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Press Release

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*For Immediate Release*

## **SECOND CIRCUIT UPHOLDS HISTORIC LABOR AGREEMENT BETWEEN THE CITY AND ASSOCIATION OF UNIONS**

***\$6 BILLION IN PUBLIC WORKS PROJECTS WERE THREATENED BY CONTRACTOR GROUPS***

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New York, May 4, 2011 – The U.S. Court of Appeals for the Second Circuit today ruled unanimously that project labor agreements between the City and the Building and Construction Trades Council (BCTC), an organization representing some 50 local unions comprising the various construction trades in New York City, are lawful and do not violate the federal National Labor Relations Act. The project labor agreements – which improve efficiency by preventing strikes and standardizing work rules – affect \$6 billion in infrastructure projects, including the construction of a new police academy and a larger 911 call center.

PLAs are commonly used for large construction contracts, and the agreements at issue are the most comprehensive in the City's history. They are expected to save \$300 million which would be used to pay for projects that would have otherwise been cut because of the economic downturn. The City and BCTC entered into project labor agreements beginning in 2009 for public infrastructure projects involving 32,000 construction jobs through 2014. These projects were anticipated to create 1,800 new construction jobs.

"We are pleased the Second Circuit affirmed that the PLAs entered into by the City are in accord with the National Labor Relations Act. This decision will allow important construction projects to move forward in an efficient and cost-effective manner," said Drake A. Colley, who argued the case on behalf of the City.

"This decision benefits both taxpayers and construction workers and will help us continue to deliver high-quality public building projects on time and on budget. PLAs are a vital construction-management tool that have helped create thousands of good jobs in challenging economic times. We are delighted that the Second Circuit affirmed the continued use of these agreements and applaud the Law Department's excellent work on this case," said David Burney, Commissioner of the New York City Department of Design and Construction.

"Today's decision of the Second Circuit continues to validate that PLAs are a lawful tool to effectively improve the economy and efficiency of public construction projects. These PLAs have helped to stimulate the New York City economy in general. The BCTC's affiliates have shown great leadership in achieving the economies negotiated in these PLAs in order to create more work opportunities for New York City's construction workers," said Gary Labarbera, president of the Building and Construction Trades Council of Greater New York.

"I am thrilled by the decision. It is well reasoned and follows well established precedent. The Court's decision is a frank and thorough analysis of the law applicable to PLAs. The Second Circuit recognized that these PLAs have a lawful purpose that advance the City's proprietary interests in efficient construction projects," said Carol O'Rourke Pennington, counsel to the Building and Construction Trades Council of Greater New York and partner at Colleran O'Hara & Mills.

The lawsuit was brought by two contractor groups, Building Industry Electrical Contractors Association and United Electrical Contractors Association, who alleged that PLAs are unlawful under the National Labor Relations Act. They claimed that by entering into the PLAs, the City was acting as a regulator and not a market participant – allegedly by favoring unions and mandating work rules that are potentially inconsistent with existing collective bargaining agreements between contractors represented by the plaintiffs and other unions not signatories to the PLAs.

In today's decision, the Second Circuit upheld the lower court's determination that the City's conduct as a market participant in entering into PLAs was lawful and stated that "the PLAs challenged here represent the City's permissible proprietary choice; the City has behaved just as any other major landowner or developer might to secure labor for many of its construction projects." The Court also cited a U.S. Supreme Court decision regarding the clean-up of Boston Harbor which determined that PLAs negotiated to expedite the project were not preempted by federal law.

The New York City Law Department's legal team included Drake A. Colley, Jonathan S. Becker, Eric P. Jewell, Steven Stein Cushman, and Ed Hart. Carol O'Rourke Pennington of Colleran O'Hara & Mills represented the Building and Construction Trades Council of Greater New York.

The New York City Law Department is one of the oldest, largest and most dynamic law offices in the world, ranking among the top largest law offices in New York City and one of the largest public law offices in the country. Tracing its roots back to the 1600's, the Department has an active caseload of 90,000 matters and transactions in 17 legal divisions. The Corporation Counsel heads the Law Department and acts as legal counsel for the Mayor, elected officials, the City and all its agencies. The Department's 650 attorneys represent the City on a vast array of civil litigation, legislative and legal issues and in the criminal prosecution of juveniles. For more information, please visit [www.nyc.gov/law](http://www.nyc.gov/law).

The Department of Design and Construction (DDC) builds many of the civic facilities New Yorkers use every day, as well as vital infrastructure projects throughout the five boroughs. As the City's primary capital construction project manager, we provide communities with new or renovated facilities, such as firehouses, libraries, police precincts, courthouses, and senior centers. To manage this more than \$6 billion portfolio, we partner with other City agencies and with emerging and world-renowned architects and consultants, whose experience and creativity bring efficient, innovative, and environmentally-conscious design and construction strategies to the projects we build. What's more, DDC delivers well-built roadway, sewer, and water main construction projects in communities throughout the city. Over the last decade, we have completed more than 500 miles of new roadway, 600 miles of water mains, 400 miles of storm and sanitary sewers, and installed more than 42,000 sidewalk pedestrian ramps – all of which are essential for a vibrant city like New York. For more information, please visit [www.nyc.gov/DDC](http://www.nyc.gov/DDC).

The Building and Construction Trades Council of Greater New York consists of approximately 50 local affiliates of 15 national and international unions representing 100,000 working men and women in the five boroughs of New York City.

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