

PIKE PROJECT

Agreement

28171

This Agreement made as of March 13, 2003 sets forth the terms and conditions of the agreement between the City of Long Beach ("City"), represented in part by Keesal, Young & Logan, and Darrell D. Woods, Michelle Davis, and Centro Shalom, represented by the Legal Aid Foundation of Los Angeles and The Legal Aid Society-Employment Law Center (collectively, "Legal Aid") in order to achieve the goal of increasing job opportunities for Low Income residents within the City of Long Beach and Signal Hill.

I. Pike Project

Notwithstanding the City's position that Section 3 of the Housing and Urban Development Act of 1968, as amended ("Section 3") does not apply to the Pike Project, the City will take the following acts with respect to the Pike Project:

1. **On-Site Trailer-** Within ten (10) days of the date of this Agreement, the City will provide staff support at the DDR jobsite trailer for the duration of the project in order to encourage low and very low income ("Low Income") hiring, including:
 - a. 40 hours per week staffing.
 - b. Bilingual (Spanish and Khmer) staff representative 20 hours per week. 20 hours to be scheduled in manner that representative is present during hours when most Low Income inquiry activity is likely to occur. In addition, during those hours when a Spanish or Khmer speaking representative is not on site, such person will be available by telephone.
 - c. Referral to Workforce Development programs at Career Transition Center, Youth Opportunities Center, contractors, and construction Union Hall (when appropriate).

2. **Construction Management-** Within ten (10) days of the date of this Agreement, the City will use its best efforts to obtain from DDR/Snyder Langston/Bomel and their subcontractors (collectively, the "Contractors") workforce projections, lists of sub-contractors, and supplier needs in order to determine jobs and other opportunities resulting from Pike Project. During the duration of the Project, the City will enforce the existing contractual obligation of the Contractors to use good faith efforts to hire Low Income persons and their contractual obligation to report such Low Income hires (including income status, residency job classification and level, and date of hire) to the City. Within 5 days of the execution of the

agreement, the City will use its best efforts to urge each Contractor to ensure that all new hires complete a City provided form at the time of hire which details as to each new hire, the income status, the residence, the date of hire and the job classification and level. In addition, the City will use its best efforts throughout the construction of the project to encourage the Contractors to hire Low Income Long Beach and Signal Hill residents and to contract with Local Low-Income Businesses, as hereinafter defined, to the greatest extent feasible and will request in good faith the Contractors to provide hours worked and dates of employment for each new hire.

3. **Advertising and Outreach-** Within 10 days of the date of this Agreement, and continuing throughout the life of the construction of the Pike Project, the City will actively conduct outreach to Low Income Long Beach and Signal Hill residents and Local Low-Income Businesses, as hereinafter defined, to notify them of the potential employment, subcontracting, supplier needs and training opportunities. Such active outreach shall include:
- a. All information will be provided in three languages, English, Spanish, and Khmer.
 - b. Specific outreach will be made to residents of Carmelitos and Springdale, and Section 8 tenants in the City of Long Beach.
 - c. The City will conduct reasonable outreach at places where Low Income residents frequent, including churches, laundromats, and neighborhood markets.
 - d. The City of Long Beach will solicit from organizations likely to include or have knowledge of contractors and suppliers that are majority owned by Low Income residents, or 30 percent of whose full-time employees are Low Income residents ("Local Low-Income Businesses") the names and addresses of such businesses.
 - e. The City will provide DDR, Snyder Langston, Bomel and Legal Aid Foundation of Los Angeles with a list of City MBE/WBE/DBE businesses and the list of Local Low-Income Businesses, and encourage their use for procurement needs.
 - f. The City will notify all identified MBE/WBE/DBE businesses registered with the City of Long Beach, and all businesses identified on the list of Local Low-Income Businesses of the Pike Project and of the potential opportunity for contracts, and of the City's responsibility to encourage participation of such businesses in the project.
 - g. The City will post information at construction Union Halls whose members will be working on Pike Project.
 - h. As part of its implementation of items a. through g. above, the City shall use its best efforts to comply with Appendix to Part 135 of Title 24 of the Code of Federal Regulations: I. (Examples of Efforts to Offer Training and Employment Opportunities to Section 3 Residents) (3), (4), (5), (6), (7), (8), (9), (12), (13), (14) and (16) and II. (Examples of Efforts to Award Contracts to Section 3 Business Concerns) (3), (6),

(7), (8), (9), to the extent Business Concerns are identified on the list of Local Low Income Businesses, (10), (11), (12), (14) and (19).

4. **Expansion of Construction Training-** To further encourage Low Income hiring on the Pike Project, Workforce Development Bureau will expand its current construction training and employment program to assist Low Income residents through the following activities;
 - a. Actively recruiting residents of Carmelitos and Springdale, and Section 8 tenants as trainees.
 - b. Outreach and recruitment for training will be done in English, Spanish and Khmer.
 - c. Graduates of training will be referred to construction union halls and the City will pay associated dues/fees and provide such graduates with equipment and tools as reasonably necessary for work on the Pike Project.
 - d. The City will track its workforce program trainees to determine the successful placement on the Pike Project, including job classification and retention.
 - e. This training program will be consistent with the requirements of the United States Department of Labor.

5. **Work with WINTER (Women In Non-Traditional Employment Roles) –** Workforce Development will coordinate with WINTER for the placement of qualified participants into available jobs through the construction Union Halls.

6. **Reporting-** the City will provide monthly reports to Legal Aid Foundation of Los Angeles and the Monitoring Committee detailing the following:
 - a. Narrative description of advertising and outreach efforts for hiring and contracting.
 - b. Quantitative results- inquiries at worksite and referrals to Workforce Development One Stop Centers, including the Career Transition and Youth Opportunity Centers.
 - c. New Hire Reporting- by income and job category and, to the extent provided by the contractors to the City, residency, dates of employment, and hours worked.
 - d. Trainee tracking information specified in paragraph 4.d., above (excluding individual names due to privacy concerns).
 - e. Report of contracts provided to Local Low-Income Businesses, to the extent provided by the Contractors to the City, including the numbers of contracts, the type of contracts, and the dollar value of each contract to the extent provided by the Contractors. The City shall request in good faith that the Contractors provide the reports described in this Subsection 6.e.

- f. Narrative description of efforts made to obtain information from contractors and to encourage hiring and contracting, pursuant to paragraph 2, above.

7. **Monitoring.** The City's compliance with the items 1. through 6. forth above will be monitored by a five person committee (the "Monitoring Committee") made up of the following persons:

- a. 3 persons designated by Legal Aid Foundation of Los Angeles; and
- b. 2 persons designated by the City, neither of which shall be a City employee.

The Monitoring Committee will meet on a monthly basis for the duration of the project, but may meet more often if necessary. The City will provide the Monitoring Committee with meeting space and reasonable support services, such as clerical support and copying of necessary documents.

In the event the Monitoring Committee finds that the City has not complied with items 1. through 6. above, the Committee shall submit a written statement of its findings and recommendations to Judge Daniel Weinstein for final determination of the City's compliance. Judge Weinstein may ask for additional written submissions prior to ruling. Judge Weinstein's decision shall be in his sole discretion, and will be final. In the event Judge Weinstein concurs with the Committee, either in whole or in part, Judge Weinstein shall have only the following remedies at his disposal:

- a. order the City to provide further evidence of compliance;
- b. order the City to take specific steps which are consistent and not more expansive than the requirements set forth in items 1. through 6. above; and
- c. in addition to the remedies set forth in a. and b., order the City to provide additional compensatory project(s) which will be subject to Section 3 as outlined in Section II of this Term Sheet. The dollar value and timing of such additional project(s) shall be determined by Judge Weinstein.
- d. If Judge Weinstein determines that the remedies set forth in a., b., and c. are not sufficient under the circumstances, or that they are otherwise inadequate, he may order any other reasonable remedies appropriate under the circumstances that are consistent with, and not more expansive than, the terms of this agreement.

Any costs incurred in the implementation of this monitoring system, including any fees and expenses for Judge Weinstein, shall be paid by the City. Notwithstanding the preceding sentence, in the event Judge Weinstein denies a submission by the Monitoring Committee and further finds that the submission

was substantially caused by the bad faith actions of Legal Aid or any of their respective employees or agents, the party causing such bad faith submission shall be responsible for any fees and expenses of Judge Weinstein relating to such denied submission. Further, notwithstanding the prior two sentences, in the event Judge Weinstein denies a submission by the Monitoring Committee and further finds that the submission was substantially caused by the bad faith actions of employees or agents of Keesal, Young & Logan, Keesal, Young & Logan shall be responsible for any fees and expenses of Judge Weinstein relating to such denied submission. The mere fact that Legal Aid Foundation of Los Angeles nominated an individual to serve on the Monitoring Committee shall not make such person an agent of Legal Aid Foundation of Los Angeles for purposes of this paragraph.

In the event Judge Weinstein is no longer available to oversee this monitoring process, the City and Legal Aid Foundation of Los Angeles will expeditiously agree to designate a replacement adjudicator to fill the roll designated for Judge Weinstein in this agreement.

II. Additional Projects

In order to further the goal of increasing job opportunities for Low Income residents within the City of Long Beach, the City will require that the following additional projects be subject to Section 3, as it is in effect at the commencement of construction, and the City's Section 3 Plan, except that for purposes of the goals set forth in 24 CFR Part 135.20 and for these projects only, the goal shall be for Section 3 residents to comprise at least 30 percent of the new hire hours worked on each project.

1. The Proposed Additional Airport Parking Structure. The Proposed Additional Airport Parking Structure is a non-HUD-assisted project. The Proposed Additional Airport Parking Structure project is estimated to be approximately \$40 million in size.
2. The North Long Beach Library. The North Long Beach Library Project is a non-HUD-assisted project. The North Long Beach Library Project is estimated to be approximately \$7 million in size.
3. The Mark Twain/New Library. The Mark Twain/New Library Project is a non-HUD-assisted project. The Mark Twain/New Library Project is estimated to be approximately \$7 million in size.

In the event any of the projects listed above have not commenced, or will not commence, on or before July 1, 2006, the City is prohibited by law from applying the provisions of Section 3, or the City is otherwise required to meet low-income hiring or contracting requirements on any of the listed projects, the City agrees to substitute another non-HUD-assisted project of equal size (or projects which in the aggregate equal such size) which is scheduled to commence within two (2) years of such date.

The City's compliance with this part will be monitored by the Monitoring Committee. If the City and Legal Aid Foundation of Los Angeles have agreed on the structure of a Section 3 Oversight Committee prior to the commencement of construction of any additional project, the Oversight Committee shall serve as the Monitoring Committee for such project and any future projects. In the event the Monitoring Committee finds that the City has not complied with this article, the Committee shall submit a written statement of its findings and recommendations to Judge Weinstein for final determination of the City's compliance. Judge Weinstein's authority and the cost allocations shall be the same as specified in section I-7 of this agreement. Except to the extent a matter is within the scope of Judge Weinstein's review, nothing in this section shall preclude the ability of the parties to seek enforcement of the agreement in Superior Court.

III. Rainbow Harbor

The parties agree that this agreement will have no effect with respect to any deficiencies, if any, in the City's Section 3 compliance on the Rainbow Harbor Project.

IV. Legal Action

In exchange for the City's agreements set forth above, Legal Aid agrees that it, he or she shall not solicit or promote, directly or indirectly, future litigation against the City or any of its contractors or subcontractors based on a failure to comply with Section 3 with respect to the Pike Project.

Except to the extent a matter is within the scope of Judge Weinstein's review, it is intended by the parties that this agreement shall be a contract, enforceable under the laws of the State of California, in the Superior Court of Los Angeles County (the "Superior Court"). Nothing herein shall prevent a party from bringing an action in the Superior Court to enforce an order of Judge Weinstein hereunder.

V. Miscellaneous

1. **Entire Agreement.** This Agreement contains the final, complete and exclusive understanding of the parties with respect to the subject matter hereof. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements, understandings and negotiations, both written and oral, between the parties with respect to the subject matter hereof.
2. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable under any applicable law or rule in any jurisdiction, such provision shall be ineffective only to the extent of such invalidity, illegality or

unenforceability in such jurisdiction, without invalidating the remainder of this Agreement in such jurisdiction or any provision hereof in any other jurisdiction.

3. **No Oral Modifications.** This Agreement may not be amended, supplemented or otherwise modified except by an instrument in writing signed by the parties.

4. **Assignment.** This Agreement may not be assigned in any manner by either of the parties without the prior written consent of the other party, and any purported assignment without such consent shall be void.

5. **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon parties. Nothing contained in this Agreement is intended or shall be construed to give any person, other than the parties hereto any legal or equitable right, remedy or claim under or in respect of this Agreement or any provisions herein contained. This Agreement and all conditions and provisions hereof are intended to be for the sole and exclusive benefit of the parties hereto and for the benefit of no other person.

6. **Governing Law.** This Agreement and the rights and obligations of the parties created hereby shall be governed by and construed in accordance with the laws of the State of California applicable to agreements made and to be performed wholly within said state, without giving effect to any conflict of laws principles thereof.

7. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

8. **Headings.** The section headings used in this Agreement are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

[signatures continued on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

APPROVED AS TO FORM

3/11, 2003
ROBERT E. SHANNON, City Attorney

By [Signature]
HEATHER A. MAHOOD
ASSISTANT CITY ATTORNEY

City of Long Beach, a municipal corporation

By: [Signature]

Its: Acting City Manager

Legal Aid Foundation of Los Angeles

By: _____

Its: _____

For purposes of acknowledging its obligations under Sections I.7. and Section IV hereof only

The Legal Aid Society-Employment Law Center

By: _____

Its: _____

Darrell D. Woods

Michelle Davis

Centro Shalom

By: _____

Its: _____

[signatures continued on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

City of Long Beach, a municipal corporation

By: _____

Its: _____

Legal Aid Foundation of Los Angeles

By: Dennis L. Rothman

Its: Director of Advocacy

For purposes of acknowledging its obligations under Sections I.7. and Section IV hereof only

The Legal Aid Society-Employment Law Center

By: _____

Its: _____

Darrell Woods
Darrell D. Woods

Michelle Davis
Michelle Davis

Centro Shalom

By: [Signature]

Its: Program Director
[signatures continued on next page]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first written above.

City of Long Beach, a municipal corporation

By: _____

Its: _____

Legal Aid Foundation of Los Angeles

By: _____

Its: _____

For purposes of acknowledging its obligations under Sections I.7. and Section IV hereof only

The Legal Aid Society-Employment Law Center

By: William C. McNeill III

Its: Managing Attorney

Darrell D. Woods

Michelle Davis

Centro Shalom


By: _____

Its: _____

[signatures continued on next page]

For purposes of acknowledging its obligations under
Section I.7. hereof only

Keesal, Young & Logan

By: 

Its: Vice President