

**MEMORANDUM OF UNDERSTANDING
CONCERNING USE AND OPERATION OF LEASED PREMISES**

THIS MEMORANDUM OF UNDERSTANDING CONCERNING USE AND OPERATION OF LEASED PREMISES (the “**Memorandum**”) is entered into by and among the **ROCHESTER JOINT SCHOOLS CONSTRUCTION BOARD (“RJSCB”), CITY OF ROCHESTER (“City”), ROCHESTER CITY SCHOOL DISTRICT (“RCSD”), SAVIN ENGINEERS, P.C. (“Savin”), GILBANE BUILDING COMPANY (“Gilbane”), BAKER TILLY VIRCHOW KRAUSE, LLP (“Baker Tilly”), VARGAS ASSOCIATES (“Vargas”), MILLENNIUM STRATEGIES (“Millennium”), W.R. REVELS COMPANY D/B/A BLACK LABEL IT SOLUTIONS (“Black Label IT”), and ROGERS ENTERPRISES (“Rogers”).** RJSCB, Savin, Gilbane, Baker Tilly, Vargas, Millennium, Black Label IT and Rogers are sometimes collectively referred to herein as the “**Parties**” and each individually as a “**Party**.”

WHEREAS, Chapter 416, Laws of the State of New York 2007, also known as the City of Rochester and Board of Education of the City School District of the City of Rochester School Facilities Modernization Program Act (the “**Phase 1 Act**”), created the RJSCB to implement a facilities modernization program for the Rochester City Schools, known as the Rochester Schools Modernization Program (“**RSMP**”) and authorized Phase 1 of the RSMP; and

WHEREAS, on December 17, 2014, Chapter 533, Laws of New York 2014 (the “**Phase 2 Act**” and collectively with the Phase 1 Act, the “**Act**”) authorizing Phase 2 of the RSMP was signed into law by the Governor of the State of New York; and

WHEREAS, pursuant to the Act, the RJSCB is the agent for the City, the RCSD or both to undertake certain RSMP Projects (as defined in the Act) within the Rochester City School District; and

WHEREAS, pursuant to the Act, the RJSCB has the power to do all things necessary, convenient or desirable to carry out its purposes and for the exercise of the powers granted to it in the Act; and

WHEREAS, pursuant to a Program Management Agreement dated July 1, 2010, by and between the RJSCB and Gilbane, Gilbane is acting as program manager for Phase 1 of the RSMP; and

WHEREAS, pursuant to a Program Management Agreement dated December 15, 2015, by and between the RJSCB and Savin (the “**Phase 2 PM Agreement**”), Savin is acting as program manager for Phase 2 of the RSMP; and

WHEREAS, pursuant to the Phase 2 PM Agreement, the RJSCB is obligated to provide Savin (at no rental cost to Savin) with office space for Savin’s use in performing services under the Phase 2 PM Agreement; and

WHEREAS, at the direction of the RJSCB, Savin has entered into a Lease Agreement dated February 6, 2017 for approximately 16,000 square feet of office space in a building located at 70 Carlson Road, Rochester, NY 14610 (the “**Leased Premises**”) for use in connection with the

RSMP, the rental costs for which Savin will be reimbursed pursuant to the Phase 2 PM Agreement; and

WHEREAS, the RJSCB, City, RCSD, Savin, Gilbane, Baker Tilly, Vargas, Millennium, Black Label IT and Rogers desire to use the Leased Premises in connection with the RSMP Projects; and

WHEREAS, in furtherance of the Act and the RSMP Projects, Savin hereby allows the Parties to occupy and use the Leased Premises upon the terms and conditions set forth in this Memorandum.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. USE OF THE PROPERTY. Savin hereby grants to the Parties the non-exclusive right to use the Leased Premises in common with each other and in accordance with the terms hereof, for general office purposes and for any other purpose permitted under the Act. The Parties shall use best efforts to exercise the rights granted hereunder in a manner so as not to interfere with each other's rights to use the Leased Premises. Subject to the RJSCB's oversight and guidance, the Parties acknowledge and agree that Savin shall be responsible for coordinating the Parties' use of the Leased Premises, including but not limited to, assigning office, meeting, and storage space to each Party as necessary. Savin acknowledges that the Leased Premises may also be used from time to time by other consultants performing services in connection with the RSMP and hereby consents to such use; provided, however, the each consultant using the Leased Premises shall be provided with a copy of this Memorandum and shall sign the acknowledgment attached hereto as **EXHIBIT A**.

2. TERM.

(a) The effective date of this Memorandum shall be the date last executed by the Parties (the "**Effective Date**"). The term of this Memorandum (the "**Term**") shall commence on the Effective Date and shall end on the fifth (5th) anniversary thereof (the "**Expiration Date**"). The RJSCB and Savin acknowledge that in the event that the State of New York authorizes one or more additional phases of the RSMP, the RJSCB and Savin shall discuss renewal of this Memorandum for additional periods for such work.

(b) Notwithstanding the foregoing, in the event the RJSCB terminates the Phase 2 PM Agreement prior to the expiration of its term, the Lease Agreement, pursuant to Paragraph 13 of the Lease Agreement, shall, at the RJSCB's election, be assigned from Savin to the RJSCB or a successor Program Manager, effective as of the date of the termination of the Phase 2 PM Agreement.

(c) The RJSCB shall have the right to terminate this Memorandum immediately as to any Party that ceases to perform services in connection with the RSMP. Savin shall have the right to terminate this Memorandum immediately as to any Party (other than the RJSCB) that ceases to perform services in connection with the RSMP.

3. SERVICES.

(a) Savin, in consultation with the RJSCB and in accordance with obligations under the Lease Agreement, shall promptly and in a workmanlike manner perform, or shall cause to be performed, all maintenance and shall make, or shall cause to be made, all repairs and replacements required to keep the Leased Premises in good order, condition and repair (such maintenance, repair and replacement, the “**Maintenance**”). The RJSCB will reimburse Savin for the costs of Maintenance in accordance with the Phase 2 PM Agreement.

(b) All utilities, water and other services for the Leased Premises will be contracted for and initially paid for by Savin. The RJSCB expects to reimburse Savin for the costs of such utilities in accordance with the Phase 2 PM Agreement.

(c) Savin, in consultation with the RJSCB, shall be responsible for furnishing the Leased Premises and shall coordinate the delivery and installation of such furnishings. The RJSCB expects to reimburse Savin for the costs of such furnishing in accordance with the Phase 2 PM Agreement.

4. ALTERATIONS. Savin, with the written consent of the Landlord (as identified in the Lease Agreement) and the RJSCB, may make such alterations, changes, modifications or other improvements to the Leased Premises reasonably necessary or convenient for the Parties’ use of the Leased Premises. The contractual arrangements for such work under this section and the costs to be incurred must be approved by the RJSCB. Alteration costs shall be reimbursed to Savin in accordance with the Phase 2 PM Agreement.

5. RESTORATION. Following the completion of the Parties’ activities on the Leased Premises, all parties using the Leased Premises pursuant to this Memorandum shall, at their own cost and expense, remove their respective personal property from the Leased Premises.

6. INDEMNIFICATION: The Parties hereby agree to indemnify, defend and hold each other harmless from and against any and all claims, demands, damages, expenses, losses and/or liabilities, including without limitation damages arising from injuries, accidents or deaths resulting from their respective activities on the Leased Premises.

7. INSURANCE.

a. **Insurance Required by the Lease Agreement.** Savin shall procure and obtain all insurance required by the Lease Agreement. Costs related to such insurance policies shall be reimbursed to Savin in Accordance with the Phase 2 PM Agreement.

b. **Property Insurance.** The Parties agree that Savin shall procure and obtain insurance for *certain* contents located within the Leased Premises. The contents in the Leased Premises that shall be insured by Savin at replacement cost include:

Leased Premises contents (represents base FFE, computers needed to allow the facility to be operational; any other property of a Party is required to be insured individually by the Party; any Parties not tenants as of the date of this Memorandum

shall not be insured under the property insurance provided by Savin unless otherwise agreed by the Parties)

\$100,000	Furniture, Fixtures and Equipment
\$ 50,000	Computer Equipment and Printers for use by Parties who are tenants at time of this Memorandum

Costs related to such insurance policies shall be reimbursed to Savin in accordance with the Phase 2 PM Agreement. Any costs not covered due to property insurance deductibles shall be the responsibility of the RJSCB, so long as the deductible is not in excess of \$5,000. The property insurance provided by Savin shall not include coverage for any business or personal property of any Party using the Leased Premises pursuant to this Memorandum, nor shall it include coverage for any indirect loss or damage to any property. Each Party shall procure and maintain insurance covering its own business and personal property located on the Leased Premises in amounts and coverage that would customarily be carried by a prudent tenant in Monroe County, New York.

c. **Waiver of Subrogation.** The Parties hereby waive on behalf of themselves and their respective insurers, any right of action that either may have against the other for loss or damage to property. It is understood that this waiver is intended to extend to all such direct and indirect loss or damage, whether or not the same is caused by the fault or neglect of any of the Parties and whether or not insurance is in force. If required by policy conditions, each Party shall secure from its property insurer a waiver of subrogation endorsement to its policy, and deliver a copy of such endorsement to the other Parties to this Memorandum if requested.

d. **Liability Insurance.** Except for the RCSD and City which maintain different insurance coverage and limits, each Party that holds a prime contract with the RJSCB shall keep and maintain liability insurance for the Term as follows:

- (i) Commercial General Liability:
 - \$2,000,000 General Aggregate Limit
 - \$2,000,000 Products-Completed Operations Aggregate Limit
 - \$1,000,000 Personal and Advertising Liability
 - \$1,000,000 Each Occurrence Limit
 - \$1,000,000 Fire Legal Liability
 - \$ 10,000 Medical Expense Limit (each person)
- (ii) Business Automobile Liability \$1,000,000 Combined Single Limit
- (iii) Workers Compensation Statutory Limits
- (iv) Employers Liability Minimum \$100,000
- (v) Excess/Umbrella (for general aggregate and auto liability only) Minimum \$3 million
- (vi) Except for the RCSD and the City which maintain different insurance coverage and limits, each Party that holds a prime contract with the RJSCB shall cause (a) the

commercial general liability and business automobile liability coverages required above to include the other Parties as additional insureds on a primary, non-contributory basis and (b) a waiver of subrogation to be issued with respect to all Parties on the insurance required in (i) – (v) of this Liability Insurance section.

8. COMPLIANCE WITH LAWS: The Parties shall comply at all times with all applicable laws, rules, regulations, orders, directives and requirements of any kind imposed by any federal, state or local government or any agency or instrumentality of any such government.

9. ASSIGNMENT. The rights granted hereunder are personal to the Parties and shall not be assigned, nor shall the Parties otherwise permit or suffer the use of the Leased Premises by any third party whether directly or indirectly or otherwise or by operation of law, and any purported assignment in violation of this Paragraph shall be void.

10. NOTICES. All notices, demands, requests, consents or approvals (collectively, “**Notice**”) which may or are required to be given by any Party to any other Party shall be in writing and shall be deemed given if by personal delivery upon the party for whom it is intended on the day so delivered, if delivered by registered or certified mail, return receipt requested, on the third business day following such mailing, if delivered by a national courier service on the next business day following such mailing, any such Notice mailed or delivered to the following:

Rochester Joint Schools Construction Board
1776 North Clinton Avenue
Rochester, NY 14621

City of Rochester
30 Church Street
Rochester, NY 14614

Rochester City School District
131 West Broad Street
Rochester, NY 14614

Savin Engineers, P.C.
3 Campus Drive
Pleasantville, NY 10570

Gilbane Building Company
7 Southwoods Boulevard, 3rd Floor
Albany, NY 12211

Baker Tilly Virchow Krause, LLP
One Penn Plaza, Suite 3000
New York, NY 10119

Vargas Associates
40 Humboldt Street, Suite 101
Rochester, NY 14609

Millennium Strategies
1482 Erie Blvd.
Schenectady, NY 12305

W.R. Revels Company d/b/a
Black Label IT Solutions
270 Exchange Blvd., #236
Rochester, NY 14608

Rogers Enterprises
125 State Street
Rochester, NY 14614

A Party may designate in writing a different address or addresses for communications intended for it.

11. GOVERNING LAW. This Memorandum shall be governed by the laws of the State of New York.

12. ENTIRE AGREEMENT. This Memorandum and the Program Management Agreement reflect the entire agreement between the Parties concerning the specific rights granted herein and may not be modified except in a writing signed by the Parties.

13. COUNTERPARTS. This Memorandum may be executed in any number of counterparts, each of which shall be deemed an original, but all shall together constitute one and the same instrument.

14. COOPERATION. Where possible, the Parties agree to cooperate and coordinate with one another to reduce operating expenses at the Leased Premises.

[The remainder of this page is intentionally blank; signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

SAVIN ENGINEERS, P.C.

By: _____
Name: _____
Title: _____
Date: _____

CITY OF ROCHESTER

By: _____
Name: _____
Title: _____
Date: _____

GILBANE BUILDING COMPANY

By: _____
Name: _____
Title: _____
Date: _____

VARGAS ASSOCIATES

By: _____
Name: _____
Title: _____
Date: _____

**W.R. REVELS COMPANY D/B/A
BLACK LABEL IT SOLUTIONS**

By: _____
Name: _____
Title: _____
Date: _____

ROCHESTER JOINT SCHOOLS CONSTRUCTION BOARD

By: Allen Williams
Name: Allen Williams
Title: Chair
Date: 2/6/17

ROCHESTER CITY SCHOOL DISTRICT

By: _____
Name: _____
Title: _____
Date: _____

BAKER TILLY VIRCHOW KRAUSE, LLP

By: _____
Name: _____
Title: _____
Date: _____

MILLENNIUM STRATEGIES

By: _____
Name: _____
Title: _____
Date: _____

ROGERS ENTERPRISES

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

Consultant Acknowledgement

_____ hereby acknowledges receipt of a copy of the Memorandum of Understanding Concerning Use and Operation of Leased Premises last dated _____, 2017 by and among the Rochester Joint Schools Construction Board, the City of Rochester, the Rochester City School District, Savin Engineers, P.C., Gilbane Building Company, Baker Tilly Virchow Krause, LLP, Vargas Associates, Millennium Strategies, W.R. Revels Company d/b/a Black Label IT Solutions, and Rogers Enterprises (the "Memorandum") and by its signature on this acknowledgement agrees to be bound by the terms thereof with respect to its use of the Leased Premises (as defined in the Memorandum).

By: _____
Name: _____
Title: _____
Date: _____

Address for Notices:

Attn: _____