

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services



Thomas J Carroll
Holland & Knight LLP
2099 Pennsylvania Avenue, N W , Suite 100
Washington, DC 20006

JUN 14 2006

Dear Mr Carroll

We have been advised by the Department of Consumer and Regulatory Affairs, Building and Land Regulation Administration, Office of the Surveyor that you recently submitted an application (File Number S O 06-9227) on behalf of Steuart Investment Company and Steuart-H Street LLC for the proposed closing of a public alley in Square 776

In accordance with D C Law 5-93, First Source Employment Agreement Act of 1984, of Steuart Investment Company and Steuart-H Street LLC are required to enter into a First Source Employment Agreement with the D C Department of Employment Services (DOES) and to use DOES as the first source for recruitment, referral, and placement of any new employees employed as a result of the alley closing project

Enclosed for your review and signature is a copy of the First Source Employment Agreement Please complete and return it to

Vernell Jordan, Program Analyst
D C Department of Employment Services
609 H Street, NE, Room 429
Washington, D C 20002

If you have any questions regarding this requirement, please contact Vernell Jordan at (202) 698-5774 We are looking forward to working with you, and I trust this information is useful

Sincerely,

Susan O Gilbert
Associate Director
Office of Employer Services

Enclosure

FIRST SOURCE EMPLOYMENT AGREEMENT

Contract Number S.O. 06-9227

Contract Amount _____

Project Name Construction of 300 H Street, NE

Project Address 300 H-Street NE Ward 6

Nonprofit Organization with 50 Employees or Less (Yes) _____ (No) ✓

This First Source Employment Agreement, in accordance with D C Law 14-24, D C Law 5-93, and Mayor's Order 83-265 for recruitment, referral, and placement of District of Columbia residents, is between the District of Columbia Department of Employment Services, hereinafter referred to as DOES, and STEWART INVESTMENT Co & STEWART H-SMITH LLC, hereinafter, referred to as EMPLOYER. Under this Employment Agreement, the EMPLOYER will use DOES as its first source for recruitment, referral, and placement of new hires or employees for the new jobs created by this project and will hire 51% District of Columbia residents for all new jobs created, as well, as 51% of apprentices employed in connection with the project shall be District residents registered in programs approved by the District of Columbia Apprenticeship Council.

I GENERAL TERMS

- A The EMPLOYER will use DOES as its first source for the recruitment, referral and placement of employees
- B The EMPLOYER shall require all contractors and subcontractors, with contracts totaling \$100,000 or more, to enter into a First Source Employment Agreement with DOES
- C DOES will provide recruitment, referral and placement services to the EMPLOYER subject to the limitations set out in this Agreement
- D DOES participation in this Agreement will be carried out by the Office of the Director, with the Office of Employer Services, which is responsible for referral and placement of employees, or such other offices or divisions designated by DOES

- E This Agreement shall take effect when signed by the parties below and shall be fully effective for the duration of the contract and any extensions or modifications to the contract
- F This Agreement shall not be construed as an approval of the EMPLOYER'S bid package, bond application, lease agreement, zoning application, loan, or contract/subcontract
- G DOES and the EMPLOYER agree that for purposes of this Agreement, new hires and jobs created (both union and nonunion) include all EMPLOYER'S job openings and vacancies in the Washington Standard Metropolitan Statistical Area created as a result of internal promotions, terminations, and expansions of the EMPLOYER'S workforce, as a result of this project, including loans, lease agreements, zoning applications, bonds, bids, and contracts
- H For purposes of this Agreement, apprentices as defined in D C Law 2-156, as amended, are included
- I The EMPLOYER shall register an apprenticeship program with the D C Apprenticeship Council for construction or renovation contracts or subcontracts totaling \$500,000 or more This includes any construction or renovation contract or subcontract signed as the result of, but is not limited to, a loan, bond, grant, Exclusive Right Agreement, street or alley closing, or a leasing agreement of real property for one (1) year or more
- J All contractors who contract with the Government of the District of Columbia to perform information technology work with a single contract or cumulative contracts of at least \$500,000, let within any twelve (12) month period shall be required to register an apprenticeship program with the District of Columbia Apprenticeship Council
- K The term "information technology work" shall include, but is not limited to, the occupations of computer programmer, programmer analyst, desktop specialist, technical support specialist, database specialist, network support specialist, and any other related occupations as the District of Columbia Apprenticeship Council may designate by regulation

II RECRUITMENT

- A The EMPLOYER will complete the attached Employment Plan, which will indicate the number of new jobs projected, salary range, hiring dates, and union requirements The EMPLOYER will notify DOES of its specific need for new employees as soon as that need is identified

- B Notification of specific needs, as set forth in Section II A must be given to DOES at least five (5) business days (Monday - Friday) before using any other referral source, and shall include, at a minimum, the number of employees needed by job title, qualification, hiring date, rate of pay, hours of work, duration of employment, and work to be performed
- C Job openings to be filled by internal promotion from the EMPLOYER'S current workforce need not be referred to DOES for placement and referral
- D The EMPLOYER will submit to DOES, prior to starting work on the project, the names, and social security numbers of all current employees, including apprentices, trainees, and laid-off workers who will be employed on the project

III REFERRAL

DOES will screen and refer applicants according to the qualifications supplied by the EMPLOYER.

IV PLACEMENT

- A DOES will notify the EMPLOYER, prior to the anticipated hiring dates, of the number of applicants DOES will refer DOES will make every reasonable effort to refer at least two qualified applicants for each job opening
- B The EMPLOYER will make all decisions on hiring new employees but will in good faith use reasonable efforts to select its new hires or employees from among the qualified persons referred by DOES
- C In the event DOES is unable to refer the qualified personnel requested, within five (5) business days (Monday - Friday) from the date of notification, the EMPLOYER will be free to directly fill remaining positions for which no qualified applicants have been referred Notwithstanding, the EMPLOYER will still be required to hire 51% District residents for the new jobs created by the project
- D After the EMPLOYER has selected its employees, DOES will not be responsible for the employees' actions and the EMPLOYER hereby releases DOES, and the Government of the District of Columbia, the District of Columbia Municipal Corporation, and the officers and employees of the District of Columbia from any liability for employees' actions

V TRAINING

DOES and the EMPLOYER may agree to develop skills training and on-the-job training programs, the training specifications and cost for such training will be mutually agreed upon by the EMPLOYER and DOES and set forth in a separate Training Agreement

VI CONTROLLING REGULATIONS AND LAWS

- A To the extent this Agreement is in conflict with any labor laws or governmental regulations, the laws or regulations shall prevail
- B DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER is a party
- C The EMPLOYER will provide DOES with written documentation that the EMPLOYER has provided the representative of any involved collective bargaining unit with a copy of this Agreement and has requested comments or objections. If the representative has any comments or objections, the EMPLOYER will promptly provide them to DOES

VII EXEMPTIONS

- A Contracts, subcontracts or other forms of government-assistance less than \$100,000
- B Employment openings the contractor will fill with individuals already employed by the company
- C Job openings to be filled by laid-off workers according to formally established recall procedures and rosters
- D Suppliers located outside of the Washington Standard Metropolitan Statistical Area and who will perform no work in the Washington Standard Metropolitan Statistical Area

VIII AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES

- A If, during the term of this Agreement, the EMPLOYER should transfer possession of all or a portion of its business concerns affected by this Agreement to any other party by lease, sale, assignment, merger, or otherwise, the EMPLOYER as a condition of transfer shall
 - 1 Notify the party taking possession of the existence of the EMPLOYER'S Agreement
 - 2 Notify the party taking possession that full compliance with this Agreement is required in order to avoid termination of the project

- 3 EMPLOYER shall, additionally, advise DOES within seven (7) business/calendar days of the transfer. This advice will include the name of the party taking possession and the name and telephone of that party's representative.
- B DOES shall monitor EMPLOYER'S performance under this Agreement. The EMPLOYER will cooperate in DOES' monitoring effort and will submit a Contract Compliance Form to DOES monthly.
- C To assist DOES in the conduct of the monitoring review, the EMPLOYER will make available payroll and employment records for the review period indicated.
- D If additional information is needed during the review, the EMPLOYER will provide the requested information to DOES.
- E With the submission of the final request for payment from the District, the EMPLOYER shall
 - 1 Document in a report to the Contracting Officer its compliance with the requirement that 51% of the new employees hired by the project be District residents, or
 - 2 Submit a request to the Contracting Officer for a waiver of compliance with the requirement that 51% of the new employees hired by the project be District residents and include the following documentations:
 - a Material supporting a good faith effort to comply,
 - b Referrals provided by DOES and other referral sources, and
 - c Advertisement of job openings listed with DOES and other referral sources.
- F The Contracting Officer may waive the requirement that 51% of the new employees hired by the project be District residents, if the Contracting Officer finds that
 - 1 A good faith effort to comply is demonstrated by the contractor,
 - 2 The EMPLOYER is located outside the Washington Standard Metropolitan Statistical Area and none of the contract work is performed inside the Washington Standard Metropolitan Statistical Area,
 The Washington Standard Metropolitan Statistical Area includes the District of Columbia, the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg, the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George, the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert, and the West Virginia Counties of Berkeley and Jefferson.

3 The EMPLOYER enters into a special workforce development training or placement arrangement with DOES, or

4 DOES certifies that insufficient numbers of District residents in the labor market possess the skills required by the positions created as a result of the contract

G Willful breach of the First Source Employment Agreement by the EMPLOYER, or failure to submit the Contract Compliance Report, or deliberate submission of falsified data, may be enforced by the Contracting Officer through imposition of penalties, including monetary fines of 5% of the total amount of the direct and indirect labor costs of the contract

H Nonprofit organizations with 50 or less employees are exempted from the requirement that 51% of the new employees hired on the project be District residents

I The EMPLOYER and DOES, or such other agent as DOES may designate, may mutually agree to modify this Agreement

J The project may be terminated because of the EMPLOYER'S non-compliance with the provisions of this Agreement

IX Is your firm a certified Local, Small, Disadvantaged Business Enterprise (LSDBE)?

YES

☒ NO

If yes, certification number _____

X Do you have a registered Apprenticeship program with the D C Apprenticeship Council?

YES

☒ NO

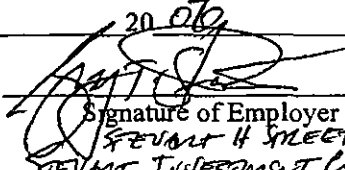
If yes, D C Apprenticeship Council Registration Number _____

XI Indicate whether your firm is a subcontractor on this project YES ☒ NO

If yes, name of prime contractor _____

Dated this 16th day of July 2007

Signature Dept of Employment Services


Signature of Employer
STEVANT H STREET LLC
STEVANT INVESTMENT CO
Name of Company

545 WISCONSIN AVE #1600
Address CHEY CHAMBERS 25817

301.451.2700
Telephone

6430stela.com
E-mail

EMPLOYMENT PLAN

NAME OF FIRM _____

ADDRESS _____

TELEPHONE NUMBER _____ FEDERAL IDENTIFICATION NO _____

CONTACT PERSON _____ TITLE _____

E-mail _____ TYPE OF BUSINESS _____

ORIGINATING DISTRICT AGENCY _____

CONTRACTING OFFICER _____ TELEPHONE NUMBER _____

TYPE OF PROJECT _____ FUNDING AMOUNT _____

PROJECTED START DATE _____ PROJECT DURATION _____

NEW JOB CREATION PROJECTIONS (Attach additional sheets, as needed) Please indicate the new position(s) your firm will create as a result of this project

	JOB TITLE	# OF JOBS F/T P/T	SALARY RANGE	UNION MEMBERSHIP REQUIRED NAME LOCAL#	PROJECTED HIRE DATE
A					
B					
C					
D					
E					
F					
G					
H					
I					
J					
K					

CURRENT EMPLOYEES Please list the names and social security numbers of all current employees including apprentices and trainees who will be employed on the project. Attach additional sheets as needed.

[illegible]

LSDBE MEMORANDUM OF UNDERSTANDING

Between **THE DISTRICT OF COLUMBIA**
DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT
And
STEUART INVESTMENT COMPANY

Steuart Investment Company and (hereinafter, the "**Developer**"), in accordance with D.C. Law 1-95 (as amended), D.C. Code Section 2-215.03 et seq. (2001 Ed.) and 2-217.01 et seq. (2001 Ed.), the statutes regarding "**Equal Opportunity for Local, Small and Disadvantaged Business Enterprises**" and in consideration of the **Zoning Commission for the District of Columbia's** approval of a Planned Unit Development and Map Amendment known as **Zoning Commission Case No. 06-01 the "PUD"**, to construct a mixed use building, including ground floor retail, to a maximum height of 90 feet and including approximately 375 parking spaces, on parts of Lots 9, 25-31, 51, 53, 800, and 821 in Square 776 in the District of Columbia (the "**Property Site**"), **Developer** does hereby covenant and agree to make a bona fide effort to contract and subcontract with Local, Small and Disadvantaged Business Enterprises certified by the D.C. Small and Local Business Opportunity Commission ("**LSDBEs**") to achieve a contracting and subcontracting goal of thirty-five percent (35%) **LSDBEs** participation in the **Developer's** contracted development costs in connection with the architectural and design, development, construction (including but not limited to, excavation, provision of construction materials, interior design and improvements, purchase of goods and supplies and equipment, janitorial and refuse collection services and other pre and post construction activities, maintenance and security for the project being created (the "**Project**"), in accordance with the following provisions¹

- A The **Developer** by entering into this Memorandum of Understanding Agreement (the "**MOU**") agrees to develop a master procurement plan inclusive of **LSDBEs** for redeveloping of the Site, including implementation of all design, pre-development and development activities contemplated by such master plan, and the demolition and/or construction of all improvements (as defined in the **MOU**) to be located at the Site (collectively, the "**Project**") The **Developer**, on its behalf and/or on behalf of its successors and assigns (if any), hereby agrees to use bona fide efforts (as defined herein) to achieve, at a minimum, **LSDBE** participation in professional/technical services, construction management, construction trade subcontracting, and construction trade suppliers for the Project equivalent to 35% of the adjusted development budget. The actual amount of the 35% Goal will be based upon **Developer's** final construction budget submitted to the **DSLBD Director**
- B The **Developer** shall utilize the resources of the Department of Small and Local Business Development ("**DSLBD**"), including the Small and Local Business Opportunity Commission's Directory of Certified Local, Small and Disadvantaged Business Enterprises, and periodic updates, as the primary referral sources for **LSDBEs**. The primary contact for such referrals shall be the Director of the Department of Small and Local Business Development (the "**Director**").

¹ The actual amount of the 35% Goal will be based upon **Developer's** final construction budget submitted to the **DSLBD Director**

- C The **Developer** shall designate one or more representatives (the '**Representatives** ') who shall be duly authorized to negotiate sign and implement this MOU and the **Developer** shall provide the name(s) of the Representatives to DSLBD promptly upon their selection together with reasonably satisfactory evidence of their authority to act as Representatives. The Representatives shall meet with DSLBD officials to explore and develop ways for achieving the 35% Goal.
- D The **Developer** agrees to make a continuing bona fide effort to utilize LSDBEs for certain goods and services as may be required by the **Developer** to conduct its daily operations during the Project, and understands that such efforts will accrue toward the 35% Goal.
- E Not later than 60 days following the filing of application for a building permit pursuant to the approved PUD, the Developer agrees to submit a local business plan, in the form of **Attachment A** to DSLBD for approval, which plan shall be incorporated in and made a part of this MOU.
- F Not later than 45 days after the local business plan has been approved by DSLBD, the **Developer** will submit to DSLBD a more extensive plan listing all of the projected procurement items, quantities and estimated costs, bid opening and closing dates, and start-up and completion dates. This plan should indicate whether any items will be bid without restriction in the open market, or limited to LSDBEs certified by the Small and Local Business Opportunity Commission.
- G The parties hereto understand and agree that the means of achieving the 35% Goal may vary according to the types of goods and services contracted for and the current availability of Certified LSDBEs. However, the **Developer** agrees to make a bona fide effort to achieve, at minimum, the 35% Goal.
- H The **Developer** further agrees to submit quarterly LSDBE contracting and subcontracting reports, in the form of **Attachment B** to DSLBD no later than fifteen (15) days after the end of each calendar quarter; the quarterly report periods shall begin on **January 1, April 1, July 1, and October 1**. These reports should include detailed documentation of outreach efforts to LSDBEs in order for DSLBD to determine whether the Owners have made bona fide efforts.
- I The Representatives of **Developer** shall meet quarterly with DSLBD staff on a mutually agreeable schedule to discuss LSDBE participation during the construction phase(s) of the Project.
- J The **Developer** further agrees to include in the terms of its contractual agreements with the general/prime contractor(s) and/or construction manager (any such general contractor or construction manager, the "**General Contractor** "), language that requires the General Contractor to make a bona fide effort to achieve the 35% Goal in (1) in its own contracting with respect to the Project, and (2) engaging subcontractors to perform work on the Project, and the General Contractor will require that the any of its contractors include in all lower tier contracts a provision requiring such lower tier subcontractors make bona fide efforts to achieve the

35% Goal

The **Developer** shall take responsibility for training the General Contractor and any subcontractors to ensure that they understand the economic development commitments made by the **Developer** to certified Local, Small and Disadvantaged Business Enterprises

The **Developer** shall employ and maintain an aggressive contract tracking and monitoring program, along with a prescribed and detailed means of dealing with inconsistent incorrect and/or tardy reports. To the extent that the **Developer** experience or discover non compliance with this MOU, the **Developer** may request additional retainage be withheld from non-complying subcontractors (including the General Contractor) until complete and correct documentation reflecting bona fide efforts to achieve the 35% Goal is submitted. Contractors shall be advised that any and all non-compliance with this MOU may negatively impact all future opportunities with the **Developer** or the General Contractor, as applicable

- K The **Developer** will publish, at a reasonable time period prior to any bid opening henceforth, a public notice in a newspaper of general circulation in the District of Columbia and in one or more other newspapers serving the District of Columbia local business community, to inform the business community as a whole of the overall project including a general description of projected phases of the development and anticipated time tables
- L For purposes of this MOU agreement, the term "bona fide effort" shall mean good faith efforts designed to meet all applicable requirements with consideration for the particular facts and circumstances of any given situation. Furthermore, "bona fide efforts" shall include, among other things the following actions, together with a commitment from the **Developer** that it shall enforce the same
 - 1 The General Contractor subject to this MOU will publish a public notice in a newspaper of general circulation in the District of Columbia, and in other newspapers serving the District of Columbia local business community, designed to inform the business community as a whole of specific contracting and subcontracting procurement opportunities
 - 2 The General Contractor subject to this MOU will publish public notices in a newspaper of general circulation in the District of Columbia and in one or more other newspapers serving the District of Columbia local business community, soliciting bids for products or services being sought, and will allow a reasonable time for all bidders to respond to the invitation for bid
 - 3 The General Contractor subject to this MOU will contact DSLDB to obtain a current listing of all LSDBEs qualified to bid on procurements as they arise
 - 4 The General Contractor subject to this MOU will negotiate with each bidder pre-qualified by the **Developer** and the General Contractor including LSDBEs, to obtain such bidder's best and final price as understood in the marketplace

- 5 The General Contractor will not require that LSDBEs provide bonding on contracts with a dollar value less than **\$100,000**, provided that in lieu of bonding the General Contractor may accept a job specific certificate of insurance
- 6 The General Contractor will design and include in all contracts and subcontracts a process for dispute settlement. This process shall incorporate an opportunity for the presentation of documentation involving the work performed and invoices regarding requests for payments. Included in such contracts shall be a provision for selecting a mutually agreed upon mediator or provisions for arbitration in accordance with the rules of the **American Arbitration Association**
- 7 The General Contractor and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the General Contractor, the General Contractor is to immediately notify any affected subcontractor as to the date on which payment can be expected
- 8 The General Contractor commits to pay all subcontractors, including LSDBEs, in accordance with the terms of the relevant subcontract, within thirty - (30) days following the General Contractor's receipt of a payment, which includes funds for such subcontractors, from the **Developer**. The **Developer** agrees to require the General Contractor to establish a procedure for giving notice to the subcontractors of the Developer's payment to the General Contractor

M In order to encourage the **Developer** to develop creative, cost competitive ways in which to meet its 35% Goal, DSLBD will give credit for new opportunities created by the **Developer** in areas not traditionally made available to LSDBEs and expansion of opportunities in existing areas

N If at the end of the first calendar quarter following the issuance of a building permit for the Project, the **Developer** is unable to comply with the LSDBE utilization plan for the Project as presented by the **Developer**, the Representatives of the **Developer** and the Director of DSLBD shall meet and discuss the possibilities for adjusting goals and strategies to extend the time of performance based on facts and circumstances

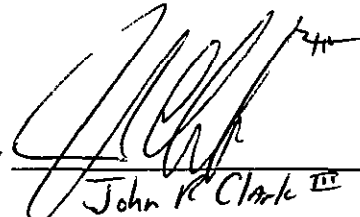
This Memorandum of Understanding shall be construed in accordance with the laws of the District of Columbia

DATE THIS _____ DAY OF _____, 2006

DEPARTMENT OF SMALL AND LOCAL
BUSINESS DEVELOPMENT

STEUART INVESTMENT COMPANY

BY _____
JACQUELYN A FLOWERS
DIRECTOR

By 
John R. Clark Jr.
President

Contact Information

Department of Small and Local Business Development
441 4TH Street N W Suite 750N
Washington DC 20001
Attn Contract and Compliance Division
Ph 202 727-3900
Fax 202-724 3786

Office of Zoning
441 4th Street, N W , Suite 210
NW, Washington, DC 20001
Attn Compliance Division
Ph (202) 727-56311
Fax (202) 727 6072

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