

## **MEMORANDUM OF UNDERSTANDING**

**WBNV CITY CENTER HOTEL HOLDINGS, LLC**, (hereinafter, the "Applicant"), in accordance with D.C. Law 1-95, D.C. Code Section 1-1-1141 *et seq.* (1987 Ed. as amended), and in consideration of the District of Columbia Government in granting the Applicant's request to approve the planned unit development ("PUD") known as D.C. Zoning Commission Case No. \_\_\_\_, which is located on at the southeast corner of M Street and New Hampshire Avenue, N.W., and consists of Lot 74 in Square 72, commits to make a bona fide effort to utilize local, small or disadvantaged business enterprises ("LSDBEs") certified by the D.C. Local Business Opportunity Commission in order to achieve, at a minimum, the goal of \_\_\_\_\_ percent (\_\_%) participation (the "\_\_% Goal") in the contracted development costs in connection with the design, development, construction (including, but not limited to, pre-construction activities), maintenance and security for the project to be created as result of the PUD (the "Project"), including janitorial, refuse collection, provision of supplies and other similar post-construction activities relating to the Project, in accordance with the following provisions.

- A. The Applicant shall utilize the resources of the Office of Local Business Development ("OLBD"), including the 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 Office of Local Business Development (the "Director").
- B. The appropriate representatives of the Applicant who negotiate, sign and are responsible for the implementation of the Memorandum of Understanding with the OLBD agree to meet with the Applicant's procurement and project officers to explore and develop ways for achieving the \_\_% Goal.
- C. The Applicant agrees to make a continuing bona fide effort to utilize LSDBEs for certain goods and services as may be required by the Applicant to conduct its daily operations and understands that such efforts will accrue toward the \_\_% Goal.
- D. Not later than (60) days following award of a contract of the first phase and each subsequent phase of the Project, the Applicant agrees to submit a minority business plan to OLBD for approval, which plan shall be incorporated in and made a part of this Agreement.
- E. Not later than thirty (30) days following the filing of an application for a building permit pursuant to the approved PUD, the Applicant will

submit to OLBD 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 Local Business Opportunity Commission.

- F. The parties hereto understand and agree that the means of achieving the \_\_% Goal may vary according to the types of goods and services contracted for and the current availability of Certified LSDBEs. However, the Applicant agrees to make a bona fide effort to achieve, at a minimum, the \_\_% Goal over the life of the Project.
- G. The Applicant further agrees to submit quarterly contracting and subcontracting reports to OLBD no later than thirty (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. The quarterly report shall be submitted on a form provided by OLBD. These reports should include detailed documentation of outreach efforts to LSDBEs in order to determine bona fide efforts.
- H. The Applicant agrees to meet quarterly with OLBD staff on a mutually agreeable schedule to discuss LSDBE's participation on the Project.
- I. In the event that there are no LSDBEs in the District of Columbia that manufacture, construct, distribute, install, or otherwise supply the goods and services required to develop, construct, renovate and/or maintain the Project, the Applicant agrees to make bona fide efforts to achieve the \_\_% Goal through a broad scale approach to contracts with other local business enterprises certified by the District.
- J. The Applicant further agrees to include in the terms of its contractual agreements with the general/prime contractor and/or construction manager (in any of such events, the "Contractor"), language that puts the Contractor on notice that the Contractor is expected to make a bona fide effort to achieve the \_\_% Goal in (1) its own contracting with respect to the Project and (2) engaging subcontractors to perform work on the Project.
- K. The Applicant will publish, in a timely manner, 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 and anticipated time tables.

- L. For purposes of this Agreement, it is agreed that "bona fide effort" means that the Applicant will obtain the following commitments from its General Contractor ("GC"):
1. The GC will publish 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, designed to inform the business community, as a whole, of specific contracting and subcontracting procurement opportunities.
  2. The GC will publish 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 invitations/requests for bids.
  3. The GC will contact OLBD to obtain a current listing of all LSDBEs qualified to bid on major procurement as they arise.
  4. The GC will negotiate with all bidders pre-qualified by the Applicant and the GC, including LSDBEs, to obtain each pre-qualified bidder's best and final price as understood in the marketplace.
  5. The GC will not require that the LSDBEs provide bonding on contracts with a dollar value less than \$100,000, provided that, in lieu of bonding, the GC may accept a job specific certificate of insurance.
  6. The GC 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 the contract shall be a mutually agreed upon mediator and provisions for arbitration in accordance with the rules of the American Arbitration Association.
  7. The GC 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 GC, the GC is to immediately notify the subcontractor and advise as to the date on which payment can be expected.

8. The GC commits to pay all subcontractors, including LSDBEs, within fifteen (15) days following the GC's receipt of a payment, which includes funds for such subcontractors, from the Applicant. The Applicant agrees to require the project manager to establish a procedure for giving notice to the subcontractors of the Applicant payments to the GC.
- M. In order to encourage the Applicant to develop creative, cost competitive ways in which to meet its \_\_% Goal, OLBD will give credit negotiated by the parties for the opening up of opportunities in areas not traditionally provided to LSDBEs and/or expansion of opportunities in existing areas.
- N. If, at the end of the first calendar quarter following the issuance of a building permit, the Applicant is unable to comply with the proposed utilization plan for the Project, representatives of the Applicant and the Director of OLBD shall confer with a view toward adjusting goals and strategies to extend the time of performance based on facts and circumstances.

DATED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2006.

**OFFICE OF / LOCAL BUSINESS  
DEVELOPMENT**

**WBNV CITY CENTER HOTEL HOLDINGS, LLC**

By: \_\_\_\_\_

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