

## **PREAMBLE**

This Project Labor Agreement (“PLA” or “Agreement”) is made by and between the parties hereto, the Building and Construction Trades Council of Westchester and Putnam Counties, New York (“Council”) on behalf of itself and its affiliated local unions who are signatories to this PLA (“Local Unions”), and [INSERT NAME(S) FOR PROJECT OWNER/MUNICIPALITY/GENERAL CONTRACTOR as applicable (“\_\_\_\_\_”)] (collectively the “Parties”).

**WHEREAS**, the (*Project Owner*) desires to provide for the cost efficient, safe, quality, and timely completion of certain construction work as defined hereafter;

**WHEREAS**, this PLA will foster the achievement of these goals, inter alia, by:

1. expediting the construction process and otherwise minimizing the disruption to the project;
2. avoiding the costly delays of potential strikes, slowdowns, and walkouts arising from work disputes and promoting labor harmony and peace for the duration of the project;
3. standardizing the terms and conditions governing the employment of labor on the project;
4. permitting flexibility in work scheduling where necessary at fair pay rates;
5. permitting modifications to work rules and staffing requirements from those which otherwise might be obtained;
6. providing comprehensive and standardized mechanisms for the settlement of work disputes, including those relating to jurisdiction; and
7. ensuring a reliable source of skilled and experienced labor; and

**WHEREAS**, the (*Project Owner*) has, through independent investigation and analysis, determined that substantial cost savings to the Project shall result from the application of this Agreement; and

**WHEREAS**, the Council, and its affiliated Local Unions and their members, desire to provide assistance in meeting these operational needs and objectives as well as to provide for stability, security and work opportunities which are afforded by this PLA; and

**WHEREAS**, the Parties desire to maximize Project Work safety conditions for both workers and the community in the Project area;

**NOW, THEREFORE**, the Parties enter into this Agreement, and agree hereafter to the following terms and conditions:

## **ARTICLE 1 - PARTIES TO THE AGREEMENT**

This PLA is entered into for certain work to be performed as part of the (Name of Project) (as defined below) between (1) (Owner or Owner's Representative, General Contractor, or Construction Manager); (2) the Council on behalf of itself and its affiliated Local Unions; and (3) the signatory Local Unions on behalf of themselves and their members.

## **ARTICLE 2 - GENERAL CONDITIONS**

### **SECTION 2.1 DEFINITIONS**

Throughout this Agreement:

- A. "Union Parties" and "Unions" mean the Building and Construction Trades Council of Westchester and Putnam Counties, New York and the signatory Local Unions, individually and collectively;
- B. "Local Union" or "Local Unions" mean the Local Union or Local Unions that are signatory to this Agreement, individually and collectively;
- C. "Project" means the work to be performed pursuant to this Agreement and as more fully set forth in Article 3, Section 3.1.
- D. "Project Work" means the work covered by this Agreement and fully defined in Article 3, Section 3.1;
- E. "Contractor" or "Contractors" mean any General Contractor, Prime Contractor, Construction Manager (or any Contractor who may serve as a successor in that role), and all other Contractors and Subcontractors of whatever tier engaged in Project Work within the scope of this Agreement as defined in Article 3;
- F. "Core Employee" means an employee who has been on a Contractor's payroll consistent with Article 4, Section 4.2 of this Agreement.
- G. "Owner's Representative" means any Project Manager or other entity designated by the Owner to enter into this Agreement or otherwise act on its behalf.

#### **SECTION 2.2 CONDITIONS FOR AGREEMENT TO BECOME EFFECTIVE**

This Agreement shall not become effective unless each of the following conditions are met: (1) the Agreement is signed by the Council and the Local Unions having jurisdiction over the Project Work; (2) the Agreement is approved by the NYS Building & Construction Trades Council; (3) the Agreement is approved by the North America's Building Trades Unions; and (4) the Agreement is signed by the Owner or the Owner's Representative or General Contractor, as applicable.

#### **SECTION 2.3 ENTITIES BOUND & ADMINISTRATION OF AGREEMENT**

This Agreement shall be binding on all signatory Unions and their affiliates and all Contractors and Subcontractors performing Project Work as defined in Article 3. The Contractors shall include in any subcontract that they let for performance during the term of this Agreement a requirement that their Subcontractors, of whatever tier, become signatory and bound by this Agreement with respect to that subcontracted work performed within the scope of Article 3, and require that each Subcontractor, of whatever tier, sign the Letter of Assent attached hereto in Schedule B. In addition thereto, the Contractor and/or Owner shall designate a representative to administer this Agreement and shall complete the annexed Schedule C.

#### **SECTION 2.4 SUPREMACY CLAUSE**

This Agreement, together with the local collective bargaining agreements referred to herein as "Schedule A Agreements" represent the complete understanding with respect to the Project and supersedes any national agreement, local agreement, or other collective bargaining agreement of any type which would otherwise apply to Project Work, in whole or in part, with the exception that the NTL Articles of Agreement, the National Stack/Liner/Chimney Agreements, the National Cooling Tower Agreement, the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors ("National Agreements") shall apply. Notwithstanding this exception, the No Strike - No Lock Out, the Grievance and Arbitration Provision, and the jurisdictional dispute resolution provisions of this Agreement (as found in Articles 7, 9 and 10 of this Agreement) shall also apply. Where a subject covered by the provisions of this Agreement is also covered by a Schedule A Agreement, the provisions of this Agreement shall prevail. If this Agreement is

silent on any matter addressed in the applicable Schedule A Agreement, the Schedule A Agreement shall govern. It is understood that by virtue of having become bound by this PLA, the Contractors will not be obligated to sign any other local, area or national agreement. Nothing in this Agreement requires employees to join a union or pay dues or fees to a union as a condition of working on the covered project. This Agreement is not, however, intended to supersede independent requirements in applicable local union agreements as to contractors that are otherwise signatory to those agreements and as to employees of such employers performing covered work.

It is further agreed that, where there is a conflict, the terms and conditions of this Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for work performed under the National Elevators Constructors Agreement and the Joint National Agreement for Instrument Control Systems Technicians, with the exception of Article 2, Section 7, and Articles 7, 9, and 10 of this Agreement, which shall apply to such work.

#### **SECTION 2.5 LIABILITY**

The liability of any Contractor and the liability of any Union under this Agreement shall be several and not joint. The General Contractor, Contractors and Subcontractors shall not be liable for any violations of this Agreement by any other Contractor or Subcontractor; and the Council and Local Unions shall not be liable for any violations of this Agreement by any individual Local Unions.

#### **SECTION 2.6 THE BID SPECIFICATIONS**

The Owner or General Contractor shall require in its bid specifications for all Project Work within the scope of Article 3 that all successful bidders and their Subcontractors of whatever tier become bound by, and signatory to, this Agreement. Every Contractor shall require its Subcontractors, of whatever tier, to execute the Letter of Assent in Schedule B and to become bound by this Agreement in order to perform Project Work.

#### **SECTION 2.7 AVAILABILITY AND APPLICABILITY TO**

##### **ALL SUCCESSFUL BIDDERS**

This Agreement shall be binding on all signatory Local Unions and all Contractors and Subcontractors performing Project Work. The Parties agree that this Agreement shall be made available to, and shall fully apply to any Contractor or Subcontractor of any tier performing project work, without regard to whether that Contractor or Subcontractor performs work at other sites on either a union or non-union basis and without regard to whether employees of such Contractor or Subcontractor are, or are not, members of any unions. The General Contractor shall require all Contractors performing Project Work to execute the Letter of Assent. The General Contractor, or Construction Manager as the case may be, shall provide the Council and the affiliated Local Unions, a copy of the signed Letter of Assent for each Contractor and Subcontractor prior to the Contractor or Subcontractor performing any Project Work. Unless expressly provided for in this Agreement, this Agreement shall not apply to the work of any Contractor which is performed at any location other than the site of Project Work.

#### **SECTION 2.8 SUBCONTRACTING**

Project Work shall only be subcontracted to a person, firm or corporation who is or agrees to become a party to this Agreement.

### **ARTICLE 3 - SCOPE OF THE AGREEMENT**

#### **SECTION 3.1 PROJECT WORK**

- A. This Agreement shall apply to all construction work related to the project located at \_\_\_\_\_, referred to as \_\_\_\_\_ (herein referred to as “Project Work”), and shall include:

**(Description of project, including Contract No. and geographic parameters, and scope of work in General Contractor/Construction Managers scope of work)**

All work included in the General Contractor’s and, as the case may be, Construction Manager’s scope of work is included as Project Work. Only work expressly excluded herein shall be excluded work.

- B. Project Work does not include, and this Agreement shall not apply to, the following work:

**(Description of excluded work; examples may include work under a certain dollar threshold; emergency work; ancillary utility work, etc.)**

**SECTION 3.2 TIME LIMITATIONS**

To be covered by this Agreement, Project Work must be let for bid after the effective date of this Agreement. It is understood that this Agreement, together with all of its provisions, shall remain in effect for all such Program Work until completion, even if not completed by the expiration date of the Agreement. If Project Work otherwise falling within the scope of Section 3.1 is not let for bid by the expiration date of this Agreement, this Agreement may be extended to that work by mutual agreement of the parties.

**SECTION 3.3 EXCLUDED EMPLOYEES**

Notwithstanding the provisions of Section 3.1 of this Article, the following person/entities are not subject to the provisions of this Agreement even though performing work on or in connection with the project:

- A. Superintendents, supervisors (excluding general and forepersons specifically covered by a Schedule A Agreement), inspectors and testers (except for high voltage testers who are performing work traditionally done by members of IBEW Local 3 and/or which is covered by a Local 3 collective bargaining agreement), quality control/assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, technicians, non-manual employees, and all professional, engineering (except general forepersons and field craft surveyors who are performing work traditionally done by members of the International Union of Operating Engineers Local 15D, AFL-CIO and/or which is covered by the Local 15D Surveying and Consulting Agreements), administrative and management persons;
- B. Employees of the Project Owner, unless they are performing manual on-site labor included in the scope of Project Work;
- C. Employees and entities engaged in off-site manufacture, modifications, repair, maintenance, assembly, painting, handling or fabrication of components, materials, equipment or machinery. However, operation of vehicles on the Project Site, site preparation, staging and stockpiling areas, and deliveries to and from the Project Site (including site preparation, staging, and stockpiling areas) involving construction equipment or major building and construction materials, including but not limited to, fuel oil for construction vehicles and equipment on the Project Site, redi-mix concrete, asphalt, dynamite, concrete block, lumber, and aggregates, such as, fill and sub-base stone/gravel, and item 4, shall not be excluded and are covered by this Agreement.;

- D. Employees of the General Contractor, excepting those performing manual, on-site construction labor who will be covered by this Agreement;
- E. Employees engaged in on-site equipment warranty work unless employees are already on site and are qualified to perform such warranty work;
- F. Employees engaged in geophysical testing (whether land or water) other than boring for core samples;
- G. Employees engaged in laboratory or specialty testing or inspections, unless ordinarily done by a member of a Trade Union and covered by a Schedule A Agreement; and
- H. Employees engaged in ancillary Project Work performed by third parties such as electric utilities, gas utilities, telephone companies, and railroads, and such third parties may perform their work to a demarcation point (e.g., the demarcation or terminus point will be the first point of distribution of system service) on the Project site established by the General Contractor/Construction Manager at the commencement of the Project.
- I. Employees of "Artisans" shall be individuals or entities whom Owner may (or may not) employ directly to create unique, one-of-a-kind decorative elements, including architectural finishes for incorporation into the building, with the exception of "Artisans" represented by Local 7, Marble, Tile and Terrazzo union and Painters DC 9, provided Local 7 and DC 9 can supply "Artisans" acceptable to the Contractor and/or the Owner. Employees, workers, or vendors engaged by the Owner to install signage (including digital signage), branding and/or branded wall-covering shall be excluded from this Agreement.

## **ARTICLE 4 - UNION RECOGNITION AND EMPLOYMENT**

### **SECTION 4.1 PRE-HIRE RECOGNITION**

The Contractors recognize the signatory Local Unions as the sole and exclusive bargaining representatives of all craft employees who are performing Project Work within the scope of Article 3 of this Agreement.

### **SECTION 4.2 UNION REFERRAL**

- A. The Contractors agree to request, employ and hire all craft employees for Project Work covered by this Agreement through the job referral systems and hiring halls established in the Local Unions' area collective bargaining agreements (attached hereto as Schedule A Agreements). Contractors and Subcontractors unfamiliar with the union referral systems and hiring halls may initiate contact with the appropriate trade(s). The Unions agree to provide such craft employees (including apprentices) to all Contractors on a nondiscriminatory basis. Notwithstanding this, Contractors shall have sole right to determine the competency of all referrals; the number of employees required; and the selection of employees for layoff (subject to Article 5, Section 5.3). In the event that a Local Union is unable to fill any request for qualified employees within a 48-hour period after such requisition is made by a Contractor (Saturdays, Sundays and holidays excepted), a Contractor may employ qualified applicants from any other available source. In the event that the Local Union does not have a job referral system, the Contractor shall give the Local Union first preference to refer applicants, subject to the other provisions of this Article. The Local Unions will cooperate with Contractor requests for minority, women, or economically disadvantaged referrals to meet the goals established for the Project.
- B. A Contractor not signatory to any Schedule A Agreements may request by name its core employee(s), and the Local Union will honor referral of those persons who have applied to the Local Union for Project Work and who meet the following qualifications:

1. possess any license required by New York State law for the Project Work to be performed;
  2. have worked a total of at least 1,000 hours in the construction craft during the prior 3 years;
  3. were on the Contractor's active payroll for at least 60 out of the 180 calendar days prior to the contract award; and
  4. have the ability to safely perform the basic functions of the applicable trade.
- C. No more than twelve percent (12%) of the employees covered by this Agreement, per Contractor by craft, shall be hired through the provisions in subsection (B) above. Under this provision, name referrals begin with the eighth employee needed and continue on the same basis.
- D. Notwithstanding Section 4.2.B, above, certified MWBE contractors for which participation goals are set forth in the bid specifications and/or contracts, that are not signatory to any Schedule A Agreements, with subcontracts valued at or under, [*one to two-million dollars (\$1,000,000 to \$2,000,000)*] may request by name, and the Local will honor, referral of the second, fourth, sixth and eighth Core Employee, who have applied to the Local for Project Work and who meet the following qualifications:
1. possess any license required by New York State law for the Project Work to be performed;
  2. have worked a total of at least 1,000 hours in the Construction field during the prior 3 years; and
  3. were on the Contractor's active payroll for at least 60 out of the 365 calendar days prior to the contract award.
- E. Where a certified MWBE Contractor voluntarily enters into a collective bargaining agreement with a Local Union, the employees of such Contractor at the time the collective bargaining agreement is executed shall be allowed to join the Local Union for the applicable trade subject to satisfying the Local Union's basic standards of proficiency for admission.

#### **SECTION 4.3 NON-DISCRIMINATION IN REFERRALS**

The Local Unions represent that their hiring halls and referral systems shall be operated in a non-discriminatory manner and in full compliance with all applicable federal, state and local laws and regulations which require equal employment opportunities. Referrals shall not be affected in any way by the rules, regulations, bylaws, constitutional provisions or any other aspects or obligations of union membership, policies, or requirements and shall be subject to such other conditions as are established in this Article. No employment applicant shall be discriminated against by any referral system or hiring hall because of the applicant's union membership or lack thereof.

#### **SECTION 4.4 WORKFORCE DIVERSITY UTILIZATION**

The Unions recognize and acknowledge that workforce diversity of minorities and women are employment goals consistent with our values of fair play. The Local Unions and Contractors will cooperate and make a good faith effort to refer women and minorities in sufficient numbers to meet the Project's workforce diversity goals of \_\_\_\_% women and \_\_\_\_% minorities. The Unions and Contractors will strive to achieve these goals based upon hours worked by craft.

In an effort to further these goals, the Unions and Contractors agree that if the Contractor's workforce would not fulfill these goals using the referral procedures in Section 4.2, and either the Union or the Contractor is able to refer additional qualified women or minority employees, then such employees shall be hired without regard to the special provisions of Section 4.2.B or Section 4.2.C. In the event that neither the Local Union nor the Contractor are able to refer qualified minority or female employees in

percentages sufficient to meet these goals, the Contractor shall make a good faith effort to employ qualified minority or female employees from any other available source. It is further understood that the special provisions of this paragraph shall terminate once the Project's diversity goals are met.

#### **SECTION 4.5 CROSS AND QUALIFIED REFERRALS**

The Local Unions shall not knowingly refer to a Contractor an employee then employed by another Contractor working under this Agreement. The Local Unions shall exert their utmost efforts to recruit sufficient numbers of skilled and qualified crafts employees to fulfill the requirements of the Contractor.

#### **SECTION 4.6 CRAFT FOREPERSONS AND GENERAL FOREPERSONS**

The selection of craft forepersons and/or general forepersons and the number of forepersons required shall be solely the responsibility of the Contractor except where otherwise provided by specific provisions of an applicable Schedule A Agreement, and provided that all craft forepersons shall be experienced and qualified journeypersons in their trade as determined by the appropriate Local Union. All forepersons shall take orders exclusively from the designated Contractor representatives. Craft forepersons shall be designated as working forepersons at the request of the Contractor, except when an existing local CBA prohibits a foreperson from working when the craft persons they are leading exceed a specified number.

### **ARTICLE 5 - UNION REPRESENTATION**

#### **SECTION 5.1 LOCAL UNION REPRESENTATIVE**

Each Local Union signatory to this Agreement shall be entitled to designate a representative and/or Business Manager who shall be afforded access to the Project site.

#### **SECTION 5.2 STEWARDS**

- A. Each Local Union shall have the right to designate from among those referred to the project a working journey person as a Steward and one alternate for each Contractor per shift, and shall notify the General Contractor of the identity of the designated Steward (and alternate) prior to the assumption of such duties. Stewards shall not exercise supervisory functions and shall receive the regular rate of pay for their craft classifications. All Stewards shall be working Stewards.
- B. In addition to their work as an employee, the Steward shall have the right to receive complaints or grievances and to discuss and assist in their adjustment with the Contractor's appropriate supervisor; such activities, however, are not to interfere with the Steward's work unless an emergency situation exists. Each Steward shall be concerned with the employees of the Steward's Contractor and, if applicable, Subcontractors of that Contractor, but not with the employees of any other Contractor. The Contractor will not discriminate against the Steward in the proper performance of Union duties.
- C. The Stewards shall not have the right to determine when overtime shall be worked, or who shall work overtime except pursuant to a Schedule A Agreement provision providing procedures for the equitable distribution of overtime.

#### **SECTION 5.3 LAYOFF OF A STEWARD**

Contractors agree to notify the appropriate Union 24 hours prior to the layoff of a Steward, except in cases of discipline or discharge for just cause. If a Steward is protected against layoff by a Schedule A Agreement, such provisions shall be recognized to the extent the Steward possesses the necessary qualifications to perform the work required. In any case in which a Steward is discharged or disciplined for just cause, the Local Union involved shall be notified immediately by the Contractor.

## **SECTION 5.4 UNION STANDARDS**

The Council and its affiliates have a legitimate interest in preventing the undermining of the work opportunities and standards gained through collective bargaining and desire to preserve and protect work opportunities for its members. Therefore, to the extent the work is defined as Project Work herein not subject to the Excluded Employees provisions of this Agreement, the parties agree that work under this Agreement may be contracted or subcontracted for off-site work only if the employees of that contractor or Subcontractor enjoy the same or greater wages and benefits than employees of the appropriate trade employed on Project Work, and under no circumstances shall employees engaged in the off-site fabrication work designed and fabricated for installation on the project, or other off-site work related to Project Work, receive less than the prevailing wage if applicable, or the wages and benefits required by this Agreement and the Schedule A Agreements including, but not limited to, wages, fringe benefits, and any other economic benefits provided therein. The parties recognize and acknowledge that this provision is a legitimate union standards clause and shall be interpreted, applied or enforced so as not to violate Section 8(e) of the National Labor Relations Act. Disputes, if any, with regard to the interpretation, application and or enforcement of this provision shall be subject to the grievance procedure set forth, herein.

## **ARTICLE 6 - MANAGEMENT RIGHTS**

### **SECTION 6.1 RESERVATION OF RIGHTS**

Except as expressly limited by a specific provision of this Agreement and the Schedule A Agreements, Contractors retain full and exclusive authority for the management of their operations including, but not limited to: the right to direct the work force, including determination as to the number to be hired and the qualifications therefore; the promotion, transfer, layoff of its employees; or the discipline or discharge for just cause of its employees; the assignment and schedule of work; the promulgation of reasonable Project work rules; and the requirement, timing and number of employees to be utilized for overtime work. Nothing contained herein shall be construed so as to allow direction of an Employee to perform work outside the jurisdiction of that Employee's Labor Union affiliation, if any. No rules, customs, or practices which limit or restrict productivity or efficiency of the individual (as determined by the Contractor) and/or joint working efforts with other employees shall be permitted or observed.

### **SECTION 6.2 MATERIALS, METHODS & EQUIPMENT**

Subject to the provisions of this Agreement and the annexed Schedule A Agreements, there shall be no limitation or restriction upon the Contractors' choice of materials, techniques, methods, technology or design, or, regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials, tools, or other labor-saving devices. Contractors may, without restriction, install or use materials, supplies or equipment regardless of their source. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work pursuant to an applicable Collective Bargaining Agreement; provided, however, it is recognized that other personnel having special qualifications may participate, in a supervisory capacity, in the installation, check-off or testing of specialized or unusual equipment or facilities as designated by the Contractor. Except to the extent otherwise agreed to by the parties in writing, all electrical and electronic work awarded to the Construction Manager, including but not limited to the installation, repair and maintenance of all building wiring systems, telephone data, fire alarm, signs, TV, security wiring and devices, sound and alarm systems and building automation systems shall be performed under the IBEW Local 3 Schedule A Agreement.

## **ARTICLE 7 - WORK STOPPAGES AND LOCKOUTS**

### **SECTION 7.1 NO STRIKES-NO LOCK OUT**



There shall be no strikes, work stoppages, or slowdowns at the Project site by any Union or employee against any Contractor or Subcontractor while performing work on the Project. There shall be no lock-out on Project Work by any General Contractor, Contractor or Subcontractor of any tier performing work on the Project.

#### **SECTION 7.2 DISCHARGE FOR VIOLATION**

A Contractor may discharge any employee violating Section 7.1, above, and any such employee will not be eligible thereafter for referral under this Agreement for a period of 100 working days.

#### **SECTION 7.3 NOTIFICATION**

If a Contractor contends that any Union has violated this Article 7, it shall notify the Council of such fact, with copies of the notification to the Local Union involved. The Council and Local Union shall instruct, order, and otherwise use their best efforts to cause the employee(s) to immediately cease and desist from any violation of this Article. The Council shall not be liable for the unauthorized acts of a Local Union or its members. Similarly, a Local Union and its members shall not be liable for any unauthorized acts of its members, the Council, or another Local Union.

#### **SECTION 7.4 EXPEDITED ARBITRATION**

Any Contractor or Union alleging a violation of Section 7.1 of this Article 7 may utilize the expedited procedure set forth below (in lieu of, or in addition to, any actions at law or equity that may be brought).

- A. A party invoking this procedure shall notify [*insert names of arbitrators*] who shall alternate as Arbitrator under this expedited arbitration procedure; with [insert name] serving first. If the Arbitrator next on the list is not available to hear the matter within 48 hours of notice, the next Arbitrator on the list shall be called. Copies of such notification will be simultaneously sent to all parties (the alleged violator, the Council, the Local Union, and the Contractor).
- B. The Arbitrator shall hold a hearing within 48 hours of receiving the notice invoking the procedure if it is contended that the violation still exists. The Arbitrator shall provide at least 24 hours' notice (excluding Sundays and holidays) to all parties as to time and place of the hearing.
- C. All notices pursuant to this Article must be delivered to all parties (Local Union, Council, Contractor, Subcontractor, alleged violator) and may be provided by telephone, hand delivery, facsimile, email (if an email address has been designated for such service), or confirmed overnight mail delivery. The hearing may be held on any day including Saturdays or Sundays. The hearing shall be completed in one session which shall not exceed 8 hours duration (no more than 4 hours being allowed to either side to present their case and conduct their cross examination) unless otherwise agreed. A failure of any party to attend the hearing shall not delay the hearing of evidence by those present or the issuance of an award by the Arbitrator.
- D. Section 7.1 hearings: The sole issue at the hearing shall be whether a violation of Section 7.1 occurred. If a violation is found to have occurred, the Arbitrator shall issue a Cease and Desist Award restraining such violation and serve copies on all parties. The Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages (any damages issue is reserved solely for court proceedings, if any). The Award shall be issued in writing within 3 hours after the close of the hearing, and may be issued without an Opinion. If any involved party desires an Opinion, one shall be issued within 15 calendar days, but its issuance shall not delay compliance with, or enforcement of, the Award.
- E. An Award issued under this procedure may be enforced by any court of competent jurisdiction upon the filing of this Agreement together with the Award. Notice of the filing of such enforcement proceedings shall be given to all parties. In any court proceedings to obtain a temporary or preliminary order enforcing the Arbitrator's Award as issued under this expedited

procedure, the involved Union and Contractor waive their right to a hearing and agree that such proceedings may be commenced by order to show cause. Such agreement does not waive any party's right to participate in a hearing for a final court order of enforcement or in any contempt proceeding.

- F. Any rights created by statute or law governing arbitration proceedings which are inconsistent with the procedure set forth in this Article, or which interfere with compliance thereto, are hereby waived by the Contractors and Unions to whom they accrue.
- G. The fees and expenses of the Arbitrator shall be equally divided between the involved Contractor and Union.

### **SECTION 7.5 ARBITRATION OF DISCHARGES FOR VIOLATION**

Procedures contained in Article 9 shall not be applicable to any alleged violation of this Article 7, with the single exception that an employee discharged for violation of Section 7.1, above, may have recourse to the procedures of Article 9 to determine only if the employee did, in fact, violate the provisions of Section 7.1 of this Article; but not for the purpose of modifying the discipline imposed where a violation is found to have occurred.

## **ARTICLE 8 - LABOR MANAGEMENT COMMITTEE**

### **SECTION 8.1 SUBJECTS**

The Project Labor Management Committee ("Committee") will meet on a regular basis to: (1) promote harmonious relations among the Contractors and Unions; (2) enhance safety awareness, cost effectiveness and productivity of construction operations; (3) protect the public interest; (4) discuss matters relating to staffing and scheduling with safety and productivity as considerations; and (5) review Affirmative Action and equal employment opportunity matters pertaining to the Project, if any.

### **SECTION 8.2 COMPOSITION**

The Committee shall be jointly chaired by a designee of the General Contractor and the Council. It may include representatives of the Local Unions and contractors involved in the issues being discussed. The Committee may conduct business through mutually agreed upon sub-committees. In all such cases, the Committee and its subcommittees shall maintain equal representation between the Local Unions and the Contractor entities.

### **SECTION 8.3 PRE-JOB CONFERENCE**

- A. So that the start and continuation of work may progress without interruption, the Committee shall require each contractor and Subcontractor of whatever tier to conduct a pre- job conference with the Council prior to commencing work. The Owner and General Contractor shall be advised in advance of such conferences and may participate if they wish.
- B. The purpose of the pre-job conference shall be for the parties to agree on such matters as work assignments, the standard work day and work week, the number of employees to be employed, the method of referral, the applicable wage rates and fringe benefit contributions, and any other applicable matters in accordance with this Agreement.
- C. Disputes and Violations.
  - 1. Unresolved disputes concerning trade assignments shall be handled in accordance with Article 10 in accordance with the National Plan established by the Building and Construction Trades Department, provided however, that disputes concerning intra-trade assignments (assignments between trades within the same International Union) will be determined by the applicable International Union.

2. All remaining unresolved issues shall be subject to the provisions of Article 9.

## **ARTICLE 9 - GRIEVANCE & ARBITRATION PROCEDURE**

### **SECTION 9.1 CLOSE COOPERATION**

The Contractors, Unions, and employees, collectively and individually, realize the importance to all parties to maintain continuous and uninterrupted performance of Project Work and agree to resolve disputes in accordance with the grievance-arbitration provisions set forth in this Article.

### **SECTION 9.2 PROCEDURE**

Any question, dispute or claim arising during the term of this Agreement involving the interpretation or application of this Agreement (other than jurisdictional disputes and alleged violations of Article 7, Section 7.1 and Article 8, Section 8.3.C.1, shall be considered a grievance and shall be resolved pursuant to the following procedure.

Step 1:

- a. When any employee covered by this Agreement feels aggrieved by a claimed violation of this Agreement, the employee shall give notice of the claimed violation to the Local Union representative or job steward, who shall notify the work site representative of the involved Contractor and the General Contractor. To be timely, such notice must be given within 7 calendar days after the act, occurrence or event giving rise to the grievance, or when the employee knew or should have known of the act, occurrence or event, whichever is later. The Local Union representative or the job steward shall meet with the work site representative of the involved Contractor and the General Contractor and endeavor to adjust the matter within 7 calendar days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party, may, within 7 calendar days thereafter, pursue Step 2 of the grievance procedure by serving the involved Contractor with written copies of the grievance setting forth a description of the claimed violation, the date on which the grievance occurred, and the provisions of the Agreement alleged to have been violated. Grievances and disputes settled at Step 1 are non-precedential except as to the specific Local Union, employee and Contractor directly involved unless the settlement is accepted in writing by the Labor-Management Committee as creating a precedent with respect to Project Work.
- b. Should any signatory to this Agreement have a dispute (excepting jurisdictional disputes and alleged violations of Article 7, Section 7.1 or Article 8, Section 8.3.C.1) with any other signatory to this Agreement and, if after conferring, a settlement is not reached within 7 calendar days, the dispute may be reduced to writing and the grieving party may proceed to Step 2 in the same manner as outlined in subparagraph (a) for the adjustment of employee grievances.

Step 2:

Upon timely receiving a written grievance, the involved Contractor shall notify and schedule a meeting with the Business Manager of the involved Local Union, the Council, and the General Contractor, and their respective representatives, for the purpose of arriving at a satisfactory settlement. Such meeting shall be held within 7 calendar days of the involved Contractor's receipt of the written grievance. Meeting minutes shall be kept by the Contractor with copies to the parties within twenty-four (24) hours.

Step 3:

- a. If the grievance shall have been submitted but not resolved in Step 2, any of the participating Step 2 entities may, within 21 calendar days after the initial Step 2 meeting, submit the grievance in writing (copies to other participants, including the General Contractor), to **[in names of Arbitrators]** who shall act, alternately, as the Arbitrator under this procedure. The Labor Arbitration Rules of the American Arbitration Association shall govern the conduct of the arbitration hearing, at which all Step 2 participants shall be parties. The decision of the Arbitrator shall be final and binding on the involved Contractor, Local Union, and employees, and the fees and expenses of such arbitrations shall be borne equally by the involved Contractor and Local Union.
- b. Failure of the grieving party to adhere to the time limits set forth in this Article shall render the grievance null and void. These time limits may be extended only by written consent of the General Contractor, the involved Contractor, and the involved Local Union at the particular step where the extension is agreed upon. The Arbitrator shall have authority to make decisions only on the issues presented to him and shall not have the authority to change, add to, delete or modify any provision of this Agreement.

## **ARTICLE 10 - JURISDICTIONAL DISPUTES**

### **SECTION 10.1 ASSIGNMENT**

The assignment of work shall be solely the responsibility of the Contractor performing the work involved, subject to the pre job conference and the procedures set forth in Article 8, Section 8.3.C, and such work assignments shall be in accordance with the National Plan for the Settlement of Jurisdictional Disputes in the Construction Industry ("National Plan") or any successor Plan approved by the Building & Construction Trades Department, AFL-CIO.

### **SECTION 10.2 PROCEDURE FOR SETTLEMENT OF JURISDICTIONAL DISPUTES**

All jurisdictional disputes involving Project Work shall be settled according to the National Plan, provided however, that disputes concerning intra-trade assignments (assignments between trades within the same International Union) will be determined by the applicable International Union.

### **SECTION 10.3 NO DISRUPTIONS**

There will be no strikes, work stoppages, or slowdowns, arising out of any jurisdictional dispute. Pending the resolution of the dispute, the work shall continue uninterrupted and as assigned by the Contractor. No jurisdictional dispute shall excuse a violation of Article 7 of this Agreement.

### **SECTION 10.4 AWARD**

Any jurisdictional award pursuant to this Article shall be final and binding on the disputing Unions and the involved Contractor on this Project only, and may be enforced in any court of competent jurisdiction. Such award or resolution shall not establish a precedent on any other construction work not covered by this Agreement.

### **SECTION 10.5 LIMITATIONS**

Awards made under this Article shall determine only to whom the disputed work belongs for this Project. The deciding person or group hereunder shall have no authority to (1) assign work to a double crew, that is, to more employees than the minimum required by the Contractor to perform the work involved; (2) assign the work to employees who are not qualified to perform the work involved; or (3) assign work being performed by non-union employees to union employees. This provision does not prohibit the establishment, with the agreement of the involved Contractor, of composite crews where more than one (1) employee is needed for the job.

## **ARTICLE 11 - WAGES AND BENEFITS**

### **SECTION 11.1 CLASSIFICATION AND HOURLY RATE**

All employees covered by this Agreement shall be classified in accordance with the work performed and paid the wage rates applicable for those classifications as required by the Schedule A Agreement applicable to the work.

### **SECTION 11.2 EMPLOYEE BENEFITS**

A. Unless expressly provided differently in this Agreement, Contractors and Subcontractors agree to pay employee fringe benefits contributions/supplements on behalf of all of their employees covered by this Agreement in the amounts required by the applicable Schedule A Agreement so long as they are consistent with the New York State Labor Law Section 220 schedule in effect. Except as provided below and in Article 11, Section 11.2.B, the Contractors and Subcontractors agree that such payments shall be made to those established jointly trustee employee benefit funds designated in the Schedule A Agreements, and in the amounts so designated. Bona fide jointly trustee fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added if they similarly fall within New York State Labor Law Section 220. Under no circumstances is a Contractor or Subcontractor required to pay benefits except as required under Section 220 or otherwise explicitly required by this Agreement.

B. Notwithstanding Section 11.2.A, above, Contractors and Subcontractors who designate employees pursuant to Article 4, Section 4.2.B, may satisfy the above benefit obligation with respect to those employees by: (1) providing those employees with coverage under their own bona fide private benefit plans, provided such plans satisfy the requirements of the Internal Revenue Code and Section 220; (2) by electing to pay into the applicable jointly held trustee funds designated on Schedule A Agreements on their behalf; or (3) by including the full amount of such benefit in the employee's wages. When the benefit payments are paid into private plans, the payments to be made on behalf of those employees must equal the total supplement amount set forth at the Wage and Benefit sheet referred in Section 11.1 of this Article 11, and must be consistent with the requirements of Section 220, and any shortfall must be included in the employee's wages. The option for a private plan equivalent supplement shall not apply to contributions into Joint Apprentice Training Committee (JATC) or similar apprentice funds designated on the Schedule A Agreements if the Contractor or Subcontractor, as the case may be, does not have an apprentice training program approved by the New York State Department of Labor. Upon request by the Council, any Contractor or Subcontractor providing coverage to Article 4, Section 4.2.B employees under private benefit plans will provide the Council with documentation of benefit payments made to individual employees during the term of their employment on the Project.

C. Contractors who exercise the option under Section 11.2.B of this Article 11 to pay into their own private benefit plans rather than the applicable jointly trustee funds designated in the Schedule A Agreements shall be responsible for and guarantee employee benefit/supplement payments and shall indemnify and hold harmless the jointly trustee funds designated in the Schedule A Agreements against any and all benefit/supplement claims by its employees. In addition thereto, such Contractors shall be required to:

1. Upon the time of hiring of such employee(s) and no later than five (5) business days upon their commencement of work, provide the General Contractor, Project Owner and the Council with their name(s), job titles and description of work they will be performing.
2. Written verification from the Internal Revenue Service of the qualified status of each private benefit plan that it will be contributing to on behalf of each employee identified in subsection a., above.
3. Remit on a monthly basis to the General Contractor, Project Owner and the Council a report identifying the names of the employees, the hours worked, the hours for which contributions have been paid into their own private benefit plans and proof that such contributions have been deposited into such plans.
4. Provide access to its books and payroll records upon demand by the General Contractor, Project Owner, the Council and/or an affiliate union thereof, for audit and inspection by a representative of same during reasonable business hours. The failure to do so, shall be a material breach of the terms of this Agreement.

D. Contractors who contribute to jointly trustee funds under this Section 11.2 agree to be bound by the written terms of the legally-established jointly trustee Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Trust Funds but only with regard to work done on this Project and only for those employees for whom this Agreement requires such benefit Payments. Notwithstanding the foregoing, a Contractor's liability shall be at all times limited to the amount of contributions required to be made to the Trust Funds together with those damages as articulated in the trust agreements establishing said fringe benefit contribution plans and the Employee Retirement Income Security Act of 1947.

E. Each Contractor shall be responsible for and guarantee the payment of all required fringe benefits on the Project Site. Prior to the Prime Contractor issuing payment to a Contractor on behalf of the Contractor (or its Subcontractor) for Project Site work, the Prime Contractor will notify the applicable Union and any fund to which that Contractor or Subcontractor is contributing that a payment will be issued for that Contractor or Subcontractor. Notification, which may be by facsimile and/or email (in the event that an email address has been designated for this purpose), will provide that the fund has 48 hours from the time the fax or email is sent in which to advise the Prime Contractor and the Construction Manager of any current contribution delinquencies for that Contractor or Subcontractor. If written notice of such a delinquency is received by the Prime Contractor and Construction Manager within that 48-hour period, the Prime Contractor shall withhold from any payment due that Contractor the amount of that delinquency, up to the total amount due the Contractor and/or Subcontractor, until any dispute regarding the delinquency has been resolved. If notice of a delinquency is not received by the Prime Contractor and the Construction Manager within the required time periods, the Prime Contractor and the Construction Manager shall have no basis upon which to withhold, with respect to that delinquency, any part of a payment which is otherwise due.

F. For the purposes of notification under this Section, notification of a deficiency shall be forwarded to: *[insert name, address, email address of Prime Contractor and/or Construction Manager contacts]*.

## **ARTICLE 12 - HOURS OF WORK, PREMIUM PAYMENTS, SHIFTS AND HOLIDAYS**

### **SECTION 12.1 WORK WEEK AND WORK DAY**

A. The standard work week shall consist of 40 hours of work at straight time rates, Monday through Friday, 8 hours per day, plus ½ hour unpaid lunch period with the normal start time of either 7:00 a.m. or 8:00 a.m.

B. In accordance with project needs, there may be flexible start times with 5 work days advance notice from Contractor or Owner to the Union, in which case the Day Shift shall commence at the identified time between the hours of 6:00 a.m. and 9:00 a.m. and shall end between the hours of 2:30 p.m. and 5:30 p.m., for an 8-hour day. The Evening Shift shall commence between the hours of 3:00 p.m. and 6:00 p.m., unless different times are necessitated by the Agency's phasing plans on specific projects. The Night Shift shall commence between the hours of 11:00 p.m. and 2:00 a.m., unless different times are necessitated by the Agency's phasing plans on specific projects. Subject to the foregoing, starting and quitting times shall occur at the Program Work site designated by the Contractor.

C. Scheduling - Except as provided above, Monday through Friday is the standard work week; 8 hours per day, plus ½ hour unpaid lunch period, with the normal start time of either 7:00 a.m. or 8:00 a.m.

D. Notice - Contractors shall provide not less than 5 work days prior notice to the Local Union involved as to the work week and work hour schedules to be worked or such lesser notice as may be mutually agreed upon.

### **SECTION 12.2 OVERTIME**

Overtime shall be paid for any work over eight (8) hours in a day and any work over forty (40) hours in a week. Overtime shall be paid at time and one half (1 ½) Monday through Saturday. All overtime work performed on Sunday and Holidays will be paid pursuant to the applicable Schedule A. There shall be no stacking or pyramiding of overtime pay under any circumstances. There will be no restriction upon the Contractor's scheduling of overtime or the nondiscriminatory designation of employees who shall be worked, including the use of employees, other than those who have worked the regular or scheduled work week, at straight time rates. The Contractor shall have the right to schedule work so as to minimize overtime or schedule overtime as to some, but not all, of the crafts and whether or not of a continuous nature.

### **SECTION 12.3 SHIFTS**

- A. Flexible Schedules - Scheduling of shift work, including Saturday and Sunday work, shall be within the discretion of the Contractor in order to meet Project Work schedules and existing Project Work conditions. Shifts must have prior approval of the General Contractor and must be scheduled with not less than five work days' notice to the Local Union.
- B. Second and/or Third Shifts -- Saturday and/or Sunday Work. The second shift shall start between 3 p.m. and 6 p.m. and the third shift shall start between 11 p.m. and 2 a.m. Notwithstanding the previous sentence, each Second and/or Third Shift shall start one half (½) hour after the end of its preceding shift (i.e. the First Shift in case of a Second Shift; and the Second Shift in case of a Third Shift). Shift differentials shall be paid according to the applicable Schedule A. No other premium or payments for such work shall be required unless such work is in excess of 40 hours during the week. Work performed on Saturdays or Sundays shall be paid as provided in the applicable Schedule A.
- C. Four-Tens: Notwithstanding any other provision of this Agreement, when working a four-day work week which shall be identified by the Contractor or Owner upon 5 work days advance notice of either Monday through Thursday, the standard work day shall consist of ten (10) hours

work for ten (10) hours pay at the straight time rate exclusive of an unpaid 1/2 hour meal period and regardless of the starting time.

## **SECTION 12.4 HOLIDAYS**

- A. Schedule - There shall be nine (9) recognized holidays, with Juneteenth\* serving as a tenth (10th) holiday when so required by federal, state or municipal law or directive:

New Years Day  
Veteran's Day  
Dr. Martin Luther King, Jr. Day  
Presidents Day  
Memorial Day  
Fourth of July  
Labor Day  
Thanksgiving Day  
Christmas Day  
Juneteenth\*

All said holidays shall be observed on the dates designated by New York State Law. In the absence of such designation, they shall be observed on the calendar date, except that holidays which occur on Sunday shall be observed on the following Monday.

- B. Payment - Regular holiday pay, if any, for work performed on a recognized holiday shall be in accordance with the applicable Schedule A Agreement.
- C. Exclusivity - No holidays other than those listed in Section 12.4 shall be recognized or observed.
- D. Whenever a paid holiday falls within a work week, which is defined for the purpose of this Section as commencing on Sunday and concluding on the following Saturday, then an Employee covered by this Agreement shall be paid for such holiday.

## **SECTION 12.5 MAKE-UP DAYS**

When severe weather, power failure, fire or natural disaster or other similar circumstances beyond the control of the Contractor prevent work from being performed on a regularly scheduled weekday, the Contractor — so long as it is current in the remittance of all fringe benefit contributions owed to date — may, subject to Owner approval, schedule a Saturday make-up day and such time shall be scheduled and paid as if performed on a weekday. Any other Saturday work shall be paid at time and one-half (1 ½). In the event that the regular work schedule is four (4) 10-hour work days, then Friday may be scheduled as a make-up day and such time shall be scheduled and paid as if performed on a week day. Any other Friday work shall be paid at time and one-half (1 ½). The Contractor shall notify the Local Union on the missed day or as soon thereafter as practicable if such a make-up day is to be worked. The refusal of any Local Union to honor a request for a make-up day due to the Contractor's failure to be current in the remittance of all fringe benefit contributions owed to date shall not be considered a work stoppage violation of the No Strike Provision of this Agreement. The crew of employees on a make-up day shall not exceed the



average crew size employed during the work week and no employees shall be disciplined for refusing to work on a make-up day.

#### **SECTION 12.6 REPORTING PAY**

- A. Employees who report to the work location pursuant to a regular schedule and who are not provided with work or whose work is terminated early by a Contractor, for whatever reason, shall receive the greater of an allowance for travel costs equal to one hour's pay or pay for any hours actually worked, but not both. (Such payment is in lieu of any reporting or similar pay provided for in an applicable Schedule A Agreement.) The allowance for travel costs is not to be considered as wages nor is it to be included in the calculation of any benefits.
- B. When an employee who has completed his or her scheduled shift and has left the Project site is "called out" to perform special work of a casual, incidental, or irregular nature, the employee shall receive pay for actual hours worked at applicable straight time or overtime rates in accordance with this Agreement, but no less than a minimum guarantee of one (1) hour at the employee's straight time rate.
- C. When an employee leaves the job or work location of their own volition, is discharged for cause, or is not working as a result of the Contractor's invocation of Section 12.9 below, he or she shall be paid only for the actual time worked.
- D. There shall be no pay for time not actually worked except as specifically set forth in this Article 12.
- E. If provided for in a Schedule A Agreement, a full weeks' pay shall be paid for the identified craft worker foreperson in such Schedule A Agreement.

#### **SECTION 12.7 PAYMENT OF WAGES**

- A. Payday: A statement shall be furnished with the payment of wages showing the Employer's name; the Employee's name; the Total Earnings, the Total Hours and itemized Tax Deductions and/or Withholdings. A payroll check shall be drawn upon a local Federal Deposit Insurance Corporation insured financial institution within the region where the project work is being performed, payable on demand at its identified value. The Employer may also pay electronically with transfer from a direct deposit fund so long as the Employee has a viable bank account in which to transfer funds and has requested same. All Employees shall be paid by 3:00 p.m. on Thursdays. In the event that the following Friday is a bank holiday, payroll shall be issued on Wednesday of that week. Not more than one week's wages shall be held back in any pay period.
- B. Termination: Employees who are laid off or discharged for cause shall be paid in full for that which is due them at the time of termination. The Contractor shall also provide the employee with a written statement setting forth the date of layoff or discharge.

#### **SECTION 12.8 INJURY/DISABILITY**

An employee who, after commencing work, suffers a work-related injury or disability while performing work duties, shall receive no less than eight (8) hours wages for that day. Further, the employee shall be rehired at such time as the employee is able to return to duties provided there is still work available on the Project for which the employee is qualified and able to perform.

#### **SECTION 12.9 EMERGENCY WORK SUSPENSION**

A Contractor may, if considered necessary for the protection of life, property, and/or safety of employees or others, suspend all or a portion of Project Work. In such instances, employees shall be paid for actual

time worked; provided however, that when a Contractor requests that employees remain at the job site available for work, employees shall be paid for "stand-by" time at their hourly rate of pay.

#### **SECTION 12.10 TIME KEEPING**

A Contractor may utilize systems to check employees in and out. Each employee must check in and out and sign a daily sign-in sheet, or other attendance protocol as directed in writing by the Project Owner. The Contractor will provide adequate facilities for checking in and out in an expeditious manner.

#### **SECTION 12.11 MEAL PERIOD**

A Contractor shall schedule an unpaid period of a 1/2-hour duration at the work location between the 3rd and 5th hour of the scheduled shift. A Contractor may, for efficiency of operation, establish a schedule which coordinates the meal periods of two or more crafts, or which provides for staggered lunch periods within a craft or trade. If an employee is required to work through the meal period, the employee shall be compensated in a manner established in the applicable Schedule A Agreement.

### **ARTICLE 13 - APPRENTICESHIP & HELMETS TO HARDHATS**

#### **SECTION 13.1 APPRENTICE RATIOS**

Recognizing the need to maintain continuing supportive programs designed to develop adequate numbers of competent workers in the construction industry and to provide craft entry opportunities for minorities, women and economically disadvantaged non-minority males, Contractors will employ apprentices in their respective crafts to perform such work as is within their capabilities and that is customarily performed by the craft in which they are indentured. Contractors may utilize apprentices and such other appropriate classifications in the maximum ratio permitted by the New York State Department of Labor ("NYSDOL") or the maximum allowed per trade, whichever is greater. The Council and its affiliate locals fully support the advancement of employment of all persons through registered apprenticeship programs in order to assist Contractors in fulfilling their obligations to promote employment opportunities for all classifications of persons.

#### **SECTION 13.2 HELMETS TO HARDHATS**

The Contractors and the Unions desire to facilitate the entry into the building and construction trades of veterans who are interested in careers in the building and construction industry. The Contractors and the Unions agree, to the extent that individual local unions participate in it, to utilize the services of the New York Center for Military Recruitment, Assessment and Veterans Employment (the "Center") and the Center's "Helmets to Hardhats" program as a resource for preliminary orientation and assessment of construction aptitude; referral to apprenticeship programs or hiring halls; counseling and mentoring; and support networks, employment opportunities, and other needs as identified by the parties.

The Unions and the Contractors agree to work with the Center to create and maintain an integrated database of veterans interested in working on the Project as well as information about apprenticeship and employment opportunities related to this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

### **ARTICLE 14 - NO DISCRIMINATION**

#### **SECTION 14.1 COOPERATIVE EFFORTS**

The Contractors and Unions agree that they shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, marital status, age, union or non-union status, real or perceived sexual orientation or any other status protected by law, in any manner prohibited by law or regulation. It is recognized that special procedures may be established by Contractors and Local Unions and the New York State Department of Labor for the training and employment of persons who have not previously qualified to be employed on construction projects of the type covered by this

Agreement. The parties to this Agreement shall assist in such programs and agree to use their best efforts to ensure that the goals for female and minority employment are met on this Project. Nothing in this section shall be grievable.

#### **SECTION 14.2 LANGUAGE OF AGREEMENT**

The use of the masculine or feminine gender in this Agreement shall be construed as including both genders.

### **ARTICLE 15 - GENERAL TERMS**

#### **SECTION 15.1 TOOLS OF THE TRADE**

The welding/cutting torch and chain fall are tools of the trade having jurisdiction over the work performed. Employees using these tools shall perform any of the work of the trade. There shall be no restrictions on the emergency use of any tools or equipment by any qualified employee or on the use of any tools or equipment for the performance of work within the employee's jurisdiction.

#### **SECTION 15.2 SUPERVISION**

Employees shall work under the supervision of the craft foreperson or general foreperson.

#### **SECTION 15.3 FULL WORKDAY**

Employees shall be at their work area at the starting time established by the Contractor. The signatories reaffirm their policy of a fair day's work for a fair day's wage.

### **ARTICLE 16 - SAFETY PROTECTION OF PERSON AND PROPERTY**

#### **SECTION 16.1 SAFETY REQUIREMENTS**

Each Contractor will ensure that applicable OSHA and safety requirements are at all times maintained on the Project Work site, including infectious disease protocol when required by public health authorities, and the employees and Unions agree to cooperate fully with these efforts to the extent consistent with their rights and obligations under the law.

#### **SECTION 16.2 CONTRACTOR RULES**

Employees covered by this Agreement shall at all times be bound by the reasonable safety, security, and visitor rules as established by the General Contractor / Construction Manager for Project Work that are consistent with this Agreement and industry standards. Such rules will be published and posted in conspicuous places throughout the Project Work sites and provided to the Council and the Local Unions. Any site rules that are new or vary from common industry standards shall be implemented only after notice to the Council and its affiliated Local Unions and an opportunity for negotiation and resolution by the Labor Management Committee has been undertaken.

### **ARTICLE 17 - SAVINGS AND SEPARABILITY**

In the event that the application of any provision of this Agreement is enjoined, on either an interlocutory or permanent basis, or is otherwise determined to be in violation of law, the provision involved (and/or its application to a particular part of the Project, as necessary) shall be rendered, temporarily or permanently, null and void, but the remainder of the Agreement shall remain in full force and effect to the extent allowed by law. In the event a court of competent jurisdiction finds any portion of the Agreement to be invalid, the parties will immediately enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the court determination and the intent of the parties hereto for contracts to be let in the future.

#### **SECTION 17.1 NON-WAIVER**

Nothing in this Agreement is intended to be or shall be construed as a waiver by any Union(s) of any prevailing wage determination or schedule that is applicable to their trade for any public work that has been or may be performed in the future on any work outside the scope of this Agreement. Nothing contained in this Agreement is intended to be or shall be construed as a waiver by any Union(s) of any more favorable term or condition of employment that may be contained in any collective bargaining agreement applicable to work outside the scope of this Agreement.

#### **ARTICLE 18 - FUTURE CHANGES IN SCHEDULE A AREA CONTRACTS**

Each Schedule A Agreement identified herein and made a part hereof, shall continue in full force and effect until the Contractor and/or Union parties to the Area Collective Bargaining Agreements which are the basis for the Schedule A notify the Owner and General Contractor in writing of the agreed upon changes in those agreements which are applicable to the Project, and their effective dates. Such changes shall only be effective to the extent consistent with this Agreement. Any disagreement between signatories to this Agreement over the incorporation into Schedule A of provisions agreed upon in the renegotiation of Area Collective Bargaining Agreements shall be resolved in accordance with the procedure set forth in Article 9 of this Agreement.

#### **SECTION 18.1 LABOR DISPUTES DURING AREA CONTRACT NEGOTIATIONS**

The Unions agree that there shall be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity or other violations of Article 7 affecting the Project by any Local Union involved in the renegotiation of Area Local Collective Bargaining Agreements, nor shall there be any lock-out on this Project affecting a Local Union during the course of such renegotiations effect.

#### **ARTICLE 19 - WORKERS' COMPENSATION ADR**

At the written option of the Contractor and with the written approval of the Building and Construction Trades Council of Westchester and Putnam Counties, New York, all Local Unions, Contractors and Sub-Contractors working on this project agree to be bound by the Collectively Bargained Workers Compensation Alternative Dispute Resolution Agreement [ADR Agreement] and to the ADR program set forth therein, by and between the Construction Industry Council of Westchester and the Hudson Valley, Inc. and the Building and Construction Trades Council of Westchester and Putnam Counties, New York, approved by the New York State Workers' Compensation Board on February 17, 2022, as amended.

#### **ARTICLE 20 - DRUG FREE WORKPLACE**

The use, consumption, sale, transfer, purchase and/or possession of a controlled substance and/or alcohol during working hours or while on the Project Site, and reporting for work under the influence of a controlled substance or alcohol is prohibited. The Construction Manager's controlled substance and alcohol policy will apply to all individuals performing work on the Project Site and is attached hereto as Schedule D. The Construction Manager shall arrange for testing of employees of the Contractor or the Subcontractor in question through a recognized and licensed provider at the Contractor's or Subcontractor's expense.

#### **ARTICLE 21 - CLEAN UP**

A clean work site results in a safe and more productive job site. All cleanup during construction shall be performed by Laborers Local 235. The Owner will ensure a clean and safe workplace. The Owner or Construction Manager may back charge Contractors accordingly if cleanup becomes unsatisfactory. Once construction is complete and a building, section or floor is turned over to a professional cleaning company for final cleaning, including but not limited to, windows and floor prep, up to 33.3% of the

employees may be a direct employee of the cleaning company. Those direct employees shall be exempt from this Agreement.

**IN WITNESS WHEREOF** the parties have caused this Agreement to be executed and effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

BUILDING AND CONSTRUCTION TRADES COUNCIL OF  
WESTCHESTER AND PUTNAM COUNTIES, NEW YORK

By: \_\_\_\_\_  
Jeff Loughlin, President

By: \_\_\_\_\_  
Edward Cooke, Vice President

By: \_\_\_\_\_  
Anthony Ascencao, Treasurer

FOR THE OWNER/GENERAL CONTRACTOR:

By: \_\_\_\_\_  
Name:  
Title:

**FOR THE LOCAL AFFILIATES**

Local One International Union of Elevator Constructors  
of New York and New Jersey, AFL-CIO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

International Brotherhood of Electrical Workers Local No. 3

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Boilermakers Local 5

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Bricklayers and Allied Craftworkers Local 1 NY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Tile, Marble & Terrazzo Bricklayers and Allied Craftsmen  
Local Union No. 7 of New York & New Jersey

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

United Union of Roofers, Waterproofers and Allied  
Workers Local No. 8, New York

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

District Council 9 International Brotherhood  
of Painters and Allied Trades, AFL-CIO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

International Union of Operating Engineers Local 15D

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Plumbers & Steamfitters Local 21

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

International Union of Operating Engineers Local 30

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Sheet Metal Workers' Local Union 38

By: \_\_\_\_\_

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Local Union No. 40 of the International Association of  
Bridge, Structural and Ornamental Iron Workers  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Metallic Lathers Union Local 46  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Heavy Construction Laborers Local 60  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Asbestos Workers Local 91 (International Association  
of Heat and Frost Insulators and Asbestos Workers)  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
International Union of Operating Engineers Local 137  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Sheet Metal Workers Local Union 137  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Stone Derrickmen and Riggers Local Union No. 197  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Laborers International Union of North America,  
Local No. 235  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Operative Plasterers and Cement Masons  
International Association Local 262  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
North Atlantic States Regional Council  
of Carpenters - Local 279  
By: \_\_\_\_\_  
Name: \_\_\_\_\_

Title: \_\_\_\_\_  
International Brotherhood of Electrical Workers  
Local Union 363  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Teamsters Local 456  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Ornamental Ironworkers Local Union No. 580  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Road Sprinkler Fitters Local 669  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
NYCDCC Millwright and Machinery Erectors  
Local Union No. 740  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
United Cement Masons Union of Greater  
New York and Long Island Local 780  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Bridge Painters Local 806  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Teamsters Local 813  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Teamsters Local 814  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Glaziers Local 1087  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
NYCDCC Dockbuilders Local Union 1556  
By: \_\_\_\_\_  
Name: \_\_\_\_\_



Title: \_\_\_\_\_  
NYCDCC Resilient Floor Coverers Local 2287

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Iron Workers District Council of Greater  
New York and Vicinity

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## **SCHEDULE A - LOCAL COLLECTIVE BARGAINING AGREEMENTS**

1. Local One International Union of Elevator Constructors of New York and New Jersey, AFL-CIO
2. International Brotherhood of Electrical Workers Local No. 3
3. Boilermakers Local 5
4. Bricklayers and Allied Craftworks Local 1 NY
5. Tile, Marble & Terrazzo Bricklayers and Allied Craftsmen Local Union No. 7 of New York & New Jersey
6. United Union of Roofers, Waterproofers and Allied Workers Local No. 8, New York
7. District Council 9 International Brotherhood of Painters and Allied Trades, AFL-CIO
8. International Union of Operating Engineers Local 15D
9. Plumbers & Steamfitters Local 21
10. International Union of Operating Engineers Local 30
11. Sheet Metal Workers' Local Union 38
12. Local Union No. 40 of the International Association of Bridge, Structural and Ornamental Iron Workers
13. Metallic Lathers Union Local 46
14. Heavy Construction Laborers Local 60
15. Asbestos Workers Local 91 (International Association of Heat and Frost Insulators and Asbestos Workers)
16. International Union of Operating Engineers Local 137
17. Sheet Metal Workers Local Union 137
18. Stone Derrickmen and Riggers Local Union No. 197
19. Laborers International Union of North America, Local No. 235
20. Operative Plasterers and Cement Masons International Association Local 262
21. North Atlantic States Regional Council of Carpenters - Local 279
22. International Brotherhood of Electrical Workers Local Union 363
23. Teamsters Local 456
24. Ornamental Ironworkers Local Union No. 580
25. Road Sprinkler Fitters Local 669
26. NYCDCC Millwright and Machinery Erectors Local Union No. 740
27. United Cement Masons Union of Greater New York and Long Island Local 780
28. Bridge Painters Local 806
29. Teamsters Local 813
30. Teamsters Local 814
31. Glaziers Local 1087
32. NYCDCC Dockbuilders Local Union 1556
33. NYCDCC Resilient Floor Coverers Local 2287
34. Iron Workers District Council of Greater New York and Vicinity

### **SCHEDULE B - LETTER OF ASSENT**

On this \_\_\_\_ day of \_\_\_\_\_, 2023, the undersigned party confirms that it agrees to be a party to and be bound by the \_\_\_\_\_ Project Labor Agreement (hereinafter "Agreement" or "PLA") entered into between \_\_\_\_\_ and \_\_\_\_\_, and understands that such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms. The terms of the Agreement and its Schedules are hereby incorporated by reference herein. The undersigned, as a Contractor or Subcontractor (hereinafter "Contractor") on the Project known as \_\_\_\_\_ and located at \_\_\_\_\_ (hereinafter "Project"), for and in consideration of the award to it of a contract to perform work on said Project, and in further consideration of the mutual promises made in the PLA, a copy of which was received and is acknowledged, hereby:

1. accepts and agrees to be bound by the terms and conditions of the Agreement, together with any and all schedules, amendments, and supplements now existing or which are later made thereto;
2. agrees to be bound by, and incorporates and adopts the legally established collective bargaining agreements ("Schedule A Agreements") and local fringe benefit trust funds agreements as referenced in the PLA and this letter of Assent for this Project;
3. authorizes the parties to such local fringe benefit trust funds agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by the Contractor;
4. certifies that it has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of this Agreement. The Contractor agrees to employ labor that can work in harmony with all other labor on the Project and shall require labor harmony from every lower tier Subcontractor it engages to work on the Project. Labor harmony disputes and/or issues shall be subject to the Labor Management Committee's Pre-Job conference provisions;
5. agrees to secure from any Contractor(s) (as defined in the PLA) which is or becomes a Subcontractor (of any tier) on the Project, a duly executed Agreement to be bound in from identical to this document; and
6. agrees that it will not invoke the Most Favored Nations Clause that may be contained in any of its collective bargaining agreements with Council affiliated Local Unions as a result of the application of this PLA to this Project.

\_\_\_\_\_  
Name of Contractor or Subcontractor

By: \_\_\_\_\_  
Authorized Officer & Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone No./Email Address/Facsimile No.

Contractor's State License # \_\_\_\_\_

Employer EIN \_\_\_\_\_ Employer NYS IU \_\_\_\_\_ WC# \_\_\_\_\_

## **SCHEDULE C — ADMINISTRATION OF AGREEMENT & DESIGNEE**

Name of Project: \_\_\_\_\_

The General Contractor or Owner shall name a Designee to administer this Agreement. The Designee shall be notified in the event any jurisdictional issue, grievance, or other matter concerning this PLA arises, and such Designee shall actively take part in the resolution of the issue. Any signatory Union may request the Designee's assistance in rectifying an issue.

The Designee's contact information is as follows:

\_\_\_\_\_ (Office Phone)

\_\_\_\_\_ (Cell Phone)

\_\_\_\_\_ (Email)

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Print)

Owner / General Contractor

## **SCHEDULE D - DRUG AND ALCOHOL POLICY**

### **PREAMBLE**

**WHEREAS**, [CONSTRUCTION MANAGER] (“Construction Manager”), for the construction project located at [PROJECT ADDRESS] (“Project”) desires to provide for a safe, drug and alcohol-free work site for the Project;

**WHEREAS**, the parties have entered into a separate Project Labor Agreement for the Project and have agreed to negotiate in good faith a Project Drug & Alcohol Testing Policy;

**WHEREAS**, this Testing Policy is collectively negotiated between the Construction Manager and the Building and Construction Trades Council of Westchester & Putnam Counties, New York (“Council”) (the Construction Manager and the Council are collectively referred to hereafter as the “Parties”);

**WHEREAS**, the Parties each currently have respective drug and alcohol policies, including the Projects' Zero-Tolerance policy;

**WHEREAS**, the Parties desire to maximize project safety conditions for the Project personnel and public, as well as deter violations of the Parties' respective drug and alcohol policies;

**NOW, THEREFORE**, the Parties agree to this Policy as of the date hereof,

### **ARTICLE 1 - PARTIES**

This Drug & Alcohol Testing Policy (“Policy”) is hereby established by the Construction Manager and the Council, on behalf of itself and its affiliated local union members, and the signatory local unions on behalf of themselves and their members.

### **ARTICLE 2-GENERAL CONDITIONS**

#### **SECTION 2.1 - SUMMARY**

In order to reinforce the Parties' respective drug and alcohol policies, including the Projects' zero tolerance policy regarding the prohibition of the use of drugs and alcohol, and to deter Project personnel from violating those policies, the Parties agree that all Project Personnel (defined later) will be required to submit to drug and/or alcohol testing randomly, post-accident, and for reasonable suspicion provided such testing is in accordance with applicable state and federal law, including the limitations in NYS Labor Law 201-d applicable to the lawful use of marijuana.

Any individual on site that violates this Policy is subject to disciplinary action, including, without limitation, loss of site access privileges.

#### **SECTION 2.2 - REVOCATION OF PROJECT ACCESS PRIVILEGES**

Any one of the following occurrences will result in the immediate revocation of a Project Personnel's project access privileges:

1. An individual is found selling or using drugs or alcohol, or otherwise is under the influence of drugs or alcohol, subject to the other terms of this Policy, on a Project Site;
2. An individual has been convicted under any criminal drug or alcohol statute for a violation occurring in the workplace within the past two years;
3. An individual who refuses to abide by the Projects' drug and alcohol policy, or refuses to submit to a test in accordance with this Policy;

4. An individual who switches, adulterates, or in any way tampers with a specimen required to be submitted in accordance with this Policy.

## **SECTION 2.3 - DEFINITIONS**

Confirmed Positive Test: The presence of drugs, drug metabolites, or alcohol in a person's body that equals or exceeds the established cut off levels as defined in Exhibit 1. For drugs, the sample will have undergone Laboratory screening and confirmation testing and must have been verified as positive by a Medical Review Officer. A positive test result for alcohol obtained through Evidential Breath Testing is considered a Confirmed Positive Test.

Employee Assistance Program (EAP): An EAP is generally considered a workplace-based, confidential program designed to help employees deal effectively with a variety of personal problems, and, of relevance to this policy, substance abuse problems. The EAP promotes assessments and short-term counseling. An EAP shall also include any similar education or rehabilitation program provided by the Council or its respective members. The Project Personnel that are required to participate in the EAP shall be responsible for the cost of their consultation with an EAP and/or participation in any education or rehabilitation program.

Evidential Breath Testing Device (EBT): A device that is used to measure alcohol in the breath and which meets National Highway Traffic Safety Administration's specifications for precision and accuracy.

Laboratory: A laboratory that is SAMHSA (Substance Abuse and Mental Health Services Administration) certified for the testing of drugs.

Medical Review Officer (MRO): A licensed physician responsible for receiving laboratory results generated by an employer's drug testing plan who has knowledge of substance abuse disorders and medical training to interpret and evaluate a donor's confirmed positive test result together with his/her medical history and all other relevant information.

Previous Worker: All individuals whose employment relationship with the contractor, company or organization no longer exists.

Project Site: The construction area for respective Project.

Reasonable Suspicion: When a qualified trade contractor, the Developer or Construction Manager as set forth in Section 3.7, reasonably believes that an individual has violated this Policy. Reasonable suspicion is based upon (1) specific, current, behavioral or performance indicators, (2) the possible manufacture, distribution, consumption or possession of unauthorized drugs, drug paraphernalia, or alcohol, or (3) documented investigation by an agency retained by, or otherwise independent from, the Developer or Construction Manager.

## **SECTION 2.4 - INCLUDED SUBJECTS**

This Policy shall cover all employees of the Owner, Construction Manager and Project trade contractors, their subcontractors and any other of their respective personnel at any level that are performing any activity at a Project Site, inclusive of managers, superintendents and supervisors, except as specifically excluded by Section 2.5 of this Policy (collectively and singularly, "Project Personnel").

## **SECTION 2.5 - EXCLUDED SUBJECTS**

The following persons are not subject to the provisions of this Policy:

1. Employees and entities engaged in off-site manufacture, modifications, repair, maintenance, assembly, painting, handling or fabrication of components, materials, equipment or machinery;

2. Vendors and employees of vendors engaged on a Project Site in equipment testing, inspection, training, warranty work, or engaged in corrections of defective or nonconforming work, unless such employees are expressly included in the bargaining unit of a local signatory to this Agreement;
3. Employees engaged in ancillary work on a Project which is performed by third parties, such as electric utilities, gas utilities, telephone companies, and railroads, or any other work not constituting Project work;
4. Employees of any governmental authority (state, local or otherwise);
5. Employees and contractors engaged in work on the Project Site as part of due diligence or monitoring, which work is ancillary to Project work; and
6. Emergency responders.

## **SECTION 2.6 - PRESCRIPTION AND NON-PRESCRIPTION DRUGS**

The use of prescription drugs not prescribed directly to Project Personnel is prohibited, including the use of drugs prescribed to a spouse or domestic partner. The use of non-prescription drugs that are sold outside the United States and that contain substances that are illegal or require a prescription in the United States are prohibited, unless prescribed by a licensed physician.

## **SECTION 2.7 - SEARCHES**

In order for the Construction Manager to ensure the safety of Project Personnel and for the Construction Manager to protect its assets, the Construction Manager shall have the right upon good cause (such as reasonable suspicion of a violation of this Policy) to conduct reasonable searches for alcohol, drugs and related paraphernalia anywhere within the boundaries of a Project Site. A search may include any assets owned or leased by any Project Personnel that is on a Project Site, including without limitation, vehicles, lockers, gang boxes, desks and personal property brought onto a Project Site, but excluding personal body searches or physical contact with employees.

## **ARTICLE 3 - DRUG & ALCOHOL TESTING**

### **SECTION 3.1 - COLLECTION PROCESS**

As of the execution date of this PLA, Project Personnel may be required to submit urine samples ("Preliminary Drug Screening") for the purpose of detecting the presence of drugs as part of the random, post-accident or reasonable suspicion testing, in accordance with chain of custody protocols as established by Substance Abuse and Mental Health Services Administration (SAMHSA), utilizing an instant result test cup for Preliminary Drug Screenings, such testing is to be performed on-site by an independent service provider. The results from the instant result test cup will be considered preliminary. The sample will be sent to a SAMHSA certified testing laboratory for confirmation.

As of the date hereof, all Project Personnel will be required to submit to an Evidential Breath Test (EBT) for the purpose of detecting the presence of alcohol when submitting to random, post-accident or reasonable suspicion testing. Alcohol testing will not be conducted for pre-access testing.

### **SECTION 3.2 - NEGATIVE PRELIMINARY DRUG SCREENING**

Project Personnel with a negative Preliminary Drug Screening will be considered conditionally accepted for Project site access, pending confirming laboratory results. Site access privileges will be revoked if the subsequent laboratory results determine that the sample has tested positive for drugs or that the sample has been adulterated.

### **SECTION 3.3 POSITIVE PRELIMINARY DRUG SCREENING**

If the Preliminary Drug Screening indicates a positive result, the individual will not be allowed access to the Project Site. The sample will be sent to the certified laboratory for analysis and, if applicable,

reviewed by the Medical Review Officer (MRO). If the laboratory confirmation results are also positive, the individual will be considered in violation of this Policy and their site access will be revoked for at least 30 days. If the laboratory confirmation results are negative, the Project Personnel's site access will not be revoked.

## **SECTION 3.4 CONFIRMED POSITIVE TEST RESULTS**

### **A. POSITIVE DRUG TEST**

A drug test is considered positive if the test results exceed the limits shown in Exhibit 1, which is attached hereto and incorporated herein by reference. The test will be confirmed through a second analysis process and reviewed by an MRO before results are reported. Project Personnel with confirmed positive drug test results will have their site access revoked. In case of a "false positive" result, any such Personnel shall be entitled to the reimbursement of any wages lost during the suspension caused by any such false positive result.

### **B. POSITIVE EBT**

An EBT is considered positive if the test results exceed .04 BrAC, or as otherwise set forth in Exhibit 1. Project Personnel with a positive alcohol test result will be subject to the remedies set forth in Exhibit 1.

### **C. REINSTATEMENT OF SITE ACCESS PRIVILEGES**

(a) Subject to section 3.4(C)(a) immediately below, if the site access of a Project Personnel has been revoked pursuant to this Policy, then any such person may request that their site access be reinstated after 30 days, provided that all of the following conditions are met to the reasonable satisfaction of the Construction Manager. :

1. The individual has provided proof of wellness from an accredited rehabilitation facility or has provided proof that treatment isn't needed as attested to by a licensed health care provider specializing in the diagnosis and treatment of alcohol and drug abuse.
2. A current drug and alcohol test is obtained within three (3) days of the request for re-access to the site and proof of a negative test result has been received; and
3. The individual agrees to submit to multiple testing for two (2) full years from the date of gaining re-access to the project, the scheduling of which will be determined at the sole discretion of the Construction Manager. If all of these conditions have been met, the Construction Manager agrees that it will not unreasonably withhold their consent to any such request.

(b) Unlawful possession, concealment, use, purchase, sale, manufacture, dispensation or distribution of illegal drugs or un-prescribed controlled substances on the Project site will subject the Project Personnel Employee to immediate removal from the Project site and shall bar such Project Personnel Employee from returning for a minimum of three (3) months, which return shall, in any event, be subject to the reasonable approval by Construction Manager.

(c) All of the Parties agree that any such Project Personnel will only be entitled to any such reinstatement of site access privileges one time and that any subsequent violation of this Policy will result in the permanent termination of access to the Project Site.

## **SECTION 3.5 - RANDOM TESTING**



A third-party provider designated by the Construction Manager will randomly select by an objective criteria a testing pool for random drug and/or alcohol testing from all Project Personnel with site access cards. Any individual selected for a random drug and/or alcohol test will be required to submit to an Evidential Breath Test (EBT) and/or drug test. Individuals may be tested more than once during any given time period. The Parties acknowledge and agree that an EBT may be required without a drug test and that a drug test may be required without an EBT, as solely determined by the Construction Manager.

If an individual is unable to attend the first scheduled random drug test as a result of being involved in a work-related task, such drug test will be rescheduled and will be completed at or before the conclusion of such employee's then current work shift. If the second drug test is missed for any reason, the incident will be reviewed by the Construction Manager, who shall have the right to terminate the site access privileges of any such Project Personnel until such time as that Project Personnel has complied with this Policy. If the individual refuses to take the test, their access privileges will be immediately terminated for cause.

### **SECTION 3.6 - POST ACCIDENT TESTING**

After each work-related incident or injury requiring the services of a licensed health care provider, all Project Personnel involved with the incident will be required to submit to a drug and/or alcohol test immediately following the incident. In instances where emergency care is necessary, the drug and/or alcohol test shall be obtained by the care facility, if possible, within 24 hours after treatment is rendered. If more than 48 hours have passed before an injury is reported and treated by a licensed health care provider, an alcohol test will not be required.

In addition, any Project Personnel involved in a non-injury related incident at a Project Site with damages at or in excess of \$200 will be required to submit to a drug and/or alcohol test unless:

1. It is determined, after conducting an investigation and interviewing all employees involved and any witnesses, that the employee's performance can be completely discounted as a contributing factor to the incident; or
2. It is determined, after conducting an incident investigation and interviewing all employees and any witnesses that the incident was caused by inadequate equipment or system design, and/or premature failure of equipment or system components.

### **SECTION 3.7 - REASONABLE SUSPICION TESTING**

All Project Personnel will be required to submit to a drug and/or alcohol test when there is reasonable suspicion the individual has violated this policy.

Reasonable suspicion includes, without limitation, the following:

1. Violent or irrational behavior;
2. Emotional or physical unsteadiness;
3. Sensory or motor-skill malfunctions;
4. Slurred speech;
5. The odor of alcohol or drugs on clothing or breath in conjunction with other indicators;
6. Possession of alcohol, unauthorized drugs or drug paraphernalia; or
7. Documented evidence of an independent investigation regarding Project Personnel's consumption of what is reasonably believed to be an alcoholic beverage or drugs in violation of the Project's policies and/or this Policy.

Reasonable suspicion testing may only be ordered by supervisory personnel that: (a) have been trained to recognize the above referenced factors; or (b) have received credible documentary evidence from an independent investigator that a Project Personnel has violated a drug and/or alcohol policy. It is agreed that any certified training program shall satisfy the training requirement.

### **SECTION 3.8 - PRIVACY CONSIDERATIONS**

The Parties agree to use reasonable efforts to conduct any testing pursuant to this Policy in accordance with the privacy concerns of Project Personnel. To address these concerns, the Parties agree that:

1. The testing station(s) shall be screened off, or otherwise closed off from public view.
2. All documents and information regarding the testing, including test results, shall be maintained by the respective custodian(s) of record in accordance with their respective privacy policies, which any Project Personnel shall be entitled to review upon timely request.
3. The Parties agree to make a good faith effort to resolve any other privacy concern of Project Personnel regarding this Policy, provided that any such concerns do not interfere with the purpose of this Policy.

## **ARTICLE 4 – GRIEVANCE**

### **SECTION 4.1 - REPRESENTED WORKERS**

Nothing in this Policy shall restrict a member of a signatory local union from filing a grievance in accordance with the member's collective bargaining agreement or a Project Labor Agreement, provided that the grievance shall be limited to whether the removal of a member for violation of this Policy was conducted in compliance with the terms and conditions set forth herein.

### **SECTION 4.2 - HOLD HARMLESS**

The Construction Manager agrees to hold harmless and indemnify the Union/Council and its representatives from any liability that may be incurred as a result of the Company's Drug and Alcohol Policy to the extent caused by the negligence or intentional misconduct of the Construction Manager.

**IN WITNESS WHEREOF** the parties have agreed to this Policy as of \_\_\_\_\_,  
20\_\_\_\_.

FOR [CONSTRUCTION MANAGER]

By: \_\_\_\_\_

Name: [INSERT NAME]

Title: [INSERT TITLE]

FOR BUILDING AND CONSTRUCTION TRADES COUNCIL OF WESTCHESTER AND  
PUTNAM COUNTIES, NEW YORK, AFL-CIO

By: \_\_\_\_\_

Name: Jeff Loughlin

Title: President