Resolution 2011-12: 42
PLA Study and PLA Agreement

By Board Member

WHEREAS, the Rochester School Facilities Modernization Program Act ("the Act") established the Rochester Joint Schools Construction Board ("RJSCB"), a seven voting member board consisting of equal representation by the City of Rochester ("City") and the Rochester City School District ("District"), as well as a member jointly selected by the City and the District; and

WHEREAS, under the Act, the RJSCB has certain enumerated powers to act as agent for the District, the City, or both; and

WHEREAS, the Act expressly states in Section 9 that the RJSCB may require that the construction contracts for the Rochester Schools Modernization Program ("RSMP") be subject to a project labor agreement ("PLA"); and

WHEREAS, the RJSCB hired Seeler Engineering, P.C. to perform a PLA Study (Resolution 2011-2012: 16) to evaluate potential costs/benefits of utilizing a PLA for the RSMP, the results of which will be the basis for the final decision of whether or not to commence negotiations with the Rochester Building and Construction Trades Council for a PLA; and

WHEREAS, the Committee, the Board's general counsel, and the Program Manager have reviewed and discussed the PLA Study provided by Seeler Engineering, P.C. at the Committee's November 3, 2011 meeting, a copy of which is attached hereto, and after due deliberation, it accepted the PLA Study;

THEREFORE, BE IT RESOLVED:

1. The RJSCB hereby accepts the PLA Study prepared by Seeler Engineering, P.C., including the findings and recommendations therein; and

2. The RJSCB hereby directs the Program Manager, with the assistance of Seeler Engineering, P.C. and the Board's General Counsel, to negotiate the terms of a PLA with the Rochester Building and Construction Trades Council acting on behalf of the twenty-three craft unions likely to participate in the RSMP project.

Second by Board Member

Draft Report
Project Labor Agreement
Benefits Analysis

Rochester Joint Schools Construction Board
Facilities Modernization Program
Rochester, New York

October, 2011

Seeler Engineering, P.C.

Seeler Engineering, P.C.

October 31, 2011

Mr. Tom Renauto
Executive Director
Rochester Joint Schools Construction Board
690 St. Paul Street
Rochester, New York 14605

Re: Draft Report - Facilities Modernization Program
PLA Benefit Analysis

Dear Mr. Renauto:

Seeler Engineering, P.C. is pleased to submit our draft report on the analysis of the benefits and other considerations to be weighed in the Rochester Joint Schools Construction Board's deliberations on the merits of using a Project Labor Agreement (PLA) for the Facilities Modernization Program.

Based upon our analysis we estimate that implementation of the PLA will result in a maximum savings ranging from $10,518,431 to $11,160,685, or approximately 10.0 to 10.6 percent of the projected cost of labor, $105,615,000 for the project. The savings projected are based upon terms and conditions which we would reasonably anticipate for this project. These terms and conditions are taken from PLAs which have been implemented in upstate New York in recent years.

The estimated savings is inclusive of savings derived from the implementation of a Workers Compensation Alternative Dispute Resolution (ADR) program for the project. The RJSCB should work with its risk managers to confirm the estimated savings for such a program. Should the RJSCB determine, however, that an ADR program is not applicable to the project; estimated savings would still range from $6,021,195 to $6,663,449 or 5.7 to 6.3 percent.

Other benefits would be available with implementation of a PLA, yet are not precisely translated into dollar savings, including avoiding costly delays of potential strikes and other disruptions arising from work disputes, and insuring a reliable source of skilled and experienced labor, and the potential for enhancement to recruiting and training of the minority and women workforce. Based upon the size and scope of the project and the stated savings, we conclude that the application of a PLA to the project is warranted. Actual savings, however, will be achieved only upon completion of a collective bargaining process and implementation of the agreed upon PLA. We recommend, therefore, that the RJSCB proceed with negotiations with the Rochester Building and Construction Trades Council for a project labor agreement.

Thank you for considering Seeler Engineering, P.C. If you have any questions please do not hesitate to contact me at (585) 248-9520 ext. 101 or by email at timseeler@seelerengineering.com . We look forward to working with you.

Very truly yours,
Seeler Engineering, P.C.

Tim A. Seeler

Tim A. Seeler, P.E.
Principal

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Draft Report
Project Labor Agreement
Benefits Analysis

Rochester Joint Schools Construction Board
Facilities Modernization Program
Rochester, New York

October, 2011

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Section 1
Executive Summary

1.1 Background

Project Labor Agreements, which have been utilized in the private sector for many years, are a recognized tool for assisting in cost effective and timely completion of major construction projects. They serve these objectives by providing uniform working conditions, cost savings, stable labor environment, and comprehensive protection against work disruptions arising out of labor disputes.

A Project Labor Agreement ("PLA") is a labor contract limited to the construction of a specific project. Unlike a typical labor agreement, a PLA does not bind a contractor wherever it works for a specific period of time; rather, it only applies to the contractor's work on a particular project and only for the duration of that project. All parties involved in the construction project, including unions and contractors, are required to be signatories to the PLA. The PLA supersedes any pre-existing labor agreements. A typical PLA provides for standardized work practices, hours, holidays and grievance/arbitration procedures, and promotes overall labor-management harmony for the duration of the project. A PLA prohibits strikes, lock-outs, work stoppages and/or any other disruption of work for any reason. PLAs provide a tool for addressing the special needs of a unique construction project in a single, comprehensive manner, particularly among union contractors. They become a substitute for local area labor agreements that generally are written for routine types of work and are not always easily adapted to special projects.

A PLA is typically a pre-hire agreement, which means it is negotiated prior to construction and hiring. Construction industry pre-hire agreements are expressly authorized by the National Labor Relations Act. See 29 USC § 158(f).

In March of 1993, the U.S. Supreme Court held that a governmental entity, when it is acting in its proprietary capacity as owner or manager of property and is participating in the construction industry marketplace much as a private employer, can utilize a PLA without running afoul of federal law. On March 28, 1996 the New York Court of Appeals approved, under State Law, the use of PLAs on publicly owned projects. In that case, which involved the repair and refurbishing of the Tappan Zee Bridge, the Court emphasized the need for the PLA to foster one or both of the dual purposes underlying the State's various competitive bidding laws: (1) protecting public fisc and (2) avoiding favoritism, fraud or corruption. See *New York State Chapter, Inc. v. New York State Thruway Auth.*, 88 N.Y.2d 56, 643 N.Y.S.2d 480 (1996) (sometimes referred to as the "Tappan Zee" case). The importance of potential cost savings to the public through the use of a PLA was emphasized by the Court's rejection of a PLA in a companion case, involving the Roswell Park Cancer Institute in Buffalo. There, in the absence of sufficient evidence that the Dormitory Authority approved the use of the PLA as a cost saving device, the use of a PLA was struck down by the Court.

Some commentators have argued that Tappan Zee only authorized PLAs in extremely limited and exceptional circumstances, arguing that the decision does little to authorize their use on the more typical public construction project. Based on both the language of Tappan Zee and subsequent decisions applying Tappan Zee, this seems an unduly narrow view. In fact, most post-Tappan Zee PLA requirements have been judicially accepted. Tappan Zee recognized two distinct categories of cost savings that can justify use of a PLA. The first is direct labor-saving costs obtained by negotiating specific provisions as part of the PLA. The second is indirect cost savings, which can be derived from PLA provisions that enhance

construction coordination, protect an asset's revenue stream, or perhaps even avoid fines or some other financial penalty attributable to construction delay.

PLAs have a long history in both public and private construction in the United States, dating back 60 years or more. See Perritt, Keeping the Government Out of the Way: Project Labor Agreements Under the Supreme Court's Boston Harbor Decision, 12 The Labor Lawyer 69 (1996). Notable projects that have been, or are being, constructed under a PLA include the Grand Coulee Dam, the Shasta Dam, Disney World, the TransAlaska Pipeline, Boston's Central Artery and Harbor Clean Up Projects, the Tappan Zee Bridge Refurbishing Project, the Onondaga County Resource Recovery Agency Resource Recovery Facility, Cape Kennedy Space Center, the O'Rorke Bridge (Rochester, NY), the Joint Schools Construction Board Projects in Buffalo and Syracuse, the Monroe County Water Authority Eastside Water Supply Project, and the Allegany County Courthouse Project. It is worth noting that PLAs have been used successfully in the Rochester area for several recent projects, including the MCC Building 9 and Wolk Center Addition Project, the Monroe County Crime Lab Project and the MCWA Eastside Water Supply Project.

Although not new to construction, PLAs have received considerable attention in recent years as a result of the Supreme Court's Boston Harbor decision. *Building & Construction Trades Council v. Associated Builders & Contractors*, 507 U.S. 218, 230 (1993) ("Boston Harbor"). The Boston Harbor PLA was challenged in the Boston Harbor case on federal preemption grounds, on the theory that by requiring successful bidders to agree to the PLA, the public owner, the Massachusetts Water Resources Authority ("MWRA"), was dictating their labor relations policies.

Although the U.S. District Court rejected the plaintiff's preemption argument, an en banc First Circuit reversed. It found that, by requiring bidders to accept the PLA, the MWRA had "pervasively intruded" into the collective bargaining process of project contractors, in violation of the doctrine established by the Supreme Court's 1976 decision in *International Ass'n Machinists & Aerospace Workers v. Wisconsin Employment Relations Commission*. 427 U.S. 132 (1976). The doctrine prohibits states from regulating activities that Congress intended to be left unregulated under federal labor policy.

In reversing the First Circuit, the Supreme Court held that a public entity, when acting in its proprietary, as opposed to regulatory, capacity is entitled under federal labor law to take advantage of the same NLRA provisions that allow a private project owner to reap the benefits of a project labor agreement. After tracing the congressional history of Section 8(e) and (f) of the NLRA, the Court concluded that the very reasons that led to the adoption of these statutory provisions were no less implicated on publicly owned projects than on privately owned projects. Thus, so long as a public entity's decision to require a PLA is a proprietary decision and not the exercise of its regulatory powers, federal labor law and preemption principles pose no barriers.

The legal scrutiny given to PLAs has led to the recognition of the benefits that PLAs can bring to construction projects. John Koskinen, the Deputy Director for Management of the Office of Management and Budget, testified before the Senate Committee on Labor and Human Resources in April of 1997 and spoke of the long, successful history of PLAs in containing construction costs and assisting in the timely completion of major construction projects, in both the public and private sector (a copy of his testimony is attached at Appendix A).

Recognizing the ability of PLAs to "achieve economy and efficiency in Federal construction projects," President Barack Obama issued an Executive Order to all Executive Departments and Agencies on February 6, 2009 encouraging consideration of PLAs on Federal projects (a copy is attached as Appendix B). Also aware of the potential benefits PLAs can bring to public construction projects, Governor Pataki issued Executive Order No. 49 in 1997 requiring New York State agencies to establish guidelines for the

consideration of PLAs on State projects, recognizing that it is now clear that PLAs are one of many tools which may be used by management and labor and which may, under certain circumstances, assist in achieving the goals [of timely completion of public construction projects...while at the same time limiting the costs of such projects] (a copy of this Executive Order is attached at Appendix C). According to a recent report issued by the United States General Accounting Office, the Governors of Nevada, New Jersey and Washington have issued similar Executive Orders, as have the Mayors of Boston and Philadelphia.

John Dunlop, a noted labor economist and Harvard University Professor (Emeritus), commented on the value of a PLA in the now completed, multibillion dollar Boston Harbor Clean Up Project. Dr. Dunlop's comments were made in connection with the consideration of a PLA on a major Southern Nevada Water Authority project (a copy of Dr. Dunlop's statement is attached at Appendix D). A report from the Manager of ICF Kaiser, the administrator of the Boston Harbor PLA, included in Dr. Dunlop's statement clearly credits that project's PLA with helping bring the project in under budget and ahead of schedule, and completing approximately 20,000,000 craft hours without any time lost due to labor disputes. Since the issuance of the Kaiser report, greater than 25,000,000 craft hours have been expended on the project. Some 300 disputes were resolved in 12 years of project documentation without delay or disruption.

Savings from PLAs have also been recognized in court cases approving the use of PLAs on public construction projects in New York, e.g., the Tappan Zee case (approximately $6 million in estimated savings) and *Albany Specialties, Inc. v. County of Orange*, 240 A.D. 2d 739 (2d Dept. 1997) ($2.1 million in savings). However, a New York court has struck down a PLA where anticipated cost savings were not documented at the time of approval. See *Empire State Chapter of Associated Builders and Contractors, Inc. v. City of Oswego*, 239 A.D. 2d 875 (4th Dept. 1997).

Although opponents of PLAs have claimed that such a requirement precludes open shop, or non-union, contractors from bidding, the courts have soundly rejected that claim as a legal matter, and experience on a number of projects indicates that PLAs do not, in fact, have such an effect. For example, the above referenced statement of Dr. Dunlop indicates that there was significant work secured by non-union contractors on the Boston Harbor project, with, as of October of 1996, approximately 102 out of a total of 257 subcontractors classified as open shops despite Boston being a market in which approximately 75% of major construction is performed on a union basis. In addition, at the time of the decision by the Superior Court in Massachusetts approving the use of a PLA on a second, multi-billion dollar project in Boston, the Central Artery Project, dozens of non-union contractors had bid on and/or received project contracts. See *Utility Contractors Association of New England, Inc. v. Commissioners of the Massachusetts Department of Public Works*, Civil Action No. 90-3035 Decision at p. 11 (1996). See also *Associated Builders and Contractors, Inc. v. Metropolitan Water District of Southern California*, 1997 WL 768936 (Cal. App. 2 Dist. 1997) where a major construction project in California that required a PLA utilized non-union contractors for 75% of the project.

The Rochester Joint Schools Construction Board's ("RJSCB") Facility Modernization Program (the "Project") is in the final stages of procurement for the design and construction of Phase 1. Phase I legislation authorizes projects for up to thirteen schools along with a District Wide Technology Improvement Project. The current program includes upgrades and additions for twelve schools in the Rochester City School District (the "District"), along with District wide technology improvements. Construction costs for Phase 1 of the Project are estimated to be $244.9 million.

The RJSCB's enabling legislation authorizes it to use a PLA. To investigate the benefits of a PLA, the RJSCB has engaged Seeler Engineering, P.C., an independent consultant experienced in the development and implementation of PLAs, to conduct a thorough analysis of the costs/benefits of a PLA. The RJSCB

will use the results of this independent study to determine whether or not to commence negotiations for a PLA with the Rochester Building and Construction Trades Council.

Seeler Engineering, P.C. conducted this study by addressing whether a PLA covering the Project would:

1) provide economic savings and complete the best work at the lowest price in the construction process through, among other things, uniformity in work rules and practices; mechanisms for improved productivity, safety, and efficiency; and timely completion of the construction; and

2) prevent favoritism, fraud and corruption by ensuring access to the benefits of the PLA to all successful bidders (including open-shop contractors), as well as guaranteeing that all successful bidders are permitted to utilize a portion of their regular work force on the Project.

The RJSCB asked Seeler Engineering, P.C. to determine the most economical way to proceed with timely construction, with the least disruption to the public. It also asked Seeler Engineering, P.C. to consider the impact of delay, the possibility of cost savings advantages, and any local history of labor unrest.

What follows is a study designed to assist the RJSCB in determining whether to enter into negotiations with respect to a PLA. The report summarizes Seeler Engineering, P.C.'s investigation of factors relating to the appropriateness of incorporating a PLA into the proposed Project.

1.2 RJSCB Facilities Modernization Program

This study analyzes the Project, which comprises the first phase of a multi-phase program and encompasses improvements for up to thirteen district educational buildings along with a district wide technology upgrade project. The RJSCB has initially assessed twelve buildings and established planning level programming, including varying levels of:

- Alterations and renovations,
- Additions to address space adequacy, and
- Site modifications.

The RJSCB's enabling legislation is similar in many aspects to the legislation allowing the City of Buffalo and the City of Syracuse to proceed with their respective comprehensive capital renovation programs. It creates the RJSCB and allows for the formation of a public/private partnership to deliver the $325 million project with no additional tax levy.

In order for the District to continue its public service mission, it is critical to have a timely and successful completion of the Project. During the extended construction period, the District's vitally important public service activities must continue without interference or delay. The Project must be kept on schedule to prevent interference with planned school and community activities. School building projects will be continuing concurrently with regular school operations through the use of careful scheduling of work and relocation of educational activities into flex space. Any disputes or work stoppages on this project will, in all likelihood, spill over to interrupt and interfere with other aspects of school operations. The work contemplated under this project is geared to the opening of the school year, and the schedule must remain intact in order that these deadlines are met.

Therefore, it is essential that the construction work be done in an efficient and economical manner in order to secure optimum productivity and to eliminate any delays in the work.

1.3 The Proposed PLA

This study is occurring prior to any PLA negotiations or preparation of a draft PLA document. Accordingly, the terms and conditions included in this analysis reflect terms and conditions previously agreed to on other projects in the region and are believed to be reasonable and achievable for the Project.

1.4 Our Study

Seeler Engineering, P.C. has developed a comparative analysis of the existing twenty-three area collective bargaining agreements for eighteen labor craft unions that would govern construction on the Project in the absence of a PLA. The intent of the review was to identify areas for improvement through the use of a PLA that could reduce the Project's total labor cost.

This study includes an assessment of the economic and non-economic benefits of a PLA. Given the nature and size of this Project, and the make-up of the market, even in the absence of a PLA we would expect, on a dollar basis, approximately 75 percent of the successful project bidders to be unionized contractors covered by one or more of the twenty-three agreements referenced above. The percentage will vary by contract.

1.5 Summary

We estimate that using a PLA would result in savings ranging from $10,518,431 to $11,160,685, or approximately 10.0 to 10.6 percent of the projected cost of labor for the Project (estimated at $105,615,000). This estimated savings is inclusive of savings resulting from implementation of a Workers Compensation Alternative Dispute Resolution (ADR) program for the project. Should the RJSCB determine that an ADR program is not in its best interest, the estimated savings would be reduced to a range of $6,021,195 to $6,663,449 or 6.3 to 5.7 percent. Using a PLA would offer several other benefits that are not easily translated into dollar savings, but are significant to the completion of a project. These benefits include: avoiding the costly delays of potential strikes and other disruptions arising from work disputes, permitting wide flexibility in work scheduling and shift times thereby increasing productivity, ensuring a reliable source of skilled and experienced labor, enhancing opportunities for minority and women workforce participation through enhanced recruitment and training programs, and avoiding favoritism by ensuring availability of the benefits of the PLA to all successful bidders regardless of union/non-union status or the status of their employees. Given current economic conditions, the labor market is considered volatile. A PLA would, therefore, result in obtaining the best work at the lowest possible price, prevent favoritism, fraud and corruption, and eliminate the impact of delay as a result of labor unrest.

For these reasons, Seeler Engineering, P.C. recommends the use of a PLA for the Project.

Section 2

Project Description

2.1 Scope

The Rochester City School District consists of a number of Elementary, Middle and High School buildings around the City. The RJSCB's Facility Modernization Program is a comprehensive capital improvement program for the District. The Project, the first phase of a multi-phase plan, calls for repairs, maintenance, alterations, reconstruction, and additions to address "space adequacy" at up to thirteen District buildings and a project to enhance technology systems District-wide. The extent of the improvements to each building space will vary, but in general may contain asbestos abatement, replacement of interior finishes, lighting improvements, upgrades to communications and IT systems, HVAC improvements, interior space demolition and modification, and improvements to the building envelope for classrooms, athletic facilities, auditorium, administrative, and lunch room areas. The projects are to be completed while maintaining school operations in an uninterrupted and safe manner.

2.2 Schedule

The Facilities Modernization Program is divided into multiple Phases with only the first phase authorized. This Phase extends from 2012 to 2015. A preliminary construction schedule is included as Appendix E and shows the individual projects included in Phase 1. All construction work is to be completed by the end of July 2015 (37 months).

Several key factors enter into the schedule for construction activities. First, schools must remain in full operation from September through June and the District and its contractors must remain in compliance with Part 155 of the Regulations of the Commissioner of Education. Certain construction activities can only be completed after the completion of the school day, during summer recess and/or with temporary relocation of certain activities. Construction of "Swing" space first is a key component in any schedule of activities. Modifications, improvements or changes to mechanical systems must typically be done during summer months. Lastly, certain site (athletic fields) work is constrained by weather and use considerations. The need for effective schedule management is therefore a critical element of the project.

The thirty-seven month scheduled construction period, while not lavish, is reasonable and allows construction to proceed in a relatively benign manner with four summer seasons for construction as long as effective progress of interdependent work is maintained. So long as the Project does not incur significant delays, this construction timeframe should provide sufficient time to complete construction activities without the use of expedited construction techniques that would result in a premium charge to the Project.

2.3 Construction Costs

The RJSCB, the RJSCB's Program Manager and the District prepared a project estimate for the Facilities Modernization Program, a copy of which is included in Appendix F. The individual projects are listed below by phase. Total project costs including professional services, as well as construction, is projected to be $325 million in 2011 dollars. Total construction cost is estimated at $244.9 million. The estimated cost for each project is presented below:

Contract/School Name	Construction Cost
John Williams School No. 5	$17,730,000
James P. B. Duffy School No. 12	$15,650,000
Enrico Fermi School No. 17	$19,189,794
Henry Hudson School No. 28	$17,457,189
Helen Barrett Montgomery School No. 50	$17,442,549
World of Inquiry School No. 58	$36,240,961
Charlotte High School	$20,094,850
Franklin Educational Campus	$7,600,000
Thomas Jefferson High School	$20,968,000
James Monroe High School	$23,500,000
East High School	$19,848,000
Edison Educational Campus	$22,200,000
District Wide Technology Program	$7,020,000
Construction Cost Total = $244,919,343	

Section 3

Estimate of Craft Labor Needs

3.1 Craft Labor Breakdown

In connection with the Project, eighteen craft labor unions (with twenty-three craft labor union collective bargaining agreements) would represent the construction industry as signators to the PLA. Of this number, fifteen craft labor unions (with fifteen of the agreements) would likely have actual involvement in the work planned for the Project. A listing of the unions is presented on Table 1.

Table 2 includes work area labor breakdowns for the Project. This analysis estimates that approximately 2,357,310 craft labor hours will be required to complete construction work for the Project. Demand for craft labor will be immediate upon execution of the construction contracts. Given the nature and the size of the Project and the make-up of the market, even in the absence of a PLA, we would expect on a dollar basis approximately 75% of the successful project bidders to be unionized contractors covered by one or more of the craft labor agreements. For a project of this size we would not expect to see a significant number of new bidders from outside the area. Those that are from outside the area could create the potential for greater union participation because of the need to access large local workforces instead of incurring large workforce mobilization costs.

3.2 Projected Labor Costs

Utilizing applicable journeyman wage and benefit rates, we projected labor costs for the Project. The projected craft labor cost for the Project is estimated at $105,615,189 or 43 percent of the anticipated construction cost, with the actual percentage varying on individual components from 20 to 60 percent.

Section 4

Summary of Existing Agreements

4.1 Existing Agreements

Seeler Engineering, P.C. has developed a comparative analysis of fifteen of the twenty-three craft unions and fifteen applicable collective bargaining agreements. Based upon the current scope of the Project, three crafts; Millwrights, Piledrivers and Teamsters would not have involvement in the Project. Further it is anticipated that the work planned would be subject to Building Rate Agreements only. Work subject to Heavy and Highway agreements is not anticipated. Significant aspects of each agreement are summarized on Table 3. Elevator workers participate in PLAs, however, because of the nature of the agreement, they are subject only to general conditions. The intent of the review was to identify areas of improvement achieved through the proposed PLA which could potentially result in a reduction of the labor cost for the Project. A brief synopsis of the terms of the existing agreements is presented below.

4.1.1 Contract Duration/Expiration Date

Contract durations range from two to five years, with the majority of the agreements being five years in duration. Five of the agreements (Bricklayers, Electrical Workers, Iron Workers, Operating Engineers and Painters) are set to expire just prior to the anticipated construction start date. Seven agreements are set to expire during the construction period.

4.1.2 Regular Work Hours/Regular Work Day

Regular work hours/work day are not consistent between agreements. Although all of the agreements standardize on a 5 day, 40 hour work week, some crafts allow 4 ten hour days as an alternative with consent of the union. The majority of the agreements set normal work hours from 8 a.m. to noon and 12:30 p.m. to 4:30 p.m. with an unpaid one-half hour for lunch. Several unions do not state specific start and quitting times, but state that the hours must be consecutive with a ½ hour lunch. Other unions specifically state that the starting and quitting times may be changed, but require notification to or mutual agreement of the union.

4.1.3 Guaranteed Pay

All of the union agreements except the Bricklayers, Carpenters, Insulators and Ironworkers require two or more hours pay for reporting in. Iron workers require $30 per hour for the first two hours if the employee shows up and no work is provided due to weather or other means not controlled by the employer. The detailed requirements vary. Some of the agreements limit the obligation to non-weather related conditions. Some require the pay regardless. Still others require additional compensation if weather conditions permit work, but no work is provided. The Operating Engineers essentially guarantee a minimum of three full days of pay once the work day starts regardless of the hours actually worked. In some instances these guaranties can be as much as 40 hours. Most of the unions allow Saturdays as a make-up day for weather related delays at straight time.

4.1.4 Shift Work

The agreements vary widely. Shift differentials range from 10 to 17.5 percent premium for second shift to 15 to 31.4 percent premium for third shift. In addition, many agreements shorten the hours worked for second and third shift (7.5 hours for second shift and 7 hours for the third shift) but require 8 hours of pay. Glaziers and Roofers do not address second and third shifts. The Painters require second and third shift compensation at base pay plus $2 per hour.

4.1.5 Overtime

Most agreements provide for time-and-one-half for overtime for weekdays and Saturdays. For Sundays and holidays two-times base salary is typical. Painters allow Sunday work at time-and-one-half.

4.1.6 Holidays

All unions are standardized on 6 holidays: Christmas, New Years, Thanksgiving, Labor Day, Memorial Day and Independence Day. For all unions, holidays are unpaid if not worked.

4.1.7 Apprentice Ratios

The ratios vary and change with the number of Journeymen at the site. For example, many unions allow the first Apprentice with the first Journeyman. While one Apprentice usually is allowed initially, once staffing grows beyond a small labor force the following ratios have been established:

Journeyman/Apprentice Ratio	Number of Agreements
1/1	2
2/1	1
3/1	7
4/1	2
5/1	0
6/1	0
3/2	1

4.1.8 Off-Site Fabrication

Off-site fabrication rules vary from agreement to agreement. Some do not address the issue at all. For example, electricians define certain work elements and require them to be union. Plumbers require off-site work "under the control" of the contractor to be union. Several other crafts have similar language which could restrict flexibility in the use and selection of off-site fabricators.

4.1.9 Mileage and Parking

Some of the unions require payment for parking in downtown areas. Rules also vary for mileage. Most agreements do not require payment of mileage within Monroe County if the worker reports directly to the job-site. Compensation for parking ranges from $0 to $7 per day, while travel ranges from $0.00 to $0.51 per mile.

4.1.10 Management Rights

Most of the existing agreements do not contain a "Management's Rights" clause. This means that they lack clear statements of the rights of management giving the contractor the assistance and/or flexibility required for necessary control and management of the Project work, including control of

the level of staffing and control/selection of key personnel such as the foreman including the consideration that the foreman be provided by Contractor.

4.2 Labor Unrest

We reviewed the general labor climate in the Rochester area over the last ten years. Our review revealed a mixed picture. Nationwide, labor activism is on the rise. This unrest is evidenced nationally by the Chicago Laborers Strike in June of 2006, which stopped the construction of an over $1 Billion project and the most recent walkout of 400 unionized Cement Truck Drivers in New York City. The unrest is evidenced locally by recent organizing activities in the service industries in upstate New York, by the Bricklayers in Rochester, threatened job actions in the manufacturing sector, and recent demonstrations at the MCC campus related to a proposed housing project. As recently as February of 2010, IAM Local 1555 employees went on strike for twenty-two (22) weeks in Westfield, New York, Chautauqua County. A strike, just recently settled, by Mott's employees at the Williamson, New York facility is now the longest in the Company's history lasting five months. The Rochester area trades are known to have a very strong and comprehensive organizing program and are known to take a strong position when advocating for local union involvement in project work.

As demands on skilled labor increase, availability will decrease, making access to skilled workers through hiring halls and certified apprenticeship programs even more valuable, thus giving the union worker greater strength at the bargaining table. This, in turn, increases the potential for confrontation in local bargaining and labor disruption as local area bargaining agreements go through the negotiation process. Other large projects planned for the Rochester area such as the Midtown Redevelopment Project, RGRTA Transportation Center, and new Federal and State stimulus projects could place significant demands on available labor.

While the majority of public works projects contain a Force Majeure clause excluding labor disputes from penalty provisions, a work stoppage, nonetheless, would mean additional cost for the Project. The time and expense added to a bid to protect against the uncertainties of an unstable labor force (e.g., added coordination costs, acceleration of schedules, standby costs during job actions, costs to cover liquidated damages) are real. Additionally, claims for standby costs for multiple contractors working on a site in a interdependent manner, plus material cost increases over time, can have a significant impact on projects. Job actions of any nature therefore become a critical factor in cost-effective timely project completion.

The 52-county Upstate New York region's unemployment rate stood at 7.2 percent in August 2011, down from 7.8 percent in August 2010. New York State's unemployment rate was 8.0 percent in August 2011, unchanged from July 2011, with the number of unemployed New Yorkers increasing slightly over the month from 755,900 in July to 756,400 in August 2011.

Given the current economic and unemployment conditions, we view the labor market as volatile. The high unemployment rate and reduced spending on capital projects would suggest that a large labor pool from both inside and outside the region is available and willing to work, although organizing activities are expected to increase and the frequency of job actions are expected to increase over the issue of keeping employment local.

Section 5

Economic Considerations

5.1 General

We conducted an analysis of potential cost savings for the Project utilizing the projected labor craft hours, wage rates currently in effect and contract provisions typically included in local PLAs. See below a discussion of the cost impacts of the individual contract provisions as proposed, including detailed calculations in Appendix G.

5.2 No Strike Protection for Contract Duration

A PLA would apply to all construction contracts bid and awarded for the Project. It would prohibit strikes and lock-outs or other job actions for the duration of the agreement. This would avoid the potential for work stoppages resulting from wage and benefit negotiation at the end of each craft's local area agreement, thus ensuring uninterrupted project completion. Costs associated with a project shutdown would include owner/engineer oversight time and expense, standby time for equipment and extended interim financing charges. The cost of owner/engineering oversight alone approximates $18,000 to $25,000 per month ($900/day to $1300/day). Cost for keeping swing space available is projected to be from $100,000 - $250,000 per month.

5.3 Regular Work Hours/Regular Work Day

A PLA could provide for flexibility in the regular work day start time. This would allow the contractor the flexibility to set uniform start times for all trades. The start time for the first shift can be varied within a three hour window between 6 a.m. and 9 a.m. More significantly, a PLA could allow for Special Shifts, with prior notice to begin any time. These provisions give the contractor flexibility to schedule the workday to maximize productivity without paying one or more crafts persons needlessly and more easily managing additional costs for overtime and shift differentials. Flexible hour schedules to accommodate seasonal daylight and late start in winter to accommodate snow plowing, etc. also will enhance productivity

It is estimated that a productivity gain of 1 hour per worker per week during critical coordination periods would be realized for common work day and flexible shift start times. The savings are estimated at $223,793.

5.4 Overtime

Based upon the most likely staffing scenario, we anticipate the use of overtime. Up to 20 percent of the labor effort could be in overtime hours depending upon the implementation of other provisions of a PLA. Overtime could result from unusual conditions caused by work in and around existing facilities that must remain in service at all times. The PLA standardizes on time and one half for overtime on weekdays and Saturdays. We do not anticipate work conditions that would trigger overtime at a rate greater than 1.5 times base, so this provision alone does not yield any savings.

5.5 Second/Third Shift

A PLA could reduce shift differentials. The Project contemplates a very small percent of the work activities to require work on a second shift or third shift. By reducing or eliminating shift differentials and using the flexible start times discussed above, the Project could eliminate the premium normally incurred for labor associated with these activities. This would result in no significant project savings. Nevertheless, any PLA should include reductions in second and third shift if applicable. This has been agreed to in the past for other similar PLAs.

5.6 Four Ten Hour Days

A PLA could provide for flexibility in the regular work week by allowing a contractor to use a 4 - 10 hour day schedule or a regular day, 8 hours per 5 day schedule. Further, the contractors may set start times between the hours of 6 a.m. and 9 a.m. and use special shift start and finish times to fit the needs of the assignment. This would give the contractor flexibility to schedule the workday to maximize productivity and eliminate the setup and breakdown time for one work day each week. Flexible hour schedules could accommodate for seasonal daylight, and after hours work, which would enhance productivity. Savings are estimated to be approximately one hour per week per person. The maximum savings results from implementation of a 4 day, 10 hour schedule for 9 months of the construction schedule. We anticipate that this provision would be exercised during the summer months and include June, July, and August, three months during the summer of 2012, three months during the summer of 2013, and three months during the summer of 2014. The estimated maximum savings is projected to be $642,255.

5.7 Industry Fund Payments

PLA provisions could limit the workers' pay to base wages and fringe benefit payments as published in the prevailing wage schedules. This in turn would avoid collectively bargained payments, such as Industry Promotion Funds, which are in excess of those required by/for public works projects. The local agreements provide for a payment ranging from $0/hr up to a maximum of $2.09/hr for these added costs. The elimination of these payments under a PLA would, therefore, save approximately $843,600.

5.8 Apprentice Ratio/Apprentice Program Participation

We recommend that any PLA terms agree to apprentice ratios set by the New York State Department of Labor. This translates to apprentice ratios of 3 to 1 or better. By moving several of the crafts to this ratio, a reduction in labor cost would be realized. It is estimated that this modification could result in a cost savings of $249,882.

A PLA could provide access to a qualified pool of apprentices for non-union contractors not otherwise available. This provision would allow for non-union contractors (who do not have state approved apprentice programs) to obtain qualified apprentices, through the referral process, to lower overall crew labor cost. Based upon the size and schedule of the Project, we anticipate that apprentices would be utilized. By providing access to contractors who would not otherwise be able to take advantage of apprentices, a PLA could result in savings of $1,376,565.

5.9 Guaranteed Pay

We evaluated a term from a recent PLA that would eliminate guaranteed pay in its entirety and replace it with a travel allowance equivalent to one hour's pay. Standardizing on this provision for all trades should be included in any PLA. The estimated savings is projected to be $6,049.

5.10 Mileage and Parking

We also evaluated a PLA term that would eliminate mileage and parking reimbursements in its entirety. The estimated saving is projected to be $258,645.

5.11 Off-site Fabrication

A PLA could remove restrictions on off-site work. The Project would be limited only by restrictions imposed by New York State law and, therefore, provide additional flexibility to utilize off-site fabrication involving mostly sheet metal, electrical, pipefitting, ironwork and carpentry. The estimated savings is projected to be $307,536.

5.12 Management Rights/Jurisdictional Requirements

Management can realize distinct efficiencies by controlling the level of staffing, the scheduling of staffing, and the selection and employment of a Foreman as Contractor's staff. For large projects or complex projects with high labor loadings, savings of two percent of the labor costs from these clearly established management rights are typically realized. For smaller projects or less complex projects with moderate schedules and less intense labor loadings, these advantages are reduced to 0.5 percent.

Further adjustments can be made to small projects when considering the effect of jurisdictional restrictions. In an open shop environment, workers would be allowed to perform the work of more than one trade over the work day. While prevailing wage requirements would dictate that they must be compensated for the work of each trade in accordance with the applicable schedule in effect for that trade, they would still be allowed to perform the differing tasks. Union agreements and, by their nature, PLAs would restrict the work of the governing trade, thereby prohibiting crossover to take place. The crossover of individual workers from one trade activity to another in a single days work is more frequent on smaller, less intense projects. This practice also occurs more frequently in the general building construction trades than in other crafts.

Giving the contractor(s) the ability to control various aspects of the Project could optimize shared savings. We anticipate a 1.5 percent cost reduction for this item. Savings are projected to be $2,755,125.

5.13 Workers Compensation ADR

Savings could be realized by providing for a Worker's Compensation Alternative Dispute Resolution ("ADR") process. The RJSCB could consider implementing an Owner Controlled Insurance Program ("OCIP") or develop a standalone ADR process. The ADR process could, therefore, be available to contractors conducting work under collective bargaining agreements inclusive of PLAs. Potential savings related to ADR is estimated herein and should be considered preliminary. On a preliminary basis, savings are estimated to be $4,497,236. Further evaluation by RJSCD's insurance providers is needed to more thoroughly define the savings identified herein.

5.14 Summary

The use of a PLA would result in projected, quantifiable savings ranging from $10,518,431 to $11,160,685, or approximately 10.0 to 10.6 percent of labor costs. This estimated savings is inclusive of savings resulting from implantation of a Workers Compensation Alternative Dispute Resolution (ADR) Program. Should the RJSCB determine that an ADR program is not in its best interest, the estimated savings would be reduced to a range of $6,021,195 to $6,663,449 or 6.3 to 5.7 percent.

Section 6

Additional Considerations

We believe that the RJSCB could enjoy several additional benefits from the use of a PLA. These are difficult to precisely quantify in dollars at this time, but would nonetheless be significant factors in the overall success of the Project.

6.1 Labor Stability

The RJSCB anticipates that Project construction will occur over 37 months. During the life of the Project, renewal of seven local labor contracts will occur. Of the seven renewals, two agreements renew during the spring of 2013, four will take place during the spring of 2014 right in the middle of the construction schedule, and one agreement renews during the spring of 2015. Should there be any significant disruption during these contract renewals (traditionally, these have been the periods of most intense labor unrest), the Project could be significantly disrupted and the objective of making the site available for the end of July 2015 would be jeopardized. While the cost of any disruption cannot be precisely quantified, the impact is clear. For projects with multiple prime contracts (e.g., general, electrical, HVAC, plumbing) work disruptions can result in claims of delay by other contractors working on the site who are dependent upon the performance of the contractor subject to the action. Other costs may include items associated with standby time and price increases for materials and equipment. Further, project administrative costs such as additional costs for architectural/engineering oversight and interim project financing would be incurred. At a minimum, an estimated $18,000 to $25,000/month in project administration and engineering oversight costs would be expected. The RJSCB, the District and the community at large would greatly benefit from assuring that the improvements can move forward without disruption.

6.2 The Burdens of Management

The RJSCB faces a significant challenge in assembling a management team and structure that can ensure the timely completion of this multi-component project while maintaining quality assurance, ongoing operations and community relations. The management rights provided by a PLA would allow the Project management team to establish clear work rules for the program (as reserved by a PLA). The insertion of no strike/binding arbitration procedures offered by a PLA would provide value in successful management of such a construction project. Many of the proposed construction components are dependent on each other, requiring that construction activities be closely coordinated. A PLA can provide added work schedule flexibility to aggressively manage the critical interfaces.

6.3 The "Tag Along Provision"

Key provisions of any Project Labor Agreement include the "Union Recognition and Employment" provisions, specifically the Union Referral requirement. Commonly referred to as the "Tag Along" requirement, this provision governs the process of bringing craft workers to the Project. All craft workers are required to pass through the job referral systems and hiring halls established by the unions. The "Tag Along" provision specifically allows a contractor who is not signatory to a collective bargaining agreement to bring his own core employees to the Project. The number of core employees brought to the job are limited by the agreement on the basis of a percentage of the workforce on the Project. PLAs in use in upstate and western New York have commonly established "Tag Along" requirements of from 25

percent to 50 percent. We would anticipate that a PLA for this project would agree to a 25 percent Tag Along, a very favorable requirement. The "Tag Along" requirements are often the subject of much debate when considering the application of a PLA. Arguments have been made that such provisions detract from the productivity of a contractor because the capabilities of the individuals that come to work on the site are unknown to the contractor. Arguments have also been made that such provisions allow contractors to effectively staff more projects at any given time by allowing known staff to be distributed across more projects with access to skilled labor to fill in the peak demands. No single argument carries more weight than another. Striking an effective balance in the core employee provisions is, therefore, important to an effective PLA.

6.4 Public Debate

A Project Labor Agreement is a unique project management tool that is sometimes misunderstood and sometimes considered controversial. As such, the decision making process required for implementation of such an agreement is sometimes surrounded by the strong opinions and emotions that are associated with the general debate about the value and efficiency of union versus non-union labor. Opponents of PLAs have claimed that implementation of a PLA adds to the cost of a project by driving away bidders or limiting competition by precluding open-shop contractors. Our recommended form of agreement clearly allows for an open bidding environment for both union and open shop contractors. Furthermore, experience on a number of projects indicates that PLAs do not have such a limiting effect. In fact, the courts have rejected such claims as a legal matter. Nonetheless, such debate still occurs.

6.5 Enhanced Minority Recruiting & Training Programs

A PLA can assist in advancing minority/women recruitment and training goals for the project by combining formal and comprehensive pre-apprentice programs designed to deliver first year apprentices prepared to make a construction trade a career, with apprentice demands for the project. Goals and objectives for minority and women workforce participation could be developed which incorporate this significant feature in the context of DOL approved apprentice programs not otherwise available to non-union contractors who do not have approved programs.

Section 7

Conclusions and Recommendations

Based upon the size and scope of the Project, the proposed schedule and the anticipated mix of craft labor, we conclude that using a PLA will provide the RJSCB with substantial economic benefit. Specifically, a PLA addresses the RJSCB's interest in obtaining the best work at the lowest price.

Non-economic benefits would also be available through the use of a PLA. These include:

1) avoiding the costly delays of potential strikes, slowdowns, walkouts, picketing and other disruptions arising from work disputes and promoting labor harmony and peace for the duration of the Project;

2) standardizing the terms and conditions governing the employment of labor on the Project;

3) permitting wide flexibility in work scheduling and shift hours and times, thereby increasing productivity;

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) providing for a long-term minority and women recruiting and training program;

7) reducing direct labor costs; and

8) avoiding favoritism, fraud and/or corruption by ensuring availability of the benefits of the PLA to all successful bidders regardless of union/non-union status or the status of their employees.

In summary, we recommend that the RJSCB proceed with negotiations of a PLA for use on the RJSCB's Facilities Modernization Program to confirm the projected benefits presented herein. The use of a PLA would promote a number of the RJSCB's stated objectives, including the prudent use of public funds and avoiding favoritism, fraud and/or corruption.