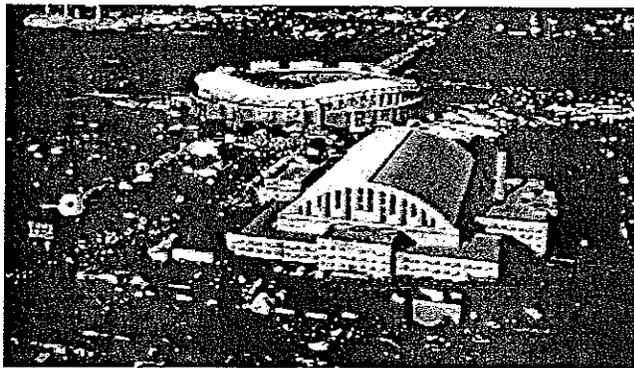
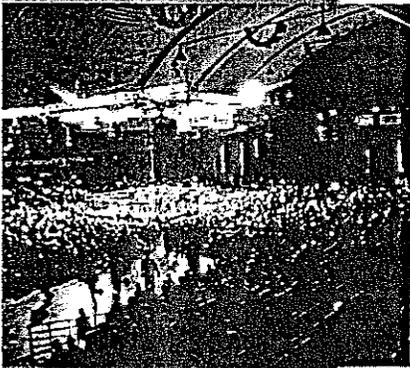


Labor Analysis and Report  
ON THE  
Feasibility and Impact  
OF A  
Project Labor Agreement  
FOR  
The Washington National's New Ballpark



PREPARED FOR  
THE DC SPORTS AND ENTERTAINMENT  
COMMISSION



by

**HILL**

Hill International

February 2006

## Contents

I.	EXECUTIVE SUMMARY .....	1
A.	Introduction .....	1
B.	The Project .....	2
C.	Analysis and Study .....	3
D.	Conclusions and Recommendations .....	4
II.	INTRODUCTION AND BACKGROUND .....	6
A.	What is a Project Labor Agreement? .....	6
B.	The Boston Harbor Precedent .....	7
C.	New York and The Tappan Zee Bridge PLA .....	8
D.	PLAs in the District of Columbia .....	10
E.	PLAs Nationwide .....	11
III.	THE PROJECT .....	12
A.	Project Description .....	12
B.	Schedule and Budget .....	13
IV.	CONSTRUCTION AND LABOR ANALYSIS .....	15
A.	Workforce .....	15
B.	Area Construction .....	16
V.	CURRENT COLLECTIVE BARGAINING AGREEMENTS .....	19
VI.	CONCLUSIONS AND RECOMMENDATIONS .....	24
VIII.	APPENDICES .....	27
A.	Analysis of Local Labor Agreement Provisions for the Project .....	27
B.	Proposed Draft PLA .....	27

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## I. Executive Summary

### A. Introduction

Hill International was retained by the District of Columbia Sports and Entertainment Commission (the Commission or DCSEC), to conduct a labor and cost analysis and study and to prepare a report addressing the feasibility and impact of utilizing a Project Labor Agreement (PLA) in connection with the construction of the proposed Washington, D.C. Major League Baseball Park (the Project). Hill was selected because of its extensive experience and participation in similar studies involving some thirty (30) major public capital construction projects and its familiarity specifically with professional sports arenas and stadiums.

A PLA is a type of collective bargaining agreement often utilized as a tool for the expeditious, cost effective construction of large, lengthy and/or complex projects employing multiple contractors and trades. It provides for standardized work practices; hours; holidays; grievance, arbitration and jurisdictional dispute procedures; and, for maintaining overall labor/management harmony throughout construction. A PLA precludes strikes, lockouts, work stoppages and any other work disruption for the duration of the work covered by the PLA. It typically is mandatory that all parties both union and non-union sign and be bound by the PLA, which supersedes all pre-existing agreements. A PLA also provides that the bidding and selection process is open to both union and non-union contractors. Its benefits and terms are applicable equally to all successful contractors on the same terms regardless of union or non-union status; and no discrimination in hiring hall referrals or in employment of workers based upon union membership is permitted.

Following the U.S. Supreme Court decision in the Boston Harbor case and the New York Court of Appeals Tappan Zee Bridge (TZB) decision, cited with approval by numerous state and federal courts, the overwhelming majority of cases nationally have upheld the validity of public owner PLAs on major capital construction projects. Courts have found public owner PLAs valid at the federal level and in at least 18 states, every jurisdiction in which they have been challenged. The importance and viability of PLAs in

major capital public projects is reflected not only in the court decisions, but in the repeated and expanding utilization of PLAs over the past several years nationwide on such projects including major commercial and public buildings; schools; airports; seaports; highways and bridges; entertainment; convention and athletic facilities; power plants and extensive water resources projects in the west and southwest United States.

## **B. The Project**

The Washington, D.C. Major League Baseball Park will be located in the Southeast quadrant of the city adjacent to the Anacostia River at South Capitol Street. The sloping nature of the site allows for a planned park and plaza toward the river with a pier extending into the river. The northeast orientation of the stadium will open the north (outfield) side to the main entrance and easy access to the major mass transit modes of transportation. The pedestrian plaza located at the main entrance will be flanked by restaurants, retail and family oriented ballpark events. The use of architectural forms such as grand stairways, pedestrian plazas and piers into the water are intended to provide an inside/outside atmosphere for the fans while incorporating maximum employment of the Anacostia River waterfront.

Utilizing the Federal and District cityscapes, framed views into and out of the ballpark are paramount as a design concept. These framed views will be created in the strategic placement of ramps and stairs that capture views out of the ballpark including views down the main pedestrian thoroughfare of South Capitol Street back towards the Capitol including views of the waterfront and the Anacostia River at the southeast corner of the ballpark. Framed views will also exist into the ballpark as pedestrians approach from Half Street and South Capitol Streets to the gates located at the outfield pedestrian plaza to the heart of the ballpark beyond. Fans sitting in the upper deck will view the Capitol dome beyond. The break in the right field seating from the proposed pier at the Anacostia will be centered on the scoreboard structure.

The ballpark shall provide a total of approximately 41,000 spectator seats for viewing baseball; distributed as follows:

22,000	Lower Bowl
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2,500	Club Seats
1,100	Suite Seats
12,100	Upper Seating Bowl Seats

#### Premium Seating/Lounges

- 500 seat Founder's Club with indoor dining/bar
- 1,300 seat Diamond Club with indoor dining/bar

#### Suites

- 8 – 16 seat Founder's Suites on Main
- 2 – 24 seat Owner's Suites
- 58 – 12 seat Standard Suites on two mid-levels
- 10 – 24 seat Party Suites on one mid-level

### C. Analysis and Study

Analysis of the construction workforce in the area generally reflects a substantial unionized labor pool (50%+/- union). In major (\$15+ million) construction projects awarded in the area during the past several years the percentage of union contractors increased greatly to more than 70%. In view of the makeup of the labor force and the recent history of both public and private sector contract awards in the area, it is certain that a substantial number of the Project contracts will be awarded to union contractors and that a majority of the work will be performed by union labor with or without a PLA.

The current collective bargaining agreements of each of the 18 local unions that will likely be involved in the Project construction were reviewed and analyzed as part of this study. Pertinent provisions were compared to determine expiration dates and areas where certain provisions might be standardized in a PLA resulting in cost savings or other economies. It was determined that all of those local agreements would expire and be renegotiated during the term of Project construction, leaving the Project vulnerable in each instance to lawful strikes and/or work disruption absent a comprehensive "no strike" agreement. It was also determined that there was significant diversity among the trades' local agreements with regard to hours of work; shifts; flextime; holidays;

grievance and arbitration procedures; and Equal Opportunity objectives. These areas as well as the rates and instances of premium pay are all subject to standardization under a PLA.

Construction in the Northeast Corridor of the U.S. over the past five years has been at a near peak level and is projected to remain at or above this level or increase for the next several years. Construction in the Washington, D.C. area has exceeded this level and is projected to continue to increase over the next five years. The number of other construction projects ongoing in the DC metropolitan area or scheduled during the same period that the Project will be under construction will almost certainly cause shortages in manpower generally, and particularly in highly skilled trades. **The hiring hall provisions of a PLA will provide assurances that local labor will be used to the maximum; and, that if this is insufficient, the halls will be able to draw the necessary manpower from union locals elsewhere, in or further away from surrounding states as may be required. These sources of skilled manpower are not readily available, if at all, to non-union contractors.**

#### **D. Conclusions and Recommendations**

The aggressive Project construction schedule leaves little, if any, room for delay without serious cost ramifications. The scheduled completion date of April 2008 for home opening day of the 2008 professional baseball season leaves only twenty-five months for completion of design and construction.

Because of the highly unionized composition of the workforce; the significant level of on-going and projected construction in the area and consequential drain on available skilled labor shortages; the size of the Project and the number of trades and contractors involved, a PLA is considered appropriate for the Project and should be executed with the Washington, D.C. Building and Construction Trades Council and implemented.

The most significant impacts and benefits of the PLA for the Project will be: (1) the assurance that the construction of all components will be completed without strikes,

delay or disruption, precluding the significant costs, schedule ramifications and impact on the city, the team, the league and the fans; (2) direct labor cost savings through standardization; (3) the public policy objectives maximizing employment of local residents, placement of local residents in approved apprenticeships, and utilization of LSDBEs will be met and (4) assurance of a continuous supply of skilled labor throughout construction.

Accordingly, the following recommendations are made:

- A PLA negotiated between the Washington, D.C. Building and Construction Trades Council (BCTC) and the Construction Manager (CM on behalf of the owner), should be approved and executed.
- A PLA, open to and binding upon all bidders (union or non-union), should be required by the bid specifications for each of the Project contracts (bid packages).

## **II. Introduction and Background**

Hill International, Inc. has been retained by the District of Columbia Sports and Entertainment Commission (The Commission or DCSEC), to conduct a study, including an analysis of the labor market, work history, and other relevant factors pertaining to the feasibility and impact of utilizing a PLA in connection with construction of the proposed Washington, D.C. Major League Baseball Park (the Project). Hill was selected because of its familiarity, experience and participation in similar studies on some thirty other major public projects totaling some \$18 billion dollars and specifically including professional sports arenas and stadiums. Hill has participated in every aspect of the PLA process and in the past has recommended both for and against the use of PLAs, based on the best interests and needs of the specific owner and project. Estimated cost savings resulting from utilization of PLAs on numerous major capital construction project have averaged between six (6) and nineteen (19) percent of total labor costs.

### **A. What is a Project Labor Agreement?**

A PLA, sometimes referred to as a "Pre-Hire Agreement," is a type of collective bargaining agreement commonly used for decades as a management tool for expeditious, cost effective construction on private construction projects, and for the past several years with increasing frequency, on large, time-sensitive or other special needs public construction projects. On projects where a PLA is used, i.e. one involving multiple contractors and many trades, it is normally mandatory for both union and non-union contractors (employers) to accept the PLA as a condition of being awarded the contract. This has resulted in legal challenges by non-union or "open-shop" contractors and/or contractor associations, which perceive PLAs as unfairly pro-union.

A PLA typically applies to a single project or series of projects as part of a construction program, and has no bearing or relevance to any other work a contractor or union may be involved in during the same period of time. A PLA is a specific contract for construction of a specific project or program, including its component parts or packages during a specific period of time. All parties involved in the construction are required to be signatories to the PLA, which supersedes any prior existing collective bargaining or

other agreements which might otherwise apply to the work. A PLA typically provides for standardized work practices; hours; holidays; grievance, dispute and arbitration procedures; and overall labor/management harmony for the duration of the project. PLAs usually contain economic concessions and, most importantly, a PLA typically precludes any strikes, lockouts, work stoppages and/or any other disruption of work for any reason during project construction. A PLA also guarantees availability of qualified, trained skilled workers and apprentices throughout construction and, it may be utilized as a means for maximizing participation of local residents, MBEs, WBEs, SBEs or other public policy objectives.

### **B. The Boston Harbor Precedent**

Although there is a history of use of PLAs on public projects going back to the Grand Coulee Dam on the Columbia River in the 1930's, the first legal challenge occurred in the early 1990's, at which time a PLA was required by the public owner for the massive, multi-billion dollar, multi-year project involving the clean-up of Boston Harbor. The project involved scores of contractors and unions, all of which were required to become signatories to a PLA. The challenge was made on a federal preemption theory, arguing that the government entity-owner requirement that all successful bidders become parties to that PLA constituted an impermissible state intrusion into the labor relations of project contractors, and was pre-empted by the National Labor Relations Act (NLRA).

In its March 1993 landmark decision, Associated Builders and Contractors of Massachusetts/Rhode Island, Inc. v. Massachusetts Water Resources Authority (commonly known as Boston Harbor), the US Supreme Court held that although the government could not impose a PLA in its regulatory capacity, it was not prohibited from benefiting from a PLA when the government entity was acting in its proprietary capacity as an owner or a purchaser of construction services in the construction industry marketplace. This decision has provided the impetus for public sector PLAs across the nation. It also has forced opponents of PLAs to base their challenges primarily on a theory that a PLA violates a State's competitive bidding statutes, because it allegedly favors union over non-union bidders.

Soon after the Boston Harbor decision, the Governor of New York issued a memorandum to all New York state agencies and authorities, referencing the "Boston Harbor Agreement" and directing that said construction agencies and authorities:

*"...evaluate the benefits, for appropriate projects, of negotiating a pre-hire agreement, . . . Such benefits may include the promotion of labor stability, timeliness of completion and efficiency."*

### **C. New York and The Tappan Zee Bridge PLA**

The New York State Thruway Authority (NYSTA) was at that time preparing to undertake a major rehabilitation and construction project on the Tappan Zee Bridge involving multiple contractors, nineteen unions, a minimum of a four-year construction schedule with an estimated cost of \$130 million. Hill International, Inc., was then under contract to the NYSTA, and was directed to pursue with the New York State Building and Construction Trades Council (NYSBCTC), local union representatives and other appropriate parties a determination as to whether a PLA could be negotiated which would conform to the guidelines in the Governor's memorandum as well as:

- provide economic savings in the construction process through changes in work rules and practices and improve productivity, safety, efficiency and timeliness of construction;
- provide for the enhancement of employment opportunities for minority, women and disadvantaged persons; and
- allow all successful bidders, including open-shop contractors, to utilize a portion of their regular work force on the Project.

After an in-depth analysis of the existing labor market; a thorough review, analysis and comparison of the nineteen individual collective bargaining agreements; a review of the recent work history and labor unrest; numerous meetings and interviews with contractors and their associations' representatives; and more than four months of intensive labor negotiations, a draft PLA, acceptable to all parties, was submitted to the NYSTA Board of Directors for consideration together with the Hill report recommending

approval. The report identified cost savings, as well as other benefits, to be derived from the proposed PLA, which was modeled after the Boston Harbor PLA.

The PLA was approved, executed by the necessary parties and included as part of the specifications in the first bid package issued by the NYSTA for the Tappan Zee Bridge Project. The PLA was immediately challenged in the New York State Supreme Court by open shop contractors and their associations. After a brief Temporary Restraining Order, the lower court refused to grant an injunction. Construction on the project proceeded utilizing the PLA while the litigation continued through the New York Court of Appeals, where the validity of the PLA ultimately was upheld.

The Court of Appeals noted that since a PLA is a restriction on the bidding process, the contracting authority must demonstrate that both the purpose and the effect of the PLA requirement will meet the objectives of the state competitive bidding laws, and that the facts and circumstances of each PLA be reviewed on a case-by-case basis. The Court of Appeals held that the purposes of the state competitive bidding statutes were (1) guarding against fraud, favoritism and extravagance, and (2) ensuring honest competition to obtain the best work at the lowest possible price. The Court found that the first purpose was served by the PLA in that case because equal access to the bidding process, and the PLA's benefits, were available to both union and non-union contractors on the same terms and that ultimate contract award was to be made without regard to union status. The PLA also prohibited discrimination by unions and contractors against employees regardless of union/non-union status in either work referral from the hiring halls or on the job; thus, further ensuring equal treatment.

The second purpose was found to be served by the PLA requirement in that it created cost savings for the NYSTA in several ways, thus protecting the "public fisc." The court noted specific areas of cost savings from concessions such as four 10-hour days at straight time, standardization of working hours, holidays, etc. The Court also specifically noted the potential substantial savings from the PLA's comprehensive "no-strike" clause, which precluded labor disruptions for the duration of the project. The stated purposes of the statute therefore having been met, the requirement of the PLA was upheld by the Court.

#### D. PLAs in the District of Columbia

PLAs have been commonly utilized in the private sector in the DC metropolitan area for many years. The only notable recent public sector PLA was on the DC Convention Center. The PLA was imminently successful in achieving both the economic and public policy goals contemplated and ensuring a continuous supply of local and quality skilled craftsmen throughout construction.

Though there appears to be no legal precedent with regard to a specific challenge of a public owner PLA in the District, there are two Pennsylvania cases which encompass nearly identical factual situations and conform to the weight of authority nationally. In each case, the labor pool makeup was similar, the construction schedules were extremely tight and determined by "opening day" team schedules, and there were potential labor shortages during construction. In both cases, the courts upheld the use of PLAs based primarily upon the due diligence exercised by the respective owners in reaching the decision to utilize a PLA. In each case, Hill had performed a labor analysis and feasibility study and had recommended to the respective owners that a PLA was appropriate and should be required.

The Commonwealth Court found that the Luzerne County Convention Center Authority, based upon the credible information provided in its investigation, had discretion to require a PLA in its bid specifications. It was not discriminatory against non-union contractors in violation of the competitive bid statute and was not an abuse of discretion. Pickett Construction Inc. v. Luzerne County Convention Center Authority, 738 A.2d 20 (1999). The court cited with approval the New York State Tappan Zee Bridge opinion discussed above.

About a year later, the Berks County Convention Center Authority, under very similar circumstances, included a PLA in its bid specifications. The resulting challenge by the non-union contractors and associations was defeated on the same grounds, with reference by the court to the Pickett decision. In each case, the courts relied greatly upon the studies and evidence provided by Hill, citing both repeatedly in the respective opinions.

Subsequent to these decisions, PLAs based upon Hill studies and recommendations were utilized in construction of Heinz Field, the PNC Ballpark and the David L. Lawrence Convention Center in Pittsburgh. PLAs were also utilized on both new stadiums in Philadelphia utilizing PLAs previously negotiated by Hill for the city on airport projects.

In the majority of jurisdictions nationally, it is well settled that the burden of proof is upon the challenger to show any abuse of discretion on the part of the owner authority. After exercise of due diligence by the public owner, that burden is extremely difficult to sustain. It is reasonable to assume that the District of Columbia would adopt the majority position in the event of a similar challenge.

#### **E. PLAs Nationwide**

With public construction in the United States at an all time high, PLAs are becoming increasingly more popular; and, in the great majority of cases in which they have been challenged, courts have upheld their validity without nearly the amount of detailed analysis required by the New York courts. In at least thirteen states, PLAs have been upheld merely on the finding of a rational basis for the PLA (such as promoting timely and therefore cost effective project completion).

Clearly, the weight of authority nationwide permits the use of PLAs in the construction of capital public projects. This is reflected not only in the court decisions and executive action, but in the repeated and expanding utilization of PLAs over the past several years on such major public projects as the Chicago, Orlando, Philadelphia (two (2) PLAs) Miami and San Francisco (\$2.4 billion) airports, the Central Artery/Third Harbor Tunnel and Boston Harbor, the Tappan Zee Bridge (two (2) PLAs), the I-287/Cross Westchester Expressway, and the New York City, New Jersey Statewide, Los Angeles County and numerous School District Construction Programs nationally. This list is obviously not meant to be all inclusive, but merely an example of the scores of capital public projects on which PLAs are being utilized successfully.

### III. The Project

#### A. Project Description

The Washington, D.C. Major League Baseball Park will be located in the Southeast quadrant of the city adjacent to the Anacostia River at South Capitol Street. The sloping nature of the site allows for a planned park and plaza toward the river with a pier extending into the river. The northeast orientation of the stadium will open the north (outfield) side to the main entrance and easy access to the major mass transit modes of transportation. The pedestrian plaza located at the main entrance will be flanked by restaurants, retail and family oriented ballpark events. The use of architectural forms such as grand stairways, pedestrian plazas and piers into the water are intended to provide an inside/outside atmosphere for the fans while incorporating maximum employment of the Anacostia River waterfront.

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#### Suites

- 8 – 16 seat Founder's Suites on Main level
- 2 – 24 seat Owner's Suites
- 58 – 12 seat Standard Suites on two mid-levels
- 10 – 24 seat Party Suites on one mid-level

### **B. Schedule and Budget**

Construction is scheduled to commence with site preparation and demolition work in March 2006 and to be completed prior to the opening Washington Nationals' home game in April 2008, approximately twenty-five (25) months. It is expected that contracts will be awarded on approximately ten (10) bid packages let by the Construction Manager as follows:

1. Excavation/below grade demolition
2. Piling/dewatering
3. Cast-in-place concrete
4. Structural steel
5. Precast structural concrete
6. Mechanical/HVAC/Plumbing
7. Fire Protection
8. Electrical
9. Special Systems/Conduit
10. Vertical transportation

The foregoing breakdown is projected and is subject to change by addition, deletion and/or combination of activities.

The estimated cost of construction is three hundred eighty million dollars (\$380,000,000).

#### **IV. Construction and Labor Analysis**

##### **A. Workforce**

The continued high level of ongoing, planned and projected construction in the Washington, D.C. metropolitan area could have significant staffing ramifications with respect to the Project. At the current time, all qualified skilled workers, both union and non-union, who want to work are working. There is and will be full employment of skilled craft persons for the foreseeable future.

In excess of \$7 billion annually in major capital construction is currently in progress or projected to be in progress in the area during the next three years. This projected construction is in addition to and will be ongoing simultaneously with the Project and will draw upon the same local pool of both skilled and unskilled workers.

The local construction industry labor force is almost evenly divided between union and non-union contractors; however, in the area of major capital construction projects in excess of \$10 million, the union contractors obtain approximately 75% of these awards. All trades are actively recruiting and training new members and retraining current workers to improve their skills on newer, state-of-the-art, more productive tools, equipment and materials. Training facilities and apprentice programs are filled to capacity and are being expanded in an effort to accommodate the rapidly increasing number of new workers and applicants. Union leadership in all of the trades stress the importance of maintaining a continuous supply of trained, skilled workers necessary to man not only the high level of existing construction, but also the extremely high level of major capital construction projected for the next several years. It is well known and understood in the industry that several concurrent large construction projects can create a drain on available local skilled trade workers and will often result in shortages in particular skills. Additionally, the departure from the skilled labor force, both union and non-union, of the aging "baby-boomer" craftsmen, is occurring much more rapidly than can be matched through apprentice training programs or other sources to fill the void.

Although few critical shortages in skilled workers have been experienced recently in any of the respective trades required on the Project, recurring shortages in some skills (e.g. electricians) are increasing in frequency. It is difficult at this time to project whether the necessary numbers of skilled workers will be continuously available locally throughout the duration of the Project based upon information currently available regarding the size, number and schedules of construction projects, which will be in progress simultaneously, however, it is reasonable to assume that shortages will occur. The unions are confident that regional trades faced with labor supply problems are effectively organized to draw workers in sufficient numbers to man the Project from less active market areas in surrounding states and/or from other more distant sources as required. This is a significant difference in the ability of union contractors, versus non-union contractors, to staff projects. Based upon all information available, there is no known instance when the Building Trades were unable to supply the necessary skilled craft persons for a project.

The most established and reliable method of ensuring an adequate supply of trained, qualified skilled workers on a project is through local trade unions and their affiliates located elsewhere. Non-union employers typically do not have training facilities, and they cannot draw upon outside sources to obtain trained skilled craft workers because such sources typically do not exist.

## **B. Area Construction**

Current Dodge Reports, industry and D.C. official data reflect an approximately \$7 billion annual level of commercial construction work in the D.C. Metropolitan area which is projected to continue an increase for the next five years.

In addition, the on-going \$2.2 billion Woodrow Wilson Bridge project is scheduled to last another three years and to continue the draw of substantial numbers of both skilled and unskilled workers until completion of construction. Adjacent to the Woodrow Wilson Bridge on the Maryland shoreline, the National Harbor Gaylord Convention Center and Hotel are currently under construction with a projected \$1 billion in additional support hotel and amusement facilities to follow.

Also, in nearby Maryland and Virginia, the following are a few of the major capital projects which are in various stages of the planning process and will likely commence during Project construction:

- A third nuclear reactor at Calvert Cliffs Nuclear Power Plant
- The Anacostia Waterfront Initiative
- Intercounty Connector – a major highway connecting Montgomery and Prince George's Counties, plus industrial facilities adjacent
- Bethesda Naval Hospital and NIH escalation of expansion to accommodate Walter Reed closing
- Rt. 270 corridor continued expansion to accommodate bio tech industry area growth
- Eli Lilly Pharmaceutical Plant
- Dulles Metro Expansion
- Six Flags Amusement Park Expansion (winter work)

In the District of Columbia, a new \$300-400 million Convention Center Hotel is projected to commence construction during Project work. The current D.C. Capital Improvement Plan FY 2006 – FY 2011 reflects total FY 2006 planned expenditures in excess of \$730 million in unprecedented and extremely ambitious construction, renovation and rehabilitation programs within the Metropolitan Police and Fire Departments, parks, schools and infrastructure. FY 2007 planned expenditures will continue at some \$500 million.

The foregoing examples are certainly not all inclusive; but are intended merely to provide an indication of the varied size and scope of projects costing in the billions of dollars and all drawing upon the same manpower pool simultaneously.

The Washington, D.C. Building and Construction Trades Council and its affiliated local unions covers five counties in Maryland, seventeen counties in Virginia as far south as Fredericksburg, as well as the District of Columbia. Non-union contractors which are not local, generally rely upon local labor to supplement core employees brought to a project.

## V. Current Collective Bargaining Agreements

In view of District's own contract award history, which is completely consistent with the labor force make-up, it is probable that most of the Project contracts would be awarded to union contractors with or without a PLA. All contractors, whether union or non-union, will be required by law to pay workers the Davis-Bacon wage rates, which rates are derived from the area collective bargaining agreements. At least eighteen (18) trades will be involved in the Project construction, all of which are members of the Washington, D.C. Building and Construction Trades Council (BCTC). The current collective bargaining agreement (CBA) of each of the following local unions representing each respective trade was reviewed and analyzed as part of this study:

- |                                     |  |
|-------------------------------------|--|
| 1. Asbestos Workers (Local 24)      | 10. Painters (District Council No. 51)   |
| 2. Boilermakers (Local 193)         | 11. Plasterers/Cement Masons (Local 891) |
| 3. Bricklayers (Local 1)            | 12. Plumbers/Pipefitters (Local 5)       |
| 4. Carpenters                       | 13. Rodmen (Local 251)                   |
| 5. Electrical Workers (Local 26)    | 14. Roofers (Local 30)                   |
| 6. Elevator Constructors (Local 10) | 15. Sheetmetal Workers (Local 100)       |
| 7. Ironworkers (Local 5)            | 16. Sprinkler Fitters (Local 669)        |
| 8. Laborers (Local 657)             | 17. Steamfitters (Local 602)             |
| 9. Operating Engineers (Local 77)   | 18. Teamsters (Local 639)                |

The significant and pertinent provisions of these local agreements were analyzed to determine where terms and conditions varied from each other or were not in conformity with the characteristics and requirements of the Project construction; and, where the consistency and concessions included in a PLA could provide cost savings or more efficient construction. The first determination involves the duration of the local agreements. All of the agreements will expire during Project construction through April 2008. With each of these expirations comes the risk that any one of the renegotiations between the Unions and the local Contractor Associations will break down. Workers covered by those agreements may then lawfully strike over any number of issues,

including many which might have nothing to do with this Project construction. Such strikes could be expected to spread to every project site on which the local contractors are employed, notwithstanding the fact that neither the Project owner nor Construction Manager were involved in, nor did they have any control over, the negotiations in issue.

Given the high percentage of unionization in the labor force, such a strike, even by a relatively minor trade, has the potential to shut down, at least for a short time, an entire project. A lawful picket line at an entrance to a construction site would be honored by every other trade worker who would refuse to cross the picket line and would not work. The Owner would ultimately get the sympathy strikers back on the job, but could not help the contractor which was the target of the original strike. Strikes not only drive up construction costs, but they disrupt construction progress resulting in completion delays which in turn lead to other increased costs and damages. A PLA's no strike clause virtually eliminates this otherwise lawful activity as a cause of project delay.

As noted, there is diversity among the local agreements with regard to hours of work; shifts; flextime; holidays; grievance, arbitration and jurisdictional dispute resolution; management rights; apprentices; and Equal Opportunity objectives. The rates and instances of premium pay also vary and there are miscellaneous clauses which appear in one or more agreements and not in others.

Following are examples of some of the differences among the provisions of the respective agreements which would be standardized under the proposed PLA (Appendix B) previously negotiated by the city with the BCTC:

- Hours of Work

There is diversity among the local agreements in these areas. In most agreements, starting and quitting times are set, with union approval required for changes and premium pay for hours worked before and/or after. Under the existing local agreements, the contractor has limited flexibility in varying the scheduling of working hours without premium payments and prior approval from the unions. The proposed PLA provides for a uniform 40 hour

week at straight time to be scheduled by the Contractor between the hours of 5:30 am and 5:30 pm.

- Shifts

Existing local agreements require almost uniformly that a first shift be worked in order for a second and/or a third shift to be scheduled. The numbers of hours worked, the amounts of pay for hours worked and the inclusion or exclusion of a lunch period or other work breaks varies among the trades and between the second and third shifts. Some agreements are silent with regard to shift differential pay, some provide for a dollar amount per hour, while others contain formulas. The proposed PLA permits a second and third shift to be worked without a first shift and both second and third shift work to be done at a standard negotiated premium.

- Holidays

The existing Agreements provide for as many as eleven (11) holidays annually with a minimum of six (6) recognized by the respective unions. Whether holidays are paid and the rates of premium pay vary among the trades. The proposed PLA provides for eight (8) holidays (plus Inauguration Day) for all trades with payment for work on those days as set forth in the local agreements.

- Flextime

Most agreements provide for premium pay for work started prior to a set starting time and for hours worked after a set quitting time. Some agreements are silent with regard to working four (4) 10-hour days (4 – 10s) in a workweek. Others provide for time and one-half pay for the 9<sup>th</sup> and 10<sup>th</sup> hours. The proposed PLA provides for flexible starting times for shifts and permits four (4) 10 - hour days at straight time.

- Jurisdictional Disputes

Procedures for dealing with jurisdictional work assignments and consequential disputes are not uniform or consistent. Agreements vary with regard to costs, binding effect of award, and work disruption pending decisions. The proposed PLA provides for a uniform jurisdiction dispute resolution mechanism.

Most importantly, there is no existing method, means, or procedure to insure that there will be no strike, lockout, work stoppage or other work disruption pending resolution of such a dispute. The proposed PLA provides for protection against work disruption during jurisdictional disputes.

- Grievances/Arbitration

Though local labor-management grievance procedures exist, they vary among specific crafts and contractor associations. No standardized, binding forum exists with authority over all respective parties. The proposed PLA provides for a uniform procedure.

- Management Rights

Many of the existing agreements do not contain a "Management's Rights" clause. Those that exist are often ambiguous or inadequate to provide the contractor with the authority and/or flexibility required for necessary control and management of the Project work. The proposed PLA contains a broad management rights clause.

- Apprentices

Though local unions have existing apprenticeship and/or training programs, they may not provide for sufficient numbers to meet the Project goals for craft entry opportunities for local residents, minorities, women and economically

disadvantaged. Increasing the ratio of apprentices to journeymen will also provide substantial cost benefits. The proposed PLA provides for a minimum of a 3 to 1 apprenticeship ratio and first priority to D.C. residents for all new apprenticeships.

- Equal Employment Opportunity

Although most of the existing agreements contain language prohibiting discrimination on the basis of race, creed, color, sex, national origin or age, few of them contain language regarding commitments to meet minority, women or disadvantaged goals. They are also silent with regard to the contractors' rights to request such persons. The proposed PLA addresses these issues and includes provisions to achieve the desired public policy objectives.

As noted, the foregoing examples, as well as rates and instances of premium pay, are addressed and standardized in the proposed PLA (Appendix B) to conform with Project objectives and requirements, as well as to provide the contractor with increased manning and scheduling control.

## VI. Conclusions and Recommendations

A PLA is considered both feasible and appropriate for this Project. Because of the highly unionized composition of the area workforce and both public and private contracting history; the high level of on-going and projected construction in the area and the need for securing a skilled manpower pool; the number of trades and contractors involved; and the public policy and standardization provisions, a PLA is considered appropriate for the Project and should be a mandatory requirement included in the bid documents.

All of the unions which will be involved in the Project construction have been involved in other PLA projects and are familiar with the requirements of a PLA. The PLA proposed for this Project (Appendix B) was negotiated by the city with the Washington, D.C. BCTC and contains desired public policy provisions concerning local hiring, apprenticeship and other training as well as many standardized work rules and provisions.

All of the current collective bargaining agreements (CBAs) of the union locals that will be involved in the construction will expire during the Project construction period. This exposes the Project to the possibility of strikes should negotiations break down when any one of those agreements is being re-negotiated. A strike or strikes would be completely lawful and, in all probability, the issues involved would have nothing to do with the Project. Further, the District would not be a party to those negotiations and would have no control over their outcome. The length and costs of resulting delays, though not quantifiable, could be substantial. Failure to maintain the extremely tight construction schedule and meet the opening day completion date will result in further substantial monetary damages.

A strong "no strike" clause is provided in the proposed PLA, precluding strikes, lockouts, work stoppages, disruptions or other delays. It supersedes the terms of the local agreements and requires that work on Project construction continue regardless of CBA status. The "no strike" clause precludes work disruption for any reason during the

term of the Project construction. Even a non-union contractor or employer could not guarantee that it would continue non-union for the term of the Project.

The diversity among the CBAs regarding work rules has been standardized by the proposed PLA provisions which ensure uniform working hours, shift times, scheduling, holidays, overtime, premium pay and other terms and conditions of employment. Also, by providing a standard procedure for grievance, arbitration and jurisdictional dispute resolution, together with a strong management rights provision, the contractor can maintain firm control of the Project staffing, scheduling and administration. The comprehensive "Management Rights" clause applicable to all contractors and all unions enumerates the powers and exclusive authority of the contractor for management and control of project operations including: direction of workforce (numbers and qualifications); assignment and schedule of work (regular hours and overtime); promulgation of work rules; and determination of choice of equipment, materials, techniques, methods and technology utilized on the Project, regardless of their source.

The PLA and bid document language should state explicitly that the bidding and selection processes are open to union and non-union contractors alike and that union affiliation will not be a factor in selection. The PLA provides that it is applicable and binding upon all successful bidders on the same terms and conditions, notwithstanding union/non-union status. Non discrimination with regard to union/non-union affiliation also applies to the hiring of workers through the hiring halls.

The economic benefits of a PLA through standardization can not be quantified at this time, however, in our experience with previous projects of similar size and scope cost savings of 6 – 13 percent of total labor costs have been realized.

The most significant impacts and benefits of the PLA for the Project will be: (1) the assurance that the construction of all components will be completed without strikes, delay or disruption, precluding the significant costs, schedule ramifications and impact on the city, the team, the league and the fans; (2) direct labor cost savings through standardization; (3) the public policy objectives maximizing employment of local

residents, placement of local residents in approved apprenticeships, and utilization of LSDBEs will be met and (4) assurance of a continuous supply of skilled labor throughout construction.

The following is recommended:

- A PLA, open to all bidders (union or non-union), should be required by the bid specifications for each of the Project components (bid packages).
  
- The Owner, Construction Manager and the D.C. Building Trades continue discussions to ensure that all desired public policy and economic objectives are included prior to execution of the final PLA.

**VIII. Appendices**

**A. Analysis of Local Labor Agreement Provisions for the Project**

**B. Proposed Draft PLA**