

CBE Utilization Plan



**QUARTERLY REPORT
COVER SHEET**

| | |
|---|--|
| Reporting Quarter | |
| Report Submission Date | |
| Project Name | |
| Address | |
| Name of General/Prime Contractor and/or Construction Manager | |
| Project Contact | |
| Telephone Number | |
| Fax Number | |
| Email Address | |
| Anticipated Project Completion Date | |

EXPENDITURE SUMMARY

| | | | | | | | |
|---|--|--|--|---------|--|--|---------|
| 1 | | | | #DIV/0! | | | #DIV/0! |
| 2 | | | | #DIV/0! | | | #DIV/0! |
| 3 | | | | #DIV/0! | | | #DIV/0! |
| 4 | | | | #DIV/0! | | | #DIV/0! |

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



DATE

[Mr./Ms. _____]
[President]
[XYZ Contractor, Inc.]
[ADDRESS]
Washington, DC _____

Dear Mr./Ms. _____,

The Department of Small and Local Business Development (DSLBD) ensures that all private sector partners and other entities receiving economic assistance from the District comply with the laws and regulations regarding utilization and participation of Certified Business Enterprises.

To ensure compliance, DSLBD requires that [DEVELOPER] submit quarterly reports to DSLBD regarding contracting and procurement of certified businesses on the construction of _____ located at _____. [DEVELOPER'S] records show that your company received a subcontract in the amount of _____ and, as of _____ 2009, your company has been paid the amount of _____ by the prime contractor.

This letter is to confirm that the information that we have been given by [DEVELOPER] relating to your subcontract with _____ [*name of prime contractor/GC*] is accurate. Please complete and have notarized the attached Verification Letter to confirm your scope of work, the amount of the subcontract, and amount your company has been paid to date. If the information received by [DEVELOPER] from the prime contractor and provided to us regarding your subcontract is incorrect please explain any inconsistencies.

If you should have any questions or concerns on this matter, please contact the DSLBD Chief of Staff, at (202) 727-3900. Thank you for your attention to this matter.

Sincerely,

Lee A. Smith III
Director

Attachment 5

_____, 2010

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

Attention: Mr. Lee A. Smith III, Director

Reference: _____ [NAME OF PROJECT]

Subject: Verification of Subcontract with _____ [DEVELOPER/GC]

Dear Interim Director Smith:

I am a CBE subcontractor to _____ [*name of GC or prime contractor*] on the _____ Project. My scope of work is

My contract work began on _____ and is scheduled to be completed on _____ . My contract amount is

\$ _____ (amount should include all change orders). I have been paid \$ _____ to date on my contract.

The undersigned, as a duly authorized representative of _____ [*name of company*], swears or affirms that the statements made herein are true and correct.

Signature: _____ Title: _____

Name (print): _____ Date: _____

District of Columbia (or State/Commonwealth of _____); to wit:

Signed and sworn to or affirmed before me on this _____ day of _____, _____, by _____, who is well known to me as the person who executed the foregoing affidavit and who acknowledged the same to be his/her free act and deed.

Notary signature: _____

(Seal)

My commission expires: _____

ATTACHMENT 6

DOCUMENTATION OF ADDITIONAL OUTREACH EFFORTS

The GC may submit the following written documentation of its CBE outreach and involvement efforts:

- (a) A listing of specific work scopes on a trade specific basis identified by the GC in which there are subcontracting opportunities for CBEs;
- (b) Copies of written solicitations used to solicit CBEs for these subcontracting opportunities;
- (c) A description of the GC's attempts to personally contact the solicited CBEs including the names, addresses, dates and telephone numbers of the CBEs contacted, a description of the information provided to the CBEs regarding plans, specifications and anticipated schedules for the work to be performed, and the responses of the CBEs to the solicitation;
- (d) In the event CBE subcontractors are found to be unavailable, the GC must request a written Statement of CBE Unavailability from the DSLBD;
- (e) A description of the GC's efforts to seek waiver of bonding requirements for CBEs, if bonding is required;
- (f) A copy of the GC's request for reduction in or partial release of retainage for CBE;
- (g) A copy of the contract between the prime contractor and each CBE subcontractor if a contract is executed between the District and the prime Contractor.

EXHIBIT D
CONSTRUCTION AND USE COVENANT

THIS CONSTRUCTION AND USE COVENANT (this “**Covenant**”) is made as of the _____ day of _____, 20__ (“**Effective Date**”), between (i) the DISTRICT OF COLUMBIA, a municipal corporation, acting by and through the Office of the Deputy Mayor for Planning and Economic Development (the “**District**”) and (ii) EASTBANC-W.D.C. PARTNERS, LLC, a District of Columbia limited liability company or permitted assigns (the “**Developer**”).

RECITALS

R-1. District and Developer entered into a Land Disposition Agreement, effective _____, 2010 (the “**Agreement**”), as the same may have been amended, which provides for, among other things, the redevelopment of certain parcels of land and air rights.

R-2. Contemporaneously with the execution of this Covenant, District has conveyed to the Developer the parcels of land and air rights identified for assessment and taxation purposes as Lots _____ in Square 37 and Lot _____ in Square 50 located in the District of Columbia (collectively, the “**District Property**”), as more particularly described on **Exhibit A**. Developer owns or controls Lot 855 in Square 37 (the “**Developer Property**”), as more particularly described on **Exhibit B**, which is adjacent to the District Property. District is the owner of the Retained District Property (as defined below).

R-3. Pursuant to [INSERT NAME OF AUTHORIZING ACT], Developer has agreed to build (a) a new library (“**New Library**”) in the Retained District Property in Square 37 to replace the library existing on Square 37 as of the Effective Date in accordance with the New Library Plans and Specifications (as hereinafter defined), this Covenant and the Library Work Agreement (hereinafter defined) and (b) a new fire station (“**New Fire Station**”) in the Retained District Property in Square 50 to replace the fire station existing on Square 50 in accordance with the New Fire Station Plans and Specifications (as hereinafter defined), this Covenant and the Fire Station Work Agreement (hereinafter defined).

R-4. The Developer desires to develop a mixed use residential and commercial project on the West End Property to include the New Library, the New Fire Station, Affordable Units (as hereinafter defined), market-rate housing and other uses consistent therewith (the “**Project**”) pursuant to the Planned Unit Development Order [INSERT PUD ORDER NUMBER] (“**PUD Approval**”) approved by the Zoning Commission for the District of Columbia and the Approved Plans and Specs.

R-5. The District Property has a unique and special importance to District. Accordingly, this Covenant makes particular provision to assure the excellence and integrity of the design and construction of the Project necessary and appropriate to serve District of Columbia residents.

NOW, THEREFORE, the Parties hereto agree that the District Property and Developer Property shall be held, sold and conveyed subject to the following covenants, conditions, and restrictions:

ARTICLE I DEFINITIONS AND MISCELLANEOUS PROVISIONS

1.1 DEFINITIONS. For the purposes of this Covenant, the following capitalized terms shall have the meanings ascribed to them below and, unless the context clearly indicates otherwise, shall include the plural as well as the singular:

“Acceptable Bank” means a commercial bank with an office located in the Washington, D.C. metropolitan area that has a credit rating with respect to certificates of deposit, short-term deposits or commercial paper of at least Aa3 (or equivalent) by Moody’s Investor Service, Inc., or at least AA- (or equivalent) by Standard & Poor’s Corporation.

“Affiliate” means with respect to any Person (“first Person”) (i) any other Person directly or indirectly controlling, controlled by, or under common control with such first Person, (ii) any officer, director, partner, shareholder, manager, member or trustee of such first Person, or (iii) any officer, director, general partner, manager, member or trustee of any Person described in clauses (i) or (ii) of this sentence. As used in this definition, the terms “controlling”, “controlled by”, or “under common control with” shall mean the possession, directly or indirectly, of the power to direct, or cause the direction of, the management and policies of a Person, whether through ownership of voting securities, membership interests or partnership interests, by contract or otherwise, or the power to elect at least fifty percent (50%) of the directors, managers, partners or Persons exercising similar authority with respect to the subject Person.

“Affordability Covenant” is the covenant agreement between District and Developer that contains certain affordability requirements for the Project, and is recorded in the Land Records.

“Affordable Unit” means each Residential Unit to be developed and used in accordance with the requirements of the Affordability Covenant.

“Agreement” is defined in Recital R-1.

“Applicable Law” means all applicable District of Columbia and federal laws, codes, regulations, and orders, including, without limitation, Environmental Laws, laws relating to historic preservation, laws relating to accessibility for persons with disabilities, and, if applicable, the Davis-Bacon Act.

“Approved Budget” is Developer’s budget for construction of the Project which was approved by District prior to the Effective Date and is attached hereto as **Exhibit D**.

“Approved Plans and Specs” means construction plans, drawings, and specifications including, without limitation, the New Library Plans and Specifications and New Fire Station Plans and Specifications, submitted to and approved by District and based upon which Permits shall be issued, as the same may be modified pursuant to Section 2a.1 of this Covenant.

“Architect” means Enrique Norton, AIA, LeMay Erickson Willcox Architects and/or WDG Architecture, and/or another architect of record, licensed to practice architecture in the District of Columbia, which has been selected by Developer for the Project and approved by District.

“Bonds” means a payment and performance bond issued by a reputable bonding company to insure the completion of the Improvements, in form and substance reasonably satisfactory to District and naming District as an obligee.

“Budgeted Amount” means the amount of appropriations authority obtained for the New Library and New Fire Station, respectively, pursuant to [INSERT ACT INFORMATION AUTHORIZING APPROPRIATIONS].

“Business Days” means Monday through Friday, inclusive, other than holidays recognized by the District of Columbia government.

“CBE” shall mean a Person that has been issued a certificate of registration by DSLBD pursuant to D.C. Official Code § 2-218.01, *et seq.* (2007 Repl.), as amended.

“CBE Agreement” is that agreement between the Developer and DSLBD, dated [_____] governing certain obligations of Developer regarding contracting, employment and equity and development participation of CBEs in the pre-construction and construction and equitable development of the Project.

“Certificate of Occupancy” means a certificate of occupancy or similar document or permit (whether conditional, unconditional, temporary, or permanent) that must be obtained from the appropriate governmental authority as a condition to the lawful occupancy of the Improvements.

“Certificate of Substantial Completion” means that certificate provided by Developer to District upon Substantial Completion, as defined in Section 2b.8.1.

“Chief” shall mean the Chief of the District of Columbia Fire and Emergency Medical Services Department.

“Closing” is the consummation of the purchase and sale of the District Property as contemplated by the Agreement.

“Commencement of Construction” means Developer has (i) executed a construction contract with its general contractor; (ii) given such general contractor a notice to proceed under said construction contract; (iii) caused such general contractor to mobilize on the West End Property equipment required to commence excavation; and (iv) obtained the Permits and commenced excavation upon the West End Property pursuant to the Approved Plans and Specs. For purposes of this Agreement, the term “Commencement of Construction” does not mean site exploration, borings to determine foundation conditions, or other pre-construction monitoring or testing to establish background information related to the suitability of the West End Property for development of the Improvements thereon or the investigations of environmental conditions.