

Commonwealth of Massachusetts
Special Commission Report on the Use of
Project Labor Agreements
in Road, Bridge and Rail Projects

Analysis and Key Findings

December 31, 2014

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Executive Summary

In August of 2012, Governor Deval Patrick signed *An Act Financing Improvements to the Commonwealth's Transportation System* (Chapter 242 of the Session Laws of 2012). Section 32 of this Act established a special commission to consider the circumstances under which project labor agreements (PLAs) should be utilized in the construction, repair and improvements to road, bridge and rail in the Commonwealth. The commission was also tasked with the consideration of their appropriateness and function, the impact of the agreements on the cost of such road, bridge and rail projects for which they are utilized, and the size, complexity and duration of said projects for which they should be utilized.

The special commission consists of 5 members: 1 of whom is the secretary of administration and finance or a designee; 1 of whom is the secretary of transportation or a designee; 1 of whom is the secretary of labor and workforce development or a designee; 1 of whom is the attorney general or designee; and 1 of whom is the auditor or a designee. This special commission met in open meetings and worked to conduct and analyze its research into better understanding the use of PLAs in road, bridge and rail work in Massachusetts.

The commission analyzed leading case law, instructive legislation, relevant federal executive orders, examples of past and current Massachusetts PLAs and solicited public input on the topic with the purpose of determining the usefulness of said agreements in containing overall project cost and addressing the complexity of schedule and geographical constraints on public works projects.

The commission found PLAs to be particularly beneficial on public infrastructure projects that are large-scale, subject to strict time constraints, involve multiple interdependent phases, and/or may be used to revitalize job creation in the area. Consequently, by prohibiting work-stops and encouraging flexible work schedules, PLAs prevent cost-overruns, encourage the timely completion of projects, and avoid potential labor disputes. Furthermore, a provision guaranteeing flexible worker schedules is particularly useful for complex projects which require multiple phases. Additionally, an apprenticeship utilization requirement promotes both job training and creation, particularly for veterans, women, minorities, and low-income individuals.

Accordingly, the commission recommends the use of a PLA for any public infrastructure project that involves one or more of the compelling criteria listed below. To encourage the use of PLAs and to provide clear and predictable standards for those PLAs, the commission has drafted model language which public entities should adopt and amend as needed for their respective road, bridge or rail projects. These recommended provisions will assist public entities with employing the most beneficial aspects of a PLA and will provide predictable standards for future potential bidders.

Project Labor Agreements: Background

A PLA is a pre-negotiated, pre-hire, collective bargaining agreement that covers working conditions and standards for each of the building trades within construction projects. As a market participant, a project owner will choose the most cost-effective means of executing the project. If a well-planned project includes a PLA, the project owner can be assured that important terms and conditions regarding workforce planning will be initially addressed by all potential bidders.

Importantly, despite rather common misunderstanding to the contrary, the use of PLAs for a project does not require employers to become “unionized.” Rather, PLAs only require employers on the project to adhere to the relevant terms and conditions outlined in the PLA for that particular project. Employers may continue to use their own employees and are not barred from competition in the bidding process if they do not have a unionized workforce. Indeed, it is recommended by the commission that local communities and larger government entities provide notice and/or outreach to local contractors during the initial bidding process to ensure that all parties understand that any project covered by a PLA does ***NOT*** require employers to become unionized, require the workforce join a union, or prohibit non-unionized contractors from bidding on the project. PLAs simply are upfront understandings of the terms and conditions for the workforce on the project, including the legally required prevailing wages for a public project, so that all potential bidders and the awarding authority can accurately account for labor costs in the bids.

Because PLAs eliminate potential risks of labor shortages, ensure effective coordination between the trades working on a project, and minimize the risk for potential labor disputes, PLAs are often utilized to promote on-schedule and on-budget completion of a project. In the alternative, when a project does not involve a PLA, there is no uniform baseline of workforce expectations for entities that bid on a project. Consequently, a bidder may not have the labor force or planning wherewithal to successfully complete a project within the timing and/or estimated budget constraints. Post-bidding contract amendment negotiations may be able to address these inadequacies, but can waste time, money, and may even raise issues under the public construction bidding laws. Thus, a project owner (here, the government) may be obliged to pay more throughout the project to compensate for a bidder’s inadequacies. A PLA provides predictability for bidders which may lead to more accurate bid costs. Additionally, without a PLA, a particular contractor may include those enhanced provisions in its bid, but it is not part of a standard requirement across bids, which compromises accurate competition among bidders.

PLAs have been used on a wide range of both public- and private-sector construction projects. Notable local PLA projects include the Logan Airport remodeling, the Boston Harbor cleanup, and the courthouse construction projects in the 1998 Courthouse Bond Bill.

Analysis

I. Leading Case Law Regarding PLAs

In 1993, the United States Supreme Court, in a case involving a PLA for the Massachusetts Water Resources Authority's (MWRA) cleanup of Boston Harbor, held that the National Labor Relations Act (NLRA) does not preempt state and local governments from using PLAs. *Building & Construction Trades Council of Metropolitan Dist. v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S. 218 (1993). The Supreme Court ruled that when the government acts as a market participant, as opposed to a market regulator making policy decisions, the NLRA does not prohibit PLA use. This ruling led to the increased use of PLAs in public-sector construction projects.

By contrast, in 1997, the Essex Superior Court held that a PLA for a Lynn public school construction project violated Massachusetts public bidding laws because the record did not demonstrate that the adoption of a PLA furthered legitimate public interests. *E. Amanti & Sons, Inc. v. City of Lynn*, No. 97-2780-C (Mass. Sup. Ct. June 9, 1997). The court emphasized that the small-scale project was not sufficiently complex to validate a PLA because it did not involve strict time constraints and the region did not have a history of labor unrest. *See id.*

Later, in 1999, the Massachusetts Supreme Judicial Court held that a PLA for a public school construction project in the City of Malden would not violate Massachusetts public bidding laws if: (1) the project is of such size, duration, timing, and complexity that the goals of the competitive bidding statute cannot otherwise be achieved; and (2) the record demonstrates that the awarding authority undertook a careful, reasoned process to conclude that the adoption of a PLA furthered the statutory goals. *See John T. Callahan & Sons, Inc. v. City of Malden*, 430 Mass. 124, 133 (1999). The Malden schools construction project was larger and more complex than the Lynn schools construction project that was the subject of the 1997 Essex Superior Court case, as this project included the closing of 9 schools, the construction of 5 new schools, and strict time constraints within the summer months.

Consequently, in 2009, the Norfolk Superior Court held that a PLA for a Braintree public school construction project did not violate Massachusetts public bidding laws under the stringent *Callahan* standard. *See Enterprise Equipment Co. Inc. v. Town of Braintree*, No.09-1784 (Mass. Sup. Ct. Nov. 3, 2009). The court emphasized that the project's strict timeline and interdependent phases of construction constituted sufficient justifications to use a PLA, despite its seemingly low budget of \$3.6 million. *See id.*

The current case law in the Commonwealth encourages the use of a PLA on public-works projects when the government finds that a PLA is appropriate for the particular project. Additionally, the case law suggests that time constraints, overall cost, and project complexity are sufficient justifications for the use of a PLA.

II. Instructive Legislation Involving PLAs

In the 1998 Courthouse Bond Bill, the Legislature required the use of a PLA on the construction and renovation of four courthouses. The Bill outlines some of the most beneficial aspects of PLA use, including uniform grievance and arbitration procedures, pre-planned labor schedules, and no strike clauses. These clauses address potential timing and scheduling issues before any issue arises. Accordingly, the Legislature's findings were consistent with the principles later set forth in the SJC's 1999 *Callahan* decision, as stated below:

The general court finds and declares that the prompt accomplishment of the important public purposes of this act by promoting the public interest and labor harmony requires the construction by project labor agreement of only four courthouse projects that are sufficiently extensive in size, complexity and duration for which this act authorizes funds, namely the downtown Worcester court complex, renovations to the historic Suffolk county courthouse, renovations or replacement of the high-rise Suffolk county courthouse, and the new downtown Fall River courthouse facility. Therefore, the commonwealth, in its capacity as a market participant for public construction projects, hereby requires a project labor agreement, including a uniform grievance and arbitration procedure and an obligation not to strike, for construction and renovation work only on each of these specified projects pursuant to item 0330-2206 of section 2.

See 1998 Mass. Acts. c. 189, sec. 1A.

The specific PLA language in the Courthouse Bond Bill is as follows:

...and provided further, that for each of the four courthouse projects specified in this item, the funds authorized by this item or otherwise by this act shall be expended only in accordance with the following conditions: (a) the provisions of section 26 to 27F, inclusive, and section 29 of chapter 149 of the General Laws shall apply to all contracts for said project; and (b) all construction employees employed in the construction of said project shall be paid not less than the wage rate established for such work pursuant to a project labor agreement with the appropriate labor organization or labor organizations, which includes (1) a uniform grievance and arbitration procedure for the resolution of work-related disputes on job sites; (2) mutually agreeable uniform work rules and schedules for the project; and (3) an obligation for any such labor organization and its constituent members not to strike with respect to work on such project; provided, that it shall not be a precondition to the award of a contract that a bidder has previously

entered into a collective bargaining agreement with a labor organization, but only that the bidder be willing to execute and comply with said project labor agreement for the designated project if it is awarded a contract for such designated project.

See id. sec. 2.

III. Federal Executive Order Encouraging the Use of PLAs

On February 6, 2009, President Obama issued Executive Order 13502 on the use of PLAs for federal construction contracts. Exec. Order No. 13502, 74 Fed. Reg. 6985 (Feb. 6, 2009). The Order establishes that the policy of the federal government is to encourage the consideration of PLAs for large-scale construction projects due to the benefits that PLAs can offer by promoting the efficient and expeditious completion of such projects. Under the terms of the Order, the Federal Highway Administration (FHWA) may grant requests by States to use PLAs on highway projects, including projects involving roads, bridges or rails. The Order specifically permits the use of PLAs in projects receiving federal financial assistance, including projects financed by the FHWA.

The United States Department of Transportation's FHWA issued interim guidance on the topic. *See* Memorandum from the Fed. Highway Admin. on the Use of Project Labor Agreements (May 7, 2010). The FHWA interim guidance explains that a State Department of Transportation (DOT) may require the use of PLA when it shows that "the use of a PLA will advance the interests of the government." *Id.* Accordingly, the guidance outlines several factors that prove advancement of government interests, including, but not limited to:

- Project size;
- Project complexity;
- Project importance;
- Need to adhere to a certain timeline;
- History of labor unrest in the area;
- Anticipated working conditions of the project relating to the environment;
- Expiration of one or more collective bargaining agreements that could lead to jurisdictional disputes;
- Impact of a labor disruption to the users, the operation of the facility and the region;
- Costs of a delay should a labor disruption occur; and/or,
- Available labor pool relative to the particular skills required to complete the project.

Id.

Additionally, the FHWA guidance states that a PLA must be consistent with law, including, but not limited to, effectively securing competition and complying with all relevant Federal regulations. *See id.* Furthermore, if a State DOT requests that a PLA be used, an FHWA Division Office must also review the terms of the PLA. A valid PLA must:

- bind all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;
- allow all contractors and subcontractors to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;
- contain guarantees against strikes, lockouts, and similar job disruptions;
- set forth effective, prompt, and mutually binding procedures for resolving labor disputes arising during the PLA;

- provide other mechanisms for labor-management cooperation on matters of mutual concern, including productivity, quality of work, safety, and health; and
- fully conform to all statutes, regulations, and Executive Orders.

Id.

Accordingly, the current Federal executive materials are highly supportive of PLA use, particularly in road, bridge or rail projects. These materials outline several additional clauses that may benefit the construction or renovation project, including pre-determined worker safety and workmanship quality requirements.

IV. Public Hearing on PLAs in Road, Bridge and Rail Projects

On April 7, 2014, the special commission on PLAs held a public hearing at One Ashburton Place, Boston, MA. The public was invited to present oral and/or written testimony. Twenty-six (26) persons attended the hearing and eight (8) persons chose to speak. Below is a summary of the public hearing:

Testimony presented at the public hearing largely supported the use of PLAs. Speaker 1, a private labor attorney who has negotiated PLAs on public projects, claimed that PLAs bring stability to larger projects and prevent work stoppages. Speaker 1 also stated that PLAs can prevent discriminatory hiring practices by including equal opportunity hiring clauses and requiring baseline percentages of minority or women workers. Likewise, Speaker 2, a hospital executive who used PLAs on construction and renovation of several projects, emphasized that PLAs promote both high productivity levels and safety standards. Speaker 2 claimed that in his experience PLAs ensure completion without interruption because they prohibit picketing or lockouts, prevent supplier disputes from impacting delivery, and promote communication between management and labor. Speaker 2 also uses PLAs for small-scale projects when urban or constrained-space construction and/or a tight schedule is involved. Speaker 2 admitted that PLAs have been appropriate for all of his varied projects, but has no direct experience with road, bridge or rail projects.

Speaker 3, a union member, highlighted the benefits of PLAs to the public because they keep projects on schedule and on budget. Speaker 3 emphasized that PLAs lend themselves to large-scale projects of +\$25 million and small-scale projects that are complex or have tight deadlines. Similarly, Speaker 4, another union member, claimed that PLAs provide workers with great benefits and provide the public with better construction through higher standards of safety and workmanship. He denied that PLAs exclude the hire of non-union workers. Speaker 5, another union member, echoed these sentiments. Both Speaker 3 and Speaker 4 suggested that PLAs also aid apprenticeship programs through union hiring. Speaker 6, member of a Boston building trades council, agreed that PLAs provide higher safety standards and better benefits for workers. Speaker 6 also suggested that PLAs serve as a career conduit for underserved workers, including veterans, minorities and women. Likewise, Speaker 7, representing the Construction Institute, claimed that PLAs provide opportunities to women, minority, and low-income workers.

In contrast, Speaker 8, an open-shop contractor and member of Associated Builders and Contractors, suggested that PLAs are largely exclusionary due to the preferential treatment of hiring union workers. Speaker 8 claimed that a private contractor's unfamiliarity with union workers causes issues during construction. Furthermore, he suggested that PLAs are largely used due to increased laws, not because they are successful.

Written materials submitted to the special commission were also largely supportive of PLAs. Several included testimony regarding successful projects that used PLAs. Others suggested that PLAs in general benefit the community through apprenticeship utilization requirements, minority and veteran hiring, and the larger Massachusetts public interest in creating local jobs and

revitalizing the economy. For a list of the submitted written materials, please see the attached index of sources.

V. Case Studies and Lessons Learned

Over the past twenty years, public works projects involving PLAs have been the subject of several case studies. These studies attempt to discern the potential advantages and drawbacks of PLA use. In particular, they focus on whether PLAs increase or decrease the actual cost of large-scale projects. A number of these studies further investigate a PLA's effect on non-quantifiable advantages, including worker benefits, quality of workmanship, and training programs.

In 2003, the Beacon Hill Institute, a Suffolk University research department that uses economic and statistical models for policy analysis, used a sample of 126 Massachusetts school construction works to determine that PLAs generally caused a 12-14% increase in project bid cost. *See Project Labor Agreements and the Cost of School Construction in Massachusetts*, Beacon Hill Institute at 2 (2003) [hereinafter BHI study]. The study called the bid cost increase phenomenon the "PLA effect" and deduced that the "PLA effect" was significantly smaller on more complex projects, like high schools and middle schools, than less complex projects, like elementary schools. *See id* at 9. The study further deduced that the "PLA effect" was even smaller on renovation projects as compared to new construction, because the cost of a renovation project is more difficult to predict accurately. *See id*.

The BHI study has been criticized for its over-simplified model, and in response to it, Dale Belman, Russell Ormiston, and several other Michigan State University Department of Economics professors, used the exact same data pool in more specialized models to conclude that PLAs in no way increase a project's bid cost or labor cost. *See Dale Belman et al., Project Labor Agreements' Effect on School Construction Costs in Massachusetts*, 49 INDUSTRIAL RELATIONS 44, 59 (2010). The study considered the relationship between school characteristics, like classroom type and atypical facilities, and the cost of those characteristics. The study concluded that the cost of those characteristics, which is unrelated to the existence of PLA, likely accounted for the presence of cost increases. *See id*.

Maurice Baskin, an attorney representing management in labor and employment matters and general counsel to Associated Builders and Contractors, Inc., produced a series of legal essays discussing PLAs. In his 2005 essay entitled, "Union-Only Project Labor Agreements: The Public Record of Poor Performance," Baskin emphasizes that PLAs have an adverse impact on competition and consequently increase bid costs. Baskin highlights several public works projects (none in Massachusetts) where the small number of bids compelled project owners to remove PLAs in an effort to encourage more open-shop contractors to bid. *Id* at 13. Baskin also includes testimony from open-shop contractors that state that they refuse to bid on a project with a PLA. *See id*.

Fred B. Kotler, a public policy analyst focusing on workforce issues and construction industry labor relations for Cornell University's School of Industrial and Labor Relations, responds to the above stated contention. Kotler states that because PLAs are negotiated pre-bid and "specifically tailored to the needs of particular projects," PLAs give project owners and contractors a "unique opportunity to anticipate and avoid potential problems that might otherwise arise and possibly impede project progress." Fred B. Kotler, *Project Labor Agreements in New York State: In the*

Public Interest, ILR Collection at 2 (2009) [hereinafter Kotler (2009)]. Kotler suggests that the ability to predict potential issues removes unprepared contractors from the bidding process, thus explaining why projects with PLAs frequently attract fewer bids than projects without PLAs. *See id* at 3. Additionally, Kotler emphasizes that PLAs, through the use of no work-stop, flexible work hours, and dispute resolution provisions, have often led to significant cost-savings on projects. *See id* at 19. He highlights that the PLA attached to the I-287/Westchester Expressway construction project, a New York state funded public works project, saved state taxpayers \$44 million every year of the five-year project, resulting in a \$221 million total savings, due to its flexible work hours provision that barred scheduling change premiums. *See id* at 19-20. Furthermore, Kotler criticizes PLA case studies, like the BHI study, that refuse to account for the complexity or time constraints of individual projects. *See id* at 22. Kotler then labels PLAs as “tools for workforce and community development,” because of apprenticeship utilization and minority and women hiring requirements. *See id* at 28.

In a follow-up report, Kotler focuses on the “soft benefits” of PLA usage, particularly apprenticeship utilization requirements and fringe benefits for workers. *See* Fred B. Kotler, *Project Labor Agreements in New York State II: In the Public Interest and of Proven Value*, ILR COLLECTION (2011) [hereinafter Kotler (2011)]. Apprenticeship utilization requirements generate jobs, training for unskilled workers, and opportunities for veterans, women, minorities, and low-income individuals. *See id* at 16-17. Kotler further states that the quality of apprenticeship programs affects both worker productivity and workers’ safety. *See id* at 19 (citing Maria Figueroa & Jeff Grabelsky, *The Socio-Economic Impacts of Construction Unionization in Massachusetts*, Cornell University School of Industrial and Labor Relations, 17 (2010)). Additionally, Kotler highlights how PLAs guarantee union benefits, including health insurance, retirement plans and prevailing wages, to all workers. *See* Kotler (2011) at 9, 11, 15. Furthermore, the use of union hiring combats the mislabeling of employees who are incorrectly labeled as independent contractors. *See id.* at 60. Proper employee classification provides accurate unemployment insurance and workers’ compensation assessments. *See id.* Kotler responds to non-union contractors’ contentions with union-only hiring provisions, by suggesting the use of “bring along” provisions, which allow an open-shop contractor to “bring along” a certain percentage of their own non-union workers. *See id* at 32.

David G. Tuerck, Executive Director of the Beacon Hill Institute and professor of economics at Suffolk University, clarifies that many open-shop contractors that are big enough to successfully execute large-scale construction works provide their employees with fringe benefits comparable to union benefits. *See* David G. Tuerck, *Why Project Labor Agreements are Not in the Public Interest*, 30 CATO J. 45, 51 (2010). Tuerck highlights that only 20% of the nation’s trade workforce is union affiliated, suggesting that union-only hiring provisions of PLAs discriminate against 80% of the trade workforce. *See id* at 47. Tuerck also states that union-only hiring provisions in PLAs adversely affect competition, because many open-shop contractors who prefer to use their own workers refuse to bid on projects with PLAs. *See id* at 61.

Deputy Director of the Massachusetts Department of Labor Standards, David Wallace, explains why the increased growth of apprenticeship programs is a major public interest for

Massachusetts. *See* “Apprenticeship Requirement for State Procurement,” David Wallace testimony to the American Recovery and Reinvestment Act taskforce (Jan. 10, 2010). Wallace states that apprenticeship programs increase the quality of workmanship, increase the overall safety of all project workers, and enhance the youth pipeline to better paying jobs and workforce opportunities. Wallace further suggests that apprenticeship utilization requirements on projects help lower labor costs through lower hourly wages.

VI. Examples of Massachusetts PLAs

Road, Bridge or Rail Projects	Project Status	Justifications for Use of PLA
Longfellow Bridge Rehabilitation Project	Active, estimated completion in 2016	<ul style="list-style-type: none"> • Timeliness of project completion to prevent further traffic detours • Complex, multi-phase project • Flexibility in workers' schedules that coincides with Red line MBTA
Whittier Bridge/I-95 Improvement Project	Active, estimated completion in 2016	<ul style="list-style-type: none"> • Timeliness of project completion to prevent further traffic detours • Complex, multi-phase project • Flexibility in workers' schedules to prevent additional labor costs
Springfield I-91 Viaduct Repair Project	Bidding begins November 2014	<ul style="list-style-type: none"> • Timeliness of project completion to prevent further traffic detours • Complex, multi-phase project • Flexibility in workers' schedules to prevent additional labor costs
Other Projects	Project Status	Justifications for Use of PLA
Boston Harbor Cleanup Project	Completed 2001	<ul style="list-style-type: none"> • Timeliness of project completion to meet court mandated timing requirements • Complex, multi-phase project • Flexibility in workers' schedules that accounts for transportation to and from island location
UMass Boston 25-year Campus Master Plan Project	Active, estimated completion of Phase 1, "General Academic Building No. 1," Fall 2015	<ul style="list-style-type: none"> • Timeliness of project completion to prevent further disruptions • Complex, multi-phase project • Flexibility in workers' schedules dependent on class schedules and off hours
Court House Bond Bill	Completed	<ul style="list-style-type: none"> • Timeliness of project completion • Complex, multi-phase project
City of Malden Schools Construction Project	Completed	<ul style="list-style-type: none"> • Timeliness of project completion within summer months to coincide with school end and start dates • Complex, multi-phase project
City of Braintree Schools Construction Project	Completed	<ul style="list-style-type: none"> • Timeliness of project completion in summer months only to prevent rental costs for additional space and availability of grant funding • Complex, multi-phase project

Key Findings

Under controlling Supreme Court and SJC rulings, PLAs are both appropriate and encouraged when involving a costly or complex public works project. Under Massachusetts legislation, PLAs can be drafted so as to fairly represent the Commonwealth as a market participant. Recent Federal guidance provides a useful road map to the appropriate method of pursuing state PLAs. Accordingly, PLA use is both appropriate and recommended in the construction, repair and improvements to road, bridge and rail in the Commonwealth.

Specifically, in circumstances involving significant size, complexity, duration and/or cost, PLAs should be utilized in the construction, repair and improvements to road, bridge and rail in the Commonwealth. The findings of the commission and the compelling criteria that justify the use of PLA include, but are not limited to:

1. Overall Project Cost:

PLAs are appropriate both for large-scale projects and smaller projects that involve other compelling criteria. Federal Executive Order 13502 suggests that a PLA is appropriate for a project with a budget equal to or greater than \$25 million. But \$25 million does not serve as a bright-line minimum threshold. Examples of successful PLA projects costing less than \$25 million include the Braintree schools construction project in *Enterprise Equipment* (\$3.6 million) and several Partners Healthcare hospital projects that involved urban construction (\$8-12 million). Consequently, a PLA is appropriate for a road, bridge or rail project that costs less than \$25 million when the project includes other compelling criteria, such as time limitations, project complexity or constrained construction.

2. Cost-saving Opportunities

When time constraints present an additional barrier to keeping a project on budget, a PLA, which encourages the timely completion of a project, can prevent the incurrence of ancillary costs. For example, in *Enterprise Equipment*, the court held that the City of Braintree would have incurred the rental costs of supplemental school facilities if the project was not completed within the school's summer vacation. In situations like this, the prohibition against work-stops and flexibility in workers' schedules can prevent the increase of project costs, which may justify the use of PLA on a project below the \$25 million threshold.

3. Complexity:

PLAs are appropriate on complex projects that require multiple, interdependent phases of work. See Kotler (2009). When one phase of a multi-phase project gets behind schedule, any proceeding phases also become delayed. By incorporating provisions that prohibit work-stops, a PLA can guarantee that labor continues without interruption despite potential disputes. Furthermore, by incorporating flexibility in

workers' schedules provisions, a phase that may get behind can get back on schedule by changing workers' schedules to address the project's needs. This flexibility can help keep a phase on schedule so a proceeding phase can begin on time. Consequently, a PLA may be particularly useful for road construction projects, where a traffic crisis has likely perpetuated the need for new construction and the project includes multiple, interdependent phases.

The Supreme Judicial Court's *Callahan* decision illustrates the importance of finishing certain phases on schedule. In that case, school construction had to begin and be completed during the school's summer vacation. Accordingly, delayed completion of the project would have adversely affected the community by placing students and teachers in temporary facilities. Because of the guaranteed prohibition against work-stops and the flexibility of workers schedules, the project was able to finish on time, which allowed the town to open its schools in the fall as scheduled. A PLA with similar provisions may help alleviate any constraints that road or bridge construction will have on traffic by guaranteeing the project's timely completion.

In general, renovation projects tend to be more complex in nature and tend to result in higher actual costs than bid costs due to their unpredictability. *See* BHI study at 9. Because a PLA requires extensive planning before the project begins, a PLA may lead to more accurate bid costs and predictions of the actual cost of a renovation project. Additionally, flexibility in workers' schedules can lead to the timely resolution of without increasing labor costs through scheduling premiums. *See* Kotler (2009) at 18. Furthermore, the use of union hiring may aid a contractor who did not foresee the need for a larger workforce when a renovation project becomes bigger than expected. *See id.*

4. Time Constraints of Project:

PLAs help keep projects on time. The Boston Harbor Cleanup Project included a strict compliance schedule, mandated by federal court. *See* MWRA letter to the special commission dated April 18, 2014. Consequently, MWRA utilized work-stop prohibition, flexible workers' schedules, and dispute resolution provisions to guarantee the timely completion of the project. Similarly, on the projects at issue in *Callahan* and *Enterprise Equipment*, PLAs were used to guarantee project completion within their strict timelines. In road, bridge or rail projects, keeping construction within a strict timeline can minimize adverse effects on traffic flow. Additionally, when a completed road, bridge or rail project will result in state income, through either commuter rail ticket usage or toll collection, a PLA may help increase state revenue.

5. Scheduling Constraints for Workers:

PLAs prevent scheduling premiums when a project presents scheduling constraints for workers. Both the Longfellow Bridge Restoration Project and the Whittier Bridge/I-93 Improvement Project include provisions for flexibility in workers' schedules, which can prevent any cost increase that may arise from scheduling workers during off-peak

traffic hours. This provision is particularly helpful in road, bridge and rail projects where construction is likely to occur at night and/or be dependent on off-peak traffic hours.

6. Geographical Constraints:

PLAs alleviate potential issues that may arise as a result of the particular geographical constraints of a project. During the public hearing, a Partners Healthcare representative stated that the healthcare system frequently uses PLAs on construction projects in urban areas that have significant physical constraints. *See* Partners Health letter to the special commission dated April 7, 2014. Additionally, the Boston Harbor Cleanup Project’s confined site presented a serious issue with respect to the transportation of both workers and materials. *See* MWRA letter to the commission, dated April 18, 2014. Because the project required daily over-water transportation to Deer Island, the PLA included provisions that addressed transportation, scheduling, and water hazard issues. Consequently, PLAs may be particularly helpful on bridge projects, where there is always some geographical constraint, like water, roads, or walkways, underneath the bridge.

7. Potential for Labor Disruptions

PLAs are appropriate tools for preventing work stoppages and avoiding potential labor disruptions, particularly in areas, either geographical or industrial, with a history of labor unrest. *See E. Amanti & Sons Inc.* (stating that if the city had a history of labor unrest, a PLA would likely be justified despite the project’s low cost and lack of complexity).

8. Under-served Communities and/or Job Creation

PLAs can create jobs for both skilled and unskilled trade workers by including apprenticeship utilization and local residents hiring requirements. *See* UMASS Boston PLA, Compliance Guidance Forms. Additionally, apprenticeship utilization requirements on construction projects provide veterans, women, minorities, and low-income individuals with the clear opportunity to enter trade professions. *See* Construction Institute letter to the commission, submitted on April 7, 2014, public hearing; “Apprenticeship Requirement of State Procurement,” David Wallace testimony to the American Recovery and Reinvestment Act taskforce (Jan. 10, 2010).

Recommended Provisions and Language for a PLA

To fully utilize the benefits of a PLA, and to provide a more accurate and easily understandable agreement, the special commission recommends that all road, bridge and rail PLAs include specific language. The recommended provisions and language follows below and is compiled primarily from the Longfellow Bridge PLA, the Whittier Bridge PLA, the UMASS Boston PLA; an index of sources follows the model language.

The special commission recognizes that every public works project is unique and that many projects will benefit from additional and/or alternate language. Again, the special commission recommends that each government entity take a reasonable amount of time and effort to study the potential benefits of a PLA for a particular project. These suggested provisions and language and/or any item discussed in this report is in no way intended to limit the use of additional provisions or language that may promote added benefits to a project.

Specific Recommended Provisions and Language for a PLA:

Purpose:

This Project Labor Agreement (the “PLA”) is entered into this [Nth] day of [MONTH], [YEAR] by and between _____ (the “General Contractor”), its successors or assigns, and the _____ [name of union group that bargained for PLA], and the [any other unions/union groups] (all unions/groups are referred to, herein collectively, as the “Union” or “Unions”) with respect to the construction work on or connected to the [Name of construction, renovation, etc. project] (the “Project”).

The term “Contractor” shall include the General Contractor and all subcontractors of whatever tier engaged in on-site construction work within the scope of this PLA. Where specific reference to the General Contractor alone is intended, the term “General Contractor” is used.

The timely and successful completion of the construction work covered by this PLA for this Project is of vital importance to all the residents of Massachusetts. For that reason, it is essential that the construction of this Project be performed in the most efficient and economical manner that will secure optimum productivity and avoid delay.

In recognition of the special need of the Commonwealth to maintain a spirit of harmony, stability, and labor management peace during the construction of the Project, the parties agree to establish effective and binding methods for the settlement of all misunderstandings, disputes or grievances which may arise, and therefore, the Union agree not to engage in any strike, slowdown, or interruption of work and the Contractors agree not to engage in any lockout on or after the effective date of this PLA.

This PLA includes and incorporates herein, the attached local union and craft agreements and the successor agreements, and the successor agrees to the attached local union and craft agreements.

Scope of the Project Labor Agreement:

Section 1. This PLA shall apply and be limited to all construction work performed on the Project under the direction of the General Contractor and performed by Contractors of whatever tier who have contracts awarded. Covered work shall be defined as all construction work performed for the Project at the Project site or specifically connected to and/or established for the Project.

Section 2(a). This PLA shall be limited to work historically performed by members of the building trades in this venue. Nothing contained herein shall be construed to prohibit, restrict, or interfere with the performance of any other operations, work or function which may occur in or around the Project site including, but not limited to, work performed by local utilities.

Section 2(b). Work specifically excluded from the scope of this PLA includes, but is not limited to, the following: [Please insert list of project specifics.]

Section 3(a). The General Contractor, or any Contractor as appropriate has the absolute right to select any qualified bidder for the award of contracts under this PLA without reference to the existence or nonexistence of any other agreement between such bidder and any party to this PLA provided only, however, that such bidder is willing,

ready and able to execute the attached Letter of Assent and comply with the PLA, should it be designated the successful bidder.

Section 3(b). It is agreed that all contractor and subcontractors of whatever tier, who have been awarded contracts for work on the Project covered by this PLA on or after the effective date of this PLA shall be required to execute the attached Letter of Assent, accept and be bound by the terms and conditions of this PLA and indicate their acceptance by execution thereof.

Section 4(a). The Local Unions have entered into collective bargaining agreements which are fully and completely incorporated herein by reference and along with this PLA represent the complete understanding of the parties and shall apply to the construction work on the Project, notwithstanding the provisions of local and area and/or national agreements which may conflict or differ from terms of this PLA.

Section 4(b). Where a subject covered by the provisions of this PLA is also covered by the terms of a local collective bargaining agreement of any of the Local Unions, the provisions of this PLA shall prevail. Where a subject is covered by the terms of a local collective bargaining agreement of any of the Local Unions and not covered by this PLA, the provisions of the local collective bargaining agreement shall prevail. Any dispute as to the applicable source, between this PLA and a collective bargaining agreement, for determining the wages, hours and working conditions of employees on the Project shall be resolved by the procedures contained in this PLA. The provisions of a collective bargaining agreement and this PLA shall cover the construction work for the Project. In the event of any conflict, inconsistency or other discrepancy between the provisions of the PLA or the provisions of any collective bargaining agreement, the provisions of the PLA shall take precedence.

Section 4(c). It is understood that this PLA together with the attached local union and craft Collective Bargaining Agreements, constitutes a self-contained, stand-alone Agreement and that by virtue of having become bound to this PLA, the Contractors will not be obligated to sign any other local, area or national agreements.

Section 5. The General Contractor, at its sole discretion, may terminate, delay, and/or suspend any or all portions of covered work at any time. Further, the General Contractor may prohibit some or all work on certain days. The General Contractor will provide reasonable notice to the parties of any changes under this clause, but in no instance shall the notice be given less than seven days prior to implementation.

Section 6. The Unions agree that this PLA does not have the effect of creating any joint employer status between or among any of the parties who execute this PLA.

Work Stoppage and Lockouts:

Section 1. There shall be no strikes, picketing, work stoppages, informational picketing, slowdowns or other disruptive activity affecting work covered by the PLA for any reason, including disputes relating to the negotiations or renegotiation of any of the Local Collective Bargaining Agreements of the Unions participating in this PLA, by the Unions, or employees, against any Contractor, and there shall be no lockout by any Contractor.

- (a) Failure of any Union or employee to cross a picket line established by any Union, whether signatory or non-signatory to this PLA, or any other organization, at the Project site will be a violation of this PLA.

- (b) Disputes between the signatory unions and any tenant, renter or other person or business carrying out its/their normal functions within the boundaries of the Project shall be handled so as not to interfere with the operation of the Project, or the work being performed under this PLA.

Section 2. Any employee violating Section 1 above shall be notified by the employer that his/her actions are in violation of the terms of his employment per this PLA, and that failure to return to work at the commencement of the next STANDARD WORK DAY will result in disciplinary action, which could include dismissal, being taken against him/her. The notice shall be sent to the employee's last known address. If the employee is represented by a Union, a copy of the notice shall be sent to the Local Union representing the individual and the Union shall advise the individual to return to work.

Section 3. If the Union and the Contractor cannot agree on the final disposition of the disciplinary action taken against the employee, the parties agree to submit the issue to the Arbitrator named in Section 4 of this Article for final resolution

Section 4. Any party may institute the following procedure, in lieu of or in addition to any other action at law or equity when a breach of Section 1 of this Article is alleged.

- (a) A party invoking this procedure shall notify the arbitrator named in Article [NUMBER] whom the parties agree shall be the permanent arbitrator under this procedure. In the event that the permanent arbitrator is unavailable at any time, the alternate Arbitrator named in Article [NUMBER] shall be appointed. In the event that neither is available, the permanent arbitrator shall appoint an alternate. Notice to the arbitrator shall be by the most expeditious means available, with notices by certified mail to the party alleged to be in violation and to the Massachusetts Department of Labor Relations and the Union if it is a Union alleged to be in violation.
- (b) Upon receipt of said notice, the arbitrator named above or his alternate shall convene a hearing within twenty-four hours if it is contended that the violation still exists, but not before twenty-four hours after the dispatch of the notice required by Subsection (a) of this Section.
- (c) The arbitrator shall notify the parties by certified mail of the place and time for the hearing. Said hearing shall be completed in one session, which, with appropriate recesses at the arbitrator's discretion, shall not exceed twenty-four hours unless otherwise agreed upon by all parties. A failure of any party or parties to attend said hearing shall not delay the hearing or issuance of any award by the arbitrator.
- (d) The sole issue at the hearing shall be whether or not a violation of Section 1 of this Article has occurred. The arbitrator shall have no authority to consider any matter in justification, explanation, or mitigation of such violation or to award damages, which issue is reserved for court proceedings, if any. The

award shall be issued in writing within three hours after the close of the hearing, and may be issued without an opinion. If any party desires an opinion, one shall be issued within fifteen days, but its issuance shall not delay compliance with, or enforcement of, the award. The arbitrator may order cessation of the violation of this Article and other appropriate relief and such award shall be served on all parties by hand or registered mail upon issuance.

- (e) Such award may be enforced by any Court of competent jurisdiction upon the filing of this Agreement and all other relevant documents referred to hereinabove in the following manner. Certified mail notice of the filing of such enforcement proceedings shall be given to the other party. In the proceeding to obtain a temporary order enforcing the arbitrator's award as issued under Section 4(d) of this Article, all parties waive the right to a hearing and agree that such proceedings may be ex parte. Such agreement does not waive any party's right to participate in a hearing for a final order of enforcement. The court's order of orders enforcing the arbitrator's Award shall be served on all parties by hand or by delivery to their last known address or by registered mail.
- (f) Any rights created by statute or law governing arbitration proceedings inconsistent with the above procedure or which interfere with compliance hereto are hereby waived by the parties to whom they accrue.
- (g) The fees and expenses of the arbitrator shall be equally divided between the moving party or parties and the party or parties respondent.
- (h) If the permanent arbitrator determines that a work stoppage or other violation of Section 1 of this Article has incurred in accordance with (d) above, the involved Union(s) shall, immediately upon receipt of the award, direct all of the employees they represent on the Project to immediately return to work or otherwise cease the violation. If such employees do not return to work or cease the violation by the beginning of the next regularly-scheduled shift following the Union's receipt of the permanent arbitrator's award, each involved Union shall pay to the Owner the sum of [\$10,000.00] as liquidated damages for the first shift in which violation occurred, and shall pay an additional [\$10,000.00] per shift for each shift thereafter on which the involved Union's employees have not returned to work. If the permanent arbitrator determines that a lockout has occurred in violation of Section 1, he shall award back-pay to the employees who were locked out including all benefit fund contributions. If such liquidated damages are not paid within 30 days from the date of the arbitrator's award, interest at the rate of 12% per annum shall be due on all unpaid amounts. The arbitrator shall retain jurisdiction to determine compliance with this Section.

Section 5. Procedures in Article [NUMBER] shall not be applicable to any alleged violation of this Article.

Section 6. The Construction Manager is a party in interest in all proceedings arising under this Article and [other articles] and shall be sent contemporaneous copies of all notifications required under these Articles, and, at their option, may participate as full party in any proceeding initiated under these Articles.

Continued Communication:

Section 1. To the extent possible it is agreed that upon the final award of a contract or subcontract, to any Contractor, for work covered by this PLA, the General Contractor shall notify the Union as to the name of the subcontractor selected, the scope of work to be performed under the contract, and which crafts are anticipated to be involved in the performance of the scope of work. The General Contractor and the selected subcontractor will hold a pre-job conference immediately after the subcontractor is selected but no later than two weeks prior to the start of any work on the Project site or any work on any mock ups. It shall be the responsibility of the Union to notify the respective Local Union of the pending award.

Section 2. Upon notice from the Union(s) of a Contractor's delinquency in payments of wages and benefits owed for work performed on the Project under this PLA, the General Contractor agrees to work with the Union(s) to find and implement a mutually agreed upon remedy prior to making any periodic payments to the subcontractor in question. Further, prior to any recommendation to the General Contractor to close payments to a subcontractor for work performed under this PLA, the General Contractor will contact the designated representative of the Union for confirmation that payment in full has been made for all wages and benefits owed for employees who have worked under this PLA.

Section 3. Periodic conferences shall be held by the parties approximately every six weeks for the purpose of discussing matters of mutual interest.

Named Arbitrator:

It is agreed by the signatories of this PLA that the Arbitrator to be named under this PLA will be [NAME and CONTACT INFO]. S/He shall be used exclusively by the signatories to this PLA to answer to any and all questions arising out of the interpretation or application of the terms and conditions of this PLA. S/he shall also be named Arbitrator to satisfy the arbitration requirements stated in this PLA regardless of the cause of the alleged violation, but s/he will have no responsibility to decide jurisdictional disputes. Any party invoking arbitration under this PLA shall notify the other relevant parties by the most expeditious means available while also complying with any provisions of notice required in this PLA.

Disputes and Grievances:

Section 1. All parties to this PLA, collectively and individually, realize the importance of maintaining the continuous and uninterrupted performance of work covered by this PLA and agree to resolve disputes in accordance with the expedited arbitration provisions set forth in this Article.

Section 2. Any question arising out of and during the term of this PLA involving its interpretation and application (other than violations of XXX and XXX) shall be considered a grievance and subject to resolution under the following procedures:

Step 1(a). When an employee subject to the provisions of this PLA feels aggrieved by a violation of this PLA the employee shall, through his/her Local Union Business Representative or job steward, give notice to the involved Contractor within a reasonable time after the occurrence of the violation, or when the violation was made known stating the provision(s) alleged to have been violated. The Business Representative or job steward and a representative of the involved Contractor shall meet and endeavor to adjust the matter within twenty-four hours after timely notice has been given. If they fail to resolve the matter within the prescribed period, the grieving party, may, within one week thereafter, pursue Step 2 of the grievance procedure provided the grievance is reduced to writing, setting forth the relevant information concerning the alleged grievance, including a short factual description of the violation, the date on which the violations occurred, and the provision(s) of the agreement allegedly violated.

Step 1 (b). should the Local Union(s) of the General Contractor or any other Contractor have a dispute with the other party and, if after conferring, a settlement is not reached within seven working days, the dispute shall be reduced to writing and proceed to Step 2 in the same manner as outlined herein for the adjustment of an employee complaint.

Step 2. The Business Manager or designee of the involved Local Union together with the International Union representative of that Union, the representative of the involved Contractor and a representative of the General Contractor shall meet within five working days of the referral of the dispute to Step 2 to attempt to resolve the matter. If the parties fail to reach agreement, the dispute may be appealed in writing in accordance with the provisions of Step 3.

Step 3(a). If the grievance shall have been submitted but not adjusted under Step 2, either party may request, in writing, within seven calendar days after the initial Step 2 meeting, that the grievance be submitted to the arbitrator identified in this PLA. The decision of the arbitrator shall be final and binding on all parties and the fee and expense of such arbitration shall be borne equally by the involved Contractor and the involved Union(s).

Step 3(b). The time limits established herein may be extended only by written consent of the parties involved at the particular step where the extension is agreed upon. The arbitrator shall have the authority to make decisions only on issues timely presented and shall not have the authority to change, amend, add to or detract from any of the provisions of this PLA.

Section 3. No adjustment or decisions may apply retroactively exceeding sixty days prior to the date of the filing of a written grievance except this limitation shall not apply to claims for contributions due to fringe benefits funds.

Section 4. The General Contractor shall be contemporaneously notified by the involved Contractor of all actions at Steps 2 and 3 and shall be a party in interest at all grievance proceedings and arbitrations.

Jurisdictional Disputes:

Section 1(a). Work shall be assigned by the Contractor in accordance with area practice, and such assignments shall be disclosed by the Contractor at a pre-job conference. The General Contractor and subcontractors involved, and representatives of the appropriate Unions shall be invited to attend such conference.

(b) The Contractor will announce proposed work assignments at a pre-job jurisdiction assignment conference held in accordance with industry practice not later than fourteen calendar days before commencing any work under this PLA. The pre-job conference will include a representative of the General Contractor and the unions. Any Union in disagreement with the proposed assignment shall notify the Contractor of its position in writing, with a copy to the Union, within seven calendar days thereafter. Within seven calendar days after the period allowed for Union notices of disagreement with the Contractor's proposed assignments, but prior to the commencement of any work, the Contractor shall make final assignments in writing with copies to the Union and the General Contractor.

(c) There will be no strikes, work stoppages, slowdowns, interruptions or other disruptive activity arising out of any jurisdictional dispute. Pending the resolution of the dispute, the construction work shall continue uninterrupted as assigned by the Contractor.

(d) The involved Contractor shall promptly notify the General Contractor who will work directly with the involved Union(s) and Contractor(s) to avoid any disruption or delay on the work in dispute pending resolution of the dispute.

Section 2. There shall be no authority to assign work to a double crew, that is, to more employees than the minimum required to perform the work involved, nor to assign the work to employees who are not qualified to perform the work involved. This does not prohibit agreement by the parties to any dispute, including the involved Contractor, to establish composite crews where more than one employee is needed for the job, or an arbitrator from ordering such when appropriate. The aforesaid determinations shall decide only to whom the dispute work belongs.

Section 3. There shall be no strike, work stoppage, interruption, or other disruptive activity while any jurisdictional dispute is being resolved. The work shall proceed without interruption as assigned by the Contractor until finally resolved. The award or resolution shall be confirmed in writing to the involved parties. There shall be no strike, work stoppage, slowdown, interruption or other disruptive activity in protest of any such award or resolution.

Extraordinary Weekend Shifts/Hours of Work, Overtime, and Holidays:

During this job the owner may designate up to [number of weekend(s) specific to project] weekends as extraordinary work periods. If and when so designated, after reasonable notice to the Union, the owner will cause work to be performed from 11 p.m. Friday up to and through 5 a.m. on Monday.

Work performed during these extraordinary work periods shall be compensated as follows:

- Friday – straight time
- Saturday – time and one-half
- Sunday – time and one-half
- Monday – straight time

Notwithstanding the preceding, workers who have completed more than forty hours in a week in a day shall be paid no less than time and one-half for those hours in excess of forty or eight even when the excess is on an extraordinary work period. Shifts on extraordinary work periods shall be no less than eight hours of work or eight hours of pay.

Extraordinary work periods will allow for tasks that can only be performed when [XXX; project specific constraints/limitations, like traffic usage, etc.].

Employer Attestation Requirement for all Contracts and Subcontracts:

The following attestation shall be included and signed by all contractors and subcontractors involved in any work covered by this PLA.

I / We, the undersigned, do hereby certify that my business complies with all laws of the Commonwealth of Massachusetts including, but not limited to: taxes, reporting of employees and contractors, and withholding and remitting of child support (M.G.L. c. 62C, § 49A(a)); unemployment insurance contributions (M.G.L. c. 151A, § 19A); workers' compensation insurance (M.G.L. c. 152, § 25A and 25C(6)); and classification of employees (M.G.L. c. 149, § 148B). I understand that compliance with these laws and other laws may be verified by multiple government entities and that false attestation of compliance may be considered just cause for denial of application, breaching of contract, and other penalties.

/Signature/, name of authorized signatory, name of business, date.

Apprentice Utilization Requirement:

Recognizing the need to maintain continuing supportive programs designed to develop adequate numbers of competent workers in the construction industry, all Contractors will employ apprentices in their respective crafts to perform such work as is within their capabilities and customarily performed by the craft in which they are indentured. The Unions and the contractors of whatever tier agree to employ apprentices in a minimum ratio of one apprentice to every four journeymen employed (20%).

Anti-Discrimination:

The parties to this PLA renounce all forms of unlawful discrimination and agree that they will not discriminate in any manner against any potential, actual, or former employee or contractor on any unlawful basis prohibited by any applicable federal, state, or local law or regulation. Protected categories include, but are not limited to, race, color, age, religion, sex, gender identity, sexual orientation, national origin, genetic information, veteran status, disability, unemployment history, and/or union membership. All complaints regarding the application of this provision should be brought to the immediate attention of the Construction Manager and involved contractor, and/or Union for consideration and resolution.

Diversity Goals:

It is understood by the parties to this Agreement that [Gov't entity] has established goals (Ref. Appendix "[letter]" [statement of goals; see appendix C of UMB PLA for example]) for minority participation of employees, apprentices, and contractors on this Project and that by execution of this agreement all parties recognize that special

procedures may need to be established by mutual agreement of the parties and governmental agencies in an effort to achieve these goals, to allow for the training and employment on this Project of individuals who would not otherwise qualify for employment on this Project. The parties to this Agreement shall make a good faith effort to assist in the implementation of such training and employment for the benefit of the population of [state/city/township/etc].

Veteran Involvement:

The Employers and the Unions recognize a desire to facilitate the entry into the building and construction trades of veterans who are interested in career in the building and construction industry. The Employers and Unions agree to utilize the services of the [X organization/agency; like 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.

The Unions and Employers 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, probable past experience.

Working Conditions:

Section 1. A craft that has been given a job assignment by a Contractor may use any tool, device, or method of application (such as but not limited to the welding/cutting torch and chain fall) necessary to complete that assignment provided that the assigned employee(s) can safely use the tools and/or equipment involved, and that they possess the proper certification needed for operation of those tools and/or equipment.

Section 2. In conformity with the terms of this PLA, the General Contractor may, after notice to the Union, implement reasonable Project rules and regulations and such rules and regulations shall be distributed to all employees and posted in conspicuous places throughout the Project. Failure of an employee to conform to these rules and regulations will subject him/her to appropriate disciplinary action, which may include discharge.

Section 3. A Contractor may establish a tool room or warehouse. It is agreed that the manpower required for the operation of the tool room or warehouse shall be the employees normally in the direct employ of the Contractor.

Section 4. The Contractors shall provide adequate supplies of drinking water and sanitary facilities for the use of all employees.

Project Safety, Medical Rules, and Regulations:

Section 1. Reasonable Project- and industry-specific safety rules and regulations will be promulgated by the General Contractor after notice to the Union and attached hereto, distributed to all employees and posted in conspicuous places throughout the Project.

Section 2. All employees must use diligent care to perform their work in a safe manner and to protect themselves and the property of the Owner, the General Contractor

and the Contractors. Failure of an employee to conform to these rules and regulations will subject him/her to appropriate disciplinary action, which may include discharge.

Section 3. To conform with any governmental (Federal or State) regulation covering this Project, the General Contractor shall establish and implement reasonable substance abuse testing procedures and regulations which may include but shall be limited to, pre-hire, reasonable cause and post-accident testing. The Owner, General Contractor and the Union agree to implement the [substance abuse program to be determined; a good example is the “Harvard University Construction Substance Abuse Program”] attached hereto. All applicants for projects positions will be required to satisfactorily complete a drug test before achieving status as a non-conditional employee. Specimens will be collected during in-processing on the project site or at a designated off-site location. Applicants will be on the clock for all time spent in processing, including specimen collection. All applicants must present a referral slip from their Union before being tested. This shall not preclude a contractor from utilizing its own employees on the project who will be provided referral slips.

Section 4. After processing of paperwork and specimen collection, samples shall be tested within 3-9 minutes for immediate test results. Employees with negative test results shall be allowed to complete the orientation process and receive a site access badge. Employee samples that indicate preliminary positive results shall not be allowed access to the project until confirmation by a National Institute on Drug Abuse approved laboratory and review by the Medical Review Officer confirms said results. Employees whose confirmation concludes an initial false positive result shall be paid for regular work hours during the confirmation period. All applicants will be notified of test results (positive or negative) in sealed envelopes. If test results are confirmed positive for illegal drugs or prescription drugs without a valid prescription, the employee will continue to be barred from the project.

Section 5. Any employee so barred may be eligible for re-assignment on the project after a period of not less than six months, provided the employee satisfactorily completes a drug test conducted by an approved laboratory at the employee’s expense. Upon the successful completion of such a subsequent test, the applicant will be eligible for assignment to the project.

Section 6. Any employee who refuses to take the Instant Test will be permitted to take a full laboratory test which may take several days for results. The employee may be required to stay away from the project during the testing process, and s/he will not be compensated for the waiting period. Refusal on the part of any applicant to comply with the testing procedure will disqualify the applicant from consideration for employment on the project. The program shall only require pre-hire, reasonable cause and post-accident drug testing. An employee who has satisfactorily completed the drug test, leaves the project temporarily and is then reassigned to the project within 6 months of taking the test shall not be required to take a new drug test.

“Bring Along” Provision:

Signatory non-union Contractors shall be allowed to bring employees for the applicable trade subject to union standards of proficiency. The awarding authority may decide that for a particular PLA all labor will be referred to the Contractor from the respective signatory local unions except for a certain [XX] percentage of a Contractor’s

labor force for the project in accordance with the terms and conditions of the PLA.
[Note: the referral process and/or specifics of Contractors exercising this right should be decided prior to the bid process and incorporated into the terms and conditions of the specific project, based on the particular needs of the project.]

Savings and Severability:

It is not the intention of the signatories of this document to violate any laws governing the subject matter covered within this PLA. The parties hereto agree that in the event that any provision of this PLA is finally held or determined to be illegal or void as being in contravention of any applicable law, the remainder of the terms and conditions of this PLA shall remain in full force and effect unless the parts found to be void are contained in Article [XXX], Union Security, Recognition and Employment, and/or Article [XXX], Work Stoppage and Lockout or in the specifications to bids of Contractors enforcing this PLA, which were the basis upon which this PLA was entered into and are inseparable from the remaining portions of this PLA. In the event that bids of Contractors enforcing this PLA are held invalid, than the [name of Union group that did the bargaining for the PLA] shall have the right to declare this PLA null and void because of lack of consideration.

Further, the General Contractor and the Unions agree that if and when any or all provisions of this PLA are any enabling specifications are finally held or determined to be illegal or void by a court of competent jurisdiction, that they will promptly, but in no instance later than 48 hours from the decision of the Court, enter into negotiations concerning the substance affected by such decision for the purpose of achieving conformity with the requirement of an applicable law and the intent of the parties hereto.

Appendix: Diversity/apprenticeship Compliance Daily Worksheets

- New hire information sheet;
- Contractor daily workforce report;
- Workforce projection table;
- On-site application;
- On-site application fact sheet;
- On-site application information.

Index of Sources for PLA Model Language

Fred B. Kotler, Project Labor Agreements in New York State: In the Public Interest, ILR COLLECTION (2009).

Fred B. Kotler, Project Labor Agreements in New York State II: In the Public Interest and of Proven Value, ILR COLLECTION (2011).

Project Labor Agreement for the Longfellow Bridge Restoration Project between Building and Construction Trades Council of the Metropolitan District and the New England Regional Council of Carpenters and White-Skanska-Consigli, signed March 15, 2013.

Project Labor Agreement for the Whittier Bridge/I-95 Improvement Project between Merrimack Valley Building Trades Council and the New England Regional Council of Carpenters and Walsh Construction Company, signed April 22, 2013.

Project Labor Agreement for the University of Massachusetts Boston Campus between the Building and Construction Trades Council of the Metropolitan District and the New England Regional Council of Carpenters and Gilbane Building Company, signed June 6, 2011.

UMass Boston PLA, Compliance Guidance Forms (2011).

Conclusion

The special commission recognizes that PLA use on public construction works is a complex issue and appreciates the opportunity to examine the opinions, research, and case studies put forth from the public on this important topic. The information gathered through this process largely supported the use of PLAs. The special commission recommends the use of a PLA on any construction or renovation of roads, bridges and rails where the project involves any combination of the above-listed compelling criteria, such as overall cost, complexity, time constraints, workforce scheduling constraints, geographical constraints, or potential for labor unrest.

Index of Sources for the Report

- A. Speakers at the public hearing, April 7, 2014
 - i. Miranda Jones, O'Reilly, Grosso, and Gross, P.C.
 - ii. Greg Beeman, Associated Builders and Contractors
 - iii. John Messervy, Partners Healthcare
 - iv. Frank Callahan, Massachusetts Building Trades
 - v. Paul Lynch, Local 7 Ironworkers
 - vi. Brian Doherty, Metro Boston Building Trades
 - vii. Mary Vogel, The Construction Institute
- B. Written submissions presented to the special commission related to the public hearing
 - i. Partners Healthcare Letter, John Messervy, April 7, 2014.
 - ii. Associated Builders and Contractors Letter, Greg Beeman, April 8, 2014.
 - iii. Massachusetts Building Trades Letter, Frank Callahan, April 18, 2014.
 - iv. Massachusetts Water Resources Authority Letter, Frederick A. Laskey, April 18, 2014.
 - v. Construction Institute Letter, Mary Vogel, April 7, 2014.
- C. Case Studies
 - i. Paul Bachman et al., *Project Labor Agreements and the Cost of School Construction in Massachusetts*, Beacon Hill Institute (2003).
 - ii. Dale Belman et al., *Project Labor Agreements' Effect on School Construction Costs in Massachusetts*, 49 INDUSTRIAL RELATIONS 44 (2010).
 - iii. Fred B. Kotler, *Project Labor Agreements in New York State: In the Public Interest*, ILR COLLECTION (2009).
 - iv. Fred B. Kotler, *Project Labor Agreements in New York State II: In the Public Interest and of Proven Value*, ILR COLLECTION (2011).
 - v. David G. Tuerck, *Why Project Labor Agreements are Not in the Public Interest*, 30 CATO J. 45 (2010).
 - vi. Maurice Baskin, *Union-Only Project Labor Agreements: The Public Record of Poor Performance*, (2005).

- vii. “Apprentice Requirement for State Procurement,” David Wallace testimony to the American Recovery and Reinvestment Act taskforce, January 10, 2010.

D. Project Labor Agreements

- i. Project Labor Agreement for the Longfellow Bridge Restoration Project between Building and Construction Trades Council of the Metropolitan District and the New England Regional Council of Carpenters and White-Skanska-Consigli, signed March 15, 2013.
- ii. Project Labor Agreement for the Whittier Bridge/I-95 Improvement Project between Merrimack Valley Building Trades Council and the New England Regional Council of Carpenters and Walsh Construction Company, signed April 22, 2013.
- iii. Project Labor Agreement for the University of Massachusetts Boston Campus between the Building and Construction Trades Council of the Metropolitan District and the New England Regional Council of Carpenters and Gilbane Building Company, signed June 6, 2011.
- iv. UMass Boston PLA, Compliance Guidance Forms (2011).

E. Case law

- i. *Building & Construction Trades Council of Metropolitan Dist. v. Associated Builders & Contractors of Massachusetts/Rhode Island, Inc.*, 507 U.S 218 (1993).
- ii. *E. Amanti & Sons, Inc. v. City of Lynn*, No. 97-2780-C (Mass. Sup. Ct. June 9, 1997).
- iii. *John T. Callahan & Sons, Inc. v. City of Malden*, 430 Mass. 124 (1999).
- iv. *Enterprise Equipment Co. Inc. v. Town of Braintree*, No.09-1784 (Mass. Sup. Ct. Nov. 3, 2009).

F. Legislative materials

- i. “1998 Courthouse Bond Bill,” 1998 Mass. Acts. c. 189, §§ 1A-2.

G. Executive materials

- i. Exec. Order No. 13,502, 74 Fed. Reg. 6985 (Feb. 6, 2009).
- ii. Memorandum from the Fed. Highway Admin. on the Use of Project Labor Agreements (May 7, 2010).

H. Special commission members

- i. Administration and Finance designee, David E. Sullivan, General Counsel
- ii. Transportation designee, Frank DePaola, Acting Secretary and CEO Department of Transportation
- iii. Labor and Workforce Development designee, Paula Lyons, Deputy General Counsel
- iv. Attorney General designee, Jocelyn B. Jones, Deputy Chief & Special Counsel for Fair Labor Policy, Fair Labor Division
- v. Auditor designee, Gerald A. McDonough, Deputy Auditor and General Counsel