

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (the "MOU") is entered into the 10th day of March, 2015, by and among the **DORMITORY AUTHORITY OF THE STATE OF NEW YORK**, with its principal offices located at 515 Broadway, Albany, New York 12207 ("DASNY"), the **BUILDING AND CONSTRUCTION TRADES COUNCIL OF GREATER NEW YORK AND VICINITY** ("Council") (on behalf of itself) and the signatory affiliated **LOCAL UNIONS** ("Unions" or "Local Unions").

WITNESSETH

WHEREAS, pursuant to the Dormitory Authority Act (Title 4 of Article 8 of the Public Authorities Law) and the Facilities Development Corporation Act, being McKinney's Unconsolidated Laws §§4401 through 4417, DASNY is authorized to design, acquire, construct, finance or otherwise provide projects for various agencies of the State and City of New York; and

WHEREAS, Labor §222 authorizes DASNY to require a contractor awarded a contract, subcontract or other agreement for a project to enter into a project labor agreement (as defined in Labor Law §222) for the work involved with such project provided that (1) DASNY has determined that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages, and any local history of labor unrest, are best met by requiring a project labor agreement and (2) DASNY includes a requirement in its contract documents that all contractors and subcontractors performing work on the project be bound by the terms of the project labor agreement; and

WHEREAS, Labor Law §222 further provides that any contract or subcontract for projects undertaken by DASNY that are subject to a project labor agreement shall not be subject to the requirements of separate specifications (referred to as the Wicks Law) for plumbing, heating, ventilation and air conditioning, and electrical work; and

WHEREAS, consistent with the provisions of Labor Law §222, DASNY desires to require utilization of project labor agreements for those projects located in the City of New York for which it has determined that the use of such project labor agreement will provide for the cost efficient, safe, quality, and timely completion of the project in a manner designed to afford the lowest costs to DASNY, its clients and the public it represents, consistent with applicable competitive bidding laws, inter alia, by:

(1) providing a mechanism for responding to the unique construction needs associated with the Project Work (as hereinafter defined) and achieving the most cost effective means of construction, including direct labor cost savings, by changing work and pay practices which would otherwise apply to Project Work;

(2) expediting the construction process and otherwise minimizing the disruption to the ongoing operations of the Construction Client (as hereinafter defined) in the project area;

(3) avoiding the costly delays of potential strikes, slowdowns, walkouts, picketing and other disruptions arising from work disputes, reducing jobsite friction on common situs worksites, and promoting labor harmony for the duration of the Project Work;

(4) standardizing the terms and conditions governing the employment of labor on the Project Work;

(5) permitting wide flexibility in work scheduling;

(6) permitting adjustments to work rules and staffing requirements from those which otherwise might obtain;

(7) providing comprehensive and standardized mechanisms for the settlement of work disputes, including those relating to jurisdiction;

(8) ensuring a reliable source of skilled and experienced labor;

(9) securing applicable New York State Labor Law exemptions;

(10) promoting the statutory objectives stated in the Authority's enabling legislation, applicable Executive Orders, and Authority resolutions, in a non-discriminatory manner designed to open construction opportunities to all qualified bidders;

(11) complying with the goals established under Article 15-a of the Executive Law for the Project Work;

(12) furthering public policy objectives as to improved employment opportunities for minorities, women and the economically disadvantaged, in connection with the Project Work, including but not limited to consideration and implementation where appropriate of any approved Mentor-Protégé program established hereafter by the Authority pursuant to Section 147 of the State Finance Law, as amended by Chapter 360 of the 2009 Laws of the State of New York, provided that said objectives can be implemented consistent with the goals of the competitive bidding laws;

(13) increasing apprenticeship levels for minorities, women and economically disadvantaged individuals to the fullest extent allowed by law; and

(14) permitting non-union contractors and subcontractors working on the Project Work to retain a percentage of their "core" employees;

WHEREAS, the Council and Local unions desire to assist the Authority in meeting these operational needs and objectives as well as to provide for stability, security and work opportunities which are afforded by this Project Labor Agreement; and

WHEREAS, in furtherance of the above objectives, the Authority, Council and Local Unions, have negotiated the terms of the annexed “NEW CONSTRUCTION PROJECT LABOR AGREEMENT” (Attachment “A”) and the annexed “PROJECT LABOR AGREEMENT COVERING SPECIFIED RENOVATION AND REHABILITATION WORK” (Attachment “B”); and

WHEREAS, the parties hereto desire that all Project Work on Covered Projects (as hereinafter defined) be subject to the applicable annexed Project Labor Agreement;

NOW, THEREFORE, the Parties enter into this MOU:

I. Definitions

For purposes of this MOU, the following terms shall have the following meanings:

- a. “Applicable Project Labor Agreement” shall mean either the Project Labor Agreement annexed hereto as Attachment “A” or “Attachment “B” as is appropriate to the nature of the Project Work.
- b. “Construction Client” shall mean any agency or department of the State or City of New York for which the Authority is authorized to design, acquire, construct, finance or otherwise provide projects.
- c. “Construction Manager” shall mean the construction management firm engaged by the Authority for any Covered Project.
- d. “Covered Project” shall mean any Project for which a Project Labor Agreement is entered into pursuant to the requirements of Section II of this MOU.
- e. “Discretionary Contract” shall mean a contract awarded by the Authority pursuant to Public Authorities Law Section 2879(3)(b)(i) for the purchase of goods or services from small business concerns or those certified as minority or woman-owned business enterprises, or goods or technology that are recycled or remanufactured, in an amount not to exceed two hundred thousand dollars.
- f. “Emergency Contract” shall mean any contract in the case of an emergency arising out of an accident or other unforeseen occurrence or condition whereby circumstances affecting property or other interests of the Authority or life, health or safety require immediate action, the President or an Officer designee may award a Procurement Contract without the use of a Competitive Basis. A record setting forth the circumstances under which such contract was let shall be maintained with the contract.
- g. “Prime Contractor” shall mean any contractor with which the Authority enters into a contract to perform work on a Covered Project.

- h. "Sub-Contractor" shall mean any person, persons, firm, partnership, limited liability company, or corporation under contract with a Construction Manager, Prime Contractor or a Subcontractor of any tier to perform work on a Covered Project.
- i. "Project" means any construction project (other than a project for which the Authority lets an Emergency Contract) undertaken by the Authority for a Construction Client that is located in the City of New York; provided however, that the term "Project" shall not include any construction project having a total construction cost of one million dollars (\$1,000,000) or less except that the term "Project" shall include any construction project solely for asbestos abatement, insulation or painting having a total cost exceeding five hundred thousand dollars (\$500,000). The cumulative amount of projects subject to these exclusions, plus the total amount of Discretionary Contracts awarded, shall not exceed twenty million dollars (\$20,000,000) in any calendar year. Nothing in this paragraph shall limit the total amount of Discretionary Contracts or Emergency Contracts that can be awarded in any calendar year.

For every project of one million dollars (\$1,000,000) or less not required to be performed under the Applicable Project Labor Agreement ("Excluded Project"), the Construction Manager for the Excluded Project (if any) and every Prime Contractor performing work on the Excluded Project shall have the option to execute voluntarily the Applicable Project Labor Agreement with the Council and Local Unions in the form attached to this MOU. If the Construction Manager or Prime Contractor exercises such option to enter into the Applicable Project Labor Agreement, all Project Work undertaken in connection with the Excluded Project by such Construction Manager or Prime Contractor shall be governed by, and subject to the conditions set forth in, the applicable Project Labor Agreement. The Authority will provide the Construction Managers and Prime Contractors on Excluded Projects with notice of this option but execution of the Applicable Project Labor Agreement shall not be a requirement to perform work on any Excluded Project.

- j. "Project Work" shall have the meaning ascribed thereto in the Appendix to the Applicable Project Labor Agreement

II. Covered Projects

(a) The Authority, prior to soliciting any bids or proposals and commencing work on any Project, shall cause to be performed an analysis (which analysis may pertain to a specific Project or type or group of Projects) establishing whether adherence to the terms of the Applicable Project Labor Agreement will result in the lowest reasonable cost for the Project based upon one or more of the factors enumerated in the fourth Recital of this MOU. In furtherance of this requirement, the Authority shall: (i) cause one or more such analyses to be undertaken with respect to the Projects identified on Attachment "C" to this MOU and (ii) with respect to any other Project, may, in its sole discretion, either rely on the analyses obtained pursuant to clause (i) of this sentence or obtain a separate analysis to satisfy the requirements of paragraph (b)(2) of this Section for such other Project.

(b) A Covered Project shall be any Project which meets the following requirements:

1. The Construction Client has approved the use of a Project Labor Agreement for the Project; and
2. The analysis obtained by the Authority pursuant to paragraph (a) of this Section demonstrates that the inclusion in the specifications of a requirement to adhere to the terms of the Applicable Project Labor Agreement will result in the lowest reasonable cost based upon one or more factors enumerated in the fourth Recital of this MOU.

(c) For every Project that constitutes a Covered Project, the Authority shall require its Construction Manager for the Project (or if there be no Construction Manager for the Covered Project, every Prime Contractor performing work on the Project) to execute the Applicable Project Labor Agreement with the Council and the Local Unions in the form attached to this MOU and all Project Work undertaken in connection with the Covered Project shall be governed by, and subject to the conditions set forth in, the Project Labor Agreement. Subcontractors of all tiers will be required to execute a Letter of Assent to the PLA, and said Letters of Assent will be obtained by the Construction Manager or Prime Contractor for each Covered Project and produced to the Council and/or its affiliated Local unions upon request.

(d) The Authority hereby agrees that it will use its best efforts to obtain the approval of its Construction Clients to use a Project Labor Agreement for any Project that satisfies the requirements of paragraph (b)(2) of this Section.

III. TERM OF AGREEMENT

(a) This MOU shall apply to all Projects for which contracts are to be advertised and let after the effective date of this MOU and let for bid prior to December 31, 2018, the expiration date of this MOU; provided however that the termination of this MOU shall not affect the terms of any Project Labor Agreement executed by a Construction Manager or Prime Contractor prior to the termination of this MOU.

(b) The effective date of this MOU shall be the date that it is executed by all the parties hereto.

IN WITNESS WHEREOF the parties have caused this MOU to be executed and effective as of the
10th day of March, 2015

**FOR BUILDING AND CONSTRUCTION TRADES COUNCIL
OF GREATER NEW YORK AND VICINITY**

BY: Mary La Barbera President
(Name/Title)

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

BY: Paul T. Williams /
(Name/Title)

Paul T Williams / President