

DORMITORY AUTHORITY OF THE STATE OF NEW YORK
161 Delaware Avenue, Delmar, New York 12054-1398
(518) 475-3000
Fax: (518) 475-3040

October 16, 1997


Mr. Frank Breselor
General Counsel
State University Construction Fund
State University Plaza
P.O. Box 1946
Albany, New York 12201-1946

Dear Mr. Breselor:

Enclosed is a fully executed Memorandum of Understanding between our offices. This agreement will enable DASNY to provide the necessary design, construction and rehabilitation improvements to the SUNY Residence Halls.

We look forward to working with your office in making this administrative initiative a success.

Sincerely,


Jeffrey Pohl
General Counsel

cc: Paul Casey- Controller w/att
Jim Gray- Program Director w/att.
Fred Lindheimer-Associate Manager w/att.
Gary Moore- Assistant Controller SUNY w/att.
Ken Schweigard - Treasurer SUCF w/att.

BCC: Phil Wood
Dick Sauer
Chip Rowen ✓
Stephen Boiko

Thomas J. Murphy, Chairman
John L. Buono, Executive Director

New York Office
One Penn Plaza, 32nd Floor

Buffalo Office
710 E. 1st St.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE STATE UNIVERSITY OF NEW YORK
AND
THE DORMITORY AUTHORITY OF THE STATE OF NEW YORK

THIS AGREEMENT, made this 3rd day of October, 1997 between the State University of New York (hereinafter referred to as "SUNY"), with offices at University Plaza, Albany, New York 12246 and the Dormitory Authority of the State of New York (hereinafter referred to as "the Authority"), with offices at 161 Delaware Avenue, Delmar, New York 12054.

WHEREAS, the Authority and SUNY are authorized by law to enter into agreements providing for the design, construction, reconstruction, rehabilitation, or improvement of residence hall facilities for SUNY; and

WHEREAS, pursuant to the SUNY Board of Trustees' policy as set forth in "Rethinking SUNY", SUNY has devolved to the individual campuses certain control and responsibility for selecting the entity (the Authority, the SUCF, SUNY or OGS) which will implement the design, construction, reconstruction, rehabilitation or improvement of the residence hall facilities for SUNY; and

WHEREAS, the Authority and SUNY are mutually desirous of entering into an agreement wherein the Authority, at the request of the campuses, will provide the design, construction, reconstruction, rehabilitation or improvement of residence hall facilities; and

NOW THEREFORE, the parties hereto mutually agree as follows:

I. RESIDENCE HALLS COVERED BY THE AGREEMENT

This agreement will apply to all residence hall facilities leased by SUNY from the Authority under the Lease and Agreement dated September 20, 1995. This Agreement shall not supersede the Lease and Agreement and nothing contained herein shall operate as a limitation, modification, or amendment of any provision of the Lease and Agreement, including the Authority's obligation to approve the Project and the entity performing the work on facilities leased by SUNY from the Authority. If any inconsistencies exist between the provisions of this Agreement and the Lease and Agreement, the provisions of the Lease and Agreement shall prevail.

To commence a Project, a Project Service Request (copy attached) will be initiated by the Client campus with input from the Authority. A completed and fully executed request will provide the Authority and the Client campus with the individual project scope and budget for each Project. Each Project Service Request shall be approved by the Office of the State Comptroller prior to the commencement of each Project. The Office of the State Comptroller shall approve or disapprove a Project Service Request within ten (10) business days after its receipt thereof and if it disapproves a Project Service Request, set forth its reasons for such disapproval in writing. The Comptroller will not advance funds in the absence of an appropriation.

II. PROJECT COSTS/CAPITAL

The Authority will establish and maintain at a bank an account to be designated "SUNY RESIDENCE HALL REHAB FUND" (the "Account"). All interest earned on the Account shall be accounted for and reasonably apportioned back to the appropriate SUNY campuses. Said interest earnings will be credited back to the campuses on a quarterly basis.

All such moneys deposited to the Account shall be invested in or collateralized by United States Treasury Securities, or other investments authorized by the Authority's investment guidelines.

The Authority shall prepare an estimated Projects Funding Schedule for each SUNY campus (the "Funding Schedule") that sets forth the monthly funding requirements for each of the Projects for each campus. Such Funding Schedule shall include only those projects that are specifically requested by each campus pursuant to the Project Service Request as set forth in Section I of this Agreement. Based upon the Funding Schedule, the Authority shall requisition by New York State Standard Voucher submitted to each campus a sum estimated to be necessary to pay all projected expenses of each of the Projects included in the Funding Schedule anticipated to be payable for the next three months and deposit the amount so requisitioned into the Account when received. Thereafter, on a monthly basis, the Authority shall submit a requisition by New York State Standard Voucher to the campus for the amount necessary to ensure that adequate funds exist in the account to pay estimated expenses for each of the Projects for the ensuing three months. Such vouchers must contain sufficient information for each Project covered to satisfy the payment requirements of the Office of the State Comptroller.

The Authority shall apply the Account proceeds solely for the payment of Project expenses in accordance with the terms of contracts entered into by the Authority for the design, construction and equipping of the Projects.

SUNY shall maintain a Project Reserve Fund (the "Fund") with the Authority to ensure that adequate funds are available to provide for the campus commitments for the Authority managed Projects. The Fund shall be established at five hundred thousand dollars (\$500,000) and shall be in an interest bearing account. Interest shall be remitted quarterly to the SUNY Controller's Office. No disbursements from this Fund shall be made unless written authorization is received from the SUNY Controller's Office. Any disbursements from the Fund must be reimbursed by SUNY in order to maintain the Fund at five hundred thousand dollars (\$500,000).

The Authority shall within sixty days after close out of each Project, submit to each campus a final accounting of all expenditures incurred against each project and, at the direction of the campus, return any excess funds not due and payable for each Project.

III. AUTHORITY ADMINISTRATIVE FEES

The Authority shall include an estimate for administrative services applicable to this Agreement in its annual rental certificate to SUNY commencing with the Authority fiscal year which begins April 1, 1997 and ends March 31, 1998 and for each fiscal year thereafter. The estimate will be based upon the current knowledge of upcoming projects and past history of actual hours. An actual charge back by project by campus for such administrative services will be provided to SUNY on an annual basis within sixty (60) days of the Authority's fiscal year end.

IV. LIABILITY AND INSURANCE

The provisions of Section 4.03 of the Lease and Agreement, dated September 20, 1995, shall in all respects apply to any Project undertaken pursuant to this Agreement.

Furthermore, the Authority hereby agrees to insert language as follows into the contractor's insurance requirements set forth in its contracts: "The contractor shall defend, indemnify and save harmless the State of New York, the State University of New York, its officers, employees, servants and agents, and when applicable, SUNY's representative, SUNY's construction manager, servants and employees, from any and all claims of subcontractors, materialmen, or the employees thereof, arising out of or in connection with the work."

V. Miscellaneous Terms

A. Termination. Either party may terminate this agreement, without cause, upon sixty (60) day written notice to the other party. Projects currently being managed by the Authority will be allowed to be completed unless the campus terminates the Project under the provisions of the Project Service Amendment. Written notice shall be hand delivered or sent by certified mail return receipt requested to, and deemed given upon receipt:

For SUNY:

Office of Vice Chancellor for Capital Facilities
State University of New York
System Administration
SUNY Plaza
Albany, New York 12246

For Authority:

Dormitory Authority of the State of New York
Office of Counsel
161 Delaware Avenue
Delmar, New York 12054-1398

B. Amendments. This Agreement may only be changed or modified in writing and signed by both parties.

C. Laws. This Agreement shall be interpreted and enforced under the laws of the State of New York.

D. Standard State Contract Clauses. Attached hereto and made a part hereof, as applicable, are the Standard State Contract Clauses, Exhibits A and A 1.

IN WITNESS WHEREOF, this Agreement has been duly executed the date and year first written above.

DORMITORY AUTHORITY - STATE OF NEW STATE UNIVERSITY OF NEW
YORK YORK

For Authority:

Dormitory Authority of the State of New York
Office of Counsel
161 Delaware Avenue
Delmar, New York 12054-1398

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DORMITORY AUTHORITY -
STATE OF NEW YORK

STATE UNIVERSITY OF NEW YORK

By: [Signature]
Date: 8-11-97

By: [Signature]
Date: 6/3/97
Assistant Vice-Chancellor
for Capital Facilities

APPROVED AND FILED

Date: _____

COMPTROLLER OF THE
STATE OF NEW YORK

By: [Signature]

19871

APPROVED AS TO FORM
NYS ATTORNEY GENERAL
OCT - 8 1997
[Signature]
STEPHEN J. HONDEL
ASSOCIATE ATTORNEY