

**PROJECT LABOR AGREEMENT (PLA) FOR THE
NEW LAKE CHAMPLAIN BRIDGE**

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PROJECT LABOR AGREEMENT (PLA) FOR THE NEW LAKE CHAMPLAIN BRIDGE

ARTICLE 1 – PREAMBLE

WHEREAS, the New York State Department of Transportation (“Department”) desires to provide for the efficient, safe, quality, and timely completion of a construction project for anticipated improvements on the New Lake Champlain Bridge in a manner designed to afford the lowest reasonable costs to the Department, and the Public it represents, and the advancement of public policy objectives;

WHEREAS, this Project Labor Agreement will foster the achievement of these goals, inter alia, by:

- (1) avoiding the costly delays of potential strikes, slowdowns, walkouts, picketing and other disruptions arising from work disputes and promote labor harmony and peace for the duration of the Project;
- (2) standardizing the terms and conditions governing the employment of labor on the Project;
- (3) permitting wide flexibility in work scheduling and shift hours and times;

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(4) receiving negotiated adjustments as to work rules and staffing requirements from

those which otherwise might obtain;

(5) providing comprehensive and standardized mechanisms for the settlement of work

disputes, including those relating to jurisdiction;

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

(7) furthering public policy objectives as to improved employment opportunities for

minorities, women and the economically disadvantaged in the construction industry;

(8) minimizing potential losses of toll revenues;

(9) expediting the construction process and otherwise minimizing the traffic

inconveniences of travelers and commuters;

and, WHEREAS, the signatory Unions desire the stability, security and work

opportunities afforded by a Project Labor Agreement;

and, WHEREAS, the Parties desire to maximize Project safety conditions for both

workers and the traveling public;

NOW, THEREFORE, the Parties enter into this Agreement:

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SECTION 1. PARTIES TO THE AGREEMENT

This is a Project Labor Agreement (“Agreement”) entered into by and between the Department and the New York State Building and Construction Trades Council, AFL-CIO (“New York State Council”), the Vermont Building and Construction Trades Council (“Vermont State Council”) on behalf of themselves and their respective affiliated local union members; the Plattsburgh Building and Construction Trades Council (“Council”) on behalf of itself and its affiliated members, and the signatory Local Unions on behalf of themselves and their members.

ARTICLE 2 – GENERAL CONDITIONS

SECTION 1. DEFINITIONS

Throughout this Agreement, the Union parties and the Local Unions and Council are referred to singularly and collectively as “Union(s)” where specific deference is made to “Local Unions” that phrase is sometimes used; the term “Contractor” shall include the signatory contractor, and their subcontractors of whatever tier, engaged in on-site Project construction work within the scope of this Agreement as defined in Article 3; and the work covered by this Agreement (as defined in Article 3) is referred to as the “Project.”

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SECTION 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 State and Local Councils, and the Local Unions having jurisdiction over the Project work; (2) The Agreement is signed by the Department.

SECTION 3. ENTITIES BOUND & ADMINISTRATION OF AGREEMENT

This Agreement shall be binding on all signatory Unions and the signatory Contractor performing on-site Project work, including site preparation and staging areas, as defined in Article 3. The Contractor 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 subcontracted work performed within the scope of Article 3.

SECTION 4. SUPREMACY CLAUSE

This Agreement, together with the local Collective Bargaining Agreements appended hereto as Schedule A, represents the complete understanding of all signatories and supersedes any national agreement, local agreement or other collective bargaining agreement of any type which would otherwise apply to this Project, in whole or in part. Where a subject covered by the provisions, explicit or implicit, of this Agreement is also covered by Schedule A, the provisions of this Agreement shall prevail.

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It is further understood that the Contractor shall not be required to sign any other agreement as a condition of performing work on this Project. No practice, understanding or agreement between the Contractor and a Local Union which is not explicitly set forth in this Agreement or Schedule A shall be binding on this Project.

SECTION 5. LIABILITY

The liability of the Contractor and the liability of any Union under this Agreement shall be several and not joint. The State and Local Councils and Local Unions shall not be liable for the acts or violation of any other Union.

SECTION 6. THE DEPARTMENT

The Department shall require in their bid specifications for all work within the scope of Article 3 that the successful bidder, and their subcontractors of whatever tier, become bound by, and signatory to, this Agreement. It is understood that nothing in this Agreement shall be construed as limiting the sole discretion of the Department in determining which Contractor shall be awarded the contract for this Project work. It is further understood that the Department has sole discretion at any time to terminate, delay or suspend the work, in whole or part, on this Project. It is understood that all Contractors, subject to the requirements of the Department, shall be eligible to compete for contracts and

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subcontracts without regard to whether they are otherwise parties to an existing collective bargaining agreement.

SECTION 7. AVAILABILITY AND APPLICABILITY TO SUCCESSFUL BIDDER

The Unions agree that this Agreement will be made available to, and will fully apply to any successful bidder for Project work who becomes signatory thereto, without regard to whether that successful bidder performs work at other sites on either a union or non-union basis and without regard to whether employees of such successful bidder are, or are not, members of any unions. This Agreement shall not apply to the work of the Contractor which is performed at any location other than the Project site, as defined in Article 3, Section 1.

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ARTICLE 3 – SCOPE OF THE AGREEMENT

The Project work covered by this Agreement shall be as defined and limited by the following sections of this Article.

SECTION 1. THE WORK

This Agreement shall only apply to certain anticipated on-site construction work performed on the New Lake Champlain Bridge during the timeframe of this Agreement, more fully described as follows:

[need project description from DOT]

It is intended that only the work included in the above contract bid package and approved orders on contracts (“Project work”) is covered by this Agreement.

“On-site” construction and repair work in connection with the above shall also include Project work performed at preparation and staging areas located within 15 miles of the Corridor.

SECTION 2. TIME LIMITATIONS

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This Agreement shall be further limited to Project work performed under Department construction contracts awarded after the effective date of this Agreement and performed prior to the termination date of this Agreement. It is further understood that this Agreement, together with all of its provisions, shall remain in effect for all Project work bid but not completed by August 31, 2010 and may be extended by mutual agreement of the parties.

SECTION 3. EXCLUDED EMPLOYEES

The following persons (excluding divers) are not subject to the provisions of this Agreement, even though performing work on the Project:

a. Superintendents, supervisors (excluding general and forepersons and Master Mechanics specifically covered by a craft's Schedule A), engineers, inspectors and testers, quality control assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, technicians, non-manual employees, and all professional, engineering (excluding field surveyors), administrative and management persons;

b. Employees of the Department, or of any other State agency, authority or entity, or employees of any municipality or other public employer;

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- c. Employees and entities engaged pursuant to contracts that qualify as Disadvantaged Business Enterprise (DBE) contracts pursuant to []_____,
- d. Employees and entities engaged in work pursuant to contracts or subcontracts of independent utility of 25,000 dollars or less, provided that the total value of all such contracts shall not exceed 750,000 dollars,
- e.. Employees and entities engaged in off-site manufacture, modifications, repair, maintenance, assembly, painting, handling or fabrication of components, materials, equipment or machinery or involved in deliveries to and from the Project site, excepting local deliveries of all major construction materials including fill, ready mix, asphalt, granular materials and stored materials which are covered by this Agreement;
- f.. Employees engaged in on-site equipment warranty work (when the Contractor has on site an employee already certified by the relevant manufacturer to make warranty repairs on the Contractor's equipment, that employee shall be used; when the Contractor has on site an employee already qualified to make warranty repairs, although not certified by the equipment manufacturer to do so, that employee shall be used to make repairs working under the direction of a manufacturer certified warranty representative. Notwithstanding the foregoing, if the Contractor, in order to satisfy the warranty

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requirements of a manufacturer, must utilize a person or entity designated by the manufacturer, it may do so without coverage under this Agreement);

g.. Employees engaged in geophysical testing (whether land or water) other than boring for core samples;

h.. Employees engaged in laboratory or specialty testing or inspections;

i. Employees engaged in work ancillary to the Project, performed by third parties.

With respect to entities engaged in such work ancillary to the Project, they may participate under this Agreement, if they so choose. To the extent practicable, and within its control, the Department will use their best efforts to coordinate ancillary work within the vicinity of construction performed under this PLA to promote labor harmony on the Project.

SECTION 4. NON-APPLICATION TO CERTAIN ENTITIES

This Agreement shall not apply to the parents, affiliates, subsidiaries, or other joint or sole ventures of the Contractor which do not perform work at this Project. It is agreed, for the purposes of this Agreement only, that this Agreement does not have the effect of creating any joint employment, single employer or alter ego status for the Contractor. The Agreement shall further not apply to the Department or any other state agency, authority, or other municipal or public entity and nothing contained

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herein shall be construed to prohibit or restrict the Department or its employees or any other state authority, agency or entity and its employees from performing on or off-site work related to the Project.

As the contracts which comprise the Project work are completed and accepted, the Agreement shall not have further force or effect on such items or areas except where inspections, additions, repairs, modifications, checkout and/or warranty work are assigned in writing (copy to Local Union involved) by the Contractor for performance under the terms of this Agreement.

ARTICLE 4 – UNION RECOGNITION AND EMPLOYMENT

SECTION 1. PRE-HIRE RECOGNITION

The Contractor recognizes the signatory Unions as the sole and exclusive bargaining representatives of all craft employees who are performing on-site Project work within the scope of this Agreement as defined in Article 3.

SECTION 2. UNION REFERRAL

a. The Contractor agrees to hire Project, craft employees covered by this Agreement through the job referral systems and hiring halls (where the referrals meet the qualifications set forth in items 1, 2 and 4 of subparagraph B) established in the Local Unions' area collective bargaining agreements (attached as Schedule A to this Agreement). Notwithstanding this, the Contractor shall have

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sole right to determine the competency of all referrals; the number of employees required; the selection of employees to be laid-off (except as provided in Article 5, Section 3); and the sole right to reject any applicant referred by a Local Union,. 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 the Contractor (Saturdays, Sundays and holidays excepted), the Contractor may employ 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 Contractor shall notify the Local Union of Project, craft employees hired within its jurisdiction from any source other than referral by the Union.

b. The Contractor may request by name, and the Local will honor, referral of persons who have applied to the Local for Project work and who meet the following qualifications as determined by a Committee of 3 designated, respectively, by the applicable Local Union, the Department and a mutually selected third party or, in the absence of agreement, the permanent Arbitrator (or designee) designated in Article 7:

- (1) possess any license required by NYS law for the Project work to be performed;
- (2) have worked a total of at least 1000 hours in the Construction craft during the prior three years;

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- (3) have demonstrated ability to safely perform the basic functions of the applicable trade.

No more than 16 per centum of the employees covered by this Agreement, by craft, shall be hired through the special provisions above (any fraction shall be rounded to the next highest whole number).

The Committee may also allow the Contractor, subject to the above per centum, to employ trainees (pursuant to Article 13, Section 2) to afford entry into the construction industry outside of the formal apprenticeship program.

SECTION 3. NON-DISCRIMINATION IN REFERRALS

The Local Unions represent that their hiring halls and referral systems will be operated in a nondiscriminatory 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

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or hiring hall because of the applicant's geographic location of residence or union membership, or lack of thereof.

SECTION 4. MINORITY AND FEMALE REFERRALS

In the event a Local Union either fails, or is unable, to refer qualified minority or female applicants in percentages equaling Project affirmative action goals as set forth in the Department's bid specifications, and the appropriate governmental authority determines that the Union's efforts in referring applicants to meet those goals is not sufficient to satisfy the Contractor's obligation to meet those goals, the Contractor may employ qualified minority or female applicants from any other available source in the minimum numbers needed to satisfy its obligation.

SECTION 5. QUALIFIED REFERRALS

The Local Unions will exert their best efforts to recruit sufficient numbers of skilled and qualified crafts employees to fulfill the requirements of the Contractor.

SECTION 6. UNION DUES

All employees covered by this Agreement shall be subject to the union security provisions contained in the applicable Schedule A local agreements, as amended from time to time, but

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only for the period of time during which they are performing on-site Project work and only to the extent of rendering payment of the applicable monthly union dues uniformly required for union membership in the Local Union, signatory to this Agreement, which represents the craft in which the employee is performing Project work. No employee shall be discriminated against at the Project site because of the employee's union membership or lack thereof. In the case of unaffiliated employees, the dues payment will be received by the Unions as an agency shop fee.

SECTION 7. 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. 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 Collective Bargaining Agreement prohibits a foreperson from working when the craftpersons he is leading exceed a specified number.

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ARTICLE 5 – UNION REPRESENTATION

SECTION 1. LOCAL UNION REPRESENTATIVE

Each Local Union representing on-site Project employees shall be entitled to designate in writing (copy to Contractor and Department) one representative, and/or the Business Manager, who shall be afforded access to the Project.

SECTION 2. STEWARDS

a. Each Local Union shall have the right to designate a working journeyman as a Steward and an alternate, and shall notify the Contractor of the identity of the designated Steward (and alternate) prior to the assumption of such duties. Stewards shall not exercise supervisory functions and will receive the regular rate of pay for their craft classifications. There will be no non-working Stewards on the Project.

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. 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 his Union duties.

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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 provision providing procedures for the equitable distribution of overtime.

SECTION 3. LAYOFF OF A STEWARD

The Contractor agrees 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 Schedule A, 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.

ARTICLE 6 – MANAGEMENT’S RIGHTS

SECTION 1. RESERVATION OF RIGHTS

Except as expressly limited by a specific provision of this Agreement, the Contractor retains full and exclusive authority for the management of their Project 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

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work rules; and, the requirement, timing and number of employees to be utilized for overtime work. No rules, customs, or practices which limit or restrict productivity or efficiency of the individual, as determined by the Contractor, and for joint working efforts with other employees shall be permitted or observed.

SECTION 2. MATERIALS, METHODS & EQUIPMENT

There shall be no limitation or restriction upon the Contractor's 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 (except that all rebar for use in cast-in-place, on site construction will be cut and bent in accordance with local industry practices), or pre-assembled materials, tools, or other labor-saving devices. The Contractor 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; 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. There shall be no restrictions as to work which is performed off-site for the Project.

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ARTICLE 7 – WORK STOPPAGES AND LOCKOUTS

SECTION 1. NO STRIKES -NO LOCK OUT

There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns, hand billing, demonstrations or other disruptive activity at the Project site or otherwise adversely affecting Project work for any reason by any Union or employee against the Contractor or any employer while performing work at the Project site. There shall be no other Union, or concerted or employee activity which disrupts or interferes with the use of Lake Champlain Bridge and related service roads or the free flow of traffic thereon. Failure of any Union or employee to cross any picket line established by any union, signatory or non-signatory to this Agreement, or the picket or demonstration line of any other organization, at the Project site which otherwise adversely affects Project work or which disrupts or interferes with the use of Lake Champlain Bridge and related service roads or the free flow of traffic thereon is a violation of this Article. There shall be no lockout at the Project by any signatory Contractor. The Contractor and Unions shall take all steps necessary to ensure compliance with this Section and to ensure uninterrupted construction and the free flow of traffic over the Lake Champlain Bridge and related service roads for the duration of this Agreement.

SECTION 2. DISCHARGE FOR VIOLATION

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The Contractor may discharge any employee violating Section 1, above, and any such employee will not be eligible thereafter for referral under this Agreement for a period of 100 days.

SECTION 3. NOTIFICATION

If the Contractor contends that any Union has violated this Article, it will notify the appropriate district or area council of the Local Union involved advising of such fact, with copies of the notification to the Local Union. The district or area council shall instruct, order and otherwise use their best efforts to cause the employees, and/or the Local Unions to immediately cease and desist from any violation of this Article. A district or area council complying with these obligations shall not be liable for the unauthorized acts of a Local Union or its members.

SECTION 4. EXPEDITED ARBITRATION

The Contractor or any Union alleging a violation of Section 1 of this Article 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 [], who shall alternate as Arbitrator under this expedited arbitration procedure. Copies of such notification will be

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simultaneously sent to the alleged violator and, if a Local Union is alleged to be in violation, its International, and the Council.

b. The Arbitrator shall thereupon, after notice as to time and place to the Contractor, the Local Union involved, the Council and the Department, hold a hearing within 48 hours of receipt of the notice invoking the procedure if it is contended that the violation still exists. The hearing will not, however, be scheduled for less than 24 hours after the notice to the district or area Council required by Section 3, above.

c. All notices pursuant to this Article may be by telephone, telegraph, hand delivery, or fax, confirmed by overnight delivery, to the Arbitrator, Contractor or Union involved. 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 four hours being allowed to either side to present their case, and conduct their cross-examination) unless otherwise agreed. A failure of any Union or the Contractor to attend the hearing shall not delay the hearing of evidence by those present or the issuance of an award by the Arbitrator.

d. The sole issue at the hearing shall be whether a violation of Section 1, above, occurred. If a violation is found to have occurred, the Arbitrator shall issue a Cease and Desist Award

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restraining such violation and serve copies on the Contractor and Union involved. The Arbitrator shall have no authority to consider any matter in justification, explanation or mitigation of such violation or to award damages, which issue is reserved solely for court proceedings, if any. The Award shall be issued in writing within three 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 the Contractor or Union involved. In any court proceeding to obtain a temporary or preliminary order enforcing the Arbitrator's Award as issued under this expedited procedure, the involved Union and the Contractor waive their right to a hearing and agree that such proceedings may be ex parte, provided notice is given to opposing counsel. 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.

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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 Contractor and Unions to whom they accrue.

g. The fees and expenses of the Arbitrator shall be equally divided between the Contractor and Union involved.

SECTION 5. ARBITRATION OF DISCHARGES FOR VIOLATION

Procedures contained in Article 9 shall not be applicable to any alleged violation of this Article, with the single exception that an employee discharged for violation of Section 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 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 1. SUBJECTS

The Project Labor Management Committee will meet on a regular basis to: 1) promote harmonious relations between the Contractor and Unions; 2) enhance safety awareness, cost effectiveness

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and productivity of construction operations; 3) protect the public interests; 4) discuss matters relating to manning and scheduling with safety and productivity as considerations; and 5) review Affirmative Action and equal opportunity matters pertaining to the Project.

SECTION 2. COMPOSITION

The Committee shall be jointly chaired by designees of the President of the Council and shall include representatives of the Contractor and Local Unions involved in the issues being discussed.

The Committee may conduct business through mutually agreed sub-committees.

ARTICLE 9 – GRIEVANCE & ARBITRATION PROCEDURE

SECTION 1. PROCEDURE FOR RESOLUTION OF GRIEVANCES

Any question, dispute or claim arising out of, or involving the interpretation or application of this Agreement (other than jurisdictional disputes or alleged violations of Article 7, Section 1) shall be considered a grievance and shall be resolved pursuant to the exclusive procedure of the steps described below; provided, in all cases, that the question, dispute or claim arose during the term of this Agreement.

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Step 1:

(a) When any employee covered by this Agreement feels aggrieved by a claimed violation of this Agreement, the employee shall, through the Local Union business representative or job steward give notice of the claimed violation to the work site representative of the Contractor. To be timely, such notice of the grievance must be given within 14 calendar days after the act, occurrence, or event giving rise to the grievance. The business representative of the Local Union or the job steward and the work site representative of the Contractor shall meet and endeavor to resolve the matter within 14 calendar days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party, may, within 14 calendar days thereafter, pursue Step 2 of the grievance procedure by serving the 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.

(b) Should any signatory to this Agreement have a dispute (excepting jurisdictional disputes or alleged violations of Article 7, Section 1) with any other signatory to this Agreement and, if after conferring, a settlement is not reached within 14 calendar days, the dispute shall be reduced to

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writing and proceed to Step 2 in the same manner as outlined in subparagraph (a) for the adjustment of employee grievances.

Step 2:

The Business Manager or designee of the involved Local Union, together with representatives of the Councils and the Contractor, shall meet in Step 2 within 14 calendar days of service of the written grievance to arrive at a satisfactory settlement. The parties intend this step of the process to include good faith efforts by all involved parties to find a mutually acceptable basis for resolution. In the event a majority of the principal participants in this process (i.e., the Business Manager, and the Contractor) agree on a resolution which is not accepted by the third participant and the matter proceeds through arbitration to the issuance of an award which is not substantially favorable to that third participant, the Arbitrator shall have the discretion to impose the full cost of the arbitration, including reasonable attorneys' fees, on that third participant.

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) to Messrs. J.J. Pierson and/or Roger Maher, who shall

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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 permitted to participate. The decision of the Arbitrator shall be final and binding on the Contractor, Local Union and employees and the fees and expenses of such arbitrations shall be borne equally by the 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 Contractor and 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. The Arbitrator shall have the discretion to award costs, including attorneys' fees, in accordance with Step 2, above.

SECTION 2. LIMITATION AS TO RETROACTIVITY

No arbitration decision or award may provide retroactivity of any kind exceeding 60 calendar days prior to the date of service of the written grievance on the Contractor or Local Union.

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ARTICLE 10 – JURISDICTIONAL DISPUTES

SECTION 1. NO DISRUPTIONS

There will be no strikes, sympathy strikes, work stoppages, slowdowns, picketing or other disruptive activity of any kind arising out of any jurisdictional dispute. Pending final 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. Individuals violating this section shall be subject to immediate discharge.

SECTION 2. ASSIGNMENT

The assignment of work will be solely the responsibility of the Contractor; and such work assignments will be in accordance with the Plan for the Settlement of Jurisdictional Disputes in the Construction Industry (the “Plan”) or any successor Plan.

SECTION 3. PROCEDURE FOR SETTLEMENT OF DISPUTES

a. Any Union having a jurisdictional dispute with respect to Project work assigned to another Union will submit the dispute in writing to the Administrator of the Plan within 72 hours of the assignment and will send a copy of that notice to the other Union involved, the Contractor, and the district

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or area councils of the unions involved. Upon receipt of a dispute letter from any union, the Administrator will invoke the procedures set forth in the Plan to resolve the jurisdictional dispute. The jurisdictional dispute letter shall contain the information described in Article IV of the Plan.

b. Within five calendar days of receipt of the dispute letter, there shall be a meeting of the Contractor, the Local Unions involved and designees of the district or area councils of the Local Unions involved for the purpose of resolving the jurisdictional dispute.

c. If the dispute remains unresolved after this meeting, the parties will proceed to final and binding arbitration in accordance with the principles and procedures set forth in the rules of the "Plan for the Settlement of Jurisdictional Disputes in the Construction Industry."

d. The Arbitrator will render a short-form decision within five days of the hearing based upon the evidence submitted at the hearing, with a written decision to follow within 30 days of the close of hearing.

e. This Jurisdictional Dispute Resolution Procedure will only apply to work performed by Local Unions at the Project.

f. Any Local Union involved in a jurisdictional dispute on this Project shall continue working in accordance with Section 1 above and without disruption of any kind.

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SECTION 4. AWARD

Any jurisdictional award pursuant to Section 3 shall be final and binding on the disputing Local Unions and the 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 shall not establish a precedent on any other construction work not covered by this Agreement. In all disputes under this Article the Contractor shall be considered the party in interest.

SECTION 5. LIMITATIONS

The Jurisdictional Dispute Arbitrator shall have no authority to assign work to a double crew, that is, to more employees than the minimum required by the Contractor to perform the work involved; nor to assign the work to employees who are not qualified to perform the work involved; nor to assign work being performed by non-union employees to union employees. This does not prohibit the establishment, with the agreement of the Contractor, of composite crews where more than one employee is needed for the job. The aforesaid determinations shall decide only to whom the disputed work belongs.

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SECTION 6. NO INTERFERENCE WITH WORK

There shall be no interference or interruption of any kind with the work of the Project while any jurisdictional dispute is being resolved. The work shall proceed as assigned by the Contractor until finally resolved under the applicable procedure of this Article. The award shall be confirmed in writing to the involved parties. There shall be no strike, work stoppage or interruption in protest of any such award.

SECTION 7. PRE-JOB CONFERENCE

The Contractor will conduct a pre-job conference with the appropriate Building and Construction Trades Council prior to commencing work. The Department will be advised in advance of all such conferences and may participate if they wish.

ARTICLE 11 – WAGES AND BENEFITS

SECTION 1. CLASSIFICATION AND BASE HOURLY RATE

All employees covered by this Agreement shall be classified in accordance with the work performed and paid the base hourly wage rates for those classifications as specified in the attached Schedules A, as amended during this Agreement. Recognizing, however, that special conditions may exist

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or occur on the Project, the parties, by mutual agreement may establish rates and/or hours for one or more classifications which may differ from Schedule A. Parties to such agreements shall be the Contractor, the involved Local Unions and the Council. In no event shall the rate be less than the prevailing minimum wage determined by the Secretary of the US Department of Labor under 40 U.S.C. 3142 and 23 U.S.C. 113.

SECTION 2. EMPLOYEE BENEFIT FUNDS

a. The Contractor agrees to pay contributions on behalf of all employees covered by this Agreement to the established employee benefit funds in the amounts designated in the appropriate Schedule A; provided, however, that the Contractor and the Union agree that only such bona fide employee benefits as are explicitly required under Section 220 of the New York State Labor Law shall be included in this requirement and paid by the Contractor on this Project. Bona fide jointly trustee fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added if similarly protected under Section 220. The Contractor shall not be required to contribute to non-Section 220 benefits, trusts or plans.

b. The Contractor agrees to be bound by the written terms of the legally-established Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid

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out of, such Trust Funds but only with regard to work done on this Project and only for those employees to whom this Agreement requires such benefit Payments.

ARTICLE 12 – HOURS OF WORK, PREMIUM PAYMENTS, SHIFTS AND HOLIDAYS

SECTION 1. WORK WEEK AND WORK DAY

a. The standard work week shall consist of 40 hours of work at straight time rates per one of the following schedules:

(1) Five Day Work Week: Monday – Friday; 5 days, 8 hours plus 1/2 hour unpaid lunch period each day.

(2) Four Day Work Week: Monday – Thursday; 4 days, 10 hours plus 1/2 hour unpaid lunch period each day.

b. The Day Shift shall commence 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 7:30 p.m. Starting and quitting times shall occur at the location designated by the Contractor.

c. Scheduling – The Contractor shall have the option of scheduling either a five-day or four-day work week and the work day hours consistent with Project requirements, the Project schedule,

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and minimization of interference with traffic flow. When conditions beyond the control of the Contractor, such as severe weather, power failure, fire or natural disaster, prevent the performance of Project work on a regularly scheduled work day, the Contractor may, with mutual agreement of the Local Union, schedule Friday (where on 4, 10's) during that calendar week in which a workday was lost, as a make up work day at straight time pay; providing the employees involved work a total of 40 hours or less during that work week.

d. Notice – The Contractor shall provide not less than 5 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 2. OVERTIME

Overtime pay for hours outside of the standard work week and work day, described in Section 1.a above, shall be paid in accordance with the applicable Schedule A. There will be no restriction upon the Contractor's scheduling of overtime or the non-discriminatory designation of employees who shall be worked. There shall be no pyramiding of overtime pay under any circumstances. The Contractor shall have the right to schedule work so as to minimize overtime.

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SECTION 3. SHIFTS

a. Flexible Schedules – Scheduling of shift work shall remain flexible in order to meet Project schedules and existing Project conditions including the minimization of interference with traffic.

It is not necessary to work a day shift in order to schedule a second shift. Shifts must be worked a minimum of five consecutive work days (four consecutive work days if working a 4-10 hour schedule), must be scheduled with not less than five work days notice to the Local Union.

b. Second Shift – The second shift (starting between 2 p.m. and 8 p.m.) shall consist of 8 hours work (or 10 hours of work) for an equal number of hours pay at the straight time rate .

c. Flexible Starting Times – Shift starting times will be adjusted by the Contractor as necessary to fulfill Project requirements subject to the notice requirements of paragraph A.

d. Four Tens – When working a four-day work week, the standard work day, shall consist of 10 hours work for 10 hours of pay at the straight time rate exclusive of an unpaid 1/2 hour meal period and regardless of the starting time.

SECTION 4. HOLIDAYS

1. Schedule – There shall be six recognized holidays on the Project:

New Years Day

Labor Day

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Memorial Day

Thanksgiving Day

Fourth of July

Christmas Day

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 those holidays which occur on Sunday shall be observed on the following Monday.

b. No payment shall be made for unworked holidays.

c. Premium pay for work performed on such recognized holiday shall be in accordance with the applicable Schedule A

d. Exclusivity – No holidays other than those listed in Section 4.A above shall be recognized nor observed.

SECTION 5. REPORTING PAY

a. Employees who report to the work location pursuant to regular schedule and who are not provided with work or whose work is terminated early by the Contractor, for whatever reason, shall receive no reporting pay..

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b. When an employee, who has completed his scheduled shift and 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 with no minimum guarantee.,

c. When an employee leaves the job or work location of his own volition or is discharged for cause or is not working as a result of the Contractor’s invocation of Section 7 below, he shall be paid only for the actual time worked.

d. Except as specifically set forth in this Article there shall be no premiums, bonuses, hazardous duty, high time or other special payments of any kind.

e. There shall be no pay for time not actually worked except as specifically set forth in this Article.

SECTION 6. PAYMENT OF WAGES

a. Payday – Payment shall be made by check, drawn on a New York bank with branches located within commuting distance of the job site. Paychecks shall be issued by the Contractor at the job site by 10 a.m. on Thursdays. In the event that the following Friday is a bank holiday, paychecks shall be issued on Wednesday of that week. Not more than three days wages shall be held back

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in any pay period. Paycheck stubs shall contain the name and business address of the Contractor, together with an itemization of deductions from gross wages.

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 lay off or discharge.

SECTION 7: EMERGENCY WORK SUSPENSION

The Contractor may, if considered necessary for the protection of life and for safety of employees or others, suspend all or a portion of Project work. In such instances employees will be paid for actual time worked; provided, however, that when the Contractor requests that employees remain at the job site available for work, employees will be paid for “stand-by” time at their hourly rate of pay.

SECTION 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 8 hours wages for that day. Further, the employee

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shall be rehired at such time as he is able to return to his duties provided there is still work available on the Project for which he is qualified and able to perform.

SECTION 9. TIME KEEPING

The Contractor may utilize brassing or other systems to check employees in and out.

Each employee must check in and out. The Contractor will provide adequate facilities for checking in and out in an expeditious manner.

SECTION 10. MEAL PERIOD

The Contractor shall schedule an unpaid period of not more than 1/2 hour duration at the work location between the 3rd and 5th hour of the scheduled shift. The Contractor may, for efficiency of operation, establish a schedule which coordinates the meal periods of two or more crafts. If an employee is required to work through the meal period, he shall be compensated in a manner established in the applicable Schedule A.

SECTION 11. BREAK PERIODS

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There will be no rest periods, organized coffee breaks or other non-working time established during working hours. Individual coffee containers will be permitted at the employee's work location.

ARTICLE 13 – APPRENTICES

SECTION 1. 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, and economically disadvantaged non-minority males, the Contractor will employ apprentices in their respective craft to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. The Contractor may utilize apprentices in a ratio not to exceed 25% of his work force by craft (without regard to whether a lesser ratio is set forth in Schedule A), unless

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the applicable Schedules A provide for a higher percentage. Apprentices shall be employed in a manner consistent with the provisions of the appropriate Schedule A.

SECTION 2. DEPARTMENT OF LABOR

The Unions agree to work in close cooperation with, and accept monitoring by, the New York State Department of Labor to ensure that minorities and women are afforded every opportunity to participate in apprenticeship programs which result in the placement of apprentices on this project. To further ensure that this goal is achieved, the Contractor and the Unions agree that minority or women apprentices or recognized trainees may be used on the Project in accordance with the requirements of the Project bid documents.

Article 14-HELMETS TO HARDHATS

Section 1. The employers and the Unions recognize a 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 Employers and Unions agree to utilize the services of the Center for Military Recruitment, Assessment and Veterans Employment (hereinafter "Center") and the Center's "Helmets to Hardhats" program to serve as a resource for preliminary orientation, assessment of construction aptitude, referral to apprenticeship programs or hiring halls, counseling and mentoring, support network, employment opportunities and other needs as identified by the parties.

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Section 2. The Unions and Employers agree to coordinate with the Center to create and maintain an integrated database of veterans interested in working on this Project and of apprenticeship and employment opportunities for this Project. To the extent permitted by law, the Unions will give credit to such veterans for bona fide, provable past experience.

ARTICLE 15 – SAFETY PROTECTION OF PERSON AND PROPERTY

SECTION 1. SAFETY REQUIREMENTS

The Contractor will ensure that applicable OSHA requirements are at all times maintained on the Project and the employees and Unions agree to cooperate fully with these efforts.

Employees must perform their work at all times in a safe manner and protect themselves and the property of the Contractor and Authority from injury or harm. Failure to do so will be grounds for discipline, including discharge.

SECTION 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 Contractor.

SECTION 3. INSPECTIONS

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The Contractor retains the right to inspect incoming shipments of equipment, apparatus, machinery and construction materials of every kind.

ARTICLE 16 – NO DISCRIMINATION

SECTION 1. COOPERATIVE EFFORTS

The Contractor and Unions agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin or age in any manner prohibited by law or regulation. It is recognized that special procedures may be established by the Contractor 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 will 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.

SECTION 2. LANGUAGE OF AGREEMENT

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

ARTICLE 17 – GENERAL TERMS

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SECTION 1. PROJECT RULES

The Contractor shall establish such reasonable Project rules as are appropriate for the good order of the Project, including but not limited to rules relating to health and safety, access, and alcohol and drug use. These rules will be explained at the pre-job conference and posted at the Project site and may be amended thereafter as necessary. Failure of an employee to observe these rules and regulations shall be grounds for discipline, including discharge. The fact that no order was posted prohibiting a certain type of misconduct shall not be a defense to an employee disciplined or discharged for such misconduct when the action taken is for cause.

SECTION 2. 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 3. SUPERVISION

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

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SECTION 4. TRAVEL ALLOWANCES

There shall be no payments for travel expenses, travel time, subsistence allowance or other such reimbursements or special pay except as expressly set forth in this Agreement.

SECTION 5. FULL WORK DAY

Employees shall be at their staging area at the starting time established by the Contractor and shall be returned to their staging area by quitting time after performing their assigned functions under the supervision of the Contractor. The signatories reaffirm their policy of a fair day's work for a fair day's wage.

SECTION 6. COOPERATION

The Unions will cooperate in seeking any NYS Department of Labor approvals that may be required for implementation of any terms of this Agreement. To the extent the provisions of this Agreement differ from the requirements of the applicable prevailing wage law, or any other law, the Unions, on their own behalf and on behalf of the individual employees they represent, intend the provisions of this Agreement to control to the maximum extent permitted by law.

ARTICLE 18 – SAVINGS AND SEPARABILITY

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SECTION 1. THIS AGREEMENT

In the event that the application of any provision of this Agreement is enjoined, on either an interlocutory or permanent basis, or otherwise found in violation of law, the provision involved shall be rendered, temporarily or permanently, null and void but the remainder of the Agreement shall remain in full force and effect. In such event the Agreement shall remain in force and effect for contracts already bid and awarded or in construction where the Contractor voluntarily accepts the Agreement. The parties to this Agreement will enter into negotiations for a substitute provision in conformity with the law and the intent of the parties for contracts to be let in the future.

SECTION 2. THE BID SPECIFICATIONS

In the event that the Department bid specifications, or other action, requiring that a successful bidder become signatory to this Agreement is enjoined, on either an interlocutory or permanent basis, or otherwise found in violation of law such requirement shall be rendered, temporarily or permanently, null-and void but the Agreement shall remain in full force and effect to the extent allowed by law. In such event, the Agreement shall remain in effect for contracts already bid and awarded or in construction where the Contractor voluntarily accepts the Agreement. The parties will enter into

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negotiations as to modifications to the Agreement to reflect the court action taken and the intent of the parties for contracts to be let in the future.

SECTION3. NON-LIABILITY

In the event of an occurrence referenced in Section 1 or Section 2 of this Article, neither the Government, nor Contractor, or any signatory Union shall be liable, directly or indirectly, for any action taken, or not taken, to comply with any court order, injunction or determination. Project bid specifications will be issued in conformance with court orders then in effect and no retroactive payments or other action will be required if the original court determination is ultimately reversed.

SECTION4. NON-WAIVER

Nothing in this Article shall be construed as waiving the prohibitions of Article 7 as to the signatory Contractor and signatory Unions.

ARTICLE 19 – FUTURE CHANGES IN SCHEDULE A AREA CONTRACTS

SECTION 1. CHANGES TO AREA CONTRACTS

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a. Schedules A to this Agreement 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 Schedules A notify the Department in writing of the mutually agreed upon changes in provisions of such agreements which are applicable to the Project, and their effective dates.

b. It is agreed that any provisions negotiated into Schedules A Collective Bargaining Agreements will not apply to work on this Project if such provisions are less favorable to this Project than those uniformly required of contractors for construction work normally covered by those agreements; nor shall any provision be recognized or applied on this Project if it may be construed to apply exclusively, or predominantly, to work covered by this Project Agreement.

c. Any disagreement between signatories to this Agreement over the incorporation into Schedules 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 2. LABOR DISPUTES DURING AREA CONTRACT NEGOTIATIONS

The Unions agree that there will be no strikes, work stoppages, sympathy actions, picketing, slowdowns or other disruptive activity or other violations of Article 7 affecting the Project by

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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.

ARTICLE 20 – WORKERS’ COMPENSATION ADR

All signatory unions and the Contractor agree to adopt and be bound by the Alternative Dispute Resolution Agreement entered into between the Construction Industry Council of Westchester and Hudson Valley, Inc. and the Council (hereinafter referred to as the “Workers’ Compensation ADR Agreement”).

The Contractor can provide Workers’ Compensation insurance through an alternative insurance carrier (or through self insurance) or may use an alternative Program Manager, other than the primary carrier or Program Manager designated in Article 3, Section 2 of the Workers’ Compensation ADR Agreement. The use of an alternative carrier (or self insurance) and/or Program Manager is subject to approval by the Workers’ Compensation ADR Agreement Oversight Committee, which approval shall not be unreasonably withheld.

The determination to utilize the Workers’ Compensation ADR Agreement will be at the exclusive option of the Department.

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SCHEDULE A

LISTING OF LOCAL COLLECTIVE BARGAINING AGREEMENTS

LOCAL/COUNCIL

EFFECTIVE DATES

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1. Bricklayers and Allied Craft Workers – Local Union 5 6/1/08 – 5/31/11
2. Empire State Regional Council of Carpenters – Local 11 - 4/30/10
3. New York City District Council of Carpenters-Dockbuilders – Local Union 1456
4. International Brotherhood of Electrical Workers Local #3 5/8/08 – 4/24/13
5. Local Union #40 of the International Association of Bridge, Structural and Ornamental Iron Workers 7/1/-8 – 6/30/14
6. Laborers International Union of North America, Local #60 4/1/08 – 3/31/11
7. Metallic Lathers Union Local #46 7/1/08 – 6/30/14
8. International Union of Operating Engineers, Local #15 3/3/09 – 3/6/11
9. International Union of Operating Engineers, Local #137 7/1/06 – 7/30/10
10. District Council #9 International Brotherhood of Painters and Allied Trades AFL-CIO Painters -4/30/11
11. Plumbers & Steamfitters Local 21 5/1/09 – 4/30/10
12. Teamsters Local #456, 1BT -5/30/11
13. Local #580 International Association of Bridge Structural Ornamental & Re-Enforcing Iron Workers 7/1/08 – 6/30/13

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and

effective as of the ____ day of _____, 2010:

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NEW YORK STATE DEPARTMENT OF TRANSPORTATION

BY: _____

(Robert A. Dennison III, P.E., Chief Engineer)

FOR THE BUILDING & CONSTRUCTION TRADES

BUILDING & CONSTRUCTION TRADES COUNCIL OF WESTCHESTER & PUTNAM
COUNTIES, NY

BY: _____

(Edward Doyle, President)

FOR LOCAL UNIONS

BRICKLAYERS AND ALLIED CRAFT WORKERS – LOCAL UNION 5

BY: _____

(Name/Title)

EMPIRE STATE REGIONAL COUNCIL OF CARPENTERS – LOCAL 11

BY: _____

(Name/Title)

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NEW YORK CITY DISTRICT COUNCIL OF CARPENTERS-DOCKBUILDERS LOCAL UNION

1456

BY: _____

(Name/Title)

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL #3

BY: _____

(Name/Title)

LOCAL UNION #40 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND
ORNAMENTAL IRON WORKERS

BY: _____

(Name/Title)

LABORERS INTERNATIONAL UNION OR NORTH AMERICA, LOCAL #60

BY: _____

(Name/Title)

METALLIC LATHERS UNION LOCAL #46

BY: _____

(Name/Title)

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INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL #15

BY: _____

(Name/Title)

INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL #137

BY: _____

(Name/Title)

DISTRICT COUNCIL #9 INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED

TRADES AFL/CIO PAINTERS

BY: _____

(Name/Title)

PLUMBERS AND STEAMFITTERS LOCAL 21

BY: _____

(Name/Title)

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TEAMSTERS LOCAL #456, IBT

BY: _____

(Name/Title)

LOCAL #580 INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL ORNAMENTAL &

RE-ENFORCING IRON WORKERS

BY: _____

(Name/Title)