

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING, entered into as of the 24th day of November 2009, between the City of New York ("City") with an office located at City Hall, New York, NY 10007, the Building and Construction Trades Council of Greater New York and Vicinity, on its behalf and on behalf of its affiliated unions ("BCTC"), with its principal place of business located at 71 West 23rd Street, New York, NY 10010, and the Building Trades Employers Association of New York City, on its behalf and on behalf of its affiliated contractors ("BTEA"), with its principal place of business located at 1430 Broadway, New York, NY 10018.

WHEREAS, the Mayor's Commission on Construction Opportunity ("MCCO") was established in 2005 and comprised of thirty-three representatives from private developers and contractors, including minority and women-owned businesses, union representatives, advocates, and government officials, including the City, the BCTC, and the BTEA; and

WHEREAS, in October 2005, the MCCO announced a set of policy initiatives designed to ensure that all New Yorkers from diverse backgrounds, particularly minorities, women, returning veterans, new high school graduates of New York City public schools and New Yorkers in need of economic opportunity, are well-prepared for participation in the workforce, and can gain access to good careers in construction, in both the private and public sectors; and

WHEREAS, through the MCCO, the BCTC and the BTEA committed to: (i) promote the representation of veterans, women, high school graduates of the City's public schools, and New Yorkers in need of economic opportunity in apprenticeship programs jointly sponsored by BCTC unions and BTEA contractors, and (ii) improve workforce training and development for entrance into the construction industry;

WHEREAS, pursuant to Local Law 129 of 2005, the City is also committed to its Minority- and Women-Owned Business Enterprise ("M/WBE") program, and in partnership with the M/WBE Leadership Association seeks to encourage eligible companies to certify as M/WBEs, and provides a wide range of training and technical assistance to build the capacity of its certified companies to bid successfully for the City's contracts and subcontracts;

WHEREAS, in accordance with New York State Labor Law 816-b, by Mayoral directive issued by the Director of the Mayor's Office of Contract Services, on July 20, 2006, and modified most recently on June 19, 2008 (the "Directive," attached as Exhibit A), the City has for certain construction contracts required contractors and certain subcontractors to have apprenticeship agreements appropriate for the type and scope of work to be performed that have been registered with, and approved by, the New York State Commissioner of Labor;

WHEREAS, an important element in the success of apprenticeship programs, and in creating work opportunities for contractors and sub-contractors in New York City, is the availability of work on publicly funded and assisted projects;

WHEREAS, the BCTC has, contemporaneous with this Memorandum of Understanding ("MOU"), entered into Project Labor Agreements ("PLAs") with the City applicable to certain

city capital projects for fiscal years 2010 through 2014, and with the New York City School Construction Authority for public school construction capital projects for fiscal years 2010 through 2014, under which work on such projects will be made available to members of BCTC unions and contractors which become signatory to such PLAs, including minority and women-owned businesses and their employees;

WHEREAS, it is the intention of the parties to this MOU to publicly state their intentions with respect to apprenticeship programs and the creation of contracting and other economic opportunities in the construction industry;

NOW, THEREFORE, the City, the BCTC, and the BTEA state as follows:

1. **Scope.** This MOU:

(i) States the intentions of the City, the BCTC, and the BTEA regarding (a) the provision of opportunities in apprenticeship programs jointly sponsored by BCTC unions and BTEA contractors; (b) the City's application of apprenticeship requirements in City construction contracts from the time of execution through June 30, 2014; and (c) the joint goal of the City, the BCTC Unions, and the BTEA to create employment opportunities, including apprenticeships, in the construction industry; and

(ii) Shall terminate on June 30, 2014.

2. **Apprenticeship Goals.** The BCTC and the BTEA state their intention, in the aggregate, to achieve a goal of having 45% of their new apprenticeships for New York City residents comprised of New York City public high school graduates, veterans of the U.S. Armed Services, women, NYCHA and Section 8 residents, and adults in need of economic opportunity. The BCTC and the BTEA intend to achieve this goal primarily through apprenticeship programs jointly sponsored by unions affiliated with the BCTC and contractors affiliated with the BTEA.

3. **Apprenticeship Targets.** In furtherance of the goals set forth in paragraph 2, apprenticeship programs jointly sponsored by unions affiliated with the BCTC and employers affiliated with the BTEA shall, subject to approval by the New York State Department of Labor ("NYS DOL"), and to the extent not inconsistent with any applicable consent decrees, court orders or similar mandates, reserve up to the following percentages of their new apprenticeships for direct entry:

(i) 10% for graduates of New York City public high schools who have completed pre-apprenticeship training provided by The Edward J. Malloy Initiative for Construction Skills ("C-SKILLS");

(ii) 10% for veterans of the U.S. Armed Services who are referred by Helmets to Hardhats ("H2H"), provided, however, that any veterans whose qualifications allow them to enter unions as journey persons shall be counted toward the fulfillment of this percentage;

(iii) 10% for women who have completed pre-apprenticeship training provided by Nontraditional Employment for Women (“NEW”);

(iv) 10% for NYCHA and Section 8 residents, and adults in need of economic opportunity, who have completed pre-apprenticeship training provided by C-SKILLS or NEW; and

(v) 5% for qualified employees of certified minority- and women-owned business enterprises and other employers not signatory to collective bargaining agreements of unions affiliated with the BCTC which become signatory to such collective bargaining agreements, provided, however, that any such employees whose qualifications allow them to enter unions as journey persons shall be counted toward the fulfillment of this percentage.

4. The target percentages in paragraphs 2 and 3 are aggregate targets for apprenticeship programs jointly sponsored by BCTC unions and BTEA contractors to achieve on an annual basis. The City recognizes that different apprenticeship programs face different circumstances and have varying capacities to meet the percentages set forth in each category; notwithstanding that, the BCTC and the BTEA agree to participate in meeting the targets in paragraphs 2 and 3, and to work with apprenticeship programs jointly sponsored by their affiliated unions and contractors to take affirmative steps to achieve that goal.

5. To the extent that the target percentages in paragraphs 2 and 3 cannot be met through the specific programs set forth in paragraph 3, or for apprenticeship programs jointly sponsored by BCTC unions and BTEA contractors which do not participate in the programs set forth in paragraph 3, the BCTC and the BTEA will seek to achieve 100% participation of all apprenticeship programs jointly sponsored by their affiliated unions and contractors in meeting the target goals through apprenticeship recruitment efforts.

6. The City, BCTC, and BTEA acknowledge that on federally funded projects the NYCHA must comply with federal regulations contained at 24 C.F.R. part 135 (“Section 3”) regarding efforts to employ residents of NYCHA developments and other Section 3 populations.

7. To the extent that members of unions affiliated with the BCTC can be documented to legally reside in NYCHA developments or to be members of other Section 3 populations, and they shall be employed on projects in New York City by contractors or subcontractors performing work on a federally funded NYCHA project, such employment shall contribute toward meeting the goals of the Section 3 requirements irrespective of whether it occurs on a federally funded NYCHA project.

8. **Construction Industry Partnership Annual Report.** On an annual basis beginning February 1, 2011, the Construction Industry Partnership of New York City (“CIP”), a joint labor-management organization of the BCTC and the BTEA, shall produce and deliver to the City a written or electronic report that contains:

(i) A consolidated listing of the total number of New York City residents who

were referred to and entered into unions and apprenticeship programs during the prior year through the C-SKILLS, H2H and NEW programs;

(ii) Subtotals of the number of these apprentices (and/or journeypersons for H2H) according to the union and apprenticeship program, residency (by ZIP code), race (African American, Hispanic, Caucasian, Asian and other) and gender (male, female);

(iii) The total number of apprentices who were New York City residents in each apprenticeship program during the prior year, the total number of these apprentices who entered each apprenticeship program during the prior year, and the subtotals of the number of these apprentices according to residency (by ZIP code), race (African American, Hispanic, Caucasian, Asian and other) and gender (male, female).

(iv) A description of the efforts made by the CIP to encourage and facilitate full participation by apprenticeship programs jointly sponsored by BCTC unions and BTEA contractors in meeting the targets set in paragraph 2.

The CIP will report items (i) and (ii) above to the City on a quarterly basis beginning July1, 2010.

9. **Quarterly Notices.** On a quarterly basis, apprenticeship programs jointly sponsored by unions affiliated with the BCTC and employers affiliated with the BTEA shall provide to C-SKILLS, H2H, and NEW written or electronic notice of any incoming classes and the start dates of such classes anticipated to occur within the ensuing one hundred twenty (120) days. Such notices shall include the anticipated start date of each incoming class and the anticipated number of new apprentices to enter each incoming class. Apprenticeship programs shall furthermore cooperate with C-SKILLS, H2H and NEW in coordinating, scheduling and completing any interviews, tests or other requirements for entry. In no event shall a referral from C-SKILLS, H2H or NEW be required to participate in any recruitments, except in any cases where doing so may be required by consent decrees, court orders or similar mandates.

10. **City of New York Apprenticeship Directive.** As a means of expanding the pool of work available to apprentices and graduates of state-approved apprenticeship programs providing opportunities to the groups of individuals designated in Paragraphs 2 and 3 above, the City states its intention to implement, as may be amended from time to time, the Directive, attached as Exhibit A. The Directive directs City agencies, for construction contracts where either (i) the cost estimate of the contract exceeds \$3 million, or (ii) the cost estimate of the contract exceeds \$1 million on a project with a cost estimate of at least \$5 million, and for such other contracts as the bidding agency determines to be appropriate, to require the contractor and any of its subcontractors with subcontracts worth at least \$1 million to have apprenticeship agreements appropriate for the type and scope of work to be performed that have been registered with, and approved by, the New York State Commissioner of Labor. The contractors and subcontractors must also demonstrate that such apprenticeship programs have three years of current, successful experience in providing career opportunities.)

11. The City shall include a statement concerning the applicability of the Directive in every City Record notice of the solicitation or award of a contract for a public works project, and shall also post such information on the Construction Project Procurement Pipeline, available for public viewing in advance of such solicitations, at <http://www.nyc.gov/html/mocs/html/research/pipeline.shtml>. Within thirty (30) days of any determination that no responsible, responsive bids or proposals have been received for any solicitation to which the Directive applies, the City shall notify BCTC and BTEA, in writing or electronically, of the failure to obtain such bids or proposals. Within five (5) days of the issuance of any waiver from the apprenticeship requirement, the City shall notify the BCTC and the BTEA, in writing or electronically, of the granting of such waiver and the reasons therefore.

12. **City of New York Annual Report.** On an annual basis beginning February 1, 2011, the City shall produce and deliver to the CIP a written or electronic report:

(i) Listing the dollar values and dates of award of all contracts to which the Directive was applied during the prior year, and the names and addresses of all contractors to which such work was awarded;

(ii) To the extent any awardee is not a signatory to a project labor agreement referenced in this MOU, or a project labor agreement otherwise recognized by the BCTC, for a contract subject to the Directive, the City shall also identify each of the trades that were employed or anticipated to be used under such contract and shall provide the names and addresses of the sponsors of the apprenticeship programs in which such awardee was confirmed to participate, and the dates that the programs were approved by the NYSDOL.

(iii) For any project that receives at least \$5 million in City capital funding, a listing of all construction contracts awarded that were either made subject to the Directive or to similar apprenticeship requirements, indicating the dollar values, sponsoring/approving agency, dates of award (of the construction contracts), and names and addresses of all contractors awarded such work. The listing shall include all construction contracts on such projects that were made subject to apprenticeship requirements, regardless of whether the construction contracts themselves are funded directly with City capital funding.

(iv) Listing the dollar values and agency approval dates for all subcontracts approved on any of the contracts reported in (i) and (iii) above, other than those approved on any contract subject to a project labor agreement referenced in this MOU, or a project labor agreement otherwise recognized by the BCTC, together with the names and addresses of all subcontractors to which such work was awarded, identifying each of the trades that were employed or anticipated to be used under such subcontract and indicating whether the Directive was applied, and whether the subcontract was credited toward any M/WBE goal or similar state or federal participation goal.

13. **Construction Committee.** The City, the BCTC, and the BTEA agree on the importance of creating apprenticeship training and job opportunities at publicly funded or

assisted construction sites throughout the five boroughs. Moreover, such opportunities are dependent, to a large extent, on the City's and other developer's ability to move forward with planned public works and other publicly funded or assisted construction projects which act affirmatively to promote apprenticeship opportunities. To provide a regular forum for consideration of these issues, the City, the BCTC, and the BTEA establish the NYC Committee on Construction Work Force and Contracting Opportunity ("Construction Committee"). The Construction Committee shall be comprised of sixteen (16) members as follows:

- (i) Three City representatives designated by the Mayor, one of whom shall be the Commissioner of the Department of Small Business Services or his or her designee;
- (ii) One representative designated by the Chairman of NYCHA;
- (iii) One representative designated by the President of the School Construction Authority;
- (iv) Three representatives designated by the BCTC;
- (v) Three representatives from the contractor community designated by the BTEA, at least one of which shall be a representative of minority and women-owned businesses.
- (vi) Three representatives from the contractor community designated by the Mayor, at least two of which shall be representatives of minority and women-owned businesses including both union and non-union contractors;
- (vii) One representative appointed by the Speaker of the City Council; and
- (viii) One representative appointed by the New York City Comptroller.

One representative designated by the Mayor will serve as chair of the Construction Committee and two representatives, one from the BCTC and one from the BTEA, shall serve as vice chairs. The Committee shall meet at least quarterly and shall publish an annual report on the status of Work Force and Contracting Opportunity in New York City, based in part on the annual reports described in sections 6 and 10 above.

14. The City, the BCTC, and the BTEA agree that the Construction Committee is an appropriate venue to discuss potential changes to the City's Directive, including whether apprenticeship requirements serve the public interest in procurement contracts other than those covered by the Directive, or in certain publicly-financed development projects. It is acknowledged that the degree to which apprenticeship requirements apply to publicly funded or assisted projects other than those covered by the Directive is a factor in realizing the goals and commitments referenced herein. In addition, the Construction Committee is an appropriate forum to consider success in meeting the goals set forth in paragraphs 2 and 3 and to discuss available methods of reaching those goals.

15. The City, the BCTC, and the BTEA look forward to working together and with the contractor community in a spirit of cooperation and good will toward the goal that all New Yorkers from diverse backgrounds, particularly minorities, women, returning veterans, new high school graduates and New Yorkers in need of economic opportunity, are well-prepared for participation in the workforce, and can gain access to good careers in the construction industry, in both the private and public sectors.