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DATE: July 20, 2005
TO: Working Group for a DIFT CBA
FROM: Katy Locker
Director of Policy Projects
RE: Recommended Process for Establishing a Community Benefits Agreement

At your request, I have surveyed the literature on community benefits agreements (CBAs) and I have begun conversations with some of the organizers and attorneys associated with successful CBAs in other parts of the country. I have attempted to identify "best practices" and "lessons learned" in order to be able to recommend an approach for the groups in Southwest Detroit to take as they embark upon the DIFT CBA. Where possible, I have drawn on my experience with Southwest Detroit community groups in order to tailor the approach to the realities of community organizing in Southwest Detroit.

Regardless of the process chosen by the Working Group, **the key element is unity of vision.** All community groups engaged in the DIFT CBA process must have a common understanding of the goal and the method of reaching that goal.

I describe below a possible method for approaching the development of the DIFT CBA. Obviously, changing circumstances and/or new information could change the approach.

Recruitment

The larger and more influential the coalition of community partners engaged in the negotiations for the CBA, the better chance the Coalition has in succeeding in (a) establishing a CBA, and (b) gaining significant community benefits.¹

Most coalitions that enter into CBAs are not incorporated as stand-alone nonprofits. Rather, they are simply groups of organizations and individuals working together. **The recommended approach is for each organizational member of the Coalition to sign the CBA on its own behalf.** (Individual persons who are Coalition members generally should not take on the legal benefits and burdens of a complex contract like a CBA.) This makes clear to each organization the legal reality that it must live up to the CBA's commitments. For this reason, it is appropriate to ask all organizations to demonstrate that they have board support for proceeding in good faith with a CBA approach.

Eventually, the Working Group must identify those who are willing to engage in CBA negotiations within a framework of collective vision and priorities. The establishment of a collective vision and the collective priorities must be done by those groups who are committed to engaging in good faith negotiation and to signing a CBA once an acceptable agreement is reached.

¹ I am assuming that the informal Working Group for a DIFT CBA will eventually establish a "Coalition" of named organizations.

Note that no group should at any time be considered obligated to sign the CBA – only to participate in the process in good faith.

Agreed Vision

Coincident with recruitment, the Working Group should begin to draft a “vision statement” for the Coalition so a shared vision for the CBA may be understood by all who join the Coalition. Such a vision for a DIFT CBA could include the rejection of a “no action” choice for the DIFT, a commitment to good faith negotiation, a commitment to prioritize community benefits based upon the collective decisionmaking of the Coalition members, etc. Once the Coalition is established, the Coalition should formally adopt a vision statement that can then be shared amongst the Coalition and with interested parties who will be observing the CBA process – MDOT, City leaders, County leaders, etc.

Meetings & Decisionmaking of the Coalition

Ongoing communication and inclusive opportunities to express priorities, preferences and concerns will be key to a successful CBA process. All meetings should be scheduled and publicized to Coalition members in advance – preferably with at least a two week notice so Coalition members can prioritize attendance. An agenda that clearly states the topics of discussion and decisions to be made at the upcoming meeting should be released in advance of any meeting. Any significant decisions of the Coalition (e.g., vision, priorities, priority elements) should be made over the course of at least two meetings so if a Coalition member is unable to attend one of the meetings, it will have an opportunity at the other meeting(s).

In order to stress the importance of meeting attendance and collective decisionmaking, a Coalition member who fails to attend a meeting should be assumed to agree with the actions taken at the meeting.

Establish CBA Priorities

The establishment of the Coalition’s CBA priorities is a critical element of the process. A carefully crafted set of facilitated meetings must be held to identify these priorities. Only Coalition members should be allowed to participate in the development of these priorities. These “Priorities” should be broad in order to establish the boundaries of the issues that will be a part of the CBA. Examples include: Infrastructure Improvement, Improved Traffic Flow, Environmental Issues, Community Services, Accountability and Community Involvement, Good Jobs, Affordable Housing, etc.

If a list of Priorities is established at one meeting those Priorities should be circulated in advance of the next meeting and an opportunity must be provided at the second meeting for additional discussion before the Coalition commits to the list of Priorities.

As stated above, once the Priorities are selected the Coalition should commit to those Priorities as the universe in which the CBA will be negotiated. The process has the potential to be bogged down in constant revisiting of issues if the Coalition is unwilling to commit to a strategy that will continually advance the discussion toward a defined set of goals for negotiation.

Once the Coalition has established a Vision and Priorities, the Coalition will have a tool for promoting the value of the CBA to a broader audience. There’s an excellent example of the use of such a promotion from the Milwaukee CBA. See: www.wisconsinsfuture.org/workingfamilies/econdev/GJLNbrochure.pdf

Define Priority Benefits

Once the Coalition agrees to a set of Priorities, the Coalition will likely need to break into subgroups to define the benefits desired within each Priority area. The information that these subgroups provide will be the basis for negotiation.

Organizations and individuals should be able to select which and how many subgroups they participate on. Failure to participate on a subgroup means that an organization is assumed to defer to the subgroup participants on that Priority – although the Coalition as a whole will later get an opportunity to review and consent to the results of each subgroup’s meetings. A chair or chairs should be selected by each subgroup so there is one person to call meetings of the subgroup and to be responsible for reporting back the results of the subgroup meetings.

The subgroup will need to describe the reason for the Priority, the needed benefit(s) within the Priority area, and any additional information necessary to assist the negotiators in discussing the Priority. For example, if a subgroup was handling the “Improved Infrastructure” Priority, the subgroup would: (a) provide a summary of the existing problems with infrastructure (e.g., roads flooding, potholes); (b) describe the desired infrastructure fixes and, if possible, the mechanism for those fixes (e.g., resurfacing of Main Road – provision of X dollars to Main Road Commission); and (c) attempt to weight the importance of each of the identified benefits desired within that Priority area.

There are examples available from a number of CBAs negotiated in other communities. Of note, the LAX CBA has provisions related to PM 2.5, Limits on Diesel Idling, Designated Truck Routes, Implementation Meetings, and Annual Progress Routes.

The subgroups will need to meet over a period time to flesh out the Benefits desired within their Priority area. Upon completion of each subgroup’s meetings, the subgroup should be asked to report back to the Coalition and the Coalition as a whole will need to consent to the desired Benefits identified by the subgroup.

Identify Negotiators

The Coalition will need to appoint a steering committee or negotiating team of workable size to conduct negotiations with MDOT. Trust and confidence are key elements of this appointment.

Inclusion of Legal Counsel

Because the CBA is an enforceable contract, legal counsel will have to become involved at some point in the negotiation process. Ideally the Coalition’s appointed negotiating team will lead the actual negotiations and the attorney will primarily serve to memorialize, in a legally enforceable manner, the substance of the agreement. It can be anticipated that MDOT will require its attorneys to be part of the negotiation. Therefore, the Coalition should be represented by an attorney at any time MDOT’s attorney(s) are present. When the Coalition is prepared for negotiations, Community Legal Resources will make every attempt to find a volunteer attorney to participate in the drafting of the CBA on behalf of the Coalition.

Each organizational member of the Coalition should involve their own legal counsel in the review of the CBA before the organization signs on to the CBA.

Negotiation

The Priorities and Priority Benefits established by the Coalition will be used to provide a framework for negotiations. At some point, the negotiating team will have to identify the “deal points” which will cause the Coalition to reject or accept a CBA.

Transparency is an important element of any CBA process. However, there must also be some level of trust built among the participating community groups as Priorities are established because negotiation inherently requires that “some cards are kept close to the vest.”

A good CBA will contain answers to the following questions:

- What commitments are being made by the Developer/MDOT and the Coalition’s members?
- What is the time frame for each commitment to be fulfilled?
- Who will monitor performance?
- How and when will information on performance be made available?
- What will happen if a commitment is not fulfilled?

It should be assumed that the negotiation will be an arduous and lengthy process and that the Coalition will likely not get all that it desires.

Commitment by All Parties

Time must be allowed for all parties to the CBA to go through their own internal approval process.

A community group should not sign a CBA unless (1) it believes that offering its public support in exchange for the negotiated community benefits is a good trade-off; and (2) it understands its commitments under the CBA and is willing and able to abide by them.

Incorporate Additional Government Entities

If the CBA is, as envisioned, an agreement between MDOT and the organizational members of the Coalition, the City of Detroit and Wayne County will not be parties to the agreement and therefore will not have enforcement rights. However, if the City or County incorporates the CBA into a land use or funding approval associated with the DIFT, the City or County would then have the legal right to enforce the provisions of the CBA. It is obviously desirable to have the significant legal teams of the County and City available as enforcement tools. Therefore, once a CBA is negotiated between MDOT and the members of the Coalition, the Coalition should consider a strategy to get that CBA incorporated into City and County approvals that may be associated with the DIFT.

Enforcement

A CBA is a legally binding contract, it can be enforced only by a party that has signed it. Every community group that signs the CBA will be entitled to force compliance with its provisions (and obligated to perform any community group obligations provided for in the CBA).

CBAs should contain some correction period, allowing each party a chance to correct problems once put on notice. In addition, CBAs should contain some dispute-resolution system, giving parties an ability to come together and work out solutions, thereby avoiding litigation. Court action or arbitration is an important last-resort enforcement option, however.

A good CBA will ensure the right to ask for a court order requiring the developer to honor commitments contained in the CBA.

Many CBAs provide for some form of an “oversight” or “implementation” or “advisory” committee to establish a regular meeting schedule to monitor implementation, receive updates, and discuss community concerns. Such a committee provides an ongoing, regular accountability mechanism. In between meetings with the developer/MDOT, various subcommittees of the Committee could work on specific implementation issues. In addition, the committee as a whole may convene prior to a meeting with the developer/MDOT, to update all members and prepare.

Organizations that bond together to win a CBA should understand that they will need to be working together for years in order to assure strong implementation of the benefits they obtained. Many community benefits require ongoing communication between community groups and the developer for a period of years after the opening of the development.