

PROJECT LABOR AGREEMENT
FOR
CONSTRUCTION OF THE
Fuller Road Management Corporation's
Clean Room Module (Nanofab West) at the
Albany NanoTech Facility, College of Nanoscale Science &
Engineering
State University of New York at Albany

ALBANY, NEW YORK

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ARTICLE 1 – PREAMBLE

This Agreement is entered into this 1st day of April 2011, by and between The Whiting Turner Contracting Company, M + W US, Inc. and the Local Unions affiliated with the Greater Capital Region Building and Construction Trades Council, AFL-CIO (herein after "Unions").

WHEREAS, the Construction Manager(s) desires to provide for the sufficient, safe, quality and timely completion of the "NanoFab West Clean Room Module" - located at the College of Nanoscale Science and Engineering (CNSE), State University of New York at Albany (the Project) in a manner designed to afford the best work at the lowest reasonable cost to Owner (Fuller Road Management Corporation and/or Murphy & McManus), and the public it represents, and the advancement of public policy interests, embodied in the competitive bidding statutes;

WHEREAS, this Project Labor Agreement ("Agreement") will foster the achievement of these goals including:

1. Standardizing the terms and conditions governing the employment of labor on the Project;
2. Receiving negotiated adjustments as to work rules and staffing requirements from those which otherwise might not provide the same.
3. Providing comprehensive and standardized mechanisms for the settlement of work disputes, including those related to jurisdiction; (prior to project start and during)
4. Ensuring a reliable source of skilled and experienced labor;
5. Furthering public policy objectives as to improved employment opportunities for local workers, minorities, women and the economically disadvantaged in the construction industry;
6. Avoiding the costly delays of potential strikes, slowdowns, walkouts, lockouts, picketing and other disruptions arising from work disputes and promote labor harmony and peace for the duration of the Project;
7. Expediting the construction process and otherwise maximizing the public safety and minimizing inconvenience caused by ongoing construction; and
8. Improving project cost efficiencies by incorporating state of the art processes and avoiding duplication of labor activities (stacking) or any non-productive labor (standby) requirements.

WHEREAS, the parties subject to the terms of this Agreement desire the stability, security and work opportunities afforded by a Project Labor Agreement;

Now, therefore, it is agreed as follows:

ARTICLE 2 – PARTIES COVERED BY THIS AGREEMENT AND GENERAL CONDITIONS

Section 1. Parties by this Agreement

The parties covered by and subject to the terms of this Agreement are:

- a. The Greater Capital Region Building and Construction Trades Council, AFL-CIO together with its affiliated Local Union members identified in the Collective Bargaining Agreements attached hereto and made a part hereof (Schedule A).
- b. All Contractors, regardless of tier who are awarded contracts pursuant to the bidding procedures applicable to this Project.
- c. The Whiting-Turner Contracting Company and M + W US, Inc.

Section 2. Certain Definitions

- a. Throughout this Agreement, the Greater Capital Region Building and Construction Trades Council, AFL-CIO (“GCRBCTC”) and its affiliated Local Union members are sometimes referred to singularly and collectively as "Union(s)".
- b. "Collective Bargaining Agreements", herein sometimes referred to as “CBA’s”, means those local union agreements identified in Schedule A attached hereto:
- c. "Contractor(s)" means contractor(s) who have been awarded contracts for this Project and subcontractors of any tier engaged by Contractor(s) for on-site Project construction work within Whiting-Turner and M +W US, Inc.’s scope of work.
- d. “Construction Manager” means The Whiting-Turner Contracting Company or M + W US, Inc.
- e. “Owner” means Fuller Road Management Corporation (FRMC), Murphy & McManus, Inc (MM), and the College of Nanoscale Science & Engineering (CNSE) at the University at Albany.

Section 3. Supremacy Clause

This Agreement, together with the Collective Bargaining Agreements (Schedule A) represents the complete understanding of all parties covered by this Agreement and supersedes any national, local 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 provisions set forth in the Collective Bargaining Agreements the provisions of this Agreement shall prevail. No practice, understanding or agreement between a Contractor and a Local Union which is not explicitly set forth in this Agreement shall be binding on this Project unless endorsed in writing by the Contractor.

Section 4. Liability

The liability of any Contractor and/or any Union under this Agreement shall be several and not joint. The Owner, Construction Manager and any Contractor shall not be liable for any violations of this Agreement by any other Contractor.

Section 5. Bid Specifications

- a. The bid specifications or the Construction Manager's Instruction to Bidders and Bid Package of the Project will require that all successful bidders and their subcontractors of whatever tier are bound by this Agreement. It is understood that nothing in this Agreement shall be construed as limiting the sole discretion of Owner and Construction Manager in determining which bidder(s) shall be awarded contracts for the Project. It is further understood that Owner has sole discretion at any time to terminate, delay or suspend the Project, in whole or part. It is also understood that this is a self-contained, stand alone Agreement and that by virtue of having become bound to the Project Agreement, neither the Construction Manager nor the Contractor(s) will be obligated to sign any other local, area or national agreement.
- b. This Agreement shall only be binding on the signatory parties hereto and shall not apply to their parents, affiliates or subsidiaries.
- c. Nothing contained herein shall be construed to prohibit, restrict or interfere with the performance of any other operation, work or function which may occur at the Project site or be associated with the development of the Project.
- d. The Owner and/or the Construction Manager have the absolute right to select any qualified bidder for the award of contracts on this Project without the reference to the existence or non-existence of any agreements between such bidder and any party to this Agreement: provided, however, only that such bidder is willing, ready and able to become a party to and comply with this Project Agreement, should it be designated the successful bidder.
- e. It is agreed that the Construction Manager shall require all Contractors of whatever tier have been awarded contracts for work covered by this Agreement, to accept and be bound by the terms and conditions of this Project Agreement through a provision in its subcontract prior to commencing work. It is further agreed that, where there is a conflict, the terms and conditions of this Project Agreement shall supersede and override terms and conditions of any and all other national, area, or local collective bargaining agreements, except for all work performed under the NTL Articles of Agreement, the National Stack/Chimney Agreement, the National Cooling Tower Agreement, all instrument calibration work and loop checking shall be performed under the terms of the UA/IBEW Joint National Agreement for Instrument and Control Systems Technicians, and the National Agreement of the International Union of Elevator Constructors, with the exception of Article V, VI, and VII of this Project Agreement, which shall apply to such work. It is understood that this is a self-contained, stand alone, Agreement and that by virtue of having become bound to this Project Agreement, neither the Construction Manager nor the Contractors will be obligated to sign any other local, area, or national agreement.

ARTICLE 3 – SCOPE OF THIS AGREEMENT

This agreement shall be as defined and limited by the following sections of this Article 3.

Section 1. The Work

This Agreement applies only to on-site construction of base building, fit up work and Site Environmental and Site Infrastructure Improvements performed on the Project during the term hereof. Specifically the work includes a new 4 story ~260,000 GSF structure with approximately 44,000SF of on waffle clean room, an upgrade to the Central Utility Building (CUB), a roof trestle with utilities, and a pedestrian/utility bridge over Washington Avenue

Tool hook-up or owner's equipment installation is not part of this scope of work

Section 2. Term

This Agreement commences April 1, 2011, and shall remain in effect for the duration of the Project.

Section 3. Excluded Persons

The following persons are not subject to the provisions of the Agreement:

- a. Superintendents, supervisors (excluding general and forepersons specifically covered in Schedule A) engineers, inspectors and testers, quality control/ assurance personnel (including cleanroom certification technicians and UHP Gas, Chemical and Ultra Pure Water certifiers/technicians), equipment manufactures, factory technicians, I & C programmers and technicians, janitorial service, surveyors, timekeepers, mail carriers, clerks, office workers, suppliers, messengers, security guards, non-manual employees, and all professional, engineering, administrative, salaried and management persons.
- b. Employees or Contractors of, Owner or any New York State agency, authority or entity or employees of any municipality or other public employer;
- c. Persons engaged in laboratory or specialty testing or inspections not ordinarily done by a member of a Trade Union.
- d. 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,
- e. Employees of the Construction Manager, Contractor, other contractors or subcontractors excepting those performing manual, on-site construction labor who will be covered by this Agreement and Schedule A.
- f. Employees of equipment suppliers performing or assisting in on-site equipment installation or warranty work will work with the respective craft having jurisdiction over such work. The craft must have a certified or qualified (trained) person to assist in the work.
- g. Employees engaged in geophysical testing (whether land or water) other than boring for core samples;
- h. Employees engaged in laboratory, specialty testing, inspections or surveying, or any other professional consultants, and such laboratory, testing, inspection or surveying firm (individuals engaged in on-site surveying as direct hires of a signatory contractor, rather than pursuant to a professional services contract with the Owner, the Construction Manager or any other professional consultants, are covered by this Agreement). "Project property surveying and benchmarks shall be provided by the civil engineer or others hired by the owner or A/E. All surveys and layout from the benchmarks provided by others shall be performed by the respective trade in accordance with their collective bargaining agreements."

- i. Employees of subcontractors and/or suppliers and/or independent haulers engaged in use of vehicles for delivery of and pick up of materials or supplies for deliveries and pick-ups at the Project site (teamsters shall not be required to drive such vehicles) except in the case of deliveries of dirt, stone or concrete or other aggregates, which teamsters shall drive to the Project site.
- j. Employees engaged in ancillary Project work performed by third parties such as electrical utilities, gas utilities, telephone companies and railroads.
- k. All on-site construction debris or waste materials generated by any contractor or subcontractor shall be removed by laborers or respective trade. Construction Manager in its sole discretion may employ laborers in a sufficient quantity to remove construction debris or waste materials, as well as general site clean up. Notwithstanding this provision each contractor or subcontractor is responsible for clearing their immediate work area of debris and materials generated by the particular trade.

ARTICLE 4 – REFERRAL AND EMPLOYMENT

Section 1. Referral

- a. Contractors agree to hire craft employees covered by this Agreement through the job referral systems established in the Local Unions' area Collective Bargaining Agreement.
- b. The Local Unions shall exert their utmost efforts to recruit and train sufficient numbers of skilled craft workers to fill the manpower requirements of the Contractor. The parties to this Agreement support the development of increased numbers of skilled construction workers from the residents of the Capital Region and its immediate vicinity to meet the needs of this Project and the requirements of the industry generally.
- c. Contractors shall contact and meet with representatives of the signatory unions at the Albany Labor Temple 890 Third street Albany NY 12206 or such other location mutually agreed to with the unions prior to commencing work for the purpose of a Mark-Up meeting.

Section 2. Non-Discrimination in Referrals

The local Unions represent that their hiring halls and/or referral systems will 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 3. Union Dues/Fringe Benefits

All employees covered by this Agreement shall be subject to the Union security provisions contained in the applicable Collective Bargaining Agreement as amended from time to time,

but 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, which represents the craft in which the employee is performing Project work. The Construction Manager, in order to ensure the full and timely remittance of all union dues and fringe benefit funds, including but not limited to Health and Welfare, Pension, Annuity, Legal Service, Education and Training, SUB, Apprenticeship (hereinafter "Funds" or "Fund") due the affiliated Local Unions as provided for in all applicable Collective Bargaining Agreements between the Local Unions and Contractors which have contracted to perform work on the Project, agrees that it will, upon notification of not more than fifteen (15) days from the date of a default from any affiliated Local Union that a Contractor has become delinquent in the payment of Fund contributions due in connection with the work on the Project to immediately stop payment on all monies due or which may become due to the delinquent Contractor up to the amount alleged to be owed from the Project and all such funds be paid directly to the complaining Local Union to be applied against the amount owed by the defaulting Contractor.

- a. The Construction Manager shall allow the Contractor a period of ten (10) working days from the date of notification to produce a written letter signed by the Business Manager of the complaining Local Union that the amount in default has been paid in full and the Contractor is current in the remittance of Funds or a bona-fide explanation acceptable to the complaining Local Union of why in the Contractor's opinion the amounts are not due as alleged. In the event of such a bona-fide dispute, The Construction Manager will use its best efforts to act as initial arbiter and take action it then deems appropriate.
- b. No monies shall be paid to the delinquent Contractor who may request arbitration of the dispute in accordance with this Article 4. In the event such a letter is not delivered to the Construction Manager within ten (10) working days from the date of notification to the defaulting Contractor, the Construction Manager shall immediately cause to have paid over to the Fund Administrator of the complaining Local Union all monies due the defaulting Contractor to the extent necessary to satisfy the amounts payable to the Contractor by Construction Manager for the Project.
- c. Notwithstanding any other provisions of this Agreement, including any provisions to arbitrate disputes, the members of a Local Union can elect to refuse to perform services for a delinquent Employer anytime after a Benefit Fund delinquency exceeds thirty (30) days, on five (5) days written notice to the President of the Building Trades Council and the Construction Manager. The provisions of Section 3 shall remain in full force and effect with work to all other Local Union members working on the Project. If a Contractor fails to contribute to a Local Union's Benefit Funds because of the Contractor's inability to collect payment from the Owner and/or Construction Manager for work performed on the Project, the Construction Manager agrees that the Contractor will not be removed from the job for non-performance which results from a Local Union's members refusing to perform services as set forth in this Section.

Section 4. 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 Collective Bargaining Agreement. 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 craft persons he is leading exceed a specified number.

Section 5.

Any Labor Management Fund established with no additional cost to the owner, employer or contractors shall become part of this agreement.

ARTICLE 5 – UNION REPRESENTATION

Section 1. Local Union Representative/Non-Affiliated Representative

Each Local Union shall be entitled to designate one representative in writing (copy to Contractor involved, the Construction Manager, and/or the Business Manager), who shall be afforded access to the Project. Non-affiliated Contractors may also designate one representative and/or Business Manager who shall be offered access to the Project, upon giving notice as directed above.

Section 2. Stewards

- a. Each Local Union may have the right to designate a working journey person 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. 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 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 Collective Bargaining agreement provision providing procedures for the equitable distribution of overtime.

Section 3. Layoff of a Steward

Contractors agree to notify the appropriate Local Union twenty four (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 Collective Bargaining 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.

ARTICLE 6 – MANAGEMENT’S RIGHTS

Section 1. Reservation of Rights

Except as expressly limited by a specific provisions of this Agreement, 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, or the discipline or discharge for a 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 Employees Labor Union affiliation, if any. No rules, customs, or practices as determined by the contractor which limit or restrict productivity or efficiency of the individual, and/or 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 or pre-assembled materials, tools or other labor-saving devises. 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 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. There shall be no restrictions as to work which is not performed at the Project site, with the exception of pre-tied or welded reinforcing steel.

ARTICLE 7 – WORK STOPPAGE AND LOCKOUTS

Section 1. No Strikes, No Lock Out

There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdown, hand billing, demonstrations or other disruptive activity at the Project site for any reason by any Local Union or Employee against any Contractor or Employer while performing work at the Project site,. There shall be no other Local Union or concerted Employee activity which disrupts or interferes with the operation of the Project. Failure of any Local 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 or in proximity to the Project site is a violation of this Article 7. There shall be no lockout at the Project by Owner or any Contractor. Contractors and Local Unions shall take all steps necessary to ensure compliance with this Section 1.

Section 2. Discharge for Violation

A Contractor may discharge any Employee violating Section I above and any such Employee will not be eligible thereafter for referral under this Agreement for sixty days.

Section 3. Notification

If a Contractor contends that any party covered by this Agreement has violated this Article 7, it will notify the Construction Manager and/or the Local Union involved advising of such fact with copy to the Building and Construction Trades Department (BCTC) and to the Local Union. The BCTC shall instruct, order or otherwise use its best efforts to cause the Employees, Contractors and/or the Local Unions to immediately cease and desist from any violation of this Article 7. The BCTC complying with these obligations shall not be liable for the unauthorized acts of a Local Union or its members.

Section 4. Expedited Arbitration

Any party alleging a violation of Section 1 of this Article 7 may utilize the expedited procedure set forth below (in lieu of, in addition to, any actions at law or equity).

- a. A party invoking this procedure shall notify (to be mutually determined at a later date) who shall act as Arbitrator under this expedited arbitration procedure. Copies of such notification will be simultaneously sent to the alleged violator, the Contractor the Construction Manager and if a Local Union is alleged to be in violation, then to the BCTC.
- b. The Arbitrator shall thereupon, after notice to all parties covered as to time and place, hold a hearing within Forty Eight (48) hours of receipt of the notice invoking the procedures if it is contended that the violation still exists. The hearing will not, however, be scheduled for less than twenty four (24) hours after the notice to the BCTC required by Section 3, above.
- c. All notices pursuant to this Article 7, may be by telephone, telegraph, email, hand delivery or fax, confirmed by overnight delivery, to the parties involved. The hearing may be held on any day including Saturdays and Sundays. The hearing shall be completed in one session, which shall not exceed Four (4) hours duration with no more than Two (2) hours being allowed to either side to present its case, and conduct its 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. The sole issue at the hearing shall be whether a violation of Section I above has occurred. If a violation is found to have occurred, the Arbitrator shall issue a Cease and Desist Order restraining such violation and serve copies on the party determined to be in violation. 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 other proceedings, if any. The decision shall be issued in writing within three (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 fifteen (15) calendar days, but its issuance shall not delay compliance with, or enforcement of, the decision.

A decision issued under this procedure may be enforced by any court of competent jurisdiction upon the filing of this Agreement together with the decision. Notice of the filing of such enforcement proceedings shall be given to the party 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 Party and 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.

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

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 ("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 interests; 4) discuss matters relating to staffing and scheduling with safety and productivity as considerations; and 5) deal with possible jurisdictional conflicts; 6) monitor and ensure timely completion; and 7) ensure a high degree of skill and quality of workmanship in the performance of the Project.

Section 2. Composition

The Committee shall be jointly chaired by designees of the Construction Manager, representatives of the BCTC and Contractors involved in the issues being discussed. The Committee may conduct business through mutually agreed subcommittees.

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 violation of Article 7, Section 1) shall be considered a grievance and shall be resolved pursuant to the exclusive procedures of the steps described below; provided, in all cases, that the question, dispute or claim arose during the term of this Agreement.

Step 1:

- a. When any party covered by this Agreement feels aggrieved by a claimed violation of this Agreement, the party shall, through the Local Union business representative, job steward or Contractor give notice of the claimed violation to the work site representative of the involved Contractor. To be timely, such notice of the grievance must be given within fourteen (14) calendar days after the act, occurrences or event giving rise to the grievance. The business representative of the Local Union, the job steward, the Party and the work site representative of the involved Contractor shall meet and endeavor to adjust the matter within forty eight (48) hours after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party may, within fourteen (14) calendar days thereafter, pursue Step 2 of the grievance procedure by serving the involved Contractor and the CM or its assignee 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, non-affiliated Party Employee and contractor directly involved unless the settlement is accepted in writing by Owner, or its designated representative as creating a precedent.
- b. Should any party to this Agreement have a dispute (except jurisdictional disputes or alleged violations of Article 7, Section 1) with any other party to this Agreement and, if after conferring, a settlement is not reached within fourteen (14) calendar days, the dispute shall be reduced to writing and proceed to Step 2 in the same manner as outlined in subparagraph (a) above for the adjustment of Employee grievances.

Step 2:

The Business Manager or designee of the involved party, together with the representatives of BCTC, the involved Contractor, and the Construction Manager, or its designated representative shall meet within seven (7) calendar days of service of the written grievance arrive at a satisfactory settlement.

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 twenty one (21) calendar days after the initial Step 2 meeting, submit the grievance in writing (copies to other participants) to 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 parties.
- 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 parties 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.

Section 2. Limitation as to Retroactivity

No arbitration decision or award may provide retroactivity of any kind exceeding Thirty (30) calendar days prior to the date of service of the written grievance on the involved Contractor or Local Union.

Section 3. Participation by the Construction Manager or its Designated Representative

The Construction Manager shall be notified by the involved parties of all actions at Steps 2 and 3 and, at its election, may participate in full in all proceedings at these steps, including Step 3 arbitration.

ARTICLE 10 – JURISDICTIONAL DISPUTES

Section 1. No Disruptions

- a. 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 the resolution of the dispute, the work shall continue uninterrupted. No jurisdictional dispute shall excuse a violation of Article 7.
- b. No jurisdiction dispute shall affect coordination of the various contractors at the Project or the progress of the Project.
- c. The Signatories to this agreement adhere to the principle that jurisdictional disputes can not and shall not interfere with the project.
- d. Every effort will be made by the Employer to resolve all anticipated disputes over work assignments. These efforts will include pre-job conferences, jurisdictional mark-up meetings and similar such conferences. Pre-job conferences must be held by each Employer prior to the field work actually starting. Resolution of jurisdictional disputes will not include any “over manning” or the requirement to assign employees to any work functions other than the number that may be required to safely execute the work. No back pay or any other monetary penalty shall be assessed against any Employer in the resolution of jurisdictional disputes.
- e. Memorandum of understandings of past or pre-construction jurisdictional disputes which have been identified by the owner or its Construction Manager (Whiting Turner Contracting) shall be settled prior to the final execution of this agreement and shall become part of this agreement as Attachment A.
- f. The construction manager shall be notified of all meetings pertaining to all jurisdictional disputes and may attend and participate.

Section 2. Assignment

The assignment of work will be solely the responsibility of the Contractor performing the work involved; 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, Plan for the settlement of Jurisdictional Disputes in the Construction Industry within seventy two (72) hours and send a copy of the letter to the other Contractor involved, the GCRBTC and the Local Union involved. Upon receipt of a dispute letter from any Local 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. Any Contractor involved in a jurisdictional dispute on this Project shall continue working and without disruption of any kind.

Section 4. 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. This does not prohibit the establishment, with the Agreement of the involved 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.

Section 5. 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.

ARTICLE 11 – HOURS OF WORK, PREMIUM PAYMENTS, SHIFTS & HOLIDAYS

Section 1. Work Week and WorkDay

- a. The standard work week will consist of five days Monday - Friday eight hours per day, plus 1/2 hour unpaid lunch period each day, or a four day 10 hour work week Monday - Thursday plus 1/2 hour unpaid lunch period each day. Any work beyond the eight hours or ten hour work day will be paid at time and one half.
- b. The Construction Manager shall have the option of scheduling a five-day or four-day work week and the work day hours consistent with the Project requirements, and the Project Schedule.
- c. The Day Shift shall be the hours of 7:00 a.m. - 3:30 p.m. Starting and quitting times shall occur at the staging areas designated by the Contractor. Other shifts shall similarly commence and end at uniform times agreed upon by the Contractor and Union.

- d. Notice – Contractors shall provide not less than five (5) days prior notice to the Unions as to the workweek and work hour schedules to be worked or such lesser notice as may be mutually agreed upon.
- e. Saturday/Make-up Day- The Contractor and/or Construction Manager shall have the option of scheduling Saturday as a voluntary make-up day for any work missed during Monday-Friday.

Section 2. Overtime

Overtime pay for hours outside of the standard work week and work day, described in Section 1, paragraph (a) above, shall be paid at time and a half, Saturdays shall be at time and half for the first eight hours and double time thereafter and Sundays shall be at double time whichever is less. There will be no restriction upon the Contractor's scheduling or overtime or the non-discriminatory designation of employees who shall be worked, except as specifically set forth in Schedule A. There shall be no pyramiding of overtime pay under any circumstances. The Construction Manager and/or Contractor shall have the right to schedule work so as to minimize overtime.

Section 3. Starting Times and Shifts

- a. There shall be a uniform start time for all Contractors and employees on each shift in accordance with Section 1 above.
- b. Flexible Schedules – To the extent that they do not have a cost impact on the Project, scheduling of shift work may remain flexible in order to meet Project schedules and existing Project conditions. Shifts must be worked with a minimum of five (5) consecutive workdays and must be scheduled with the BCTC with not less than five (5) work days notice to the party. Regularly scheduled shifts will not be paid at overtime rate, but rather at a fixed percentage increase per Schedule A or 15% (whichever is less).
- 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 (b).
- d. Shift work may be scheduled on either a five (5) day (5-8 hrs) or four (4) day (4-10 hrs) work week basis, at a straight time rate plus a fixed percentage increase per Schedule A or 15% shift differential (whichever is less)

Section 4. Holidays

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

New Years Day	Labor Day
Memorial Day	Thanksgiving Day
Fourth of July	Christmas Day

All holidays shall be observed on the dates designated by 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. Payment – Regular holiday pay, if any, and/or premium pay for the work performed on such a recognized holiday shall be in accordance with the applicable Collective Bargaining Agreement.
- c. Exclusivity – No holidays other than those listed in Section 4 – (a) above shall be recognized or 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 a Contractor, for whatever reason, shall receive minimum reporting pay in accordance with the applicable Collective Bargaining Agreement. (Schedule A). Should this occur on a scheduled ten (10) hour work day, ten (10) hours minimum reporting pay shall apply in lieu of eight (8) hours where appearing
- b. When an employee who has completed a schedule 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 a minimum guarantee as may be required by the applicable Collective Bargaining Agreement. (Schedule A).
- 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 specifically set forth in Article 11, there shall be no premiums, bonuses, high time payments of any kind.
- e. There shall be no pay for time not actually worked except as specifically set forth in this Article or as specifically provided in a Schedule A.

Section 6. Payment 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 the end of the scheduled workday 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 in any 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 Construction Manager and/or Contractor may, if considered necessary for the protection of life and/or 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 a 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, by the applicable Schedule A.

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 eight (8) Hours wages for that day. Further, the employee shall be rehired at such time as said 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 9. Time Keeping

A Contractor may utilize brass tagging, electronic time cards 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

Employees shall have meal period of not more than one half (1/2) hour duration at the work location between the third and fifth 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. 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.

Section 11. Break Periods

There will be no rest periods, organized coffee breaks or other non-working time established during working hours. Individual beverage containers will be permitted at the employee’s work location. There will be no food or drink other than water allowed within the building area.

Section 12. Other Work Rules

There shall be no use of tobacco or smoking within the building area. Designated smoking location will be identified for use during the allowed half hour lunch break.

Violation of tobacco/smoking, food restrictions or other designated Protocols established to maintain the cleanliness and safety of the facility will result in dismissal from the job-site.

The Construction Manager reserves the right to issue additional rules, including but not limited to, rules concerning the clean room and support areas (such as chemical, spec gas, etc...).

ARTICLE 12 – 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, Contractors will employ apprentices in their respective crafts to perform such work as is within their capabilities and which is customarily performed by the craft in which they are indentured. Contractors may utilize apprentices in a ratio not to exceed 25% when available

of his work force by craft (without regard to whether a lesser ratio is set forth in Schedule A), unless the applicable Schedule A provides for a higher percentage. Apprentices shall be employed in a manner consistent with the provisions of the appropriate Schedule A and as approved by the NYSDOL.

Section 2. Department of Labor

To assist the Contractors in attaining a maximum effort on this Project, the parties 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. The Local unions will cooperate with Contractor requests for minority, women or economically disadvantaged referrals to meet this Contractor effort and/or as provided in the Collective Bargaining Agreement.

ARTICLE 13 – SAFETY AND PROTECTION OF PERSON AND PROPERTY

Section 1. Safety Requirements

Each Contractor will ensure that applicable Owner, Construction Manager, State, local and OSHA requirements are at all times maintained on the Project. Employees of the Contractors must perform their work at all times in a safe manner and protect themselves and the property of the Contractor and Owner from injury or harm. Failure to do so will be grounds for discipline, including discharge.

Section 2. Contractor Rules

Employees shall at times be bound by the reasonable safety, security, and visitor rules as established for this Project. Such rules will be published and posted in conspicuous places throughout the Project.

Section 3. Inspections

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

ARTICLE 14 – Miscellaneous Provisions

Section 1. Project Rules

The Construction Manager and Contractors shall establish such reasonable Project rules as are appropriate for the good order of the Project. 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 of a Contractor 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 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.

Section 4. Travel Allowance

There shall be no payment 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

- a. Employees shall be at their staging area at the 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 parties reaffirm their policy of a fair day's work for a fair day's wage.
- b. There shall be no non-working employees at the Project unless the presence of such employee is required due to normal maintenance (e.g. refueling). There shall be no electrical stand-by employees until the electrical prime contractor has commenced work on the Project. No electrical stand-by employee may remain on the Project after the permanent electrical system is operational. There shall be no stand-by labor of any kind unless requested by the Construction Manager and/or Owner. With respect to the operating engineers working on the project, manning shall be in accordance with their current collective bargaining agreement with the explicit understanding that all manpower assigned to the project is productive".

Section 6. Cooperation

The parties will cooperate in seeking any New York State Department of Labor approvals that may be required for implementation of any terms of this Agreement.

ARTICLE 15 – FUTURE CHANGES IN COLLECTIVE BARGAINING AGREEMENT

Section 1. Changes

- a. Schedule A to this Agreement shall continue in full force and effect until the applicable Contractor and/or Union parties to the Schedule A CBAs notifies the PCC 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 work rule provisions negotiated into future Collective Bargaining Agreements will not apply to work on this Project if such provisions are less favorable to this Project than those contained in the expiring Collective Bargaining Agreements as they pertain to work rules; nor shall any provision be recognized or apply on this Project if it may be construed to apply exclusively, or predominantly, to work covered by this Agreement.

- c. Any disagreement over the incorporation into Collective Bargaining Agreements of provisions agreed upon in the re-negotiation of Area Collective Bargaining Agreement shall be resolved in accordance with the procedure set forth in this Agreement.

Section 2. Labor Disputes During Negotiation of Collective Bargaining Agreements

The parties agree that there will be no strikes, work stoppages, sympathy actions, picketing, slowdown or other disruptive activity or other violations of this Agreement affecting the Project by any parties involved in the re-negotiation of Collective Bargaining Agreements nor shall there be any lockout on this Project affecting any party during the course of such re-negotiations.

ARTICLE 16 – SAVINGS AND SEPARABILITY

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 any law, the provision involved shall be rendered, temporarily or permanently, null and void but the remainder of this Agreement shall remain in full force and effect. In such event, this Agreement shall remain in effect for contracts already bid, awarded or in construction. The parties will enter into negotiations for a substitute provision in conformity with the law and the intent of the parties for contracts to be awarded in the future.

Section 2. The Bid Specifications

In the event that Owner's bid specifications, or other action, requiring that a successful bidder be bound by 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 this 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, awarded or in construction. The parties will enter into negotiations as to modifications to the Agreement to reflect the court action taken and in the intent of the parties for contracts to be awarded in the future.

Section 3. Non – Liability

In the event of an occurrence referenced in Section 1 or Section 2 of this Article 16, neither Owner, Construction Manager, nor any Contractor or any Local 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.

Section 4. Non – Waiver

Nothing in Article 16 shall be construed as waiving the prohibitions set forth in Article 7.

Section 5. Drug Testing and Security Background Check

Drug/Alcohol Testing: Prior to performing work, each contractor shall be responsible to provide a drug/alcohol screen for all employees prior to the employee performing on-site work, such testing shall be mandatory for all employees. Employees subject to drug/alcohol testing who pass the tests will receive payment for the time lost to take test but not to exceed 2 hours pays. No pay will be given to those testing positive for drugs/alcohol and they will not be permitted to work on the project.

In the discretion of the Owner, Construction Manager and/or Contractor or its duly retained consultant, random drug/alcohol testing may be conducted during the term of the Project. The Owner, Construction Manager and/or Contractor may also require drug/alcohol testing of employees for cause when there is a reasonable suspicion of drug or alcohol use or employee involvement in an accident or documented unsafe act on the Project.

This section shall supersede any inconsistent provision in a local Union Agreement. All drug/alcohol testing shall be conducted in conformity with the Owners, Construction Managers and/or Contractors Drug/Alcohol Policy.

Article 17-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 service of the Center for Military Recruitment, Assessment and Veterans Employment (hereafter "Center") and the Center's "Helmet 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.

Section 2. The Union 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.

IN WITNESS WHEREOF the parties have caused this Agreement to be executed and effective this ____1st____ day of ____April____, 2011.

For:

M + W U.S. Inc

By: _____
Rick Whitney/President and Chief Executive Officer

The Whiting Turner Contracting Company

By: _____
Joaquim M. DaSilva/Division Vice President

The Greater Capital Region Building and Construction Trades Council, AFL-CIO

By: _____
Mr. Jeffrey Stark, President

By: _____
Mr. Edward Nadeau, Secretary/Treasure

FOR LOCAL UNIONS

Carpenters Local Union 370

Millwrights Local Union 1163

By: _____
NAME/TITLE

By: _____
NAME/TITLE

(Print): _____

(Print): _____



Floor Covering Local Union 42

By: _____
NAME/TITLE

(Print): _____

Laborers Local Union 157

By: _____
NAME/TITLE

(Print): _____

Electrical Workers Local Union 236

By: _____
NAME/TITLE

(Print): _____

Sheet Metal Workers Local Union 83

By: _____
NAME/TITLE

(Print): _____

Roofers Local Union 241

By: _____
NAME/TITLE

(Print): _____

Painters & Allied Trades Council 9

By: _____
NAME/TITLE

(Print): _____

Plumbers Local Union 7

By: _____
NAME/TITLE

(Print): _____

Laborers Local Union 186

By: _____
NAME/TITLE

(Print): _____

Insulators Local Union 40

By: _____
NAME/TITLE

(Print): _____

Sprinklerfitters Local 669

By: _____
NAME/TITLE

(Print): _____

Operating Engineers Local Union 106

By: _____
NAME/TITLE

(Print): _____

Laborers Local Union 190

By: _____
NAME/TITLE

(Print): _____

Iron Workers Local Union 12

By: _____
NAME/TITLE

(Print): _____

Teamsters Local Union 294

By: _____
NAME/TITLE

(Print): _____

Bricklayers Local Union 2

By: _____
NAME/TITLE

(Print): _____

Plumbers Local Union 773

By: _____
NAME/TITLE

(Print): _____

Boilermakers Local Union 5, Zone 197

By: _____
NAME/TITLE

(Print): _____

Elevator Constructors Local Union 35

By: _____
NAME/TITLE

(Print): _____