

510 WEST 45TH ST

Gotham West Buildings B & C

AFFORDABLE HOUSING

PROJECT LABOR AGREEMENT

GOTHAM WEST – BUILDINGS B & C

PROJECT

NEW YORK CITY

between

BUILDING AND CONSTRUCTION TRADES COUNCIL

OF GREATER NEW YORK

and

GOTHAM CONSTRUCTION COMPANY, LLC

Construction Manager - General Contractor

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AFFORDABLE HOUSING

PROJECT LABOR AGREEMENT

PREAMBLE

WHEREAS, 44th Street Development, LLC, the (Owner-Developer) by its Construction Manager and/or General Contractor, desire to provide for the cost efficient, safe, quality and timely completion of affordable housing construction work in the five (5) boroughs of New York City;

WHEREAS, the parties desire to increase union work opportunities in the five (5) boroughs of New York City;

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

- (1) Expediting the construction process and otherwise minimizing the disruption to the project;
- (2) Avoiding the costly delays of labor unrest and promoting labor harmony for the duration of the project;
- (3) Standardizing certain terms and conditions governing the employment of labor on the project;
- (4) Providing comprehensive and standardized mechanisms for the settlement of work disputes, including those relating to jurisdiction;
- (5) Ensuring a reliable source of skilled and experienced labor, and

WHEREAS, the Building and Construction Trades Council of Greater New York, its affiliated Local Unions signatory hereto, desire to provide for stability, security and work opportunities which are afforded by a Project Labor Agreement; and

WHEREAS, the Parties desire to maximize project safety conditions for both workers and others; and

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WHEREAS, it is the intent of the parties that this Agreement shall be utilized in the Affordable Housing Industry as a means to increase union market share and to meet the competitive economic conditions typically found in this industry; and

NOW, THEREFORE, the Parties enter into this Agreement:

A Project Labor Agreement (“PLA”) has been negotiated and executed by and between Gotham Construction Company, LLC, (“Construction Manager”) and the Building and Construction Trades Council of Greater New York (“Council” or “BCTC”) and affiliated unions signatory hereto. The PLA will govern the relationship between the Construction Manager, general contractors, subcontractors and the unions’ signatory hereto with respect to construction work to be performed at Gotham West Building B & C, 510-530 West 45th Street, New York, NY 10036 (“Project”).

ARTICLE I – PARTIES TO THE AGREEMENT

This is a Project Labor Agreement (“Agreement”) for Work to be performed at Gotham West Buildings B & C, 510-530 West 45th Street by Gotham Construction Company, LLC, the Construction Manager, General Contractors and subcontractors of whatever tier; and the Council, and the signatory affiliated Local Unions (“Local Unions”) and their members. The parties each warrant and represent that they have been duly authorized to enter into this Agreement on behalf of and to bind their respective organizations.

ARTICLE II – GENERAL CONDITIONS

SECTION 1 – DEFINITIONS

Throughout this Agreement, the various Union parties, including the Council and its affiliated Local Unions, are referred to singularly and collectively as “Unions(s),” where specific reference is made to “Local Unions” that phrase is sometimes used to denote a particular union affiliated with the Council; the term “Contractor(s)” shall include any General Contractors and all other contractors and subcontractors of whatever tier, engaged in work within the scope of this Agreement as defined in Article III. The work covered by this Agreement is referred to herein as “Project Work.”

SECTION 2 – CONDITIONS FOR AGREEMENT TO BECOME EFFECTIVE

This Agreement shall not be utilized unless the Construction Manager/Contractor applies for application of the PLA prior to any bids or contracts for work being awarded. A Construction Manager or Contractor working with an Owner/Developer may apply for application of the PLA in the planning stages of the project and the BCTC may approve application of the PLA contingent upon the ultimate award of the work to that Construction Manager or Contractor. No post bid/award applications for use of this Agreement will be entertained.

This Agreement shall not become effective unless each of the following conditions are met:

- (1) the Agreement is signed by the Council, and those of its affiliates participating herein;
- (2) the Agreement is approved by the Owner/Developer and signed by its Construction Manager and;
- (3) the Agreement is approved by the Building and Construction Trades Department.

SECTION 3 – ENTITIES BOUND & ADMINISTRATION OF AGREEMENT

This Agreement shall be binding on the Council, the signatory Unions, the Construction Manager and all Contractors performing Project Work as defined in Article III. The Construction Manager and Contractors shall include, in any bid specifications, contracts and/or subcontracts, that they let for performance during the term of this Agreement a requirement that their contractors and subcontractors, of whatever tier, become signatory and bound by this Agreement with respect to work falling within the scope of Article III. This Agreement shall be administered by the Construction Manager or such other designee as may be named by 44th Street Development, LLC (Owner/Developer), on behalf of all Contractors.

SECTION 4 – SUPREMACY CLAUSE

This Agreement, together with the local Collective Bargaining Agreements of the signatory unions appended hereto and collectively referred to as Schedule "A's," represents the complete understanding

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of all signatories. Where a subject covered by the provisions of this Agreement is also covered by a Schedule "A" contract, the provisions of this Agreement shall prevail, where this Agreement is silent on a subject, the applicable Collective Bargaining Agreement(s) found in Schedule "A" shall govern.

It is further agreed that, where there is a conflict, the terms and conditions of this Project Labor 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 X of this Project Agreement, which shall apply to such work.

SECTION 5 – LIABILITY

The liability of any Contractor and the liability of any Union under this Agreement shall be several and not joint. 44th Street Development, LLC (Owner/Developer), the Construction Manager and any Contractor shall not be liable for any violations of this Agreement by any other Contractor; and the Council and signatory unions shall not be liable for any violations of this Agreement by any other Union.

SECTION 6 – THE PLA

The Construction Manager shall require in its bid specifications/contracts for all Project Work, within the scope of Article III, that all successful bidders, and their subcontractors of whatever tier, and any and all contractors of any tier awarded or performing work within the scope of this PLA shall become bound by, and signatory to, this Agreement, or shall sign a "Letter of Assent" in the form annexed hereto agreeing to be bound to and incorporating the terms of this Agreement by reference, 44th Street Development, LLC, Owner/Developer, shall not be liable for any violation of this Agreement by any

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Contractor, expect as specifically provided for in Article XI, Section 2(c), for the payment of delinquent wage and fringe benefit contributions as provided therein.

ARTICLE III – THE WORK - AFFORDABLE HOUSING

This Agreement shall apply to any project that is (1) located in New York City, (2) primarily for residential use, (3) not subject to prevailing wage requirements under the Davis Bacon and Related Acts, Article 8, § 220 of New York State Labor Law or any equivalent thereof, and (4) where fifty (50%) or more of the dwelling units are subject to an agreement with a municipality, the state, the federal government or any instrumentality thereof which restricts the occupancy of such units to individuals or families with a gross household income at or below one hundred and thirty five (135%) of the area median income. Notwithstanding the fact that this agreement shall only apply to projects that are primarily for residential use, the agreement shall apply to all non-residential portions of such projects except to the extent otherwise provided in this agreement. This agreement shall not apply to any project under the terms of another project labor agreement.

The Contractor(s) and subcontractors agree to be bound by this Agreement and the terms of the local Collective Bargaining Agreements (Schedule “A”) of the signatory Unions, entered into between the Unions and their employers and/or employer associations, for work performed within the scope of this agreement. Schedule “A” is incorporated herein by reference to the extent not in conflict with this Agreement.

SECTION 1 – NON-APPLICATION TO CERTAIN ENTITIES

This Agreement shall not apply to the parents, affiliates, subsidiaries, or other joint or sole ventures of any Contractor, which does not perform work at this Project, unless it can be established under applicable law that such entities are alter-egos, single employers, or successors to a contractor. 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 among Owner-Developer, and/or

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any Contractor. 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, check-out and/or warranty work are assigned in writing by the Construction Manager (copy to Local Union involved) to the contractor(s) for performance under the terms of this Agreement.

SECTION 2 – EXCLUDED EMPLOYEES

The following persons are not subject to the provisions of this Agreement, even though performing work ancillary to Project Work:

- (a) Superintendents, supervisors, professional engineers and/or licensed architects engaged in inspection and testing, quality control/assurance personnel, timekeepers, mail carriers, clerks, office workers, messengers, guards, technicians, non-manual employees, and all professional, engineering, administrative and management persons, unless such persons are specifically and explicitly covered by a craft's Schedule "A," for example where general forepersons, forepersons and field surveyors are included in the bargaining unit under a particular Collective Bargaining Agreement, they are covered by this PLA.
- (b) Employees of 44th Street Development, LLC, Owner-Developer, the Construction Project Manager, except those performing manual, on site construction labor who will be covered by this Agreement.
- (c) Employees engaged in on-site machinery warranty work, unless a current employee of a contractor is on site and certified by the relevant manufacturer to make warranty repairs on the contractor's equipment.
- (d) Employees engaged in geophysical testing other than boring for core samples.
- (e) Employees engaged in work, which is ancillary to Project Work and performed by third parties such as utility companies, who shall install their work only to a certain demarcation point identified by the Construction Manager at the commencement of the project, provided that the employees of such third parties are not used to replace employees performing Project Work pursuant to this Agreement.

ARTICLE IV – UNION RECOGNITION AND EMPLOYMENT

SECTION 1 – PRE-HIRE RECOGNITION

The Construction Manager, the contractors, including the general contractors and subcontractors of any tier recognize the signatory Unions as the sole and exclusive bargaining representatives of all craft employees performing Project Work with the scope of this agreement as defined in Article III, with respect to that work.

SECTION 2 – UNION REFERRAL

- A. The Contractors agree to employ, utilize and hire craft employees for Project Work covered by this Agreement through the job referral systems and hiring halls established in the signatory Unions' Schedule "A" Collective Bargaining Agreements, and in accordance with the procedures set forth in those agreements. Notwithstanding this, Contractors shall have the sole right to reject any applicant referred by a Local Union for good cause.
- B. In the event that a Local Union is unable to fill any request for qualified employees within a 48-hour period after such request by a Contractor (Saturdays, Sundays and holidays excepted), a Contractor may employ qualified applicants in that trade from any other available source, upon notification to the Local Union and subject to Section 4 below. 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 craft employees hired for Project Work within its jurisdiction from any source other than referral by the Union.

SECTION 3 – NON-DISCRIMINATION

The signatory Unions represent that their respective Local Union hiring hall and referral system 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.

SECTION 4 – UNION DUES

All employees of all contractors and subcontractors performing work covered by this Agreement shall be subject to the Union Security provisions contained in the applicable Schedule "A" Collective Bargaining Agreements, 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 tendering payment of the applicable union dues and assessments uniformly required for union membership in the Local Unions which represents the craft in which the employee is performing Project Work.

SECTION 5 – 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 contractors subject to union rules for safety. Craft forepersons shall work pursuant to the terms and conditions established under the relevant local Collective Bargaining Agreement.

SECTION 6 – APPRENTICES

Apprentices may be employed at the maximum ratios approved by the New York State Department of Labor for the relevant trade.

SECTION 7 – HELMETS TO HARDHATS

A. 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.

B. 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 Execution Copy

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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 V – UNION REPRESENTATION

SECTION 1 – LOCAL UNION REPRESENTATIVE

Each Local Union representing Project employees shall be entitled to designate a representative(s), and/or the Business Manager, who shall be afforded access to the Project but who shall not disrupt or interrupt the work of employees.

SECTION 2 – STEWARDS

- (a) Each Local Union shall have the sole discretion to select and designate any journey person as a Steward and an alternate Steward. The Union shall notify the Owner and/or Construction Project Manager, as well as the Contractor of the identity of the designated Steward prior to the assumption of such duties. All stewards shall be working stewards.
- (b) In addition to their work as an employee, the Steward shall have the right to receive complaints or grievances from the employees working in their respective trade and to discuss and assist in their adjustment with the Contractor.

SECTION 3 – LAYOFF OF A STEWARD

Contractors agree to notify the appropriate Union 24 hours prior to the layoff of a Steward, except in cases of discipline or discharge for just cause. 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 VI – MANAGEMENT’S RIGHTS

SECTION 1 – RESERVATION OF RIGHTS

Except as expressly limited by a specific provision of this Agreement and the applicable Schedule “A”s, 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 of employees to be hired and the qualifications therefore; the promotion, transfer, layoff of its employees;

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or the discipline or discharge for just cause of its employees; the assignment (subject to New York Plan provisions) and schedule of work; the promulgation of reasonable Project Work rules that are not inconsistent with this Agreement; and the requirement, timing and number of employees to be utilized for overtime work. No rules, customs, or practices that limit or restrict productivity or efficiency of the individual as exclusively determined by the Owner and/or Contractor shall be permitted or observed, provided such means and methods are not inconsistent with industry practice and custom as set forth in lawful work preservation and union standards clauses contained in the Schedule "A" Agreements.

SECTION 2 – WORK PRESERVATION – SUB-CONTRACTING

The Construction Manager agrees that neither it nor any of its contractors or subcontractors will subcontract any work to be done on the Project except to a person, firm or corporation who is or agrees to become party to this Agreement. Any contractor or subcontractor working on the Project shall, as a condition to working on said Project, become signatory to and perform work under the terms of this Agreement.

ARTICLE VII – WORK STOPPAGES AND LOCKOUTS

SECTION 1 – NO STRIKES – NO LOCK OUT

There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns or other unlawful disruptive activity regarding Project Work, except as provided in Article XI, Sec. 3(c). There shall be no lockout at the Project by any signatory Contractor, Construction Manager or the Owner-Developer. Contractors and Unions shall use their best efforts to ensure compliance with this Section 1 and to ensure uninterrupted construction and the free flow of traffic in the project area for the duration of this Agreement.

SECTION 2 – DISCHARGE FOR VIOLATION

A 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 30 days. Such discharge shall be subject to the grievance arbitration clause set forth in Subsection 5 of this Article.

SECTION 3 – NOTIFICATION

If the Owner or any Contractor contends that any Union has violated this Article, it will notify the Local Union involved advising of such fact, with copies of the notification to the Council. The Local Union and the Council shall each use their best efforts to cause, the employees to immediately cease and desist from any violation of this Article. The Council shall not be liable for the unauthorized acts of a Local Union or its members. Similarly, a Local Union and its members will not be liable for any unauthorized acts of the Council or its other affiliates. Failure of a Contractor or the Construction Project Manager to give any notification set forth in this Article shall preclude enforcement of this provision.

SECTION -4 – EXPEDITED ARBITRATION

Any Contractor or 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 Richard Adelman who shall serve as Arbitrator under this expedited arbitration procedure. Copies of such notification will be simultaneously sent to the alleged violator and the Council.
 - (b) The Arbitrator shall thereupon, after notice as to the time and place to the Contractor, the Local Union involved, the Council and the Construction Project Manager, 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 required by Section 3 above.
 - (c) All notices pursuant to this Article may be provided by telephone, telegraph, hand delivery, or fax, confirmed by overnight delivery, to the Arbitrator, Contractor, Construction Project Manager and Local 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 (not more than 4 hours being allowed to either side to present their case, and conduct their cross examination) unless
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otherwise agreed. A failure of any Union or 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 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 (any damages issue is reserved solely for court proceedings, if any). The Award shall be issued in writing within 3 hours after the close of the hearing, and may be issued without an Opinion. If any involved party desires an Opinion, one shall be issued within 15 calendar days, but its issuance shall not delay compliance with, or enforcement of, the Award.
- (e) An Award issued under this procedure may be enforced by any court of competent jurisdiction upon the filing of this Agreement together with the Award. Notice of the filing of such enforcement proceedings shall be given to the Union and Contractor involved, and the Construction Project Manager.
- (f) Any rights created by statute or law governing arbitration proceedings which are inconsistent with the procedure set forth in this Article, or which interfere with compliance thereto, are hereby waived by the Contractors and Unions to whom they accrue.
- (g) The fees and expenses of the Arbitrator shall be equally divided between the involved Contractor and Union.

SECTION 5 – ARBITRATION OF DISCHARGES FOR VIOLATION

Procedures contained in Article IX 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 IX 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 VIII – LABOR MANAGEMENT COMMITTEE

SECTION 1 – SUBJECTS

The Project Labor Management 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) discuss matters relating to staffing and scheduling with safety and productivity as considerations; and (4) collective bargaining for the purpose of negotiating an ADR program for Workers Compensation benefits consistent with Section 25(2-C) of the New York State Workers Compensation Law.

SECTION 2 – COMPOSITION

The Committee shall be jointly chaired by a designee of the Construction Manager and the Council. It may include representatives of the Local Unions and Contractors involved in the issues being discussed. The Committee may conduct business through mutually agreed upon subcommittees.

ARTICLE IX – GRIEVANCE and 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 VII, 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.

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 involved Contractor and the Construction Project Manager. To be timely, such notice of the grievance must be given within 7 calendar days after the act, occurrence or event giving rise to the grievance. The business

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representative of the Local Union or the job steward and the work site representative of the involved Contractor shall meet and endeavor to adjust the matter within 7 calendar days after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party, may, within 7 calendar days thereafter pursue Step 2 of the grievance procedure by serving the involved Contractor with written copies of the grievance setting forth a description of the claimed violation, the date on which the grievance occurred, and the provisions of the Agreement alleged to have been violated. Grievances and disputes settled at Step 1 are non-precedential except as to the specific Local Union, employee and Contractor directly involved unless the settlement is accepted in writing by the Construction Project Manager (or designee) as creating a precedent.

- (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 7 calendar days, the dispute shall be reduced to 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 involved Contractor, Council and the Construction Project Manager (or designee), shall meet in Step 2 within 7 calendar days of service of the written grievance to arrive at a satisfactory settlement.

Step 3:

In the event Step 2 does not result in a settlement or resolution of the grievance, the matter may be submitted for mediation to designee of the Council and Construction Project Manager.

Step 4:

- (a) If the grievance shall have been submitted but not resolved in Step 3, any of the participating Step 3 entities may, within 21 calendar days after the initial Step 3 meeting, submit the grievance in writing (copies to other participants, including the Construction Project Manager or designee) to Richard Adelman, who shall act, as the Arbitrator under this procedure. The Labor Arbitration Rules of the Execution Copy

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American Arbitration Association shall govern the conduct of the arbitration hearing, at which all Step 2 participants shall be parties. The decision of the Arbitrator shall be final and binding on the involved Contractor, Local Union and employees and the fees and expenses of such arbitrations shall be borne equally by the involved Contractor and Local Union.

- (b) Failure of the grieving party to adhere to the time limits set forth in this Article shall render the grievance null and void. These time limits may be extended only by consent of the Construction Project Manager (or designee), involved 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

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 Construction Project Manager and the involved Contractor or Local Union.

SECTION 3 – PARTICIPATION BY CONSTRUCTION PROJECT MANAGER

The Owner and Construction Manager shall be notified by the involved Contractor of all actions at Steps 2 and 3 and, at its election may participate in full in all proceedings at these Steps, including Step 4 arbitration.

ARTICLE X – JURISDICTIONAL DISPUTES

The New York Plan for the Settlement of Jurisdictional Disputes (“New York Plan”) shall apply to the settlement of all jurisdictional disputes involving all Project Work. The New York Plan shall apply to any and all contractors, subcontractors and unions performing work on the Project.

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SECTION 1 – NO DISRUPTIONS

There will be no strikes, sympathy strikes, work stoppages, slowdowns, picketing or other unlawful disruptive activity of any kind arising out of any jurisdictional dispute. Pending the resolution of the dispute, the work shall continue uninterrupted and as assigned by the Contractor.

SECTION 2 – ASSIGNMENT

All Project work assignments shall be made by the Contractor to unions affiliated with the BCTC or BCTD consistent with the New York Plan for the Settlement of Jurisdictional Disputes (“New York Plan”) and its Greenbook decisions, if any. Where there are no applicable Greenbook decisions, assignments shall be made in accordance with the provisions of the New York Plan and local industry practice.

ARTICLE XI – 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 eighty percent (80%) of the total hourly wage and fringe benefit package rates for those classifications as specified in the Schedule “A” agreements. This 80% rate applies to the affiliates’ rates existing prior to any adjustments made as part of any prior Project Labor Agreement negotiations and not in addition thereto. The unions, at their sole discretion and with respect to their own local union, will allocate the package rate between wages and fringes.

SECTION 2 – HOURS OF WORK, HOLIDAYS, RESTRICTIONS, etc.

(a) STANDARD WORK DAY/WORK WEEK

The standard work week shall consist of 40 hours of work at straight time rates, 8 hours per day, plus ½ unpaid lunch period.

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(b) STARTING TIMES

Flexible starting times of full crews between 6:30am to 9:00am shall be permitted and contractors shall provide not less than 7 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 agreed upon.

(c) OVERTIME

Overtime shall be paid for any work over eight (8) hours in a day, as well as over forty (40) hours in a week at a time and one half (1 ½) Monday through Saturday. All overtime work performed on Sunday and Holidays will be paid pursuant to the applicable Schedule "A" CBA. There shall be no stacking or pyramiding of overtime pay under any circumstances. There will be no restriction upon the Contractor's scheduling of overtime or the non-discriminatory designation of employees who shall be worked except that first choice for overtime shall be granted to those who are working at the site. The Contractor shall have the right to schedule work so as to minimize overtime or schedule overtime as to some, but not all, of the crafts and whether or not of a continuous nature.

(d) SHIFTS

A. Flexible Schedules - Scheduling of shift work, including Saturday and Sunday work, shall be within the discretion of the Contractor in order to meet Project Work schedules and existing Project Work conditions including the minimization of interference with the operations of the Owner. Shifts must have prior approval of the Construction Manager, and must be scheduled for no less than 5 consecutive work days and with not less than five work days notice to the Local Union or such lesser notice as may be mutually agreed upon.

B. Second and/or Third Shifts - The second shift shall start between 3 p.m. and 6 p.m. and the third shift shall start between 11 p.m. and 2 a.m., subject to different times necessitated by the phasing plans on the project upon notice and consent of the affected trades. Second and third shifts shall be paid a fifteen percent (15%) premium on wages and fringes, or the CBA rate, whichever is less.

Gotham West Buildings B & C

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

(e) HOLIDAYS

There shall be eight (8) holidays recognized on the Project:

New Year's Day	Independence Day
Martin Luther King Jr. Day	Labor Day
President's Day	Thanksgiving Day
Christmas Day	Memorial 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. Christmas Eve and New Year's Eve shall be treated as they are in Schedule "A" agreements.

(f) SATURDAY MAKE UP DAYS

When severe weather, power failure, fire or natural disaster or other similar circumstances beyond the control of the Contractor prevents work from being performed on a regularly scheduled week day, the Contractor may schedule a Saturday make-up day for the existing crew and such time shall be scheduled and paid as if performed on a week day. If such a make-up day is to be worked, the Contractor shall notify the Local Union on the missed day. Any other Saturday work shall be paid at time and one half (1 ½), or the CBA rate, whichever is less.

(g) LAYOFF

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.

Gotham West Buildings B & C

(h) EMERGENCY WORK SUSPENSION

A Contractor, if considered necessary for the protection of life and/or safety of others, may suspend all or a portion of the work on the jobsite. In such instances employees will be paid for actual time worked, except when a Contractor requests that employees remain at the jobsite and be available for work, employees will then be paid for that time at their hourly rate of pay.

(i) 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 shall be rehired at such time as able to return to duties provided that there is still work available at the jobsite for which the employee is qualified and able to perform.

(j) LUNCH PERIOD

A Contractor shall schedule an unpaid period of not more than one half (1/2) hour duration for lunch between the 3rd and 5th hour of the work day. 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".

(k) COOPERATIVE EFFORTS

The Contractors and Unions agree that they will not discriminate against any employee because of race, color, religion, sex, national origin, marital status, age or any other status provided by law, in any manner prohibited by law or regulation. The Developer, Contractor and Unions together shall promote best efforts for the hiring of a diverse local workforce and shall develop a system for the referral of craft workers from local zip codes within permissible guidelines of the law and union referral procedures.

(l) STANDARDS OF EXCELLENCE

This Agreement shall embrace and incorporate the attached Building Trades Standards of Excellence.

SECTION 3 – TRUST FUNDS

- a. The Contractors agree to pay contributions to the established funds in the amount of the rates designated in the appropriate Schedule "A." Jointly trusted fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added.
- b. The Contractors agree to be bound by the written terms of legally established Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Trust Funds with regard to work done on this Project for those employees to whom this Agreement required such benefits Payments.
- c. It is agreed that in return for the Unions not striking over alleged benefit fund delinquencies, the Construction Manager agrees to withhold from outstanding monies due to a Contractor, which is allegedly delinquent for contributions due for hours worked on the Project, upon thirty (30) days written notice to its Construction Manager, with a copy to the relevant Contractor, from the respective Benefit Fund Administrator or its affiliated Union, the amount claimed. The Construction Manager further agrees to pay over any such withheld amounts within forty-five (45) days after receipt of such notification from the Union, provided that such amounts have not already been paid or the dispute has not been submitted to arbitration; in the latter case, withholding or pay over shall occur only after issuance of an arbitration award so directing. A failure of the Construction Manager to comply with this provision shall constitute a material breach of this Agreement and the involved Local Union may withhold labor until such time as this provision is complied with.

ARTICLE XII – NO DISCRIMINATION

SECTION 1. – COOPERATIVE EFFORTS

The Contractors and Unions agree that they will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, national origin, marital status, are or any other status provided by law, in any manner prohibited by law or regulations.

SECTION 2. LANGUAGE OF AGREEMENT

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

ARTICLE XIII – TEMPORARY SERVICES

Temporary services, i.e., all temporary heat, climate control, water, power and light, may be used at the discretion of the Construction Manager; and when requested shall be assigned to the appropriate trade with jurisdiction. Temporary system coverage shall be provided by the appropriate Contractors' existing employees during working hours in which a shift is scheduled for any employees. The Construction Manager may determine the need for temporary system coverage requirements during non-working hours. There shall be no stacking of trades on temporary services. In the event a temporary system is claimed by multiple trades, the matter shall be resolved through the New York Plan for the Settlement of Jurisdictional Disputes.

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

SECTION 2 – NON-LIABILITY

- a. Nothing in this Article shall be construed as waiving the prohibitions of Article VII as to signatory Contractors and Unions, except as set forth in Article XI, Section 2(c).
- b. Nothing in this Agreement is intended to be or shall be construed as a waiver by any union(s) of any prevailing wage determination or schedule that is applicable to their trade for any public work that has been or may be performed in the future on any work outside the scope of this Agreement.
- c. Nothing contained in this Agreement is intended to be or shall be construed as a waiver by any signatory union(s) of any more favorable term or condition of employment that may be contained in any collective bargaining agreement applicable to work outside the scope of this agreement.

SECTION 3 – NON-WAIVER

- a. Nothing in this Article shall be construed as waiving the prohibitions of Article VII as to signatory Contractors and Unions, except as set forth in Article XI, Section 2(c).
- b. Nothing in this Agreement is intended to be or shall be construed as a waiver by any Union(s) of any prevailing wage determination or schedule that is applicable to their trade for any public work that has been or may be performed in the future on any work outside the scope of this agreement.
- c. Nothing contained in this Agreement is intended to be or shall be construed as a waiver by any signatory union(s) of any more favorable term or condition of employment that may be contained in any Collective Bargaining Agreement applicable to work outside the scope of this agreement.

ARTICLE XV – FUTURE CHANGES IN SCHEDULE “A” AREA CONTRACTS

SECTION 1 – CHANGES TO AREA CONTRACTS

If there are any changes in the rate or other terms and conditions of employment that are negotiated in any area collective bargaining after the start of the construction project, such change shall be applicable to work on this project.

ARTICLE XVI – WORKFORCE DEVELOPMENT

The Parties recognize that the Project will require large numbers of craft personnel and other supporting workers. It is, therefore, the explicit understanding and intention of the Parties to use the opportunities provided by the length of the Project and the extensive amount of work to be covered by the Labor Agreement to identify and promote, through cooperative efforts, programs, procedures, and ways to assist interested local residents in the surrounding communities of the Project, especially disadvantaged residents, in pursuing careers in the construction industry through apprenticeship programs. These efforts may include, for example, programs to prepare persons for entrance into formal apprenticeship programs such as pre-apprenticeship programs utilizing the Building and Construction Trades Council’s Edward J. Malloy Initiative for Construction Skills, and any program that may be offered the Department, and outreach programs to the community describing opportunities available as a result of the Project.

Gotham West Buildings B & C

**FOR BUILDING AND CONSTRUCTION TRADES COUNCIL OF
GREATER NEW YORK AND VICINITY**

BY: Gary LaBarbera

Gary LaBarbera, President

Approved by: _____ BY: _____
44th Street Development, LLC Gotham Construction Company, LLC

AFFILIATES:
See attached addendum for signatory affiliates.

Gotham West Buildings B & C

Boiler Makers Local No. 5

By: _____

Date: _____

Bricklayers Local No. 1

By: _____

Date: _____

Concrete Workers District Council No. 16

By: _____

Date: _____

Drywall Tapers 1974 DC 9

By: _____

Date: _____

Elevator Constructors No. 1

By: _____

Date: _____

Glaziers Local Union No. 1281 DC 9

By: _____

Date: _____

Heat & Frost Insulators Local Union No. 12A

By: _____

Date: _____

Carpenters District Council

By: _____

Date: _____

Cement Masons No. 780

By: _____

Date: _____

Derrickmen and Riggers Local Union No. 197

By: _____

Date: _____

Electrical Local No. 3

By: _____

Date: _____

Heat & Frost Insulators
Local Union No. 12

By: _____

Date: _____

Laborers Local 1010

Pavers and Road Builders District Council

By: _____

Date: _____

Plumbers No. 1

By: George W. Rilly

Date: August 3, 2011

GOTHAM WEST BUILDINGS B & C PLA SCHEDULE "B"
TRADE SPECIFIC ADDENDA - Term Sheet

SCHEDULE "B"

The parties to the Project Labor Agreement agree that this Schedule "B" shall apply to this Project, and shall modify relevant provisions of the PLA and relevant provisions in the current collective bargaining agreements between the Affiliated Unions and the Construction Manager, and/or any of its Contractors/subcontractors for this Project only due to the special considerations set forth in the Preamble to the PLA and shall not constitute a reopener or waiver of the terms and conditions set forth in the collective bargaining agreements for any other purpose.

ENTERPRISE ASSOCIATION, STEAMFITTERS LOCAL 638 ("Local 638") as follows:

1. The Project Labor Agreement ("the PLA") between Gotham Construction Company, LLC and the New York City Building and Construction Trades Council on this Project is made to facilitate the building of the Project in this time of economic distress.

2. **Overtime.**

Overtime May Be Worked Only With The Permission Of The Union.

3. **Temporary Services.**

Temporary Services will be maintained at the owner's request in accordance with the Trade Agreement. Once the system is on automatic, then no temporary services will be required.

4. **Economic Terms.**

(a) For the purpose of THIS PROJECT ONLY, the schedule "A" Agreement shall be the Trade Agreement as modified by the Public Works Supplement thereto shall be the wage rate, overtime rate, shift rate, etc. for the Project.

(b) Local 638 commits that its Job Target Program will provide an agreed upon amount per hour of work on this Project.

These two items – (a) application of the Public Works Supplement and (b) an agreed upon amount per hour of Job Target funds for hours worked on this Project are estimated to equal a significant cost savings to the owner.

- 5. Local 638 will abide by the no-strike clause in the PLA.
- 6. Local 638 will honor the common holidays set forth in the PLA.
- 7. This Addendum will not go into effect unless the PLA for this Project is approved by all necessary parties.

ENTERPRISE ASSOCIATION,
STEAMFITTERS LOCAL 638

By: Steamfitters 638
 Name and Title: Richard B. Roberts
 Dated: 8/16/11

Gotham West Buildings B & C

Project Labor Agreement -- Letter of Assent

Dear _____:
Gotham Construction Company, LLC

The undersigned party confirms that it agrees to be a party to and be bound by the Building B & C Project Labor Agreement as such Agreement may, from time to time, be amended by the parties or interpreted pursuant to its terms. The terms of the Project Labor Agreement, its Schedules, Addenda and Exhibits are hereby incorporated by reference herein.

The undersigned, as a Contractor or Subcontractor (hereinafter Contractor) on the Project Gotham West Buildings B & C located at 10-530 West 45th Street, New York, NY 10019 (hereinafter PROJECT), for and in consideration of the award to it to contract to perform work on said PROJECT, and in further consideration of the mutual promises made in the Project Labor Agreement, a copy of which was received and is acknowledged, hereby

- (1) Accepts and agrees to be bound by the terms and conditions of the Project Labor Agreement, together with any and all schedules; amendments and supplements now existing or which are later made thereto;
- (2) Agrees to be bound by the legally established collective bargaining agreements and local trust agreements as set forth in the Project Labor Agreement.
- (3) Authorizes the parties to such local trust agreements to appoint trustees and successor trustees to administer the trust funds and hereby ratifies and accepts the trustees so appointed as if made by Contractor;
- (4) Certifies that it has no commitments or agreements that would preclude its full and complete compliance with the terms and conditions of said Project Labor Agreement. The Contractor agrees to employ labor that can work in harmony with all other labor on the Project and shall require labor harmony from every lower tier subcontractor it engaged to work on the Project. Labor harmony disputes/issue shall be subject to the Labor Management Committee's dispute resolution provisions.
- (5) Agrees to secure from any Contractor(s) (as defined in said Project Labor Agreement) which is or becomes a Subcontractor (of any tier), to it, a duly executed Agreement to be Bound in from identical to document.
- (6) Agrees that it will not invoke the Most Favored Clause that may be contained in any of its Collective Bargaining Agreements with affiliated unions as a result of the application of this PLA to a project.

Dated: _____
(Name of Contractor or subcontractor)

(Name of CM; GC; Contractor or Higher Level Subcontractor)

(Authorized Officer & Title)

(Address)

(Phone) (Fax)

Contractor's State License # _____

Sworn to before me this
___ day of _____, 2011

Notary Public

**BUILDING AND CONSTRUCTION TRADES COUNCIL
OF GREATER NEW YORK
STANDARDS OF EXCELLENCE**

The purpose of this Standard of Excellence is to reinforce the pride of every construction worker and the commitment to be the most skilled, most productive and safest workforce available to construction employers and users in the City of New York. It is the commitment of every affiliated local union to use our training and skills to produce the highest quality work and to exercise safe and productive work practices.

The rank and file members represented by the affiliated local unions acknowledge and adopt the following standards:

- *Provide a full days work for a full days pay;*
- *Safely work towards the timely completion of the job;*
- *Arrive to work on time and work until the contractual quitting time;*
- *Adhere to contractual lunch and break times;*
- *Promote a drug and alcohol free work site;*
- *Work in accordance with all applicable safety rules and procedures;*
- *Allow union representatives to handle job site disputes and grievances without resort to slowdowns, or unlawful job disruptions;*
- *Respect management directives that are safe, reasonable and legitimate;*
- *Respect the rights of co-workers;*
- *Respect the property rights of the owner, management and contractors.*

The Unions affiliated with the Building and Construction Trades Council of Greater New York will expect the signatory contractors to safely and efficiently manage their jobs and the unions see this as a corresponding obligation of the contractors under this Standard of Excellence. The affiliated unions will expect the following from its signatory contractors:

- *Management adherence to the collective bargaining agreements;*
- *Communication and cooperation with the trade foremen and stewards;*
- *Efficient, safe and sanitary management of the job site;*
- *Efficient job scheduling to mitigate and minimize unproductive time;*
- *Efficient and adequate staffing by properly trained employees by trade;*
- *Efficient delivery schedules and availability of equipment and tools to ensure efficient job progress;*
- *Ensure proper blueprints, specifications and layout instructions and material are available in a timely manner*
- *Promote job site dispute resolution and leadership skills to mitigate such disputes;*
- *Treatment of all employees in a respectful and dignified manner acknowledging their contributions to a successful project.*

The affiliated unions and their signatory contractors shall ensure that both the rank and file members and the management staff shall be properly trained in the obligations undertaken in the Standards of Excellence.