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**MEMORANDUM OF LAW**

DATE: October 17, 2014  
TO: Honorable Mayor and City Council  
FROM: City Attorney  
SUBJECT: Legal Interpretation of Proposition A

**INTRODUCTION**

On October 20, 2014, the City Council will consider adopting a resolution confirming our legal interpretation of Proposition A. Proposition A generally prohibits the City from requiring a Project Labor Agreement (PLA) “[e]xcept as required by state or federal law as a contracting or procurement obligation, or as a condition of the receipt of state or federal funds.” San Diego Municipal Code (SDMC) § 22.4402. Since 2012, this Office has advised that this exception clause protects the City’s access to State funds by maintaining the City’s ability to require a PLA as required by law as a condition of the receipt of State funds. *See* City Att’y MOL No. 2012-10 (Nov. 30, 2012). This memorandum reaffirms our legal interpretation of Proposition A.

**QUESTION PRESENTED**

Is the City of San Diego eligible for State funding and financial assistance for its construction projects under Proposition A and California Public Contract Code sections 2500 - 2503?

**SHORT ANSWER**

Yes. Proposition A was written to protect the City’s access to State construction funds. The exception clause operates to maintain the City’s discretion to adopt, require or utilize PLAs on all City construction projects as required by State law as a condition of the receipt of State funds.

## ANALYSIS

On June 5, 2012, the voters of the City of San Diego passed Proposition A. Proposition A states:

*Except as required by state or federal law as a contracting or procurement obligation, or as a condition of the receipt of state or federal funds*, the City shall not require a Contractor on a Construction Project to execute or otherwise become a party to a Project Labor Agreement as a condition of bidding, negotiating, awarding or the performing of a contract.

San Diego Municipal Code (SDMC) § 22.4402 (emphasis added). As discussed in our 2012 Memorandum of Law, the key language for purposes of harmonizing Proposition A with Public Contract Code sections 2500 - 2503 (Senate Bills 829 and 922) is the exception clause italicized above.

Interpreting the exception clause in Proposition A depends on the meaning of “as required by . . . law.” The phrase “as required by law” means *in the manner* required by law. *Sustainability of Park, Recycling and Wildlife Legal Defense Fund v. County of Solano Department of Resource Management*, 167 Cal. App. 4th 1350, 1361-1362 (2008); *see Black’s Law Dictionary* 113 (6th ed., 1990) (“as” means in the same manner, or the manner in which.) The breadth of the exception clause is therefore dependent on *the manner in which* state or federal law requires PLAs to be used on local projects. That is, whether the exception clause operates as a project-specific exception or something broader depends on the requirements of state or federal law because the phrase “as required by law” expressly incorporates other laws into Proposition A. *See In re American Airlines, Inc., Privacy Litigation*, 370 F. Supp. 2d 552, 566 (N.D. Texas, 2005) (“As required by law” expressly incorporates the law into the contract.); *Marine Midland Realty Credit Corp. v. LLMD of Michigan, Inc.*, 821 F. Supp. 370, 373 (E.D. Penn., 1993) (“Required by law” is not limited to situations where failure to comply will result in a fine or other punitive order, but also the denial or loss of an important right or privilege.) The exception clause incorporates State law in *the manner in which* Public Contract Code sections 2500 - 2503 require, which is for the City to have discretion to consider a PLA on all its construction projects to be eligible for State funds.

This interpretation of the exception clause is consistent with the voters’ intent. The better evidence of the voters’ intent is the ballot argument in favor of the proposition rather than the views of individual drafters. *C-Y Development Co. v. City of Redlands*, 137 Cal. App. 3d 926, 932-933 (1982). Proposition A’s Official Ballot Argument in support states “Proposition A was written to protect the City’s access to state construction funds.” The exception clause is the only provision in Proposition A that can accomplish that protection. The exception clause must be interpreted as incorporating the eligibility requirements of Public Contract Code sections 2500 - 2503 to comply with voters’ intent in passing Proposition A.

The City will also receive some deference in interpreting Proposition A. When an agency is charged with administering a statute or ordinance, the agency's interpretation of the applicable law is given deference by the reviewing court. *Rea v. Blue Shield of California*, 226 Cal. App.

4th 1209 (2014). The City, through the Mayor, is obligated to administer and enforce Proposition A. San Diego Charter § 265(b)(2).

In sum, the exception clause allows the City to meet the condition for receipt of State funds imposed by Public Contract Code sections 2500 - 2503, by maintaining its discretion to adopt, require or utilize PLAs in City construction contracts, notwithstanding the contrary operative language of Proposition A. This is consistent with the stated purpose of Proposition A to prohibit mandatory PLAs only where there is no resulting loss of State or federal funds.

### CONCLUSION

The exception clause in Proposition A preserves the City's access to State construction funds as the voters intended. The exception clause incorporates the eligibility requirements of Public Contract Code sections 2500 - 2503, which is for the City to maintain discretion to adopt, require or utilize PLAs on all City construction projects as required by State law as a condition of the receipt of State funds, notwithstanding the contrary operative language of Proposition A. The City is eligible to receive State funding and financial assistance.

JAN I. GOLDSMITH, City Attorney

By       /s/ Thomas C. Zeleny        
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