SBE SUBCONTRACTING, AND EQUITY AND DEVELOPMENT PARTICIPATION, STATUTORY REQUIREMENTS ACKNOWLEDGEMENT FORM

I Todd Weiss [Name], Member [Title] of Roadside Development, LLC (an affiliate of which will be member of SPE to be formed for the project) [Prime Contractor/ Developer] acknowledge that the Grimke School (Project Name, Contract Number) project is subject to the SBE subcontracting, and equity and development participation requirements of the Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014 (the "Act") (D.C. Law 20-108; D.C. Official Code § 2-218.01 et seq.). I further acknowledge that this form is just a summary of the Act, and that the project must comply with all relevant sections of the Act, and not just the provisions outlined below.

SBE Subcontracting Requirements

- Pursuant to section 2-218.46 of the Act, all construction & non-construction **Government-assisted projects (agency** issued contracts & private projects that received any type of District subsidy) over $250,000, shall require 35% subcontracting to Small Business Enterprises (SBE) certified by the Department of Small and Local Business Development (DSLBD), unless waived by DSLBD.
    - Agency Issued Contracts – 35% of the total amount of the agency issued contract shall be subcontracted to SBEs.
    - Private Projects with District Subsidy – 35% of the total project costs (development costs) shall be subcontracted to SBEs. The 35% requirement is not limited to the amount of the District subsidy.
- If there are insufficient qualified SBEs to fulfill the 35% subcontracting requirement, the requirement may be satisfied by subcontracting 35% to Certified Business Enterprises (CBE) certified by DSLBD; provided, that all reasonable efforts shall be made to ensure that qualified SBEs are significant participants in the overall subcontract work.

SBE Subcontracting Plan

- A SBE Subcontracting Plan listing all subcontracts, between the **Beneficiary** and SBEs/CBEs; and between SBE/CBE and Non-CBE Subcontractors and all lower tier SBE/CBE Subcontractors must be submitted for this project.
    - For Agency Solicitations - the SBE Subcontracting Plan must be submitted to the agency with the bid/proposal for the bid/proposal to be considered responsive.

- For Agency Multi-year/ Options/ Extensions - submit SBE Subcontracting Plan to agency before next year/ option/ extension exercised.
    - No multiyear contracts or extended contracts which are not in compliance with the subcontracting requirements at the time of the contemplated exercise of the option or extension, shall be renewed or extended, and any such option or extension shall be void.
- For Private Projects - submit revised SBE Subcontracting Plans to DSLBD, agency project manager and Office of the District of Columbia Auditor (ODCA), with each quarterly report.
- For Agency Contracts for Design-Build Projects - the SBE Subcontracting Plan is not required to be submitted for preconstruction services; however, a full SBE Subcontracting Plan (35% of the amount of the contract including total design and build costs) is required before entering into a guaranteed maximum price or contract authorizing construction.

Special Requirements

- Each construction and non-construction Government-assisted project for which a CBE is selected as a Beneficiary, shall require the CBE perform at least 35% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracted effort shall be with CBEs.

- Each construction and non-construction Government-assisted project for which a CBE is utilized to meet the 35% subcontracting requirement, shall require the CBE perform at least 35% of the contracting effort with its own organization and resources.
- Each construction and non-construction Government-assisted project of **$1 million or less** for which a CBE is selected as a Beneficiary shall include a requirement that the CBE perform at least 50% of the on-site work with its own workforce.

Special Exemption

- If the Beneficiary is a CBE and will perform the *ENTIRE* government-assisted project with its own organization and resources and NOT subcontract any portion of the government-assisted project, then the CBE is not required to subcontract 35% to SBEs.

Special Requirements for Certified Joint Venture Beneficiaries

- Each construction and non-construction Government-assisted project for which a certified joint venture is selected as a Beneficiary shall include a requirement that the CBE member of the joint venture perform at least 50% of the contracting effort with its own organization and resources and, if it subcontracts, 35% of the subcontracted effort shall be with CBEs.

Mandatory Meetings

- The Beneficiary of a Government-assisted project **shall meet with DSLBD and ODCA within 10 days of the execution of this Acknowledgment Form.**
- The Beneficiary shall provide DSLBD a copy of the Government-assisted project's budget at the initial meeting.
- Thereafter, the Beneficiary of a Government-assisted project shall meet on an annual basis with DSLBD and ODCA to provide an update of the subcontracting plan for utilization of SBEs and CBEs.

Compliance Reporting Requirements

- The Beneficiary of a Government-assisted project shall submit the following reports to DSLBD, the agency contracting officer, project manager, and ODCA:
  - SBE Subcontracting Plan;
  - Completed Quarterly Reports;
  - Completed Vendor Verification Forms; and
  - Each fully executed subcontract with each subcontractor listed on the SBE Subcontracting Plan (required to receive credit towards the 35% SBE subcontracting requirement).
- The Beneficiary can receive the vendor verification forms, and any other compliance forms at the initial meeting with DSLBD.

Equity & Development Participation

- In all development projects conducted pursuant to a disposition under D.C. Official Code § 10-801, authorizing the sale, conveyance, lease for greater than 20 years, exchange, or other disposition of certain real estate in the District of Columbia no longer required for public purposes, **Small Investors**, **Disadvantaged Investors**, or **Certified Equity Participants** shall invest a minimum of 20% of the total sponsor equity, excluding debt financing, mezzanine financing, or other equity contributions by limited or institutional investors.
- For each Government-assisted **project involving development**, in addition to complying with the general 35% SBE subcontracting requirements, at least 20% of the dollar volume of non-construction development goods and services shall be subcontracted to SBEs, and if there are insufficient qualified SBEs to completely fulfill this requirement, then the requirement may be satisfied by contracting 20% of that dollar volume to any qualified CBEs; provided, that all

reasonable efforts shall be made to ensure that qualified small business enterprises are significant participants in the overall development goods and services work.

- Equity and development participation shall not apply if the entity that controls the development project is an entity tax-exempt under section 501(c) of the Internal Revenue Code of 1986, or other not-for-profit entity. And shall not apply to any development project for which a contract for purchase of one or more parcels of real property has been executed prior to the effective date of the Act.

Enforcement and Penalties

- If a CBE Beneficiary that received points or a price reduction performs less than 35% of the total contracting effort with its own organization and resources, then the CBE shall be subject to the penalties and fines of section 2-218.63 of the Act.
- If the CBE member of a certified joint venture Beneficiary that received points or a price reduction, performs less than 50% of the total contracting effort with its own organization and resources, then the joint venture and the CBE shall be subject to the penalties and fines of section 2-218.63 of the Act.
- For any subcontracting plan required by law, the Beneficiary shall be deemed to have breached the subcontracting plan for utilization of SBEs or CBEs in the performance of a contract if the Beneficiary:
    - Fails to submit subcontracting plan monitoring or compliance reports or other required subcontracting information in a reasonably timely manner;
    - Submits a monitoring or compliance report, or other required subcontracting information containing a materially false statement; or
    - Fails to meet the subcontracting requirements of section 2-218.46 of the Act.
- A Beneficiary that is found to have breached a subcontracting plan for utilization of certified business enterprises shall be subject to the imposition of penalties, including monetary fines, pursuant to section 2-218.63 of the Act.
- A Beneficiary that fails to comply with the equity and development requirements of the Act shall be subject to the imposition of penalties, including monetary fines, pursuant to section 2-218.63 of the Act.
- If DSLBD determines that a Beneficiary has failed to use commercially reasonable best efforts to meet the subcontracting requirements of section 2-218.46 of the Act, DSLBD shall assess a civil penalty equal to 10% of the dollar volume of the contract that the Beneficiary was required but failed to subcontract. The civil penalty will be in addition to any other penalties or causes of action that may be available.

Pertinent DEFINITIONS

Agency means: an agency, department, office, board, commission, authority, or other *instrumentality of the District government*, with or without legal existence separate from that of the District government.

Beneficiary means: a business enterprise that is the prime contractor or developer on a government-assisted project.

Certified Equity Participant means: a single-purpose legal entity created to participate in real estate development projects and includes members that are small investors or disadvantaged investors.

Disadvantaged Investor means:

(A) A disadvantaged business enterprise pursuant to D.C. Official Code § 2-218.33; or

(B) A District-domiciled economically disadvantaged individual as determined by regulations promulgated by DSLBD.

Government-assisted project means:

(A) A *contract* executed by an agency on behalf of the District or pursuant to statutory authority that involves District funds or, to the extent not prohibited by federal law, funds that the District administers in accordance with a federal grant or otherwise;

(B) A *project* funded in whole or in part by District funds;

(C) A *project* that receives a loan or grant from a District agency;

(D) A *project* that receives bonds or notes or the proceeds from bonds or notes issued by a District agency, including tax increment financing or payment in lieu of tax bonds or notes, but not including industrial revenue bonds;

(E) A *project* that receives District tax exemptions or abatements that are specific to the project and not to the nature of the entity undertaking the project, such as a religious institution or nonprofit corporation; or

(F) A *development project* conducted pursuant to a disposition under section 1 of An Act Authorizing the sale of certain real estate in the District of Columbia no longer required for public purposes, approved August 5, 1939 (53 Stat. 1211; D.C. Official Code § 10-801).

Project involving development means: a private development or redevelopment of real property improvements on land disposed of by, or leased from, the District and private development or redevelopment of real property improvements to which the District has contributed through a grant (or other public subsidy for which the District does not anticipate re-payment, such as a cash contribution, tax increment financing, payment in lieu of taxes, or similar programs or agreements) at least 15% of the

development costs or $500,000, whichever is less; but *does not* include improvements on real property where the owner will occupy at least 25% of the real property and the development budget is $500,000 or less.

Small Investor means:

(A) A small business enterprise pursuant to D.C. Official Code § 2-218.32; or
(B) A District-domiciled individual with a net worth that does not exceed the limit set by DSLBD for investors.

Signatures to follow

I acknowledge receipt of this Acknowledgement Form, and understand that a Beneficiary, CBE, or Certified Joint Venture, or its designee, successor, or assign that fails to comply with all of the relevant requirements of the Small and Certified Business Enterprise Development and Assistance Amendment Act of 2014 (D.C. Law 20-108) (the "Act"), which include, but are not limited to the provisions above, shall be subject to penalties as outlined in the Act. I further acknowledge that I am authorized to sign on behalf of the entity listed below.

Todd Weiss **09/15/15**
Name **Date**

Member
Title

Roadside Development, LLC (an affiliate of which will be the majority member of SPE to be formed for the project)
Company

ACKNOWLEDGED AND AGREED TO BY EQUITY PARTICIPANT(S):

By:

Todd Weiss **09/15/15**
List Name of Person Signing **Date**

Roadside Development, LLC (an affiliate of which will be an equity participant)
List Company and Title of Person Signing

20
% of Equity Participation in the Project