor and maintain files regarding the Uniform Tax Exemption Policy of IDA,

including ensuring that any required filings are completed.

16. Provide for the preparation and distribution of Applications submitted by applicants.
17. Meet with potential applicants for IDA assistance and coordinate such meetings.
18. Prepare a proposed structure for the granting of IDA assistance for applicants, consistent with IDA policies, including the IDA Uniform Tax Exemption Policy, for consideration by the IDA.
19. Prepare and review the cost/benefit analysis for proposed IDA projects.
20. Attend IDA board and committee meetings, and prepare and present reports on administrative matters, potential IDA projects and economic development marketing efforts.
21. Review draft IDA documents prepared by IDA Counsel to confirm IDA documents contain approved IDA assistance.
22. Monitor and provide for the volume cap of IDA.
23. Monitor and maintain files regarding the collection of administrative fees for the IDA.
24. Monitor compliance with IDA requirements relating to the exemptions from certain sales and use taxes, real property taxes, real property transfer taxes, mortgage recording taxes, job creation, job retention and job reporting.
25. Provide guidance in connection with any proposed assignment of an existing PILOT Agreement.
26. Ensure that applicants are utilizing local labor in accordance with IDA Policy.
27. Monitor project applicants to ensure that each applicant is not subject to recapturing of benefits or other corrective action in accordance with IDA Policy, and prepare recommendations for consideration by the IDA.
28. Follow the IDA media relations policy.
29. Provide uniform criteria for the evaluation of projects in accordance with IDA Policy.
30. Review, organize, monitor and maintain policies and files relating to the requirements imposed on the IDA relating to the Public Authorities Accountability Act ("PAAA") and the Public Authorities Reform Act ("PARA"), including, but not limited to, working with IDA Counsel and IDA Bond Counsel with respect to such policies.

31. Subject to IDA Board approval, it is intended that the IDA Officers shall be elected and/or appointed from among the members of the AACCA staff.

SCHEDULE B OFFICE FACILITIES

1. A conference room of sufficient size to host IDA board meetings, conference meetings and meetings with potential project applicants.
2. Subject to availability, parking for members to attend meetings (both during normal business hours and outside business hours).
3. Storage space on site for IDA files.
4. IT support to provide for live streaming of IDA meetings and committee meetings.
1. IT support to provide for conference call/zoom (or equivalent, as necessary) meetings.