

make a Contingent Contribution. The Developer may meet its burden to demonstrate it has taken all actions reasonably necessary to achieve its CBE Minimum Expenditure by (1) fulfilling all CBE outreach and recruitment efforts identified in Article II of this Agreement; (2) complying with Article IV of this Agreement; (3) providing evidence of the General Contractors' compliance with the commitments set forth in Article IV of this Agreement, and (4) by taking the following actions, among other things²:

- a. In connection with the preparation of future bid packages, if any, develop a list of media outlets that target CBEs and *potential* CBEs hereafter referred to as "Target Audience" based on D.C. certification criteria;
 - b. During the initial construction of the Project, place advertisements in media outlets that address the Target Audience on a regular basis (*i.e.*, each time a new bid package is sent out) and advertise the programmatic activities established pursuant to the Agreement on an as needed basis;
 - c. Fax and/or email new procurement opportunity alerts to targeted CBEs according to trade category;
 - d. In connection with the preparation of future bid packages, if any, develop a list of academic institutions, business and community organizations that represent the Target Audience so that they may provide updated information on available opportunities to their constituents;
 - e. Make presentations and conduct pre-bid conferences advising of contracting opportunities for the Target Audience either one-on-one or through targeted business organizations;
 - f. Provide up to ten (10) sets, in the aggregate, of free plans and specifications related to the particular bid for business organizations representing Target Audiences upon request;
 - g. Commit to promoting opportunities for joint ventures between non-CBE and CBE firms to further grow CBEs and increase contract participation.
- (iv) If the Shortfall is less than 10% of the CBE Minimum Expenditure, but Developer has *not* taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure, Developer shall make a Contingent Contribution that is the percentage of the Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 5%, the Developer shall make a Contingent Contribution of 5% of the Contribution Fund, *i.e.*, \$471,459.

In the event a CBE hired as part of the Project goes out of business or otherwise cannot perform in accordance with customary and acceptable standards for the relevant industry, the Developer

² See Attachment 6 for a list of suggested outreach activities.

may identify and hire a substitute CBE capable of performing in accordance with customary and acceptable standards for the relevant industry. If the Developer cannot identify and hire a substitute CBE, the Developer may request in writing that the Director identify a substitute CBE capable of performing in accordance with customary and acceptable standards for the relevant industry ("Request"). Only if, within ten (10) business days after receiving the Request, the Director fails to send written notice to the Developer identifying a substitute CBE to perform the work for an amount no greater than 5% above the remaining balance of the original CBE contracted amount may the Developer contract with a non-CBE to perform the work, provided that the non-CBE contracted amount shall not exceed the balance of the original CBE contracted amount by greater than 5% ("Approved Deduction") and the Approved Deduction shall be deducted from the CBE Minimum Expenditure.

Section 6.2 Failure to Meet Equity and Development Participation Requirements. Failure to comply with the equity and development participation requirements of Article V of this Agreement shall constitute a material breach of this Agreement and of the Land Disposition and Development Agreement.

Section 6.3 Other Remedies. Failure to make any required Contingent Contribution in the time and manner specified by DSLBD shall be a material breach of this Agreement. In the event that the Developer breaches any of its obligations under this Agreement, in addition to the remedies stated herein, DSLBD does not waive its right to seek any other remedy against the Developer, the general contractor of the Project and any manager of the Project that might otherwise be available at law or in equity, including specific performance.

Section 6.4 Waiver of Contingent Contributions. Any Contingent Contribution required under this Section may be rescinded or modified by the Director upon consideration of the totality of the circumstances affecting such noncompliance.

ARTICLE VII MISCELLANEOUS

Section 7.1 Primary Contact. The Director, or his or her designee, shall be the primary point of contact for Developer for the purposes of collecting or providing information, or carrying out any of the activities under this Agreement. The Director and a representative of the Developer with contracting and/or hiring authority shall meet regularly.

Section 7.2 Notices. Any notice, payment or instrument required or permitted by this Agreement to be given or delivered to either party shall be deemed to have been received when personally delivered or transmitted by telecopy or facsimile transmission (which shall be immediately confirmed by telephone and shall be followed by mailing an original of the same within 24 hours after such transmission) or 72 hours following deposit of the same in any United States Post Office, registered or certified mail, postage prepaid, addressed as follows:

To DSLBD: Department of Small and Local Business Development
441 4th Street, N.W., Suite 970 North
Washington, DC 20001

West End Parcels CBE AGREEMENT

Attention: Director
Tel: (202) 727-3900
Fax: (202) 724-3786

and

Office of the Deputy Mayor for Planning and Economic
Development Government of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 317
Washington, DC 20004
Attention: Deputy Mayor for Planning and Economic
Development
Tel: (202) 727-6365
Fax: (202) 727-6703

With a copy to:

Office of the Attorney General
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 407
Washington, DC 20004
Attention: Attorney General
Tel: (202) 724-3400
Fax: (202) 347-8922

To ODCA:

Office of the District of Columbia Auditor
717 14th ST NW, Suite 900
Washington, DC 20005
Attention: District of Columbia Auditor
202-727-3600

To Developer:

EastBanc W.D.C. LLC
3307 M Street NW
Washington, DC 20007
Suite 400
Mary Mottershead
Tel: (202) 737-1000
Fax (202) 737-1001

Loretta S. Caldwell
EastBanc W.D.C. LLC
3307 M ST NW
Washington, DC 20007
202-587-7800
lorettac@lscaldwell.com

Each party may change its address or addresses for delivery of notice by delivering written notice of such change of address to the other party.

Section 7.3 Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent possible.

Section 7.4 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of any permitted successors and assigns of the parties hereto. This Agreement shall not be assigned by the Developer without the prior written consent of the DSLBD, which consent shall not be unreasonably withheld or delayed. In connection with any such consent of DSLBD, DSLBD may condition its consent upon the acceptability of the financial condition of the proposed assignee, upon the assignee's express assumption of all obligations of the Developer hereunder or upon any other reasonable factor which DSLBD deems relevant in the circumstances. In any event, any such assignment shall be in writing, shall clearly identify the scope of the rights and obligations assigned and shall not be effective until approved by the DSLBD. DSLBD shall have no right to assign this Agreement except to another District agency.

Section 7.5 Amendment; Waiver. This Agreement may be amended from time to time by written supplement hereto and executed by DSLBD and Developer. Any obligations hereunder may not be waived, except by written instrument signed by the party to be bound by such waiver. No failure or delay of either party in the exercise of any right given to such party hereunder or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right, or satisfaction of such condition, has expired) shall constitute a waiver of any other or further right nor shall any single or partial exercise of any right preclude other or further exercise thereof or any other right. The waiver of any breach hereunder shall not be deemed to be a waiver of any other or any subsequent breach hereof.

Section 7.6 Governing Law. This Agreement shall be governed by the laws of the District of Columbia.

Section 7.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 7.8 Entire Agreement. All previous negotiations and understandings between the parties hereto or their respective agents and employees with respect to the transactions set forth herein are merged into this Agreement, and this Agreement alone fully and completely expresses the parties' rights, duties and obligations with respect to its subject matter.

Section 7.9 Captions, Gender, Number and Language of Inclusion. The captions are inserted in this Agreement only for convenience of reference and do not define, limit or describe the scope or intent of any provisions of this Agreement. Unless the context clearly requires otherwise, the singular includes the plural, and vice versa, and the masculine, feminine and neuter adjectives include one another. As used in this Agreement, the word "including" shall mean "including but not limited to".

Section 7.10 Attachments. The following exhibits shall be deemed incorporated into this Agreement in their entirety:

<i>Attachment 1:</i>	CBE Minimum Expenditure
<i>Attachment 2:</i>	Target Sector List

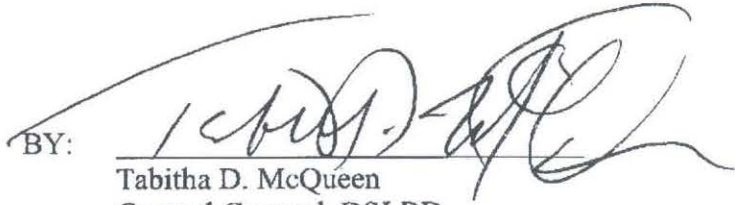
West End Parcels CBE AGREEMENT

- Attachment 3:* Utilization Plan
- Attachment 4:* CBE Reports
- Attachment 5:* Vendor Verification Forms
- Attachment 6:* Suggested Outreach Activities

Section 7.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.

West End Parcels CBE AGREEMENT

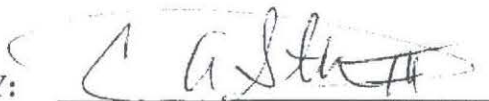
Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

BY: 

Tabitha D. McQueen
General Counsel, DSLBD

AGREED TO AND EXECUTED THIS 14th DAY OF June 2010

DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

BY: 

Lee A. Smith III
Director

DEVELOPER, EASTBANC-W.D.C. PARTNERS, LLC

BY: _____
Anthony M. Lanier
Managing Partner

West End Parcels CBE AGREEMENT

Approved as to legal sufficiency for the District of Columbia Department of Small and Local Business Development:

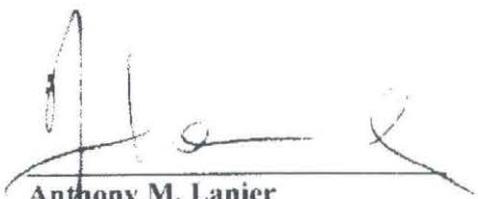
BY: _____
Tabitha D. McQueen
General Counsel, DSLBD

AGREED TO AND EXECUTED THIS _____ DAY OF _____ 2010

DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT

BY: _____
Lee A. Smith III
Director

DEVELOPER, EASTBANC-W.D.C. PARTNERS, LLC

BY: 

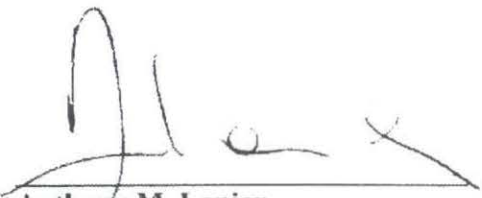
Anthony M. Lanier
Managing Partner

West End Parcels CBE AGREEMENT

ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE DEVELOPMENT PARTICIPANT(S):

BY: 
Anthony M. Lanier
President
EastBanc Inc
80% CBE Developer Participant
CBE # LSZXR43501072011

ACKNOWLEDGED AND AGREED TO, AS TO ARTICLE V, BY CBE EQUITY PARTICIPANT(S):

BY: 
Anthony M. Lanier
President
EastBanc Inc
80% CBE Equity Participant
CBE # LSZXR43501072011

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT



EASTBANC WDC PARTNERS
MIXED USE DEVELOPMENT

MARKET RATE AND AFFORDABLE HOUSING

LDDA
ZONING COMMISSION CASE No.: (TBD)

LOCATED BETWEEN
L AND M STREETS, NW, BETWEEN 23RD AND 24TH STREETS
IN
SQUARE 37 LOTS 836 AND 837; SQUARE 50 LOT 822

WASHINGTON, D.C.

PROJECT OVERVIEW

Dated: 5/28/10

Project Name:	WEST END REDEVELOPMENT
Project Owner/Sponsor:	EASTBANC WDC PARTNERS 3307 M STREET NW, WASHINGTON DC 20007
Developer & Managing Member:	EASTBANC WDC PARTNERS
Local Ownership Partners:	EastBanc Inc DANTES PARTNERS AND L. S. CALDWELL & ASSOCIATES, INC.
Lead Architect:	TEN ARQUITECTOS
Civil Engineer:	TBD
Landscape Architect:	TBD
Traffic Planner:	TBD
Zoning Counsel:	ARENT FOX
Advisory Neighborhood Commission (ANC):	2A
Project Location:	On 2 sites in the West End. Square 37 is on L Street where the West End Library and Special Ops station currently reside. Square 50 is located on M Street and the site is the current home of the DC Engine Company Number 1.

Total Project Budget	<u>\$118,519,016</u>
Total Exclusions	<u>\$10,757,066</u>
Adjusted Budget	<u>\$107,761,950</u>
CBE Minimum Expenditure	\$37,716,683
Contingent Contribution - 25% of CBE Minimum	\$9,429,171
Section 6.1(i) contribution example	\$9,429,171
Section 6.1(ii) contribution example	\$1,885,834
Section 6.1(iii) contribution example	\$471,459



Date: 6/4/10

Approved by: Antonio D. Hunter Assistant Director, Business Opportunities and Access to Capital (DSLBD)

Attachment 2

Target Sector List

To be included on the Target Sector List, the trade, service, or function must be necessary for the specific project and no Certified Business Enterprise ("CBE") is able to perform the required service or function.

On page one, please provide a proposed list of trades, services or functions that the Developer believes that no CBE is able to perform, along with a narrative describing why it believes that no CBE is able to perform the required service or function.

On page two, please provide a narrative description of the efforts made in identifying that the trade, service, or function should properly be included on the target list. Efforts may include searching the DSLBD database, communications with other developers in an effort to identify specific CBEs, holding pre-bid conferences, working with DSLBD staff to identify CBEs, and/or etc.

**NO SUBMISSION FOR THE
WEST END PARCELS PROJECT**

Submitted by: _____ Date: _____
(Name of Developer)

Reviewed/Recommended by: _____ Date: _____
Antonio D. Hunter
Assistant Director, Business Opportunities and Access to Capital (DSLBD)

Approved by: _____ Date: _____
Lee A. Smith III, Director (DSLBD)

Attachment 2

Target Sector List

(Narrative Description of Efforts)

**NO SUBMISSION FOR THE
WEST END PARCELS PROJECT**

Submitted by:

(Name of Developer)

Date: _____

Reviewed/Recommended by:

Antonio D. Hunter
Assistant Director, Business Opportunities and Access to Capital (DSLBD)

Date: _____

Approved by:

Lee A. Smith III, Director (DSLBD)

Date: _____