## **VOLUNTARY COMPLIANCE AGREEMENT**

Section 3 of the Housing and Community Development Act of 1968 (12U.S.C 1701u)

#### Between

The United States of America Department of Housing and Urban Development

And

The City of Long Beach, CA

Section 3 Monitoring for Compliance of HUD Queensway Bay Restitution Plan Conducted October 2009

#### I. Introduction

The U.S. Department of Housing and Urban Development (hereinafter, HUD or the Department), Office of Fair Housing Equal Opportunity (hereinafter, FHEO), has completed a Section 3 review of the City of Long Beach's compliance with the "Queensway Bay Restitution Plan" (hereinafter, Plan or Restitution Plan). The review was conducted under the authority of Section 3 of the Housing and Urban Development Act of 1968, as amended, (12 U.S.C. 1701u).

The purpose of Section 3 is to ensure that employment and other economic opportunities generated by certain HUD financial assistance shall, to the greatest extent feasible, and consistent with existing federal, state and local laws and regulations, be directed to low and very low- income persons, particularly those who are recipients of government assistance for housing, and to business concerns which provide economic opportunities to low and very low-income persons.

The Section 3 monitoring and compliance review involved information collection and data verification pertaining to the Restitution Plan. The purpose of the review was to determine whether the City of Long Beach (hereinafter, City or Recipient) complied with the terms stipulated in the Restitution Plan, which resulted from the imposed resolution set forth in HUD's Determination of Noncompliance letter of April 26, 2004. The Restitution Plan was finalized in December 2005 and had a time frame of three (3) years or until the subject restitution is completed, whichever occurs later.

The Department received a verified complaint alleging noncompliance by the City of Long Beach, California. The Department was required to investigate the complaint pursuant to its responsibilities under Section 3 of the Housing and Urban Development Act of 1968 as amended (12 U.S.C. 1701u), and the governing regulations at 24 CPR Part 135 (as published June 30, 1994.)

On August 8, 1995, the Recipient applied to HUD for a Section 108 loan guarantee in the amount of \$40 million. These funds were specifically allocated to construct public infrastructure for the downtown harbor in the Rainbow Harbor area, which became known as the Queensway Bay Project.

Pursuant to an administrative complaint filed by the Legal Aid Foundation of Los Angeles (LAFLA), the Department initiated an investigation into the City's Queensway Bay Project. The Department ultimately determined that the City had not fulfilled its Section 3 obligation. Specifically, the Department determined that when LAFLA filed the complaint the percentage of Section 3 new hires was 5.2% for Phase I and 7.5% for Phase II of the project. The Department also found that the Recipient's contractors attempted to hire more Section 3 residents during the later stages of the project.

The overall delay in Section 3 hiring resulted in Section 3 residents working only 19% of the Section 3 eligible hours expended on the project. Consequently, the cumulative Section 3 new hire rate of 31% was not enough to show that the City made hiring opportunities available "to the greatest extent feasible." As such, through the Department's Determination of Noncompliance, the Department ordered the City to submit a restitution plan detailing how it would restore the lost employment and business opportunities.

When the City entered into the Restitution Plan with HUD in December 2005, it had already entered into a similar agreement with LAFLA. The Parties entered into the HUD Restitution Plan with the understanding that the City would fulfill its obligations under both the Restitution Plan and the agreement with LAFLA. HUD made it clear in the original Letter of Noncompliance that the City "must not duplicate existing obligations or commitments" in restoring Section 3 employment and business opportunities under the Restitution Plan

The Recipient agreed to take the following specific actions to restore all the Section 3 employment and business opportunities within 3 years (the Recipient has successfully fulfilled its Employment Opportunities obligations listed under items 1, 2 and 3 below):

- 1. Provide no less than 3,000 hours of work to low income Long Beach residents on City funded construction projects. (Employment Opportunities)
- 2. Train and graduate at a minimum 50 local low-income participants from the pre-apprenticeship program, with 25 slots for Long Beach residents of government assisted housing, including Carmelitos and 25 slots to be reserved for at-risk young men and women. (Employment Opportunities)
- 3. Provide placement assistance for graduates of the construction training program into the Union Building Trade apprenticeship program and provide up to \$1,500 to each participant for purchase of tools, uniforms, and other program necessities. (Employment Opportunities)
- 4. Implement a \$3.2 million Section 3 business incentive program to encourage contractors to use Section 3 businesses in the construction of future projects. (Business Opportunities)

Pursuant to the determination and resolution imposed by the Department, the City was obligated to provide quarterly reports indicating its progress in implementing the HUD Queensway Bay Restitution Plan (Plan).

Since the Restitution Plan was entered into in December 2005, the City has strived to meet the goals of the Plan, as well as to ensure compliance on the City's HUD funded projects. The City provided and exceeded the 3,000 hours of work to local low-income residents and also provided more than the recommended training slots to local low-income residents in government assisted housing and at-risk young men and women.

The City hired consultants to assist staff in creating a HUD Section 3 Business Certification Program designed to assist contractors to become certified and to assist prime contractors to identify HUD Section 3 businesses. In addition, the City now requires mandatory pre-bid meetings when Section 3 is applicable to a project, provides dedicated staff support to their Section 3 program, and other actions to meet Section 3 obligations. The City also attends several outreach events throughout the year, provides information to new contractors with their business licenses, and provides bid information through the City's online bidding system

The City is reminded that pursuant to 24 CFR 135.76(f)(2) "...the Assistant Secretary will attempt, through informal methods, to obtain a voluntary and just resolution of the complaint. Where attempts to resolve the complaint informally fail, the Assistant Secretary will impose a resolution on the recipient and complainant."

In this respect, the City agrees to enter into this Voluntary Compliance Agreement in order to address the issues raised in HUD's June 23, 2010, Monitoring Review for Compliance letter and to comply with the City's responsibilities under the HUD Queensway Bay Restitution Plan. It is understood that if the City fails to abide by the terms of this agreement, the failure will constitute a continued violation of Section 3 and could result in termination, suspension, or withdrawal of Federal financial assistance.

## II. Effective Date

This agreement shall become effective on the date that it is executed by the Assistant Secretary for Fair Housing and Equal Opportunity or his designee.

## III. General Provisions

- A. This agreement is a compromise reached following HUD's determination that the City failed to comply with the imposed resolution set forth in HUD's Determination of Noncompliance letter dated April 26, 2004. This agreement is not a validation of the City's defenses for failure to comply with its Section 3 obligations.
- B. Nothing herein shall be deemed or construed to be an admission or concession of any liability whatsoever on the part of the City.

- C. This agreement is a public document. A copy of this agreement shall be made available to any person for his/her review in accordance with HUD's and the City's obligations under the Freedom of Information Act or any other law.
- D. The City acknowledges that it has an affirmative duty not to retaliate against any person who has: 1) exercised or will exercise his/her legal rights under Section 3; 2) participated in or will participate in any manner with a Section 3 compliance review; or 3) participated in any manner in protecting the rights of Section 3 residents or businesses.
- E. The City acknowledges its on-going obligation to comply with all Section 3 requirements in addition to complying with the terms of this agreement.
- F. To the extent that any prior or contemporaneous HUD guidance (written or oral) in the form of letters, opinions or similar guidance regarding the City's obligations set forth in HUD's Determination of Noncompliance letter of April 26, 2004, conflicts with this agreement, this agreement is the controlling document from the effective date of this agreement.
- G. This agreement does not in any way limit or restrict HUD's authority to investigate any other complaint involving the City arising from unrelated facts and circumstances made pursuant to the Fair Housing Act, or any other complaint within the Department's jurisdiction.
- H. This a greement does not increase or diminish the ability of any person or class of persons to exercise their rights under Section 3. Individuals or classes of person who may have rights under the aforementioned statute or regulation are not parties or third party beneficiaries of this agreement. Nothing in this agreement shall be construed as creating any right in a third party to enforce any provision of this agreement or to assert any claim against the City or HUD.

# IV. Specific Provisions Regarding Business Opportunities

In addition to all regulatory requirements, the City shall fulfill the following Business Opportunities obligations within three (3) years of the effective date of this agreement

- 1. Provide \$3.7 million in business opportunities for Long Beach Section 3 businesses.
  - (a) If after three (3) years after the effective date of this agreement, providing \$3.7 million of business opportunity for Long Beach Section 3 businesses has not been met the City will:
    - (1) Increase each year by 3%<sup>2</sup> the \$3.7 million business

<sup>&</sup>lt;sup>1</sup> The \$3.2 million has been adjusted based on the increase in median household income over a 5 year period.

<sup>&</sup>lt;sup>2</sup> The adjustment is based on the compound rate of increase per year in median household income over a 5 year period from 2005 to 2010.

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- opportunities for Long Beach Section 3 businesses until the goal has been met.
- (2) Request a formal written extension prior to the expiration date of this original agreement should it be necessary.
- 2. The City will apply Section 3 contracting opportunities where Section 3 would not otherwise apply. The City and its Contractors shall develop a Section 3 plan detailing how they will comply with the requirements of Section 3 for any projects that are less than \$200,000 and for any contracts that are under \$100,000. The City will work with its Contractors to enforce this requirement.
- 3. The City may choose any project it determines necessary to fulfill the \$3.7 million Section 3 business opportunity requirement including the \$29 million Airport Terminal Project. However, the City cannot count Section 3 business opportunities applied to the fulfillment of this agreement to any other Section 3 obligation.
- 4. The City will implement a "Section 3 Business Incentive Program" to encourage contractors to utilize Section 3 businesses in the construction of future projects. The program will provide a 10% reimbursement of the total contract amount provided to qualified Section 3 businesses (up to \$3.7 million in contracts) if project budget can accommodate. For example, if "General Construction" hires "Local Electric Company" (certified Section 3 business) on a City project for \$100,000, the City will reimburse "General Construction" \$10,000 (10%) after the sub-contractor work is completed. Implementation of this program will begin immediately upon the execution of this agreement, and operate until \$3.7 million of contracts are received by Section 3 businesses.
  - a. Language will be included in City (non-federal) construction contracts identifying the "Section 3 Business Incentive Program" and how contractors may participate.
  - b. Contractors will be encouraged to utilize The Section 3 Business Incentive Program at pre-construction conferences.
  - c. The City will develop and distribute lists of certified Section 3 businesses at pre-construction conferences. The City, at a minimum, will use the following methods to develop the lists:
    - (1) Assess the City's current Section 3 business outreach process.
    - (2) Survey the business community.
    - (3) Review best practices of other cities.
    - (4) Develop effective communication strategies.
    - (5) Develop a process for indentifying and certifying Section 3 businesses.
    - (6) Create a Section 3 business database or utilize the

# Department's Section 3 Database if available.

# V. Reporting and Record Keeping Provisions

The City shall keep any and all records necessary to substantiate information regarding the reports described below from the effective date of this agreement unless otherwise indicated. Specifically the City shall:

# 1. Direct all reports to:

U.S. Department of Housing and Urban Development Chief, Office of FHEO, Program Compliance Branch 611 West Sixth Street, Suite 1020A Los Angeles, California 90017

- 2. Submit quarterly reports to HUD LA-FHEO detailing all activity undertaken pursuant to this Voluntary Compliance Agreement. Quarterly reports will contain information and details as outlined in Section IV (Specific Provisions Regarding Business Opportunities) of this agreement. Reports must also include details regarding the amount of business contracts awarded to the City's Section 3 businesses, including type of contract, date of contract, amount of contract and name of the Section 3 contractor.
- 3. Submit quarterly reports on April 15, June 15, September 15 and January 15, and include quantified results pertaining to compliance with the VCA. Reports shall include information for the specific time period being reported as well as cumulative information to date
- 4. Identify any of the actions listed in this agreement which the City believes have proved impractical and propose alternative proposals which may achieve the same ends.
- 5. Document and report any and all aspects of the hiring and employment policies that present barriers to complying with Section 3 and document and report all actions taken to overcome the barriers.
- 6. Every quarter, after the effective date of this agreement, HUD Los Angeles FHEO will review the progress that the City is making in meeting the goals under the Employment Opportunities and Business Opportunities section of this VCA.

# VI. Monitoring Provisions

- 1. The City agrees that the Department may monitor compliance with this agreement.
- 2. The monitoring shall include: written reports, inspections of the premises managed or assisted by the City, interviews with employees and residents, and examination and duplication of documents.

- 3. The City assures its full cooperation in any monitoring review undertaken by the Department to ensure compliance with this agreement.
- 4. The City is not by entering into this agreement, waiving any right that it may have to seek administrative review or to appeal any action taken by the Department concerning this VCA, including any judicial review or relief available to it.

## VII. Duration

- 1. The City agrees that the duration of this agreement shall be three (3) years from the Effective Date of this agreement and this agreement may be amended during such period of time if the Department:
  - (a) Determines that this agreement must be revised, or expanded based on the Department's monitoring review of the City's performance under the agreement.
  - (b) Receives from the City a written extension request 90-days prior to the expiration date of this agreement. The request must detail actions taken by the City to comply with the terms of the agreement and provide justifiable reason(s) for delay in completion of the City's obligations under the terms of the agreement.
- 2. The Department has the authority to extend the expiration date of this agreement for non-compliance by the City.

## VIII. Effect of Non-Compliance with this Agreement

- 1. Failure to carry out the terms of this agreement shall constitute a violation of the agreement and may result in the suspension or termination of or refusal to grant or to continue Federal financial assistance.
- 2. Any act(s) or omissions(s) that violate(s) the terms of this agreement may serve as grounds for HUD to seek specific performance and/or enforce any or all of the provisions of this agreement in federal court.

# **SIGNATURES**

These signatures attest to the approval and acceptance of this Voluntary Compliance Agreement:

On behalf of the City of Long Beach, CA:

Pat West

City Manager

On behalf of the U.S. Department of Housing and Urban Development

Chuck Hauptman

Director, Region IX, Office of Fair Housing and Equal Opportunity

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