



# **Recommendations of the Task Force on Public Benefit Agreements**

---

Presented to City Comptroller John C. Liu

September 29, 2010  
New York City



## Recommendations of the Task Force on Public Benefit Agreements

The Honorable John C. Liu  
Comptroller of the City of New York  
One Centre Street  
New York, New York 10007

To Comptroller Liu:

It is our great pleasure to submit to you this report on the findings and recommendations of the Task Force on Public Benefit Agreements.

This report proposes a new framework for public benefit agreements in New York City based on the principles of accountability, transparency, inclusiveness, consistency and fiscal responsibility. We expect that, if implemented, these recommendations will create a more predictable development process that limits uncertainties for the City, the developer and the community.

The Task Force studied past and present benefit agreements in New York City and around the country in order to devise a process that provides clear expectations, broad-based participation and enforceable benefits that comply with current legal standards. The resulting recommendations will not apply to every development in New York City, but rather major projects that have the potential for significant neighborhood impacts. While the report includes suggestions relating to the negotiation process, methods to increase informed participation, and enforcement mechanisms and protections against conflicts of interest, the proposals do not add additional time to an already lengthy land use process.

We would like to express our gratitude to the Task Force members who have made valuable contributions to this project. It was their thoughtful questions and suggestions from which the substance of this report draws its recommendations. The Task Force looks forward to working with you to see these recommendations implemented in the interest of more effective and equitable economic development.

Respectfully submitted,

John Ahern  
Co-chair

Priscilla Almodovar  
Co-chair

Barry Gosin  
Co-chair

Joyce Moy  
Co-chair



## Recommendations of the Task Force on Public Benefit Agreements

### Task Force Members

**John Ahern, Co-Chair**

President, NYC Central Labor Council, AFL-CIO

**Priscilla Almodovar, Co-Chair**

Chief Operating Officer, Community Development Banking, JP Morgan Chase

**Barry Gosin, Co-Chair**

Chief Executive Officer, Newmark Knight Frank

**Joyce Moy, Co-Chair**

Executive Director, Asian American/Asian Research Institute, CUNY

Tom Angotti, Center for Community Planning, Hunter College

Stuart Appelbaum, RWDSU/UFCW

Bruce Bender, Forest City Ratner Companies

Eric Bluestone, The Bluestone Organization

Carlton Brown, Full Spectrum of New York

Darnell Canada, Real Economics Building Unity and Innovative Local Development (REBUILD)

Scott Cantone, Forest City Ratner Companies

Bettina Damiani, Good Jobs New York

Kevin Doyle, SEIU 32BJ

Benjamin Dulchin, Association for Neighborhood and Housing Development (ANHD)

Adam Friedman, Pratt Center for Community Development

Roger Green, DuBois-Bunche Center for Public Policy

Valery Jean, Families United for Racial and Economic Equality (FUREE)

Richard Lipsky, Neighborhood Retail Alliance

Nick Lugo, NYC Hispanic Chamber of Commerce

Edwin Lynch, United Food and Commercial Workers International Union

Timothy H. Marshall, Jamaica Business Resource Center

Patrick Purcell Jr., UFCW 1500

David Reiss, Brooklyn Law School

Cy Richardson, Housing & Community Development, National Urban League



## Recommendations of the Task Force on Public Benefit Agreements

Al Rodriguez, Bronx Borough President Ruben Diaz

Matt Ryan, New York Jobs with Justice

Denise Scott, Local Initiatives Support Corp

Paul Sonn, National Employment Law Project

Peter Ward, New York Hotel Trades Council

### **Task Force Staff**

John Choe

Joshua Gold

Nancy Ozeas

Susan Scheer

Scott Sieber

Margaret Stix

Sandra Ung

Alan van Capelle



## Table of Contents

<b>I. Executive Summary.....</b>	<b>5</b>
<b>II. Introduction.....</b>	<b>8</b>
<b>III. Convening the Task Force .....</b>	<b>10</b>
a. Task Force Leaders and Members	
b. Task Force Process	
<b>IV. Land Use and Environmental Review.....</b>	<b>14</b>
a. New York City Development	
i. Land Use Review	
ii. Subsidies for Development	
iii. Environmental Review	
iv. Addressing Project Impacts	
b. New York State-Assisted Development	
<b>V. Public Benefit Agreements (PBAs).....</b>	<b>18</b>
a. PBA Formation, Implementation, and Oversight	
i. PBAs without a formal government role	
ii. PBAs with a formal government role	
b. Issues Raised by Existing PBAs	
i. Lack of Accountability	
ii. Lack of Fairness	
iii. Lack of Transparency	
iv. Lack of Feasibility	
v. Lack of Enforceability	
<b>VI. Recommendations .....</b>	<b>24</b>
a. Principles of the PBA Process	
i. Accountability	
ii. Fairness	
iii. Transparency	
iv. Feasibility	
v. Enforceability	
b. Implementation of the PBA Process	
c. Monitoring of Implementation	
d. Legislative Recommendations	
e. Long-Term Recommendations	



## Recommendations of the Task Force on Public Benefit Agreements

<b>VII. Appendices .....</b>	<b>34</b>
Appendix A: Community Benefit Agreements in New York City	
Appendix B: Community Benefit Agreements Negotiated Outside New York City	
Appendix C: New York City Land Use Approvals	
Appendix D: New York City Subsidized Development 2006-2009	



### I. Executive Summary

Municipalities commonly facilitate development of large commercial projects to encourage job development and increase their tax base. But to residents who shoulder the consequential socio-economic and environmental impacts, the reputed benefits may have little value. In 2001, a coalition of organizations and local residents negotiated an agreement designed to balance the burdens of an enormous sports and entertainment complex with commensurate social and economic benefits for the community. The landmark “Community Benefits Agreement” (CBA) that was struck with the developers of the Los Angeles Staples Center project has catalyzed a national movement.

Since then, similar agreements have been negotiated by groups in cities as diverse as Atlanta, Philadelphia, Denver, Milwaukee, Minneapolis, Seattle, Washington, D.C., Syracuse, New Haven and Wilmington, as well as in New York City. In a typical CBA, a developer seeking municipal assistance and/or a change in zoning will agree to provide affordable housing, local hiring, or environmental mitigations to an affected community in exchange for a promise of support. The agreement is usually enshrined in a written contract executed by the developer and representatives of a negotiating coalition that can include local residents, community based organizations, labor unions, religious institutions, and environmental organizations.

Although CBAs can seem like a “win-win” to the coalitions that initiate them and to developers whose project approval and subsidy packages are thereby facilitated, these agreements and the negotiations leading up to them have become lightning rods for controversy. Critics charge that they add unpredictability and delay, increase project costs, and are possibly illegal exactions. In March 2010, the New York City Bar Association recommended that the City of New York either refuse to consider CBAs in the land use approval process or consider only those CBAs that conform to clear and uniform standards.

However, agreements similar to CBAs have been a feature of New York City real estate development since the 1919 Zoning Resolution was adopted and, as long as the Zoning Resolution remains in effect, are likely to continue. Concluding that it was unrealistic to think they would disappear, City Comptroller John C. Liu resolved to ensure that future CBAs conformed to clear standards and were guided by the principles of accountability, transparency and enforceability. To develop such standards, as well as to sketch a process that is fair and equitable, Comptroller Liu formed a Task Force of citywide leaders representing a wide range of perspectives and experiences. Co-chairs John “Jack” Ahearn, President of the NYC Central Labor Council (AFL-CIO); Priscilla Almodovar, Chief Operating Officer for the Community Development Banking Group at JP Morgan Chase; Barry Gosin, Chief Executive Officer of Newmark Knight Frank and Professor Joyce Moy, Executive Director of CUNY’s Asian American /Asian Research Institute were selected to head the Task Force.

The Task Force first met on March 19, 2010, and continued to meet until September 2010 to review best practices of agreements negotiated in other municipalities and to evaluate their applicability to New York City. We determined to include agreements struck by one or more elected officials with an agency or authority concerning large scale plans, as well as the more typical project-specific benefit agreements within the scope of our deliberations and to coin the term “Public Benefit Agreement” (PBA) to describe them in the aggregate.



## Recommendations of the Task Force on Public Benefit Agreements

During our deliberations, the Task Force evaluated the outcomes of four major agreements negotiated in connection with New York City development projects,<sup>1</sup> as well those of 14 agreements negotiated outside New York for projects that have been completed or are under development.<sup>2</sup> The Task Force found that accountability and potential conflicts of interest are an issue for many of the CBAs outside New York City because they are often negotiated by a coalition of organizations located outside the project area. There is no way to determine how these self-selected groups are accountable to local residents who did not appoint or elect a coalition to represent them. In New York City, elected officials played a major role in negotiating the four major CBAs and so, accountability has not been an issue in this regard. Greater accountability leads to agreements that address local needs – as in the comprehensive environmental and noise mitigations provided by the LAX Airport CBA, the child asthma screening provided through the Yale-New Haven Hospital agreement, and the hotline for reporting complaints about truck traffic or odors provided by a CBA concerning a Wilmington, Delaware organic waste composting facility.

Technical assistance was found to be an essential element of an effective PBA process. Nearly every agreement executed outside New York was facilitated by nonprofit organizations, such as the Los Angeles Alliance for a New Economy (LAANE) or the Partnership for Working Families, that brought in experienced attorneys, planners, and other experts. The groups organized local coalitions, developed negotiating terms, drafted agreements, and led negotiations with developers.

Municipal redevelopment agencies also play a critical role in the majority of agreements negotiated outside New York City, particularly for those CBAs that are being implemented. In ten cases, terms developed by a community were subsequently incorporated into a franchise agreement or a development agreement with the local redevelopment agency.<sup>3</sup> Eight agreements, including the four negotiated in New York City, have no role for a governmental or quasi-governmental agency in the execution of their commitments. This is important because, although the validity of such private agreements has not been tested by the courts, a review of case law suggests that they may not be enforceable in New York.

Other issues are raised by agreements that address concerns that are unrelated to a project's direct physical and environmental impacts. Requiring a developer to provide unrelated benefits in exchange for a zoning approval violates the essential nexus and proportionality strictures laid down by the Supreme Court in two landmark decisions, *Nollan* and *Dolan*.

Based on these and other findings, the Task Force proposes standards that promote greater accountability, transparency, and enforceability in the process leading to PBAs. The framework we propose will create clear expectations, encourage broad-based participation, and result in enforceable public benefits that comply with legal strictures.

A time-limited planning and negotiation process would begin with the onset of environmental review. To make public benefit agreements more accountable and more responsive to community needs and potential project impacts, vigorous and informed community participation will be encouraged. An independent consultant will elicit and coordinate public participation under direction of community boards and elected officials, as well as provide the research for a community assessment that forms the basis of the PBA negotiation. Because the primary purpose of a benefit agreement is to mitigate project-related impacts, the total value of a negotiated package of benefits should be proportional to

---

<sup>1</sup> These are the CBAs negotiated in connection with the projects at Atlantic Yards, Brooklyn; Yankee Stadium and Gateway Center in the Bronx; and Columbia's Manhattanville expansion. Summaries of these agreements are annexed as Appendix A.

<sup>2</sup> See "CBAs Outside New York City," annexed as Appendix B.





## Recommendations of the Task Force on Public Benefit Agreements

the size of the subject development. The cost of delivering PBA terms will be quantified and calculated in relation to the value of public assistance sought by the developer – including the lot area secured through land use approvals and subsidies administered through the Economic Development Corporation, the Empire State Development Corporation, or another government agency.

A negotiating team will be selected from among the participants in the planning process to represent the community stakeholders. To minimize potential conflicts of interest, team members shall agree to neither solicit nor accept direct funds from developers and be barred from future contracts implementing the benefit agreement. Signatories shall live or work in the community. Executed agreements must be made public to facilitate monitoring of implementation, discourage conflicts of interest, and to inform residents of potential employment opportunities and other negotiated benefits.

Importantly, PBA terms will be made enforceable by integrating them within project restrictive declarations and development agreements, as is commonly the case in Los Angeles and other municipalities. This way, instead of relying on organizations or private individuals who may lack standing, implementation can be monitored and enforced by the City. Because the terms of restrictive declarations run with the land and apply to all successors in interest, performance of the terms continues even if ownership is transferred.

The Comptroller is empowered by the New York City Charter to investigate all matters relating to or affecting the finances of the City. Based on this mandate, we recommend that he monitor all benefit agreements, related restrictive declarations and development agreements, and issue an annual PBA compliance report card. Assuming that benefit agreements meet the standards discussed in this report and will deliver services that are deserved or construct facilities that are merited, it is in the City's interest to make certain that those services or facilities are implemented.

It is clearly in the public's interest to replace a process widely acknowledged to be unsatisfactory with one that is more accountable, transparent, and enforceable. The most effective way to ensure long-term compliance with this new process is by adopting it into law. In the meantime, we recommend that the Economic Development Corporation voluntarily implement the proposed process by enabling technical assistance to be provided to community coalitions and including PBA terms within development agreements. Because the desirability of adopting benefit agreement standards for New York City-assisted projects applies equally to New York State-assisted developments, we commend the Empire State Development Corporation to do likewise.

Benefit agreements are an unfortunate byproduct of the City's failure to develop solutions for problems that demand a comprehensive citywide approach. Benefit agreements also arise because the City does not effectively plan for its neighborhoods and insufficiently considers community needs. Rezoning applications that support major new developments move forward without adequate provision for public schools, transit, and other essential supports and neglect to take account of or mitigate negative economic impacts on existing businesses. But a project-based arrangement that ties benefits to a particular neighborhood is no substitute for a citywide process that evaluates current and prospective demands for better housing, jobs, health care, child care and schools, open space, and transit.



## II. Introduction

Municipalities commonly facilitate development of individual projects through financial incentives and selective re-zonings. These government actions are based on the premise that certain projects bring important benefits to the public in the form of job growth, increased tax revenue, or improved physical surroundings that would not be possible otherwise. However, benefits like a bigger tax base generally inure to the greater municipality, while local neighborhoods often shoulder the burden of increased traffic, environmental impacts, and potential displacement of existing businesses and residents. There is a growing sense that public review of significant development projects should take into account the priorities of neighborhoods and seek to balance the burdens imposed by such projects with commensurate socio-economic and physical benefits.

This conviction led to a landmark “Community Benefits Agreement” (CBA) negotiated in 2001 by a coalition of organizations and the developers of the Staples Center Sports Arena in Los Angeles. Since then, similar agreements have been negotiated in cities as diverse as Atlanta, Philadelphia, Denver, Milwaukee, Minneapolis, Seattle, Washington, D.C., Syracuse, New Haven, and Wilmington, as well as in New York City.

In a typical CBA, the developer of a project seeking municipal assistance and/or a change in zoning will agree to provide benefits such as affordable housing, local hiring, and environmental improvements to an affected community in exchange for a promise of support for the project by the negotiating coalition. The final agreement is usually enshrined in a written contract executed by the developer and coalition representatives. While these private agreements are considered by some to be enforceable by the signatories alone, CBA terms are frequently incorporated into development agreements between municipalities and developers. And even where terms are not incorporated within a development agreement, public sector actors, including elected officials, economic development corporations, housing departments, workforce development agencies, and parks departments, can become implicit parties to benefit agreements and play significant roles implementing them.<sup>4</sup> For example, elected officials were involved in the negotiations over the four major CBAs adopted between 2005 and 2008 in New York City, and Council members were signatories to the CBA negotiated in connection with the development of the new Yankees Stadium.

Although CBAs can seem like a “win-win” for groups that have signed them, and by developers whose project approval and subsidy packages are facilitated by community support<sup>5</sup>, CBAs and the negotiations leading up to them have become lightning rods for controversy. Negotiations over a CBA can add unpredictability and delay, increase project costs, and even kill a project. Some see them as illegal exactions. Others have condemned them as sham agreements that lack transparency, accountability, and inclusiveness.<sup>6</sup> Although Mayor Michael Bloomberg initially endorsed the Atlantic Yards and

<sup>4</sup> Laura Wolf-Powers, “Community Benefits Agreements and Local Government: A Review of Recent Evidence,” *Journal of the American Planning Association* (February 2010), available at <http://dx.doi.org/10.1080/0194436090349023>. An example of these interrelationships is the Atlantic Yards CBA, in which terms relating to affordable housing depend on the provision of subsidies obtained from the State and City.

<sup>5</sup> Forest City Ratner Companies’ Executive Vice-President James Stuckey called the Atlantic Yards CBA “a vehicle for positive change.” See “Developers Deal-Making Escalates,” *Crain’s NY Business*, (March 27, 2006). In the same article, Raymond Levin, of Counsel to Wachtel & Masyr, LLP, attorneys for The Related Company, stated that developers see CBAs as a cost of doing business.

<sup>6</sup> See e.g., Patricia Salkin & Amy Lavine, “Community Benefits Agreements and Comprehensive Planning: Balancing Community Empowerment and the Police Power,” *Journal of Law and Policy* (forthcoming), ALS Research Paper 10-03, Available at SSRN: <http://SSRN.com/abstract=1597275>.



## Recommendations of the Task Force on Public Benefit Agreements

Gateway Center CBAs<sup>7</sup> and the New York City Economic Development Corporation reportedly provided \$350,000 and recruited a mediator to facilitate negotiation of the Manhattanville CBA, the Administration now opposes CBAs as a matter of general principle.<sup>8</sup>

CBAs also raise a variety of legal questions. For example, requiring a developer to provide unrelated benefits in exchange for a zoning approval potentially raises constitutional concerns under the “takings” clause of the U.S. Constitution.<sup>9</sup> On the other hand, when a CBA is made a condition of a project receiving a public subsidy – as is the case in most large development projects – cities have broad latitude to negotiate a wide range of public benefits in exchange for providing the taxpayer-funded assistance.

In March 2010, the New York City Bar Association added to the growing chorus of criticism with its issuance of a report cataloging legal and policy issues raised by the agreements, including concerns about the adequacy of representation by residents, the lack of safeguards to protect against conflicts of interest, the uneven bargaining power of the parties, and the general lack of transparency surrounding their negotiations.<sup>10</sup> Based on these concerns and their perceived potential to compromise sound planning and land use regulations, the Bar Association concluded that the City of New York should either refuse to consider CBAs in the land use approval process or consider only those CBAs that conform to clear standards.<sup>11</sup>

As the Bar Association report acknowledges, CBAs are essentially “old wine in new bottles,” representing the latest effort to generate support for large-scale projects that require discretionary City approvals by promising benefits to communities. Because the stakes are so high, and the potential impacts are so great, communities are unlikely to resist seeking concessions, and developers would be unwilling to cease trying to attract their support. Therefore, even if it were desirable for the City Council to ignore a CBA for a project calendared for a vote, it is simply not reasonable or realistic to expect it to happen.<sup>12</sup> Accordingly, the responsible course of action is to ensure that CBAs conform to clear standards and are guided by the principles of accountability, transparency and enforceability. The recommendations in this report represent an effort to develop such standards, as well as to sketch a process that is fair and equitable.

<sup>7</sup> Mayor Bloomberg praised the CBA for Gateway Center as a “sweeping [agreement] that will go a long way toward meeting the community’s needs.” (Erik Engquist, “Developer’s Deal-Making Escalates: Community Benefit Agreements Become Costly as Bloomberg Endorses Concept,” *Crain’s NY Bus.* (Mar. 27, 2006)). And the Mayor signed the Atlantic Yards CBA as a witness.

<sup>8</sup> “Mr. Bollinger’s Battle,” Matthew Schuerman, *The New York Observer* (Feb. 18, 2007), available at <http://www.observer.com/node/36744>.

<sup>9</sup> See *Nollan v. California Coastal Commission* 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

<sup>10</sup> The Association of the Bar of the City of New York, “The Role of Community Benefit Agreements in New York City’s Land Use Process,” March 8, 2010.

<sup>11</sup> *Id.* at 46-47.

<sup>12</sup> The Related Companies and the Yankees executed their CBA hours before the City Council voted on the land use plan “because the Council was waiting to see that the affected neighborhoods got something for their pain,” see “Mr. Bollinger’s Battle,” *supra*. City Council approval of Columbia’s Manhattanville plan closely followed agreement on a memorandum of understanding between Columbia and the West Harlem Local Development Corporation, and the Council voted down redevelopment of the Kingsbridge Armory immediately after negotiations on a CBA broke down.



### III. Convening the Task Force

On June 27, 2005, eight community organizations entered into a 54-page agreement with Forest City Ratner Companies (FCRC) in which the developer agreed to provide 3,000 units of affordable housing, job training, schools, a health center, a senior center, parks and open space in connection with development of the Atlantic Yards Project, a \$5 billion, 22-acre mixed-use project in Brooklyn.<sup>13</sup>

The Atlantic Yards CBA was a landmark – no developer in New York City had ever agreed to a similar package of concessions.<sup>14</sup> Since its execution, agreements have been struck in connection with three other major projects: construction of a new stadium for the Yankees; development of a shopping mall (“Gateway Center”) at the site of the Bronx Terminal Market; and the expansion of Columbia University into a new campus in West Harlem (“Manhattanville”).<sup>15</sup> All these agreements were negotiated in a context where no clear and generally-accepted standards existed, which allowed critics of the projects to question their credibility. The negotiation around the CBA for Yankee Stadium, for example, has been criticized as being unrepresentative and insufficiently inclusive and transparent.<sup>16</sup> Although the City Council cannot be a party to a CBA, evidence of community support is naturally an important factor to be considered when approvals are before it. Therefore, questions about the validity of an agreement and the extent of community support for it can complicate deliberations on land use changes.<sup>17</sup>

While acknowledging both the strengths and limitations of past agreements, City Comptroller John C. Liu concluded that standards were necessary to make the process of reaching future agreements in connection with City-assisted development more accountable, transparent, and equitable. On February 17, 2010, he cited the need for greater oversight over agreements meant to mitigate the impacts of development, stating that:

[t]he public has seen a series of major promises to communities in exchange for public subsidies. A layer of unpredictability confronts developers when they engage in private negotiations over benefits associated with their projects. In fact, studies have singled out New York City’s community benefit agreements as examples of what not to do. It is time for this embarrassment to end.

#### a. Task Force Leaders and Members

City Comptroller John C. Liu called for the formation of a Task Force of experts and stakeholders to examine the process by which benefit agreements for publicly-subsidized development projects are developed and to propose reforms that ensure greater accountability, transparency, and enforceability. New Yorkers with a wide range of perspectives and experiences answered the Comptroller’s call, including public, business and labor representatives.

<sup>13</sup> For a summary project description, see “New York City Community Benefit Agreements,” annexed as Appendix A.

<sup>14</sup> Atlantic Yards is the first CBA negotiated for a New York City “mega-project,” but it is not the first CBA. Agreements between developers and community groups have been part of the development landscape for decades, most commonly negotiated with respect to the development of affordable housing.

<sup>15</sup> See Appendix A. Reportedly a CBA was also negotiated in connection with a new Target store in East Harlem.

<sup>16</sup> See “Community Benefits Agreements and Comprehensive Planning: Balancing Community Empowerment and the Police Power,” *surpra*. See also, “Community Benefits Agreements and Local Government,” *Journal of the American Planning Association*, (February 23, 2010), in which author Laura Wolf-Powers points out that the Yankees Stadium CBA was negotiated between the team and elected officials without participation by local residents, was not publicly released, and that the Yankee Stadium Community Benefits fund, a nonprofit charity created to distribute developer funds to community groups, lacks accountability and transparency.

<sup>17</sup> See “Congrats, Kingsbridge Armory Opponents,” Robert Knakal, *The Commercial Observer* (April 15, 2010) available at [http://www.observer.com/2010/commercial-observer/congrats\\_kingsbridge\\_armory\\_opponents](http://www.observer.com/2010/commercial-observer/congrats_kingsbridge_armory_opponents).



## Recommendations of the Task Force on Public Benefit Agreements

Four co-chairs, each of whom have implemented innovative solutions to the City's often intractable economic development problems, were selected to lead the Task Force:

### **JOHN "JACK" AHERN**

Jack Ahern has been a union leader for more than 35 years and currently represents over 1.4 million workers as President of the NYC Central Labor Council (AFL-CIO), the nation's largest regional labor council. Mr. Ahern is also the Business Manager and Financial Secretary of the International Union of Operating Engineers Local 30.

### **PRISCILLA ALMODOVAR**

Priscilla Almodovar is Chief Operating Officer for the Community Development Banking Group at JP Morgan Chase. She is the former President and Chief Executive Officer of New York State's Housing Finance Agency and the State of New York Mortgage Agency.

### **BARRY GOSIN**

Barry Gosin has been Chief Executive Officer of Newmark Knight Frank since 1979. Employing 6,300 worldwide, the firm now operates from more than 200 offices throughout the United States, Canada, Latin America, Europe, Asia, Africa and the Middle East.

### **JOYCE MOY**

Joyce Moy is Professor of Small Business Management and Entrepreneurship at the City University of New York's (CUNY) and Executive Director of CUNY's Asian American/Asian Research Institute. She has extensive experience developing programs that support immigrant, women, and minority business owners throughout New York City.

## **b. Task Force Process**

At the first meeting on March 19, 2010, City Comptroller John C. Liu charged the Task Force with drafting a framework for a more effective and equitable process to guide publicly subsidized economic development projects in New York City. Comptroller Liu urged members to evaluate the legal and implementation issues arising from agreements negotiated between developers and community groups, as well as those between elected officials and government agencies, and to review best practices of other municipalities. The full Task Force met six times between March and September 2010. Between meetings, the co-chairs met to refine the goals and research agenda.

At the first meeting, some members expressed the view that local CBAs had sprung up to fill the void created by the City's failure to assess the impact of large projects on surrounding neighborhoods or to proactively and comprehensively plan for New York City's overall growth. These members contended that CBAs would disappear or fade in importance if the City's Uniform Land Use Review Procedure (ULURP) and the overall planning process were reformed. Until such reform was adopted, however, we resolved that any new agreements should be made accountable, transparent, inclusive, consistent, fiscally responsible, and enforceable.

In discussing possible recommendations, Task Force members raised the following questions:

1. What kinds of projects should be subject to a CBA negotiation?
2. How can the process be made more equitable?
3. How can the process be made more consistent and predictable?
4. Who should be represented?



## Recommendations of the Task Force on Public Benefit Agreements

5. Who should convene and facilitate discussions?
6. When in the process should discussions take place and for how long?
7. Which benefits ought to be negotiable and which should not?
8. Who would be responsible for implementing agreement terms?
9. What are community impacts and how should they be measured?
10. What is the value of community benefits and how should they be measured?
11. Are such agreements enforceable and who should oversee and enforce them?
12. Can agreements be modified?

At its second meeting on April 20, 2010, the Task Force resolved to also include consideration of “public benefit agreements” within its purview, defined as agreements that:

[S]eek to maximize positive community impacts and facilitate private development projects receiving public resources, including, but not limited to, tax benefits, rezonings, IDA/CRC financing, and eminent domain proceedings. Parties to these agreements may include private developers, governmental agencies, elected officials, and/or members of the public.

The Task Force coined the term “Public Benefit Agreements” to also encompass large scale plans undertaken by the Department of City Planning or the Economic Development Corporation for which no developer has yet been designated, in addition to those projects for which a developer is already attached, which are more commonly thought of as typical CBA candidates. Applying a CBA-type process to large redevelopment plans was thought to help ensure that the ultimate development reflects the full range of neighborhood needs, including the physical and social infrastructure necessary to support the projected residential and commercial development and that project impacts are sufficiently mitigated.

The proposed recommendations in this report would make the negotiation process for both types of agreements more accountable and transparent. Furthermore, agreements that address issues and concerns defined by a neighborhood-centered needs assessment would be most effective and consistent with legal strictures, while policy issues that crossed community lines, such as the need for a comprehensive citywide planning process or for citywide labor standards, would be better addressed legislatively.

The Task Force was supplied with relevant background materials and heard presentations by experts in land use and planning as well as practitioners with relevant expertise and varying perspectives. Among them were Vicki Been, Faculty Director of the NYU Furman Center for Real Estate and Public Policy.<sup>18</sup> Professor Been provided an overview of the City’s land use review process in the context of publicly-subsidized development projects and past community benefit agreements.

Two panel discussions were convened. The first discussion, which focused on stakeholder perspectives on how benefit agreements are currently negotiated and implemented, was led by Louis J. Coletti, President and Chief Executive Officer of the Building Trades Employers’ Association; Bettina Damiani, Project Director at Good Jobs New York; and, Paul Sonn, Legal Co-Director of the National Employment Law Project.

In a second panel discussion, negotiators of benefit agreements in Los Angeles and Milwaukee shared their experiences. The panelists included: Julian Gross, Director of the Community Benefits Law Center; Lillian Burkenheim, Project Manager at the Community Redevelopment Agency of Los Angeles; Roxana

---

<sup>18</sup> Professor Been is also the Boxer Family Professor of Law at New York University (NYU) Law School and Affiliated Professor of Public Policy at NYU’s Robert F. Wagner Graduate School of Public Service.



## Recommendations of the Task Force on Public Benefit Agreements

Tynan, Deputy Director of Los Angeles Alliance for a New Economy (LAANE); Paulina Gonzalez, Executive Director of the Strategic Action for a Just Economy (SAJE); and, Kathleen Mulligan-Hansel, Deputy Director of the Partnership for Working Families.

During the next phase, individual interviews and small group discussions were conducted to solicit specific ideas and recommendations for making prospective benefit agreements more accountable, transparent, and enforceable. Proposals were then incorporated into a set of draft recommendations that was then presented to the Task Force as a whole for review and comment.





### IV. Land Use and Environmental Review

Publicly assisted real estate development in New York City takes place within an elaborate statutory regime with required outlets for public review and comment. The development of a large project in New York City often cannot be undertaken without a rezoning that permits greater bulk and density, or a change in the permitted use. Public hearings air concerns about these proposed zoning changes and their potential environmental impacts before they are presented to the City Council for a vote. In order to establish a better framework for future benefit agreements in New York City, it is necessary to understand the operation of our current land use approval process.

The City and State also facilitate certain large-scale developments perceived to provide long-term economic advantages through job creation and increased tax revenue. Because the State and City of New York are prohibited from directly subsidizing private developers, financial assistance is often provided through the NYC Economic Development Corporation (EDC) or the Empire State Development Corporation (ESDC). Subsidy packages can include a variety of tax abatements and credits, low-cost bond financing, and the sale of City-owned land at below-market rates.

#### NEW YORK CITY DEVELOPMENT

##### a. Land Use Review

New York City's Zoning Resolution generally does not permit "as-of-right" development of significant projects. As a result, relaxation of requirements limiting the use, bulk, height, parking or density permitted is often necessary before a project can be developed. Designations of Special Districts, development plans, and comprehensive rezoning plans, dispositions of City-owned property, and site selections for City facilities and subsidized housing projects also require City land use approvals before they can proceed.

These actions are all subject to the City's Uniform Land Use Review Procedure (ULURP), a public review process that ends with a vote by the New York City Council.<sup>19</sup> ULURP applications for zoning changes, for example, are submitted first to the Department of City Planning to review for "completeness" with the requirements of Section 197-c of the Zoning Resolution. Once the City Planning Department certifies a Section 197-c plan as complete, the affected community board has a 60-day period to hold a public hearing and vote on the application. The community board then files its recommendations with the New York City Planning Commission and the affected borough president. The borough president then must file his or her recommendations with the commission within 30 days. Within 60 days of its receipt, the New York City Planning Commission must hear and take action on the application. If the City Planning Commission approves the application, the City Council must then hear and take action within 50 days of the Commission's decision, with a 15-day extension if it proposes modifications. The Commission must first consider those modifications before the City Council acts on them. If the City Council adopts the action, then it goes to the Mayor for review. If the Mayor vetoes the application, then the City Council may override the veto by a two-thirds majority vote. The recommendations by the community board and the borough president are advisory.

During the period from 2006 to 2009, the Department of City Planning certified more than 1,000 land use applications for ULURP. These included applications for a large scale development on the east side

<sup>19</sup> See RULES OF THE CITY OF NEW YORK, TITLE 62, § 2; The Uniform Land Use Review Procedure (ULURP), New York City Department of Planning. <http://www.nyc.gov/html/dcp/html/lucproc/ulrpo.shtml>.





## Recommendations of the Task Force on Public Benefit Agreements

of Manhattan on the site of a former Con Edison steam power plant, as well as the designation of seven special districts and development plans for areas greater than 27 acres.<sup>20</sup>

### **b. Subsidies for Development**

The City of New York provides a wide range of assistance to large-scale development projects. Subsidies can take the form of tax incentives or abatements, low-cost financing, infrastructure improvements and the sale of City-owned land at a below-market price.<sup>21</sup> Assembling the package of development subsidies is the job of the New York City Economic Development Corporation (EDC), a nonprofit local development corporation contracted by the City to promote economic growth, manage City-owned properties, administer loans and financing, and facilitate commercial and industrial development. Both the President of EDC and a controlling majority of its Board are appointed by the Mayor.

EDC staffs the Industrial Development Authority (IDA), a public benefit corporation, and the Capital Resource Corporation (CRC), a local development corporation. The IDA provides corporations with access to bond financing and City and State tax benefits to acquire, build or renovate property or to purchase equipment. The CRC provides lower-cost financing for project development. The Mayor appoints a controlling majority of members to the IDA and CRC boards of directors.

Between 2006 and 2009, the EDC assembled financing and incentive packages in excess of \$75 million for seven developments.<sup>22</sup>

### **c. Environmental Review**

City Environmental Quality Review (CEQR) is New York City's process for implementing the State Environmental Quality Review Act (SEQRA). SEQRA requires state and local government agencies to assess the environmental effects of a discretionary action unless the action is exempted from review by specific statutes or regulations.<sup>23</sup> The CEQR process requires city agencies to assess, disclose and mitigate to the greatest extent practicable the significant environmental consequences of their decisions to fund or approve a project. The environmental assessment analyzes the project that is facilitated by the action (i.e., approval or funding). Environmental review must be completed before the City may fund or approve a project.

For projects that are subject to CEQR, a "lead agency" is the agency considered principally responsible for carrying out funding or approving an action and for overseeing environmental review. The lead agency must assess areas such as air quality, noise, traffic and socio-economic conditions to determine whether significant adverse impact on the environment could occur as a result of the project and if so, what alternatives would avoid or minimize such impacts to the maximum extent possible. EDC is the "lead agency" for projects involving City financial assistance,<sup>24</sup> while the Department of City Planning acts as the lead agency for projects requiring zoning actions.

<sup>20</sup> See "New York City Land Use Approvals, 2006-2009," annexed as Appendix C.

<sup>21</sup> Rezoning is not generally considered a "subsidy." However, many rezonings permit substantial increases in developable floor area over what had been permitted "as-of-right." For the purposes of this report, that additional floor area is considered to be a form of "public assistance," tantamount to a subsidy in light of the consequential increase in the market value of the rezoned site.

<sup>22</sup> See "New York City Subsidized Developments 2006-2009," annexed as Appendix D.

<sup>23</sup> See ECL Section 8-0101 et seq.; see also 6 NYCRR 617 and CEQR Technical Manual 2010.

<sup>24</sup> Technically, the Office of the Deputy Mayor for Economic Development serves as the lead agency, but EDC acts as his staff for the purpose of application preparation.



## Recommendations of the Task Force on Public Benefit Agreements

The study area for an assessment of environmental impact generally includes the project site and the area within 400 feet of the project site boundaries. Larger study areas may be evaluated for projects which are large in scale.<sup>25</sup>

### Addressing Project Impacts

#### I. Environmental Impacts

Environmental review and the concomitant mitigation of identified environmental impacts is an essential element of the City land use approval process. The notion of balancing greater bulk or density with public improvements such as plazas, transit improvements, and affordable housing is in fact built into many provisions of the city's Zoning Resolution.

New York City has used a variety of agreements over the years to mitigate the impacts of large scale developments facilitated by rezoning actions. For example, mitigations to impacts identified in the land use process for the Riverside South Development were set forth in a 238-page restrictive declaration that included commitments to provide affordable housing and open space and to pay \$10 million towards improvements to two subway stations.<sup>26</sup>

A restrictive declaration is an instrument that describes a proposed development, the method by which it is to be completed, and sets forth protocols for environmental remediation. After the ULURP process has been completed and a proposed project has been approved, the declaration is filed in the office of the County Clerk and becomes a public document of record and a covenant running with the land that binds property owners and their successors. Generally, as a condition of certain special permits, an applicant may be required to sign and record a restrictive declaration that places conditions on the further use and development of the property.

Because restrictive declarations are executed as part of the land use regulatory process, they are subject to the requirements of due process, equal protection and the Fifth Amendment's taking clause, as well as nexus and proportionality requirements. The Supreme Court, in its *Nollan* and *Dolan* landmark decisions, has imposed a requirement that the benefit a government seeks to gain from a developer must have an "essential nexus" to the legitimate state interest that the government would have invoked to justify rejecting the proposed development.<sup>27</sup> Further, the amount of benefit the government seeks has to be roughly proportional to the impact that the particular development would impose.<sup>28</sup> Within those strictures, governments are allowed to impose exactions upon developers to offset the environmental and land use impacts that the proposed development will have on the local community.

<sup>25</sup> CEQR Technical Manual, Section 310, p.21-2 (May 2010).

<sup>26</sup> Similarly, in connection with a rezoning of the 9.7 acre former Con Ed site at First Avenue between 35<sup>th</sup> and 41<sup>st</sup> Streets to permit the development of approximately five million square feet of floor area in six residential towers with 4,137 dwelling units and one commercial tower of 1.37 million square feet of floor area, more than 70,000 square feet of retail space and 1,557 parking spaces, the City imposed four main obligations in a restrictive declaration: (1) the mitigation of unavoidable environmental impacts; (2) the inclusion of open space; (3) the development of a public school; and (4) adoption of a construction protection plan to protect 5 Tudor City Place, part of Tudor City, a designated city landmark. The developer must also provide noise control and air quality control measures during construction.

<sup>27</sup> *Nollan v. California Coastal Community*, 483 U.S. 825 (1987). *Nollan* involved a requirement that conditioned a building permit on the dedication of a path across the homeowner's property to reach the beach behind the home. The Court held that there was no nexus between the requirement and the environmental impacts of the house.

<sup>28</sup> *Dolan v. City of Tigard*, 512 U.S. 374 (1994). In *Dolan*, the Court adopted a three-part test: (i) does the permit condition seek to promote a legitimate state interest?; (ii) does an essential nexus exist between the legitimate state interest and the permit condition?; and (iii) does a required degree of connection exist between the exactions and the proposed impact of the development?



## Recommendations of the Task Force on Public Benefit Agreements

### II. Socio-Economic Impacts

*Nollan-Dolan* jurisprudence prohibits local governments from exacting a payment from a developer in connection with a project unless there is a clear and proportional connection between the development and the fee. However, PBA terms negotiated as a condition for the receipt of government subsidies are treated very differently than those negotiated as part of the process of land use review. When a local government or a redevelopment agency, such as EDC, chooses to provide subsidies to developers, it may condition those subsidies in any way it thinks appropriate, within legal requirements. Developers who object to the conditions imposed are free to decline to be involved.<sup>29</sup> Therefore, it is possible for agreements negotiated with redevelopment agencies to include requirements to address existing socio-economic conditions and other non-physical project impacts or to integrate such terms after they have been enshrined in a benefits agreement.

#### NEW YORK STATE-ASSISTED DEVELOPMENT

The vehicle for New York State-subsidized development is the Urban Development Corporation (UDC), doing business as the Empire State Development Corporation (ESDC). UDC is a New York State public benefit corporation created in 1968 to build subsidized housing, which now engages in economic and real estate development. To be able to overcome obstacles without delay, it was given unprecedented legal and economic powers, including the power to seize and condemn property by eminent domain, the ability to issue its own bonds without limit and grant tax abatements, and immunity from zoning requirements.<sup>30</sup> Among its past and current projects are construction of the Jacob K. Javits Convention Center, the revitalization of 42nd Street, the construction of Battery Park City, the development of Roosevelt Island, and the Atlantic Yards project. The ESDC is controlled by a nine-member board appointed by the Governor.

Due to its immunity from local zoning statutes, projects of ESDC and its subsidiaries (such as the Lower Manhattan Development Corporation) are not subject to ULURP requirements. For example, on March 3, 2005, the City and the ESDC signed a Memorandum of Understanding (MOU) with Forest City Ratner Companies that recognized the ESDC's power to override ULURP,<sup>31</sup> thereby eliminating any formal role in the project approval process for Brooklyn Community Boards 2, 6, and 8, the Brooklyn Borough President, the City Planning Commission (CPC), or the City Council. Only one public hearing of ESDC projects is required. ESDC projects are subject to SEQRA review.

<sup>29</sup> "Unconstitutional Land Development Conditions and the Development Agreement Solution: Bargaining for Public Facilities after *Nollan and Dolan*," David L. Callies and Julie Tappendorf, 51 Case W. Res. 663 (2001).

<sup>30</sup> Urban Development Corporation Act 174/68.

<sup>31</sup> See Press Release, State of N.Y. Executive Chamber, Governor Pataki and Mayor Bloomberg Announce Memorandum of Understanding for Atlantic Yards Project in Brooklyn (Mar. 4, 2005), available at [http://www.nylovesbiz.com/press/press\\_display.asp?id=556](http://www.nylovesbiz.com/press/press_display.asp?id=556).



### V. Public Benefit Agreements (PBAs)

The Task Force was able to identify 27 benefit agreements negotiated between 1998 and 2008; 23 were negotiated in cities across the country including Atlanta, Denver, Pittsburgh, Minneapolis, Milwaukee, Seattle and Washington, D.C., and four pertained to New York City projects. The downturn in the real estate market has taken its toll—at least nine projects have stalled or been abandoned altogether,<sup>32</sup> while others have been reduced in scale, but eighteen agreements have either been implemented or are expected to be implemented within the next several years.<sup>33</sup> Several major developments have been successfully built with benefit agreements, including "LA Live," a massive sports and entertainment project adjacent to the Staples Center in the City of Los Angeles.

New York City's first benefit agreement was executed in 2005 between Forest City Ratner Companies and a coalition of eight organizations in connection with a large mixed-use development at Atlantic Yards. Since then, local benefit agreements have been negotiated in connection with major developments at the Bronx's Yankee Stadium, the former site of the Bronx Terminal Market (Gateway Center), and with Columbia University's Manhattanville expansion.<sup>34</sup>

In a typical CBA, a developer agrees to provide a set of benefits in exchange for an agreement by a community coalition to support the project during the approval process. The coalition can include local residents and businesses as well as community based organizations, labor unions, environmental advocates, and religious organizations. The benefits can include a range of items, with the most common being:

- Job-related benefits for the community where the project would be located, such as: local hiring preferences, job training requirements, and responsible contractor requirements;
- Affordable or low-income housing mandates, usually set as a percentage of units set aside for households at stipulated income levels;
- Environmental requirements, including brownfield remediation, "smart growth" building principles, development of open space and recreational facilities, and green building standards; and
- Child care centers.

Advocates consider benefit agreements to be a valuable and effective tool to address community needs. The development community is divided on their merits—some find them advantageous to securing project approvals and subsidies, while others decry them as exactions that add to the risk of development and jeopardize project financing.<sup>35</sup>

Thus far, benefit agreements have not been a major factor in New York City development. Between 2006 and 2009,<sup>36</sup> the City Planning Commission approved one project with floor area in excess of 500,000 square feet over that permitted as-of-right and seven special zoning districts and large-scale

<sup>32</sup> These include Marlton Square, Los Angeles, CA; Dearborn Project, Seattle, WA; SunQuest industrial Park, Los Angeles, CA; Ballpark Village, San Diego, CA; Gates Rubber Company, Denver, CO; Oak to Ninth, Oakland CA; Grand Avenue, Los Angeles, CA; Atlanta Beltline authorizing legislation, GA; and Park East Redevelopment Compact, Milwaukee, WI.

<sup>33</sup> These include 14 agreements negotiated outside New York City described in Appendix B and four agreements in New York City summarized in Appendix A.

<sup>34</sup> See Appendix A.

<sup>35</sup> "Understanding Community Benefits," Patricia E. Salkin and Amy Lavine, *The Practical Real Estate Lawyer* (July 2008), available at <http://ssrn.com/abstract=1157613>.

<sup>36</sup> See Appendix C. The chart illustrates a proposed project that sought more than 500,000 square feet of floor area over that permitted as of right, as well as rezonings that affected more than 27 acres in lot area.



## Recommendations of the Task Force on Public Benefit Agreements

development plans with lot areas in excess of 27 acres. The EDC approved subsidized financing for another six projects in excess of \$75 million.<sup>37</sup> Only two of these projects were the subject of benefit agreements.

### **PBA FORMATION, IMPLEMENTATION, AND OVERSIGHT**

Negotiation, implementation and oversight of benefit agreements have taken a number of different forms. Typically, either a community group will identify its needs and initiate negotiate with the developer, or a citywide organization such as the Los Angeles Alliance for a New Economy (LAANE), or national organization such as the Partnership for Working Families, may organize a community coalition and help it to negotiate a benefit agreement. Negotiations in several cases were initiated by a developer.

After its execution, terms of a benefit agreement can be integrated into the regulatory agreements between local development agencies or contracts with a City, or they can remain stand-alone agreements between the negotiating parties. In the case of the former, they are enforceable through remedies contained in the regulatory agreement or contract. In the latter case, performance is monitored by the community signatories and an enforcement action could be brought in a court of law. The differing organizing and implementation structures are discussed below.

#### **Public versus Private PBAs**

Municipal agencies are responsible for overseeing implementation of eleven agreements negotiated elsewhere in the country between 1990 and 2008. In four cases, terms negotiated by a community coalition were subsequently integrated into a development agreement executed by the developer with the local redevelopment agency<sup>38</sup> and, in one case involving a citywide WiFi contract, the terms were integrated into a franchise agreement.<sup>39</sup> In another five cases, agreements were negotiated by community coalitions and then formally incorporated into development agreements.<sup>40</sup>

Seven agreements lack a formal government role. These private agreements include three projects outside New York – Longfellow Station, Minneapolis, MN; Peninsula Compost Company, Wilmington, DE, and SugarHouse Casino in Pittsburgh, PA. The remaining four agreements concern New York City projects (although the City provided funding and mediation services to the parties during the negotiation process of the Manhattanville CBA).

### **ISSUES RAISED BY EXISTING PBAs**

Past benefit agreements have been cited as lacking accountability and transparency, as well as being bad bargains struck by groups disadvantaged by a lack of knowledge and negotiating power. They characteristically have weak mechanisms to monitor and enforce them. At the same time, some developers have come to fear that community demands will delay construction, jeopardize financing, or make projects unprofitable.

---

<sup>37</sup> See Appendix D.

<sup>38</sup> See summary descriptions of the Hollywood & Highland, Broadcast Center Partners-Shaw district, Yale-New Haven, and Penguins agreements in Appendix B.

<sup>39</sup> See summary description of the Minneapolis Digital Inclusion agreement in Appendix B.

<sup>40</sup> See summary descriptions of the Hollywood & Vine, Los Angeles, CA; L.A Live: Los Angeles Sports & Entertainment District, Los Angeles, CA; NoHo Commons, Los Angeles, CA; CIM project, San Jose, CA; and LAX Airport Expansion, Los Angeles, CA in Appendix B.



## Recommendations of the Task Force on Public Benefit Agreements

### I. Lack of Accountability

There is a clear tension arising out of the question of who represents the community. While groups negotiating benefit agreements may take care to involve community residents and local businesses, protect against conflicts of interest, and ensure an inclusive bargaining process, at bottom, there is no consensus as to what the “community” is – whether it is the immediate neighborhood surrounding a proposed project, a larger area, or an advocacy group. In addition, there is no consensus on how a negotiating process can be made more accountable. This issue is highly charged because the negotiators will naturally be perceived to be motivated by their own agendas and individuals or groups that are not “at the table” will presume that their interests are ignored. As one commentator put it:

[t]here are no safeguards in place other than those the groups impose on themselves; no mechanism for ensuring that those who claim to speak for the community actually do so; no guaranteed forum through which the community can express its views about the substance of the CBA or the wisdom of entering into a CBA; and no formal means by which the community can hold negotiators accountable for the success or failure of a CBA.<sup>41</sup>

Strictly speaking, there is no way to determine how coalitions of citywide environmental, labor, religious, and even neighborhood-based organizations are accountable to local residents. These coalitions are largely self-selecting and do not depend on a formal vote from local residents and businesses to represent them. Some agreements contain significant concessions concerning purely local issues or direct project impacts. Examples include the comprehensive environmental and noise mitigations provided by the LAX Airport CBA, the child asthma screening provided through the Yale-New Haven Hospital agreement, and the hotline for reporting complaints about truck traffic or odors provided by a CBA concerning a Wilmington, Delaware organic waste composting facility. However, many others largely reflect broad citywide concerns such as access to construction jobs, labor standards, and the provision of affordable housing. Local residents and businesses care about these issues as well, but may have different priorities. The agreements raise a question as to whom the negotiating parties were accountable.

The four major benefit agreements signed in New York City all proceeded with a high degree of accountability to the communities in which these projects were proposed inasmuch as elected officials led negotiations for two – Gateway Center and Yankee Stadium – and were instrumental in the process leading to the Atlantic Yards and Manhattanville CBAs. However, although elected officials are directly accountable to the communities they represent, the processes leading to some of these agreements have been criticized for a perceived lack of participation by individual neighborhood residents and businesses. For example, only one public meeting was held concerning the Yankee Stadium project, after which closed door negotiations were held between the Yankees, the Office of Bronx Borough President, and the local City Council members.

To the extent that important constituencies and critical interests are absent from the negotiation process, the legitimacy of the agreement will suffer, at least among those who perceive that their interests are not represented. For example, some local residents who bemoan delays in the replacement of Macombs Dam Park blame the Yankee Stadium CBA for prioritizing Bronx-wide business development over the recreation needs of the local community.

---

<sup>41</sup> “Community Benefit Agreements: A New Local Government Tool or Another Variation on the Exactions Theme?” Professor Vicki Been, Working Paper 2010, NYU Furman Center for Real Estate and Urban Policy.





## Recommendations of the Task Force on Public Benefit Agreements

### **II. Lack of Fairness**

Technical assistance was found to be an essential element of an effective PBA process. The Task Force found that nine of the 14 agreements executed outside New York were facilitated by sophisticated organizations such as the Los Angeles Alliance for a New Economy (LAANE) or the Partnership for Working Families, which helped organize local coalitions, develop negotiating terms, draft agreements and negotiate with developers. The agreements they contributed to characteristically have terms that are more enforceable and remedies for non-compliance.

Without outside help, community coalitions are generally not well matched in a negotiation with a development team, which can include a cadre of lawyers and consultants. Local residents, small businesses, and community groups often lack access to the information or expertise necessary to thoroughly evaluate project impacts and to devise mitigations. They may lack experience with the real estate development and contract negotiations and generally have limited or no resources to hire consultants who can advise and guide them through the process.

At the very least, the inexperience of the community-based parties can cause major headaches for developers, but at its worst, it can precipitate financial disaster. Negotiation of a benefit agreement can take a year or more and add unpredictability to the development timetable, which can jeopardize financing and delay construction. Moreover, community groups may make excessive and unreasonable demands that are difficult, if not impossible to meet, and propose well-intentioned terms that are inordinately complicated to implement.

### **III. Lack of Transparency**

CBAs have been assailed both for a lack of transparency in their negotiation as well as for the failure of the signatories to make them public. Although some benefit agreements have been made public, others are not readily available. While agreements negotiated by LAANE can be downloaded from the organization's website, securing other agreements resembles a scavenger hunt. Without public disclosure of the terms of a benefit agreement, independent monitoring or assessment of the commitments is not possible.

### **IV. Lack of Feasibility**

The Manhattanville CBA and several benefit agreements outside New York depend on the creation of a new not-for-profit to implement the terms of the agreement. Typically, the community coalition and the developer will agree on a sum of money that will either pay for the delivery of services directly by the newly-created organization or through a contract between one or more existing organizations and the new organization.

There are a number of potential pitfalls to this arrangement, not the least of which relates to timing of service delivery and additional overhead costs. Development of an organization requires recruitment of a governing body, incorporation, renting office space, establishing accounting systems, creating organizational policies, and hiring staff. The process can take one to two years, and generally will not start until after project approval and securing of funds from the developer. During that time, none of the services expected from the benefit agreement will be delivered.



## Recommendations of the Task Force on Public Benefit Agreements

### V. Lack of Enforceability

- a. *Many of the potential signatories to a PBA lack a legal basis to enforce the agreement.*

The validity of traditional CBAs has not yet been tested by the courts, either nationally or in New York, but there are questions as to whether these private benefit agreements could survive a legal challenge. Private agreements generally depend on a theory of contracts in which the agreement by signatories to support a project is construed to represent the “consideration” required to be valid and enforceable.<sup>42</sup> However, it is unclear whether such a promise can serve as consideration for an enforceable contract because a citizen cannot bargain to vote — or to refrain from voting — in return for a private benefit.<sup>43</sup> And even if a court found such a promise to be valid, the imbalance between what is promised by nonprofit signatories and the promises made by a developer could render the community signatories’ consideration insufficient. An exception is possible where the organizations commit to provide specific services as their part of the exchange.<sup>44</sup>

In addition, many potential parties clearly lack the legal capacity to enforce a benefit agreement under New York law. For example, measures promised in a benefit agreement may be unenforceable by not-for-profit signatories unless they are clearly consistent with their mission. Also benefit agreements cannot be enforced by community residents and business owners who may be the intended beneficiaries of the agreements,<sup>45</sup> or by community boards or elected officials acting in their official capacity. As creatures of statutes, neither a community board nor an elected official has an inherent or common-law right to sue, which must be derived from relevant enabling legislation.<sup>46</sup>

- b. *PBA terms may lack sufficient specificity.*

Another bar to enforceability is that benefit agreements are often characterized by terms that are vague and timeframes that lack the specificity required to demonstrate a “meeting of the minds.” For example, many benefit agreements contain terms that show intent rather than fixed obligations. Parties to such agreements have simply ignored their obligations.

- c. *PBAs lack enforcement structures.*

<sup>42</sup> See, e.g., “Community Benefits Agreements: Definitions, Values, and Legal Enforceability,” Julian Gross, *Journal of Affordable Housing*, p. 39 (Fall 2007/Winter 2008).

<sup>43</sup> RESTATEMENT OF CONTRACTS § 567 cmt. a (1932).

<sup>44</sup> “Strategies and Lessons from the Los Angeles Community Benefits Experience,” Benjamin S. Beach, *Journal of Affordable Housing*, p. 105 (Fall 2007/Winter 2008). Beach cites the example of an organization which entered into a first source hiring agreement with a restaurant in which it agreed to provide outreach, intake, screening and referral services to potential job applicants.

<sup>45</sup> See *Branch v. Riverside Park Community LLC*, 2010 NY Slip Op. 5472 (1<sup>st</sup> Dep’t 2010) (dismissal of complaint by Mitchell Lama tenants challenging the modification of ground lease which deleted the provision requiring that the building be maintained for persons of low and moderate income because they could not show that the lease was intended for their benefit). A party seeking to enforce a contract as a third party beneficiary has the burden of demonstrating that the contract terms grant it an enforceable right. See also *Fourth Ocean Putnam Corp. v. Interstate Wrecking Co, Inc.* 66 NY 2d 38 (1985). A local resident who was not specifically named by the agreement would be unable to establish “(1) the existence of a valid contract between other parties; (2) that the contract was intended for his or her benefit; and (3) that the benefit to him is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties to compensate him if the benefit is lost.” *Alicea v. City of New York*, 145 A.D.2<sup>nd</sup> 315, 317 (1<sup>st</sup> Dep’t 1988). Intent to benefit a third party can also be found when “no one other than the third party can recover if the promissory breaches the contract or the language of the contract otherwise clearly evidences intent to permit enforcement by the third party.” *Id.*

<sup>46</sup> NYC Charter section 2800 does not expressly authorize community boards to bring suit under the NY Public Officer Law, Section 84-90. Such authority cannot be construed as a necessary implication of a local community board’s other powers, since there are clear indications in the legislation that no authority to sue was intended. *Community Board 7 v. Shaffer*, 84 N.Y.2<sup>nd</sup> 148 (1994).





## Recommendations of the Task Force on Public Benefit Agreements

Characteristically, agreements lack reporting requirements by developers and ongoing monitoring mechanisms. They generally fail to include an operating agreement that specifies responsibility for execution and enforcement.<sup>47</sup> Because of the lack of specific reporting requirements and monitoring structures, the Task Force was unable to categorically verify that any CBA was implemented in conformance with the agreement's requirements. There were myriad reasons -- either the community coalition members no longer exist or cannot be located, or the staffer assigned to track progress left and was not replaced, or the staff resources simply are not there. Roxana Tynan, Deputy Director of LAANE told Task Force staff that monitoring an agreement is a "full-time job." A similar story is true for the government agencies charged with overseeing development agreements. Catherine Settanni, a member of the Minneapolis Digital Inclusion Task Force reported that implementation of some of the key community benefits secured by that city's "digital divide agreement" had stalled because of the lack of resources for city staffers or outside organizations to perform this job.<sup>48</sup>

---

<sup>47</sup> For example, the Manhattanville Project CBA sets aside \$76 million for implementation, but contains no spending protocols.

<sup>48</sup> Discussions and email correspondence with the Task Force staff, September 15, 2010 and September 21, 2010.



### VI. Recommendations

New York City needs a framework that provides greater accountability, transparency, and enforceability in the process leading to benefit agreements for large publicly-assisted development projects. The framework we propose creates clear expectations, encourages broad-based participation, and results in enforceable public benefits that comply with legal standards.

As a Task Force of stakeholders in New York City's future, we believe it is in the interests of City government to adopt standards that introduce credibility and predictability to a process that has been proceeding without generally-accepted guidelines. Doing so will go a long way toward preventing future projects from being delayed or derailed by deadlocked negotiations. The third-party technical assistance we propose will help residents develop terms that result in real benefits and that target investment to communities that need it.

While the principles of accountability and transparency should apply to all public benefit agreements, the standards we propose are designed specifically for "major projects," which we define as developments:

- (i) seeking floor area of 500,000 square feet in excess of what is permitted as-of-right; and/or
- (ii) with publicly subsidized financing valued at \$75 million or more; and/or
- (iii) generated through large-scale plans and Special District designations in excess of 27 acres.

A planning and negotiation process assisted by professionals would begin with the onset of environmental review and end with certification of zoning applications by the Department of City Planning, thereby allowing benefit measures to be considered in conjunction with land use review.

To impose lasting reform on the development process, the Task Force recommends adopting legislation codifying these standards. Mandating of standards will ensure that future benefit agreements are consistently responsive to identified community needs and are enforceable by City government.

#### PRINCIPLES OF THE PBA PROCESS

##### I. Accountability

Public benefit agreements can be made more accountable with guidelines that ensure broad-based and informed community participation.

- a. Encourage informed community participation early in the development process.*

Agreements largely defined by community members will more effectively identify local needs and develop solutions that offset the impacts and burdens of a project on the surrounding area. For this reason, local residents and businesses should form the nucleus of a negotiating team assisted by elected officials and other advisors.

The process of building a broad-based group of engaged stakeholders ought to begin immediately after submission of an Environmental Assessment Statement (EAS) to the lead government agency.<sup>49</sup> This

---

<sup>49</sup> Either the Department of City Planning or the NYCEDC would act as lead agency.



## Recommendations of the Task Force on Public Benefit Agreements

point is early enough in the development process that mitigation terms can be reflected in the CEQR process, but is far enough along that the project is well-defined.<sup>50</sup> After receipt of the EAS, the lead agency would send a project description to the borough president and the City Council member<sup>51</sup> representing the district in which the project is proposed.

The City Council member (or state legislator if the project requires state approval) and borough president would then jointly convene a forum or set of forums with the affected community board(s) to discuss the proposed project and establish a negotiation team. The Task Force recommends that meeting notification be provided to:

- (i) all residents and businesses within a 400-foot radius of the project;<sup>52</sup>
- (ii) members of the affected community board(s);
- (iii) community board mailing lists;
- (iv) local development corporations (LDCs) and business improvement districts (BIDs) serving the affected area; as well as
- (v) postings in at least one citywide newspaper and one community newspaper or local blog.

Project notification would include an invitation to one or more community forums to discuss the project and its potential impacts. Stakeholders would be invited to participate in a planning process to identify and evaluate community needs, which would be the basis for prioritizing and selecting the public benefits package for the project. Elected officials and the community board would form a negotiation team from the participants in this planning process and meet with the developer.<sup>53</sup> All decisions in this process would be reached by consensus in public meetings.

### II. Fairness

Fairness means that the terms of a benefit agreement should clearly reflect community needs and be proportional to the impacts created by the project, and that the negotiating process should be as balanced as possible and avoid undue cost and delays. The negotiation process should be time-limited and the outcomes must be within the capacity of the signatories to implement.

- a. Identifying and quantifying community needs and potential environment impacts should be the basis of the negotiated benefit agreement.*

The Supreme Court has held that the validity of exactions arising out of the land use process depends on their nexus to the proposed project and their proportionality – meaning that community benefits sought in connection with a zoning approval must directly relate to the impacts created by that rezoning and be proportional to those impacts. Although most benefit agreements are private contracts outside the ambit of the *Nollan-Dolan* decisions discussed above, the Task Force recommends that their terms should nonetheless originate with a planning process that assesses a full range of existing conditions and projected impacts of the proposed development. This would include an evaluation of socio-economic and environmental conditions surrounding the project, including local housing, transportation, education, health care, parks and recreation, workforce and business development, and retail shopping needs.

<sup>50</sup> Currently, the public would not be aware of the scope of a proposed project until after the projects were certified by the Department of City Planning, which could occur much further in the future.

<sup>51</sup> If a project overlapped two districts, both Council Members would be notified.

<sup>52</sup> CEQR Technical Manual, Section 310, p.21-2 (May 2010).

<sup>53</sup> If any member of the community coalition became a plaintiff in a lawsuit challenging the proposed project, they would necessarily have to be precluded from further negotiations on the PBA.



## Recommendations of the Task Force on Public Benefit Agreements

This process would cover many of the issues addressed in a “Section 197-a plan,” in which community boards, the City Planning Commission, and borough presidents prepare “plans for the development, growth, and improvement of the city and of its boroughs.” The comprehensive planning process involved in the preparation of a 197-a plan generally includes robust public participation and provides a framework for future changes based on an assessment of present and future conditions and needs. For example, the 197-a plans for Morrisania in the Bronx and Chelsea in Manhattan helped shape future planning, zoning, and development decisions in those local neighborhoods. Where a community has undertaken a 197-a process, it may be possible to rely on the already collected information, as well as on community board district needs statements.

The community needs identified through the planning process should form the basis for all future benefit agreements. For example, if it is found that recreational space in the one-mile area surrounding the proposed development is lower than the citywide average, the negotiating team may decide to seek a commitment from the developer or City to set aside land for a local park. Similarly, data showing that school overcrowding in the area would worsen after completion of the proposed project could buttress the case for building a new public school in the agreement.

*b. PBA development should be facilitated.*

Development of a good benefit agreement demands a wide range of expertise. For example, assessment of community needs requires expertise in planning, research, and data analysis. Negotiating an enforceable bargain and managing a negotiating team may require consultants and advisors who can guide community members through the process.

An independent consultant should be designated to help elicit and coordinate public participation, as well as to staff the planning process and mediate negotiations. The process of deploying the consultant could proceed as follows: after the EAS is submitted, the lead agency would notify the City Council member and borough president, who would then request consultant designation by the lead agency. Another option could utilize the existing City Charter mandate for community boards to hire planners, who could be funded on an ad-hoc basis to consult on large development projects. The consultant could be drawn from a pre-qualified pool selected by a panel – modeled on that for the Percent for Art Program<sup>54</sup> – after an Request for Qualifications (RFQ) was issued by a City agency in consultation with the local community board.<sup>55</sup> The community board should also play a role in selecting the consultant, who would be responsible for providing a community needs assessment as well as managing the process leading to an agreement. The consultant could be paid from a portion of the development fees currently collected by EDC or from a Public Purpose Fund administered by EDC or another City agency.

*c. The cost of delivering PBA terms must be quantified and be proportional to the public assistance provided to the project.*

At the end of the planning process, the community negotiators will prioritize the benefits they intend to seek in connection with the proposed project. By then, the consultant will have “priced” the projects (providing construction cost estimates for capital projects; projected wage and administrative expenses

<sup>54</sup> Percent for Art requires that one percent of the budget for eligible City-funded construction projects be spent on artwork for City facilities. Artists are selected by a panel that includes art professionals, representatives of city agencies sponsoring the capital project, as well as representatives of the borough president, City Council Member and community board.

<sup>55</sup> Potential planning consultants could include Pratt Center for Community Development, firms such as Hamilton, Rabinovitz & Alschuler, Inc., and the Local Initiatives Support Corporation, which played an instrumental role in the planning process leading up to the Manhattanville PBA. The cost of planning and technical assistance consulting is estimated at between \$10,000 and \$30,000 per month, depending on the size and scope of the proposed development project as well as duration of the negotiations.



## Recommendations of the Task Force on Public Benefit Agreements

for socio-economic programs, etc.). After the cost of the items on the community “wish list” are calculated, the projects would be prioritized by the coalition. The cost to deliver the proposed benefit agreement commitments must be quantified before negotiations begin.

Larger projects can be expected to impose greater impacts on neighborhoods than smaller projects. Because the primary purpose of a benefit agreement is to mitigate project-related impacts, the total value of a negotiated package of benefits should be proportional to the size of the subject development and to the total value of the public assistance sought by the developer – including the value of the lot area secured through land use approvals and of any subsidy package administered through the Economic Development Corporation, the Empire State Development Corporation, or another government agency.<sup>56</sup>

*d. The process must be predictable and time-limited.*

Real estate development is a high-risk business. Development can be profitable during a boom period, but a bust can precipitate bankruptcy. For example, at least nine of the benefit agreements negotiated in the United States between 2003 and 2008 were not implemented or were scaled back due to the economic downturn – in each case, prospective tenants pulled out and could not be replaced, financing disappeared, or the developer went bankrupt. Furthermore, the state of the economy has made banks more wary and risk averse. Lending institutions may be unwilling to maintain a funding commitment if project timetables change or the cost of a project increases unpredictably.

For the same reason, it is important that the negotiating process occur over a finite period of time and be completed before a project requiring land use approvals is certified by the Department of City Planning. In this way, the benefit agreement terms can be considered during the ULURP process.

### III. Transparency

*a. Potential conflicts of interest should be avoided.*

The role of the negotiating team is to represent the community and to strike an agreement that represents community stakeholders. To minimize potential conflicts of interest, members of the negotiation team should agree to neither solicit nor accept direct funds from developers and to be barred from future contracts implementing the benefit agreement. Signatories should live or work in the community.

*b. Executed agreements must be made public.*

Making benefit agreements available online would increase opportunities to monitor the implementation of terms. Having agreements publicly available would also allow community residents who are the intended beneficiaries to become aware of potential employment opportunities and other negotiated benefits. Doing so also helps reduce the potential for conflicts of interest.

---

<sup>56</sup> As indicated by Appendix C and Appendix D, one project and seven special zoning districts and development plans approved by the City Planning Commission between 2006 and 2009, and seven projects approved by EDC during the same period would have met the proposed PBA thresholds.



## Recommendations of the Task Force on Public Benefit Agreements

### IV. Feasibility

- a. Implementation should rely on existing structures rather than creating new ones.*

Rather than “reinventing the wheel” to the largest extent possible, implementation of bargained for terms should rely on existing structures rather than creating new ones. Doing so would reduce administrative overhead and other expenses, expedite the delivery of community benefits, limit potential conflicts of interest and be more cost effective. For example, a recent case study demonstrates that implementation of local hiring requirements in benefit agreements was most effective when it relied on existing workforce development organizations.<sup>57</sup>

The Department of Small Business Services has developed a structure to facilitate local hiring by projects subsidized by EDC that has successfully filled jobs created by the development of the Time Warner Center. A PBA aimed at encouraging local hiring could potentially build on the SBS model and the City’s existing workforce development infrastructure, thus saving time and money in delivering this important benefit.<sup>58</sup>

- b. There must be capacity to implement the proposed terms.*

Proposed terms that rely on unsecured appropriations by the City or State or further legislative or administrative actions should be avoided. Bargained-for terms should be susceptible of being provided without additional or ongoing subsidies from the City or State.

### V. Enforceability

- a. All PBA terms must be clear, concrete and have a schedule for implementation.*

As the Bar Association’s report points out, benefit agreements phrased in aspirational terms make it hard to determine exactly what is being promised. Phrasing a developer’s obligations in terms such as “the developers agree to work . . . towards the creation of a [h]igh [s]chool” or the developers “will seek to” and “intend” to perform various actions, do not actually commit the developers to do so. The same is true for provisions that defer specifics, such as the developer “will provide space for a day care center “at rent and terms to be agreed upon.” We recommend review by an experienced attorney to ensure that terms are sufficiently precise.

<sup>57</sup> *Making Development Work for Local Residents: Local Hire Projects and Implementation Strategies that Serve Low-Income Communities*, Kathleen Mulligan-Hansel, PhD, Partnership for Working Families (July 2008). Hansell notes that TrizecHahn, developer of the Los Angeles Hollywood and Highland project, was required by the PBA to use best efforts to create 323 full-time equivalent jobs, with 165 jobs to be available to Low and Moderate Income persons within 36 months. TrizecHahn succeeded in creating a total of 656 full-time equivalent positions with 235 filled by low and moderate income (LMI) workers, after an experienced workforce development consultant convened an implementation team that included workforce centers, community-based organizations, and the tenant businesses. Community-based organizations recruited job seekers, workforce centers did initial pre-screening and identified workers for the jobs, local job training agencies prepared candidates through pre-interviews and training and then referred those workers to employers.

<sup>58</sup> Applicants for City assistance should be required to identify the number of jobs to be created, the job titles and skills required for the projected new jobs and to develop a hiring and recruitment plan in conjunction with the Department of Small Business Services (DSBS). Workforce development organizations located within a one mile radius of the proposed development should be notified of the project development timetable. Three months before the opening of the project, the developer should provide human resources (HR) contact information for each project tenant to DSBS. DSBS should, in turn, identify the number of openings and their job titles and skills requirements for each tenant, the hiring process and transmit this information to local workforce development organizations and to the relevant Workforce 1 Center. Job developers at both will be responsible for pre-screening and referring qualified applicants to the HR representatives. Pre-screening of applicants is a major boon to employers and can be a real inducement to local hiring.



## Recommendations of the Task Force on Public Benefit Agreements

- b. All PBAs should set forth an accountable enforcement structure that includes reporting requirements for terms, cure and remedy provisions, and is not overly burdensome.*

Benefit agreements must assign responsibility for performance monitoring, specify how and when performance reports will become available, and what will happen if commitments are not fulfilled. At the same time, care must be taken to prevent compliance from being unduly burdensome. Terms that require ongoing monitoring over a period of years can present practical administrative challenges and be costly to administer. Successful benefit agreements have established community advisory boards where those who negotiated with the developer meet on a regular basis to identify and resolve issues.

- c. Where possible, PBA terms should be made enforceable by the City and EDC.*

As discussed in Section V., private benefit agreements appear to be unenforceable in New York. Therefore, it makes sense to follow the model adopted by other municipalities for benefit agreements that meet the Task Force's standards and to incorporate CBA terms into the City's development documents. For example, for projects subsidized through EDC, the terms of the benefit agreement negotiated with the community should be integrated into the regulatory agreement with the developer, thereby allowing enforcement by EDC, instead of relying on legal enforcement by private individuals or organizations that may lack standing in the courts. Incorporating community benefits into a regulatory agreement will allow the implementation of those benefits to be monitored and enforced by City government as well as by the community.

- d. Physical project impacts should be addressed in a restrictive declaration.*

Enforcement of terms concerning physical benefits can be addressed through a restrictive declaration executed and recorded by the developer that places conditions on the future use and development of her property. Restrictive declarations are commonly used to bind developers to commitments for physical improvements that mitigate project impacts and so are consistent with the *Nollan/Dolan* nexus requirements.<sup>59</sup> Because the terms run with the land and apply to all successors in interest, performance of the terms is required even if the ownership is transferred. The draft restrictive declaration can be reviewed by the City Council before approval of land use changes and can be modified by the City Council to take into account changed business conditions after approval. Restrictive declarations are enforceable by the City.<sup>60</sup>

Significant project impacts can be addressed in a restrictive declaration. For example, when the Lincoln West project was initially proposed for the West Side Rail Yards, community activists documented the number of riders that would be added to the already dangerously overcrowded platforms at the 72<sup>nd</sup> Street Subway Station. They won concessions from the developer including expanding the subway platforms – benefits that were memorialized in a restrictive declaration.

<sup>59</sup> In the East River Realty Company development on the site of a former Con Edison steam plant, a restrictive declaration commits the developer to build a public school, affordable housing, and \$10 million waterfront park with performing arts space in connection with a large mixed use development. With respect to Riverside South, a 238-page restrictive declaration contains terms calling for park development, subway improvements, etc.

<sup>60</sup> See *Middleland, Inc. v. City Council of the City of New York* 14 Misc. 3d 1223A, 2006 Slip Op. 52546U (Sup. Ct. 2006). *Middleland* challenged the City Council's refusal to cancel a restrictive declaration limiting the use of the subject property to accessory parking for IBM. The court found (i) that the restrictive declaration was invalid because it unlawfully restricted property based on the identity of the user; and (ii) that City Council's refusal to cancel the restrictive declaration amounted to an unconstitutional regulatory "taking" because it left petitioner without a legal use for the property, as IBM no longer owned the adjacent property.





## Recommendations of the Task Force on Public Benefit Agreements

### IMPLEMENTATION OF THE PBA PROCESS

Implementation of the principles above will vary depending on the identity of the lead agency and how the project or plan is initiated.

- (i) Discrete developments requiring NYC land use approval(s) in which EDC is the lead agency.

This model would apply to proposed projects that meet the stated thresholds for City assistance. As discussed above, commitments for physical improvements (negotiated in a benefit agreement) would be incorporated into the project's restrictive declaration, while all other commitments would be reflected in the development agreement. Any project funds would be administered by the lead agency and/or the Department of Small Business Services (in the case of workforce development funding), as applicable.

- (ii) Large scale proposed plans in which EDC is the lead agency.

Hunts Point, Willets Point, and other large-scale redevelopment plans have the potential to radically alter and transform neighborhoods. For this reason, evaluation of community impacts is critical. However, the lack of a specific developer to negotiate with means that the process of identifying and mitigating those impacts will necessarily be different. The community planning process would be more akin to a 197-a planning process. Instead of a developer, negotiations concerning project impacts would be conducted with a lead agency like EDC, the Mayor's Office of Economic Development, or the Department of City Planning. The Office of Management and Budget (OMB) would likely be involved at a later stage, in that the cost of "community benefits" would involve an appropriation of City capital funding.

- (iii) Discrete developments not requiring NYC land use approval in which EDC or ESDC is the lead agency.

If the EDC is the lead agency for a proposed development that does not require land use approvals or ESDC is financing the development, then there will be a restricted declaration carrying forward the benefit agreement terms. In such a case, terms will be enforceable by EDC or ESDC if they are included in the regulatory agreement executed between the agency and the developer.<sup>61</sup>

### MONITORING OF IMPLEMENTATION

- a. The Task Force recommends that a Community Advisory Board be established for each agreement.*

Many of the agreements where benefits have been successfully implemented have established a "Community Advisory Board" made up of the signatories. We recommend that a similar body be created for all future agreements in conjunction with the local community board to meet with the developer on a regular basis and resolve any issues that come up during the implementation period. Local community boards should play a key role in monitoring the implementation of future benefit agreements because they are an established governmental body and often have a long institutional memory when it comes to local development projects.

---

<sup>61</sup> There is a precedent for this in the Manhattanville CBA where the terms were incorporated into the General Project Plan executed by Columbia University with ESDC.





## Recommendations of the Task Force on Public Benefit Agreements

- b. The Task Force recommends that the New York City Comptroller monitor the implementation of PBAs.*

Benefit agreements around the country have mixed records in terms of delivering on the promises made in the heat of negotiations. After the dust settles and interest among community members wanes, implementation can often depend on the good faith of a developer. Benefits incorporated into developer agreements executed by redevelopment authorities – most notably those with the Community Redevelopment Agency of Los Angeles – apparently have a better track record than agreements that depend on private individuals for enforcement. Therefore, to the extent that a benefit agreement meets the standards discussed herein, and will deliver services that are deserved or construct facilities that are merited, it is in the interest of the City to make certain that those services or facilities are implemented.

Furthermore, nearly every project that requires City land use approvals is accompanied by a package of benefits for the community in which the project will be sited. An initial package may be offered during the period when the project is being heard by the community board with additional benefits added to the package when approval of the project is before the City Council. Because it is so customary and predictable, the cost of the benefits to be proffered is likely to be included in the project's development, so that a portion of any City assistance ultimately granted is effectively paying for the benefits offered to the developer. Reportedly, members of the City Council closely followed the status of negotiations concerning the CBAs for the Manhattanville and Bronx Terminal Gateway projects and the votes on these projects followed immediately after the consummation of the CBAs. Because the benefits negotiated in a benefit agreement do, albeit indirectly, have a financial impact on the City, we believe it is critical for the City Comptroller to oversee and monitor future agreements.

The New York City Charter empowers the Comptroller to investigate all matters relating to or affecting the finances of the City, including without limitation “the performance of contracts and the receipt and expenditure of City funds.”<sup>62</sup> Based on this existing mandate, the Comptroller should monitor the implementation of benefit agreements.

- c. The Comptroller should maintain a digital repository of all benefit agreements, related restrictive declarations and development agreements, and PBA-related resources.*

As discussed above, there is no central repository for benefit agreements and related documents that currently allow the public easy access. This hampers monitoring and enforcement efforts of executed agreements, as well as forcing would-be negotiators to work “from scratch.”

- d. The Comptroller should review, on a regular basis, compliance with restrictive declarations and regulatory agreements originating with PBAs established in the previous five years and issue an annual PBA compliance report card.*

### LEGISLATIVE RECOMMENDATIONS

- a. The Comptroller should recommend legislation to the New York City Council codifying the Task Force's PBA recommendations.*

As numerous commentators have pointed out, the manner in which past benefit agreements have been effectuated in New York City has the potential to be unaccountable, unpredictable, and unenforceable.

---

<sup>62</sup> NYC Charter section 93(b).



## Recommendations of the Task Force on Public Benefit Agreements

However, while it is clearly in the public's interest to replace a process widely acknowledged to be unsatisfactory with one that is more accountable, transparent, and enforceable, its implementation depends on actions undertaken by a number of different institutions, including: the Economic Development Corporation, the Department of City Planning, and elected officials. If one or more fail to act, our proposed process will break down. The most effective way to ensure long-term compliance with the new process is by adopting it into law.

The Comptroller is empowered by the New York City Charter to “make such recommendations, comments and criticism of the City as he or she may deem advisable in the public interest”.<sup>63</sup> This Charter mandate gives him the legal basis to propose legislation codifying these recommendations. Furthermore, State law provides the statutory framework for the codification of benefit agreement standards.<sup>64</sup>

As an interim step, the Comptroller should secure a commitment by EDC to voluntarily adopt the policies and practices described herein – by providing technical assistance, community notification, and including PBA terms within development agreements.

- b. *The Comptroller should recommend adoption of a policy and procedure by the Empire State Development Corporation.*

ESDC has played and continues to play a major role in the development of projects within New York City that present tremendous community impacts. The desirability of adopting benefit agreement standards for New York City-assisted projects applies equally to ESDC-assisted developments. Therefore, we commend ESDC to adopt similar standards and procedures and suggest that the Authority play a role similar to that sketched for EDC, by providing technical assistance, community notification, and enshrining agreed-upon terms within development agreements. If ESDC refuses to cooperate, we recommend that the Comptroller work with the Governor, the State Legislature, and the Public Authorities Control Board to reform the policies and procedures of the Empire State Development Corporation and its subsidiaries.

### LONG-TERM RECOMMENDATIONS

- a. *The Next Charter Revision Commission should modify the operations of EDC and the Department of City Planning.*

The proliferation of benefit agreements can be seen as a byproduct of the City's failure to effectively plan for neighborhood growth and to develop solutions for problems that require a comprehensive citywide approach. Benefit agreements have become necessary precisely because the Department of City Planning seldom examines citywide needs in a comprehensive and inclusive manner, leaving it to the City Council to address them on a piecemeal basis. But a project-based arrangement that ties benefits to a particular neighborhood is no substitute for a citywide process that evaluates current and

<sup>63</sup> NYC Charter section 93 (a).

<sup>64</sup> NY CLS General City Section 81-d (3) (e) authorizes the City Council to set forth the procedure by which incentives are provided to specific properties. According to the statute, the procedure must describe: 1) the incentives or bonuses that may be granted to the applicant by the City; 2) the community benefits that may be accepted by the City from the applicant; 3) the criteria for approval, including the methods required for determining the adequacy of community amenities to be accepted from the applicant in exchange for the particular bonus or incentive to be granted to the applicant by the City; 4) the procedure for obtaining bonuses, including applications and the review process, and the terms and conditions attached to any approval; and 5) provision for a public hearing, if such public hearing is required as part of a zoning ordinance, local law or regulation. The guidelines set forth by Section 81-d (3) (e) of the General City Law are consistent with the benefit agreement standards recommended by the Task Force.



## Recommendations of the Task Force on Public Benefit Agreements

prospective demands for better housing, jobs, health care, child care and schools, open space, and transit.

New York City needs comprehensive land use and economic development planning that proactively shapes our future. According to PlaNYC 2030, a million additional housing units are needed to accommodate the 10 million residents projected to live in our City twenty years from now. However, instead of planning for new housing or infrastructure, City Planning has initiated more than 100 rezonings that primarily serve to maintain the existing built environment in much of the City.

Benefit agreements also arise because City land use decisions are being made with little consideration of community needs. Rezoning applications that support major new developments move forward without adequate provision for public schools, transit, and other essential supports. They also neglect to take account of or mitigate negative economic impacts on existing businesses.

The Charter should be revised to update the mission of City Planning accordingly, as well as give community boards a more significant role in ULURP. As discussed above, currently, community boards hold a public hearing and then submit recommendations to the borough president and the City Planning Commission that are purely advisory in ULURP. Requiring a supermajority of the Planning Commission when overturning community board recommendations<sup>65</sup> would empower local residents and businesses to meaningfully participate in planning decisions that impact their neighborhoods. A citywide planning framework with a mandate to take into account neighborhood needs would go a long way toward rendering side agreements unnecessary.

The Charter should also replace the City's economic development priorities and execution with a process that is inclusive and achieves long-term City needs for jobs. EDC should be required to provide subsidy disclosures on its website, in a manner that is clear and comprehensible.

---

<sup>65</sup> This is presently the case when a borough president has rejected the siting of a City facility in his/her borough.



## VII. Appendices

### Appendix A: Community Benefit Agreements in New York City

Between 2005 and 2008, community benefit agreements were negotiated in connection with four major development projects in New York City. These agreements are summarized below:

#### Atlantic Yards (2005)

The first Community Benefits Agreement (CBA) in New York City was executed in connection with the 22-acre development of the Long Island Vanderbilt Railroad yards. In December 2003, Forest City Ratner Companies (FCRC) announced plans to construct a 19,000-seat sports and entertainment arena that will be the home to the NBA's New Jersey Nets, along with 6,430 units of housing, office and retail space, a hotel and parking on the site. The proposed \$4.9 billion project would be the largest NYC development outside Manhattan in more than 25 years.

In July 2004, FCRC convened a meeting of community groups, including the New York chapter of the Association of Community Organizations for Reform Now (ACORN), Brooklyn United for Innovative Local Development (BUILD), the Downtown Brooklyn Oversight and Advisory Committee (DBOAC), as well as members of Community Boards 2, 6 and 8 to discuss a community benefits agreement. Regular meetings continued until June 27, 2005, when FCRC signed a CBA with eight organizations (the Coalition) in exchange for their public support for the project.<sup>66</sup> Under the agreement, FCRC committed to provide an array of benefits, including:

- intent to award at least 20 percent of the total construction contract dollars to qualified minority owned businesses (MBEs) and at least ten percent of the total construction contract dollars to qualified women-owned businesses (WBEs);
- good faith efforts to ensure that at least 35 percent of the construction workers are people of color and 10 percent are female;
- leasing of at least 15 percent of the gross retail space to qualified community based businesses;
- a promise to make 50 percent of the 4,500 residential rental units affordable to low- and moderate-income families pursuant to a separate Memorandum of Understanding with ACORN;
- community amenities, including a health center, Intergenerational Center, and at least six acres of parks and open spaces;
- environmental mitigations;
- arena-related programs, including seats for community use groups at least ten times per year;
- development of four schools and the funding of capital improvements to libraries and recreational centers at NYCHA properties;

The CBA sets forth a detailed structure for the implementation of the agreement's provisions. To oversee overall implementation, an Executive Committee composed of representatives of the Coalition

<sup>66</sup> The signatories are: All-Faith Council of Brooklyn (AFCB); Association of Community Organizations for Reform Now (ACORN); Brooklyn United for Innovative Local Development (BUILD); Downtown Brooklyn Neighborhood Alliance (DBNA); Downtown Brooklyn Educational Consortium (DBEC); First Atlantic Terminal Housing Committee (FATHC); New York State Association of Minority Contractors (NYSAMC); and Public Housing Communities (PHC). The Atlantic Yards CBA is available at <http://www.buildbrooklyn.org/pr/cba.pdf>.



## Recommendations of the Task Force on Public Benefit Agreements

and FCRC is to meet bimonthly. The agreement also establishes eight councils to be headed by a Coalition member to address each major subject area. In addition to participating in the Executive Committee and heading its respective Council, specific responsibilities are also delegated to each Coalition member. For example, BUILD is responsible for coordination, management, implementation and initial oversight of workforce development and small business initiatives.

### *Reporting, Monitoring and Enforcement*

The Atlantic Yards CBA contains clear reporting provisions with respect to the workforce and contracting requirements. Within 30 days after the end of each quarter, FCRC is required to report on the actions taken to fulfill the agreement, including the:

- number of community residents enrolled in the pre-apprentice training initiative, the percentage of minority and women workers, the number who completed training and were hired, the length of time they were employed;
- number of persons placed through the CLE program;
- total number of construction workers and journey level workers, the percentage of them that are minority and women workers;
- total non-construction and construction contracts award and the percentage awarded to community-based, minority or women-owned businesses; and
- status of job fairs, including the number of employers participating, the number of attendees and the status of any applicants filed by them with FCRC or affiliates.

Specific implementation timeframes and reporting requirements are absent with respect to the other CBA terms.

In the event FCRC fails to perform a term or provision, the Coalition must provide written notice documenting the alleged default and offer to meet to resolve the issue. FCRC then has 60 days to cure the alleged default. If the parties are unable to resolve the disagreement, they may request assignment of an independent mediator at FCRC's expense. The Coalition may also elect to waive the default to pursue binding arbitration or judicial remedies. There are also similar provisions in the agreement to address default by a Coalition member.

### *Implementation*

The Atlantic Yards project secured approval from the Empire State Development Corporation in early December 2006 and the Public Authorities Control Board in mid December 2006. The project experienced a series of delays due to prolonged litigation. The project's official groundbreaking occurred in March 2010 and the arena is projected to be completed in the summer of 2012 with residential and commercial components to follow.

Delays in starting the project pushed back implementation of the CBA's terms, but progress has been made in some key areas.<sup>67</sup>

- During the initial phases of demolition and construction, FCRC exceeded the total M/WBE prime contract and total contract dollar goals;

<sup>67</sup> Based on information provided by Scott Cantone, FCRC's Senior Vice President for Government and Public Affairs, in a telephone discussion with Task Force staff on September 21, 2010 and in written comments submitted on September 23, 2010.



## Recommendations of the Task Force on Public Benefit Agreements

- 35 residents from the local community have been placed through FCRC's Community-Labor Exchange (exceeding the CBAs 1-to-4 requirement);
- A Project Labor Agreement has been negotiated and executed with the construction trade unions and thus far FCRC has secured 200 slots from the construction trade union pre-apprenticeship programs for BUILD graduates;
- BUILD has recently commenced its pre-apprenticeship program and training is underway for 30 individuals; and,
- Discussions are underway with FCRC and the Coalition to implement the affordable housing component of the project's first residential building, the establishment of a community charitable foundation, and a new charter school as well as other terms of the CBA.

### **Yankee Stadium (2006)**

In 2004, the New York Yankees proposed to construct a new stadium across the street from their existing ballpark on space occupied by two public parks. The team sought extensive public assistance, ultimately securing more than \$1.2 billion in financing for the stadium and approximately \$238 million for a parking garage. After concerns were raised concerning lost parkland, increased air pollution and the extent of proposed subsidies, the Yankees signed a CBA with then-Borough President Carrion and Bronx City Council Members Baez, Arroyo and Majority Leader Rivera, which promises:

- to award of at least 25 percent of construction contracts to Bronx-based businesses of which at least half would be qualified minority and women-owned businesses;
- to hire and employ Bronx residents for at least 25 percent of the job force;
- technical assistance to Bronx-based contractors;
- \$1 million to fund job training programs;
- environmental monitoring and remediation by the Yankees;
- a community benefits fund that will annually distribute until 2046: (i) \$800,000 to Bronx not-for-profit organizations; (ii) equipment and merchandise with a minimum value of \$100,000; and (iii) 15,000 tickets with an average price of \$25; and
- to hire a program administrator with experience in construction, MWLBE programs and Bronx community affairs to implement the CBA terms with an annual budget of \$450,000 and a liaison at \$35,000 per year.

The program administrator is to be selected by a Fund Advisory Panel appointed by the signatories in consultation with the New York City Council Bronx Delegation. A construction advisory committee composed Yankees representatives, the Bronx Borough President and another Bronx elected official (not specifically identified) will monitor and provide input on the planning and construction of the project and will meet monthly with the Yankees, the construction manager, and the developer.

#### *Reporting, Monitoring and Enforcement*

The Program Administrator is responsible for monitoring the program and for reporting to the Yankees, the Fund Advisory Panel and the Developer. The Program Administrator is also required to provide a monthly written report detailing the status of program compliance to the Construction Advisory Committee and to recommend and implement remedial measures if program requirements are not met.

#### *Implementation*

Michael Drezin, was hired to incorporate and administer the fund in December 2006 but the Fund Advisory Panel was not convened until the fall of 2007. No funds were disbursed until



## Recommendations of the Task Force on Public Benefit Agreements

April 2008, when grants of \$500 were made to 24 Bronx Little League teams.<sup>68</sup> An additional 60 grants and 15,000 tickets were disbursed to local groups by the end of 2008; and 102 grants and 15,000 tickets by the end of 2009.<sup>69</sup> In 2009, the Administrator filed a pending lawsuit against the Chairman charging mismanagement of the Foundation's account.<sup>70</sup>

There has been no independent monitoring of the Yankees CBA and therefore no data is available on the implementation of job and contracting requirements. The Yankees have been using the Bronx Overall Economic Development Corporation (BOEDC) for job applicant referrals, but further information was unavailable as of the date of this report.<sup>71</sup>

### Gateway Center (2006)

In 2004, The Related Companies entered into an agreement with the New York City Economic Development Corporation to develop Gateway Center at Bronx Terminal Market, a \$500 million shopping mall with one million square feet of retail space, 2,600 parking spots, as well as space for local businesses and a possible hotel. In late-2005, former Bronx Borough President Adolfo Carrion and the City Council's Bronx Delegation convened an 18-member CBA Task Force to address concerns raised by local organizations and labor unions. A CBA was executed by Hostos Community College, the New Bronx Chamber of Commerce, and the Mount Hope Housing Company (the "Coalition") and BTM Development Partners, LLC, an affiliate of The Related Companies one day before the New York City Council approved a rezoning to facilitate the project's development. Through the CBA, the developer agreed to community benefits including:

- a "first source" local hiring program using locally based organizations to screen and make referrals of Bronx residents, particularly "special needs" populations (defined to include persons on public assistance, persons with disabilities, and ex-offenders);
- on-site space for job recruitment and pre-screening services;
- a training and apprenticeship program for construction jobs;
- reservation of 18,000 square feet of retail space for existing small and local businesses;
- \$3 million to fund business development, local hiring and job training programs;
- commitments concerning purchasing and contracting with Bronx-based businesses;
- offering of 2,000 reduced price memberships (at \$20) for low-income Bronx residents; and
- the set-aside of 3,500 square feet for child care services, to be leased at a below-market rent.

The Bronx Overall Economic Development Corporation (BOEDC) was awarded \$3 million to administer hiring and job training programs.

<sup>68</sup> "Little League Reaps a Windfall from New Yankee Stadium Foundation," Bill Egbert, *NY Daily News* (May 5, 2008).

<sup>69</sup> 2008 and 2009 Year End Reports, New Yankees Stadium Community Benefits Fund Inc. (<http://www.bronxyankeefund.org/>).

<sup>70</sup> "Former Administrator Sues the Yankees' Bronx community Charity," Fernanda Santos, *The New York Times* (April 1, 2009)

<sup>71</sup> Information provided by Al Rodriguez, Counsel to the Bronx Borough President, in a telephone conversation with Task Force staff on September 22, 2010 and written comments on September 23, 2010.





## Recommendations of the Task Force on Public Benefit Agreements

### *Reporting, Monitoring and Enforcement*

The Developer must report quarterly to the Coalition on implementation until one year after the issuance of a temporary certificate of occupancy for the retail portion of the development, and annually thereafter.

The enforcement terms are similar to those of the Atlantic Terminal CBA in which the Developer has a 60-day right to cure after written notice of a failure to perform. The cure period is extended as long as the developer is making diligent efforts to cure the alleged default in good faith. After expiration of the cure period, the Coalition may pursue binding arbitration or a judicial remedy to remedy the alleged default, so long as a majority agrees. Injunctive relief is barred by the agreement, which stipulates that if found to be in default, the developer is liable for a maximum penalty of \$60,000 for each violation with a lifetime cap of \$600,000.

### *Implementation*

Gateway Center opened on September 21, 2009. Reportedly, at least 90 percent of the retail space was leased at opening, with leases for the remaining ten percent in negotiation. Nearly 54,000 square feet was leased to local businesses and leasing of another 16,000 square feet was under negotiation. Nearly 40 percent of the construction contracts were awarded to Bronx-based firms, and approximately 1,100 Bronx residents had been hired for permanent positions (67 percent of the total). BJ's Wholesale Club held a lottery to distribute the 2,000 reduced price memberships.<sup>72</sup>

In July 2009, a lawsuit was filed by the CBA Administrator charging the Bronx Overall Economic Development Corporation (BOEDC) with diverting \$1.6 million promised in the CBA for job development towards BOEDC salaries. The Bronx Borough President initiated an investigation September 2009, which determined that BOEDC had used the funds for payroll expenses for its Fast Track program. However, according to BOEDC, "the requirements of the Gateway CBA are being met or exceeded".<sup>73</sup>

- A Bronx County vendor database of over 500 firms resulting from extensive outreach to Bronx-based firms and M/WBEs;
- A MWBE program that has resulted in 39 contracts awarded to Bronx-based firms (38.2%) and fifteen contracts awarded to M/WBEs (14.7%) out of a total 102 contracts awarded as of April 17, 2009;
- Environmental improvements, including particulate emissions monitoring, tree plantings, and rodent control in the local neighborhood;
- A nutrition program where the developer agreed to help 2,000 local families, who receive food stamps and are eligible for WIC, secure half-price memberships to any warehouse shopping club at the Gateway Center;
- A day care center in which the developer set aside 3,500 square feet of space to a qualified, licensed child day care provider at 35% below market rates;
- A small business leasing program in which the developer set aside 18,000 square feet of retail space for local businesses (3,557 square feet has already been leased);
- A \$175,000 job program run by Project H.I.R.E., which conducted free training from February 1, 2007 to June 29, 2007. 45 students were accepted and 25 students

<sup>72</sup> "NYC's Largest New Retail Center in 30 Years Opens in the South Bronx," *Real Estate Channel* (Sept. 21, 2009).

<sup>73</sup> Bronx Overall Economic Development Corporation (BOEDC) Progress Report on the Gateway Fast Track Unit at BOEDC (July 17, 2009).





## Recommendations of the Task Force on Public Benefit Agreements

graduated from the program. Nineteen of these graduates are employed with union positions in Locals 79 (Mason Tenders), Local 8 (Roofers) and Local 731 (Laborers), with at least two graduates engaged at the Gateway Center site.

### **West Harlem (2007)**

In the fall of 2002, Columbia University announced plans to expand its campus by nearly seven million square feet in an area of West Harlem known as Manhattanville. The new campus would be built over a 25-year period in the area generally bounded by 133<sup>rd</sup> Street on the north, 125<sup>th</sup> Street on the south, from Broadway west to the Hudson River.

In 2006, the Chairperson of Community Board 9 approached a Columbia official and proposed that a CBA be negotiated in connection with the development. The Board then established the West Harlem Local Development Corporation (WHLDC) with the support of Council Member Robert Jackson. Efforts were made to solicit the participation of a representative sample of the surrounding neighborhoods including residents of nearby housing projects, local business owners, and commercial property owners. As representatives of the Manhattan Borough, President Stringer, Congressman Rangel, NYS Assemblyman Wright and City Councilman Jackson later joined the 20-member WHLDC board.

Participants met weekly beginning in September 2006 and formed eleven working groups focusing on issues of housing, business and economic development, employment and jobs, education, historic preservation, community facilities and social services, arts and culture, environmental stewardship, transportation, research and laboratory activities, and green spaces. The WHLDC and Columbia then negotiated a memorandum of understanding (MOU) just before the City Planning Commission's vote on the expansion plan. The MOU contains a commitment by the University to provide \$150 million in benefits, including \$20 million to fund affordable housing, \$30 million in services for a university-run public school, access to Columbia facilities, services and amenities valued at \$20 million, \$4 million for tenant legal assistance, and \$76 million for community programs to be implemented over a 16-year period. On May 18, 2009, the WHLDC and Columbia consummated a CBA that provides a structure to implement the MOU. Among the other CBA provisions:

- \$3 million of the benefits fund will be used for capital and program needs for the NYCHA developments Grant Houses and Manhattanville Houses;
- commitments to pay all Columbia University project employees a living wage;
- good faith commitment to have minority, women and local residents compose 50 percent of its construction workforce for the life of the project and to purchase 35 percent of the total dollar value of non-construction goods and services from minority, women, or local vendors;
- \$750,000 for skills-based and workforce development training;
- creation of a center where residents can receive information about Columbia's community programs and project commitments;
- fifteen summer internships for high school students living in the community or attending the Math, Science and Engineering High School; and
- subway improvements.

The CBA includes a schedule for the payment of benefits in specified installments. In certain cases, payment is conditioned on meeting certain campus construction milestones and on the development of organizational structures. For example, payment of the first \$10 million installment of affordable housing is triggered by the issuance of a building permit for the first Phase 1 new building. CBA terms



## Recommendations of the Task Force on Public Benefit Agreements

respecting in-kind benefits and the public school remain in effect to December 31, 2040 and terms pertaining to minority/women/local hiring and contracting apply until December 31, 2045.

### *Monitoring and Enforcement*

Columbia is to provide WHLDC with an annual report that includes: (i) a summary of the payments to the Benefit Fund during the year and cumulatively; (ii) an annual summary of the in-kind benefits provided; (iii) publicly available reports provided to the City or State regarding implementation; and (iv) reports on M/W/LBE hiring and contracting, in addition to reporting requirements specific to the various commitments.

In the event that Columbia fails to timely make a required payment, WHLDC may bring a legal action. Upon a determination against it that is not appealable, Columbia will make any payments owed plus reasonable attorney's fees. The CBA also sets forth a dispute resolution process and provides for mediation in the event that the process is ineffective in resolving the dispute. The agreement also provides for an independent monitor who will review and take steps to ensure that Columbia complies with the CBA.

In addition, the agreement's terms were incorporated into the details of the General Project Plan executed by Columbia University with the Empire State Development Corporation.

### *Implementation*

In September 2009, Columbia provided initial benefit funding in the amount of \$500,000 to the WHLDC. However, in May 2010, it was reported that the WHLDC had not secured tax-exempt status nor established spending guidelines or a formal application process.<sup>74</sup> Since then, a new WHLDC president and consultant have been selected to implement the benefits. To date, Columbia has contributed \$1.55 million to the benefits fund in conformance with the agreed-upon schedule.<sup>75</sup>

<sup>74</sup> "Harlem Group's Chaos Endangers \$76M Gift," Isabel Vincent and Melissa Klein, *New York Post* (May 9, 2010).

<sup>75</sup> Information was provided to Task Force staff by Eric Kuo from Columbia University in a telephone discussion with Task Force staff on September 21, 2010 and in written comments submitted September 22, 2010.



### Appendix B: Community Benefit Agreements Negotiated Outside NYC

The Task Force has identified fourteen community benefit agreements negotiated between 1998 and 2008 in connection with developments outside New York City that have been completed or are underway. The basic terms of these agreements and their outcomes are summarized below. Another nine agreements were negotiated for projects that are not currently proceeding,<sup>76</sup> either because of the national economic downturn, developer bankruptcy or litigation. Information regarding the terms of these agreements is available from: <http://communitybenefits.blogspot.com>.<sup>77</sup>

#### **Hollywood and Highland Center, Los Angeles, CA (1998)**

The first CBA was negotiated in 1998 in connection with the development of the \$388 million Hollywood and Highland Center, now home to the 4,000-seat Kodak Theater, hotels and 1.2 million square feet of retail space. In exchange for support by community groups who feared increased traffic and crime, the developer offered to finance traffic improvements, implement a first-source hiring plan, and ensure that workers at the center were paid a living wage.<sup>78</sup> Community support of the development helped the developer to obtain \$90 million in local subsidies. The agreement was negotiated by Los Angeles Council Member Jackie Goldberg and the Los Angeles Alliance for a New Economy (LAANE).

#### *Reporting, Monitoring and Enforcement*

The Community Redevelopment Agency of Los Angeles (CRA/LA) is charged with monitoring local hiring but does not publish status reports.

#### *Implementation*

- Approximately 19 percent of construction worker hours were completed by local residents, primarily achieved through zip coding;
- About 68 percent of the hotel jobs at opening were held by local residents; and

Approximately half of the permanent positions at the project's opening provided living wages, and the percentage of living wage jobs is currently estimated to be 40 percent. All hotel, maintenance, parking lot, and security jobs all pay living wages.

#### **L.A. Live – Staples Center, Los Angeles, CA (2001)**

The first major CBA involved the construction of L.A. Live, a 5.6 million square foot, \$4.2 billion sports and entertainment complex including a 54-story hotel and condominium tower, the 7,100-seat Nokia Theatre, a 3,770-seat movie complex, the 2,300-seat Nokia Club, the GRAMMY Museum, and a retail

<sup>76</sup> These include the developments slated for Milwaukee Park East, Seattle's Dearborn Street, Denver's Cherokee-Gates community, San Diego's Ballpark Village and redevelopment of the Sun Quest Industrial Park and Marlton Square area of Los Angeles and the Oak to Ninth CBA in Oakland. As of August 26, 2010, the developer of the LA Grand Avenue hotel, condo and shopping complex was requesting a two-year extension of its current February 2011 deadline to begin construction. If the new deal is approved by City and County officials, groundbreaking would not start until 2013.

<sup>77</sup> This blog, produced by Amy Lavine, Staff Attorney at the Government Law Center of Albany Law School, is the primary source of information for the agreements summarized by this Appendix

<sup>78</sup> Information was provided by Roxana Tynan, Deputy Director, LAANE, in a telephone conversation with Task Force staff on September 21, 2010. As of the date of publication, a copy of the CBA was unavailable.



## Recommendations of the Task Force on Public Benefit Agreements

complex.<sup>79</sup> Rezoning of the 27-acre project site, at least \$150 million in public subsidies and the use of eminent domain was sought from the City of Los Angeles by developers Anschutz Entertainment Group (AEG), Wachovia Corporation and MacFarlane Partners (collectively, the developer).

Negotiations were held between the developer and the Figueroa Corridor Coalition for Economic Justice, a coalition of more than 30 community organizations. Strategic Action for a Just Economy (SAJE) and the Los Angeles Alliance for a New Economy (LAANE) provided organizational and political support to the coalition and community members. After five months, the parties inked an agreement in which the developer agreed to: commit \$1 million for park and recreational facilities; adopt a “first source” hiring program and prioritize hiring of persons displaced by the project and low-income individuals; set aside 20 percent of the residential units as affordable housing; and provide \$650,000 in interest-free loans for the development of additional affordable units by nonprofit housing developers.

On November 11, 2009, AEG announced plans to expand L.A. Live to include 332,618 square feet of office space, a 269,182 square foot broadcast studio, a 275-room hotel and a 25-story residential building.

### *Reporting, Monitoring and Enforcement*

The CBA includes reporting requirements and establishes an advisory committee of representatives of the developer and the Coalition to meet quarterly to monitor and enforce the agreement and maintain a dialogue. The CBA includes provisions to assess the agreement’s implementation at five and ten year benchmarks after its completion. Compliance with living wage requirements is established through annual reports detailing the proportion of living wage jobs created by the project. If the developer performs less than 80 percent of the CBA’s goals for two consecutive years, the Coalition and the developer must meet to formulate a mutually accepted plan to reach those goals. The parties have also modified the CBA at their own instance to respond to the changing needs of both the developer and the community.

The CBA was approved by the City of Los Angeles and the CRA/LA and its terms were integrated into the development agreement between the developer and the CRA/LA, making it enforceable by both the city and community groups.

### *Implementation*<sup>80</sup>

- \$1 million has been spent on parks with priorities for the funding determined through a series of community meetings and workshops;
- About 300 units of inclusionary affordable housing have been financed, and a revolving loan fund for local businesses has revolved several times; and
- From September 2007 through December 2007, 338 local workers had been placed in jobs onsite.

### **North Hollywood Commons, Los Angeles, CA (2001)**

The 60,000 square foot North Hollywood (NoHo) Commons mixed-use development includes residential, retail and office space, a school, and child care center. LAANE organized a coalition to negotiate a CBA

<sup>79</sup> A copy of the CBA is available at: [www.comptroller.nyc.gov/pba](http://www.comptroller.nyc.gov/pba).

<sup>80</sup> Information was provided by Roxana Tynan, Deputy Director, LAANE, in a telephone conversation with Task Force staff on September 21, 2010.



## Recommendations of the Task Force on Public Benefit Agreements

with the developer, J.H. Snyder Co. The deal secured promises of affordable housing, first source hiring for permanent jobs, and payment of living wages for at least 75 percent of the jobs.<sup>81</sup> The developer in return got about \$44 million in City subsidies, an increase over the \$33 million subsidy originally proposed.

### *Reporting, Monitoring and Enforcement*

Participation in first source hiring program is voluntary on the part of tenants. The developer is required to report biennially to the CRA/LA on the number and percentage of jobs that are living wage jobs, using project-wide data as well as data regarding each employer in the development.

### *Implementation*

Reportedly, during the first year (2007) only a supermarket on the site used the first source system, hiring 42 entry-level workers and three senior positions from the local community.<sup>82</sup>

### **CIM Group Project, San Jose, CA (2002)**

In connection with the development of a \$189 million residential retail and entertainment complex in downtown San Jose for which \$47 million in subsidies was sought, community benefits were negotiated between Working Partnerships USA (WPUSA) and a coalition of 27 elected officials, unions and community groups and the developer, CIM California Urban Real Estate Fund, L.P. These negotiations established policy priorities that were incorporated into the Disposition and Development Agreement (DDA) approved by the San Jose Redevelopment Agency (SJRA) in 2002. Benefits included: living wage protections for parking garage employees, an agreement to use unionized labor during construction, affordable housing requirements, a commitment to help set up a day care facility, a promise to set aside space for locally owned small businesses on site, and to seek tenants who would pay living wages for employees of the grocery, retail and hotel tenants. A 2003 amendment to the DDA deepened the affordable housing requirements by increasing the number of units set aside for extremely low income tenants, based upon the availability of City subsidies.<sup>83</sup>

### *Reporting, Monitoring and Enforcement*

Monitoring and enforcement were the responsibility of the SJRA. WPUSA and the community coalition monitored compliance with construction-related requirements during development and, on an ongoing basis, informally sought community feedback on aspects of the agreement.

### *Implementation*

The project was completed in 2009. According to WPUSA, the project was scaled back from three sites to two due to funding constraints. The plans for a hotel and a day care facility did not come to fruition. All other developer commitments were fulfilled.<sup>84</sup>

<sup>81</sup> A copy of the CBA is available at: [www.comptroller.nyc.gov/pba](http://www.comptroller.nyc.gov/pba).

<sup>82</sup> *Making Development Work for Local Residents: Local Hire Projects and Implementation Strategies that Serve low-Income Communities*, Kathleen Mulligan-Hansel, PhD, Partnership for Working Families (July 2008).

<sup>83</sup> A copy of the CBA is available at: [www.comptroller.nyc.gov/pba](http://www.comptroller.nyc.gov/pba).

<sup>84</sup> Email and telephone communications by Task Force staff with Sarah Muller, Director of Health Policy and Community Development at Working Partnerships USA, September 20, 2010.



## Recommendations of the Task Force on Public Benefit Agreements

### **Hollywood and Vine, Los Angeles, CA (2004)**

LAANE helped organize the Coalition and negotiate separate agreements with developers Legacy Partners and Gatehouse Capital concerning development of a 4.6 acre, \$326 million project at the corner of Hollywood and Vine in Los Angeles (one block from the Hollywood and Highland development discussed above).<sup>85</sup> The project was proposed to include a 300-room hotel, an estimated 500 housing units, 67,000 square feet of retail space and more than 1,000 parking spaces. The developers agreed to provide living wages for all of their direct employees, use a first source hiring program, set aside 20 percent of the units on site or 15 percent of the total units on site and on the Gatehouse portion of the mixed-use development as affordable, contribute \$100,000 for a career ladder training program in the culinary arts, provide \$500,000 for arts programs at Hollywood High School, and fund \$30,000 to sign up employees and neighbors for low cost healthcare. The hotel also reached a separate agreement with the hotel workers' union.<sup>86</sup>

#### *Reporting, Monitoring and Enforcement*

According to the community benefit agreement, the City, the CRA/LA, and the community coalition are intended third-party beneficiaries of any agreements concerning the project and may each enforce the agreements. The agreements allow for a request for injunctive relief with respect to performance of any terms. Except as specified, neither the CRA/LA nor the Coalition is entitled to monetary damages. The agreement is binding upon successors and the provisions of the agreements are covenants that run with the land.<sup>87</sup>

#### *Implementation*

Seventy-eight affordable units have been built, and funds have been distributed for training and arts programs, and for outreach concerning low-cost healthcare. There are 350 living-wage jobs at the on-site hotel and approximately half of the jobs at a “Trader Joe” retail market are living wage jobs. The developer hired a staff person to implement the local hiring program.<sup>88</sup>

### **LAX Airport Expansion, Los Angeles, CA (2004)**

After Los Angeles World Airports (LAWA) proposed an \$11 billion airport overhaul, a coalition of 22 community groups, environmental groups, and labor unions met with the airport officials over a ten month period to negotiate a CBA addressing a range of legal, policy and health-related concerns. In December 2004, the Los Angeles City Council approved the CBA, which provides more than \$500 million in community benefits.<sup>89</sup>

The CBA requires local hiring for all non-construction jobs other than those covered by collective bargaining agreements. These include baggage handling and other jobs on the tarmac as well as positions with approximately 300 retail and food service vendors and service contractors. In addition to provisions covering job training, first-source hiring, and living-wage requirements, the CBA also devotes substantial resources toward mitigating the environmental impacts of the airport, including:

<sup>85</sup> Gatehouse Capital was the hotel developer and Legacy Partners developed most of the retail and housing square footage. Each agreement has two parts: a main CBA, and a contractor and tenant attachment covering local hire requirements which developers secure from their tenants and contractors. Email correspondence from Roxana Tynan, LAANE Deputy Director to Task Force staff, September 20, 2010.

<sup>86</sup> The information was provided by Roxana Tynan, Deputy Director, LAANE, in a telephone conversation with Task Force staff, September 21, 2010.

<sup>87</sup> A copy of the Legacy Partners and Gatehouse Capital CBAs is available at: [www.comptroller.nyc.gov/pba](http://www.comptroller.nyc.gov/pba).

<sup>88</sup> The information was provided by Roxana Tynan, Deputy Director, LAANE, in a telephone conversation with Task Force staff, September 21, 2010.

<sup>89</sup> A copy of the CBA is available at: [www.comptroller.nyc.gov/pba](http://www.comptroller.nyc.gov/pba).



## Recommendations of the Task Force on Public Benefit Agreements

- more than \$8.5 million annually for noise mitigation of local schools, City buildings, places of worship and homes;
- economic development benefits;
- community air quality and health studies;
- air quality measures and emission reductions controls, such as electrification of passenger gates and cargo areas to reduce the need for engine idling and the conversion of airport vehicles to alternative fuels; and
- environmental mitigation measures related to construction.

### *Reporting, Monitoring and Enforcement*

The CBA is part of a larger package that also includes a Cooperation Agreement setting out the legal framework of the Agreement, including conditions, commitments, obligations, and enforcement; it also includes a settlement agreement with the two neighboring school districts. Local hire requirements are incorporated into all airport contracts, lease agreements, and licensing or permitting agreements and are applied to renewals as existing agreements expire, thus ensuring that successor contractors and tenants of the airport are held to its terms.

### *Implementation*

Implementation of the LAX Agreement began in October 2006. Subsequent to the execution of the CBA, a coalition of local municipal governments and civic groups that had not been a part of the negotiations sued to stop the LAX expansion.<sup>90</sup> Irrespective of the lawsuit, the Master Plan for the expansion was shelved in late-2005 and only a modernization of the airport runways is proceeding. The CBA is in effect for that part of the project.

All noise mitigation measures are being implemented; 2000 homes in the airport's flight path have been sound-proofed and, in summer 2010, LAWA sent the first portion of a \$200 million overall commitment to the first of two local school districts for soundproofing. In addition, 100 percent of the gates have been electrified to eliminate pollution from diesel engines and most airport equipment has been switched over to lower-emission energy sources. LAWA has provided \$15 million for job training. The money has not been spent, however, because of a dispute over which positions will be eligible for the funding.

The air quality and health impact studies have not yet been undertaken.<sup>91</sup>

### **Broadcast Center Partners – Shaw District, Washington D.C. (2005)**

In 2005, One DC, a community organization based in the predominately low-income Shaw neighborhood negotiated a CBA with the National Capital Revitalization Corporation (NCRC), a development corporation created by the City government to redevelop the City's abandoned and vacant properties, and Broadcast Center Partners, LLC, a private developer selected by NCRC to develop a large mixed-use project consisting of approximately 100,000 square feet of commercial office space for Radio One,

<sup>90</sup> *Implementation and the Unpredictability of Government Planning*, available at [http://www.westernjustice.org/Pdf\\_files/Collaborative\\_Politics\\_in\\_Action.pdf](http://www.westernjustice.org/Pdf_files/Collaborative_Politics_in_Action.pdf). Plaintiffs included Culver City and the City of Inglewood as well as a homeowners alliance that had complained about being excluded from the LAX coalition.

<sup>91</sup> The information was provided by Roxana Tynan, Deputy Director, LAANE, in a telephone conversation with Task Force staff, September 21, 2010.





## Recommendations of the Task Force on Public Benefit Agreements

25,000 square feet of retail space and 200 condominium units. The terms of the initial agreement provided for job training, employment opportunities, local business space, a community development fund and a set-aside of affordable housing.

In 2007, the CBA was amended to reflect the changing real estate market. The condominium units were converted to rental housing with at least 25 percent of the units designed to be affordable to households with incomes ranging from 31 percent to 120 percent of the area median income.<sup>92</sup> The developer and lead tenant subsequently dropped out and the project is now known as the UNCF (United Negro College Fund) Headquarters Project.

### *Reporting, Monitoring and Enforcement*

The agreement specifically disclaims any obligations on the part of the anchor tenant and fails to specify the duties and obligations of the contracting parties. The agreement further lacks explicit schedules, procedures, or benchmarks for measuring performance or fulfillment of promises. The NCRC was a party to the agreement to ensure enforcement by the City, but was disbanded after the election of a new Mayor, and the City regained the subject site. Although the community coalition was able to secure a commitment from the new administration to abide by the CBA, the agreement does not bind any successor developer to its terms.

### *Implementation*

As of September 2010, construction had not yet begun.

### **Yale-New Haven Hospital Development Agreement, New Haven, CT (2006)**

A coalition of 22 community groups, faith-based organizations and local unions represented by Connecticut Center for a New Economy (CCNE) and Community Organized for Responsible Development (CORD) identified impacts and negotiated an oral community benefits agreement in conjunction with Yale University's planned construction of a new cancer center. Terms reflecting these concerns were incorporated into the development agreement between the City of New Haven and the University. The agreement required Yale to:

- contribute \$1.2 million for housing and economic development in the neighborhood surrounding the center and to make voluntary tax payments to the City for a period of 5 years;
- provide at least \$500,000 to establish career ladder programs to allow Yale New Haven employees employed in entry level non-healthcare positions and 100 nearby residents to enter the healthcare field;
- provide an additional \$500,000 to expand its existing career ladder training to serve an additional 50 City residents employed at the hospital as nurses;
- hire 100 New Haven residents annually for a period of five years commencing in 2006;
- fund an asthma outreach coordinator, an uninsured children's outreach coordinator, and contribute at least \$500,000 over five years to the Mayor's Youth Initiative; and
- make specified traffic and parking improvements.<sup>93</sup>

<sup>92</sup> The amended Shaw District CBA is available at: [www.comptroller.nyc.gov/pba](http://www.comptroller.nyc.gov/pba).

<sup>93</sup> A copy of the final development agreement is available at: [www.comptroller.nyc.gov/pba](http://www.comptroller.nyc.gov/pba).



## Recommendations of the Task Force on Public Benefit Agreements

### *Reporting, Monitoring and Enforcement*

The Center was completed in fall 2009. Yale University is supposed to report annually to the City of New Haven on compliance with the career ladder programs, including data on enrollment, salaries, promotions, and hiring. The agreement contains a provision for a dispute resolution process in the event that a party alleges default in the agreement.

### *Implementation*

Funding for the asthma coordinator and uninsured children's outreach coordinator positions was provided<sup>94</sup> but money pledged to a community college for job training was nine months late. CORD has petitioned the City of New Haven to enforce the hiring provisions of the CBA.

### **Christina Avenue Composting Facility, Wilmington, DE (2008)**

The first CBA in the state of Delaware was negotiated by a 14-member community coalition<sup>95</sup> led by the Southbridge Civic Association and Neighborhood House Inc. with the developer of the Wilmington Organic Recycling Center, an 18,000 square foot, state-of-the art organic waste composting facility on a 27-acre site in a largely low-income neighborhood.

The agreement committed the developer to a 20 percent goal for minority and local hiring and required that local residents be notified of openings after the project is completed.<sup>96</sup> The developer also agreed to bypass residential areas to the greatest extent possible, to operate a 24-hour hotline where residents can report complaints about truck traffic or odors, and to provide up to 1,000 tons of compost to community groups and residents.

### *Reporting, Monitoring and Enforcement*

The agreement specifies no reporting requirements. In the event of an alleged default, written notice is required to the allegedly defaulting party. A meeting to resolve the dispute is to take place within 20 days of the notice receipt. If the parties cannot achieve a resolution within 15 days of the first meeting, the aggrieved party may select one of three possible remedies: mediation, binding arbitration, or litigation. The parties agree that injunctive relief ordering specific performance is the only remedy if a court finds the party to be in default.

### *Implementation*

The facility opened on December 1, 2009. According to Nelson Widell, a partner in Peninsula Compost, LLC, the company has met or exceeded the 20 percent minority and local hiring requirements and made free compost available to the community.<sup>97</sup> Marvin Thomas of the

<sup>94</sup> Information on implementation was provided by Andrea van den Heever, former President of Connecticut Center for a New Economy, in an interview on September 8, 2010 with Task Force staff.

<sup>95</sup> Other members included the Henrietta Johnson Medical Center, Global Solutions, New Millennium CDC, Be Ready CDC, Southbridge Residence Council, Wilmington Housing Authority, Labor Union Local 199, International Longshoreman Association, Martin Luther King Center, New Calvary Baptist Church, and Mt. Joy Methodist Church.

<sup>96</sup> The CBA is available at [www.comptroller.nyc.gov/pba](http://www.comptroller.nyc.gov/pba).

<sup>97</sup> Telephone conversation with Nelson Widell and Task Force staff, September 16, 2010.



## Recommendations of the Task Force on Public Benefit Agreements

Southbridge Civic Association confirmed that the hotline is operational, and reported that community residents have requested the number from his organization.<sup>98</sup>

### **Longfellow Station, Minneapolis, MN (2008)**

The Longfellow Station project involves the redevelopment of a former Purina factory into a sustainable mixed-use transit-oriented development. The project is located adjacent to a light rail line and will feature green roofs and onsite storm water retention. A CBA negotiated by the Longfellow Community Council (LCC) and developer Capital Growth Real Estate required 30 to 60 percent of the housing units be affordable, a first month free transit pass with each residential rental, green building certification, and compliance with the City's policies on prevailing wages, living wages, MWBE contracting, apprenticeship training and accessibility-- standards that would otherwise not apply to a project that was not City assisted.<sup>99</sup> The developer also agreed to give preference in space leasing to small grocery stores, retail, healthcare, restaurants and cafes, small hotels, music/entertainment venues, offices, and light manufacturers. Local and regional businesses were to be given priority over national chains. At least 10 percent of the floor area must be reserved for "community based small businesses" and national retailers are limited to 70 percent of the commercial floor area. The maximum allowable square footage for any single commercial/retail space is 30,000 square feet.

#### *Reporting, Monitoring and Enforcement*

The developer is required to provide the implementation committee with regular updates related to the design and construction of the project. The agreement includes a 60-day right to cure. In the case of alleged default, remedies include mediation or legal action. All relevant requirements are imposed upon subcontractors and LCC is an intended third party beneficiary with enforcement rights. All parties are required to provide records or information needed to monitor compliance with the CBA.

#### *Implementation:*

Site preparation did not begin until June 2010 due to changes in the national economy, which delayed the project and required its modification. A retail component was reduced from 40,000 square feet to 10,000 square feet and the number and affordability of the projected housing units was also cut back. The development now consists of 196 housing units, of which 74 are affordable. Forty units will be offered to families earning \$40,450 or less and 34 units will be available for families earning \$48,540 or less. Implementation of the CBA is the responsibility of a committee composed of staff from the Longfellow Community Council and the developer as well as a representative selected by each.

### **Minneapolis Digital Inclusion, Minneapolis, MN (2008)**

An agreement developed by a 20-member coalition composed of community-based organizations and information technology experts in connection with the creation of a citywide Wi-Fi network is designed to make the City's internet service more accessible to low-income residents.<sup>100</sup> As a result, the City

<sup>98</sup> Based on email correspondence from Marvin Thomas to Task Force staff, September 21, 2010.

<sup>99</sup> The Longfellow Station CBA is available at [www.comptroller.nyc.gov/pba](http://www.comptroller.nyc.gov/pba).

<sup>100</sup> Based on email correspondence from Catherine Settanni, Founder of Digital Access on September 14 and 15, 2010. Additional information is available from <http://www.ci.minneapolis.mn.us/council/2006-meetings/20060901/Docs/WirelessBroadbandTermSheet.pdf>; the website of the Digital Access Project at <http://www.digitalaccess.org/>; at <http://digitalaccessproject.blogspot.com/>; [http://www.digitalaccess.org/documents/wireless\\_contract.pdf](http://www.digitalaccess.org/documents/wireless_contract.pdf) and <http://www.ci.minneapolis.mn.us/wirelessminneapolis/>



## Recommendations of the Task Force on Public Benefit Agreements

Council authorized the formation of a 35-member Digital Inclusion Task Force<sup>101</sup> to assess the community's digital needs and to incorporate the results of the assessment into the Wi-Fi proposal. Ultimately, the City amended its request for vendor proposals to require internet providers to address the digital divide and the Minneapolis City Council voted to adopt contract terms that provide for more than \$11 million in digital inclusion funding over the next seven to ten years. The agreement between vendor USI Wireless and the City of Minneapolis is a hybrid of common CBA elements and municipal cable franchise agreements and provides the following community benefits:

- \$500,000 in upfront monies, five percent annually in ongoing pre-tax network revenues, and two percent of additional profits from adjacent community contracts to a new digital inclusion fund;
- subsidized services to over 100 Community Technology Centers (CTCs) and vouchers for trial accounts to CTCs to distribute to volunteers;
- a free "walled garden" of content, available to everyone who can access the signal, that includes neighborhood portal pages, city websites, and public safety information;
- 100 percent of portal page advertising revenue will be directed to the digital inclusion fund;
- a content management system and community server for use by neighborhoods and community groups; and
- a guarantee of network neutrality.

### *Reporting, Monitoring and Enforcement*

There is no independent agreement between the vendor and the community coalition and neither the community coalition nor the task force has assumed a vigorous and consistent oversight role. Therefore sole responsibility for monitoring and enforcement lies with the City of Minneapolis. The contract contains no specific schedules, procedures or benchmarks for delivery of the benefit provisions, or reporting requirements.

### *Implementation*

The City appointed the Minneapolis Foundation to administer the digital inclusion fund, and the City is responsible for implementing the remainder of the terms with its existing resources. No specific City agency was made responsible for enforcement or management of CBA benefits, although the City's communications and community engagement offices have ensured that initial cash payments were made by the vendor, the portal page is operative and free accounts have been distributed.<sup>102</sup>

### **Penguins Arena – Hill District, Pittsburgh, PA (2008)**

An agreement was negotiated over the course of a year by the One Hill Neighborhood Coalition, Pittsburgh United, the Pittsburgh Penguins, the Pittsburgh Sports and Exhibition Authority (SEA), the Pittsburgh Urban Redevelopment Authority (URA), the City of Pittsburgh and Allegheny County in

<sup>101</sup> The digital inclusion task force included community based organizations, schools, libraries, institutions of higher education, technology-focused foundations, and members of the community coalition.

<sup>102</sup> Based on email correspondence from Catherine Settanni, Founder of Digital Access on September 15, 2010.



## Recommendations of the Task Force on Public Benefit Agreements

connection with the publicly financed development of a new Penguins Arena and the surrounding 28-acre site. The \$8.3 million agreement addresses a range of employment, planning and social service needs in the Hill District of Pittsburgh.<sup>103</sup>

### Employment-related commitments:

- Joint funding by the City and County of \$150,000 per year for two years for a First Source Employment Center to facilitate hiring of neighborhood residents and an agreement by the Penguins to give Hill District residents first priority for newly created jobs; and
- Agreement by the Penguins to create jobs at wages of \$12 to \$30 per hour plus benefits and to honor union neutrality.

### Planning-related commitments:

- Funding by the URA for drafting of a Master Development Plan that would be used by the City and the County to guide future development of the Hill District;
- Agreement by the Penguins that the Club's development plans will be consistent with the principles outlined in the Master Plan and that One Hill will be provided with copies of all development plans before they are submitted for public approval; and
- Commitment by the Penguins to contribute \$1 million (matched by the City's Urban Redevelopment Authority) for a supermarket in the affected neighborhood and to structure the contribution such that it leverages additional development and predevelopment funds.

### Social Services and Health-Related commitments:

- Agreement by the County to conduct a two-year assessment of social services in the Hill District, to identify and prioritize needs. The needs assessment will be used to create new initiatives and/or improving the quality of existing programs and services;
- Assistance by the City, County and URA to the Pittsburgh YMCA to develop and sustain a multi-purpose center for youth, families and seniors;
- Payment by the City, County and URA of \$500,000 per year for six to 12 years to support community and economic development, education and youth services, preservation and green spaces and drug, alcohol and mental health services in the Hill District (Neighborhood Partnership Program); and
- Commitment by SEA, City and County to strictly enforce ordinances, regulations and laws controlling diesel fuel emissions.

### *Reporting, Monitoring and Enforcement*

The Penguins and the developer agree to report on progress made toward hiring neighborhood residents and meeting MBE/WBE contracting goals and hiring Hill District residents. The agreement provides for a 60-day right to cure after notice of an alleged default. If the parties

<sup>103</sup> The Penguin – Hill District CBA is available at [www.comptroller.nyc.gov/pba](http://www.comptroller.nyc.gov/pba).



## Recommendations of the Task Force on Public Benefit Agreements

are unable to resolve the alleged default through meetings, any party may request mediation of the dispute at its own expense. After exhaustion of the 60-day cure period, the party alleging default may pursue legal action seeking specific performance of the agreement. The parties agree that the court shall have the power to order equitable/injunctive relief.

### *Implementation*

The Hill District First Source Employment Center is operating, as well as the Neighborhood Partnership Program. In July 2010, it was announced that a 29,500 square foot full-service supermarket would open on City-owned land in late 2011. Construction documents for the YMCA were completed in March 2010 and construction is expected to begin on the YMCA in fall 2010. The master plan was not completed by the February 19, 2010 deadline.

### **SugarHouse Casino, Philadelphia, PA (2008)**

SugarHouse Casino is a 1.3 million square foot gaming complex under construction on a 22-acre site formerly occupied by the Jack Frost Sugar Refinery. Phase I, estimated at \$550 million, includes a casino with 3,000 slot machines, retail and dining outlets, and a 3,000 car garage. Future project phases include a 500-room hotel and 30,000 square foot conference center, and expanded dining and retail facilities. The casino opened on September 23, 2010.

Under a CBA negotiated between local organizations Fishtown Action, the New Kensington CDC and HSP Gaming, SugarHouse agreed to provide \$175,000 annually between the project's approval and its opening and \$1 million annually for fifteen years to a newly created tax exempt organization for administration of community programs (referred to a "Special Services District" or "SSD").<sup>104</sup> Other CBA terms include:

- Establishment of a public complaint hotline for residents;
- Use of union labor for construction of the first construction phase and an agreement on a policy of union neutrality;
- Creation of an internship and job training program and job counseling by SugarHouse; and
- Good faith efforts to hire local vendors, contractors and suppliers.

### *Reporting, Monitoring and Enforcement*

The SSD is controlled by a seven-member board of directors who serve without compensation and may not hold public offices. These board members are elected by residents of the neighborhoods surrounding the project. There is also a nonvoting advisory board composed of local officials. The agreement provides no guidelines for expending the developer's contribution and is explicitly not enforceable by the signatories.<sup>105</sup> If SugarHouse decided not to make its annual payments, the organization created under the CBA would have to take legal action.

<sup>104</sup> The SugarHouse CBA is available at [www.comptroller.nyc.gov/pba](http://www.comptroller.nyc.gov/pba).

<sup>105</sup> The existence of a genuine SSD would require action by the State Legislature and the City Council. Such an SSD would have much broader powers than the SugarHouse SSD, including the ability to place a lien against a business that does not make its required contributions.



## Recommendations of the Task Force on Public Benefit Agreements

### *Implementation*

The first check for \$175,000 was paid out in October 2009.<sup>106</sup>

#### **Bayview-Hunters Point, San Francisco, CA (2008)**

Lennar Corporation proposes to build an \$8 billion, 3.6 million square foot mixed-use development project with 10,000 residential units, 3.5 million square feet of commercial space, 800,000 square feet of retail space, a sports and performance arena, 320 acres of park and open space, including restored wetlands and seven miles of waterfront walkways, and a potential new stadium for the 49ers football team on a 721-acre former shipyard site.<sup>107</sup> In May 2008, the San Francisco Labor Council, the Association of Communities Organizations for Reform Now (ACORN), and the San Francisco Organizing Project executed a CBA.<sup>108</sup>

The CBA anticipates that the parties will continue to work with the Hunters Point Shipyard Citizen's Advisory Committee and the Bayview-Hunters Point Project Area Committee, the Redevelopment Agency of the City and County of San Francisco and the City to advocate for the inclusion of the commitments of the CBA in the Term Sheet, the DDA and other operative agreements related to the development of the project. Under the CBA, the developer would:

- ensure that 32% of housing units built within the project are affordable at a range of specified income levels<sup>109</sup>;
- provide over \$27 million in housing assistance funds targeted to neighborhood residents, including down payment assistance;
- provide over \$8.5 million in job training funds targeted to neighborhood residents;
- ensure all project employers participate in the specified local hiring program;
- ensure project employers comply with San Francisco's City card check policy, as applicable, so that workers have the right to unionize; and
- renovate a deteriorated public housing development.

### *Reporting, Monitoring and Enforcement*

The developer or its successors is required to ensure compliance with relevant requirements by contracted entities that are not parties to the CBA if needed to carry out the terms of the agreement and to acknowledge that the Lead Organizations, the City and the Redevelopment Agency are intended third party beneficiaries with enforcement rights. The Developer is required to provide evidence of compliance with the terms of the agreement. The agreement provides for a 60-day cure period, binding arbitration and/or legal action. Monetary damages are not available as a remedy.

<sup>106</sup> "SugarHouse Money to be Doled Out," Ronnie Polaneczky, *Philadelphia Daily News* (January 15, 2010) available at [http://www.philly.com/philly/blogs/what\\_happened/\\_sugarhouse\\_money\\_to\\_be\\_doled\\_...](http://www.philly.com/philly/blogs/what_happened/_sugarhouse_money_to_be_doled_...)

<sup>107</sup> "San Francisco Supervisors Approve Hunters Point EIR," J.K.Dineen, *SF Business Times*, (July 14, 2010) available at <http://sanfrancisco.bizjournals.com/sanfrancisco/stories/2010/07/12/daily32.html>

<sup>108</sup> The Bayview-Hunters Point CBA is available at [www.comptroller.nyc.gov/pba](http://www.comptroller.nyc.gov/pba).

<sup>109</sup> 1600 units will be rental units reserved for households whose income is equal to or less than 60% of the area median income of \$64,267 for a family of four.





## Recommendations of the Task Force on Public Benefit Agreements

### *Implementation*

The CBA calls for the creation of an Implementation Committee by the developer and the three lead organizations to establish processes and priorities for the expenditures of the Workforce Development and Housing Funds, which will be held by a mutually-agreed upon foundation. The San Francisco Board of Supervisors voted to approve the environmental review on July 14, 2010. Home construction is projected to begin in 2010.



## Recommendations of the Task Force on Public Benefit Agreements

### Appendix C: New York City Land Use Approvals

During the period from 2006 to 2009, the Department of City Planning certified 1,000 land use applications. As indicated below, these applications included a rezoning which permitted the addition of more than 500,000 square feet of floor area, and six development plans, comprehensive rezonings and special districts exceeding 27 acres.

#### APPROVALS PERMITTING FLOOR AREA INCREASES OF 500,000 S.F. OR MORE (2006-2009):

Applicant	Project	Address Block/Lot	Lot Area	Permitted Zoning & Floor Area	Approved Zoning & Floor Area Ratio	Net Additional Floor Area	City Council Approval
East River Realty Company	Con Edison Site	Zoning Lot A (685 First Avenue), Manhattan.	80,677 s.f.	C1-9 (FAR of 10) 806,770 s.f.	C5-2 (FAR of 10)	1,418,421 s.f.	3/26/08
		Parcel B (708 First Avenue), Manhattan.	277,145 s.f.	M3-2 (max. FAR of 2.0) 544,290 s.f.	2,759,481 s.f.		

#### APPROVALS OF DEVELOPMENT PLANS AND SPECIAL DISTRICTS EXCEEDING 27 ACRES (2006-2009):

Project	Location	Existing Zoning	Approved Zoning and Floor Area Ratio	City Council Approval
Special Hudson Yards District	25-block area bounded generally by 11 <sup>th</sup> Avenue, 41 <sup>st</sup> Street, 8 <sup>th</sup> Avenue and 31 <sup>st</sup> Street	M2-3	C6-4 and establishment of Special District to permit mixed-use development with approximately 5,000 DU, commercial, retail and community facility uses and 5.45 acres of open space.	12/21/09
Coney Island Comprehensive Rezoning Plan	19-block area bounded by the Aquarium, W. 24 <sup>th</sup> Street, the Boardwalk and Mermaid Avenue, Brooklyn.	14 blocks and portions of 3 blocks zoned C7 (2.0 FAR); 2 blocks and portions of 3 blocks zoned  R6/ C1-2 (FAR of 2.43)	Coney East Subdistrict: FAR of 2.6 to 4.5; Coney West Subdistrict: Max. FAR of 5.8	7/29/09
Willeys Point Development Plan	Site is a triangular 61-acre area bounded on the north by Northern Boulevard, on the west by 126 <sup>th</sup> Street and on the south by Willeys Point Road.	M3-1 and R3-2, Max. FAR of 2.0 is permitted	C4-4, Max FAR of 3.4 is permitted. Proposed development plan contemplates: 5,500 DU, 1.7 million s.f. of retail, 500,000 s.f. of commercial space, and a school.	11/13/08

Continued on the next page.



## Recommendations of the Task Force on Public Benefit Agreements

Project	Location	Existing Zoning	Approved Zoning and Floor Area Ratio	City Council Approval
Special Hunts Point District	70 blocks in the Hunts Point Peninsula within the area bounded by the East River, Bronx River and Bruckner Expressway	M1-2, M2-1 and M3-1, Max. FAR of 2.0 is permitted	M1-2 , Max. FAR of 2.0 is permitted. New zoning prevents development of heavy manufacturing uses.	7/23/08
Special Manhattanville Mixed Use District	35-block area located generally within West 135 <sup>th</sup> Street on the north, West 125 <sup>th</sup> Street on the south, the pierhead line on the west and Broadway on the east.	M1-2, M2-3, and M3-1  Max. FAR of 2.0 is permitted	C6-1, C6-2, R8A  For proposed development of 17-acre academic mixed-use development of approximately 6.8 million s.f.	12/19/07
Special Downtown Jamaica District	368 blocks block area generally bounded by the Van Wyck Expressway on the west, Highland Avenue/ 87 <sup>th</sup> Road on the north, Farmer's Boulevard on the east and 108 <sup>th</sup> Road on the south		C6-2 and C6-3 districts Downtown building bulks of up to 12.0 FAR concentrates higher densities along the transit infrastructure: from the AirTrain/LIRR Jamaica Station on the west to 168th Street and Jamaica Avenue to the east.	9/10/07
Special Stapleton Waterfront District	35+ acre Homeport Site running east from the State Island rapid Transit eight-of-way, west from the pierhead line from a point 560-feet south of Hannah Street to Greenfield Avenue	M2-1 and M3-1	C4-2A; Max. commercial FAR of 3.0 (R6A equivalent)	10/25/06



## Appendix D: New York City Subsidized Development 2006-2009

### DEVELOPMENTS WITH SUBSIDIZED FUNDING IN EXCESS OF \$75 MILLION

Project Name	Location	Block/Lot	Subsidies	Total <sup>110</sup>
Yankee Stadium Garage	"Site A," Bronx	2499/100	Not-For-Profit Bond Financing	\$237,635,000
Yankee Stadium	1 East 161 <sup>st</sup> Street, Bronx,	2493/1	Commercial Growth Project	\$1,201,554,944
Polytechnic University	5 and 6 Metrotech Center, Brooklyn	142/1	Not-For-Profit Bond Financing	\$103,700,000
ARE East River Science Park	East 28 <sup>th</sup> to East 30 <sup>th</sup> St. and First Avenue, Manhattan	962/99	Industrial Incentive	\$ 556,389,672
Mets Stadium	123-01 Roosevelt Ave., Queens	1787/20	Commercial Growth Project	\$650,267,088
New York Law School	40 Leonard Street, Manhattan	176/18	Not-For-Profit Bond Financing	\$135,000,000

<sup>110</sup> This does not include any property pilot savings, mortgage recording tax exemptions, sales tax exemptions, or energy tax savings inuring to the project.