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## Project Labor Agreements in New York State II: In the Public Interest and of Proven Value

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## Project Labor Agreements in New York State II: In the Public Interest and of Proven Value

### Abstract

[Excerpt] This report is a follow-up to the earlier Cornell ILR report, *Project Labor Agreements in New York State: In the Public Interest*, issued in March 2009. There has been a significant increase in the authorization and use of PLAs for both public and private sector work during the intervening two years – particularly for New York City and, generally, throughout New York State. PLAs now govern the labor relations for a broad scope of projects involving tens of billions of dollars of infrastructure, new construction, and renovation work. The current report details how and why these agreements are serving the interests of taxpayers, businesses, communities, as well as the construction industry and workforce.

### Keywords

project labor agreements, PLAs, New York State, New York City, construction, management

### Comments

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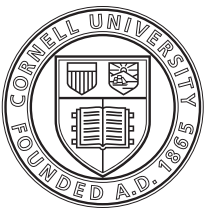
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# Project Labor Agreements in New York State II: *In the Public Interest and of Proven Value*

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## Introduction and Overview:

### Project Labor Agreements in New York State: In the Public Interest and of Proven Value

This report is a follow-up to the earlier Cornell ILR report, *Project Labor Agreements in New York State: In the Public Interest*, issued in March 2009. There has been a significant increase in the authorization and use of PLAs for both public and private sector work during the intervening two years – particularly for New York City and, generally, throughout New York State. PLAs now govern the labor relations for a broad scope of projects involving tens of billions of dollars of infrastructure, new construction, and renovation work. The current report details how and why these agreements are serving the interests of taxpayers, businesses, communities, as well as the construction industry and workforce.

The reasons for the industry’s increased reliance on PLAs are straightforward: they provide value for government and corporate purchasers of construction services – getting the best work for the money with far greater likelihood of on-time, on-budget performance.

There is an understandable temptation in difficult economic times to cut corners. Budget pressures are certainly real. But what may appear to be “penny-wise” often isn’t. Inefficiencies, inadequately skilled labor, poor supervision, cost overruns and a high number of change orders can quickly erase presumed savings. Cut rate or shoddy work can lead to costly repairs or rebuilding that reveal earlier decisions as “pound-foolish”.

Large-scale public and private investment in new construction and renovation is for the long-run. It alters the landscape and is a legacy for future generations. Resources must be invested wisely. The public infrastructure and commercial construction now underway in New York will benefit citizens, taxpayers, school children, and businesses for decades. Works of lasting value are being created or restored. And these labor agreements are helping to advance those works.

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## What are PLAs and why are they valuable?

**A Project Labor Agreement or PLA is a comprehensive, uniform labor agreement - a “job site constitution”** – that standardizes contract terms among various crafts for the duration of a project. It is a valuable construction management tool for substantial cost savings, productivity, job stability, timely completion and quality work.

**A uniform agreement represents a planned approach to labor relations and offers significant advantages.** As detailed within this report, the dramatic increase in the use of PLAs for both public and private sector work in New York City and New York State in recent years reflects these advantages and attests to PLAs’ value for the industry.

**PLA terms and conditions can be tailored to meet a project’s particular needs.** Contractors can more accurately predict labor costs and schedule production timetables. Conflicting contract terms can be addressed, work rules can be streamlined and schedules adjusted for better coordination among the various crafts. The interests of owners, clients, customers, and the public are taken into account: effective planning and coordination can minimize the delays or disruption that may accompany renovation work or new construction.

**PLAs provide job stability and promote productivity by banning strikes and by including a common contract expiration date that replaces the expiration dates of the various craft agreements.** This is arguably the most significant advantage of a uniform agreement – the critical factor for reducing the risk of costly delays. Project delays caused by picketing and other job actions upon expiration of a single craft’s collective bargaining agreement can be very expensive. They can disrupt closely coordinated construction timetables and seriously impact the operations of construction users – public agencies, schools, or businesses.

The common expiration date -- in combination with the prohibition on strikes -- eliminates this risk. This is especially significant for projects now underway in metropolitan New York City: up to fifteen craft agreements will expire in the New York City area during 2011. Projects covered by PLAs are shielded from the potential disruption that may develop from any single contract dispute.

**PLAs achieve substantial, direct cost savings by standardizing contract terms among various area craft agreements.** These typically involve hours of work, the number of paid holidays, adjusting overtime or eliminating shift differential premium pay, and allowing for expanded use of apprentices. Such adjustments were, for example, incorporated into the PLA for the New York City School Construction Authority 2004-09 rehab and reconstruction project. Our 2009 study reported that this PLA provided cost savings to taxpayers of \$44 million for each year of the project.

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More recent and no less persuasive examples are discussed within this report. These include: seven PLAs covering a broad scope of renovation and new construction for New York City agencies; a second five-year PLA for the New York City School Construction Authority; and the Economic Recovery PLA - a template agreement for private-sector construction negotiated in response to the economic downturn in 2008-09 that has preserved and stimulated projects throughout metro New York and that has saved or created about 10,000 jobs.

Public works projects in New York now benefit from legislation enacted in 2008 that specifically exempts PLAs from Wicks Law requirements for specialty contractor bidding. This has enabled public entities in New York State to realize significant, direct savings and it has been a key factor supporting the authorization of PLAs by the City of New York in 2009-10.

Indirect cost savings, though usually harder to quantify than direct savings, can be no less significant. There are related to the higher productivity and uninterrupted production that stem from contract language banning strikes, providing alternative dispute resolution procedures, monitoring safety, and assuring that contractors will have continued access to a steady supply of skilled, properly-trained workers.

**PLAs have a long history of industry use because the advantages are real and substantial.** Major corporations, such as Walmart and Delta Airlines now use, and others, such as Toyota, continue to use PLAs for their large manufacturing and commercial projects. And courts, federal and state, have consistently sanctioned PLA use for public projects as in the public interest.

**PLA use in the public sector is clearly established as consistent with competitive bidding statutes. PLA bidding must be open and fair and cannot discriminate against nonunion contractors.** Competitive bidding statutes are enacted *for the benefit of taxpayers and the public property owners not for the benefit or enrichment of bidders.* It is the public interest -- not the business interest of individual contractors -- that is to be protected by securing, through fair and open bidding, the *best* work for the money.

**The increased use of PLAs in New York represents responsible government policy and business practices during an extremely difficult economic period.** For an industry that is at all times highly competitive, these agreements stand as alternatives to the “race to the bottom” – the damaging response to competitive pressure that drives down labor standards, that reduces government revenues, that further weakens the economy and that imposes significant burdens on the public.

Seen within the context of collective bargaining and prevailing wage standards, PLAs constructively and effectively address a series of “market failures” in relation to worker health care and retirement benefits as well as skills development and workforce training.

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**The recent experience in New York demonstrates the significant social and economic value of these agreements.** The PLAs are preserving work and jobs, improving public infrastructure, sustaining the flow of tax revenues, reducing pressure on public support services, providing “bottom-up” economic stimulus through fair labor standards, advancing industry training and skills, opening avenues for workforce development and increasing opportunities for women and minority owned businesses.

The construction community of New York has shown a better way. In response to tough times, labor, business, and government have employed these agreements to preserve work, jobs and living standards, pursuing their interests in ways that support not damage the broader economy.

**Typical PLA provisions include the following:**

- A contractual commitment to uninterrupted production is made via a no-strike / no lockout, no slowdown or disruption provision
- Hiring is conducted through union referral procedures; nonunion subcontractors are often permitted to retain a defined percentage of employees outside of referral procedures
- Exclusive representation is granted to the appropriate labor organization for employees in their craft
- Work schedules and other terms are made uniform among the various crafts and typically adjusted to achieve cost savings and improve efficiency and minimize inconvenience to the owner and the public
- Dispute resolution procedures are put into place to address contractual and jurisdiction issues: these may include a grievance-arbitration procedure, joint labor-management problem solving, and alternative dispute resolution [ADR] to resolve disputes involving the payment of workers’ compensation benefits
- Collectively bargained wage rates and fringe benefit payments are incorporated into the PLA
- Negotiated changes in the journey person - apprentice ratios
- No further negotiations on wages or benefits are conducted for the life of the agreement; the practice in New York City is that wage rates that are newly negotiated for area agreements during the term of the PLA will be adopted by the PLA



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- Fringe benefit payments are directed to joint-trustee pension, health insurance, and apprentice training trust funds.

### **This report is divided into three parts:**

**Part I - PLAs PROVIDE BROAD SOCIAL AND ECONOMIC BENEFITS** considers PLAs within the context of fair labor standards achieved through statutes and collective bargaining. It examines the broader positive social and economic impact of these agreements on government and the public in relation to these issues:

- Worker pay, project costs and public funds
- Health benefits
- Pension benefits
- Worker training, skills, productivity and safety
- Economic opportunity and workforce development

**Part II - PLAs AND COMPETITIVE BIDDING** challenges critics' claims that PLAs are "union-only" agreements that discriminate against nonunion contractors on bidding for public works projects. This section describes the PLA bidding process as open and fair. It also discusses how provisions in recently negotiated PLAs encourage the participation of nonunion contractors.

**Part III – COST SAVINGS ADVANTAGES OF PLAs** discusses the scope and scale of PLA cost savings and it details how these savings are achieved by reviewing due diligence studies conducted by construction management consulting firms in advance of PLA authorization and implementation.

A PLA is an instrument to predict and control labor costs. PLA labor cost savings are both direct and indirect and can be substantial over the life of a project.

Consultants' due diligence studies make reasonable forecasts of project labor cost savings by comparing and contrasting the terms and conditions of a proposed uniform agreement [PLA] with specific provisions with various area craft agreements; the consultant examines opportunities for cost savings while accounting for the project's particular demands, such as highway, bridge, or school work that must primarily be done at certain hours.

While a project's actual costs can only be known after a project's completion, the due diligence studies provide an owner – public or corporate – with the best possible information then available upon which to base its decision to authorize and use a PLA.

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## Part I: PLAs Provide Broad Social and Economic Benefits

### The Role and Value of Collective Bargaining

Construction is a fiercely competitive contract industry particularly sensitive to boom and bust cycles in the economy. It is comprised largely of numerous small to medium-sized companies that can face intense pressure to cut costs and that can often operate beyond the view of state regulators. The industry’s workforce is mobile so it is often difficult for regulators to track down particular employers. It is labor intensive, its jobs are temporary and many jobs, particularly in unlicensed trades, can be broken down into piece work. Injury rates are high and so are workers compensation rates. It is a lucrative employment source for immigrant, often undocumented, workers who are particularly vulnerable to unlawful and abusive employer practices.

All the elements are present throughout the industry for destructive competition: a “race to the bottom” that severely erodes industry, working, and living standards, that unfairly disadvantages law-abiding businesses, and that drives up taxpayer costs and injures communities. Those who follow this “low road” business strategy are “pound foolish” but not “penny-wise.”

Private-sector owners have a duty to shareholders to procure the best work for the money; this means quality construction, done right the first time, building and maintaining structures of lasting value to the corporation. Public owners have a broader responsibility to safeguard the public interest; this includes a responsibility to account for “externalities” – the broader economic and social impact of agency decisions.

Public officials, in particular, need to assess the role of collective bargaining for advancing the public interest. As stated below, the US Supreme Court’s *Boston Harbor* decision – while discussing the historic use and benefits of Project Labor Agreements – is a strong endorsement of collective bargaining in the construction industry.

Collective bargaining agreements and Project Labor Agreements, in particular, act as bulwarks against the forces of destructive competition. They insure that taxpayers will receive value through productivity, quality work and cost-efficiencies. They are a valuable means for enforcing prevailing wage standards including the guarantee of health and pension benefits, for assuring that workers are properly trained and that the highest skill levels are maintained, that proper safety and health practices are observed, and that there are opportunities for employment, advancement, and workforce development.

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*Collective bargaining is a form of privatized industry regulation for setting labor standards and for peaceably resolving disputes. It is privatized in that contract terms for individual companies and within industries are negotiated by the parties and, except for certain minimal statutory standards, not determined by government intervention. The intent of the original federal legislation covering most of the private sector, the National Labor Relations Act [NLRA or Wagner Act] of 1935, was to bring order out of industry chaos – to mitigate the impact of destructive competition.*

An often overlooked provision of the NLRA is Section 1.<sup>1</sup> It is the law’s mission statement that articulates why collective bargaining is necessary for economic and social stability. It also provides the constitutional basis for upholding the law – as an Act, rooted in the Commerce Clause, to safeguard the economy from the disruption of labor disputes.

The Wagner Act’s authors understood that the crisis of the 1930s – with its persistent and unprecedented levels of unemployment – developed in large part from unbridled competition that destroyed the living standards for a significant part of the working population. They knew that an economy suffers – and can spiral downward into depression – when labor standards are pushed so low that working people do not have adequate income to buy the goods and services the economy produces. They saw collective bargaining as an important vehicle for taking labor standards out of competition and, by so doing, protecting living standards, community standards, and promoting a more healthy economy.<sup>2</sup> The parallels to today’s crisis are clear and

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<sup>1</sup> Section 1. [§151.] *The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.*

*The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.*

*Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.*

*It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.*

--29 U.S.C. §§ 151-169 [Title 29, Chapter 7, Subchapter II, United States Code] FINDINGS AND POLICIES

<sup>2</sup> See “Collective Rights as Human Rights: Fulfilling Senator Wagner’s Promise of Democracy in the Workplace - The Blue Eagle Can Fly Again”, Charles J. Morris, University of San Francisco Law Review, Spring, 2005, 39 U.S.F. L. Rev. 701

The philosophy behind the NLRA - and of the New Deal in general - was famously articulated by economist John K. Galbraith

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the need for a renewed consensus about the value of collective bargaining is compelling.

## Prevailing Wage Standards

Notwithstanding the central role of collective bargaining for US labor relations, there are notable areas where government intervention has historically sought to maintain labor standards against destructive competition. Foremost among these, and related to public works, are prevailing wage statutes.

Prevailing wage laws require contractors performing public works projects to pay workers at least those wages and fringe benefits provided for similar projects in the area. New York State enacted its prevailing wage law in 1894 – one of the earliest in the nation. Seven states adopted laws between 1891 and 1923. Eighteen more states followed during the Great Depression of the 1930s. The federal prevailing wage law, commonly known as Davis-Bacon, named for its two Republican co-sponsors, was enacted in 1931 and signed into law by Republican President Herbert Hoover.<sup>3</sup>

New York State’s prevailing wage law, Labor Law Section 220, regulates wages, hours, and supplements; these include payments, other than wages, for health and pension benefits, non-occupational disability, vacation benefits, holiday pay, life insurance, and apprenticeship training.<sup>4</sup> The standards are typically established by area craft agreements covering at least 30%

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in his book, *American Capitalism: The Concept of Countervailing Power*. Galbraith explains how unions act as a “countervailing power” serving as “an equalizing force in labor markets.” *American Capitalism: The Concept of Countervailing Power*, John Kenneth Galbraith, Transaction Publishers, 1993, at ix; NB Chapter IX, “The Theory of Countervailing Power” in which Galbraith discusses the necessary regulatory function that unionization plays within the economy and in relation to industry competition: “They [unions] have assumed price-and market-regulating functions that are the normal function of managements, and on which the latter, because of the competitive character of the industry, have been forced to default.” at 116.

A particularly clear and contemporaneous statement supporting collective bargaining’s role for economic stabilization came not from a labor leader but from an employer spokesperson providing testimony before a Senate committee in 1935:

It became obvious to the management of our company that no mass production could long be carried on unless there was increased purchasing power by the great masses of people... we arrived at the conclusion that collective bargaining by employer and employee ...was the only means by which, under our system, any adjustment in the equitable distribution of income could be accomplished...

*Statement of H.M. Robertson, General Counsel, Brown and Williamson Tobacco Corporation, in Senate Committee on Education and Labor, Hearing on a National Labor Relations Board, 74<sup>th</sup> Congress, 1<sup>st</sup> sess., 1935, at 218. Quoted in U.S. Labor Relations Law: Historical Development, Benjamin J. Taylor and Fred Witney, Prentice-Hall, 1992, at 166*

<sup>3</sup> “Under Davis-Bacon, the prevailing rate is the rate paid to at least 50% of workers in a construction occupation for a local area. If there is no single rate for at least 50% of workers in that occupation, then the prevailing wage is the average rate paid in the area for that occupation. States, counties, and cities have adopted their own prevailing wage legislation, and policies vary widely. Prevailing wages in states and localities might be set as the local union wage rate, the average wage for construction occupations in the area, or a combination of the two.” *Prevailing Wages and Government Contracting Costs: A Review of the Research*, Nooshin Mahalia, Economic Policy Institute, July 8, 2008 | EPI Briefing Paper #215, available at: <http://www.epi.org/publications/entry/bp215/>

<sup>4</sup> *NY CLS Labor § 220* See also: *89 NY Jur Public Works and Contracts § 94*

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of the workers in an area.<sup>5</sup> Employers challenging the state’s determination of the prevailing wage in a locality bear the burden of proof and must comply with the existing standard pending a final determination. The statute is explicit:

The employer must allege and prove by competent evidence, that the actual percentage of workers, laborers or mechanics is below the required thirty per centum and during the pendency of any such contest and until final determination thereof, the work in question shall proceed under the rate established by the fiscal officer.<sup>6</sup>

The purpose behind these laws is that government, when acting as a purchaser in the marketplace, should respect area standards and not drive down wages thereby safeguarding the interests of workers, their families and communities. The policy objective complements the mandate of competitive bidding statutes in that government also has an obligation to protect taxpayers from the cut-rate, shoddy work of unscrupulous contractors. It is also consistent with responsible contracting policies intended to disqualify contractors who, among other criteria, cheat on payroll taxes, fail to pay unemployment insurance and workers compensation premiums, cut corners on safety, inadequately train, violate other wage and hour laws, or are financially unstable.<sup>7</sup>

The problem is significant, symptomatic of an increasingly casual labor force and a climate of unbridled competition. The Fiscal Policy Institute issued a study in late 2007, at the height of the construction boom, estimating that 43,000 construction workers in New York City earned less than \$11 an hour – not much above the federal poverty level for a family of four. The FPI also estimated that 50,000 or one in four New York City construction workers are in the “underground economy” – either misclassified as independent contractors or paid “under the table.”<sup>8</sup>

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<sup>5</sup> *NY CLS Labor § 220 (5) . Definitions. a. The “prevailing rate of wage,” for the intents and purposes of this article, shall be the rate of wage paid in the locality, as hereinafter defined, by virtue of collective bargaining agreements between bona fide labor organizations and employers of the private sector, performing public or private work provided that said employers employ at least thirty per centum of workers, laborers or mechanics in the same trade or occupation in the locality where the work is being performed.*

<sup>6</sup> *NY CLS Labor § 220 (6)*

<sup>7</sup> See the following:

*The Cost of Worker Misclassification In New York State*, Linda H. Donahue, James Ryan Lamare, Fred B. Kotler, Cornell School of Industrial and Labor Relations, February 2007, NB 6-8. Available at <http://digitalcommons.ilr.cornell.edu/reports/9/>

*Unregulated Work in the Global City: Employment and Labor Law Violations in New York City*, Annette Bernhardt, Siobhan McGrath, and James DeFilippis, Brennan Center for Justice at New York University, April 2007. Available at: [www.brennancenter.org](http://www.brennancenter.org).

<sup>8</sup> *Building Up New York, Tearing Down Job Quality: Taxpayer Impact of Worsening Employment Practices in New York City’s Construction Industry*, James Parrott, Fiscal Policy Institute, December 2007. At 1-2. Available at: <http://www.fiscalpolicy.org/>

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## Prevailing Wages and Public-Sector PLAs

Prevailing wage standards apply to public works projects whether or not those projects are covered by collective bargaining agreements and, to the extent that they are monitored and enforced, provide a “level playing field” for labor costs for both union and nonunion contractors. And they force bidders to include overall labor costs, including benefits, into their bids.

Public-sector PLAs are clearly within the scope and coverage of prevailing wage standards and PLA terms reflect the statutory mandates. The statutory and contract requirements, taken together, are the protected labor standards for the project.

This section discusses the broader social and economic impact of these protected labor standards in the following areas:

- Worker pay, project costs, and public funds
- Health benefits
- Pension benefits
- Worker training, skills, productivity and safety
- Economic opportunity and workforce development

### Worker Pay, Project Costs, and Public Funds

PLAs, as discussed earlier in this report, have significant cost advantages for public works projects in New York. Studies have shown that the incorporation of prevailing wages, considered on their own, have considerable benefits. These include higher productivity - in the range of 13-15% more value added per worker – and higher worker income – averaging 15% more in wages and 25% more in Social Security.<sup>9</sup> These translate into increased consumer confidence and purchasing power as well as higher tax revenues.

Labor costs, including benefits and payroll taxes, on average represent about one-fourth of total construction costs. A 10% increase that might be attributable to prevailing wage standards translates into a relatively small 2.5% increase in overall project costs.<sup>10</sup>

Public funds benefit when prevailing wage standards are honored and suffer when they

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<sup>9</sup> *Quality Construction – Strong Communities: The Effect of Prevailing Wage Regulations on the Construction Industry in Iowa*, Working Paper, Peter Philips, Economics Department, University of Utah, 2006, at 3-4, available at: <http://www.smacna.org/legislative/quality-construction.pdf>;

<sup>10</sup> *Prevailing Wages and Government Contracting Costs: A Review of the Research*, Nooshin Mahalia, Economic Policy Institute, EPI Briefing Paper #215, July, 2008, available at: [www.epi.org/publications/entry/bp215](http://www.epi.org/publications/entry/bp215).

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are violated. The absence of prevailing wage certified payrolls has been shown to attract irresponsible bidders who cheat workers and taxpayers by misclassifying their workers and evading obligations to withhold taxes, and make payments for Social Security, unemployment insurance, and workers' compensation.<sup>11</sup>

Lost payroll taxes and social insurance premiums due to cheating by unscrupulous contractors in the New York City construction market has been estimated at \$272 million a year and lost income tax collections at \$70 million.<sup>12</sup>

## Health Benefits

Without the protection of prevailing wage or collective bargaining standards, construction workers are “on their own” for health benefits – and that typically means that they and their families either have inadequate health insurance or no insurance. This represents a significant and burdensome “market failure” that shifts costs to taxpayers and creates a competitive disadvantage for those contractors who do provide health coverage.

Health care coverage in construction is low compared to other industries. This reflects industry conditions that, as mentioned earlier, can fuel the “race to the bottom”: fierce competition, a predominance of small employers, temporary and seasonal work, and a mobile workforce. Only 58% of construction workers had employer-based health insurance in 2005 as compared to 74% of workers in all industries.<sup>13</sup>

Workers without health benefits and who earn low pay are often forced to get their medical care at public expense. They might qualify for Medicaid or seek help for themselves and family members at emergency rooms, safety-net hospitals and clinics. Workers who are undocumented or paid “under the table” might not access Medicaid coverage even if they do qualify. The

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<sup>11</sup> *Quality Construction – Strong Communities: The Effect of Prevailing Wage Regulations on the Construction Industry in Iowa*, Working Paper, Peter Phillips, at 5, available at: <http://www.smacna.org/legislative/quality-construction.pdf>; *Prevailing Wages and Government Contracting Costs: A Review of the Research*, Noonan Mahalia, Economic Policy Institute, EPI Briefing Paper #215, July 8, 2008, available at <http://www.epi.org/publications/entry/bp215>.

Also see *The Economic Development Benefits of Prevailing Wage*, Fiscal Policy Institute, May 2006, available at [http://www.faircontracting.org/prevailing\\_wages.html](http://www.faircontracting.org/prevailing_wages.html). This report estimates that skilled construction workers earning higher wages are 205 more productive than lower-skilled workers. It also points out that contractors can, under prevailing wage standards, pay considerably less to apprentices in registered programs than the pay required for skilled journeymen.

<sup>12</sup> *Building Up New York, Tearing Down Job Quality*, Fiscal Policy Institute, at 20

<sup>13</sup> *The Construction Chart Book*, CPWR – The Center for Construction Research and Training, produced with support from the National Institute for Occupational Safety and Health grant number OH008307, #26: Health Insurance Coverage in Construction and Other Industries, available at [www.cpwr.com/rp-chartbook.html](http://www.cpwr.com/rp-chartbook.html).

Also see: *Construction Procurement Policies that Address Health Insurance: A Cost Analysis*, David C. May, SCD, and C. Jeffrey Waddoups, PhD., April 2010, CPWR, available at: [www.cpwr.com/cern/report.html](http://www.cpwr.com/cern/report.html).

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estimated cost of Medicaid coverage for the New York City construction market – in 2007, at the height of the construction boom - was \$111 million annually.

And the cost of providing uncompensated health care to an estimated 14,800 New York City construction workers was \$37 million annually - the total cost estimate for health care costs shifted onto the workers themselves, to taxpayers, and to other contractors was \$148 million.<sup>14</sup>

Responsible employers in New York, and jointly-managed union-employer Health and Welfare Funds in particular, bear an unfair burden. Under the state’s Health Care Reform Act, responsible employers who provide health coverage have to pay a surcharge for certain medical expenses; they are required to pay up to several hundred dollars per worker per year to make-up for what their unscrupulous competitors do not provide.<sup>15</sup>

The overall situation for employer-based health insurance [EBHI] in New York State is deteriorating. According to a recently released report of the New York State Health Foundation, *Decade of Decline: A Survey of Employer Health Insurance Coverage in New York State*, the percentage of workers in the state with EBHI “has declined sharply since the beginning of the decade” and notes that the “employer coverage rate ... now lags the national average.” These points are highlighted in the Foundation’s report:

- The percentage of New York workers covered by employer-sponsored insurance fell significantly, from 69% in 2003 to 58% in 2009. The decline in coverage rates has occurred among firms of all sizes.
- The percentages of workers in New York firms who are eligible for or who take up coverage has fallen since 2001. Among firms offering coverage, the percentage of workers eligible for coverage has fallen from 85% to 74%. Among eligible workers, the percentage taking up coverage has declined from 82% to 78%.
- The percentage of New York employers offering health benefits in 2009 remained steady since 2001 at 70%. Nationwide, the offer rate was 60% in 2009, down from earlier in the decade.
- The report notes these adverse consequences for the State’s economy:
- Two-thirds (66%) of firms reported that they are struggling “a great deal” or “somewhat” to afford health insurance.

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<sup>14</sup> *Building Up New York, Tearing Down Job Quality: Taxpayer Impact of Worsening Employment Practices in New York City’s Construction Industry*, James Parrot, Fiscal Policy Institute, December 2007 at 21

<sup>15</sup> *Ibid.* at 19



- One in four New York employers reported that they had reduced or frozen wages in response to rising health insurance costs.
- More than one in five firms has avoided hiring more workers because of rising health insurance costs.
- One in five firms reported reducing benefits because of rising costs.

This is a situation of “market failure”<sup>16</sup> – the market has failed to allocate resources in an efficient and reasonable manner leading, in this case, to severe and disabling economic and social consequences. This market failure does not reflect the operation of disinterested, impersonal or mechanical economic forces. It is a result of three decades of corporate policies that have increased downward competitive pressure on labor standards and government action or inaction that has only exacerbated the negative impact of those competitive pressures.

The union sector of the construction industry long ago developed a smart, sensible approach for employee health care coverage well suited to the industry’s particular circumstances: joint contractor-union trust funds. The fund approach applies to Project Labor Agreements used for both public and private projects, that is, whether or not, prevailing wage laws apply.<sup>17</sup>

The jointly administered, multi-employer Health and Welfare Trust Funds<sup>18</sup> are a *privatized*,

<sup>16</sup> See Jeffrey Waddoups, “Health Care Subsidies in Construction: Does the Public Sector Subsidize Low-Wage Contractors?” In The Economics of Prevailing Wage Laws, edited by Hamid Azari-Rad, Peter Phillips, and Mark J. Prus, Burlington, VT: Ashgate, 2005, at 205-224 Available at: [www.faircontracting.org/PDFs/prevailing.../Health\\_Care\\_Subsidies.pdf](http://www.faircontracting.org/PDFs/prevailing.../Health_Care_Subsidies.pdf).

It remains to be seen just how effectively the recently enacted federal Affordable Care Act will address the market failure. Given that key provision do not go into effect until 2014, an assessment is years away. FK

<sup>17</sup> An example of operative language is provided within the New York City Renovation PLA:

*A. The Contractors agree to pay on a timely basis contributions on behalf of all employees covered by this Agreement to those established jointly trustee employee benefit funds designated in Schedule A (in the appropriate Schedule A amounts), provided that such benefits are required to be paid on public works under any applicable prevailing wage law. Bona fide jointly trustee fringe benefit plans established or negotiated through collective bargaining during the life of this Agreement may be added if similarly required under applicable prevailing wage law. Contractors, not otherwise contractually bound to do so, shall not be required to contribute to benefits, trusts or plans of any kind which are not required by the prevailing wage law provided, however, that this provision does not relieve Contractors signatory to local collective bargaining agreement with any affiliated union from complying with the fringe benefit requirements for all funds contained in the CBA.*

*B. The Contractors agree to be bound by the written terms of the legally established jointly trustee Trust Agreements specifying the detailed basis on which payments are to be paid into, and benefits paid out of, such Trust Funds but only with regard to Program Work done under this Agreement and only for those employees to whom this Agreement requires such benefit payments. [Section 2 Employee Benefits: NYC Renovation PLA]*

<sup>18</sup> These funds are commonly referred to as “Taft-Hartley Funds” because they are regulated under the Taft-Hartley Labor Management Relations Act of 1947.

Five characteristics of Taft-Hartley Multi-Employer Health and Welfare Plans:

1. One or more employers contribute to the fund.
2. The fund is collectively bargained with each participating employer.
3. The fund and its assets are managed by a joint board of trustees equally representative of management and labor.
4. Assets are placed in a trust fund, legally distinct from the union and the employers, for the sole and exclusive benefit of the employees and their families.
5. Mobile employees can change employers without losing coverage provided the new job is with an employer who participates in the same Taft-Hartley fund.

--From: National Labor College: [www.nlc.edu/cait/olc/Taft\\_Hartley/html/t-chpater%201.htm](http://www.nlc.edu/cait/olc/Taft_Hartley/html/t-chpater%201.htm)

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*industry solution* to the failure of the marketplace. These funds, for the reasons discussed below, are why unionized construction workers are far more likely to be covered by either private insurance or employer-based health insurance than their non-union counterparts.<sup>19</sup>

The construction industry, as mentioned earlier, is characterized by numerous small companies with fewer than 25 employees. Small companies, nonunion and acting alone, are at a disadvantage in the insurance marketplace and are particularly vulnerable to rising premiums over which they have no control. As explained by economist C. Jeffrey Waddoups, author of several important studies of health insurance coverage in construction and other industries:

Small firms in general find Employer Based Health Insurance [EBHI] relatively expensive, because economies of scale in administration costs cannot be realized in the small group over which the risk is spread. Administration costs for small firms average about 40 percent of total costs, while administrative costs for larger firms (over 10,000 employees) average only 5.5 percent. In addition, small groups and groups with higher levels of turnover increase the risk for insurers, which leads them to charge higher premiums. Consequently, small employers, in general, and small construction contractors in particular, are less likely to provide EBHI.<sup>20</sup>

Other industry factors come into play – seasonal work, temporary jobs, workers who may be employed by several employers during a year – that present additional challenges for providing worker health benefits. Again, according to Waddoups,

... Tenure of employment with a single employer may not last long enough to meet an EBHI program's eligibility requirements, which generally range from three to six months. Construction work is also highly sensitive to seasonal and cyclical factors, which increase the probability of unemployment spells and further reduce the probability of obtaining EBHI.<sup>21</sup>

Individual, small, nonunion employers have a business disincentive to purchase health insurance and often avoid providing coverage so that they can undercut unionized competitors. And some who do provide insurance engage in unscrupulous practices such as discharging employees before they are eligible for coverage.

This injures the industry because there is a demonstrated connection between health coverage and worker retention: the industry retains workers – and their skills and experience

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<sup>19</sup> 83-84% of unionized construction workers have either private health insurance or employer-based health insurance. *The Construction Chart Book*, CPWR – The Center for Construction Research and Training, produced with support from the National Institute for Occupational Safety and Health grant number OH008307, #26: Health Insurance Coverage in Construction and Other Industries, available at [www.cpwrt.com/rp-chartbook.html](http://www.cpwrt.com/rp-chartbook.html).

<sup>20</sup> Waddoups, “Health Care Subsidies in Construction” at 196

<sup>21</sup> *Ibid.* at 197

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– longer when those workers receive health benefits.<sup>22</sup>

Collective bargaining agreements remove the disincentives otherwise burdening individual employers. Multi-employer, jointly managed health and welfare trust fund provisions enable unionized contractors to provide employee health coverage for several reasons: risks and responsibilities are shared among numerous employers so the size of the company isn't an issue; economies of scale are realized for administrative costs; there is now a larger and more stable risk pool; the coverage is not employer specific so workers can change employers without losing insurance or assuming high COBRA payments; and eligibility requirements better reflect the realities of seasonal or temporary work.<sup>23</sup>

Contractors are then better able to predict costs and the joint trust fund approach levels the playing field within the unionized sector. And when nonunion contractors become signatories to Project Labor Agreements, everyone plays by the same rules.

## Retirement Benefits

Retirement benefits for construction workers reflect the same issues, problems and solutions discussed above for health care benefits.

The construction industry participation rate for retirement benefits [39%] is lower than that for all industries [57%], well below those for finance [64%], transportation [65%], and manufacturing [67%].<sup>24</sup>

And while construction workers generally participate at a lower rate in retirement plans, the participation rate for unionized workers is significantly higher [71%] than for nonunion workers 21%].<sup>25</sup>

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<sup>22</sup> One recently published [2010] study has shown a connection between health coverage and worker retention: As reported by labor economists Jaewhan Kim and Peter Philips,

...partially and fully employer-provided health insurance from union contractors make it 36 (30) percent and 41 (37) percent (respectively) in the 1996 (2001) panel more likely that unionized construction workers will remain in the construction industry compared to nonunionized construction workers with no health insurance. In contrast, partially and fully employer-provided health insurance from nonunion contractors make it 18 (7) percent and 13 (17) percent respectively in the 1996 (2001) panel more likely that nonunionized construction workers will remain in construction compared to nonunionized construction workers with no health insurance

“Health Insurance and Worker Retention in the Construction Industry”, Jaewhan Kim and Peter Philips, *Journal of Labor Research*, Volume 31, Number 1, J Labor Res (2010), 20-38. Published online 2/24/10 See: [http://faculty.utah.edu/u0035312-PETER\\_W\\_PHILIPS,\\_Labor\\_Economist/bibliography/index.html](http://faculty.utah.edu/u0035312-PETER_W_PHILIPS,_Labor_Economist/bibliography/index.html)

<sup>23</sup> Ibid. at 197-8

<sup>24</sup> *The Construction Chart Book*, CPWR – The Center for Construction Research and Training, produced with support from the National Institute for Occupational Safety and Health grant number OH008307, #27: Employment-based Retirement Plans in Construction and Other Industries, available at [www.cpw.com/rp-chartbook.html](http://www.cpw.com/rp-chartbook.html).

<sup>25</sup> Ibid.

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The difference has everything to do with the intervention of collectively bargained and prevailing wage standards to address market failures, remove these costs from bidding, and benefit the workforce. Multiemployer plans are common within the unionized sector of industries characterized by a more highly mobile workforce. These include, in addition to construction, trucking, grocery stores, and garment manufacturing.

Overall retirement plan participation rates for US employers and employees have steadily declined in recent decades. The decline in retirement plan coverage is matched by a shift in the nature of the plans – from defined benefit to defined contribution plans, effectively shifting risk from employers to workers.

This is an especially important issue for construction workers who face significantly higher injury risks and sustained physical demands that limit the overall length of their employment. Larger public policy issues relate to the long-term economic and social costs of and for an aging workforce – a workforce facing intensified pressure to remain longer in the workforce, if physically able, struggling to secure resources necessary to live out life in relative comfort and with dignity.

It is also worth noting that these union sector funds do more than benefit the covered worker: union pension funds support communities by providing the financing for “high road” economic development.<sup>26</sup>

### **Worker Training, Skills, Productivity and Safety**

Unbridled industry competition leads to another “market failure” – that for workforce development. Underinvestment in worker training, skills, productivity and safety has a number of serious, negative effects for the worker, the industry, and the purchaser of construction services.

For the individual worker, it can mean increased risk of injury and lost opportunities for acquiring and upgrading skills. The promise of a career within the industry as a well-rounded, skilled craftsperson is also lost as the work itself is downgraded and de-skilled toward the performance of individual tasks.

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<sup>26</sup>“Existing research shows that targeted investments of union pension funds, including investments in real estate development projects (Hagerman et al; Pozdena and Josephson 2006, 2009), yield competitive risk-adjusted returns to their investors and beneficiaries, while producing collateral social benefits such as jobs, increased supply of affordable housing, infrastructure, and an increased tax base. This process is facilitated by institutional fund managers such as the AFL-CIO Housing Investment Trust, J-for Jobs (ULLICO), Intercontinental RE Corp, and others, which operate as pooling vehicles for individual unions’ pension funds. These fund managers impose strict union labor requirements on the projects they finance. This ensures both well paying jobs with high safety and productivity standards, as well as continued investment in and revitalization of the communities where union workers live and work.” *The Socio-Economic Impacts of Construction Unionization in Massachusetts*, Maria Figueroa and Jeff Grabelsky, Cornell University School of Industrial and Labor Relations, March 2010, at 12. Available at: <http://builtbest.org/new-study-socio-economic-impacts-construction-unions-massachusetts>.

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Nonunion companies have a disincentive to properly train their workers and many of these contractors have no training program.<sup>27</sup> Training costs are typically excluded from labor cost estimates as contractors face fierce bid competition. Because the industry workforce is mobile and workers move from employer to employer, an individual company has little incentive to invest in training when to do so might well benefit competitors. This effect is compounded to the extent that nonunion contractors are a presence in a market.

The industry suffers an overall loss of worker skill. And because there is a direct connection between skill, productivity, and quality, the purchaser of construction services – including taxpayers -- receive less value and incur a higher risk that work will have to be redone sooner and at greater expense.

Collective bargaining and prevailing wage standards provide a solution to the training “market failure” just as they do for the market failures in worker health care and retirement security.

The mechanism is the same: pooling of employer resources through the operation of jointly administered funds. Collective bargaining agreements, including PLAs, require signatory contractors to pay a set amount per worker per hour into a training fund for their respective craft. These contractors include these costs into their bids.

The joint funds training model again demonstrates how the union sector has successfully implemented a privatized, industry-wide response to industry conditions. If the union sector were not providing this training – and all crafts do provide it -- then the responsibility would necessarily fall, as it does in other nations, upon government and taxpayers.

These funds administer apprentice and training programs that are among the best practical educations available in the world today and they are the pride of the union sector. The union sector’s investment in the industry is substantial – between \$750 million and \$1 billion annually<sup>28</sup> - insuring that these multi-year programs are properly staffed, properly resourced, and uniformly well-run.

The programs guarantee a continued supply of highly-skilled workers for the industry while providing valuable career opportunities for a key segment of the nation’s blue collar workforce. The industry invests about \$5000 per year per apprentice<sup>29</sup> and apprentices earn – and pay taxes - while they learn. These programs are institutions of higher learning – combining theory and practice – with many courses offering college credit – providing training for jobs that cannot be exported. The training programs are a stabilizing force: with such a high

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<sup>27</sup> Ibid. at 17

<sup>28</sup>Per Robert Pleasure, Special Assistant to Building and Construction Trades Department President Ayers, 3/19/11.

<sup>29</sup>Comments of economist Peter Philips in the DVD, “America’s Building Trades Unions: Value of Display, Every Day,” Building and Construction Trades Department, 2011

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level of investment and skills development, both the industry and the individual have strong incentives to complete the training, move into, and remain within the industry.

Union-trained journey-level workers must meet certain clearly-defined standards for competence. These standards provide a uniformity and consistency in training throughout North America; contractors can be assured that quality standards will be met no matter where particular employees were trained. A listing of the apprenticeship requirements for various crafts illustrates the high level of union sector standards. A summary is included here as *Appendix A*.

All successful PLA bidders – union and nonunion – have access to a labor pool with this level of training. Nonunion PLA signatories have recognized that union referral enables them to compete for — and more likely successfully perform — jobs requiring a higher degree of worker skill and technical experience. In many recent cases within the New York City market, contractors have, for this reason, been persuaded to then sign area craft agreements and become union contractors.

Apprenticeship and training programs are highly valued as a matter of public policy. It is “the declared policy of the state of New York to develop sound apprenticeship training standards and to encourage industry and labor to institute training programs.” Labor Law Section 220(b), New York’s prevailing wage statute, specifically requires that

No employee shall be deemed to be an apprentice unless he is individually registered in an apprentice program which is duly registered with the industrial commissioner in conforming with provisions of article twenty-three of this chapter...

And the law empowers the NYS Department of Labor to determine “the allowable ratio of apprentices to journeymen in any craft.” Reflecting policy that encourages apprenticeship training, state regulations, as stated earlier in this report, permit contractors to pay registered apprentices at a rate approximately 40-50 percent less than that for journey-level workers – a source of considerable cost savings for projects performed under PLAs.

New York Labor Law Section 222 – in addition to exempting PLAs from Wicks Law requirements – mandates that each PLA signatory contractor participate in a NYS Department of Labor approved apprenticeship program for each trade it employs for the past three years, that the program have graduated an least one apprentice during that time, and have at least one apprentice currently enrolled. Signatories must also be able to show the program has made significant efforts to attract and retain minority apprentices per affirmative action goals set by the Department.<sup>30</sup>

Requiring that the bidder be party to a New York State certified apprenticeship program

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<sup>30</sup>New York Labor Law Section 222(e)

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provides an important standard for quality work. The New York City School Construction Authority, for example, has, since 1992, made this a condition for contract awards over \$25,000 on projects larger than \$1 million.

Studies of the impact of prevailing wage laws have consistently shown a relationship between apprenticeship, training, worker skill level and productivity. States that repealed prevailing wage laws experienced severe cost overruns, a rise in change orders, lower quality and lower productivity. Higher skill means higher productivity – one estimate is that skilled construction workers are as much as 20 percent more productive than less skilled workers. Higher productivity reduces unit costs, reduces the need for supervision, and lowers recruitment costs.<sup>31</sup>

Construction is a particularly dangerous industry and workers compensation rates are accordingly high. Jobsite fatalities are as high as 1,200 per year, a rate significantly higher than for manufacturing. The risks are inherent in the work and compounded by the presence of multiple contractors and crafts on the site at a given time.<sup>32</sup>

Researchers have shown a connection between training levels and worker safety. One study reported a 25% lower fatality rate among construction workers in state with prevailing wage laws.<sup>33</sup> Another report cites Occupational Safety and Health Administration data from investigations of construction deaths in New York City during 2006-07 with this summary:

Half of the deaths occurred among workers at very small construction companies, three-fourths of the workers involved worked for non-union companies, and failure to provide safety training was cited in over half of the cases.<sup>34</sup>

The relationship between union apprenticeship programs – and more generally, the unionized sector - and worker safety was articulated within a recent [2010] study of the Massachusetts construction industry by Cornell ILR researchers Jeff Grabelsky and Maria Figueroa:

The quality of the apprenticeship programs not only affects worker productivity but also has serious impacts on workers' safety. While union apprentices are required to take safety courses

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<sup>31</sup> *Building Up New York, Tearing Down Job Quality*, James Parrot, at 22; *Prevailing Wages and Government Contracting Costs: A Review of the Research*, Nooshin Mahalia, Economic Policy Institute; *Quality Construction – Strong Communities: The Effect of Prevailing Wage Regulations on the Construction Industry in Iowa*, Working Paper, Peter Phillips, N.B. chapter 1.

<sup>32</sup> “The fatality rate in construction is “equal to 12.3 fatalities per 100,000 full-time equivalent workers. This compares to a fatality rate of between 2.3 and 3.3 per 100,000 workers in various manufacturing sectors. And while the fatality rate has declined dramatically in most industries, it has remained stubbornly high in construction... the fundamental disorganization of construction sites makes improving safety particularly challenging.” Memorandum, Victoria L. Bor, Sherman, Dunn, Cohen, Leifer & Yellig, P.C. to US Army Corps of Engineers re: *Solicitation of Comments on the Potential Use of Project Labor Agreements [PLAs] for Large Scale Construction Projects Within Orange County, New York*, February 18, 2010.

<sup>33</sup> As reported in *Prevailing Wages and Government Contracting Costs*

<sup>34</sup> *Building Up New York, Tearing Down Job Quality* at 1-2

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and training on OSHA regulations, the majority of the non-union apprentices are not getting any type of training. Other factors contributing to a safer worksite in unionized settings include the use of a safety plan fitted for every project, and of in-house safety officers. Additionally, unionized contractors are required to provide safety equipment, while non-union contractors often do not provide this equipment or require workers to bring their own. The inadequacy or lack of safety training in the non-union construction sector reflects in the number of violations recorded by OSHA. For the years 2004 through 2009, OSHA records for the Massachusetts construction industry reveal that 88 percent of the violations were committed by non-union contractors.<sup>35</sup>

## How PLAs Deal with Safety and Other Urgent Issues Arising During the Project

Safety concerns demand a high level of monitoring, accountability, and a procedure to quickly resolve problems that arise on the job. Collective bargaining agreements - and PLAs in particular - provide the mechanism.

The *New York City Renovation PLA* provides an example of contractual language on safety. The provision is both the written commitment of signatories and a goal statement:

*ARTICLE 14-SAFETY PROTECTION OF PERSON AND PROPERTY:*

*SECTION 1. SAFETY REQUIREMENTS*

Each Contractor will ensure that applicable OSHA and safety requirements are at all times maintained on the Program Work site and the employees and Unions agree to cooperate fully with these efforts to the extent consistent with their rights and obligations under the law. Employees will cooperate with employer safety policies and will perform their work at all times in a safe manner and protect themselves and the property of the Contractor and Agency from injury or harm, to the extent consistent with their rights and obligations under the law. Failure to do so will be grounds for discipline, including discharge.

*SECTION 2. CONTRACTOR RULES*

Employees covered by this Agreement shall at all times be bound by the reasonable safety, security, and visitor rules as established by the Contractors and the Construction Manager for this Program Work. Such rules will be published and posted in conspicuous places throughout the Program Work sites. Any site security and access policies established by the Construction Manager or General Contractor intended for specific application to the construction workforce for Program Work and that are not established pursuant to an Agency directive shall be implemented only after notice to the BCTC and its affiliates and an opportunity for negotiation and resolution by the Labor Management Committee.

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<sup>35</sup>*The Socio-Economic Impacts of Construction Unionization in Massachusetts*, Maria Figueroa and Jeff Grabelsky, Cornell University School of Industrial and Labor Relations, March 2010, at 17. Available at: <http://www.nybctc.org/>



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But language alone is not enough. What's most important is that the language exists within an institutional structure of accountability through contract administration. Workers interests are represented. There is a pledge of mutual cooperation and there are avenues for redress.<sup>36</sup>

Particularly note the reference in Section 2 to the *Labor Management Committee*. This is one of the elements of a PLA for project stability and productivity and it is a good example of how the PLA operates as a “jobsite constitution”. Safety issues, in particular, require vigilance and an expedited procedure for efficient resolution. Other issues, such as jurisdiction, that may arise during the course of a project also demand immediate attention.

The PLA provides alternative dispute resolution procedures to deal efficiently –and in an expedited manner – with a variety of potential problems or disputes. There is a formal grievance and arbitration procedure to address “Any question, dispute or claim arising out of, or involving the interpretation or application of this Agreement...,” a special provision for resolving jurisdictional disputes, and a Labor Management Committee charged with project oversight:

*ARTICLE 8 – LABOR MANAGEMENT COMMITTEE*

*SECTION 1. SUBJECTS*

The Program 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) protect the public interests; 4) discuss matters relating to staffing and scheduling with safety and productivity as considerations; and 5) review efforts to meet applicable participation goals for MWBEs and workforce participation goals for minority and female employees.

*SECTION 2. COMPOSITION*

The Committee shall be jointly chaired by a designee of the Agency and the President of the Council. It may include representatives of the Local Unions and Contractors involved in the issues being discussed. The parties may mutually designate an MWBE representative to participate in appropriate Committee discussions. The Committee may conduct business through mutually agreed upon sub-committees.

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<sup>36</sup> The New York City PLA provisions – and similar provisions in other PLAs – discussed in this report -- are consistent with recommendations included within the *Economic Policy Institute Briefing Paper #274, Building Better: A Look at Best Practices for the Design of Project Labor Agreements*, Dale Belman and Matthew Bodah, 8/11/10. The report includes a section “Designing PLAs to improve safety and health” that suggests “five elements...necessary for a safety plan to reduce injuries and fatalities:

1. Health and safety committees for the project as a whole (planning/oversight) and an active health and safety committee structure at the worksite that reflects the changing set of trades onsite over the course of the project;
2. an explicit training program for both apprentice and journeymen related to the site;
3. specific procedures to ensure a health and safety culture, e.g., regular morning meetings on training;
4. consistent tracking of workplace injuries and illnesses on the site and evaluation of “near-miss” situations; and
5. linking of health and safety to workers’ compensation to provide cost savings for effective health and safety programs.”

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## Economic Opportunity and Workforce Development

### *Helmets to Hardhats*

Recent studies<sup>37</sup> detail how PLAs are effective instruments for workforce and community economic development. PLA provisions have been linked to local hiring and have expanded opportunities for apprenticeship training as well as for the hiring of minority, women, and low income workers. PLAs have, for these reasons and in recent years, also been labeled as Community Workforce Agreements. The agreements provide the opportunity for various parties — public owners, contractors, unions, and community groups — to formulate innovative programs that serve important social policy goals. One such provision – and the focus of this section – promotes an especially timely and valuable program: *Helmets to Hardhats*.

*Helmets to Hardhats* is a partnership between the building and construction trades unions, the signatory Construction Industry Employer Associations, and the US military. Its mission is to transition military veterans back to civilian life with quality training and opportunities for a career in the construction industry.

The program performs an important service to the nation, to the industry, and to America's military families. Veterans receive training in the trade of their choice through union apprenticeship. The process begins while candidates are still in the service. Information about careers and apprenticeships are accessible via the Internet. Candidates complete a comprehensive profile so that hiring managers can determine what skills acquired in the military will best match and transfer to a particular craft. Representatives from *Helmets to Hardhats* then follow-up with candidates, checking that all applications requirements are met.

It is a logical and sensible match. Veterans offer more than transferable skills. Their experience provides the kind of discipline, commitment to teamwork, and drive that are highly valued within the construction industry. A representative account is that of former US Air Force Civil Engineer and New Yorker Philip Mondano, now a member of the International Union of Operating Engineers. At the time the article was written, Mondano was employed at the World Trade Center Rebuild project. According to the story,

His military experience proved useful for him in still other ways: “Most people who go through

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<sup>37</sup> *The Socio-Economic Impacts of Construction Unionization in Massachusetts*, Maria Figueroa and Jeff Grabelsky, Cornell University School of Industrial and Labor Relations, March 2010. Available at: <http://builtbest.org/new-study-socio-economic-impacts-construction-unions-massachusetts>.

*Building Better: A Look at Best Practices for the Design of Project Labor Agreements*, Dale Belman and Matthew Bodah, Economic Policy Institute Briefing Paper #274, August 2010, available at: [www.epi.org](http://www.epi.org).

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the apprenticeship program are in for four years, but my work in the military as a civil engineer gave me an advantage,” he said. “I only had to train for 2 months before I was placed in a job.”

From there Mondano worked long hours, using the dedication and drive that he had once applied to his military career to prove that he was committed to success.<sup>38</sup>

*Helmets to Hardhats* is supported as a formal policy of the Building and Construction Trades Department, AFL-CIO and building trades councils across the nation including the Building and Construction Trades Council of Greater New York and Vicinity. Specific provisions are typically included within PLAs such as Article 21 of the New York City agency PLAs:

*ARTICLE 21 - HELMETS TO HARDHATS*

*Section 1.*

The Contractors 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 Contractors 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.

*Section 2.*

The Unions and Contractors 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 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.

Many states have passed resolutions that recognize the value of *Helmets to Hardhats* and that allow preferences for veterans seeking apprenticeships.<sup>39</sup> New York State supports the program as a matter of public policy:

The New York State Department of Labor Apprenticeship Training Unit actively supports the

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<sup>38</sup>“Military Experience Makes a Difference: Success Story” at <http://info.helmetstohardhats.org/>

<sup>39</sup>“A Natural Fit: When a nonprofit jobs program began training exiting service members for work in the construction trades, employers started snapping them up”, Christina Ianzito, *Washington Post*, April 13, 2008, available at: <http://www.washingtonpost.com/wp-dyn/content/article/2008/04/08/AR2008040802040.html>

Also see “Helmets to Hardhats Opens Doors into New Trades for Veterans”, Mike Cronin, *Pittsburgh Tribune-Review*, October 23, 2008, available at <http://info.helmetstohardhats.org/content/career/helmets-to-hardhats-opens-doors-into-new-trades-for-veterans>

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Helmets to Hardhats initiative by encouraging apprenticeship sponsors throughout the State to participate in the program to the maximum extent feasible. The Apprenticeship Training Unit will lend whatever assistance is necessary to help sponsors insure the success of the Helmets to Hardhats program and is excited about the potential this program has to expand interest in careers in the trades. With a large number of skilled laborers reaching retirement age and leaving the workforce, particularly in the building and construction trades, this program will help to fill the shortfall of workers in those trades.<sup>40</sup>

The construction industry has taken the lead among employers and unions and the timing could not be more appropriate. US Senator Charles Schumer of New York issued a recent statement - and call for action - highlighting the urgent need for programs – in various industries - to aid veterans who now face “alarming” levels of unemployment. Schumer’s statement noted that the US Department of Labor reported an unemployment rate of 21.1 percent among 18-24 year-old veterans – four points higher than the unemployment rate for non-veterans and over twice the unemployment rate for the nation.<sup>41</sup>

### ***Edward J. Malloy Initiative for Construction Skills***

Related to the work performed under the NYC agency and Economic Recovery PLAs is The *Edward J. Malloy Initiative for Construction Skills* – the leading industry-based labor-management partnership for workforce development in the metropolitan New York area. Its mission is to provide the local industry with an emerging pool of highly-skilled workers and to provide those workers with a meaningful career in the building and construction trades. Its operation exemplifies industry “best practices” for successful and effective workforce development programs.<sup>42</sup>

Established in 2001, the *Construction Skills* program is jointly-sponsored by the Building

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<sup>40</sup><http://www.labor.ny.gov/apprenticeship/Helmet2Hardhat.shtm>

<sup>41</sup> “Schumer Report Reveals Staggering Unemployment Among Recent Veterans-Schumer Announces New Online Campaign to Help Unemployed Vets Find Jobs at Upstate NY Businesses”, News Release, March 9, 2011, available at: [www.schumer.senate.gov](http://www.schumer.senate.gov).

<sup>42</sup> Belman and Bodah identify six elements for program success based on their review of training literature:

1. A pre-apprenticeship program providing “foundation skills and [that] screens enrollees for their ability to handle the demands of construction”
2. A link between pre-apprenticeship and actual apprenticeship opportunities
3. Sufficient apprenticeship work opportunities enabling enrolled apprentices to complete the program in a reasonable time
4. Continuing work opportunities to facilitate the movement of apprentices into journey-worker status
5. Oversight of the training by industry and community stakeholder representatives, and
6. Close working relationships “between community groups and advocates and local building trades unions and councils in the development, crafting, implementation, and ongoing evaluation...”

*Building Better: A Look at Best Practices for the Design of Project Labor Agreements*, Dale Belman and Matthew Bodah, Economic Policy Institute Briefing Paper #274, August 2010, at 16, available at: [www.epi.org](http://www.epi.org).

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and Construction Trades Council of Greater New York and the Building Trades Employers Association; Heat and Frost Insulators Local 12 Business Manager Dennis Ippolito serves as Chairman and Building Trades Council Chief of Staff Paul Fernandes is President and CEO. It is supported by the Port Authority of New York/New Jersey, the New York City School Construction Authority, the New York City Department of Education, the New York Building Congress, and the Consortium for Worker Education.

*Construction Skills* places New York City high school graduates, veterans, women, and economically disadvantaged workers into apprenticeship programs of unions affiliated with the Building and Construction Trades Council. As of April 2010, 1,141 City residents have been placed into apprenticeship programs.<sup>43</sup>

With a retention rate above 80%, the program is a major reason for the broad diversity of the metropolitan New York construction workforce: African-Americans, Hispanics, and Asians from the five boroughs today represent a majority of new union members in the area's trades.<sup>44</sup>

Pre-apprenticeship programs prepare high school seniors from New York City's public schools with both classroom and hands-on training for a "direct track" into union-sector apprenticeships. *Construction Skills* puts strong emphasis on career counseling for high school seniors. Participating high school seniors must meet regularly with staff and receive individualized coaching and advice relevant to the trade of their choice.<sup>45</sup>

*Construction Skills* revised its pre-apprenticeship mission in 2006 to include adult residents of the New York City Housing Authority. Participants move through a full-time, five week classroom and hands-on training that includes math, fitness, health and safety, and an introduction to the building trades.<sup>46</sup> As stated by Nicole Bertran, Vice President of Programs at *Construction Skills*, "Pre-apprenticeship is such a tremendous way to move people out of poverty."<sup>47</sup>

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<sup>43</sup><http://www.constructionskills.org/>

<sup>44</sup>Ibid.

<sup>45</sup>*Construction Pre-apprenticeship Programs: Interviews with Field Leaders*, Maureen Conway, Allison Gerber, and Matt Helmer, The Aspen Institute, Workforce Strategies Initiative, 2010, at 12. Available at: [http://bfri.org/Portals/0/Uploads/Documents/Public/wsi\\_preapprenticeship\\_interviews%20with%20field%20leaders\\_web.pdf](http://bfri.org/Portals/0/Uploads/Documents/Public/wsi_preapprenticeship_interviews%20with%20field%20leaders_web.pdf)

<sup>46</sup>"Pre-apprenticeship" at [www.constructionskills.org](http://www.constructionskills.org)

<sup>47</sup>Ibid. at 34

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## Part II: PLAs and Competitive Bidding

Public-sector PLAs have repeatedly been upheld as consistent with state competitive bidding laws in New York State and other jurisdictions since the US Supreme Court empowered states to authorize PLAs in the 1993 *Boston Harbor* decision. The Court unanimously held that states and municipalities, in their capacity as owners and purchasers of construction services, have a constitutional privilege to secure the use of PLAs for their projects.<sup>48</sup>

Critics of PLAs nevertheless continue to oppose PLAs, through largely unsuccessful litigation and lobbying efforts, claiming that PLA are inherently “anti-competitive,” “union-only” agreements that discriminate against non-union contractors, limit the pool of bidders and therefore drive up construction costs. These claims are not supported by PLA experience or by a clear analysis of statutory and case law.<sup>49</sup>

The underlying objectives of New York State’s competitive bidding laws are: 1) to protect public funds by obtaining the best possible work at the lowest possible price, and 2) to prevent

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<sup>48</sup>[Building and Construction Trades Council of the Metropolitan District, et al. v. Associated Builders and Contractors of Massachusetts / Rhode Island, et al.](#), 507 U.S. 218 at , 142 LRRM 2649, 2651, (1993), “*Boston Harbor*.”

The U.S. Supreme Court’s *Boston Harbor* decision not only significantly broadened the use of PLAs. It is a strong statement of support for collective bargaining in the construction industry. The Court considered the intent of Congress in amending the National Labor Relations Act [NLRA] to allow construction industry pre-hire and restrictive subcontracting agreements [Section 8(e) and 8(f)]. It then declared that the same rationale which justifies the use of such agreements in the private sector also justifies their use in the public sector when public agencies are acting as property owners.

The Court discusses the historic use and benefits of PLAs — for stability and productivity — and explains why those benefits should be extended to states and municipalities; the rationale for using PLAs in the private sector also justifies their use in the public sector when public agencies are acting as participants in the construction marketplace. Let all parties operate freely within that marketplace and have the flexibility to authorize or enter into agreements that advance their interests. Important public interests are served when public entities make effective use of limited public resources by securing optimum productivity and insuring the timely and successful completion of the project. See *Boston Harbor* at 2654.

<sup>49</sup>For a detailed discussion of the relationship between costs and bidding, see *Project Labor Agreements in New York State: In the Public Interest*, Fred Kotler, Cornell ILR, 2009, at 14 -23, available at: <http://digitalcommons.ilr.cornell.edu/reports/22/>.

Also see *Project Labor Agreements*, Dale Belman, Ph.D., Matthew M. Bodah, Ph.D., Peter Phillips, Ph.D., ELECTRI International, (2007), at 1-16, 35-36; available at: <http://massbuildingtrades.org/project-labor-agreements-white-papers>.

Belman, Bodah, and Phillips reviewed previous research and conducted a study of bidding on both PLA and non-PLA projects in two adjacent school districts of the San Jose-Sunnyvale-Santa Clara, California construction market. They noted that different bidding methods can influence the number of bidders; in their comparison, one of the districts favors separate prime contracts on specialty work. Since there are more specialty than general contractors in most construction markets, that fact alone may account for more bidding.

Their report concluded that “... the only statistically significant variable that predicts bidding behavior is business cycle. In the period that construction activity increased, the number of bidders per bid opening decreased. Most notably, the results of the study indicate that the presence of a PLA has no statistically significant effect on the number of bidders per bid opening.” [at 36]

PLA opponents argue that PLAs restrict bidders thereby reducing competition and raising prices. “The problem with this argument,” according to the Belman team, “is that one need only about half a dozen bidders to get the full effect of bidding competition on prices. Furthermore, research to date only looks at whether nonunion contractors are discouraged and not whether union or high wage nonunion contractors are attracted by PLAs. In short, we do not know whether or to what extent PLAs discourage bidding.” [at 16]

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favoritism, improvidence, fraud and corruption in the awarding of public contracts.<sup>50</sup>

Under state competitive bidding laws, all bidding must be open and nondiscriminatory. Although union-only agreements are permitted in the private sector, bid awards in the public sector cannot be made on the basis of union status. Because union and non-union contractors are free to bid on projects covered by PLAs, they avoid the favoritism that competitive bidding laws are designed to prevent. Awards are frequently made to both union and non-union companies. Successful bidders are required to become signatory to the Project Labor Agreement; they are not required to become signatory to the respective area craft agreement.

New York State law requires fair and honest competition in bidding for public works projects. It does not require unfettered competition.<sup>51</sup> Requiring that successful bidders, union and non-union, become PLA signatories is a reasonable exercise of public authority because it advances important policy concerns of the competitive bidding statutes: cost effectiveness, timely performance and uninterrupted production.

Competitive bidding statutes are enacted *for the benefit of taxpayers and the public property owners not for the benefit or enrichment of bidders*. It is the public interest -- not the business interest of individual contractors -- that is to be protected by securing, through fair and open

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<sup>50</sup>“Competitive bidding on public contracts is intended to guard against favoritism, improvidence, extravagance, fraud and corruption and to foster honest competition in order that the public entity might obtain the best goods and services at the lowest possible price. Bidding statutes are for the benefit of the taxpayers rather than the benefit of the bidders and should be construed and applied so as to accomplish that purpose fairly and reasonably with sole reference to the public interest.”

“Pursuant to *General Municipal Law § 103*, except as otherwise expressly provided by legislative act or local law adopted prior to September 1, 1953, all contracts for public work involving an expenditure of more than twenty thousand dollars, and all purchase contracts involving an expenditure of more than ten thousand dollars, shall be awarded to the lowest responsible bidder furnishing the required security after advertisement for sealed bids. Section 103 applies to a political division or any district therein. The term “political division” is defined by *Gen. Mun. L. § 100(1)* as including a municipal corporation, school district, district corporation and board of cooperative educational services. “Municipal corporation” is defined by *Gen. Mun. L. § 2* as including a county, town, city or village.

“Other statutes incorporate the bidding requirements of *Gen. Mun. L. § 103* by reference. *Section 122 of the Town Law*, applicable to advertising for bids and the letting of contracts, specifically provides that “[e]very officer, board or agency of a town shall let all contracts for public work and all purchase contracts to the lowest responsible bidder after advertisement for bids where so required by section one hundred three of the general municipal law.”

--Judith Craven, LEXSTAT 3-13 NY PRACTICE GUIDE: BUSINESS AND COMMERCIAL § 13.06

“New York has a multitude of procurement statutes applicable to public entities, but the underlying purpose is uniform: to assure prudent use of public moneys and to facilitate the acquisition of high quality goods and services at the lowest possible cost (see, e.g., *General Municipal Law § 100-a*). This Court has several times revisited New York’s requirement for competitive bidding in the disposition of public contracts.”

New York State Chapter, Associated General Contractors v. New York Thruway Authority, 88 N.Y.2d 56, 666N.E.2d 185, 643 N.Y.S. 2d 480, 151 L.R.R.M. (BNA) 2891, 42 CLR 117, 133, 4/13/96; hereinafter “Thruway”

<sup>51</sup>“New York’s competitive bidding statutes do not compel unfettered competition, but do demand that specifications that exclude a class of would-be bidders be both rational and essential to the public interest. Thus, a PLA will be sustained for a particular project where the record supporting the determination to enter into such an agreement establishes that the PLA was justified by the interests underlying the competitive bidding laws.” *Thruway* HN 1

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bidding, the best work for the money.<sup>52</sup>

Nonunion contractors are free to bid or not to bid on PLA projects. Those who choose not to bid might object to working within a collective bargaining framework. They might have concerns about employing workers through union referral or paying into union-sector benefits plans. They might assess, for business reasons independent of the PLA, that they are neither sufficiently large nor sufficiently experienced to successfully perform the work.

There are many reasons why contractors — both union and non-union — may choose not to bid on particular projects. These include market conditions, contractor experience and worker skill levels, and bidding procedures. There are no credible studies demonstrating that a PLA in the bid specifications is itself responsible for a decrease in the number of bidders or that fewer bidders translates into higher actual project costs.<sup>53</sup>

Contractor choices in no way limit the power of public entities to make the rules and require PLA use. It is the *opportunity to bid* that is critical. So long as the PLA has been duly authorized and the procedure does not prevent nonunion contractors as a group from bidding, the public entity is acting in the public interest.

The US Supreme Court and the Court of Appeals of New York have been very clear on this. The message to the contractor community is straightforward: You are free to participate — or not to participate — in the PLA bidding process. If you play the game, you have to play by its rules. Otherwise seek your business opportunities elsewhere.

The US Supreme Court made the point in its landmark *Boston Harbor* decision that opened the door for non-federal public entities to authorize PLAs:

...those contractors who do not normally enter into such agreements [PLAs] are faced with a choice. They may alter their usual mode of operation to secure the business opportunity at hand, or seek business from purchasers whose perceived needs do not include a project labor agreement.<sup>54</sup>

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<sup>52</sup>General Municipal Law § 103 was enacted to protect municipalities and its taxpayers and not for the benefit of the bidders. *Fonseca v. Board of Ed. of Rome City School Dist.*, 58 Misc. 2d 223, 294 N.Y.S.2d 952 (Sup 1968).

Statutory requirements for public bidding are not primarily enacted to enable a contractor to prosper in his business, but rather to assure that public affairs will be conducted economically, efficiently, and honestly; nevertheless, contractors should not be disqualified in advance from bidding by action of a public body without particularization of charges against them and an opportunity to be heard. *Application of Pipe & Engineering Co.*, 220 N.Y.S.2d 175 (Sup 1961) (board of education) See commentary at 27 NY Jur Counties, Towns, and Municipal Corporations Section 1329.

<sup>53</sup>See again works cited and discussed in footnote 49 above; also see commentary by Dale Belman within “America’s Building Trades Unions: Value of Display, Every Day,” DVD, Building and Construction Trades Department, 2011

<sup>54</sup>*Boston Harbor* at 2651

Forty percent of successful bidders on the Boston Harbor project – 102 of 257 subcontractors - were non-union firms within a



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The *Boston Harbor* Court discussed the historic use and benefits of PLAs — for stability and productivity — and explained why those benefits should be extended to states and municipalities; the rationale for using PLAs in the private sector also justifies their use in the public sector when public agencies are acting as participants in the construction marketplace. Let all parties operate freely within that marketplace and have the flexibility to authorize or enter into agreements that advance their interests. Important public interests are served when public entities make effective use of limited public resources by securing optimum productivity and insuring the timely and successful completion of the project.<sup>55</sup>

The Court of Appeals of New York echoed the U.S. Supreme Court in the 1996 *Thruway* decision that reconciled the federal *Boston Harbor* holding with New York’s competitive bidding statutes.<sup>56</sup> Answering charges that PLAs unfairly favor the union sector and cut into the business of open shop contractors, the Court of Appeals stated:

The PLA cannot be said to promote favoritism or cronyism because the PLA applies whether the successful bidder is a union or nonunion contractor...*The fact that certain non-union contractors may be disinclined to submit bids does not amount to the preclusion of competition...* [Emphasis added]<sup>57</sup>

Dismissing the Dissent’s argument that PLA authorization places unfair limits on competition, the *Thruway* majority commented:

Placing preclusive preeminence on a policy of free competition, the dissent would prohibit PLAs without specific legislative direction, however strong the showing that for a particular project such an agreement in fact served the public interest. New York law, of course, has never insisted upon unfettered competition in the letting of public contracts (*see*, at 67-68, *supra*).<sup>58</sup>

The Majority similarly rejected the Dissent’s charge that PLAs unfairly favor unions and union members:

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market that, at that time, was about three-quarters unionized. Early on, this undercut the claim made by PLA opponents that PLAs limit the pool of bidders to union firms or discriminate against non-union contractors in the awarding of bids.

See *The Case for Public Owner Project Labor Agreements (PLAs)*, James M. O’Neill, Esq. and Michael V. Griffin, P.E., Hill International, Inc., available at: <http://www.hillintl.com/PDFs/Project%20Labor%20Agreements%20%28PLAs%29%20-%20O%27Neil.pdf> N.B. Section 5.06.

Also see “Project Labor Agreements and Competitive Bidding Statutes”, Jolie M. Siegel, *University of Pennsylvania Journal of Labor & Employment Law*, Winter, 2001, 3 *U. Pa. J. Lab. & Emp. L.* 295

<sup>55</sup>*Boston Harbor* at 2654

<sup>56</sup>While *Boston Harbor* provided non-federal public entities with a constitutional privilege to require project labor agreements as part of bid specifications, it did not address the limitations on state agencies’ authority to use PLAs under state competitive bidding laws.

<sup>57</sup>*Thruway* at 71. New York State Chapter, Associated General Contractors v. New York Thruway Authority, 88 N.Y.2d 56 at 71, 666N.E.2d 185, 643 N.Y.S. 2d 480, 151 L.R.R.M. (BNA) 2891, 42 CLR 117, 133, 4/13/96; hereinafter “*Thruway*”

<sup>58</sup>*Thruway* at 75

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Nor do PLAs generically represent a social policy favoring organized labor (dissenting opn, at 83). The Thruway Authority PLA, for example, recognized that the successful bidder need not be a union contractor; it recognized that the unions must comply with the terms of the PLA whether or not the successful bidder was a union contractor; and it prohibited discrimination against prospective employees on the basis of union membership.<sup>59</sup>

There is a unifying theme underlying public policy in this area, a theme that ties together the *Boston Harbor* holding with New York’s *Thruway* decision and competitive bidding statutes: Government has a duty to protect the public interest and the right to influence the marketplace by the choices it makes as a marketplace participant.

### Competitive Bidding, Fairness, and the New York City Agency PLAs

The New York City Mayor’s Office of Contract Services memoranda recommending PLA authorization restate the purpose and judicial interpretation of the competitive bidding statute as they clearly define the City’s policy objectives:

...The City entered negotiations with the assumption that, in order to be acceptable, a PLA should provide the best opportunity for obtaining the best work at the lowest possible price; prevent favoritism, fraud and corruption; and otherwise benefit the covered projects and the City by minimizing the costs of delay and providing the possibility of substantial cost savings. Specifically, the City’s objective was to negotiate a PLA that could (1) provide economic benefits to the City through concessionary change in work rules and practices and/or other terms and conditions, the standardization of work hours and the widest possible flexibility in scheduling; (2) provide protection from increased costs and scheduling delays due to labor disputes and disruptions; and (3) secure relief pursuant to Labor Law 222 from the costs associated with Wicks Law compliance. *Furthermore, it was critical that any negotiated PLA provide all successful bidders, including open shop contractors, be allowed equal access to work covered by the PLA, and that they be able to utilize a portion of their regular work force on the project....*<sup>60</sup> [Emphasis added]

The New York City agency PLAs and the 2009-2014 School Construction Authority PLA all include nearly identical language clearly stating that nonunion contractors have the same right to bid and be awarded work as union contractors:

The Unions agree that this Agreement will be made available to, and will full apply to, any successful bidder for Program Work who becomes signatory thereto, without regard to whether that successful bidder performs at other sites on either a union or non-union basis and without regard to whether employees of such successful bidder are, or are not, members of any unions...<sup>61</sup>

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<sup>59</sup>*Thruway* at 76

<sup>60</sup>*NYC MOCS Memo re Renovation PLA* at 2

<sup>61</sup>*Project Labor Agreement Covering Specified Construction Work Under the Capital Improvement Program for Fiscal Years 2009-2014 on Behalf of the New York City School Construction Authority*, Article 2, Section 7, “Availability and Applicability to All Successful Bidders,” at 6

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The same language appeared in the first [2005-2009] School Construction Authority PLA and it is worth noting that, under that agreement, an estimated 20% of successful bidders were non-union companies.<sup>62</sup>

### **Union Referral: Safeguards Against Favoritism**

There is a second layer of protection against favoritism in the job referral procedure: unions cannot lawfully favor their members or discriminate against equally qualified non-members. This is typically restated within the PLA itself. A useful example is the language within the New York City agency PLAs:

*ARTICLE 4- UNION RECOGNITION AND EMPLOYMENT:*

*Section 3: Non-Discrimination in Referrals*

The Council represents that each 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. Referrals shall not be affected in any way by the rules, regulations, bylaws, constitutional provisions or any other aspects or obligations of union membership, policies or requirements and shall be subject to such other conditions as are established in this Article. No employment applicant shall be discriminated against by any referral system or hiring hall because of the applicant's union membership, or lack thereof.<sup>63</sup>

Contractors have the right to determine the competency of all referrals as well as the number of employees required. Contractors can reject applicants referred by the union and can secure labor from sources other than the union if the union cannot meet the contractor's request:

*Section 2: Union Referral*

A. ...Contractors shall have sole right to determine the competency of all referrals; to determine the number of employees required; to select employees for layoff (subject to Article 5, Section 3); and the sole right to reject any applicant referred by a Local Union, subject to the show-up payments. In the event that a Local Union is unable to fill any request for qualified employees within a 48 hour period after such requisition is made by a Contractor (Saturdays, Sundays and holidays excepted), a Contractor may employ qualified applicants from any other available source...<sup>64</sup>

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<sup>62</sup>See "PLAs" within "America's Building Trades Unions: Value of Display, Every Day," DVD, Building and Construction Trades Department, 2011

<sup>63</sup>NYC DEP RENOVATION & REHAB CITY OWNED BUILDINGS/STRUCTURES PLA [DEP Renovation PLA] at 11-12.

<sup>64</sup>Ibid. at 10

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## Provisions Enabling Nonunion Contractors to “Bring Along” Core Employees

Public-sector PLAs typically include provisions for contractors to bypass union referral and “bring along” an agreed upon percentage of their core employees onto the project. These terms ease the transition for nonunion contractors who might otherwise object to relying on a workforce they didn’t know and solely acquired through union referral. It was an important consideration for City officials in the negotiation of the NYC agency PLAs. As stated above, the the Mayor’s Office of Contract Services position was clear that all successful bidders, union and nonunion, “be able to utilize a portion of their regular work force for work on the project...”<sup>65</sup>

The NYC agency PLAs allows contractors to hire up to 12% of their workforce outside of union referral subject to specified qualifications:

### *Section 2: Union Referral*

B. A Contractor may request by name, and the Local will honor, referral of persons who have applied to the Local for Program Work and who meet the following qualifications:

- (1) possess any license required by New York State law for the Program Work to be performed;
- (2) have worked a total of at least 1000 hours in the Construction field during the prior 3 years; and
- (3) were on the Contractor’s active payroll for at least 60 out of the 180 calendar days prior to the contract award.

No more than twelve per centum (12%) of the employees covered by this Agreement, per Contractor by craft, shall be hired through the special provisions above. Under this provision, name referrals begin with the eighth employee needed and continue on that same basis.<sup>66</sup>

## Provisions Encouraging Participation of MWBE Contractors

Minority and women-owned business enterprises [MWBE] in construction typically perform smaller projects than those usually involving PLAs. This has often made it more difficult for MWBE contractors to secure PLA work. Many MWBE companies also face the challenge of moving into the networks of established firms, getting access to training, and securing financing and bonding.<sup>67</sup>

MWBE contractors have historically looked to public sector work for bid opportunities. New York State and New York City have, in recent years, taken steps to increase women and minority business participation. Governor Eliot Spitzer’s Executive Order 8 [2007] instituted a review

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<sup>65</sup>NYC MOCS Memo re Renovation PLA at 2

<sup>66</sup>Ibid.

<sup>67</sup>“Under-Exposed: The Industry’s Minority and Women-Owned Firms Face Challenges”, *New York Construction*, Vol. 55, No. 9, 3/1/08, at 56

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of state procurement policies. New York City enacted Local Law 129 [2005] following a formal study of disparities in contract awards; the law mandates utilization and subcontractor goals for MWBE contractors.<sup>68</sup>

PLA terms, in New York and elsewhere, are being adjusted to increase the role of MWBE contractors on public jobs. The NYC agency agreements enable nonunion MWBE contractors to be more competitive by tying worker retention to project size. These are significant adjustments to union referral procedures specifically intended to broaden the pool of bidders, and reflecting input received during negotiations from representatives of the City’s MWBE contractor community.<sup>69</sup> For contracts at or under \$500,000, MWBE contractors can retain – or “bring along” – workers for up to fifty percent [50%] or four of the first eight positions. Larger contracts, those over \$500,000 and under \$1million, MWBE contractors can retain three of the first eight positions.<sup>70</sup>

### NYC School Construction Authority Mentor Program

Facilitating participation of MWBE contractors is the mission of the New York City School Construction Authority Mentor Program. The program is seen as a model for helping MWBE contractors develop their businesses and secure larger, public project work.<sup>71</sup>

The Mentor Program is a highly developed, multi-year program for preparing smaller, nonunion MWBE contractors to successfully bid and perform large NYC public projects. It is particularly significant for the market because SCA’s budget represents the single largest share [25%] of public work in New York City and the agency, now engaged in its second multi-billion dollar five-year Capital Plan under a PLA, is a driver for the industry.

Pursuant to the *New York City School Construction Authority Act*<sup>72</sup>, the Mentor Program’s stated mission is to:

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<sup>68</sup>Ibid.

<sup>69</sup>Ibid. See also Andrew Brent, “Mayor Bloomberg Announces Labor Agreements on Public Projects to Reduce Costs, Spur Projects and Create Jobs”, *Targeted News Service*, 11/24/09, [available on Lexis].

<sup>70</sup>C. Notwithstanding Section 2(B), above, certified MWBE contractors for which participation goals are set pursuant to New York City Administrative Code §6-129, that are not signatory to any Schedule A CBAs, with contracts valued at or under five hundred thousand (\$500,000), may request by name, and the Local will honor, referral of the second (2nd), fourth (4th), sixth (6th), and eighth (8th) employee, who have applied to the Local for Program Work and who meet the... [“bring along”] qualifications [of Section 2B]...

For such contracts valued at above \$500,000 but less than \$1 million, the Local will honor referrals by name of the second (2nd), fifth (5th), and eighth (8th) employee subject to the foregoing requirements. In both cases, name referrals will thereafter be in accordance with Section 2(B), above. *DEP Renovation PLA at 11.*

<sup>71</sup>“Under-Exposed: The Industry’s Minority and Women-Owned Firms Face Challenges”, *New York Construction*

<sup>72</sup>NY CLS Pub A § 1743 (2011) § 1743: Equal employment opportunity program and minority and women-owned business enterprise program: 2(b): “The authority shall establish and implement reasonable procedures to secure the meaningful participation of minority and women-owned business enterprises in its procurement process.”

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...increase, facilitate and encourage the participation of Minority, Women-Owned and Locally-Based Enterprises (M/W/LBEs) by providing a flexible framework for eligible firms to develop and grow within the construction industry and to establish stable, long-term business relationships with the SCA.<sup>73</sup>

Here too project size is considered. The program targets projects under \$750,000 for MWBE bidding. Technical assistance and training are provided by [mentor] construction management firms. Participating contractors, having pre-qualified,<sup>74</sup> acquire experience on SCA projects but, at least as important for long term relationships, receive technical assistance and training from construction management firms. These include training in such areas as business, organizational and personnel skills development and preparation for operating within a large organizational environment.

The program is part of agency leaders' larger commitment to improving and streamlining administrative processes and improved communication. This, according to a 2009 interview with then- SCA President Sharon Greenberger, has made it "easier for people to work with us" and is reflected in the quality of the firms that have bid.<sup>75</sup>

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<sup>73</sup>See <http://schools.nyc.gov/Offices/SCA/Programs/MentorProgram/>.

<sup>74</sup>Ibid. Requirements as stated on SCA's website:

In order to participate in the SCA's Mentor Program, a firm must meet all of the following criteria:

- Be prequalified to do business with the SCA;
- Learn how to get prequalified
- Be certified as a Minority-Owned Business (MBE), Woman-Owned Business (WBE) or Locally-Based Enterprise (LBE);
- Learn how to become certified as MWLBE
- Provide at least two references for commercial work – valued at no less than \$25,000 each – in every trade for which it wishes to be qualified; and
  - Have been in business for at least one year.
  - Because the program is targeted to the small contracting business community, a firm can *not* have:
    - ◆ Average gross sales more than \$2.1 million in the last three calendar years; and
    - ◆ Bonding capacity greater than \$1 million.

<sup>75</sup>"*Is the NYC School Construction Authority the Region's Most Important Builder?*", New York Construction, 2009 Owner of the Year, interview by Jack Buehrer, May 2009 Available at <http://newyork.construction.com>. Greenberger's comments were confirmed by a more recent interview conducted by this author with SCA Vice President and General Counsel Ross Holden, 12/15/10.

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## Part III: Cost Savings Advantages of PLAs

### A. THE NEW YORK CITY AGENCY PLAs

New York City Mayor Michael Bloomberg and Building and Construction Trades Council of Greater New York President Gary LaBarbera announced on November 24, 2009 that the City had reached agreement on four Project Labor Agreements covering \$5.3 billion of new construction and renovation work and 32,000 jobs through the end of 2014.

The agreements, following eight months of negotiations, would create 1800 new jobs and save New York City approximately \$300 million. These savings would be channeled back into infrastructure projects that would otherwise have been cut. The announcement further underscored the City's commitment of access to jobs for minorities, women, returning veterans, and NYC high school graduates.<sup>76</sup>

Three of the four PLAs included in the announcement cover projects involving renovation or new construction for designated City agencies:

- *Citywide Rehabilitation and Renovation of City-Owned Structures PLA: Department of Design and Construction [DDC]: ["DDC Renovation PLA"]*
  - This covers \$942 million in projects for renovation, repair, alteration, rehabilitation or expansion of existing structures of several agencies
- *New Construction PLA for the Department of Design and Construction [DDC]: ["DDC New Construction PLA"]*
- *New Construction PLA for the New York City Department of Sanitation [DSNY]: ["DSNY New Construction PLA"]*
  - The two "New Construction" PLAs apply to eleven projects involving expenditures of \$1.9 billion

The fourth PLA was negotiated for the *New York City School Construction Authority*. This is a successor agreement to the 2004-09 PLA. The new agreement covers approximately \$2.5 billion in renovation and rehabilitation work for the schools.

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<sup>76</sup>From Targeted News Service, *Mayor Bloomberg Announces Labor Agreements on Public Projects to Reduce Costs, Spur Projects and Create Jobs*, 11/24/09, Andrew Brent. [Available on Lexis] "Also joining the announcement, held at Chelsea Career and Technical Education High School, were Building Trades Employers' Association President Louis J. Coletti, Women Builders Council President Sandra Wilkin, Association of Minority Enterprises of New York President James Heyleger, Jamaica Business Resource Center President and CEO Timothy Marshall, Harlem Business Alliance Chairman Walter Edwards, NYC School Construction Authority Equal Employment Opportunity Advisory Board Chairman Bill Howell, 100 Black Men President Philip Banks and Adam Bryant of Iraq and Afghanistan Veterans of America."

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Following the November 2009 announcement, three additional PLA were finalized:

- *Renovation and Rehabilitation PLA for the New York City Department of Environmental Protection [DEP]: [“DEP Renovation PLA”] [executed March 2010]*
- *New Construction PLA for the Department of Parks and Recreation [DPR / Bronx Greenway Project]: [“DPR New Construction PLA”] [executed May 2010]*
- *Renovation and Rehabilitation PLA for the New York City Department of Housing Preservation and Development [HPD]: [“HPD Renovation PLA”]*

The City commissioned due diligence studies prior to entering into the agreements. Four construction management firms conducted these studies:

- Hill International, Inc.
- LiRo Group,
- Turner Construction Company
- Tishman Construction

Fifteen studies were conducted, analyzing projects independently, and identifying potential cost savings and increases in efficiency. All of the studies reached the same conclusion: the PLAs would produce substantial direct and indirect cost savings for the City, provide job stability, and promote productivity and greater efficiency. These would be achieved through contractual provisions in three areas:

- Applying the statutory Wicks Law exception for Project Labor Agreements where applicable [pursuant to Labor Law Sec. 222]
- Standardizing and modifying work rules – including scheduling flexibility, standardizing hours, and mutual commitments for productivity
- Reductions in costs for shift work and overtime
- Prohibiting strikes for the duration of the project<sup>77</sup>

Pursuant to completion of the due diligence studies, Marla Simpson, Director, Mayor’s

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<sup>77</sup>[11/24/09 memorandum from Marla G. Simpson, Director, Mayor’s Office of Contract Services and David Resnick, Deputy Commissioner, Structures Division, Department of Design & Construction RE: *Report and Recommendation on Proposed Project Labor Agreement contracts that predominantly involve the renovation, repair, alteration, rehabilitation or expansion of an existing City-owned building*, at 1-2, hereinafter: *NYC OCS Memo re Renovation PLA*]



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Office of Contract Services, with other City officials, issued a series of memoranda formally recommending PLA use.

### **Wicks Exemption for PLAs a Significant Factor**

The statutory exception to Wicks Law requirements --granted specifically to projects covered by PLAs --figures prominently in the consultants' studies and City officials' memoranda. It proved, as anticipated, a significant cost savings factor for the New York City agency agreements and it deserves some detailed discussion here.

NYS General Municipal Law Section 101 ["Wicks Law"] requires that local governments when "soliciting contracts for the erection, construction, reconstruction or alteration of buildings," must "prepare separate specifications" for the electrical, plumbing, and mechanical [heating, ventilation, and air-conditioning] portions of the work.

Local governments in New York have long sought repeal of this requirement for multiple prime contractors as burdensome -- imposing unnecessary costs and time-consuming procedures.

Critics of the Wicks requirements have pointed to several specific problems:

- Each prime contractor would include its own profit margins and increase bid amounts
- Difficulties coordinating work among various prime contractors with resulting delays
- More disputes over the scope of work
- Different levels of competence among prime contractors

Strong efficiencies have been noted in the absence of Wicks: a single prime [general] contractor who can be held accountable to coordinate all of the work among the trades and handle the myriad administrative functions such as permits and approvals, insurance issues, and compliance with codes and other laws.

The New York State legislature responded to calls for Wicks reform in 2008 by raising the dollar threshold for triggering Wicks provisions: to \$3,000,000 -- or a 60-fold jump--for projects in New York City; to \$1.5 million for Westchester, Nassau, and Suffolk Counties; and \$500,000 for all other locations.<sup>78</sup> The new law exempts more than 70 percent of public works projects. Quite

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<sup>78</sup>The legislature has allowed numerous exceptions to Wicks requirements. These include a stadium project in Erie County and construction of the Albany Civic Center. The most significant exception has been for the New York City School Construction Authority [1988], an exemption limited to five years but consistently renewed. See Melissa Wagner, *Wicks Law and Its Reform: Albany Takes a Small Step*, 15 City Law 1, January-February 2009.

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critically, the legislature also took the significant step of exempting all projects conducted under Project Labor Agreements and it broadly endorsed PLA use. [Labor Law Sec. 222]<sup>79</sup>

## **Analyses of Cost Savings for the Various NYC Agency PLAs**

The following subsections summarize cost saving advantages of five NYC agency PLAs as reported in consultant’s studies and City memoranda. The Hill study performed for the Department of Design and Construction [DDC] renovation projects is treated here in more depth. Although there are some differences in format and presentation among the consultants’ reports, the Hill study is representative of the methodology used for all and it quite clearly reflects how and where the cost savings are typically achieved.

### **The NYC PLA for RENOVATION PROJECTS: DEPARTMENT of DESIGN and CONSTRUCTION [“DDC Renovation PLA”]**<sup>80</sup>

#### **The Hill International, Inc. Study**

Hill International, Inc. conducted a study for the PLA involving the renovation, repair, alternation, rehabilitation or expansion of existing City-owned buildings [hereafter the “DDC Renovation PLA”].

Hill looked at eight representative projects selected by the Department of Design and Construction. The projects ranged from \$800,000 to \$25.7 million. Five were multi-bid package multi-contractor projects and sufficiently large [over \$3 million] to qualify as exempt from the Wicks Law requirements pursuant to NYS Labor Law Section 222:

- Rehabilitation of Engine Co. 259 / Ladder 128 Firehouse: \$9.6 million: 5 contracts
- Interior Rehabilitation & Site work at Crown Heights Health Center: \$4.15 million: 4 contracts
- Riverside Health Center: \$26 million: 4 contracts

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<sup>79</sup>Labor Law Sec. 222[2][a] permits state and local government bodies to require that contractors and subcontractors “enter into a project labor agreement during and for the work involved with such project when...[the government body]...determines that its interest in obtaining the best work at the lowest possible price, preventing favoritism, fraud, and corruption, and other considerations such as the impact of delay, the possibility of cost savings advantages, and any local history of labor unrest, are best met by required a project labor agreement.”

Subsection (b) sets out the exception available to public entities who authorize use of a Project Labor Agreements:

Any contract, subcontract, lease, grant, bond, covenant or other agreement for projects undertaken pursuant to this section shall not be subject to the requirements of separate specifications (referred to as the Wicks Law) when the agency, board, department, commission or officer of the state of New York, or political subdivision thereof, municipal corporation, public benefit corporation or local or state authority having jurisdiction over the public work has chosen to require a project labor agreement, pursuant to paragraph (a) of this subdivision.

<sup>80</sup>*Labor Cost Analysis and Report on the Feasibility for a Project Labor Agreement Covering Renovation and Rehabilitation Projects for City Owned Buildings and Structures*, Hill International, Inc., November 19, 2009 [hereinafter “Hill NYC Renovation PLA Study”].

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- Brooklyn Children’s Museum: \$24.1 million: 18 contracts
  - Staten Island Child Advocacy Center: \$1.03 million: 4 contracts

The remaining three projects were single bid package / single contractor projects not eligible for the Wicks exemption:

- Nelson Family Residence – Exterior Envelope Restoration: \$3.4 million
- Auburn Family Residence / Fire Safety: \$877,797
- DOS Brooklyn South District Garage: \$809,420

### **Hill’s Analysis of Area Agreements / Recommended Uniform [PLA] Provisions**

Hill analyzed area agreements of 25 union locals likely to be involved in the projects. It examined differences in the terms and conditions and ways that provisions could be standardized under a PLA for cost savings, efficiency and job stability. It noted differences in provisions for:

- Hours [workday and work week]
- Overtime
- Premium pay
- Starting times
- Breaks
- Shift work
- Reporting pay
- Apprentice ratios
- Holidays
- Grievance, arbitration and dispute resolution procedures
- Management rights
- Contract expiration dates

### **Hill’s Analysis of the Economic Benefits of the DDC Renovation PLA**

Hill then analyzed fourteen contract areas for potential cost savings.<sup>81</sup>

For this report, cost savings areas are presented in two categories: a) those areas more closely identified with project stability; and b) areas more easily seen as providing specific, measurable

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<sup>81</sup> Hill NYC Renovation PLA Study at 17.

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or quantifiable cost savings typically achieved by standardizing provisions of various area craft agreements.

### **Cost Savings Achieved by Assuring Project Stability, Efficiency and Productivity**

Project costs are always impacted by project stability. The following areas have particular benefits for productivity, efficiency and on-time performance and are significant for overall cost savings. Their importance, value and magnitude cannot be overestimated – as acknowledged by owners and the construction community; one such acknowledgement – by New York City officials - is provided in the following section.

- ***No Strikes or Work Stoppages***

- The report points out that all 25 agreements would, quite critically, expire at least once before Fiscal Year 2014 – the period for project performance – and raising a particularly strong potential for labor unrest in the absence of a uniform agreement.
- Hill estimated that work stoppages would cost \$10,749/day for all eight projects. It noted the additional costs and problems associated with delays affecting overall project timing, completion date, inconvenience to the public and agencies.
- ◆ City officials added important commentary on this provision in their memorandum written pursuant to Hill’s report. They noted the significant risk of jobs actions, delays, inconvenience and cost impact in the absence of a PLA because of the duration of the City’s projects. The commentary deserves to be quoted at length:

Over the 4 ½ year duration of the PLA, each of the local union contracts will expire at least once and, in some cases, twice. Each of these contract renegotiations, which are outside the control of the City [City is not a party to the negotiations] and which involve more than 25 locals, could result in lawful strikes or work stoppages that could disrupt important City projects. The effect of this comprehensive no-strike protection is that even if a strike does develop out of those negotiations which shuts down work on construction projects generally throughout the City, work on City owned projects covered by the PLA will continue. The City’s proprietary interests are clearly well served by this comprehensive no-strike/no lock-out protection for the entire construction period covered by the PLA. First, if there should be a strike, the City’s projects would avoid direct costs related to a strike – continued overhead charges, increased wage/material costs as project is delayed, carrying charges in having to continue financing longer, etc. In addition, the City’s projects would avoid the negative impact of a strike resulting in construction delays and interruptions of important public projects or

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City operations such as police precincts, fire stations, health clinics, detention facilities, public libraries, and cultural institutions.<sup>82</sup>

- ***No Strikes or Work Stoppages due to Jurisdictional Disputes***

- Special PLA provisions [Article 10] ban work disruptions and work stoppages due to jurisdictional disputes and include procedures for work assignments.

- ***Management Rights***

- This provision --articulating management's authority to direct and supervise the workforce for productivity and efficiency – has significant impact on overall project performance. Not all area craft agreements include a management rights provision.

- ***Standards of Excellence***

- Hill cites the *Standards of Excellence* promulgated by the Building and Construction Trades Council of Greater New York and Vicinity to increase productivity and efficiency through enhanced communication and coordination among trades. It is a detailed, concrete statement of labor's commitment of quality performance to contractors, users, and taxpayers and it is included here in its entirety:

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<sup>82</sup>NYC OCS Memo re Renovation PLA at 8.

## STANDARDS OF EXCELLENCE<sup>83</sup>

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 New York City Building and Construction Trades Council 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 Standard of Excellence.

<sup>83</sup>NYC Renovation PLA at 45.

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- ***Flexible Starting Times***

- PLA allows contractor to schedule start times for normal weekday work, shift times, including Saturday and Sunday work, to meet project needs and minimize interference with agency operations.
  - ◆ A contractor could, for example, schedule all trades to be present for a 7am delivery without the obligation for premium pay to those trades who would, under the terms of their respective CBAs, not begin work until 8am.

- ***Coordinated / Staggered Lunch Periods***

- PLA enables contractor to coordinate meal periods among crafts or within a craft

- ***Saturday Makeup Days***

- This PLA, but not all PLAs, permits the contractor to schedule Saturday work at straight-time to make-up for productivity lost to severe weather, fire, natural disaster or other circumstances beyond the contractor's control

### **Cost Savings Achieved Through Standardizing Terms of Various Area Craft Agreements:**

- ***Wicks Law Exemption***

- Pursuant to New York State Labor Law Section 222 as discussed above. While not a standardization of various contract provisions, this area yields the most significant quantifiable savings: 10.35% of total construction costs

- ***Standardizing a 40-hour Workweek***

- Estimated savings of \$2,397,755 or 5.8% of total estimated *labor* costs
  - ◆ It is important to note that *labor cost savings* – when isolated as a separate factor – are significantly higher than *total project* cost savings

- ***Overtime at Time and a Half***

- PLA standardization replaces provisions in some trade agreement that require double time. PLA provision also restricts stacking or pyramiding of overtime pay, allows contractor to schedule work so as to minimize overtime and to schedule overtime for some, but not all, crafts as project needs require.

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- ◆ This is a significant cost savings factor even though it is not possible, because the extent of overtime use is not knowable in advance, to reasonably forecast a dollar amount.
  - **Multiple Shifts and Shift Differentials**
    - PLA standardization creates a shift premium - 5% is an example - for work on second and third shifts in lieu of premiums set-out in trade agreements
    - ◆ Shift provisions are particularly important for renovation work -- to lessen any disruption caused by the work to the owner's normal business operations.
  - **Standby Time for Temporary Utilities**
    - PLA eclipses those provisions of trade agreements that require round-the-clock staffing for maintenance of temporary heat and power. PLA enables contractor to use existing employees during regular working hours and for DDC to determine the need for temporary coverage at other, non-work, times. PLA eliminates the need for additional staffing.
  - **Standardizing Holidays**
    - to eight (8): produces net cost savings of \$277,896 and includes the benefit of having all trades on the job on the same days
  - **Reporting Pay**
    - PLA standardizes reporting pay, early termination and discharge pay; replaces trade agreement provisions for special premium payments.
  - **Apprentices**
    - PLA allows contractors to utilize the maximum ratio of apprentices. PLA recognizes the apprenticeship and training's role in providing craft opportunities for women, minorities, and economically-disadvantaged non-minority males.

#### **Hill's Summary of Total Cost Savings for the Eight Projects of the DDC Renovation PLA:**

- Costs savings of 14.4% of total project costs on the five projects subject to the Wicks exemption:
  - Savings based on the Wick exemption, 40 hour week and standardized starting times and holidays
- Cost savings of 2.92% of total project costs -or c.5.9% of total labor costs- for single trade contracts not covered by the Wicks exemption.
- Total savings were projected at \$9.48 million or 13.6% of total project costs.



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*ARTICLE 6- MANAGEMENT'S RIGHTS*

*SECTION 1. RESERVATION OF RIGHTS*

Except as expressly limited by a specific provision of this Agreement, 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; require compliance with the directives of the Agency including standard restrictions related to security and access to the site that are equally applicable to Agency employees, guests, or vendors; or the discipline or discharge for just cause of its employees; assign and schedule work; promulgate reasonable Program Work rules that are not inconsistent with this Agreement or rules common in the industry and are reasonably related to the nature of work; and, the requirement, timing and number of employees to be utilized for overtime work. No rules, customs, or practices which limit or restrict productivity or efficiency of the individual, as determined by the Contractor, Agency and/or Construction Manager and/or joint working efforts with other employees shall be permitted or observed.

*SECTION 2. MATERIALS, METHODS & EQUIPMENT*

There shall be no limitation or restriction upon the Contractors' choice of materials, techniques, methods, technology or design, or, regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre--finished, or pre-assembled materials or products, tools, or other labor-saving devices. Contractors may, without restriction, install or use materials, supplies or equipment regardless of their source; provided, however, that where there is a Schedule "A" that includes a lawful union standards and practices clauses, then such clause as set forth in Schedule A Agreements will be complied with, unless there is a lawful Agency specification (or specification issued by a Construction Manager which would be lawful if issued by the Agency directly) that would specifically limit or restrict the Contractor's choice of materials, techniques, methods, technology or design, or, regardless of source or location, upon the use and installation of equipment, machinery, package units, pre-cast, pre-fabricated, pre-finished, or pre-assembled materials or products, tools, or other labor-saving devices, and which would prevent compliance with such Schedule A clause. The on-site installation or application of such items shall be performed by the craft having jurisdiction over such work; provided, however, it is recognized that other personnel having special qualifications may participate, in a supervisory capacity, in the installation, check-off or testing of specialized or unusual equipment or facilities as designated by the Contractor. There shall be no restrictions as to work which is performed off-site for Program Work.

*NYC DEP RENOVATION & REHAB OF CITY OWNED BUILDINGS/STRUCTURES PROJECT LABOR AGREEMENT COVERING SPECIFIED RENOVATION & REHABILITATION OF CITY OWNED BUILDINGS AND STRUCTURES, 1/22/10*

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## **THE NEW YORK CITY PLA for NEW CONSTRUCTION: DEPARTMENT OF DESIGN AND CONSTRUCTION** **["DDC New Construction PLA"]**

This agreement covers eight projects involving \$1.21 billion in new construction costs:

- Public Safety Answering Center (PSAC II)
- Police Academy
- 40<sup>th</sup> Precinct Stationhouse
- Soundview (Zerega) EMS
- Greenpoint EMS
- Far Rockaway Library
- Solar II
- Queens Library-Hunters Point

The labor costs estimated for these projects were more than \$417 million. Three consultants were retained to conduct studies of economic benefits:

- Tishman Technology Corporation ["Tishman"]: for the Public Safety Answering Center II [PSAC II] project<sup>84</sup>
- Turner Construction Company ["Turner"]: for the Police Academy and Solar 2<sup>85</sup>
- LiRo Program and Construction Management, P.C. ["LiRo"]: for the remaining five projects.<sup>86</sup>
- Projected cumulative savings for all eight projects: \$59,290,000 or 4.88% of total project costs.

## **THE NEW YORK CITY PLA for NEW CONSTRUCTION: DEPARTMENT OF SANITATION** **["DSNY New Construction PLA"]**

This agreement covers three new projects:

- East 91<sup>st</sup> Street Marine Transfer Station, Manhattan
- Southwest Brooklyn Marine Transfer Station, Brooklyn
- Manhattan 1/2/5 Garage, 500 Washington Street, Manhattan

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<sup>84</sup>*Feasibility Study for a Project Labor Agreement Covering Public Safety Answering Center II (PSAC II)*, Tishman Technology Corporation 11/23/09; Tishman is the construction manager for the project.

<sup>85</sup>*NY Police Academy Project: Proposed Project Labor Agreement Analysis Report*, Turner Construction Company, 11/2/09; Turner is the construction manager for the project.

<sup>86</sup>*Economic Benefits of Utilizing A Project Labor Agreement*, LiRo Program and Construction Management, P.C., 11/19/09

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The three projects together represent \$661.3 million in new construction costs. Labor costs alone estimated at \$176.1 million. LiRo was retained to conduct analysis for all three projects – all of which qualified for the Wicks exemption. LiRo estimated at least \$40.1 million or 6.1% of total project costs, cumulatively, on all three projects.

LiRo’s studies show that, in addition to the Wicks exemption, key cost savings factors are the 40 hour week as well as standardizing starting times and holidays.<sup>87</sup>

**THE NEW YORK CITY PLA for RENOVATION: DEPARTMENT OF ENVIRONMENTAL PROTECTION**  
**["DEP Renovation PLA"]**

This agreement covers seven projects for renovation, repair, alteration, rehabilitation or expansion of a water pollution control plant, a water filtration plant, or a pumping station within the five boroughs at a total value of \$686.26 million.

The City relied on cost savings analyses conducted by both LiRo Program and Construction Management, P.C. [LiRo] and Hill International, Inc. and concluded that the PLA would save the Department of Environmental Protection [DEP] approximately \$37.40 million or 5.5% of total project costs.<sup>88</sup>

**THE NEW YORK CITY PLA for NEW CONSTRUCTION: DEPARTMENT OF PARKS AND RECREATION**  
**["DPR New Construction PLA"]**

This agreement covers \$5.94 million in new construction costs for the Bronx River Greenway River House. Labor costs for the project were estimated at \$3.37 million.

LiRo conducted the study and estimated total projected savings of \$608,000 or 10.2% of total construction costs with this breakdown:

- No Disruptions Due to Strikes/Lock Outs/Jurisdictional Disputes: \$ 22,000
- Enhanced Management Rights Provisions: 5,000
- 8 Hour Work Day / 40 Hours Work Week 108,000
- Standardized Holidays 12,000
- Flexible Starting Times and Shifts 17,000
- Meal Period Provisions 9,000

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<sup>87</sup> 11/23/09 memorandum from Marla G. Simpson, Director, Mayor’s Office of Contract Services, Larry Cipolina, Deputy Commissioner for Financial Management and Administration, Department of Sanitation, et al, to John J. Doherty, Commissioner, Department of Sanitation, RE: Report and Recommendation on Proposed Project Labor Agreement for Specified New Construction at 12.

<sup>88</sup> 1/4/10 memorandum from Marla G. Simpson, Director, Mayor’s Office of Contract Services and Kathryn Garcia, Assistant Commissioner, Office of Strategic Projects, Department of Environmental Protection to Caswell F. Holloway, Commissioner, Department of Environmental Protection RE: Report and Recommendation on Proposed Project Labor Agreement contracts that predominantly involve the renovation, repair, alteration, rehabilitation or expansion of an existing City-owned building at 4.

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● Temporary Services	79,000
● Reporting Pay	4,000
● Break Periods	27,000
● Working Stewards	66,000

The Wicks exemption was, as in other analyses, the largest single factor for savings at \$259,000.<sup>89</sup>

### Importance of the NYC School Construction Authority PLA Experience

The Simpson memoranda stress the importance of the City’s earlier “positive experience” with the first School Construction Authority [SCA] PLA [2004-2009]:

We also considered the experiences of the New York City School Construction Authority (“SCA”) in reaching this recommendation. In 2004, the SCA entered into a PLA with the trades covering approximately \$5.4 billion of repair and renovation work in City schools between 2004 and 2009. As reported to us by the SCA, its experiences under the PLA were very positive. Savings were in fact achieved, the SCA was not adversely impacted by any labor dispute or disruption, and in its view construction proceeded more efficiently and more effectively than it would have in the absence of a PLA. Based on this positive experience, SCA is in the process of completing negotiations on a successor PLA to cover its 2009-2014 Capital Plan.<sup>90</sup>

The SCA manages the renovation of existing City schools and construction of new schools for the Department of Education. Its comprehensive capital planning process has yielded impressive results and, by several accounts, has made the SCA a key player in New York City’s construction industry.<sup>91</sup> SCA projects represent 25% of the City’s construction budget. Its 2005-2009 Five-Year Capital Plan was the largest investment in school infrastructure in the City’s history. More than 100,000 school seats were constructed since 2003 including nearly 25,000 in the Bronx, 25,000 in Brooklyn, 13,000 in Manhattan, 32,500 in Queens, and over 5,600 in Staten Island.<sup>92</sup> The SCA

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<sup>89</sup>The LiRo study is incorporated within the 1/11/10 memorandum from Marla Simpson, Director, Mayor’s Office of Contract Services and Liam Kavanagh, First Deputy Commissioner, Department of Parks and Recreation, et al to Adrian Benepe, Commissioner, Department of Parks and Recreation *re Report and Recommendation on Proposed Project Labor Agreement for Specified New Construction: Bronx River Greenway River House*.

<sup>90</sup>Ibid., at 3-4.

<sup>91</sup>See especially, “Is the NYC School Construction Authority the Region’s Most Important Builder?” in *New York Construction*, “Owner of the Year”, Cover Story – May 2009, available at [newyork.construction.com](http://newyork.construction.com); “New York’s Schools Seize A Chance to Expand”, Julie Satow, *The New York Times*, December 21, 2010.

<sup>92</sup>“Mayor Bloomberg Appoints Lorraine Grillo President of School Construction Authority”, Office of the Mayor, Targeted News Service, November 18, 2010.

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opened 18 new schools in 2008, the largest one-year number since the SCA was created in 1988. Mayor Bloomberg credits this productivity to “the reforms the School Construction Authority has adopted to bring down the costs of construction.”<sup>93</sup>

The 2009 Cornell ILR report, *Project Labor Agreements in New York State: In the Public Interest*, noted that Hill International conducted a “PLA Post Audit” during the fourth year of the first SCA project [2008]. Hill’s analysis was that labor – as distinguished from total project - cost savings for that project’s duration were over \$221 million; the City’s taxpayers saved over \$44 million for each year of the project.<sup>94</sup>

The successor PLA for the SCA’s \$11.7 billion 2009-2014 Capital Plan, patterned after the earlier agreement, is now in effect. Both SCA PLAs have provided two key elements for success: scheduling flexibility and cost savings. Scheduling adjustments were necessary for school renovation work to be performed on second or third shifts so to avoid disrupting ongoing school activities.<sup>95</sup> Second and third shift work are typically at high rates of premium pay – time and one-half or double-time - and can add significant costs. The PLA allows for a 5% limitation on the shift differential premium. Because the SCA is exempt from Wicks requirements, per legislation that created the agency in 1988, the second and third shift pay provisions are key cost savings advantages under the SCA PLAs.

## **B. THE NEW YORK CITY ECONOMIC RECOVERY PLA**

The private sector in metropolitan New York City has also dramatically increased its use of Project Labor Agreements for a wide scope of projects since early 2009. This is primarily due to an innovative *Economic Recovery PLA* [hereafter “ER PLA”] – a template PLA applicable to multiple projects -- negotiated by the Building and Construction Trades Council of Greater New York [NYC BCTC] and the Building Trades Employers Association [BTEA] working within the Construction Industry Partnership [CIP].

The CIP was created in 1998 to promote labor-management relations, improve the image of the unionized construction industry, and to increase productivity and union sector market

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<sup>93</sup>Ibid.

<sup>94</sup>*Project Labor Agreements In New York State: In the Public Interest*, Fred B. Kotler, Cornell University School of Industrial and Labor Relations, 2009, at 19-20. Available at [digitalcommons.ilr.cornell.edu/reports/22](http://digitalcommons.ilr.cornell.edu/reports/22)

<sup>95</sup>As articulated within the agreement in Article 12, Section 3: 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 educational mission of the New York City public schools...*” [Emphasis added]

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share. The two organizations are the key labor-management players within New York City's construction industry. The NYC BCTC represents 100,000 craft workers within 54 affiliated local unions. The BTEA is comprised of 28 contractor associations representing 1,700 construction managers, general contractors and specialty trade subcontractors who employ over 25,000 project management and support personnel.<sup>96</sup>

Months of negotiations preceded the May 2009 announcement of the ER PLA. The agreement is designed to save construction jobs and "financially distressed" private sector projects from the severe impact of the 2008-2009 economic downturn to New York City's construction and real estate markets.<sup>97</sup> The sharp drop in real estate values and general economic activity threatened to cancel, modify, or delay projects planned and already underway. Overall construction spending in New York City dropped from highs of \$31.06 billion in 2007 and \$31.0 billion in 2008

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<sup>96</sup> The Construction Industry Partnership, available at: <http://www.bteany.com/media/ppt/cip.pdf>.

<sup>97</sup> Its intent to benefit both the industry and the City's economy was articulated at the initial announcement by the principals involved in the negotiations.

According to NYC BTC President Gary LaBarbera,

This agreement will help our industry and the City get back on its feet and working men and women back on job site. This PLA ensures unionized construction work can continue to thrive in New York City. Developers and building owners already know that union labor and contractors build the best quality and safest projects, now it can be done at a cost that takes into consideration today's economic climate.

LaBarbera's comments were joined by those from BTEA President Lou Coletti,

This historic PLA will be a tremendous boost to the construction industry and the city's overall economic health. It demonstrates recognition by the industry that we understand the new economic realities of building in today's market. We believe this PLA is a great step forward in a continuing process by the industry to make necessary changes to remain competitive, and show the global banking and investment community that unionized construction is serious about getting projects off the ground. The impact of this unprecedented agreement goes far beyond the projects moving forward today, it symbolizes the commitment of the BTEA contractors and our labor partners to a continuous effort to restructure the unionized construction industry.

[Quotes from "Unions and Management Agree to Major Construction Cost Reductions at Twelve Large Development Sites in New York City", *Business Wire*, May 29, 2009.]

The agreement's intent are also clearly stated within the *ER PLA Preamble*:

WHEREAS, due to the national and local economic downturn the project is at risk of being canceled, delayed or modified to significantly reduce the size and scope of the project; and

WHEREAS, the cancellation, delay or modification of the project will adversely impact construction employment opportunities for the construction trade unions in the City of New York; and

WHEREAS, the Construction Manager and the New York City Building and Construction Trades Council desire to mitigate the impact of the economic downturn on construction in the City of New York and have negotiated the terms of this emergency Project Labor Agreement to promote the cost efficient, safe, quality, and timely completion of certain construction work; and

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

(1) expediting the construction process and otherwise minimizing 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; (6) maximizing project safety conditions for both workers and others; (7) reducing labor costs by giving contractors flexibility to manage and perform work operations in the most efficient and productive manner;

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to \$27 billion in 2009. This was reflected in the loss of 11,000 construction jobs during 2008-09. Private sector construction – both residential and commercial -- were particularly hard-hit.<sup>98</sup>

The ER PLA, as initially announced, would save 10,000 jobs, stimulate \$2 billion in construction activity, and be applied to up to three dozen projects.<sup>99</sup> Its scope and impact have been substantially greater.

Seventy-three projects, as of early 2011, have sought and received approval for coverage under the ER PLA through a formal process established by the CIP. These jobs represent over \$14 billion and fifty-five million man-hours of construction activity<sup>100</sup> at such high-profile and varied projects as Beekman Towers, Tower 111, the World Trade Center, Lincoln Center, 150 Amsterdam Ave., 200 & 300 North End Ave., The Milford Plaza Hotel, Hunter College, and St. Mary's Children's Hospital.

The ER PLA reduces the cost of unionized construction by an average of 16-21%. Savings vary by location and are primarily based on work rule changes accepted by labor. Several unions also agreed to a wage freeze and benefits reductions – changes not reflected in the 16-21% savings rate.

Specific provisions agreed to by the Building Trades Council include:

- No strikes or work stoppages
- Standard 8-hour workday and 40-hour work week
- Overtime at time and one-half
- Eight common holidays
- Flexible starting times and lunch breaks
- Maximum utilization of apprentices at training wages
- Strict adherence to safety rules and a standard of excellence for performance – a commitment by workers to be productive for 8 hours a day and to meet their responsibilities in the collective bargaining agreement

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<sup>98</sup>New York Building Trades Congress Construction Outlook, Press Release, October 26, 2010. Available at: [www.buildingcongress.com](http://www.buildingcongress.com).

<sup>99</sup>“Unions and Management Agree to Major Construction Cost Reductions at Twelve Large Development Sites in New York City”, *Business Wire*, May 29, 2009.

<sup>100</sup>Memorandum from Sherman, Dunn, Cohen, Leifer & Yellig, P.C. to U.S. Army Corps of Engineers *re Solicitation of Comments on the Potential Use of Project Labor Agreements*, Victoria Bor, February 18, 2011.

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## Hill's Study of ER PLA Cost Savings<sup>101</sup>

Hill International, Inc. was earlier retained by the CIP to conduct a cost savings analysis and issued its report in March, 2009. It is similar in approach to analyses later conducted by Hill for the City of New York public project discussed above.

Using a steel frame 40 story commercial office building as a model for its calculations, Hill examined relevant provisions of 21 current collective bargaining agreements as well as materials costs, labor and schedule data provided by the Building Trades Employers Association [BTEA].

Hill's report provides examples of PLA standardization that would both reduce costs and increase project coordination and efficiency:

### No Strike Provision<sup>102</sup>

The point here is the same as that discussed earlier within the discussion of New York City agency PLAs. A key advantage of a PLA is the assurance provided for uninterrupted production based on: 1) the no strike provision, 2) alternative dispute resolution procedures, and 3) the common contract expiration date that eclipses the expiration dates of the various area craft agreements. These remove substantial risk of unanticipated costs and delays that might otherwise be triggered by disputes involving a single trade.

### Work Week

- Current local agreements:
  - Thirteen (13) of 25 local agreements provide for a 35-hour workweek.
- PLA:
  - Provides for a 40-hour workweek, 8 hours/day plus ½ hour unpaid lunch with start times from 6-8am

### Holidays

- Current local agreements:
  - Range from 7-14 holidays per year
- PLA:
  - Eight (8) standardized holidays

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<sup>101</sup>This section is based on the *Cost Benefit Analysis of BCTC Economic Downturn Project Labor Agreement*, Hill International, Inc., March 2009.

<sup>102</sup>ER PLA: Article VII. Work Stoppages and Lockouts: Section 1. No Strikes – No Lock Out:

“There shall be no strikes, sympathy strikes, picketing, work stoppages, slowdowns, demonstrations or other unlawful disruptive activity. There shall be no lockouts 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 and to ensure uninterrupted construction and the free flow of traffic in the Project area for the duration of this Agreement.”



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- ◆ Workweek adjustment and standardized holiday schedule produce estimated savings of 8.19% of total labor costs

### **Flexible Start Times and Staggered Lunches / Vertical movement**

- Current local agreements:
  - Start times vary from 6-8am
- PLA:
  - Flexible start times and staggered lunch breaks allowing contractors to schedule high rise lifts so as to reduce non-productive wait time during arrival and departure from the jobsite.
    - ◆ This was estimated to add one hour of productive time [four 15-minute wait times] per day or 3.5% of total labor costs for the project.

### **Shifts /Premium pay**

- Current local agreements:
  - Premium pay for second shift work varied from 0% to 100%.
- PLA:
  - All trades: Shift differentials of 15% for second shift; 20% for third shift
    - ◆ Hill estimated approximately 4% of total labor cost savings.

### **Overtime**

- Current local agreements:
  - Seven trades: double time for all work outside normal hours, Monday-Friday
  - Most trades: double time for Saturdays
  - All trades: double time for Sundays and Holidays
- PLA:
  - All trades: 1 ½ time
    - ◆ This produces significant cost savings even though it is difficult to project actual overtime use or a specified dollar amount.

### **Apprentices**

- Current local agreements:
  - Some CBAs are silent on the ratio of apprentices to journeymen
  - Generally range from 9% to 33%

- PLA:
  - Allows employment of apprentices to the maximum approved by the NYS Department of Labor: 25% or 1:3 ratio
  - Numbers and level of apprentices to be determined by the Contractor per PLA Management Rights provision

**Alternative Dispute Resolution (ADR) for Workers’ Compensation**

- Pursuant to NYS statute [section] permitting alternative dispute resolution procedures for Workers’ Compensation claims when articulated through collective bargaining and approved by the Workers’ Compensation Board.
  - Particularly valuable in an industry with relatively high injury rates and premiums, these procedures offer a non-adversarial means for more quickly and efficiently resolving claims. Hill noted that credits in Workers’ Compensation premiums of 5-20% could be transferred from contractors to owners. Hill estimated a potential savings of \$730,000 over the life of the model project.

**Temporary Services**

- Impacts up to six trades: PLA provides that temporary services for maintenance of on-site heating, cooling, and ventilation will be upon the request of the owner, Construction Manager, or General Contractor.
  - Hill estimated that temporary services on this project would typically cost about \$350,000, that 80% of that amount is attributable to labor costs and that this provision would save about 70% of those labor costs.

**Trade Specific Work Rule Changes and All Trades Commitment to Standards of Excellence**

- Hill’s report also factored-in benefits from several agreed upon non-quantifiable, trade-specific work rule changes and cited all trades’ commitment to the *Building Trades’ Standards of Excellence*<sup>103</sup> for efficient and productive performance. Projected savings of 3.50% of total labor costs.

**COST SAVINGS SUMMARY**

● 35 to 40 Hour Work Week & Standard 8 Holidays	8.19%
● Flextime and Staggered lunch	3.50%
● Shifts*	4.17%

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<sup>103</sup>See discussion above of NYC agency PLAs for text of the *Standards of Excellence*.

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● Increased Productivity {1 Hour} - Standards of Excellence	3.50%
● Temporary Services	0.16%
● <b>Estimated Total Labor Cost Savings</b>	<b>19.52%</b>

*\*Assuming 2 shifts, all trades duration of project*

### **ER PLA's Impact: Beekman Tower Project**

The \$680 million Beekman Tower— a high-profile project designed by noted architect Frank Gehry – was one of the first to qualify for the ER PLA. The project is a good illustration of how the ER PLA has saved projects threatened with cessation or significant reduction in size and scale.

Conceived during New York City’s building boom in 2007, the 76-story, 867 foot Tower is now the tallest residential building in the City. But earlier difficulties in financing and high project costs --exacerbated by the weakened real estate and rental markets -- disrupted work and threatened to seriously change the project’s scale. Developer Forest City Ratner stopped work in December, 2007, then again in March, 2009 when construction was at 37 stories, and sought to cap the building at 40 stories. With labor costs reduced by as much as 20 percent under the newly-implemented ER PLA, and aided by cost reductions for materials and appliances - work resumed in May, 2009.<sup>104</sup>

The ongoing construction created 2,500 jobs and, as the first building to top-out under the ER PLA, is viewed as a “milestone” and a “major victory” for the Construction Industry Partnership.<sup>105</sup>

### **List of Approved and Executed ER PLA Projects**

A list of approved and executed projects under the *Economic Recovery PLA* is included in this report as *Appendix B*.

## **C. PUBLIC AND PRIVATE SECTOR PLAs ELSEWHERE IN NEW YORK**

PLA activity is significant elsewhere in New York State. This section provides an overview of other recent PLA activity in both the public and private sectors within and beyond the metropolitan New York area. Projects listed are representative, not all-inclusive, and are included to give the reader a sense of scope of projects, the range of owners who have authorized PLAs, and the importance of PLAs for the industry.

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<sup>104</sup>“Savings on Labor Allow Work on Residential Skyscraper to Resume”, Charles V. Bagli, *The New York Times*, May 29, 2009.

<sup>105</sup>“Beekman Tower Reaches Milestone”, *New York Construction*, January 1, 2010, at 9

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## Outer Boroughs, Nassau and Suffolk Counties

- Public projects include:
  - The Great Neck Water Pollution Control District Wastewater Treatment Plant
  - Improvements and Expansion
  - Hicksville Garage: Town of Oyster Bay
  - Manorhaven Pool Complex
  - Nassau Community College
  - N. Hempstead Community Center
  - Smithtown Library
  - Suffolk County Community College
  - Suffolk County Sewer District
  - Astoria Powerhouse
  - Bronx Psychiatric Center
  - CUNY Science Research Center
  - Brooklyn College Law School
- Private projects include:
  - Wal-Mart – all owned and leased facilities in the five boroughs
  - Delta Airlines – JFK Airport Terminals 3 & 4 Redevelopment Program
  - Pinnacle Hotel
  - Renaissance Technologies
  - Canon USA Headquarters
  - Aqueduct Raceway
  - Mets and Yankee Stadiums
  - NHCC [Nassau Health Care Corporation]

### PLA's Value for the Hicksville Parking Garage Project

A representative public-sector PLA project in Nassau County is the construction of a new Hicksville Parking Garage located near the Hicksville Long Island Railroad station at the Town of Oyster Bay. The estimated \$40 million project replaces a former parking facility and involves both above ground and below grade construction for a multi-use facility totaling 575,000 square feet including office space.

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The due diligence study, conducted by LiRo Program and Construction Management, highlights the PLA's importance for coordination, uninterrupted production and timely completion: a critical need to minimize disruption for rail commuters requires that the project follow a "complex" and "aggressive" 18 month schedule. This involves "close coordination of contractors and trades working on several locations on the Project site." The study also points to the importance of contractors' ready access to skilled labor through the PLA:

Critical milestones must be met to maintain the schedule. In order to maximize schedule compliance, the enlistment of a skilled and reliable workforce is imperative. The provisions of a PLA provide for the availability of the requisite skilled and reliable trades.

LiRo's cost analysis estimated that the PLA would save taxpayers \$1.21 million – 6% of labor costs and 3% of total project costs - through standardization of the workweek to 40 hours as well as standardization of work rules, schedules and holidays.<sup>106</sup>

### **Westchester and Putnam Counties**

Approximately \$7 billion in new construction and renovation projects have been performed under PLAs in Westchester and Putnam Counties. Please see the list included within this report as *Appendix C*.

### **Hudson Valley [including Orange County]<sup>107</sup>**

- Public projects include:
  - Orange County Infirmary
  - Orange County Courthouse
  - Orange County Correctional Facility
  - Stewart Airport – various projects
  - New York Thruway / Stewart Interchange Project
  - Kingston City Hall Project
  - Harriman Waste Water Treatment Center

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<sup>106</sup>Feasibility Analysis, Development and Implementation of a Project Labor Agreement for the Hicksville Parking Garage, submitted to the Town of Oyster Bay Department of Public Works, prepared by LiRo Program & Construction Management, P.C., Syosset, New York, May 2009.

<sup>107</sup>Memorandum, Victoria L. Bor, Sherman, Dunn, Cohen, Leifer & Yellig, P.C. to US Army Corps of Engineers re: *Solicitation of Comments on the Potential Use of Project Labor Agreements [PLAs] for Large Scale Construction Projects Within Orange County, New York*, February 18, 2010. This list includes "projects conducted during the past ten years".

The memo also includes this comment re awards to nonunion contractors: "...the Hudson Valley BCTC reports that of the contractors that have been awarded work under its PLAs, 25-30% have been non-union contractors"

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- Ulster County Law Enforcement Facility
  - Orange County Emergency 911 Center
  - Newburgh City Courthouse Project
  - Fishkill Rombout Waste Water Treatment Plant
  - Kingston Courthouse and Police Project
  - Kaplan Hall SUNY Orange -Phase II
  - Sullivan County Transfer Station
  - Marlboro Schools – Elementary and High School Projects
  - Newburgh Schools – projects under two bond initiatives
  - Private projects include:
    - Super K-Mart, Sullivan Plaza
    - Mount Alverno Health Care Facility
    - Woodbury Commons
    - Home Depot Distribution Center
    - Kohl’s Distribution Center
    - GAP Distribution Warehouse Project – Phases I and II
    - Concord Hotel Reconstruction – Phase I
    - Empire Resorts – Monticello Raceway
    - Harriman Commons
    - IBM 323 Annex – Phases I and II
    - St. Luke’s Hospital – Newburgh and Cornwall Campuses – various projects
    - Mount St. Mary’s College Aquinas Hall Project

## Monroe County

- Projects include:
  - Monroe County East Side Water Treatment Plant
  - O’Rourke Bridge (Stutson Street Bridge Replacement)
  - Monroe County Crime Lab
  - Paetec Park
  - Monroe Community College- Nursing School
  - Rochester Genesee Regional Transit Authority
  - Monroe County Crime Laboratory

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### Other PLA Projects in New York State include:

- Onondaga Lake Improvement Project: cost savings estimated at approximately \$12 million or 11% of the projected \$400 million cost of the project
- St. Lawrence County Jail Project: projected labor cost savings of \$270,000
- Syracuse [Hancock] Airport Passenger Terminal project:
  - Projected labor cost savings: \$780,000
  - Projected additional savings of \$5.97 million from Wicks exemption
- Utica School District: costs savings estimated to exceed \$3.5 million
- SUNY Buffalo School of Engineering

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## SUMMARY

### Significant PLA Use in New York State

- New York City has seen a dramatic increase in the authorization and use of PLAs since early 2009. PLAs now cover a wide range of infrastructure and corporate projects in all five boroughs.
- PLA activity is also significant – for both public and private sector construction – beyond metropolitan New York City and throughout New York State.
- This report examines three areas of PLA authorization and use:
  - PLAs’ broad social and economic benefits
  - PLAs and competitive bidding
  - The advantages of PLAs for costs savings, productivity and efficiency

### PLAs Provide Broad Social and Economic Benefits

- All the elements are present in the construction industry for destructive competition - a “race to the bottom” that severely erodes industry, working, and living standards, that unfairly disadvantages law-abiding businesses, and that drives up taxpayer costs and injures communities.
- Collective bargaining agreements, prevailing wage standards, and Project Labor Agreements, in particular, act as bulwarks against destructive competition.
  - Taxpayers receive value through productivity, quality work and cost-efficiencies.
  - Public funds receive the proper level of support through lawful and proper employer practices including proper worker classification as employees, the withholding and payment of taxes and premiums for unemployment insurance and workers compensation.
  - Higher worker pay standards translate into higher productivity - in the range of 13-15% more value added per worker – and increased consumer purchasing power that stimulates economic activity.
  - Workers receive health care and retirement benefits through jointly administered funds.
    - ◆ These joint funds provide a *privatized, industry-wide solution* to “market failures” in worker health and retirement benefits coverage.



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- ◆ The construction industry has a disproportionately high number of workers with inadequate or no health coverage.
    - Workers without health benefits are often forced to get their medical care at public expense.
    - Costs are shifted to taxpayers and responsible contractors who provide health coverage suffer a competitive disadvantage.
  - ◆ Construction industry participation rates for retirement benefits are lower than those for other industries.
  - ◆ These represent “market failures” addressed and corrected by PLA signatory contributions to multi-employer benefit plans administered through joint union-employer [“Taft-Hartley”] trust funds.
  - Workers receive proper training and supervision
    - ◆ Proper training is directly related to improved productivity, cost-efficiencies, and worker safety.
    - ◆ Nonunion companies have a disincentive to properly train their workers and many of these contractors have no training program.
      - Training costs are typically excluded from labor cost estimates as nonunion contractors face fierce bid competition.
    - ◆ Joint apprenticeship and training funds and programs in the unionized sector provide the industry with a properly trained and highly skilled workforce.
      - These programs represent a privatized, industry-wide response to industry conditions – here successfully addressing a market failure in workforce training.
      - If the union sector were not providing this training – and all crafts do provide it – then the responsibility would necessarily fall, as it does in other nations, upon government and taxpayers.
    - ◆ All successful PLA bidders – union and nonunion – have access to a highly-skilled labor pool.
  - Nonunion PLA signatories have recognized that union referral enables them to compete for — and more likely successfully perform — jobs requiring a higher degree of worker skill and technical experience.
  - PLAs have effective procedures for monitoring safety and for dealing with urgent issues arising during the project.
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- PLAs provide valuable opportunities for employment opportunities and advancement, as well as community and workforce development.
    - PLA provisions have been linked to local hiring and have expanded opportunities for apprenticeship training as well as for the hiring of minority, women, and low income workers.
    - PLAs have, for these reasons and in recent years, also been labeled as Community Workforce Agreements. These agreements provide the opportunity for various parties — public owners, contractors, unions, and community groups — to formulate innovative programs that serve important social policy goals.
    - Two programs related to PLAs in New York and highlighted within this report are *Helmets to Hardhats* and *Edward J. Malloy Initiative for Construction Skills*.

### PLAs and Competitive Bidding

- Public-sector PLAs have repeatedly been upheld as consistent with state competitive bidding laws in New York State and other jurisdictions.
- Because union and non-union contractors are free to bid – or not bid - on projects covered by PLAs, they avoid the favoritism that competitive bidding laws are designed to prevent.
  - There are many reasons why contractors — both union and non-union — may choose not to bid on particular projects. These include market conditions, contractor experience and worker skill levels, and bidding procedures.
  - There are no credible studies demonstrating that a PLA in the bid specifications is itself responsible for a decrease in the number of bidders or that fewer bidders translates into higher actual project costs.
  - Contractor choices in no way limit the power of public entities to make the rules and require PLA use. It is the opportunity to bid that is critical. So long as the PLA has been duly authorized and the procedure does not prevent nonunion contractors as a group from bidding, the public entity is acting in the public interest.
  - Awards are frequently made to both union and non-union companies.
  - Successful bidders are required to become signatory to the Project Labor Agreement; they are not required to become signatory to the respective area craft agreement.

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- The PLAs reviewed in this report include provisions that encourage the participation of nonunion as well as minority and women business enterprises.
  - PLAs serve the underlying objectives of New York State's competitive bidding laws: 1) to protect public funds by obtaining the best possible work at the lowest possible price, and 2) to prevent favoritism, improvidence, fraud and corruption in the awarding of public contracts.
    - New York State law requires fair and honest competition in bidding for public works projects: It does not require unfettered competition.
  - Requiring that successful bidders, union and non-union, become PLA signatories is a reasonable exercise of public authority because it advances important policy concerns of the competitive bidding statutes: cost effectiveness, timely performance and uninterrupted production.
  - Competitive bidding statutes are enacted for the benefit of taxpayers and the public property owners not for the benefit or enrichment of bidders.
    - It is the public interest -- not the business interest of individual contractors -- that is to be protected by securing, through fair and open bidding, the best work for the money.

### **PLA Cost Savings, Productivity and Efficiency**

- *New York City Agency PLAs*
  - New York City agencies authorized a series of PLAs covering over \$6 billion in construction and renovation work through 2014.
  - The projects are expected to create 32,000 jobs and the PLAs are projected to save New York City over \$300 million in construction costs. These savings will be channeled back into infrastructure projects that would otherwise have been cut due to the broader economic crisis.
  - Fifteen due diligence studies were conducted by consultants to identify cost savings and increases in efficiency. All of the studies reached the same conclusion: the PLAs would produce substantial direct and indirect cost savings for the City, provide job stability, and promote productivity and greater efficiency.
  - Substantial cost savings are achieved
    - ◆ By assuring project stability, efficiency and productivity in these areas:
      - No strikes or work stoppages for the duration of the project

- 
- › A broad Management Rights provision
  - › Trades commitment to an articulated *Standards of Excellence*
  - › Provisions for increased contractor flexibility:
    - Flexible starting times
    - Staggered or coordinated lunch times
    - Saturday make-up days
  - ◆ Through application of the Wicks Law exemption: this factor alone represents a savings of 10.35% of total construction costs.
  - ◆ By standardizing terms of various area craft agreements permitting greater scheduling flexibility and in such areas as overtime and shift differentials, workweek hours, holidays, reporting pay, and the journey-person-apprentice ratios.
  - *New York City Economic Recovery PLA*
    - The private sector in metropolitan New York City has also markedly increased the use of Project Labor Agreements for a wide scope of projects since early 2009.
    - This is primarily due to an innovative Economic Recovery PLA – a template PLA applicable to multiple projects -- negotiated in response to the sharp economic downturn by the Building and Construction Trades Council of Greater New York [NYC BTC] and the Building Trades Employers Association [BTEA] working within the Construction Industry Partnership [CIP].
    - The ER PLA, as initially announced in May 2009, was projected to save 10,000 jobs, stimulate \$2 billion in construction activity, and be applied to up to three dozen projects.
    - The ER PLA's scope – number of projects included - and impact have substantially increased since May 2009.
    - The ER PLA reduces the cost of unionized construction by an average of 16-21%. Savings vary by location and are primarily based on work rule changes accepted by labor and by reductions in profit margins agreed to by the contractors.
  - Project Labor Agreements have demonstrated significant value for both public and private projects on Long Island, in Westchester and Putnam Counties, in the Hudson Valley, in Monroe County, Onondaga County, and other upstate areas.
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- Linda Donahue, School of Industrial and Labor Relations, Cornell University
- Maria Figueroa, School of Industrial and Labor Relations, Cornell University

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## Appendix A

### Summary of Union Sector Apprenticeship and Training Requirements

- **Brickmason:** 3 years of on-the-job training in addition to a minimum of 144 hours of classroom instruction each year in subjects such as blueprint reading, mathematics, layout work, and sketching. High school education is preferable.
- **Carpenter:** Usually 3 to 4 years depending on skill level. On the job, apprentices learn elementary structural design and common carpentry skills. Classes include safety, first aid, blueprint reading, freehand sketching, mathematics, and carpentry techniques.
- **Carpet and Tile:** Nearly 3 years to complete. On-the-job training provides comprehensive training in all phases of trade. In addition, related classroom instruction is necessary.
- **Construction Equipment Operator:** At least 3 years or 6,000 hours of on-the-job training and 144 hours a year of related classroom instruction. Apprentices learn to operate a wider variety of machines and have better job opportunities. High school education is preferable.
- **Construction Laborer:** Between 2 to 4 years of classroom and on-the-job training. Core curriculum of the first 200 hours consists of basic skills such as blueprint reading, use of tools and equipment, and safety and health procedures. Remainder of the curriculum contains specialized skills training in building construction, heavy/highway construction, and environmental remediation.
- **Construction Manager:** No formal apprenticeship program. Traditionally, advance to position after having substantial experience as a construction craft worker. Need a solid background in building science, business and management, and industry work experience. A bachelor's degree or higher is preferred along with Spanish language skills.
- **Drywall:** Between 3 to 4 years depending on skill level. Both classroom and on-the-job training are combined. Many of the skills can be learned within the first year.
- **Electrician:** About 4 years and each year requires at least 144 hours of classroom instruction and 2,000 hours of on-the-job training. Must have a high school diploma or G.E.D. and good math and English skills. Most localities require an electrician to be licensed.
- **Heat A/C Mechanic:** 3 to 5 years of on-the-job training with classroom instruction. Classes include use and care of tools, safety practices, blueprint reading, and theory and design of heating, ventilation, air-conditioning, and refrigeration. Must have a high school diploma or G.E.D. and math and reading skills.
- **Ironworker:** 3 or 4 years of on-the-job training on all aspects of the trade and evening classroom instruction. Classes include blueprint reading, mathematics, care and use of tools, basics of structural erecting, rigging, reinforcing, welding, assembling, and safety training. High school diploma is preferable.

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- **Painter:** 2 to 4 years of on-the-job training, supplemented by 144 hours of related classroom instruction each year with topics such as color harmony, use and care of tools and equipment, surface preparation, application techniques, paint mixing and matching, characteristics of finishes, blueprint reading, wood finishing, and safety. Must have a high school diploma or G.E.D. with courses in mathematics.
  - **Plumber:** 4 or 5 years of on-the-job training about all aspects of the trade, in addition to at least 144 hours per year of related classroom instruction such as drafting and blueprint reading, mathematics, applied physics and chemistry, safety, and local plumbing codes and regulations. High school education is preferable. Most communities require a plumber to be licensed.
  - **Roofer:** 3-year program with a minimum of 2,000 hours of on-the-job training annually, plus a minimum of 144 hours of classroom instruction a year in subjects such as tools and their uses, arithmetic, and safety. High school education and courses in mechanical drawing and mathematics are preferable.
  - **Sheet Metal:** 4 to 5 years depending on skill level. Comprehensive instruction in both sheet metal fabrication and installation with classes consisting of drafting, plan and specification reading, trigonometry and geometry, use of computerized equipment, welding, safety, and the principles of heating, air-conditioning, and ventilating systems. On-the-job training, as well as learning the relationship between sheet metal work and other construction work.
  - **Truck Driver:** No formal apprenticeship program. Some formal training or classroom instruction may be required. Must comply with Federal and State regulations, possess a driver's license (sometimes commercial) from state of residence, have a clean driving record, and read and speak English well enough to read road signs, prepare reports, and communicate with law enforcement officers and the public.
  - **Welder:** No formal apprenticeship program. Training can range from a few weeks to several years depending on skill level. Courses in blueprint reading, shop mathematics, mechanical drawing, physics, chemistry, and metallurgy are preferable.<sup>1</sup>

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<sup>1</sup> *The Construction Chart Book*, CPWR – The Center for Construction Research and Training, produced with support from the National Institute for Occupational Safety and Health grant number OH008307, #27: Employment-based Retirement Plans in Construction and Other Industries, available at [www.cpwr.com/rp-chartbook.html](http://www.cpwr.com/rp-chartbook.html). Information is based on data from the U.S. Bureau of Labor Statistics, Occupational Outlook Handbook (OOH) <http://www.bls.gov/oco/home.htm>.

The US Department of Labor provides the following description of the nation's Registered Apprenticeship system and emphasizes its central role in workforce development, for worker retention, and improved productivity:

*Registered apprenticeship is a national training system that combines paid learning on-the-job and related technical and theoretical instruction in a skilled occupation. The purpose of a Registered Apprenticeship program is to enable employers to develop and apply industry standards to training programs that can increase productivity and improve the quality of the workforce. In the United States today, 250,000 separate employers offer Registered Apprenticeship employment and training to almost 450,000 apprentices in such industries as construction, manufacturing, transportation, telecommunications, information technology, biotechnology, retail, health care, the military, utilities, security, and the public sector. By providing on-the-job learning, related classroom instruction, and guaranteed wage structures, employers who sponsor apprentices provide incentives to attract and retain more highly qualified employees and improve productivity and services. Regions that adopt robust Registered Apprenticeship programs in the context of economic development strategies create seamless pipelines of skilled workers and flexible career pathways to meet current and future workforce demands.* <http://www.doleta.gov/OA/etadefault.cfm>

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## Appendix B

### Economic Recovery Project Labor Agreement: List of Projects Approved and Executed [as of April 2011]

#### Building Trades Employers Association [BTEA]: <http://www.bteany.com>

<b>Applicant</b>	<b>Project</b>
Barr & Barr, Inc.	450 West 37th Street- Dimenna Center for Classical Music
Bovis Lend Lease, Inc.	157 West 57th Street
Bovis Lend Lease, Inc.	885 Avenue of the Americas - Tower 111
Bovis Lend Lease, Inc.	African American Museum -1280 5th Avenue
Bovis Lend Lease, Inc.	150 Amsterdam Avenue
Bovis Lend Lease, Inc.	111 Lawrence Street
Bovis Lend Lease, Inc.	1470 Madison Avenue
Bovis Lend Lease	135 West 45th Street
CNY Builders LLC	1717 Broadway- Marriott Central Park
F.J. Sciamè Construction Co.	150 West 83rd Street
F.J. Sciamè Construction Co.	36-0145th Avenue
F.J. Sciamè Construction	130 West 56th Street
F.J. Sciamè Construction	West End Avenue & West 61st Street
F.J. Sciamè Construction	40 West 53rd Street-Triennale Museum
F.J. Sciamè Construction	102 North End Avenue
Forest City Ratner	80 DeKalb Avenue
Gotham Construction	150 West 62nd Street- Fordham Law School
Gotham Construction	4 East 102nd Street
Henegan Construction Co., Inc.	620 Avenue of the Americas
Hunt Construction Group, Inc.	620 Atlantic Avenue - Barclays Center
Ibex Construction	140 Fourth Avenue
Ibex Construction	25 Broadway
Kreisler Borg Florman	8 Spruce Street - Beekman Tower
Kreislar Borg Florman	320 West 38th Street
Kreisler Borg Florman	330 West 39th Street
M.D. Carlisle Construction Corp.	839 6th Avenue
M.D. Carlisle Construction Corp.	9-11 West 54th Street
M.D. Carlisle Construction Corp.	627 Greenwich Street
Morgan Construction Enterprise Inc.	535 East 70th Street
Pavarini McGovern	66-70 West 45th Street - 45th Street Hotel



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<b><u>Owner</u></b>	<b><u>Value</u></b>	<b><u>Project Status</u></b>	<b><u>Project Type</u></b>
St. Luke's Chamber Ensemble, Inc.	\$8 million	New	Cultural
Extell West 57th Street LLC	\$550 million	New	Commercial
Tower 111, LLC	\$160 million	New	Residential
Brickman Realty	\$155 million	Existing	Cultural
Amsterdam Holdings, LLC	\$207 million	Existing	Residential
Lawrence Street Partners LLC	\$177 million	Existing	Residential
Mount Sinai Hospital	\$264 million	New	Hospitality
Extell West 45th, LLC	\$189 million	Existing	Commercial
Granite Broadway Development LLC	\$130 million	New	Commercial
Redeemer Presbyterian Church	\$20 million	New	Non-Profit
Museum of Moving Image	\$35 million	Existing	Cultural
New York City Center	\$30 million	New	Commercial
Abraham Joshua Heschel School	\$69 million	New	Educational
Art Living NY Inc.	\$9 million	Existing	Cultural
Site 25 Hotel, LLC	\$85 million	New	Commercial
Forest City Ratner	\$110 million	Existing	Residential/Affordable
Fordham University	\$250 million	New	Higher Education
MSMC Residential Realty	\$157 million	New	Hospitality/Residential
Building Service 32BJ Health Fund	\$31 million	New	Commercial
Brooklyn, Events Center, LLC	\$400 million	New	Commercial
Nordstrom	\$4 million	New	Commercial
Wolfson Group	\$20 million	New	Commercial
Forest City Ratner	\$680 million	Existing	Residential/School
West 38th Street LLC- Glenwood Mgt.	\$40 million	Existing	Residential
West 39th Street Realty LLC	\$70 million	New	Residential
J.D. Carlisle LLC	\$275 million	Existing	Commercial/Residential
J.D. Carlisle LLC	\$125 million	New	Commercial
J.D. Carlisle LLC	\$60 million	New	Commercial
Hospital for Special Surgery	\$35 million	Existing	Hospital
Waterscape Resort LLC	\$83 million	Existing	Residential

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**Applicant****Project**

Plaza Construction Corp.	200 & 300 North End Avenue
Plaza Construction Corp.	11 Times Square -Aquarium
RC Dolner Construction	Promenade
RC Dolner Construction	10005th Avenue
Skanska USA Building	56 West 66th Street
Shawmut Design & Construction	12-1643rd Avenue
Structure Tone, Inc.	Pier 32
Structure Tone, Inc.	440 West 42nd Street
Tishman Construction Corp.	306 West 44th Street
Tishman Construction Corp.	123 Washington Street
Tishman Construction Corp.	440 West 42nd Street
Tishman Construction Corp.	413 East 69th Street
Tishman Construction Corp.	99 Church Street
Tishman Construction Corp.	175 Greenwich Street - WTC Tower 3
Tishman Construction Corp.	150 Greenwich Street- WTC Tower4
Tishman Construction Corp.	881 Seventh Avenue- Carnegie Hall Studio Tower
Tishman Construction Corp.	65 Fifth Avenue - New School University Center
Tishman Construction Corp.	441 East Fordham Road - Gabelli Business School
Tishman Interiors, Inc.	1775 Broadway- 3 Columbus Circle
Tishman Interiors, Inc.	643 Park Avenue-7th Regiment Armory
Tishman Construction Corp.	180 Broadway
Turner Construction Co.	2180 3rd Avenue - Hunter College
Turner Construction Co.	29-01216th Street, Bayside
Turner Construction Co.	Adjacent to West 65th Street
Turner Construction Co.	550 West 120th Street
Turner Construction Co.	1230YorkAvenue
Turner Construction Co.	WTC Tower 2
Turner Construction Co.	165 East 118th Street
Turner Construction	130 West 12th Street
Turner Construction	550 First Avenue
Turner Construction	425 East 68th Street- Floors 4,5,6 Fitout
Turner Construction	425 East 68th Street- C2 Level Fitout
Turner Construction	425 East 68th Street- Ground Floor/C4 Fitout
Yorke Construction Corp.	Elinor Bunin Monroe Film Center-140 West 65th Street
Yorke Construction Corp.	150 West 65th Street- Lincoln Center Theater #3

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<b><u>Owner</u></b>	<b><u>Value</u></b>	<b><u>Project Status</u></b>	<b><u>Project Type</u></b>
MP Freedom LLC/BPC	\$300 million	Existing	Residential
SJP Properties	\$80 million	New	Cultural
Lincoln Center	\$112 million	Existing	Cultural
Metropolitan Museum of Art	\$46 million	Existing	Cultural
American Broadcasting Co., Inc.	\$30 million	New	Commercial
R-LIC	\$52 million	Existing	Commercial
Basket Ball City	\$9 million	New	Cultural
Signature Theater Company	\$30 million	New	Cultural
Tishman Hotels Corp.	\$200 million	Existing	Hotel
123 Washington LLC	\$320 million	Existing	Residential/Hotel
Related Companies	\$365 million	New	Commercial/Residential
Weill Cornell Medical Center	\$485 million	New	Health Care
Silverstein Properties	\$400 million	New	Commercial/Residential
Silverstein Properties	\$1.5 billion	New	Commercial
Silverstein Properties	\$1.2 billion	New	Commercial
Carnegie Hall Corp.	\$118 million	New	Cultural
New School	\$215 million	New	Educational
Fordham University	\$26 million	New	Educational
Dervash LLC	\$80 million	Existing	Commercial/Retail
Park Avenue Armory	\$11 million	New	Cultural
S.L. Green Realty Corp.	\$50 million	New	Educational
Brodsky	\$70 million	New	Higher Education
Street Mary's Hospital	\$70 million	New	Hospital
Lincoln Center	\$452 million	Existing	Cultural
Columbia University	\$242 million	Existing	Higher Education
Rockefeller University	\$350 million	Existing	Higher Education
World Trade Center, LLC	\$1.5 billion	New	Commercial
118 Associates	\$20 million	New	Higher Education
Rudin Management Co.	\$40 million	New	Residential
NYULMC -Tisch Elevator Tower	\$49 million	New	Healthcare
Memorial Sloan Kettering	\$12.5 million	Existing	Healthcare
Memorial Sloan Kettering	\$6.6 million	Existing	Healthcare
Memorial Sloan Kettering	\$11.7 million	Existing	Healthcare
Film Society at Lincoln Center	\$11.5 million	New	Cultural
Lincoln Center Theater	\$32 million	New	Cultural

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## Appendix C

### Westchester and Putnam Counties, Project Labor Agreement

<b>Description</b>	<b>Contractor/Developer</b>
The Westchester White Plains Fashion Mall, White Plains, NY	Whiting-Turner Corp.
Ciba-Geigy Additives Lab, Tarrytown, NY	Sardoni-Skanska
The Pavilion Shopping Mall, White Plains, NY	Gilbane Building Co.
Hudson Valley Hospital Center, Peekskill, NY	E.J. Howell
US Postal Service Mail Handling Facility, Harrison, NY	Morganti Construction
IBM World Headquarters, Armonk, NY	Whiting-Turner Corp.
Tappan Zee Bridge Rehabilitation	NYS Thruway Authority
The Osborne Retirement Home, Harrison, NY	Humphrey-Harding
Travelers Conference Center, Armonk, NY	Andron Construction
Nordstrom Inc.	Pepper Construction
Pierpointe-on-Hudson	Yonkers Waterfront Association
Hudson Valley Hospital Center	J.W. Howell
NYC Watershed	George Frank Building Contractors Association
Yonkers Ave./St. James Garden	Non Profit Development Corp.
Irvington Public School	J. Michael Orifici & Associates
Westchester Resource Recovery Plant	Westchester Resco Company, L.P.
Carrollwood Condominium	Talleyrand Associates
Green, Taxter Road Tarrytown, NY	Avalon Properties, Inc.
Building Shell	Andron Construction Corp.
Austin Ave. Mall, Yonkers, NY	Morris Brothers Corp.
Nine-West Headquarters Interior Renovation	Structure Tone, Inc.
A & P Supermarket	Jeffrey M. Brown Associates, Inc.
Woodlands Viaduct	Persico Contracting & Trucking Inc.
Revlon	Scarsdale Avenue Associates, LLC.
Parallel Taxiway-Westchester, County Airport	Bilotta Construction Corp.
Extended Stay Hotel	Skyfield Construction Services, LLC.
Home Depot — Cortlandt	Raimond & Son
Westchester Medical Center — Children’s Hospital	Turner Construction
Rehabilitation of Glen Island Bascule Bridge, Glen Island Park	Kiewit Constructors, Inc.
Waste Water Treatment Facilities	Spetraserve Construction Corp.
Filtration Plant & Water Supply	Carlin Contracting
City of Yonkers Board of Education & Public Library	The Whiting Turner Contracting Co.
Michaelian Office Building Parking Structure	Antar-Com, Inc.
Stop & Shop, White Plains, NY	E.W. Howell
Iona College Dormitories	Holt Construction

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**Description**

New Wing at New Rochelle High School  
Morgan Stanley, 2000 Westchester Avenue, Harrison, NY  
Stone Barns  
The Robert V. Lapenta Student Union, Iona College  
Rehabilitations of The Richard J. Daronco, Courthouse,  
Phase 3, White Plains, NY  
Ameripath, 100 Midland Ave., Port Chester, NY  
Carmel School District  
Ridge Hill Village Center, Yonkers, NY  
Northern Westchester Hospital  
IBM Site work & Building Shell  
Bethel-Springdale Nursing Home  
Cortlandt Town Center  
Rosewood Mausoleum at Ferncliff Cemetery  
Hebrew Hospital Home of Westchester  
New Rochelle Police Court Facility  
Costco Wholesale, New Rochelle, NY  
Swiss-Re America Headquarters, Armonk, NY  
Purdue Pharma, LP (laboratory)  
New Roe Center, New Rochelle, NY  
MCI Network Information Center  
Fairview-White Plains, NY  
Hudson Park at Yonkers Waterfront  
Catskill Aqueduct Water Treatment  
Swiss-Re Project, Armonk, NY  
Kendal on Hudson, Tarrytown, NY  
Pelham Union Free School District  
Trump National Club House, Briarcliff, NY  
300 Jefferson Place, White Plains, NY  
Monroe College, New Rochelle, NY  
SJMC Senior Housing, Yonkers, NY  
Sunrise Assisted Living Project, Yonkers, NY  
Stop & Shop, Peekskill, NY  
Target Department Store, Mount Vernon, NY  
Target Department Store, Mount Kisco, NY  
Gateway Apartments, Yonkers, NY  
Neiman Marcus Store, White Plains, NY  
Wal-Mart Store, White Plains, NY  
Yonkers Pier Restaurant  
Renaissance Square, White Plains, NY  
  
Yonkers Raceway  
Sheraton Hotel, Tarrytown, NY

**Contractor/Developer**

Delhi Steel Corp.  
Plaza Construction  
Turner Construction  
Darlind Construction Inc.  
M.A. Angeliades Inc.  
  
Skanska USA  
Greenwood Corp.  
Yonkers Contracting  
Turner Construction  
The Whiting Turner Contracting Co.  
Fairchester Builders, Inc.  
EMJ Corp.  
Crow/Jones Construction Co.  
R.C. Dolner  
J.A. Valenti Contracting Co.  
James A. Jennings Co., Inc.  
Turner Construction Co.  
Morganti Construction  
Cappelli Enterprises, Inc.  
Tishman Technologies  
  
York Hunter Incorporated  
Gilbane Building Co.  
Turner Construction Co.  
Andron Construction Co.  
Hill International Inc.  
HRH Construction Corp.  
HRH Construction Corp.  
Holt Construction Corp.  
Monadnock Construction, Inc.  
E.W. Howell Company, Inc.  
March Associates, Inc.  
E.W. Howell Company, Inc.  
E.W. Howell Company, Inc.  
Al Diodati Construction Corp.  
E.W. Howell Company, Inc.  
E.W. Howell Company, Inc.  
Holt Construction  
Cappelli Enterprises, Inc. &  
George A. Fuller Company  
Tishman Construction Corp.  
WNC Tarrytown Co., LLC

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**Description**

Trump Plaza/Parcel 1A, New Rochelle, NY

Putnam County Courthouse, Camel, NY

Hudson Park North, Yonkers, NY

Avalon on the Sound Phase II, New Rochelle, NY

Roadway on Old Mamaroneck, White Plains, NY

Manhattanville College Student Union

Phelps Memorial Hospital, Sleepy Hollow, NY

Ridge Hill Village Center

Parking Structure, White Plains, NY

Bio Med, Greenburgh, NY

Oncology Department, Putnam Hospital, Carmel, NY

Avalon Bay Project

Water Treatment Plan, Peekskill, NY

Greenburgh Library

Croton Dam

Sprout Brook Ashfill, Liner Containment System, Cortlandt, NY

Hudson Hills Development

18 Hole Golf Course, New Castle, NY

Learning Resource Center, Westchester Community College

Central Westchester Parkway

City Center, White Plains, NY

Hudson Park, Yonkers, NY

NY-Rangers-Knicks-Liberty Practice Facility

Fortunoff Store, White Plains, NY

Bank Street Commons

I-287 Rehabilitation

Mount Vernon City School District

Norwood E. Jackson Correctional Center, Valhalla, NY

Norwood E. Jackson Correctional Center, Valhalla, NY

Norwood E. Jackson Correctional Center, Valhalla, NY

Senior Housing, Rye Brook, NY

Woodlands Senior Housing, Ardsley, NY

Entergy Nuclear Northeast Generation Support Building, Buchanan, NY

St. Agnes Hospital, White Plains, NY

Avalon Willows, Mamaroneck, NY

Stop & Shop Supermarket, North White Plains, NY

Stop & Shop Supermarket, New Rochelle, NY

**Contractor/Developer**

Cappelli Enterprises, Inc. & George A. Fuller Company

Worth Construction Co, Inc.

Turner Construction Co.

Turner Construction Co.

Bilotta Construction Corp.

E.W. Howell Company, Inc.

Barr & Barr Incorporated

U.W. Marx, Inc.

EIQ Industries, Inc.

William Berry Company

BBL Construction Services

Avalon Bay Communities

Jett Industries, Inc.

Jett Industries, Inc.

Yonkers Contracting

Columbus Construction Corp.

Turco Golf, Inc.

Subolo Contracting Corp.

Melrose Development Corp.

Cappelli Enterprises, Inc. & George A. Fuller Company

Turner New York & Collins Associates

Turner New York

The Whiting Turner Contracting Co.

LCOR Incorporated & HRH Construction Corp.

NYS Thruway Authority

Turner/Luster

L.J. Coppola, Inc

West-Fair Electric Contractors, Inc.

Worth Construction Co., Inc.

HRH Construction LLC

Klewin Building Company

Turner Construction Co.

Barr & Barr, Inc.

York Hunter Incorporated

R2D Construction

R2D Construction

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**Description**

Municipal Bond Investors Assurance  
Armonk, NY

Summerfield Suite Hotel, Harrison, NY

Pfizer Training Center, Rye Brook, NY

Classic Residence by Hyatt, Yonkers, NY

Putnam Valley High School  
East Main Street, Yorktown, NY

Putnam Commons Nursing Home,  
Mahopac, NY

Putnam County Senior Citizens Center, Mahopac, NY

Multiplex Movie Theatres, Elmsford, NY

Target Store, Yonkers, NY

IBM/Quest Data Center

Trump National Golf Course

Yonkers Joint Wastewater Treatment Plant

Tuckahoe Road Bridge Pondfield Bridge, Yonkers, NY

Hudson Valley Hospital  
Wellington, Bronxville, NY

Bronx River Parkway Roadway

Westchester Reform Temple, Bronxville, NY

Catskill & Delaware Ultraviolet Water  
Treatment Facility

Gateway Project, Westchester Community College

Cross County Shopping Center Yonkers, NY

Tech Building, Westchester Community College

Croton Point Park

Dewatering Equipment Rehabilitation Yonkers Joint  
Wastewater Treatment

Regeneron Tenant Fit out 734 & 745  
Old Saw Mill River Rd., Tarrytown, NY

Pool Modernization, Tibbetts Brook Park, Yonkers, NY

Roof Replacement, Low Rise Building 110 Dr. Martin  
Luther King, Jr. Blvd., White Plains, NY

Security System Integration-Phase 1, Jail Division,  
Norwood E. Jackson Correctional Center, Valhalla, NY

Grant Park, Mulford Gardens

Blythedale Children's Hospital

Saxon Woods Golf Course, Scarsdale, New York

Security System Integration-Phase 2,  
Jail Division, Norwood E. Jackson Correctional Center,  
Valhalla, NY

**Contractor/Developer**

Plaza Construction Corp.

Suffolk Construction

Morse Diesel International, Inc.

J.A. Jones GMO - LLC

Thomas Associates

Bilotta Construction

FIP Corporation

FIP Corporation

The Stegla Group, Inc.

The Whiting Turner Contracting Co.

The Whiting Turner Contracting Co.

Trump Briarcliff Manor LLC

Spearin, Preston & Burrows, Inc.

Burtis Construction Co., Inc.

Barr & Barr Incorporated

Hunter Roberts Construction Group

Montesano Brothers, Inc.

E.W. Howell Company, Inc.

Sew Construction, JV

Worth Construction

The Whiting Turner Contracting Co.

C.W. Brown, Inc.

Arben Group, LLC

Arben Group, LLC

William A. Berry & Son, Inc.

SISCA Northeast, Inc.

NUA Construction Corp.

ADCO Electrical Corp.

Monadnock Construction, Inc.

Bovis Lend Lease LMB, Inc.

Avanti Building Construction Corp.

E-J Electric Installation Co.

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## Projects Completed Under The Westchester County Project Labor Agreement

<b>Description</b>	<b>Contractor</b>
Playland Parkway	ELQ Industries
Courthouse Rehab.	M.A. Angeliades
Courthouse Rehab.	Talt, Inc.
Courthouse Rehab	Richards Conditioning
Courthouse Rehab	C & B Plumbing
Tibbetts Brook Park	Unity Mechanical
Tibbetts Brook Park	Bradhurst Site Const.
Tibbetts Brook Park	AKL Mechanical
Old Mamaroneck Road	Bilotta Construction
W.P. Parking Structure	ELQ Industries
Tuckahoe Road Bridge	Burtis Construction
BRP Reconstruction	Montesano Bros.
BRP-Crane Road	WJL Equities
450 Saw Mill River Rd.	McNamee Constr.
Central Heating Plant	Rok-Built Constr.
New Rochelle WWTP	Diggins Mechanical
Mountain Lakes Pk.	Mace Contracting
Mill St. Pump Station	Avanti Building Constr.
Yonkers Joint WWTP	Spectrasery Inc.
Tibbetts Brook Pk	Arben Group LLC
Low Rise Building	Sisca Northeast
Low Rise Building	NUA Construction
DOC-Jail Division	ADCO Electrical
DOC-Old Jail	ADCO Electrical
DOC-Jail Division	E-J Electric Installation Co.
Saxon Woods G.C.	Avanti Building Constr.
New Rochelle Wastewater Treatment Plant	
Peach Lake Environmental Center, Peach Lake, Sewer District-Town Southeast and North Salem, NY	Arben Group LLC



**Fred B. Kotler, J.D.** is Lecturer and Research Associate, School of Industrial and Labor Relations at Cornell University. He has served as Associate Director, Cornell Construction Industry Program, and written numerous reports, articles, and training materials related to the construction industry.

He began studying Project Labor Agreements in 1996 at the request of the Dean of the School of Industrial and Labor Relations and wrote three reports supporting and evaluating two PLAs authorized for renovation work at the ILR School. Mr. Kotler's 2001 report, Digging-in to the Big Dig, evaluated the PLA used for the Boston Central Artery/Tunnel Project. He is co-author of the 2007 Cornell ILR study, The Cost of Worker Misclassification in New York State, which served as a basis for an Executive Order establishing the New York State Joint Employment Task Force on Employee Misclassification. His 2009 report, Project Labor Agreements in New York State: In the Public Interest, reviewed the history of, and standards for, PLA use in New York State. He teaches a course at Cornell ILR, Building America: Public Policy and Economic Development, that analyzes the history and role of public infrastructure projects for the nation's growth and development. He attended Harvard University, the University of California, Berkeley, and received his law degree from the University of San Francisco. Mr. Kotler can be reached at [fbk2@cornell.edu](mailto:fbk2@cornell.edu).

