

ORIGINAL

***NEW YORK STATE HIGHER EDUCATION CAPITAL
MATCHING GRANT PROGRAM
(HECap)***

**NEW YORK STATE HIGHER EDUCATION CAPITAL
MATCHING GRANT PROGRAM**

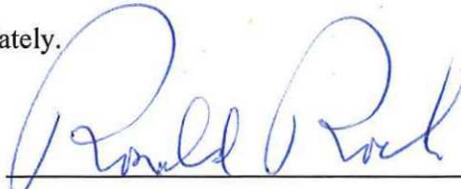
*BOARD MEETING AGENDA
January 15, 2008*

- I. Adoption of the By-Laws of the Board
- II. Election of Chair of the Board
- III. Overview of Higher Education Capital Matching Grant Program
- IV. Discussion of the Approval Process for Higher Education Capital Matching Grants
- V. Discussion of Model Contract to be Executed by Higher Education Capital Matching Grant Recipients
- VI. Discussion of Methodology and the Resulting Matching Ratios Developed by the Dormitory Authority
- VII. Approval of Higher Education Capital Matching Grant Applications

A RESOLUTION OF THE NEW YORK STATE HIGHER EDUCATION
CAPITAL MATCHING GRANT (HECAP) BOARD APPROVING THE BY-LAWS
FOR THE NEW YORK STATE HIGHER EDUCATION CAPITAL MATCHING
GRANT PROGRAM (HECAP)

BE IT RESOLVED by the Members of the New York State Higher Education Capital
Matching Grant (HECap) Board that the New York State Higher Education Capital Matching
Grant (HECap) Program By-Laws attached hereto are hereby approved.

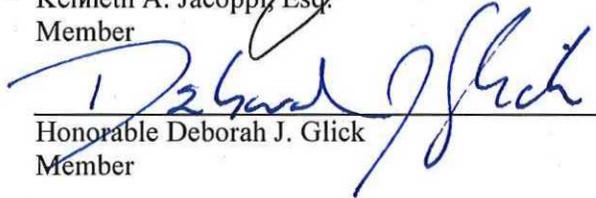
This resolution shall take effect immediately.



Ronald M. Rock
Member



Kenneth A. Jacoppi, Esq.
Member



Honorable Deborah J. Glick
Member

January 15, 2008

NEW YORK STATE HIGHER EDUCATION CAPITAL MATCHING GRANT BOARD

BY-LAWS

ARTICLE I

Offices

Section 1.1. Location. The principal office of the New York State Higher Education Capital Matching Grant Board (the "HE Cap Board") shall be located within the State of New York at the offices of the Dormitory Authority of the State of New York, located at 515 Broadway, Albany, New York. The HE Cap Board may also maintain additional offices within the State of New York as the Board may from time to time determine.

ARTICLE II

Powers, Organization and Administration

Section 2.1. Governing Laws and Existence of the Board The powers, organization and administration of the HE Cap Board shall be in accordance with the provisions of Part U of Chapter 63 of the Laws of 2005, as amended (the "Act"), and any other applicable laws and these By-Laws. The HE Cap Board shall remain in existence during the period of the New York State Higher Education Capital Matching Grant Program through March 31, 2010, or the date on which the last of the funds available for grants under this program shall have been disbursed, whichever is earlier.

Section 2.2. Powers of Members. Subject to the provisions of the Act and these By-Laws, the activities and affairs of the HE Cap Board shall be conducted and all corporate powers shall be exercised by or under the direction of the Board. The Board may delegate responsibility for management of certain activities and affairs of the HE Cap Board to the Dormitory Authority, which acts as staff to the HE Cap Board pursuant to the Act, provided that these activities and affairs of the HE Cap Board shall be exercised under the ultimate direction of the Board.

Section 2.3. Fiscal Year. The fiscal year of the HE Cap Board shall begin April 1 and end March 31.

Section 2.4. Form of Seal. The seal of the HE Cap Board shall be in such form as may be determined, from time to time, by the HE Cap Board. The seal on any HE Cap Board obligation for the payment of money may be a facsimile.

ARTICLE III

Meetings of the HE Cap Board and Duties of the Officers

- Section 3.1. Annual Meeting. The first meeting in each fiscal year shall be the Annual Meeting of the HE Cap Board and shall be held at the time and place, within the State of New York, designated in the notice of same.
- Section 3.2. Regular Meetings. The HE Cap Board may establish a schedule of regular meetings to be held, within the State of New York, between the annual meetings. The regular business of the HE Cap Board may be transacted at such meetings.
- Section 3.3. Special Meetings. Special meetings of the Board may be called by the Chair upon the written request of two of the Members. Each special meeting shall be held at the time and place, within the State of New York, as the person calling same shall determine.
- Section 3.4. Notices. Notice of each annual and each special meeting of the HE Cap Board shall be given by mailing the same, at least three days before the day on which the meeting is to be held, to the address of each Member designated by him or her for such purpose (or, if none is designated, to his or her last known address) or by delivering it personally or telephonically at least 12 hours in advance of the time for which the meeting is called. Notice of any meeting need not be given to any Member who submits a signed waiver of notice thereof before, at or after the meeting or if his or her duly appointed representative submits a signed waiver of notice at the meeting. Neither the business to be transacted at, nor the purpose of, any meeting of the HE Cap Board need be specified in any notice or written waiver of notice unless so required by these By-Laws. Notice to the public shall also be given in accordance with the requirements of the Open Meetings Law.
- Section 3.5. Exercise of Powers and Voting All action shall be taken by a unanimous vote of the Members of the Board. Voting on any matter shall be by roll call and the yeas and nays shall be entered upon the minutes of such meeting. Any determination of the HE Cap Board shall be evidenced by a certification thereof executed by all the Members.
- Section 3.6. Meetings by Video or Telephone Conference. If the Chair determines there is need for the HE Cap Board to act under circumstances where it is not possible or practicable to bring the Board together at the same location, the Chair may give notice that Members may participate in a meeting of the HE Cap Board by means of video conference equipment, whereby all persons participating in the meeting can hear and observe each other and all other persons present at each of the designated places of the meeting, and such participation in a meeting shall constitute presence in person at such meeting. Any required notice of the place

of a meeting at which participation is by means of video conference equipment shall designate as the place of the meeting, each place at which the video conference equipment is located at the time the meeting is held. In addition, to the extent permitted by law, meetings by telephone conference may be conducted in accordance with the provisions of this section except that (i) the place of the meeting shall be a place at which one or more of the participants shall be located; and (ii) the participants at the different locations need only be able to hear one another.

Section 3.7. Presiding Officer. At all meetings of the HE Cap Board, the Chair shall be the presiding officer. The members of the HE Cap Board shall vote among themselves to determine who shall serve as the Chair.

Section 3.8 Secretary. The Secretary shall be appointed by the Chair, and shall act as Secretary of all meetings of the HE Cap Board, shall keep minutes thereof. The Secretary shall see that all notices required to be given by the HE Cap Board are given and served; be custodian of the seal of the HE Cap Board and may impress the seal upon all documents the execution of which on behalf of the Board under its official seal is authorized by resolution or in these By-Laws; have charge of the books, records and papers of the HE Cap Board relating to its organization and management; see that the reports, statements and other documents required by law are properly kept, filed and made available to the Members; and in general, perform all duties incident to the Office of Secretary and such other duties as from time to time may be assigned by the Chair.

Section 3.9. Procedure. The order of business and all other matters of procedure at each meeting of the HE Cap Board may be determined by the presiding officer.

ARTICLE IV

Members Generally

Section 4.1. Members. Pursuant to the Act, the membership of the HE Cap Board shall consist of three persons appointed by the governor, of which one shall be upon the recommendation of the temporary president of the senate and one upon the recommendation of the speaker of the assembly.

Section 4.2 Term of Office. The term of the Members shall each be for one year ending on March 31 in each year, other than a Member's initial term which shall be from the date of his or her appointment until the succeeding March 31.

Section 4.3 Representatives. Each Member of the HE Cap Board may be entitled to designate a representative to attend meetings of the HE Cap Board on the designating Member's behalf, and to vote or otherwise act on the designating Member's behalf in the designating Member's absence. Notice of such designation shall be furnished in writing to the HE Cap Board by the designating Member. A representative shall serve at the pleasure of the

designating Member during the Member's term of office. A representative shall not be authorized to delegate any of his or her duties or functions to any other person.

Section 4.3. Acts of the HE Cap Board. All acts, agreements and documents of the HE Cap Board shall be performed or executed in the name of the HE Cap Board evidenced by the signature of all of the Members.

Section 4.4. Removal and Vacancies. Upon the recommendation of the nominating party, the Governor shall replace any Member in accordance with the Act.

ARTICLE V

Indemnification of Members, their Representatives, Officers and Staff

Section 5.1. Right of Indemnification. In accordance with the Act, the Members, their Representatives, officers and staff to the HE Cap Board shall be deemed employees within the meaning of Section 17 of the Public Officers Law.

ARTICLE VI

Amendments

Section 6.1. Procedure for Amending By-Laws. By-Laws of the HE Cap Board may be adopted, amended or repealed at any meeting of the HE Cap Board, notice of which shall have referred to the proposed action, by unanimous vote of the Members of the Board.



A RESOLUTION OF THE NEW YORK STATE HIGHER EDUCATION CAPITAL
MATCHING GRANT (HECAP) BOARD ELECTING THE CHAIR

BE IT RESOLVED by the Members of the New York State Higher Education Capital Matching Grant (HECap) Board that Ronald M. Rock, Member, be elected Chair of the HECap Board and shall hold such office until the next Annual Meeting of the HECap Board or until his successor is elected.

This resolution shall take effect immediately.

Ronald M. Rock
Member

Kenneth A. Jacoppi, Esq.
Member

Honorable Deborah J. Glick
Member

Higher Education Capital Match Program Overview – January 15, 2008

Eligible Projects:

An eligible project is defined as the design, acquisition, construction, reconstruction, rehabilitation, or equipping of a facility on or near a college campus within the State of New York, including critical academic facilities, economic development and/or high technology projects, and urban renewal and/or historical preservation projects that would enhance the programmatic offerings or the student life at the college or provide economic development benefits to the area surrounding such college campus. No more than 3 ½ % of any HECap grant may be allocated to any entity for the purpose of paying for the administration of the program. In addition, grant funds may not be used to supplant any direct or indirect costs of the grantee.

Grant funds must be used for projects that commenced on or after April 13, 2005, the effective date of the statute. Costs for projects that were started prior to this date, or for equipment purchased prior to this date, would not be eligible for reimbursement. In order to be eligible for a HECap grant, applicants must provide notification to the Dormitory Authority of an intent to apply for a grant no later than March 31, 2008 and must apply for such grant no later than March 31, 2009. After March 31, 2009, remaining funds shall be awarded on a competitive basis to other colleges. The legislation requires the Dormitory Authority to develop a request for proposals and application process, in consultation with the HECap Board, for the awarding of such grants. The HECap Board is required to take action on these applications by November 1, 2009.

The Dormitory Authority has received a number of calls from applicants requesting clarification of the above definition as it relates to the “phasing” of a project. We have made clear in these discussions that the HECap Board will be making the ultimate determination as to whether, and under what conditions, a phase or component of a larger project may be undertaken with HECap grant proceeds. We will need to discuss the parameters for funding a component of an overall project.

The acquisition of a facility as an eligible project may be funded with grant proceeds so long as the grantee will have title to the property once the grant proceeds are spent. HECap funds cannot be used to “acquire” by long term lease, nor can proceeds be used to pay down existing debt. HECap funds may be used to renovate or equip leased property so long as the term of the lease is for a period of time that is acceptable to bond counsel—preferably 10 years. Grant funds may not be used to pay for leased equipment. A five year lease is probably acceptable where the bonds are issued through the PIT program and shorter term bonds are issued.

If the HECap grant funds are to be used to purchase equipment, the review undertaken by the Dormitory Authority must ascertain whether the nature of the items to be purchased are truly equipment, and therefore eligible for funding, or whether they must be more appropriately described as building systems or supplies. Building systems that are routinely part of facility construction and not specific to a program of instruction

or research will not be eligible as "equipment," but would be considered to be part of a larger construction project. For example, an HVAC system is an integral part of the building construction and cannot be considered "equipment." Similarly, items that are typically disposable or that have a short useful life and must be replaced regularly are likely to be considered to be "supplies." For example, replacement bulbs, toner cartridges, and other similar items may not be paid for with HECap grant proceeds.

In order to be eligible to receive a HECap grant, the legislation requires that all grantees comply with Article 9 of the State Finance Law (except section 135), Article 15-A of the executive law, and Articles 8, 9, and 10 of the Labor Law. The Dormitory Authority has had discussions with OSC regarding the level of OSC's anticipated involvement in the review of the contracts to be entered into between the grantees and their contractors for the purposes of determining compliance with the applicable sections of the Labor Law and Executive Law and we have reached an agreement as to the process.

Non-State Matching Funds:

The HECap legislation defines Non-State funds to mean "any funds received no earlier than 180 days before the effective date of this section, except state funds, accessible by the college for the project, including but not limited to federal funds, local funds, private funds, and in-kind contributions."

When undertaking a financial analysis of each grant project, the Dormitory Authority will analyze all sources of project funding to determine if they meet the criteria set forth above. In addition, we will verify that sufficient funds exist to complete the project in excess of the grant amount plus the non-State matching funds.

The Dormitory Authority recommends that each grantee segregate (by board designation or otherwise) all funds received from any source that it intends to use as its matching funds for an eligible project to facilitate documenting the source and receipt of those funds as outlined below. Required documentation may include, but is not limited to, any or all of the following:

- Bank account and investment account statements
- Donor pledges, agreements and receipts
- Grant award letters, agreements and contracts
- Loan agreements, commitment letters, terms and conditions
- Bond documents
- Personal service contracts
- Bills of sale and paid invoices evidencing payment by the Grantee for an eligible cost. In order to qualify as a matching cost, the payment must have been in furtherance of a component of the project that complied in all respects with the requirements of the statute (prevailing wage, MWBE, etc.)
- If the Grantee will be using institution funds for any part of the non-State match, the most recent audited financials should also be provided to the Dormitory Authority for review.

Types of Matching Funds and Guidelines

The Dormitory Authority suggests the application of the following guidelines in assessing whether certain funds qualify as matching funds. We will need to discuss this concept with the HECap Board.

- Private funds consist of donations, contributions, grants and loans from private sources (including persons, corporations, foundations and not-for-profit entities). Private donations, contributions and grants are received when they are actually in the accounts of the institutions (“in hand”) AND available to spend by the institution (i.e. - all restrictions have been satisfied). Both of these must occur subsequent to the time restriction to be eligible as matching funds. If the conditions of a grant require that the institution expend funds and be subsequently reimbursed for such expenditures, the grant is received when there is documentation of a final and irrevocable award of grant funds. Private loans are received when they are available for an immediate draw by the institution.
- Local funds consist of grants and loans from local municipal entities and other political subdivisions of the State that are not private funds. The provisions set forth above with respect to private funds would apply to local funds.
- Federal funds consist of grants and loans from the Federal government. The provisions set forth above with respect to private funds would apply to Federal funds.
- Borrowed funds consist of any form of institutional contractual indebtedness. Borrowed funds are received when all requirements have been met for the funds to be available for an immediate draw down by the institution to finance an eligible project.
- Own source funds consist of any funds provided by the institution from its own financial resources, interest earnings free from any restrictions and cash from current operations which have been specifically dedicated to eligible projects by the institution as evidenced by a Board resolution. Own source funds are received when they are earned and on deposit in one or more accounts of the institution the date that they are earned AND the deposit must occur on or after the 180-day look back period. It is recommended that grantees segregate and document own source funds that they intend to use as matching funds for an eligible project so that the source and timing of receipt of those funds is clear and unambiguous.
- In-kind contributions consist of goods and services donated to the institution specifically related to an eligible project. It is suggested that goods be deemed received at the time the institution has use and possession of them for the eligible project purpose. Services shall be received at the time they are performed, or when it can be documented that they will be contractually performed for an

eligible project purpose. All in-kind contributions must be valued at their fair market value at the time they are received or expected to be received and the institution must document the determination of fair market value at the time of application.

- Eligible Project Expenditures already made by an institution may be counted as Non-State matching funds contributed by that institution. However, the funds used to make the expenditures must be sourced back to one or more categories of matching funds and documented to meet the 180-day look back requirement for each source of funds.

We look forward to discussing the administration of the HECap Program with the Board. Please feel free to contact us with any questions.



Dormitory Authority -- State of New York

Memorandum

TO: HECap Board Members

DATE: January 15, 2008

RE: Recommended Approach for Processing Higher Education Capital Matching Grant (HECap Grant) Applications

The Dormitory Authority is pleased to act as staff to the Board in connection with implementing the Higher Education Capital Matching Grant Program ("HECap Program"). As you may be aware, the Dormitory Authority administers a number of grant programs for both the Senate and the Assembly, some of which involve other State agencies such as the State Education Department, the Department of Health, and the Office of Children and Family Services. As such, we have learned a great deal about the administration of grants, and we look forward to implementing that knowledge in connection with this exciting program.

We have outlined below our recommended approach for administering the HECap program, including the review of HECap Grant Applications to determine eligibility for a grant award; the due diligence to be undertaken prior to submitting applications to the Board for approval; the Grant Disbursement Agreement ("GDA") process; and the payment of requisitions. This approach is similar to the process utilized in connection with other grant programs. Of course, we would be happy to discuss any requested modifications to the process set forth below in order to implement the HECap program in the manner desired by the Board.

Generally, there are four "phases" in the "life cycle" of a grant: 1) application processing; 2) the approval phase; 3) the GDA phase; and 4) the requisition phase.

1. Application Processing

- Verify that the project justification is satisfactory in accordance with the statute and, if applicable, Board Guidelines.
- Verify that the project as described in the application meets statutory requirements and Board Guidelines.
- Verify that the application is complete with respect to required information and follow-up with recipient as necessary. Please note that this often involves a number of related tasks, including a determination that the application names the proper grantee, verifying site control, and a wide variety of other issues.

- Verify that the project as described in the application meets federal and state statutory requirements.
- Verify that an appropriate SEQR or CEQR review has been undertaken for the project, or undertake the necessary review acting as Lead Agency.
- Verify any other land use or other requirements that must be met prior to construction including, as applicable, ULURP (required in connection with certain actions in New York City); compliance with zoning codes, compliance with section 14.09 of the Historic Preservation Act, etc.) and participating in those reviews or processes if necessary.
- Verify that the required matching funds are adequate, meet statutory requirements and any Board Guidelines, and have been secured.
- Confirm the proper corporate entity that will be the grantee.
- Undertake appropriate due diligence. This may include obtaining a Uniform Grantee Questionnaire or verifying that the Office of the State Comptroller has approved the Grantee on the Vendex system.
- Obtain bond counsel approval of the project to ensure that Dormitory Authority Bond proceeds may be used to reimburse the State for grants paid under the HECap program.
- Verify that the grant funds will not be used in connection with any religious program or to further any particular religion.

For the convenience of the Board, attached hereto as Exhibit A is a checklist setting forth each of the review items that needs to be completed in this phase.

2. Approval Phase

Once all of the above steps have been undertaken, the Dormitory Authority will notify the HECap Board of the completion of its review. After the HECap Board approves grant awards to certain Grantees, the Dormitory Authority will forward a GDA to the Grantee.

In an effort to implement the program initially, the Dormitory Authority may also provide the HECap Board with a list of projects that appear to meet the requirements of the applicable statutes. The HECap Board may approve the projects, subject to the Authority undertaking the due diligence and receiving appropriate documentation set forth above.

3. GDA Phase

Once the HECap Board notifies the Dormitory Authority of the award of one or more grants, and all the steps set forth in Section 1 have been undertaken, a GDA will be forwarded to the grantee. A draft form GDA used in other programs is attached hereto as Exhibit D for the Board's review. It will need to be modified

to reflect the HECap Board as the Grantor, and to include certification of prevailing wage, MWBE, etc., and other desired general GDA changes specific to the HECap Program upon final establishment of Program parameters by the HECap Board and updated input from OSC and the Office of the Attorney General.

The Dormitory Authority has had discussions with OSC regarding the level of their anticipated involvement in the review of the contracts to be entered into between the grantees and their contractors for the purposes of determining compliance with the applicable sections of the Labor Law and Executive Law and we have reached agreement as to the process.

Review GDAs for completeness and accuracy upon return. This will include, but shall not be limited to, verification that the budget has not changed (or that a valid rationale is given for the change and the change does not materially affect the approved project, timeline or budget); that the exhibits are properly completed, that an appropriate opinion of counsel has been provided, and that no other issues have arisen that would affect the status of the grant.

Once this review has been completed, arrange for execution of GDA by the Board.

4. Requisition Phase

Grantees may begin to requisition funds once the GDA is fully executed utilizing the forms included as exhibits to the GDA. Requisitions are forwarded directly to Accounts Payable.

A desk audit will be performed for each requisition received, including but not limited to verification that proper documentation has been received; that the named grantee is the legal entity responsible for paying the project costs, and confirming that the costs to be paid with grant funds are consistent with the enabling legislation. Approved requisitions will then be forwarded to OSC for payment. OSC will pay the Grantees directly.

5. Additional Services and Responsibilities

A. Project Management Services

The Authority is also available to provide project management services to institutions who request this service. The cost of this service will be negotiated with each grantee on a case by case basis. In the event a Project Manager is

assigned to a particular project, requisitions will be approved by the Project Manager before being forwarded to Accounts Payable.

B. Reporting

The Dormitory Authority will maintain detailed project information in a grants database capable of producing reports depicting the grant review process. We may provide the HECap Board with reports setting forth the status of each grant. In addition, the Dormitory Authority will provide the reports as required by Statute to those parties named in the legislation.

Of course, we welcome any suggestions or modifications the Board may have with respect to the above process. We look forward to working closely with each of you to successfully implement the HECap program.

**HIGHER EDUCATION CAPITAL MATCHING GRANT
(HE Cap)
APPLICATION AND PROJECT INFORMATION SHEET ***

SECTION 1: GENERAL INFORMATION**A. Project Name:**

Project Location:

B. Applicant College or University:

Legally Incorporated Name:

Street (not P.O. Box):

City:

Zip:

County:

Phone:

Ext:

Fax:

E-mail:

Contact Name & Title:

Federal Taxpayer I.D./Charity Reg.# (Non-profits Only):

1. Eligible HECap Grant Allocation _____

2. Is the organization currently seeking or receiving any other New York State assistance for this project?

 No Yes

If your answer is yes, please provide a detailed explanation on an attached separate sheet.

SECTION 2: PROJECT DESCRIPTION**A. Project Description and Amount**

1. Please attach a detailed description of the specific capital project that will be undertaken and funded pursuant to this application.

2. Please list the anticipated amount of funding to be received from the HECap Program for this project.

\$ _____

3. Project Start Date: _____ Anticipated Date of Project Completion: _____

4. Please delineate each specific Non-state funding source, whereby the receipt of such funds shall be sufficient to meet the Non-state match requirement. In addition, please list all additional funding sources necessary for completion of the project.

5. Does the Project have the participation and financial support of a consortium of colleges and/or public or private partnerships? If so, please explain. No Yes

6. Please explain how the project would enhance the programmatic offerings or the student life at the college or provide economic development benefits to the area surrounding the college campus.

SECTION 3: PROJECT BUDGET, DISBURSEMENT SCHEDULE, & OPERATING COSTS

A. Use of Funds

Complete the following Project Budget detailing the proposed sources and uses of funds (attach additional sheets if necessary).

<u>USE OF FUNDS</u>	<u>SOURCES</u>			<u>TOTAL</u>
	HECap Grant	Non-state Matching Funds	Other sources (Please specify each source and include commitment letter or other evidence that funds have been secured)	
Uses (Attach additional pages if necessary)				
Facility	\$	\$	\$	\$
Land Acquisition				
Building Acquisition				
New Construction				
Renovation				
Architect Fees				
Engineer Fees				
Other Soft Costs				
Machinery & Equipment				
Purchase				
Installation				
Total:	\$	\$	\$	\$

- B. Does the project require environmental or other regulatory permits? No Yes
 If yes, please specify type:
- Have they been secured? No Yes NA
 If not, is there a reasonable expectation that such approvals will be obtained? No Yes NA
- C. Has any State or local government agency reviewed the project under the State Environmental Quality Review Act (SEQRA)? No Yes NA

D. Will a recurring source of revenue be available to support facility operations and maintenance for the project?
 If yes, please explain. () No ()Yes

SECTION 4: ELIGIBILITY FOR TAX-EXEMPT FINANCING

1. Do you believe your project is eligible for tax-exempt financing under the Federal Internal Revenue Service Code? () No ()Yes

2. Has the applicant previously received financing from the sale of tax-exempt bonds? If yes, attach a schedule describing the details of such financing. () No ()Yes

3. Does the applicant anticipate applying for financing for this project from the sale of other bonds? () No ()Yes

4. Have any funds been expended or obligations incurred to date on that portion of the project for which this application is made? If yes, attach a schedule showing details of such disbursements (date, purpose, payee, etc.). () No ()Yes

5. Does the applicant plan to own and occupy 100% of the project facility? If no, attach a schedule explaining the planned occupancy. () No ()Yes

*** Note: The proposed form of this application is subject to the review and approval of the HE Cap Board once it is constituted.**

CERTIFICATION

The proposed Project will enhance the programmatic offerings or the student life at the college or provide economic development benefits to the area surrounding the college campus; and

As of April 13, 2005, the effective date of the legislation creating this Program, construction had not begun and equipment had not been purchased for such Project; and

Signature of Applicant: _____
 Printed Name of Applicant _____
 Title of Applicant: _____

Date: _____

This **GRANT DISBURSEMENT AGREEMENT** includes all exhibits and attachments hereto and is made on the terms and by the parties listed below and relates to the Project described below:

DORMITORY AUTHORITY OF THE STATE OF NEW YORK (the "Authority"): 515 Broadway
Albany, New York 12207
Contact:
Phone:
Fax:

THE GRANTEE: «LegalOrganizationName»
«GranteeAddress1»
«GranteeAddress2»
«GranteeCity», «GranteeState»
«GranteeZip5»
Contact: «ContactSalutation».
«ContactFirstName»
«ContactMiddleName». «ContactLastName»
Phone: «ContactTelephone»
Fax: «ContactFaxNumber»

THE PROJECT: «ProjectDesc»
GRANT AMOUNT: \$«GrantAmt»
FUNDING SOURCE: Higher Education Capital Matching Grant ("HECAP")

PRELIMINARY PROJECT INFORMATION SHEET DATE: «DateProjectInfoSheetSigned»

DATE AGREEMENT SIGNED BY THE AUTHORITY:

DATE AGREEMENT SIGNED BY GRANTEE:

For Office Use Only:

FMS#: _____
GranteeID: «GranteeID»
GrantID: «GrantID»

TERMS AND CONDITIONS

1. The Project

The Project description, including tasks and a timeline with respect thereto, is set forth in Exhibit A. The Grantee will perform the tasks on the schedule and as described in Exhibit A to this Agreement.

2. Project Budget and Use of Funds

The Grantee will undertake the Project in accordance with the overall Project budget, which includes the Grant funds, as set forth in Exhibit B to this Agreement. The Grant will be applied only to Eligible Expenses, which are separately identified, as described in the Project Information Sheet and in Exhibit A hereto.

3. Books and Records

The Grantee will maintain accurate books and records concerning the Project for six (6) years from the date the Project is completed and will make those books and records available to the Authority, its agents, officers and employees during Grantee's business hours upon reasonable request. In the event of earlier termination of this Agreement, such documentation shall be made available to the Authority, its agents, officers and employees for six (6) years following the date of such early termination.

4. Conditions Precedent to Disbursement of the Grant

No Grant funds shall be disbursed until the following conditions have been satisfied:

- (a) The Authority has received a description of the Project and timeline in the form of Exhibit A, the Project budget in substantially the form of Exhibit B hereto, and an opinion of Grantee's counsel, in substantially the form appended to this Agreement as Exhibit C; and
- (b) The requirements of the HECAP Program have been met; and
- (c) The monies required to fund the Grant have been received by the Authority; and
- (d) In the event of disbursement pursuant to paragraph 5(b) below, the Grantee has provided the Authority with documentation evidencing that a segregated account has been established by the Grantee into which Grant funds will be deposited (the "Segregated Account"). Eligible Expenses incurred in connection with the Project to be financed with Grant proceeds that are to be paid on invoice shall be paid out of the Segregated Account. The funds in such account shall not be used for any other purpose.

- (e) The Grantee certifies that it is in compliance with the provisions of the HECAP Program and this Agreement and that the Grant will only be used for the Project set forth in the Project Information Sheet and in Exhibits A and B hereto.

5. Disbursement

Subject to the terms and conditions contained in this Agreement, the Authority shall disburse the Grant to the Grantee, in the manner set forth in Exhibit D, as follows:

- (a) The Authority shall make payment directly to the Grantee the amount of Eligible Expenses actually incurred by the Grantee, upon presentation to the Authority of a Payment Requisition Form, together with such supporting documentation as the Authority may require, in the form attached to this Agreement as Exhibit E and its attachments; or
- (b) The Authority may make payment directly to the Grantee upon presentation to the Authority of an invoice from the Grantee's contractor and/or vendor evidencing the completion of work, upon presentation to the Authority of a Payment Requisition Form, together with such supporting documentation as the Authority may require, in the form attached to this Agreement as Exhibit E and its attachments. The Grantee must deposit all Grant proceeds paid on invoice pursuant to this paragraph (b) into the Segregated Account established pursuant to Paragraph 4(d). All Eligible Expenses incurred in connection with the Project to be financed with Grant funds that are to be paid on invoice must be paid out of this account. The Grantee must provide proof of disbursement of Grant funds to the respective contractor and/or vendor in a form acceptable to the Authority, within sixty (60) days of the date that Grant funds are disbursed to the Grantee to pay for such costs. The Authority will not make any additional disbursements from Grant funds until such time as such proof of payment is provided
- (c) For all disbursements of Grant proceeds made pursuant to paragraphs (a) and (b) above, five percent (5%) of each requisition will be withheld by the Authority as retainage and shall not be disbursed by the Authority until all of the tasks required under this Agreement have been completed to the Authority's satisfaction.
- (d) In no event will the Authority make any payment which would cause the Authority's aggregate disbursements to exceed the Grant amount.
- (e) The Grant, or a portion thereof, may be subject to recapture by the Authority as provided in Section 9(c) hereof.

6. Non Discrimination and Affirmative Action

The Grantee shall make its best effort to comply with the Authority's Non-Discrimination and Affirmative Action policies set forth in Exhibit F to this Agreement.

7. No Liability of the Authority or the State

The Authority shall not in any event whatsoever be liable for any injury or damage, cost or expense of any nature whatsoever that occurs as a result of or in any way in connection with the Project and the Grantee hereby agrees to indemnify and hold harmless the Authority, the State and their respective agents, officers, employees and directors (collectively, the "Indemnitees") from and against any and all such liability and any other liability for injury or damage, cost or expense resulting from the payment of the Grant by the Authority to the Grantee or use of the Project in any manner, including in a manner which, if the bonds are issued on a tax-exempt basis, (i) results in the interest on the bonds issued by the Authority the proceeds of which were used to fund the Grant (the "Bonds") to be includable in gross income for federal income tax purposes or (ii) gives rise to an allegation against the Authority by a governmental agency or authority, which the Authority defends that the interest on the Bonds is includable in gross income for federal income tax purposes, other than that caused by the gross negligence or the willful misconduct of the Indemnitees.

8. Warranties and Covenants

The Grantee warrants and covenants that:

- (a) The Grant shall be used solely for Eligible Expenses in accordance with the terms and conditions of this Agreement.
- (b) The Grantee is solely responsible for all Project costs in excess of the Grant. The Grantee will incur and pay Project costs and submit requisitions for reimbursement in connection with such costs.
- (c) The Grantee has sufficient, secured funding for all Project costs in excess of the Grant, and will complete the Project as described in the Project Information Sheet and in this Agreement.
- (d) No materials, if any, purchased with the Grant will be used for any purpose other than the eligible Project costs as identified in Exhibit B.
- (e) The Grantee owns, leases, or otherwise has control over the site where the Project will be located. If the Project includes removable equipment or furnishings including but not limited to, computer hardware and software, air conditioning units, lab equipment, office furniture and telephone systems, Grantee will develop, implement and maintain an inventory system for tracking such removable equipment and furnishings.

- (f) The Grantee shall report in writing to the Authority any Grants, commitments or funds received by the Grantee from any source, governmental or non-governmental, in connection with the carrying out of the Project, other than the Grant of funds received under this Agreement. No part of the Grant will be applied to any expenses paid or payable from any other funding source.
- (g) Neither the Grantee nor any of the members of its Board of Directors or other governing body or its employees have given or will give anything of value to anyone to procure the Grant or to influence any official act or the judgment of any person in the performance of any of the terms of this Agreement.
- (h) The Grant shall not be used in any manner for any of the following purposes:
 - (i) political activities of any kind or nature, including, but not limited to, furthering the election or defeat of any candidate for public, political or party office, or for providing a forum for such candidate activity to promote the passage, defeat, or repeal of any proposed or enacted legislation;
 - (ii) religious worship, instruction or proselytizing as part of, or in connection with, the performance of this Agreement;
 - (iii) payments to any firm, company, association, corporation or organization in which a member of the Grantee's Board of Directors or other governing body, or any officer or employee of the Grantee, or a member of the immediate family of any member of the Grantee's Board of Directors or other governing body, officer, or employee of the Grantee has any ownership, control or financial interest, including but not limited to an officer or employee directly or indirectly responsible for the preparation or the determination of the terms of the contract or other arrangement pursuant to which the proceeds of the Grant are to be disbursed. For purposes of this paragraph, "ownership" means ownership, directly or indirectly, of more than five (5) percent of the assets, stock, bonds or other dividend or interest bearing securities; and "control" means serving as a member of the board of directors or other governing body, or as an officer in any of the above; and
 - (iv) payment to any member of Grantee's Board of Directors or other governing body of any fee, salary or stipend for employment or services, except as may be expressly provided for in this Agreement.
- (i) The relationship of the Grantee (including, for purposes of this paragraph, its officers, employees, agents and representatives) to the Authority arising

out of this Agreement shall be that of an independent contractor. The Grantee covenants and agrees that it will conduct itself in a manner consistent with such status, that it will neither hold itself out as, nor claim to be, an officer, employee, agent or representative of the Authority or the State by reason hereof, and that it will not by reason thereof, make any claim, demand or application for any right or privilege applicable to an officer, employee, agent or representative of the Authority or the State, including without limitation, worker's compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

- (j) The information contained in the Project Information Sheet submitted by the Grantee in connection with the Project and the Grant, as such may have been amended or supplemented (the "Project Information Sheet"), and any supplemental documentation requested by the State or the Authority in connection with the Grant, is incorporated herein by reference in its entirety. In the event of an inconsistency between the descriptions, conditions, and terms of this Agreement and those contained in the Project Information Sheet, the provisions of this Agreement shall govern. The Grantee hereby acknowledges that the Authority has relied on the statements and representations made by the Grantee in the Project Information Sheet and any supplemental information in making the Grant. The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the Project Information Sheet or supplemental information or otherwise in connection with the Grant and that the information contained in the Project Information Sheet and supplemental information continues on the date hereof to be materially correct and complete.
- (k) The Grantee hereby represents and warrants that it has made no material misstatement or omission of fact in the due diligence questionnaire completed by the Grantee in connection with the Project and the Grant, and that the responses in the questionnaire continue on the date hereof to be materially correct and complete. The Grantee hereby acknowledges that the Dormitory Authority has relied on the statements and representations made by the Grantee in the questionnaire in making the Grant, and that the Grantee will be required to reaffirm the information therein each time a requisition for grant funds is presented to the Dormitory Authority.
- (l) The Grantee is duly organized, validly existing and in good standing under the laws of the State of New York, or is duly organized and validly existing under the laws of another jurisdiction and is authorized to do business and is in good standing in the State of New York and has full power and authority to execute and deliver the Agreement and to perform its obligations thereunder;

- (m) The Agreement was duly authorized, executed and delivered by the Grantee and is binding on and enforceable against the Grantee in accordance with its terms; and
- (n) The Grantee agrees to utilize all funds disbursed in accordance with this Agreement in accordance with the terms of the HECAP Program.

9. Default and Remedies

- (a) Each of the following shall constitute a default by the Grantee under this Agreement:
 - (i) Failure to perform or observe any obligation, warranty or covenant of the Grantee contained herein, or the failure by the Grantee to perform the requirements herein to the reasonable satisfaction of the Authority and within the time frames established therefor under this Agreement.
 - (ii) Failure to comply with any request for information reasonably made by the Authority to determine compliance by the Grantee with the terms of this Agreement or otherwise reasonably requested by the Authority in connection with the Grant.
 - (iii) The making by the Grantee of any false statement or the omission by the Grantee to state any material fact in or in connection with this Agreement or the Grant, including information provided in the Project Information Sheet or in any supplemental information that may be requested by the State or the Authority.
 - (iv) The Grantee shall (A) be generally not paying its debts as they become due, (B) file, or consent by answer or otherwise to the filing against it of, a petition under the United States Bankruptcy Code or under any other bankruptcy or insolvency law of any jurisdiction, (C) make a general assignment for the benefit of its general creditors, (D) consent to the appointment of a custodian, receiver, trustee or other officer with similar powers of itself or of any substantial part of its property, (E) be adjudicated insolvent or be liquidated or (F) take corporate action for the purpose of any of the foregoing.
 - (v) An order of a court having jurisdiction shall be made directing the sale, disposition or distribution of all or substantially all of the property belonging to the Grantee, which order shall remain undismissed or unstayed for an aggregate of thirty (30) days.
 - (vi) The Grantee abandons the Project prior to its completion.

- (b) Upon the occurrence of a default by the Grantee and written notice by the Authority indicating the nature of the default, the Authority shall have the right to terminate this Agreement.
- (c) Upon any such termination, the Authority may withhold any Grant proceeds not yet disbursed and may require repayment of Grant proceeds already disbursed. If the Authority determines that any Grant proceeds had previously been released based upon fraudulent representations or other willful misconduct, the Authority may require repayment of those funds and may refer the matter to the appropriate authorities for prosecution. The Authority shall be entitled to exercise any other rights and seek any other remedies provided by law.

10. Project Audit

The Authority shall, upon reasonable notice, have the right to conduct, or cause to be conducted, one or more audits, including field inspections, of the Grantee to assure that the Grantee is in compliance with this Agreement. This right to audit shall continue for six (6) years following the completion of the Project or earlier termination of this Agreement.

11. Survival of Provisions

The provisions of Sections 3, 7, 8(g), 8(h) and 10 shall survive the expiration or earlier termination of this Agreement.

12. Notices

Each notice, demand, request or other communication required or otherwise permitted hereunder shall be in writing and shall be effective upon receipt if personally delivered or sent by any overnight service or three (3) days after dispatch by certified mail, return receipt requested, to the addresses set forth on this document's cover page.

13. Assignment

The Grantee may not assign or transfer this Agreement or any of its rights hereunder.

14. Modification

This Agreement may be modified only by a written instrument executed by the party against whom enforcement of such modification is sought.

15. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of New York. This Agreement shall be construed without the aid of any presumption or other rule of law regarding construction against the party drafting this

Agreement or any part of it. In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid; illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such provision(s) had never been contained herein.

16. Confidentiality of Information

Any information contained in reports made to the Authority or obtained by the Authority as a result of any audit or examination of Grantee's documents or relating to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, provided that such information is clearly marked "confidential" by the Grantee that concerns or relates to trade secrets, operations and commercial or financial information, including but not limited to the nature, amount or source of income, profits, losses or expenditures, financial condition, marketing plans, manufacturing processes, production costs, productivity rates, or customer lists, which is determined by the Authority to be exempt from public disclosure under the Freedom of Information Law, shall be considered business confidential and is not to be released to anyone, except the Authority and staff directly involved in assisting the Grantee, without prior written authorization from the Grantee, as applicable. Notwithstanding the foregoing, the Authority will not be liable for any information disclosed, in the Authority's sole discretion, pursuant to the Freedom of Information Law, or which the Authority is required to disclose pursuant to legal process.

17. Executory Clause

This Agreement shall be deemed executory to the extent of monies available for the HECAP Program to the Authority.

«LegalOrganizationName»
«ProjectDesc»

This agreement is entered into as of the latest date written below:

DORMITORY AUTHORITY OF THE STATE OF NEW YORK

Authorized Officer

(Printed Name)

Date:

GRANTEE: «LEGALORGANIZATIONNAME»

(Signature)

(Printed name and title)

Date:

GRANT DISBURSEMENT AGREEMENT

EXHIBITS

EXHIBIT A	Project Description
EXHIBIT B	Project Budget
EXHIBIT C	Opinion of Counsel
EXHIBIT D	Disbursement Terms
EXHIBIT E	Payment Requisition Form
EXHIBIT E-1	Payment Requisition Cover Letter
EXHIBIT E-2	Payment Requisition Back-up Summary
EXHIBIT F	Non-Discrimination and Affirmative Action Policy

EXHIBIT B: Project Budget

«LegalOrganizationName»

«ProjectDesc»

<u>USE OF FUNDS</u>	<u>SOURCES</u>			<u>TOTAL</u>
Uses (Attach additional pages if necessary)	HECap Grant	Non-state Matching Funds	<i>Other sources</i> (Please specify each source and include commitment letter or other evidence that funds have been secured)	
Facility	\$	\$	\$	\$
Land Acquisition				
Building Acquisition				
New Construction				
Renovation				
Architect Fees				
Engineer Fees				
Other Soft Costs				
Machinery & Equipment				
Purchase				
Installation				
Total:	\$	\$	\$	\$

* Please note that the tasks set forth in this column must be those for which reimbursement or payment on invoice will be sought. Please ensure that the task list is complete and includes all the tasks for which you will be submitting requisitions. The failure to do so may delay payment.

EXHIBIT C: Opinion of Counsel

[Letterhead of Counsel to the Grantee]

[Date]

Dormitory Authority of the
State of New York
515 Broadway
Albany, New York 12207

Attn: Jeffrey Pohl, Esq.

Re: *Higher Education Capital Matching Grant ("HECAP") Grant*
«ProjectDesc»

Ladies and Gentlemen:

I have acted as counsel to «LegalOrganizationName» (the "Grantee") in connection with the Project referenced above. In so acting, I have reviewed a certain Grant Disbursement Agreement between you and the Grantee, executed by the Grantee on [*Insert date Agreement executed by Grantee*] (the "Agreement") and such other documents as I consider necessary to render the opinion expressed hereby.

Based on the foregoing, I am of the opinion that:

1. the Grantee is duly organized, validly existing and in good standing under the laws of the State of New York [**or**, is duly organized and validly existing under the laws of another jurisdiction and is authorized to do business and is in good standing in the State of New York] and has full power and authority to execute and deliver the Agreement and to perform its obligations thereunder; and
2. the Agreement was duly authorized, executed and delivered by the Grantee and is binding on and enforceable against the Grantee in accordance with its terms.

Very truly yours,

EXHIBIT D: Disbursement Terms

«LegalOrganizationName»

«ProjectDesc»

Subject to the terms and conditions contained in this Agreement, the Authority shall disburse the Grant to the Grantee as follows:

Standard Reimbursement

The Authority shall make payment to the Grantee, no more frequently than monthly, based upon Eligible Expenses (as set forth and in accordance with the budget in Exhibit B) actually incurred by the Grantee, in compliance with Exhibit A and upon presentation to the Authority of a Payment Requisition Form together with such supporting documentation as the Authority may require, in the form attached to this Agreement as Exhibit E and its attachments; or

The Authority may make payment directly to the Grantee upon presentation to the Authority of an invoice from the Grantee's contractor and/or vendor evidencing the completion of work, upon presentation to the Authority of a Payment Requisition Form, together with such supporting documentation as the Authority may require, in the form attached to this Agreement as Exhibit E and its attachments. The Grantee must deposit all Grant proceeds paid on invoice into the Segregated Account established pursuant to Paragraph 4(d) of the Grant Disbursement Agreement. All Eligible Expenses incurred in connection with the Project to be financed with Grant funds that are to be paid on invoice must be paid out of the Segregated Account. The Grantee must provide proof of disbursement of Grant funds to the respective contractor and/or vendor in a form acceptable to the Authority, within sixty (60) days of the date that Grant funds are disbursed to the Grantee to pay for such costs. The Authority will not make any additional disbursements from Grant funds until such time as such proof of payment is provided.

As stated in Section 5, paragraph (c) of this Agreement, five percent (5%) of each requisition will be withheld by the Authority as retainage, and will not be disbursed by the Authority until all of the tasks required have been completed to the Authority's satisfaction.

EXHIBIT E: Payment Requisition Form

«LegalOrganizationName»

«ProjectDesc»

For Office Use Only:		
FMS#: _____	GranteeID: «GranteeID»	GrantID: «GrantID»

Payment Request # _____, for \$ _____

For work completed between _____ and _____, for Task(s)

THIS REQUEST

Tasks*	A: the Authority SHARE	B: The Authority APPROVED REVISIONS	C: THIS REQUEST	D: TOTAL REQUESTED TO DATE	E: A-C-D BALANCE
TOTAL					
(Advance)					
(Retainage)					
AVAILABLE	0				

* Please note that the tasks set forth in this column must correspond to the tasks set forth in Exhibit A. When submitting a requisition for payment, please remember that the Authority can reimburse you for capital expenditures made by or invoiced to the Grantee only. Capital expenditures include the costs of acquisition, design, construction, reconstruction, rehabilitation, preservation, development, improvement, modernization and equipping of a Higher Education Capital Matching Grant facility.

The Authority may not reimburse Grantees or make payments on invoice for costs including, but not limited to, the following: working capital, rent, utilities, salaries, supplies and other administrative expenses.

All costs for which reimbursement or payment on invoice is sought must have been incurred by the Grantee as set forth on the cover page of this Agreement.

DUAL CERTIFICATION

This certification must be signed by two Authorized Officers of the «LegalOrganizationName».

We hereby warrant and represent to the Dormitory Authority of the State of New York (“the Authority”) that:

1. To the best of our knowledge, information and belief, the expenditures for which «LegalOrganizationName», is seeking payment and/or reimbursement comply with the requirements of the Agreement between the Authority and «LegalOrganizationName» (the “Agreement”), are Eligible Expenses, and that the payment and/or reimbursement of expenditures for which it is seeking payment and/or reimbursement from the Authority does not duplicate reimbursement or disbursement of costs and/or expenses from any other source.

2. The warranties and covenants contained in Section 8 of the Agreement are true and correct as if made on the date hereof.

3. The Eligible Expenses for which reimbursement is sought in connection with this requisition were actually incurred by the Grantee named on the cover page of this Agreement, and/or will be paid by the Grantee solely from the Segregated Account established pursuant to paragraph 4(d) of the Grant Disbursement Agreement to the contractor named on the invoices submitted in connection with this requisition and shall not be used for any other purpose.

4. All Project costs described in any contractor/vendor invoice submitted pursuant the payment requisition form have been completely and fully performed prior to the date hereof.

5. Proof of disposition of funds from the Segregated Account to the contractor and/or vendors that are being paid on invoice, if any, will be provided to the Authority within sixty (60) days of the date that Grant funds are disbursed to the Grantee to pay for such costs. We understand that in the event that acceptable proof of payment is not provided, then the Authority will not make any additional disbursements from Grant funds until such time as such proof of payment is provided.

6. We have the authority to submit this requisition on behalf of «LegalOrganizationName». The tasks have been completed in the manner outlined in the Agreement.

7. The following documents are hereby attached for Authority approval, in support of this requisition:

- Canceled Checks
- Invoice/receipts for Eligible Expense goods/services received this pay period with Back-up Summary (Exhibit E-2)
- Other:

Authorized

Officer Signature _____

Date: _____

Print Name _____

Title: _____

Authorized

Officer Signature _____

Date: _____

Print Name _____

Title: _____

EXHIBIT E-I: Payment Requisition Cover Letter

ON GRANTEE'S LETTERHEAD

Date

Ms. Kelly Ray
Dormitory Authority of the State of New York
515 Broadway
Albany, New York 12207

Re: *Higher Education Capital Matching Grant ("HECAP") Grant*
«ProjectDesc»

Dear Ms. Ray:

Enclosed please find our request for payment/reimbursement. The package includes the following:

1. Completed Exhibit E: Payment Requisition Form
2. Supporting documentation and invoices, as summarized on Exhibit E-2
3. Wire Instructions

If any further information is needed, please give me a call at () _____.

Signature

Print Name

Enclosures

EXHIBIT E-2: Payment Requisition Back-up Summary

Budget Category:

INVOICE	REFERENCE # (MARK ALSO ON INVOICE)	AMOUNT REQUESTED FROM GRANT FUNDS	COMMENT
TOTAL Request in Category:			(Transfer to Exhibit E)

Budget Category:

INVOICE	REFERENCE # (MARK ALSO ON INVOICE)	AMOUNT REQUESTED FROM GRANT FUNDS	COMMENT
TOTAL Request in Category:			(Transfer to Exhibit E)

Budget Category:

INVOICE	REFERENCE # (MARK ALSO ON INVOICE)	AMOUNT REQUESTED FROM GRANT FUNDS	COMMENT
TOTAL Request in Category:			(Transfer to Exhibit E)

EXHIBIT F

NON-DISCRIMINATION AND AFFIRMATIVE ACTION POLICY FOR THE PROJECT

It is the policy of the State of New York and the Authority, to comply with all federal, State and local law, policy, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minorities Group Members and women share in the economic opportunities generated by the Authority's participation in projects or initiatives, and/or the use of the Authority funds.

- 1) The recipient of State funds represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:
 - a) Grantee shall (i) not unlawfully discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to ensure that Minority Group Members and women are afforded equal employment opportunities, and (iii) make and document its conscientious and active efforts to employ and utilize M/WBEs, Minority Group Members and women in its workforce on contracts. Such action shall be taken with reference to, but not limited to, solicitations or advertisements for employment, recruitment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
 - b) At the request of the AAO, the Grantee shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Grantee's obligations herein.
- 2) The Grantee is encouraged to include minorities and women in any job opportunities created by the Project; and to solicit and utilize M/WBE firms for any contractual opportunities generated in connection with the Project.
- 3) Grantee represents and warrants that, for the duration of the Agreement, it shall furnish all information and reports required by the AAO and shall permit access to its books and records by the Authority, or its designee, for the purpose of ascertaining compliance with provisions hereof.
- 4) Grantee shall include or cause to be included, paragraphs (1) through (3) herein, in every contract, subcontract or purchase order with a Contracting Party executed in connection with the Project, in such a manner that said provisions shall be binding upon each Contracting Party as to its obligations incurred in connection with the Project.

NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Affirmative Action

Shall mean the actions to be undertaken by the Borrower, Grantee and any Contracting Party in connection with any project or initiative to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth in paragraph 2) herein, and developed by the Authority.

Affirmative Action Officer ("AAO")

Shall mean the Authority's Affirmative Action Officer or his/her designee, managing the affirmative action program for the Authority.

Contracting Party

Shall mean (i) any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of \$1,500, in connection with any projects or initiatives funded in whole or in part by the Authority and (ii) any borrower or Grantee receiving funds from the Authority pursuant to a loan or Grant document.

Minority Business Enterprise (“MBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is (i) a least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing, (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

Minority Group Member

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

Minority and Women-Owned Business Enterprise Participation

Minority and Women-owned Business Enterprise participation efforts are not limited to the efforts suggested herein, and the role of M/WBE firms should not be restricted to that of a subcontractor/subconsultant. Where applicable, M/WBE firms should be considered for roles as prime contractors. Such efforts may include but not be limited to:

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to Minority and Women’s trade associations;
- (c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;
- (d) Utilizing the services and cooperating with those organizations providing technical assistance to the Contracting Party in connection with potential M/WBE participation on the Authority contract;
- (e) Utilizing the resources of the Authority Affirmative Action Unit to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts;
- (f) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities with M/WBE firms, where appropriate, and
- (g) The Contracting Party shall remit payment in a timely fashion.

Women-owned Business Enterprise (“WBE”)

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing, (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.



Dormitory Authority -- State of New York

Memorandum

TO: Higher Education Capital Matching Grant Program (HE Cap) Board

FROM: Maryanne Gridley

DATE: November 3, 2006

RE: Proposed Alternative Non-State Fund Matching Methodology

Background

The HE Cap statute (Chapter 63 of the Laws of 2005, as amended) directs DASNY to develop a "methodology to determine the required non-state funds contribution for colleges" as an alternative to the standard matching requirement of three non-state fund dollars for every State grant fund dollar, and submit this methodology (and the resulting matching ratios) to the HE Cap Board for its approval (or disapproval). The statute goes on to prescribe that:

- The methodology will require a greater contribution from those colleges with greater fiscal resources as measured by endowment per full time equivalent student and tuitions and fees.
- The numerator in the matching ratio of non-state funds to grant award cannot be greater than 3 (e.g. – the standard matching ratio) or less than 0.5.

This memo outlines a methodology for an Alternative Non-State Funds Matching Requirement consistent with the requirements contained in the HE Cap statute.

Measuring Fiscal Resources

1. Endowment Per FTE: The statute directs that the methodology will consider endowment per FTE student. Since the definition for "endowment" in the statute does not comport with accounting principles, nor is the term "endowment" an accounting concept under FAS 117. The following analysis uses Long Term Investments/Investments per FTE student as the analogous measurement. Short-term investments were not considered because these typically do not have the same characteristics, function or restrictions as endowment funds.
2. Tuition and Fees: The statute requires the methodology to consider tuition and fees. The analysis considered tuition and fee revenue as reported in each institution's audited financial statements (AFS). Institutional financial aid as reported in the AFS was deducted from tuition and fee revenue to determine Net Tuition Revenue available to the institution. This was used to determine Net Tuition Revenue per FTE Student for each institution, a relative measure of the effective tuition received by each eligible institution.

Proposed Methodology

The proposed methodology is a two-step process:

1. The first step would determine whether or not a grant recipient is **eligible** for an alternative matching ratio using the value of their Long-term Investments per FTE Student. To be eligible, institutions would have to demonstrate the value of their long-term investments per FTE student was **below** a certain threshold. Consequently, these institutions would be eligible for a 2:1 matching ratio and possibly a 1:1 matching ratio based on the second step.
2. The second step identifies institutions that would be eligible for a 1:1 matching ratio based on their eligibility for a 2:1 matching ratio AND demonstrating that their Net Tuition Revenue per FTE Student is **below** a certain threshold.

Accordingly, this approach would require the Board to:

- (1) Approve the use of the ratios identified above,
- (2) Approve the alternative matching ratios associated with the methodology, and
- (3) Set the threshold levels for each of the ratios used in the methodology.

Waiver Process

The statute makes every grant recipient subject to the Standard Matching Requirement unless they receive a waiver from the HE Cap Board. This puts the onus on the grant recipient to initiate the waiver process. If the HE Cap Board approves an Alternative Non-State Matching Fund Methodology, the HE Cap Board is authorized to approve or deny applications for waivers from the Standard Matching Requirement. Attached is a proposed form of waiver request, based on this proposal, for review.

Next Steps

Upon approval of an alternative matching requirement methodology by the Board, DASNY will notify and distribute to all grant recipients the approved methodology and the approved form of waiver. A recipient institution would submit a waiver request and demonstrate, using **their most recent** audited financial statements and the associated enrollment information that was submitted to the State Education Department, that it would be eligible for an alternative matching ratio using the methodology. The institution would also demonstrate the alternative ratio for which it was eligible. Supporting schedules would be submitted with the waiver application. DASNY staff

would review the waiver applications for completeness and technical sufficiency before forwarding them to the Board for action.

If the Board declines to approve an Alternative Non-State Matching Fund Methodology, DASNY staff will notify all eligible grant recipient institutions that they will be subject to the Standard Matching Requirement of 3:1 for all applications to draw down an allocation of HE Cap program funds.

Attachments

SUMMARY OF POTENTIAL OUTCOMES OF THE METHODOLOGY

Analytical Framework

The analysis used audited financial statements (AFS) for the respective 2004 fiscal years of eligible institutions that submitted their audits to the Authority as requested (two (2) institutions submitted AFS for their 2003 fiscal year). It also uses the 2003-2004 academic year Final Full-time Equivalent (FTE) enrollment data provided by SED for each of the 114 HE Cap eligible institutions.

The Data Pool

The data pool used for the analysis consisted of 98 of the 114 HECap eligible institutions.

- Nine (9) institutions failed to submit AFS as requested.
- Five (5) institutions submitted consolidated AFS of their parent corporation in which their individual financial information was not reported. In each case, the parent was a hospital or health care system of which the HE Cap institution is an affiliate.
- Two (2) institutions were excluded from the analysis due to the lack of relevance of their financial information to the methodology:
 - a. Excelsior College because it has no FTE students.
 - b. Graduate College of Union University because it began separate operations on May 1, 2004 (fiscal year ending on June 30, 2004).

Proposed Methodology Outcomes

The subjective element in this methodology proposal is the setting of the threshold levels for each step of the two-step evaluation. It is recommended, however, that specific thresholds be set for each step of the evaluation process for administrative ease.

The following tables show a range of potential outcomes. Table 1 distributes eligible institutions into the two categories, those that would be subject to the Standard Matching Requirement and those that would be eligible for the 2:1 Alternative Matching Ratio, under three different Long-term Investments per FTE "thresholds".

Tables 2A through 2C show the distribution of institutions potentially eligible for an Alternative Matching Ratio distributed into either the 2:1 category or the 1:1 category based on three different "threshold" levels of Net Tuition per FTE Student.

Please note that the tables distribute ALL 114 institutions, including the 16 institutions which were not included in the data pool. These 16 institutions, 11 of whom are either nursing schools or specialized schools, defaulted to a 1:1 ratio.

SUMMARY OF POTENTIAL OUTCOMES OF THE METHODOLOGY

Table 1

# of Institutions = 114	<u>Long-Term Investments Per FTE Student (LTI/FTE)</u>		
	@\$10,000	@\$7,500	@\$5,000
Standard 3:1 Matching Ratio	67	71	77
Alternative Matching Ratio	47	43	37
Total	114	114	114

Table 2A

<i>LTI/FTE = \$10,000</i>	<u>Net Tuition Per FTE Student Threshold</u>		
	@\$10,000	@\$7,500	@\$5,000
# of Institutions = 47			
Alternative 2:1 Ratio	24	27	30
Alternative 1:1 Ratio	23	20	17

Table 2B

<i>LTI/FTE = \$7,500</i>	<u>Net Tuition Per FTE Student Threshold</u>		
	@\$10,000	@\$7,500	@\$5,000
# of Institutions = 43			
Alternative 2:1 Ratio	20	23	26
Alternative 1:1 Ratio	23	20	17

Table 2C

<i>LTI/FTE = \$5,000</i>	<u>Net Tuition Per FTE Student Threshold</u>		
	@\$10,000	@\$7,500	@\$5,000
# of Institutions = 37			
Alternative 2:1 Ratio	14	17	20
Alternative 1:1 Ratio	23	20	17

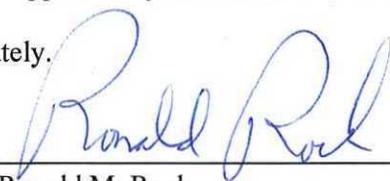
VII. Approval of Higher Education Capital Matching Grant Applications

Information to Be Provided at a Later Date

A RESOLUTION OF THE NEW YORK STATE HIGHER EDUCATION
CAPITAL MATCHING GRANT (HECAP) BOARD APPROVING THE FORM
APPLICATION FOR THE NEW YORK STATE HIGHER EDUCATION CAPITAL
MATCHING GRANT PROGRAM (HECAP)

BE IT RESOLVED by the Members of the New York State Higher Education Capital Matching Grant (HECap) Board that the form of the New York State Higher Education Capital Matching Grant (HECap) Program Application attached hereto is hereby approved, and that an Authorized Officer of the Dormitory Authority, as staff to the HECap Board, is hereby authorized to make changes, insertion or deletions as may be approved by said Authorized Officer.

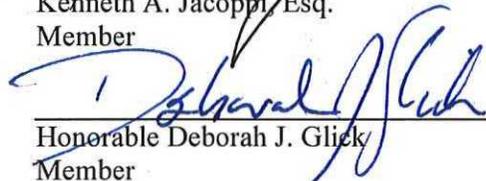
This resolution shall take effect immediately.



Ronald M. Rock
Member



Kenneth A. Jacopp, Esq.
Member



Honorable Deborah J. Glick
Member

**HIGHER EDUCATION CAPITAL MATCHING GRANT
(HE Cap)
APPLICATION AND PROJECT INFORMATION SHEET**

SECTION 1: GENERAL INFORMATION**A. Project Name:**

Project Location:

B. Applicant College or University:

Legally Incorporated Name:

Street (not P.O. Box):

City:

Zip:

County:

Phone:

Ext:

Fax:

E-mail:

Contact Name & Title:

Federal Taxpayer I.D./Charity Reg.# (Non-profits Only):

1. Eligible HECap Grant Allocation _____

2. Is the organization currently seeking or receiving any other New York State assistance for this project?

 No Yes

If your answer is yes, please provide a detailed explanation on an attached separate sheet.

SECTION 2: PROJECT DESCRIPTION**A. Project Description and Amount**

1. Please attach a detailed description of the specific capital project that will be undertaken and funded pursuant to this application.

2. Please list the anticipated amount of funding to be received from the HECap Program for this project.

\$ _____

3. Project Start Date: _____ Anticipated Date of Project Completion: _____

4. Please delineate each specific Non-state funding source, whereby the receipt of such funds shall be sufficient to meet the Non-state match requirement. In addition, please list all additional funding sources necessary for completion of the project.

5. Does the Project have the participation and financial support of a consortium of colleges and/or public or private partnerships? If so, please explain. No Yes

6. Please explain how the project would enhance the programmatic offerings or the student life at the college or provide economic development benefits to the area surrounding the college campus.

SECTION 3: PROJECT BUDGET, DISBURSEMENT SCHEDULE, & OPERATING COSTS

A. Use of Funds

Complete the following Project Budget detailing the proposed sources and uses of funds (attach additional sheets if necessary).

<u>USE OF FUNDS</u>	<u>SOURCES</u>			<u>TOTAL</u>
	HECap Grant	Non-state Matching Funds	Other sources (Please specify each source and include commitment letter or other evidence that funds have been secured)	
Uses (Attach additional pages if necessary)				
Facility	\$	\$	\$	\$
Land Acquisition				
Building Acquisition				
New Construction				
Renovation				
Architect Fees				
Engineer Fees				
Other Soft Costs				
Machinery & Equipment				
Purchase				
Installation				
Total:	\$	\$	\$	\$

B. Does the project require environmental or other regulatory permits? No Yes
 If yes, please specify type:

Have they been secured? No Yes NA
 If not, is there a reasonable expectation that such approvals will be obtained? No Yes NA

C. Has any State or local government agency reviewed the project under the State Environmental Quality Review Act (SEQRA)? No Yes NA

<p>D. Will a recurring source of revenue be available to support facility operations and maintenance for the project? If yes, please explain.</p> <p style="text-align: right;">() No () Yes</p>
<p>SECTION 4: ELIGIBILITY FOR TAX-EXEMPT FINANCING</p>
<p>1. Do you believe your project is eligible for tax-exempt financing under the Federal Internal Revenue Service Code?</p> <p style="text-align: right;">() No () Yes</p>
<p>2. Has the applicant previously received financing from the sale of tax-exempt bonds? If yes, attach a schedule describing the details of such financing.</p> <p style="text-align: right;">() No () Yes</p>
<p>3. Does the applicant anticipate applying for financing for this project from the sale of other bonds?</p> <p style="text-align: right;">() No () Yes</p>
<p>4. Have any funds been expended or obligations incurred to date on that portion of the project for which this application is made? If yes, attach a schedule showing details of such disbursements (date, purpose, payee, etc.).</p> <p style="text-align: right;">() No () Yes</p>
<p>5. Does the applicant plan to own and occupy 100% of the project facility? If no, attach a schedule explaining the planned occupancy.</p> <p style="text-align: right;">() No () Yes</p>

CERTIFICATION

The proposed Project will enhance the programmatic offerings or the student life at the college or provide economic development benefits to the area surrounding the college campus; and

As of April 13, 2005, the effective date of the legislation creating this Program, construction had not begun and equipment had not been purchased for such Project.

Signature of Applicant: _____

Date: _____

Printed Name of Applicant _____

Title of Applicant: _____