

PROJECT AGREEMENT

THIS PROJECT AGREEMENT (hereinafter, the "Agreement"), made as of October 3, 2023, by and between the BROOME COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York, with an office for the transaction of business located at FIVE South College Drive, Suite 201, Binghamton, New York 13905 (the "Agency"), and GMS REALTY, LLP, a Vermont limited liability partnership, doing business in New York as GMS REALTY PARTNERS, LLC, a limited liability company organized and existing under the laws of the State of Vermont and authorized to do business in the State of New York, having its principal offices located at 356 Rathe Road, Colchester, Vermont 05446 (the "Company") (collectively, the "Parties").

WITNESSETH:

WHEREAS, the Agency was created by Chapter 564 of the 1970 Laws of the State of New York pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Enabling Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of a warehouse/wholesale facility for the storage of electrical materials and supplies, and any other directly or indirectly related activities; and

WHEREAS, by Resolution adopted on June 21, 2023 and amended on July 19, 2023 (the "Resolution"), the Agency has conferred on the Company, in connection with the Project, certain benefits, exemptions and other financial assistance consisting of: (a) an exemption benefit from New York State and local sales and use taxes for purchases and rentals related to the Project with respect to the qualifying personal property included in or incorporated into the Project or used in the renovation and equipping of the Project, and (b) a partial abatement from real property taxes through a "payment in lieu of tax agreement" with the Company for the benefit of each municipality and school district having taxing jurisdiction over the Project (collectively, the sales and use tax exemption and the partial abatement from real property tax benefits, are hereinafter collectively referred to as the "Financial Assistance"); and

WHEREAS, it has been estimated and confirmed by the Company, as included within its Application for Financial Assistance, a copy of which is available for review at the office of the Agency during regular business hours, that (i) the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated to be in an amount up to \$2,301,500.00, and, therefore, the value of the New York State and local sales and use tax exemption benefits authorized and approved by the Agency cannot exceed \$184,120.00, and (ii) that real property tax abatement benefits to be provided to the Company over the fifteen (15) year benefit period of the anticipated payment-in-lieu-of-tax agreement are estimated to be approximately \$6,647,409.00; and

WHEREAS, the Company proposes to lease the Project to the Agency, and the Agency desires to rent the Project from the Company pursuant to the terms and conditions

set forth in a certain lease agreement dated as of October 3, 2023 (the “Lease Agreement”); and

WHEREAS, the Agency proposes to lease the Project back to the Company and the Company desires to rent the Project from the Agency, pursuant to the terms and conditions set forth in a certain leaseback agreement dated as of October 3, 2023 (the “Leaseback Agreement”); and

WHEREAS, in order to define the obligations of the Company regarding payments-in-lieu-of-taxes for the Project, the Agency and the Company will enter into a payment-in-lieu-of-tax agreement dated as of October 3, 2023 (the “PILOT Agreement”); and

WHEREAS, in order to define the obligations of the Company regarding its ability to utilize the Agency's sales and use tax exemption benefit as agent of the Agency to renovate and equip the Project and to undertake the Project, the Agency and the Company will enter into an agency agreement, dated as of October 3, 2023 (the “Agency Agreement”); and

WHEREAS, the Agency requires, as a condition and as an inducement for it to enter into the transactions contemplated by the Resolution, and as more particularly described in the Lease Agreement, Leaseback Agreement, PILOT Agreement, and Agency Agreement, that the Company provide assurances with respect to the terms and conditions herein set forth; and

WHEREAS, this Agreement sets forth the terms and conditions under which Financial Assistance shall be provided to the Company; and

WHEREAS, no Financial Assistance shall be provided to the Company prior to the effective date of this Agreement.

NOW, THEREFORE, in consideration of the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

1. PURPOSE OF PROJECT. It is understood and agreed by the Parties hereto that the purpose of the Agency’s provision of Financial Assistance with respect to the Project is to, and that the Agency is entering into the Lease Agreement, Leaseback Agreement, PILOT Agreement and Agency Agreement in order to, promote, develop, encourage and assist in the renovation and equipping of the Project, to advance job opportunities, health, general prosperity and economic welfare of the people of the Town of Kirkwood, Broome County, New York, and to otherwise accomplish the public purpose of the Act.

2. PILOT AGREEMENT. The Parties hereto understand and agree that Exhibit “A” to this Agreement contains a copy of the PILOT Agreement to be entered into by and between the Company and the Agency.

3. TERMINATION, MODIFICATION AND/OR RECAPTURE OF ANY

FINANCIAL ASSISTANCE. It is understood and agreed by the Parties hereto that the Agency is entering into the Lease Agreement, the Leaseback Agreement, the PILOT Agreement, and the Agency Agreement in order to provide Financial Assistance to the Company for the Project and to accomplish the public purposes of the Act. The Company hereby makes the following representations and covenants in order to induce the Agency to proceed with the Project:

A. In accordance with Section 875(3) of the New York General Municipal Law, the policies of the Agency, and the Resolution, the Company covenants and agrees that it may be subject to a determination by the Agency resulting in the potential recapture of any and all Financial Assistance, as described below, if the Company receives, or any of its agents or subagents receive, any Financial Assistance from the Agency, and it is determined by the Agency that:

1. the Company, or its agents or subagents, if any, authorized to make purchases for the benefit of the Project is not entitled to the sales and use tax exemption; or
2. the sales and use tax exemption is in excess of the amounts authorized by the Agency to be taken by the Company, or its agents or subagents, if any; or
3. the sales and use tax exemption is for property or services not authorized by the Agency as part of the Project; or
4. the Company has made a material, false or misleading statement, or omitted any information which, if included, would have rendered any information in its application for Financial Assistance, or supporting documentation, false or misleading in any material respect.

In order for the Agency to determine the foregoing, the Company shall provide annually to the Agency a certified statement and documentation, as set forth in Exhibit "B" attached hereto as well as additional Project assessment information that the Agency may require.

The findings made by the Agency with respect to Sections 3(A)(1), (2), (3) and/or (4) above and/or failure to provide the written confirmation as required by Section 3 may potentially be determined by the Agency in accordance with the Agency's Policy for Termination, Modification and/or Recapture of Agency Benefits for the modification of any PILOT to require increased payments. If the Agency makes a determination to recapture benefits, the Company agrees and covenants that it will (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company, and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt, the Agency shall then redistribute the recaptured funds to the appropriate affected tax jurisdiction(s). The Company further understands and agrees that, in the event that the Company fails to pay over such amounts to the Agency, the New York State Tax Commissioner may assess and determine the New York State and local sales and use tax due from the Company, together with any relevant penalties and interest due on

such amounts.

B. In accordance with the Resolution, the Company further: (i) covenants that the purchase of goods and services relating to the Project and subject to New York State and local sales and use taxes are estimated in an amount up to \$2,301,500.00 and, therefore, the value of the sales and use tax exemption benefits authorized and approved by the Agency, subject to Section 3(A) of this Agreement, cannot exceed \$184,120.00.

C. The Company acknowledges and understands that it is subject to New York Labor Law Section 224-a regarding, among other issues, prevailing wage requirements for this Project, a copy of which is attached hereto as Exhibit "C". A checklist to be used to confirm if a Project is so subject to prevailing wage requirements is attached hereto as Exhibit "D".

D. The Company acknowledges and understands that a determination to recapture benefits made with respect to Section 3(A) of this Agreement will, in addition, immediately result in the loss and forfeiture of the Company's right and ability to obtain any and all future Financial Assistance with respect to the Project.

4. SURVIVAL. All warranties, representations, and covenants made by the Company herein shall be deemed to have been relied upon by the Agency and shall survive the delivery of this Agreement to the Agency regardless of any investigation made by the Agency.

5. NOTICES. All notices, demands or communications required to be given under this Agreement shall be forwarded simultaneously by certified mail or Federal Express or other similar overnight delivery service, to the respective addresses of the Parties hereinafter set forth or to such other place(s) as any of the Parties hereto may, from time to time, designate by written notice to the other.

To the Agency: Broome County Industrial Development Agency
FIVE South College Drive
Suite 201
Binghamton, New York 13905
Attn: Executive Director

with a copy to: Joseph B. Meagher, Esq.
Thomas, Collison & Meagher
1201 Monroe Street
P.O. Box 329
Endicott, New York 13761-0329

To the Company: GMS Realty, LLP
356 Rathe Road
Colchester, Vermont 05446
Attn: Joshua Laber, Partner

with a copy to:

Jeremy H. Speich, Esq.
Harris Beach, PLLC
677 Broadway
Suite 1101
Albany, New York 12207

or at such other address as any Party may from time to time furnish to the other Party by notice given in accordance with the provisions of this Section.

6. AMENDMENTS. No amendment, change, modification, alteration or termination of this Agreement shall be made except in writing upon the written consent of the Company and the Agency.

7. SEVERABILITY. The invalidity or unenforceability of any one or more phrases, sentences, clauses or sections in this Agreement, or the application thereof, shall not affect the validity or enforceability of the remaining portions of this Agreement or any part thereof.

8. GOVERNING LAW. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York, without regard or reference to its conflict of laws principles.

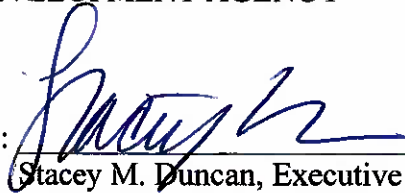
9. SECTION HEADINGS. The headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning of, or be taken as an interpretation of any provision of this Agreement.

10. COUNTERPART SIGNATURES. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Agreement. In addition, the Parties may transmit signed copies of this Agreement by e-mail and/or facsimile and each Party intends to be bound by the signatures on any document which is transmitted by e-mail and/or facsimile. Each Party is aware that the other Parties will rely on the e-mail and/or facsimile transmitted signatures, and each Party hereby waives any defenses to the enforcement of the terms of this Agreement based on the form of signature.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

BROOME COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By:



Stacey M. Duncan, Executive Director

GMS REALTY, LLP
doing business in New York as
GMS REALTY PARTNERS, LLC

By:

Joshua Laber, Partner

with a copy to:

Jeremy H. Speich, Esq.
Harris Beach, PLLC
677 Broadway
Suite 1101
Albany, New York 12207

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BROOME COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

GMS REALTY, LLP
doing business in New York as
GMS REALTY PARTNERS, LLC

By: _____
Stacey M. Duncan, Executive Director

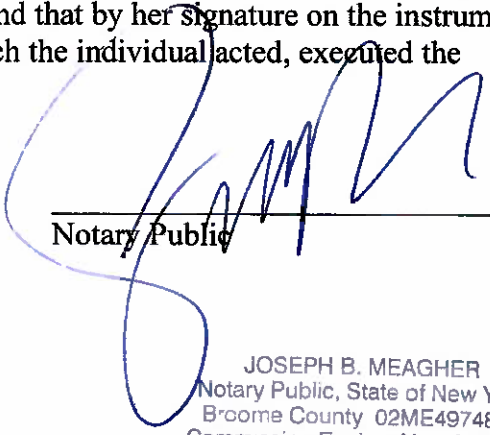
By:  _____
Joshua Laber, Partner

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On October 3, 2023, before me, the undersigned, personally appeared STACEY M. DUNCAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



 Notary Public

JOSEPH B. MEAGHER
 Notary Public, State of New York
 Broome County 02ME4974837
 Commission Expires Nov. 26, 2026

STATE OF NEW YORK :

: ss.:

COUNTY OF SARATOGA:

On October 3, 2023, before me, the undersigned, personally appeared JOSHUA LABER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK:

: ss.:

COUNTY OF BROOME:

On October 3, 2023, before me, the undersigned, personally appeared STACEY M. DUNCAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

STATE OF NEW YORK :

: ss.:

COUNTY OF SARATOGA:

On October 3, 2023, before me, the undersigned, personally appeared JOSHUA LABER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.



Notary Public

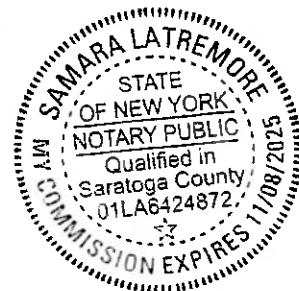


EXHIBIT "A"

(SEE ATTACHED PILOT AGREEMENT)

GMS Realty, LLC - Deviated 15 Year PILOT Schedule (Improved Existing Facility- Industrial) 47 Pine Camp Drive, Kirkwood

PILOT YEAR	FULL TAXES w/o									
	PILOT	Windsor School	County	Town	% Abatement	PILOT Payment	Windsor School	County	Town	Benefit
1	\$794,974.00	\$575,711.00	\$195,443.00	\$23,820.00	75%	\$198,743.50	\$143,927.75	\$48,860.75	\$5,955.00	\$596,230.50
2	\$810,873.48	\$587,225.22	\$199,351.86	\$24,296.40	75%	\$202,718.37	\$146,806.31	\$49,837.97	\$6,074.10	\$608,155.11
3	\$827,090.95	\$598,969.72	\$203,338.90	\$24,782.33	75%	\$206,772.74	\$149,742.43	\$50,834.72	\$6,195.58	\$620,318.21
4	\$843,632.77	\$610,949.12	\$207,405.68	\$25,277.97	75%	\$210,908.19	\$152,737.28	\$51,851.42	\$6,319.49	\$632,724.58
5	\$860,505.42	\$623,168.10	\$211,553.79	\$25,783.53	75%	\$215,126.36	\$155,792.03	\$52,888.45	\$6,445.88	\$645,379.07
6	\$877,715.53	\$635,631.46	\$215,784.86	\$26,299.20	50%	\$438,857.77	\$317,815.73	\$107,892.43	\$13,149.60	\$438,857.77
7	\$895,269.84	\$648,344.09	\$220,100.56	\$26,825.19	50%	\$447,634.92	\$324,172.05	\$110,050.28	\$13,412.59	\$447,634.92
8	\$913,175.24	\$661,310.97	\$224,502.57	\$27,361.69	50%	\$456,587.62	\$330,655.49	\$112,251.29	\$13,680.85	\$456,587.62
9	\$931,438.74	\$674,537.19	\$228,992.62	\$27,908.93	50%	\$465,719.37	\$337,268.60	\$114,496.31	\$13,954.46	\$465,719.37
10	\$950,067.52	\$688,027.94	\$233,572.48	\$28,467.10	50%	\$475,033.76	\$344,013.97	\$116,786.24	\$14,233.55	\$475,033.76
11	\$969,068.87	\$701,788.50	\$238,243.93	\$29,036.45	25%	\$726,801.65	\$526,341.37	\$178,682.94	\$21,777.34	\$242,267.22
12	\$988,450.25	\$715,824.27	\$243,008.80	\$29,617.18	25%	\$741,337.69	\$536,868.20	\$182,256.60	\$22,212.88	\$247,112.56
13	\$1,008,219.25	\$730,140.75	\$247,868.98	\$30,209.52	25%	\$756,164.44	\$547,605.56	\$185,901.74	\$22,657.14	\$252,054.81
14	\$1,028,383.64	\$744,743.57	\$252,826.36	\$30,813.71	25%	\$771,287.73	\$558,557.68	\$189,619.77	\$23,110.28	\$257,095.91
15	\$1,048,951.31	\$759,638.44	\$257,882.89	\$31,429.98	25%	\$786,713.48	\$569,728.83	\$193,412.17	\$23,572.49	\$262,237.83
TOTALS	\$13,747,816.82	\$9,956,010.35	\$3,379,877.28	\$411,929.19		\$7,100,407.58	\$5,142,833.26	\$1,745,623.08	\$212,751.25	\$6,647,409.24

Based on an assumed 2% property tax increase per year

Windsor School	30.396615	\$575,711.00	Full Market Value \$31,305,785
County	10.319066	\$195,443.00	ER 60.50%
Town of Kirkwood	1.257699	\$23,820.00	Assessment Value - \$18,940,000
1st Year Taxes		\$794,974.00	

**Special Districts are not included in this PILOT, i.e., Fire, Ambulance, Library, Highway and Parks. Please note you will still receive a bill for those taxes.

52%

EXHIBIT "B"

FORM OF ANNUAL EMPLOYMENT AND SALARY AND FRINGE BENEFITS AND
RELATED PROJECT INFORMATION CERTIFICATION LETTER

Re: New Project Verification Dear _____:

The Broome County Industrial Development Agency (the "Agency") is currently providing assistance in connection with the your project in the (municipality)

The Agency is required to file an annual report with the New York State Comptroller providing information on its activities, and the activities of projects that are assisted by the Agency. In order for the Agency to compile that report, it is necessary that we obtain information relating to assistance provided and benefits derived from all entities that receive such assistance. Failure by the Agency to file the report information required by New York State could result in the Agency losing its ability to provide future assistance or the entity suffering claw-back provisions and forfeiting benefits previously received. Therefore, it is important that this information be provided in an accurate and timely manner.

Attached please find a questionnaire to be completed and returned to the Agency by _____. If you have any questions regarding the required information, please do not hesitate to call our office.

We appreciate your assistance in this matter. A self-addressed stamped envelope is enclosed for your convenience.

Very truly yours,

Company name and address: Project Name:

Company contact: Contact phone number:
(Please correct any information above)

Financing Information

Has the Agency provided project financing assistance through issuance of a bond or note)

Yes No

If financing assistance was provided, please provide:

- Original principal balance of bond or note issued _____
- Outstanding principal balance of such bond or note _____
- Principal paid during _____
- Outstanding principal balance of such bond or note _____

Interest rate on mortgage as of _____ Final maturity date of the bond or note

Is the Company a not-for-profit? _____

Sales Tax Abatement Information

Did your company receive Sales Tax Abatement on your Project during _____

Yes No

If so, please provide the amount of sales tax savings received _____

(A copy of the ST-340 sales tax report submitted to New York State for the reporting period is required to be attached with this report)

Mortgage Recording Tax Information

Did your company receive Mortgage Tax Abatement on your Project during _____

Yes No

(NOTE: Only be applicable the year that a mortgage was placed upon the project)

The amount of the mortgage recording tax that was abated during _____

Job Information

Number of full time equivalent employees ("FTE") existing jobs by category and average Hourly wage for each **before IDA status**

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Current number of FTE employees for _____ by category and average hourly wage.

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Number of FTE jobs created during _____ as a result of the assistance received through the IDA by category and average hourly wage.

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____
FTE		Average Hourly Wage

Number of FTE jobs retained during _____ by category and average hourly wage.

Category	FTE	Average Hourly Wage
Management	_____	_____
Professional	_____	_____
Administrative	_____	_____
Production	_____	_____
Other	_____	_____

Total annual payroll for _____

A copy of the NYS 45 form for the project location is required to be submitted with this report. If the NYS 45 form is not available for the specific project location or the form does not accurately reflect the full time jobs created an internal report verifying the total jobs by employment category as outlined above at the location is required with this submission.

Number of FTE construction jobs created during _____ Number of FTE construction jobs
 during _____

_____ Capital Investment Real Estate Construction

Machinery and Equipment Other Taxable Expenses _____

Other Non-Taxable Expenses Total Capital Investment

I certify that to the best of my knowledge and belief all of the information on this form is correct. I also understand that failure to report completely and accurately may result in enforcement of provisions of my agreement, including but not limited to voidance of the agreement and potential claw back of benefits.

Signed: _____ (authorized company representative)

Date: _____

EXHIBIT "C"

(SEE ATTACHED SECTION 224-a OF THE
NEW YORK STATE LABOR LAW)

McKinney's Consolidated Laws of New York Annotated

Labor Law (Refs & Annos)

Chapter 31. Of the Consolidated Laws (Refs & Annos)

Article 8. Public Work (Refs & Annos)

McKinney's Labor Law § 224-a

§ 224-a. Prevailing wage requirements applicable to construction projects performed under private contract

Effective: January 1, 2022

Currentness

1. Subject to the provisions of this section, each “covered project” as defined in this section shall be subject to prevailing wage requirements in accordance with section two hundred twenty and two hundred twenty-b of this article. A “covered project” shall mean construction work done under contract which is paid for in whole or in part out of public funds as such term is defined in this section where the amount of all such public funds, when aggregated, is at least thirty percent of the total construction project costs and where such project costs are over five million dollars except as provided for by section two hundred twenty-four-c of this article.

2. For purposes of this section, “paid for in whole or in part out of public funds” shall mean any of the following:

a. The payment of money, by a public entity, or a third party acting on behalf of and for the benefit of a public entity, directly to or on behalf of the contractor, subcontractor, developer or owner that is not subject to repayment;

b. The savings achieved from fees, rents, interest rates, or other loan costs, or insurance costs that are lower than market rate costs; savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions or tax increment financing; savings from payments in lieu of taxes; and any other savings from reduced, waived, or forgiven costs that would have otherwise been at a higher or market rate but for the involvement of the public entity;

c. Money loaned by the public entity that is to be repaid on a contingent basis; or

d. Credits that are applied by the public entity against repayment of obligations to the public entity.

3. For purposes of this section, “paid for in whole or in part out of public funds” shall not include:

- a. Benefits under section four hundred twenty-one-a of the real property tax law;
 - b. Funds that are not provided primarily to promote, incentivize, or ensure that construction work is performed, which would otherwise be captured in subdivision two of this section;
 - c. Funds used to incentivize or ensure the development of a comprehensive sewage system, including connection to existing sewer lines or creation of new sewage lines or sewer capacity, provided, however, that such work shall be deemed to be a public work covered under the provisions of this article;
 - d. tax benefits provided for projects the length or value of which are not able to be calculated at the time the work is to be performed;
 - e. tax benefits related to brownfield remediation or brownfield redevelopment pursuant to section twenty-one, twenty-two, one hundred eight-y-seven-g or one hundred eighty-seven-h of the tax law, subdivision seventeen or eighteen of section two hundred ten-B of the tax law, subsection (dd) or (ee) of section six hundred six of the tax law, or subdivision (u) or (v) of section fifteen hundred eleven of the tax law;
 - f. funds provided pursuant to subdivision three of section twenty-eight hundred fifty-three of the education law; and
 - g. any other public monies, credits, savings or loans, determined by the public subsidy board created in section two hundred twenty-four-c of this article as exempt from this definition.
4. For purposes of this section “covered project” shall not include any of the following:
- a. Construction work on one or two family dwellings where the property is the owner’s primary residence, or construction work performed on property where the owner of the property owns no more than four dwelling units;
 - b. Construction work performed under a contract with a not-for-profit corporation as defined in section one hundred two of the not-for-profit corporation law, other than a not-for-profit corporation formed exclusively for the purpose of holding title to property and collecting income thereof or any public entity as defined in this section, where the not-for-profit corporation has gross annual revenue and support less than five million dollars;
 - c. Construction work performed on a multiple residence and/or ancillary amenities or installations that is wholly privately owned in any of the following circumstances except as provided for by section two hundred twenty-four-c of this article:

(i) where no less than twenty-five percent of the residential units are affordable and shall be retained subject to an anticipated regulatory agreement with a local, state, or federal governmental entity, or a not-for-profit entity with an anticipated formal agreement with a local, state, or federal governmental entity for purposes of providing affordable housing in a given locality or region provided that the period of affordability for a residential unit deemed affordable under the provisions of this paragraph shall be for no less than fifteen years from the date of construction; or

(ii) where no less than thirty-five percent of the residential units involves the provision of supportive housing services for vulnerable populations provided that such units are subject to an anticipated regulatory agreement with a local, state, or federal governmental entity; or

(iii) any newly created programs for affordable or subsidized housing as determined by the public subsidy board established by section two hundred twenty-four-c of this article.

d. Construction work performed on a manufactured home park as defined in paragraph three of subdivision a of section two hundred thirty-three of the real property law where the manufactured home park is subject to a regulatory agreement with a local, state, or federal governmental entity for no less than fifteen years;

e. Construction work performed under a pre-hire collective bargaining agreement between an owner or contractor and a bona fide building and construction trade labor organization which has established itself as the collective bargaining representative for all persons who will perform work on such a project, and which provides that only contractors and subcontractors who sign a pre-negotiated agreement with the labor organization can perform work on such a project, or construction work performed under a labor peace agreement, project labor agreement, or any other construction work performed under an enforceable agreement between an owner or contractor and a bona fide building and construction trade labor organization;

f. Construction work performed on projects funded by section sixteen-n of the urban development corporation act or the downtown revitalization initiative;

g. Construction work and engineering and consulting services performed in connection with the installation of a renewable energy system, renewable heating or cooling system, or energy storage system, with a capacity equal to or under five megawatts alternating current;

h. Construction work performed on supermarket retail space built or renovated with tax incentives provided under the food retail expansion to support health (FRESH) program through the New York city industrial development agency;

i. Construction work performed for interior fit-outs and improvements under ten thousand square feet through small business incubation programs operated by the New York city economic development corporation;

j. Construction work on space to be used as a school under sixty thousand square feet, pursuant to a lease from a private owner to the New York city department of education and the school construction authority; or

k. Construction work performed on projects that received tax benefits related to historic rehabilitation pursuant to subdivision twenty-six of section two hundred ten-B of the tax law, subsection (oo) or (pp) of section six hundred six of the tax law, or subdivision (y) of section fifteen hundred eleven of the tax law.

5. For purposes of this section, “public entity” shall include, but shall not be limited to, the state, a local development corporation as defined in subdivision eight of section eighteen hundred one of the public authorities law or section fourteen hundred eleven of the not-for-profit corporation law, a municipal corporation as defined in section one hundred nineteen-n of the general municipal law, an industrial development agency formed pursuant to article eighteen-A of the general municipal law or industrial development authorities formed pursuant to article eight of the public authorities law, and any state, local or interstate or international authorities as defined in section two of the public authorities law; and shall include any trust created by any such entities.

6. For purposes of this section, “construction” means work which shall be as defined by the public subsidy board to require payment of prevailing wage, and which may involve the employment of laborers, workers, or mechanics.

7. For purposes of this section and section two hundred twenty-four-b of this article, the “fiscal officer” shall be deemed to be the commissioner.

8. The enforcement of any construction work deemed to be a covered project pursuant to this section, and any additional requirements, shall be subject, in addition to this section, only to the requirements of sections two hundred twenty, two hundred twenty-four-b, two hundred twenty-four-c, and two hundred twenty-b of this article and within the jurisdiction of the fiscal officer; provided, however, nothing contained in this section shall be deemed to construe any covered project as otherwise being considered public work pursuant to this article; and further provided:

a. The owner or developer of such covered project shall certify under penalty of perjury within five days of commencement of construction work whether the project at issue is subject to the provisions of this section through the use of a standard form developed by the fiscal officer.

b. The owners or developers of a property who are undertaking a project under private contract, may seek guidance from the public subsidy board contained in section two hundred twenty-four-c of this article, and such board may render an opinion as to whether or not the project is a covered project within the meaning of this article. Any such determination shall not be reviewable by the fiscal officer, nor shall it be reviewable by the department pursuant to section two hundred twenty of this article.

c. The owner or developer of a covered project shall be responsible for retaining original payroll records in accordance with

section two hundred twenty of this article for a period of six years from the conclusion of such work. All payroll records maintained by an owner or developer pursuant to this section shall be subject to inspection on request of the fiscal officer. Such owner or developer may authorize the prime contractor of the construction project to take responsibility for retaining and maintaining payroll records, but will be held jointly and severally liable for any violations of such contractor. All records obtained by the fiscal officer shall be subject to the Freedom of Information Law.

d. Each public entity providing any of the public funds listed in subdivision two of this section to an owner, developer, contractor or subcontractor of a project shall identify the nature and dollar value of such funds and whether any such funds are excluded under subdivision three of this section and shall so notify the recipient of such funds of such determination and of their obligations under paragraph a of this subdivision.

e. The fiscal officer may issue rules and regulations governing the provisions of this section. Violations of this section shall be grounds for determinations and orders pursuant to section two hundred twenty-b of this article.

9. Each owner and developer subject to the requirements of this section shall comply with the objectives and goals of minority and women-owned business enterprises pursuant to article fifteen-A of the executive law and service-disabled veteran-owned businesses pursuant to article seventeen-B of the executive law. The department in consultation with the directors of the division of minority and women's business development and of the division of service-disabled veterans' business development shall make training and resources available to assist minority and women-owned business enterprises and service-disabled veteran-owned business enterprises on covered projects achieve and maintain compliance with prevailing wage requirements. The department shall make such training and resources available online and shall afford minority and women-owned business enterprises and service-disabled veteran-owned business enterprises an opportunity to submit comments on such training.

10. a. The fiscal officer shall report to the governor, the temporary president of the senate, and the speaker of the assembly by July first, two thousand twenty-two, and annually thereafter, on the participation of minority and women-owned business enterprises in relation to covered projects and contracts for public work subject to the provisions of this section and section two hundred twenty of this article respectively as well as the diversity practices of contractors and subcontractors employing laborers, workers, and mechanics on such projects.

b. Such reports shall include aggregated data on the utilization and participation of minority and women-owned business enterprises, the employment of minorities and women in construction-related jobs on such projects, and the commitment of contractors and subcontractors on such projects to adopting practices and policies that promote diversity within the workforce. The reports shall also examine the compliance of contractors and subcontractors with other equal employment opportunity requirements and anti-discrimination laws, in addition to any other employment practices deemed pertinent by the commissioner.

c. The fiscal officer may require any owner or developer to disclose information on the participation of minority and women-owned business enterprises and the diversity practices of contractors and subcontractors involved in the performance of any covered project. It shall be the duty of the fiscal officer to consult and to share such information in order to effectuate the requirements of this section.

11. If construction work is not deemed to be a covered project, whether by virtue of an exclusion of such project under subdivision four of this section, or by virtue of not receiving sufficient public money to be deemed “paid for in whole or in part out of public funds”, such project shall not be subject to the requirements of sections two hundred twenty and two hundred twenty-b of this article.

Credits

(Added L.2020, c. 58, pt. FFF, § 1, eff. Jan. 1, 2022. Amended L.2021, c. 56, pt. AA, § 3, eff. Jan. 1, 2022.)

McKinney’s Labor Law § 224-a, NY LABOR § 224-a

Current through L.2023, chapters 1 to 49, 61 to 104. Some statute sections may be more current, see credits for details.

End of Document

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EXHIBIT "D"

(SEE ATTACHED CHECKLIST)

PREVAILING WAGE CHECKLIST & MWBE GUIDANCE (NY Labor Law § 224-a)

On January 1, 2022, certain projects receiving financial assistance from a public entity (e.g., industrial development agencies (IDA) and local development corporations (LDC)) will be subject to prevailing wage requirements. While prevailing wage was previously limited to government contracting, this legislation will subject certain projects approved by an IDA or an LDC to prevailing wage under the New York Labor Law and MWBE requirements. Please use the following table as a checklist to confirm if a project will be subject to prevailing wage if approved:

1. Exempt Project:	<ul style="list-style-type: none"> a. Residential real estate (less than 4 units), b. Certain not-for-profit corporations with revenue under \$5 million, c. Certain Affordable Housing projects, d. Certain manufactured home park projects, e. Certain projects performed under a pre-hire collective bargaining agreement (e.g., labor peace agreement or project labor agreement), f. Projects funded by § 16-n of the Urban Development Corporation Act or the Downtown Revitalization Initiative, g. The installation of renewable energy systems, renewable heating or cooling systems, or energy storage systems with a capacity of five (5) megawatts (AC) or less, h. NYC IDA Food Retail Expansion to Support Health projects, i. NYC EDC Small Business Incubator programs under 10,000 sq. ft., j. NYC Dept. of Education school construction under 60,000 sq. ft., and k. Projects that receive certain tax benefits related to historic rehabilitation. 	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
2. Covered Project:	Construction projects throughout the state whose total costs exceed \$5 million and for which at least 30% of these costs are met through use of public subsidies. ¹	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
3. Public Fund Exemptions:	<ul style="list-style-type: none"> a. Affordable New York Housing Program benefits, b. Funds that are not provided primarily to promote, incentivize, or ensure that construction work is performed, which would otherwise be considered public funds (as defined below), c. Funds received for sewer projects or connections to existing sewer lines, d. Tax benefits where the value is unknown at time of construction, e. Tax benefits for Brownfield Cleanup Program, f. Funds for charter school facilities, and g. Any public monies, credits, savings or loans deemed exempt by the Public Subsidy Board. 	Exclude from above total.

¹ "Notice of Expanded Legal Obligations under NYS Prevailing Wage" published on or about September 21, 2021 by the NYS Department of Labor.

4. Public Funds (Public Subsidies):	<ol style="list-style-type: none"> 1. Public entity grants, 2. Savings from fees, rents, interest rates, or loan costs, or insurance costs that are lower than market rate costs, 3. Savings from reduced taxes as a result of tax credits, tax abatements, tax exemptions (i.e., sales tax and mortgage recording tax), or tax increment financing, PILOTs, and 4. Savings from reduced, waived, or forgiven costs (e.g., contingent loan repayments). 	Total: \$6,831,529
5. Effective Date	The prevailing wage and MWBE requirements take effect on January 1, 2022, and shall apply to contracts for construction executed, incentive agreements executed, procurements or solicitations issued, or applications for building permits on or after such date.	
6. Reporting Requirement	A project beneficiary must certify if a project is a Covered Project within five (5) days of commencement of construction. A Covered Project is subject to stop work orders by the NY Commissioner of Labor.	

MWBE&SDVOB

This new Labor Law section has two specific sections set forth in paragraphs 9 and 10 respectively, related to compliance by developers and owners with the objectives and goals under Article 15-A of New York Executive Law related to Minority and Women-Owned Business Enterprises ("MWBE") and Article 17-B of New York Executive Law related to Service Disabled Veteran Owned Businesses ("SDVOB").

To assist with compliance, training and resources shall be available for such firms to comply with prevailing wage requirements. Further, the fiscal officer for the project is required to report on the diversity practices of contractors and subcontractors, utilization of MWBE firms, employment of minorities and women in construction related jobs and practice and policies to provide diversity in the workforce.

The newest participation goal is 30% for MWBE and 6% for SDVOB. Contractors must demonstrate a "good faith" effort to comply with the MWBE and SDVOB requirements. Good faith efforts can include the identification of participation areas for MWBEs and SDVOBs and full utilization of lists of certified MWBEs and SDVOBs.

If, despite good faith efforts, a contractor is not able to retain an MWBE or SDVOB for a project, the company must submit a Request for Waiver along with documentation of good faith efforts and the reason they were unable to obtain an MWBE or SDVOB.

GOOD FAITH EFFORTS CAN BE EVIDENCED BY:

- Copies of solicitations (advertisements in MWBE or SDVOB-centered publications, those made to vendors in MWBE or SDVOB directories, those made to MWBE or SDVOB-oriented trade and labor organizations, etc.)
- If these solicitations are answered, the contractor must also record specific reasons why the MWBE or SDVOB enterprise was not selected.
 - o Dates of any pre-bid, pre-award or other meetings attended by the contractor, if any, scheduled by the Department of Labor with certified MWBE or SDVOB enterprises.
 - o Information describing the steps taken to ensure MWBE and SDVOB participation in a project.
 - o Descriptions of any other actions undertaken by the bidder to document good faith efforts to hire and contract with MWBE and SDVOB enterprises.

COMPLIANCE:

Project beneficiaries of Covered Projects may want to engage a diversity compliance consultant or monitor to ensure good faith efforts, proper waiver application, if necessary or warranted and proper documentation of compliance efforts to avoid penalties and sanctions. Under Article 15-A, §316 and §316-A provide penalties such as fines and ineligibility to bid on projects for one year, as well as liquidated damages for willful or intentional non-compliance.

RESOURCES:

Helpful resources and administration forms for the MWBE and SDVOB programs can be found on the NYS Department of Labor website in the middle of the page at the following address: <https://dol.ny.gov/contract-bid-grant-opportunities>.