

MEMORANDUM OF UNDERSTANDING BETWEEN THE NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY AND BUILDING & CONSTRUCTION TRADE COUNCIL OF GREATER NEW YORK

PARAGRAPH 1. Statement of Purpose

This Memorandum of Understanding (“Memorandum”) is intended to provide the basis for cooperation between the New York City School Construction Authority (“SCA”) and the Building & Construction Trade Council of Greater New York (“BCTC”) with respect to the Leasing Program of the FY 2005-09 Five-Year Capital Plan “Plan”) of the New York City Department of Education (“DOE”). More specifically, this Memorandum will describe the process the SCA will employ for: (1) lease build-out projects managed by the SCA; and (2) lease build-out projects performed by the landlord. This Memorandum will also articulate the requirements the SCA will include in those leases pursuant to which the landlord will build-out the leased space for use as a school or other educational facility. The SCA and BCTC agree that this Memorandum will promote an effective working relationship that will serve the best interests of the New York City public school system.

PARAGRAPH 2. SCA Lease Build-outs

The SCA will adhere to its legislative requirements and internal procedures with respect to leasing projects it is responsible to manage. Contracts will be bid and awarded through the SCA’s public procurement process. Contractors and subcontractors performing work on these lease projects must be prequalified by the SCA and participate in apprenticeship programs approved by the New York State Department of Labor (“DOL”), which are appropriate for the particular trade(s) employed by that contractor or subcontractor. As a government entity, the SCA and its contractors are obligated to comply with the prevailing wage laws contained in Labor Law §220.

PARAGRAPH 3. Landlord Lease Build-outs

3.1 For lease build-out projects performed by the Landlord, the SCA lease document will be modified to incorporate the following provisions:

- a. All contractors and subcontractors retained by the landlord must be prequalified by the SCA and participate in DOL-approved apprenticeship programs that are appropriate for the particular trade(s) employed by that contractor or subcontractor;

- b. The landlord must require that its contractors and subcontractors pay their employees the equivalent of the applicable prevailing wage as set forth in Labor Law § 220, and require the contractors and subcontractors to establish the equivalent of the prevailing wage rate as the contractual wage rate for its trade;
- c. The SCA shall retain the right to approve any contractor or subcontractor the landlord may seek to retain.

3.2 In the event any of the provisions set forth in subparagraph 3.1 above is enjoined on either an interlocutory or permanent basis, or is deemed otherwise to be in violation of law, the provision involved shall be rendered, temporarily or permanently, null and void, but where practicable, the remainder of this Memorandum shall remain in full force and effect. The parties to this Memorandum agree to enter into negotiations for a substitute provision in conformity with the law and the intent of the parties for leases to be executed in the future.

3.3 Nothing contained herein shall be deemed an admission that the DOE's Leasing Program in the prior or current Five Year Capital Plans violated the prevailing wage law. Provided further that nothing contained herein shall constitute a waiver of the application of the prevailing wage law to landlord lease build-outs in the event that it is determined in any administrative proceeding or in a court of competent jurisdiction to constitute "public work" within the meaning of the prevailing wage law.

PARAGRAPH 4. Signatory Parties

The parties to this Memorandum shall work together to achieve the goals described herein during the period of the Plan. This Memorandum may not be modified unless agreed to in writing by the signatory parties.

PARAGRAPH 5. Duration

This Memorandum shall remain in full force and effect for the duration of the Five Year Capital Plan FY 2005-2009, and may not be terminated unless upon mutual consent of the parties.

PARAGRAPH 6. Notices

All notices under this Memorandum shall be in writing and shall be given, made, or served by mailing the same by Registered or Certified mail, Return Receipt Requested, or delivered by hand as follows:

To the SCA

Vice President & General Counsel
New York City School Construction Authority
30-30 Thomson Avenue
Long Island City, NY 11101


To the BCTC

President, Edward J. Malloy
71 East 23rd Street
Suite 501-03
New York, New York 10010

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum and caused it to be effective as of the 5TH day of October, 2004.

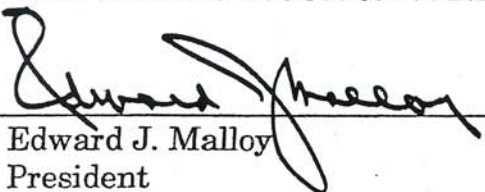
NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY

BY: _____


William H. Goldstein
President and Chief Executive Officer

BUILDING & CONSTRUCTION TRADE COUNCIL OF GREATER NEW YORK

BY: _____


Edward J. Malloy
President