



## NEGOTIATING COMMUNITY BENEFITS AGREEMENTS An Overview of the Legal Issues

Community Benefit Agreements (CBAs) have increased in popularity in the last several years due to the boom in development in New York City. A CBA “is a legally binding contract (or set of related contracts), setting forth a range of community benefits regarding a development project, and resulting from substantial community involvement.”<sup>1</sup> These agreements are generally (but not always) negotiated between a developer and coalition of community groups from the affected area. As you might imagine, creating a CBA is a complex transaction that may span several years. The following is a description of the legal and practical steps to be taken in coordinating for the execution of a CBA, along with an identification of potential issues.

The following is a general outlay of the work necessary to successfully put a CBA in place. Although it is roughly chronological, it is not a rigidly ordered sequence.

### Solidify Your Coalition

The first step towards successfully negotiating a CBA is constructing the coalition which will negotiate it. There are numerous issues to determine and document in forming the group. For example:

- Which groups will comprise your coalition?
- How will new groups be admitted to the coalition (e.g. by application)?
- How/why groups can be expelled from the coalition (e.g. by vote if groups are found to be negotiating side agreements with developer)?
- Who speaks for the coalition?
- How will the coalition secure funds to complete its work (e.g. by collecting dues from the coalition members)?
- Will the coalition act as an unincorporated association or an entity?

### Identify Where You Have Leverage

Identify the type of project the developer is trying to build (e.g., housing development, commercial development, mixed use development) and the legal steps required. Examining the process can reveal potential pressure points. For instance, in New York City a proposed real estate development project must often first undergo a thorough vetting process known as the Unified Land Use Review Procedure (ULURP). ULURP requires approvals from various local government actors including the relevant Community Board and Borough President, the

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<sup>1</sup> Julian Gross, *Community Benefits Agreements: Definitions, Value, and Legal Enforceability*, JOURN. OF AFF. HOUS. (Vol. 17:1–2 Fall 2007/Winter 2008) 37, available at [http://juliangross.net/docs/CBA\\_Definitions\\_Values\\_Enforceability.pdf](http://juliangross.net/docs/CBA_Definitions_Values_Enforceability.pdf)

City Planning Commission, the City Council, and the Mayor. This process presents an opportunity for community coalitions to apply pressure. *However*, if your coalition has incorporated as a nonprofit, be sure to keep lobbying and advocacy laws in mind.

#### Determine Your Desired “Ask” from the Developer/Project

What exactly is your group asking for? What are the desired outcomes? For example, for the developer to agree to provide money for job training programs or community facilities, to build in a commitment to hiring locally in its construction contracts or commercial leases, or to provide some other benefit as determined by the needs of your community. If the project includes significant government involvements, attempt to get the relevant agencies involved. Ideally your “ask” could be included in requests for proposals (RFPs) from those agencies so that developers are fully aware of what is required of them.

#### Consider The Potential Role of Labor and Unions in Your Goals and Coalition

The interaction of the CBA with union and labor documents such as the project labor agreement, the labor peace agreement, and other labor “asks” is incredibly important. Be sure the CBA is consistent with any labor agreements that exist. In some instances, the developer will negotiate directly with a union on labor issues, which may foreclose an opportunity for the community coalition to make headway on local hiring and workforce development goals.

#### Draft an Agreement

Once your coalition is assembled and its primary asks are determined, it is time to draft your agreement. This will usually be done by your coalition’s counsel. The aim should be to get the first draft of the agreement to the developer as soon as possible because negotiation may take a while and an uncooperative developer may stall on the CBA while it secures approvals needed to complete the development.

#### Build Support For the “Ask” In the Broader Community Outside the Coalition

Use community organizing and public relations tools to spread the word and generate broader interest in the coalition’s desired outcome. For maximum reach use as many avenues of communication as possible, including social media, television news, or written journalism.

#### Negotiate Terms of the CBA with the Developers and Execute the Agreement

Your initial draft of the CBA will likely go through several rounds of negotiation and changes. Once all major issues are agreed on between all major parties, finalize the CBA’s terms. Be especially careful to clarify how money, if any, from the developer will be allocated. It might make sense to form a special purpose vehicle (SPV) to protect the money from creditors of the community groups comprising your coalition. If a special purpose vehicle is not used, then the CBA must be clear about which organization(s) receive(s)

money as well as has authority to spend the money. As much as possible, ensure that the CBA reflects a binding agreement between the developer and your community coalition and that the obligations of the developer flow through to other relevant parties (such as general and subcontractors as well as commercial tenants).

#### Enforce the Agreement, As Applicable

Remain vigilant after your CBA is signed to make sure that the terms you've agreed upon are being met. Although ideally all parties will comply fully with their obligations, your coalition may have to generate pressure.

#### ***Discrete Legal Tasks and Needed Expertise***

To draft your CBA, seek counsel with expertise in:

- Land use issues
- Lobbying limitations
- Labor law
- Corporate law, e.g., coalition organizing—entity formation and governance
- Contracts, e.g., drafting the CBA and ensuring integration with labor peace agreement and project labor agreements

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