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The New York Plan

For

The Settlement of Jurisdictional Disputes

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2012 New York Plan

## PREAMBLE

This Agreement is entered into by and among the Building & Construction Trades Council of Greater New York (hereinafter "Trades Council") and its constituent local unions. \*

Realizing the vital economic importance of maintaining harmony in the building and construction industry, and to preserve, revise and expand the predecessor plan, which had been in existence since 1903, as amended, for the resolution of jurisdictional disputes among the various trade unions affiliated with the Trades Council, we, the authorized representatives of the Trades Council and its affiliates hereby agree that the procedures outlined below shall govern all jurisdictional disputes between the trades affiliated with the Trades Council, and all entities bound hereto and shall be known as the New York Plan for the Settlement of Jurisdictional Disputes (herein "New York Plan" or "Plan").

*All decisions rendered by the predecessor plan as published in the Handbook of the Building Trades Employers' Association are fully adopted and constitute the decisions of this revised plan.*

\* The BCTC has sought the participation of the GCA in this Plan. The BCTC has provided for the participation of the GCA and its signatory unions herein so that all parties and their affiliates would understand the proposed format for GCA participation in this Plan. However, unless executed by the GCA, all GCA references will be inapplicable

Article I

ADMINISTRATION

1. The New York Plan shall be administered by the President of the Trades Council.

2. The BCTC shall be responsible for processing cases of jurisdictional disputes when referred to the New York Plan in accordance with the procedural steps set forth herein. The BCTC shall establish procedures for the scheduling of mediations and arbitrations; administration of the arbitration program; issuance of Notices of Intent to Arbitrate and scheduling notices; publication of the Awards and Decisions of the Plan in the "Green Book"; and maintenance of records of the Plan, consistent with the Plan set forth herein.

Article II

APPLICABILITY

1. The procedures and decisions emanating from this Plan shall apply to the following:

- (a) All unions affiliated with the Trades Council, all unions affiliated with a District Council affiliated with the BCTC and all District Councils in which any affiliate is a member; and all those that were previously affiliated at the time a jurisdictional dispute arose; and
- (b) Any employer that has executed an agreement to be bound by the procedures and decisions of this Plan; and
- (c) Any employer, employer association or union that is party to a collective bargaining agreement providing for the settlement of jurisdictional disputes under the procedures and decisions of this Plan; and

- (d) All employers not covered under (b) and (c), above and who are acting as subcontractors, general contractors, construction managers or project coordinators that have otherwise agreed to be bound by the Plan.

### Article III

#### STIPULATION PROCEDURE

1. The Trades Council agrees that it shall require its affiliated local unions to solicit at the earliest possible opportunity written agreement to the Plan by all employers in a collective bargaining relationship with such local and/or their employer associations. The language to be included in affiliated unions' collective bargaining agreements is annexed hereto as Addendum "A."

2. The employers and employer associations, general contractors, construction managers or project coordinators that are bound to the Plan, agree that subcontracted work shall be assigned in accordance with Green Book decisions or GCA decisions where applicable, as provided in Article V, and they shall seek approval of the owners/developers to include in all bid documents at all levels that they or their contractors will only subcontract work or permit further subcontracting by its subcontractors, to employers who are, or become, bound to the Plan, and in the event they or their subcontractor wish to subcontract work to an employer that is not currently bound to the Plan, they shall solicit the subcontractors' agreement to the Plan prior to awarding the subcontract to the previously non-bound employer and they will take all steps necessary to implement

this provision. In all events work assignments made through subcontracting by entities bound to this Plan shall be in accordance with this paragraph.

#### Article IV

#### GENERAL PROVISIONS

1. All entities bound to this Plan, including but not limited to construction managers, project coordinators, general contractors and subcontractors, shall make all work assignments to BCTC affiliates bound to this Plan and in accordance with the decisions of the Plan, Green Book and GCA decisions, where applicable. If there are no applicable decisions, then in accordance with International Agreements of record between the trades and/or their International Unions or local industry practice.

2. When any entity bound to this Plan by any means makes an assignment of work he shall continue such assignment without alteration unless a change is agreed to between the contending local unions or it is directed to reassign the work in an official decision and award in accordance with this Plan.

3. The unions bound to the Plan shall not engage in any strikes, work stoppages picketing or public demonstrations that may disrupt the worksite as a result of a jurisdictional dispute with another union bound by the Plan.

4. It shall be the contractor's responsibility to coordinate the assignment of work in accordance with Plan decisions.

5. The procedures of this Plan may be invoked by a local union bound by this Plan either at the time that the work is awarded to a contractor or at the time

of assignment of the work to a particular trade by the contractor. Under no circumstances shall the failure to contest an award of work to a contractor preclude a union from bringing a dispute to the Plan later at the time of actual assignment of the work to a particular trade.

6. An employer bound to this Plan that is directly responsible for the assignment of disputed work and that alleges there is a strike or impediment to job progress related to a jurisdictional dispute between trades bound to this Plan may submit the dispute to the Plan, by written notice to the President of the BCTC. A strike shall have its common meaning in this context, which constitutes a withholding of labor specifically related to the alleged jurisdictional dispute. Job impediments shall be defined as actions by the trades that actually and directly cause a delay in work on the particular job site that is the subject of the dispute.

- (a) The threshold issue in any such submission shall be whether there is in fact a strike or impediment to job progress and the burden of establishing the existence of such a strike or job impediment shall be upon the submitting employer. Such threshold issue shall be submitted to one of the four independent professional arbitrators described below in Article V, Section 3(c), for this initial determination. The costs associated with the initial submission, as well as the further processing of the case under Article V if necessary shall be born by the submitting employer.
- (b) In the event there is a determination by the arbitrator that there is no strike or impediment to job progress, the employer's submission shall be dismissed.
- (c) In the event the arbitrator determines that there is in fact a strike or impediment to job progress the dispute shall be submitted for resolution in accordance with Article V herein.
- (d) Submissions by contractors under this section shall proceed immediately to mediation pursuant to Article V below. If the mediation produces no resolution, the contractor may submit the matter for arbitration, in

writing to the BCTC within 48 hours of the conclusion of the mediation. The arbitration shall be conducted in accordance with Article V below.

## Article V

### RESOLUTION OF JURISDICTIONAL DISPUTES

#### 1. STEP ONE - DIRECT RESOLUTION

- (a) Whenever a dispute arises over an assignment of work on a jobsite, the trade objecting to the assignment ("challenging trade") shall, by its business manager, request a meeting with the business manager, of the trade in possession of the work assignment ("trade in possession"). The purpose of said meeting is to make all reasonable efforts to resolve the dispute directly between the trades. Said meeting shall be conducted within two (2) business days of the request. In the event that a meeting cannot be arranged within the said 2 days, a telephone conference should be arranged within the same said 2 days.

If the challenging trade does not proceed with a mediation request within ten (10) business days of the dispute then the challenge shall be deemed abandoned for that job.

- (b) In the event there are Green Book decisions, or GCA jurisdictional decisions where applicable or International Agreements of record between the trades, the trade relying thereon shall immediately provide the citation for such reliance to the contending trades.
- (c) Simultaneously with the request for a meeting as provided for in subparagraph (a), the challenging trade shall provide notice of the dispute to the Trades Council. Said notice shall contain the name, address and phone number of the challenging trade, trade-in-possession, and employer, as well as the jobsite location, and any citation of applicable Green Book decisions, or agreements of record between trades.

#### 2. STEP TWO-MEDIATION

- (a) In the event the representatives of the trades involved in the dispute are unable, for any reason, to resolve the matter within said 2 day period, the challenging trade may submit the dispute to the Plan for mediation. Said submission shall be by either

telephonic or written communication to the Trades Council, with simultaneous notice provided to the trade in possession.

- (b) Mediation shall be conducted within seven (7) business days of the date of the submission. The Trades Council shall notify the contending unions of the date, time and location of the mediation. Said notice shall be by telegraphic, fax or overnight written communication to the parties to the dispute.
- (c) The contending trades may jointly request an extension of this seven (7) day period. However, such extensions will only be granted under the following circumstances:
  - 1.the request is jointly made; and
  - 2.the reason for the request is that the contending trades have a good faith intent and belief that they may be able to directly resolve the matter with additional time; and
  - 3.no prior extensions have been granted
- (d) If the mediation involves unions signatory to a collective bargaining agreement with the GCA, the Director of Labor Relations of the GCA shall conduct the mediation with the President of the Trades Council or if one union is signatory to a CBA with a contractor other than the GCA and one union is signatory to a CBA with GCA then the mediation shall be conducted by the Director of Labor Relations for the GCA and the President of the Trades Council.
- e) The mediators shall make every effort to have the contending unions voluntarily comply with Green Book decisions, GCA jurisdictional decisions, and/or International Agreements of record between trades, where applicable. Where no decision or agreement is applicable, the mediators shall assist the contending trades to resolve the matter by agreement consistent with the purposes and policies of the Plan.
- (f) In the event the mediators conclude that the dispute is governed by a Green Book decision of record, or GCA decision where appropriate, the mediators shall reduce such conclusion to writing setting forth the reasons for the conclusion. Either union is free to submit the mediators' written conclusion into evidence at an arbitration hearing.



### 3. STEP THREE - ARBITRATION

- (a) If the dispute is not resolved through mediation, the challenging trade may submit the matter for arbitration within seven (7) business days of the date of mediation, by written communication to the BCTC. Simultaneously therewith, Notice of Intent to Arbitrate shall be served by the submitting union by telegram, facsimile transmission, overnight mail or hand delivery, with proof of said service, or where time permits, by certified mail return receipt requested. Said Notice of Intent to Arbitrate ("Notice of Intent") shall identify the nature and location of the dispute to be determined in arbitration. The cost of the arbitrator shall be born by the contractor responsible for the contract that governs the assignment of the work in dispute, and the cost of the transcripts of the hearing shall be born equally by the contending trades.
- (b) The arbitration will be conducted by an independent professional arbitrator.
- (c) The independent professional arbitrator shall be selected from a standing panel of professional arbitrators designated by the BCTC affiliates, which shall include Richard Adelman; Gene Coughlin; Howard Edelman; John Feerick; Thomas Hanrahan; Roger Maher; Stephen O'Bierne; J.J. Pierson; Christopher Sabatella; Martin Scheinman; and Jack Tillem.
- (d) The arbitrator shall be selected by lottery in accordance with the following procedure:
  1. At the conclusion of mediation, the mediator will provide the parties to the dispute with the above referenced list of arbitrators.
  2. Each party shall have the right to strike any two of the eleven (11) listed arbitrators from the pool of arbitrators for the particular dispute.
  3. The names of the arbitrators that have not been stricken from the list will be placed on separate pieces of paper and will be randomly drawn by the parties at the mediation.
  4. The randomly selected arbitrator will be advised of their selection by the BCTC.
  5. If any party fails to appear for the mediation and/or participate in the random selection of an arbitrator, all arbitrators will deemed acceptable to that party and that party waives any objections it might have to the randomly selected arbitrator for that particular matter.

- (e) The arbitration hearing shall be conducted within fourteen (14) business days of the request for arbitration, except where an extension of time is necessary and reasonable to be determined by the President of the BCTC. The hearing shall be stenographically recorded. The transcript of said hearing shall be made available upon request to any and all parties to the dispute. The BCTC may, in its discretion, determine a reasonable and customary charge for copying the transcript.
- (f) The arbitrator, the parties and witnesses shall be the sole participants in the arbitration hearing. The parties shall not be represented by counsel in the hearing.
- (g) A failure of any party to appear after due notice has been given, without good cause as determined by the arbitration panel, shall not prevent the hearing from going forth.
- (h) The contending trades shall have the right to present any National or New York Green Book Decisions and/or other pertinent information, as well as evidence and witnesses in support of their claims including, but not limited to, any documents and drawings, in support of their claim for the work. In the event that the dispute involves a union in a contractual relationship with the GCA ("GCA trade") and a union not in a contractual relationship with the GCA ("non-GCA trade"), hereinafter referred to as "mixed claims", New York Plan Green book decisions and GCA decisions may be submitted by the contending trades for consideration by the arbitrator in support of their claims for the work until such time as the New York Plan develops an addendum to the Green book on "mixed claims" that will develop from the "mixed claim" cases submitted under this Plan.
- (i) The arbitrator shall be bound by:
  - i. First whether a previous agreement of record, or applicable agreement, including a disclaimer agreement, between the Unions to the dispute governs;
  - ii. Only if the arbitrator finds that the dispute is not covered by an appropriate or applicable agreement of record or agreement between the crafts to the dispute, he or she

shall then consider the established trade practice in the industry and prevailing practice in the locality;

- iii. Where there is a previous decision of record governing the case, the arbitrator shall give equal weight to such decision of record, unless the prevailing practice in the locality in the past ten years favors one craft. In that case, the arbitrator shall base his or her decision on the prevailing practice in the locality. Except, that if the arbitrator finds that a craft has improperly obtained the prevailing practice in the locality through raiding, the undercutting of wages or by use of the vertical agreements, the arbitrator shall rely on the decision of record and established trade practice in the industry rather than the prevailing practice in the locality. For the purpose of this Plan, the term "locality" shall refer to the five boroughs of New York City, i.e., Manhattan, Bronx, Brooklyn, Queens and Staten Island;
  - iv. Only if none of the above criteria is found to exist, the arbitrator shall then consider that because efficiency, cost or continuity and good management are essential to the well being of the industry and the interests of the consumer, past practice of the employer shall not be ignored;
  - v. The arbitrator shall set forth the basis for his or her decision and shall explain his or her findings regarding the applicability of the above criteria. If lower-ranked criteria are relied upon, the arbitrator shall explain why the higher-ranked criteria were not deemed applicable. If Local Agreements, New York Plan, or GCA decisions are deemed applicable rather than National Agreements or National Plan Decisions the arbitrator must explain the rationale for his or her findings in regard consistent with the above criteria.
- (j) In the event that a reassignment of the work is necessitated by the award, the arbitrator shall retain jurisdiction over the matter to resolve any issues that arise as a result of the transition of work assignment. Said transition shall take place within a reasonable time period, but in no event later than 5 working days from the decision. Said retention of jurisdiction shall not render the arbitration decision non-final or non-

binding. If a reassignment of work is necessitated by said award the trade receiving the work shall not be entitled to any back pay and/or fringes for work done by the other trade prior to the reassignment. Failure of a trade to surrender the work, or a contractor, construction and/or project manager to reassign the work, in accordance with an arbitration decision shall constitute a breach of this agreement and may warrant enforcement through injunctive relief.

- (k) The decisions and awards rendered pursuant to an arbitration hearing are final and binding and shall thereafter govern the awarding of work of the kind in question on all future jobs and shall be binding on all those bound to this Plan without regard to their participation in the underlying arbitration. Said decisions and awards are deemed addenda to the decisions printed in the Green Book until such time as the Green Book is updated and they are incorporated therein.
- (l) Following the issuance of the arbitration decision, the BCTC President will send a statement to the parties allocating the arbitrators fees and the transcript expenses in accordance with Article V, Section (3)(a) above. Such statements shall be payable within ten (10) days of receipt. If payment is not received within thirty (30) days, a late fee of five hundred dollars (\$500.00) will be assessed on the delinquent party. A future request by a delinquent party to process a case will be held by the BCTC President until all outstanding fees and expenses, including any late fee, have been paid.

#### Article VI

#### ENFORCEMENT

1. Any arbitration award shall be accepted and complied with within five (5) working days by all parties bound by this Agreement.
2. Arbitration awards issued as a result of a New York Plan arbitration shall be enforced jointly and/or severally by the BCTC and/or its affiliates. The directly affected local unions shall have standing to join any confirmation proceeding commenced by the Plan and/or to enforce any award or decision absent

enforcement proceedings commenced by the Plan. Applications to confirm the awards and decisions of the Plan, or any other enforcement proceeding, may be commenced in either federal or state court pursuant to the applicable arbitration statutes. The prevailing party in these confirmation proceedings shall be entitled to reasonable costs and attorneys' fees.

3. It shall be a violation of this Agreement for entities bound to this Plan, to enter into any agreement, resolution process, or stipulation that:

- (a) attempts to establish any jurisdiction which deviates from the spirit and intent of this Agreement, its procedures or decisions of this Plan; or
- (b) permits jurisdictional disputes between affiliated locals to be resolved by a single craft arbitration process where all parties to the dispute are bound hereto and said dispute can be processed hereunder.

4. Any violation of this Agreement by any entity bound hereto shall constitute a breach of the Agreement and such breach shall be subject to challenge by the BCTC and/or its affiliates. All parties bound to this Agreement consent to the jurisdiction of the United States District Court for the appropriate District of New York pursuant to Section 301 of the Labor Management Relations Act ("LMRA"). The parties to the underlying dispute shall also have standing to commence a Section 301 enforcement action in the absence of said action by the Plan, or to join in any action commenced by the Plan. The prevailing party in any Section 301 litigation for enforcement shall be entitled to recover reasonable costs and attorneys' fees from the losing party.

5. Withdrawal from the Trades Council, or any bound employer association, shall not relieve any entity of its obligations under the Plan relating to jurisdictional disputes that arose, or awards and decisions that issued, during their tenure as affiliated entities.

#### Article VII

##### EFFECTIVE DATE: DURATION

1. This agreement was amended on December 19, 2011 and shall be effective January 1, 2012, and shall continue each year thereafter unless terminated as provided for below.

2. If any signatory to this Agreement desires to change or terminate this Agreement it shall notify the other parties in writing at least ninety (90) days before the anniversary date of this Agreement. When notice to change or modify the Agreement is given, the proposed changes and/or modifications must be specified in the notice.

3. This Agreement may be amended at any time by mutual agreement between the parties, reduced to writing and duly executed by all parties hereto.

IN WITNESS HEREOF, the Executive Board of the Council, by motion duly made and passed at the meeting of the Executive Board on January 11, 2012, to be effective retroactively to January 1, 2012.

Dated:



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Gary LaBarbera, President  
Building & Construction Trades Council  
of Greater New York  
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## **ADDENDUM "A"**

### **LANGUAGE FOR INCLUSION IN AFFILIATE'S COLLECTIVE BARGAINING AGREEMENTS**

"All jurisdictional disputes between or among building and construction trades unions and employers, that are parties to this CBA, shall be settled and adjusted according to the current plan established by the New York Plan for the Settlement of Jurisdictional Disputes, as amended from time to time. Decisions rendered by the New York Plan for the Settlement of Jurisdictional Disputes shall be final, binding and conclusive on the employer and the union parties to this agreement."