

**CERTIFIED BUSINESS ENTERPRISE  
UTILIZATION AND PARTICIPATION AGREEMENT**

**THIS CERTIFIED BUSINESS ENTERPRISE UTILIZATION AND PARTICIPATION AGREEMENT** (this “**Agreement**”) is dated as of July 11, 2008 and is made by and between the **DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT (“DSLBD”)** and **WATERFRONT ASSOCIATES LLC**, a District of Columbia limited liability company, or its designees, successors or assigns (“**Developer**”).

**RECITALS**

A. Developer has entered into a Land Disposition and Development Agreement (“**LDDA**”) with the RLA Revitalization Corporation dated as of November 21, 2006 governing the disposition and redevelopment of certain real property formerly known as Waterside Mall and located at 401 M Street, S.W. in Washington, D.C. (“**Waterfront Development**”).

B. In conformance with the LDDA and the applicable provisions of the Planned Unit Development (“**PUD**”) for the Waterfront Development, Developer covenants that it has executed and will comply in all respects with this Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements contained herein, the receipt and adequacy of which is hereby acknowledged, DSLBD and Developer agree as follows:

**ARTICLE I  
UTILIZATION OF CERTIFIED BUSINESS ENTERPRISES**

**Section 1.1 CBE Minimum Expenditure; Phases.** The Developer, on its behalf and/or on behalf of its successors and assigns (if any), shall hire and contract with, or will cause its contractors to hire and contract with Certified Business Enterprises, as defined in the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (the “**Act**”), D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*, (each, a “**CBE**”) in connection with the predevelopment and development portions of the Waterfront Development, including, but not limited to, professional and technical services, construction management, construction trade work and suppliers, and pre and post-construction procurements of maintenance, security, site improvements, janitorial, refuse collection, food services, travel arrangements and other goods and services in any way related to the Waterfront Development or Developer’s operations, but excluding those areas listed on **Attachment 3**. Developer shall expend funds contracting and procuring goods and services from CBEs in an amount equivalent to *no less than* thirty-five percent (35%) of the adjusted Waterfront Development Budget (the “**CBE Minimum Expenditure**”) as set forth in **Attachment 1** hereto (the “**Waterfront Development Budget**”). The Waterfront Development Budget will be a compilation of project budgets, each of which will be specific to a single building project within the Waterfront

Development (each a “**Project Budget**”). The Developer plans to develop the Waterfront Development in eight phases, each of which is preliminarily identified in **Attachment 2** hereto (each, a “**Development Phase**”). Developer may periodically adjust the starting and ending dates for each Development Phase or combine Development Phases, and will give DSLBD prompt written notice of any such change.

**Section 1.2 Phase CBE Plans.** For each Development Phase, Developer shall expend with CBEs an amount not less than thirty-five percent (35%) of the budget for that Development Phase (the “**Contracting Target**”). Developer will inform DSLBD in writing of the beginning of each Development Phase at least thirty (30) days prior to its commencement and will provide DSLBD with its plan depicting Developer’s intended CBE utilization to obtain the Contracting Target for such Development Phase (each a “**Phase CBE Plan**”) and the Project Budget for each building in such Development Phase. Each Phase CBE Plan shall list all of the projected procurement and contract categories and estimated start-up and completion dates. Each Phase CBE Plan should indicate whether any items will be bid without restriction in the open market, or limited to CBEs. Each Phase CBE Plan shall be in substantially the form of **Attachment 4** hereto. Developer shall submit to DSLBD written updates and modifications to each Phase CBE Plan and Project Budget as specified in Section 1.4.

### **Section 1.3 Capacity Building Incentives.**

(a) Developer acknowledges that a priority of the District is to assist local businesses in developing greater capacity, technical capabilities and valuable experience, especially in areas of development and construction related services. To that end, the parties agree that Developer will have the right to earn and receive certain incentives identified as Reporting Bonuses (as defined hereinafter) for engaging in activities that are likely to create opportunities for CBEs generally, and to facilitate capacity building for Disadvantaged Business Enterprises (as defined in the Act) (each, a “**DBE**”) in particular. The Reporting Bonuses when earned by Developer will be applied by DSLBD to reduce Developer’s CBE utilization requirements set forth in Sections 1.1 and 1.2 of this Agreement.

(b) The parties have mutually devised a list of professional services, trade specialties or other vocational areas in which CBEs either lack capacity, lack depth or in which such firms traditionally do not participate as prime contractors on development projects of this nature and size (e.g., construction management; electrical contracting; mechanical contracting; structural steel erection; and landscape architecture) (each, a “**Target Sector**”) and such list is attached hereto as **Attachment 5**. The parties will revisit the composition of the Target Sectors periodically to mutually agree to revise and update them as necessary.

(c) The Reporting Bonus shall be calculated as follows:

(1) For every dollar expended with a DBE for services that fall within a Target Sector, Developer shall receive a \$2.00 credit against the applicable Contracting Target. For example, a \$200,000 contract award paid to a DBE for services that fall within a Target Sector would be counted as \$400,000 by DSLBD when measuring Developer’s performance against the Contracting Target.

(2) For every dollar expended with a CBE that is not certified as a DBE for services that fall within a Target Sector, Developer shall receive a \$1.50 credit against the applicable Contracting Target. For example, a \$200,000 contract award paid to a CBE that is not certified as a DBE for services that fall within a Target Sector would be counted as \$300,000 by DSLBD when measuring Developer's performance against the Contracting Target.

(3) For every dollar expended with a DBE for services that do not fall within a Target Sector, Developer shall receive a \$1.25 credit against the applicable Contracting Target. For example, a \$200,000 contract award paid to a DBE for services that do not fall within a Target Sector would be counted as \$250,000 by DSLBD when measuring Developer's performance against the Contracting Target (the credit amounts described in subparagraphs (1), (2) and (3) above are referred to collectively as the "**Reporting Bonus**").

(d) Every contract, purchase or task order (as applicable) issued by Developer to a CBE firm, either directly or indirectly, which Developer believes should qualify for the Reporting Bonus shall be subject to review and approval by the Director of DSLBD (the "**Director**") solely to ensure (i) that the scope of work is properly characterized within a Target Sector and (ii) that the contract is with and payments were made to a CBE firm and such firm is properly categorized. If DSLBD does not complete its review within 30 days of its receipt of the relevant information, the Reporting Bonus will be deemed approved.

(e) The parties may mutually agree in writing to additional incentives that may be earned by Developer for instituting additional capacity building initiatives for CBEs (e.g., pay without delay programs; establishment of strategic partnerships or mentor-protégé initiatives). In particular, Developer is encouraged to work with its general contractors and/or construction managers to develop more flexible criteria for pre-qualifying CBEs. The modified pre-qualification criteria should consider the size and economic wherewithal usually present in small contractors as well as insurance and bonding requirements. Developer is also highly encouraged to establish CBE set-asides for certain procurements that will restrict bidders to those bid packages.

#### **Section 1.4 Submission of and Alterations to Project Budgets.**

(a) Each initial Project Budget will be included in the Waterfront Development Budget used to ascertain the CBE Minimum Expenditure pursuant to Section 1.1 (each, an "**Initial Project Budget**"). Prior to the commencement of each building project, the Project Budget for that building project may be revised as a result of more specific cost figures not otherwise available when the Waterfront Development Budget was developed. Accordingly, each Project Budget, and, as a result, the Waterfront Development Budget, may be revised immediately prior to the execution of the architect's agreement for that building project.

(b) If any Project Budget increases by an amount greater than 5% of the Initial Project Budget, Developer will notify DSLBD in writing of the increase and indicate that either (i) the Developer has elected to increase the CBE Minimum Expenditure by an identical percentage or (ii) the Developer requests a meeting with DSLBD to discuss an equitable modification to the CBE

Minimum Expenditure. The Developer will modify its Phase CBE Plan accordingly and submit the amended Phase CBE Plan to DSLBD within ten (10) business days of such modification.

(c) If any Project Budget decreases by an amount greater than 10% of the Initial Project Budget, Developer will notify DSLBD in writing of the decrease and indicate that either (i) the Developer has elected to decrease the CBE Minimum Expenditure by an identical percentage or (ii) request a meeting with DLSBD to discuss an equitable modification to the CBE Minimum Expenditure. The Developer will modify its Phase CBE Plan accordingly and submit the amended Phase CBE Plan to DSLBD within ten (10) business days of such modification.

## **ARTICLE II CBE OUTREACH AND RECRUITMENT EFFORTS**

**Section 2.1 Identification of CBEs and Outreach Efforts.** Developer shall utilize the resources of DSLBD, including the *CBE Business Center* found on DSLBD's website. In particular, Developer shall publish, or cause its contractors to publish, all contracting opportunities for each Development Phase of the Waterfront Development within the CBE Business Center's Business Opportunities area. Developer shall use the CBE Company Directory as the primary source for identifying CBEs. Developer, and its contractors, may use other resources to identify individuals or businesses that could qualify as CBEs and is encouraged to refer any such firms to DSLBD. Throughout the duration of any Development Phase, Developer or its general contractor(s)/construction manager(s) shall (as set forth in Section 4.1) periodically publish notices in any of the following newspapers primarily serving the District of Columbia: *The Current Newspapers*, *The Washington Informer*, the *Washington Afro-American*, *Common Denominator*, *Washington Blade*, *Asian Fortune* and *El Tiempo Latino* (or if any of them should cease to exist, their successor, and if there is no successor, in another newspaper of general circulation) to inform CBEs, and entities which could qualify as CBEs, about the business opportunities. If Developer develops a website for the Waterfront Development, such website shall (i) advertise upcoming bid packages, (ii) present instructions on how to bid, and (iii) directly link to DSLBD's website.

## **ARTICLE III INFORMATION SUBMISSIONS AND REPORTING**

**Section 3.1 Quarterly Reports.** Beginning with the end of the first calendar quarter after the commencement of the first Development Phase, and for each calendar quarter thereafter during the term of this Agreement, Developer will submit, or cause to be submitted, expenditure reports for each Development Phase which shall identify, on a building by building basis:

(i) those contracts where the party providing services, goods or materials was a CBE, including the name of the company and the then current amount of the contract (including any modifications or change orders);

(ii) the nature of the contract;

- (iii) the amount actually paid by the Developer to the CBE under such contract for the period;
- (iv) the certification classification for each vendor/contractor and the CBE certification number;
- (v) work performed by vendors/contractors in Target Sectors and any approved Reporting Bonuses;
- (vi) the percentage of overall Development Phase expenditures which were to CBEs; and,
- (vii) any modifications to the CBE Minimum Expenditure and/or Contracting Target resulting from alterations to any Project Budgets as discussed in Section 1.4.

These reports will be submitted no later than thirty (30) days after the end of each quarter. The reports shall be submitted in substantially the form of **Attachment 6**. The reports will also describe the Developer's and its contractors' outreach efforts (if any) during the reporting period, to identify CBEs and/or encourage them to bid on or otherwise apply to provide labor, services, goods, and materials for use in the construction or operation of the Waterfront Development. Companies that may be eligible for certification, but are not yet certified, will not be included in these reports until the company has obtained certification. Once such a company has obtained certification, all amounts spent on the Waterfront Development under that company's contract, beginning on the date the company filed a complete application for certification with DSLBD, will be applied toward the CBE Minimum Expenditure. Concurrently with submission of the quarterly reports, Developer or its general contractor(s) shall also submit vendor verification forms (each, a "**Vendor Verification Letter**") in substantially the form of **Attachment 8**.

#### **ARTICLE IV GENERAL CONTRACTORS AND CONSTRUCTION MANAGERS**

**Section 4.1 Adherence to Contracting Targets.** Developer shall require in its contractual agreements with the general contractor(s) and/or construction manager(s) for each Development Phase, as applicable (the "**General Contractor**"), that the General Contractor comply with the obligations and responsibilities of Developer contained in this Agreement with respect to achieving the applicable Contracting Targets. Specifically, Developer will obtain the following commitments from its General Contractor ("**GC**"):

- (i) Prior to the commencement of each Development Phase, the GC will publish a public notice in a newspaper whose primary circulation is in the District of Columbia, especially those serving the District of Columbia CBE community (e.g. Afro American, Washington Informer, El Tiempo Latino, Asian Fortune, the Current Newspapers) about the Developer's procurement and contracting opportunities being created by each building in each Development Phase. The public notice will describe the time and place for an informational overview of the building project to be given by the GC and provide CBEs the opportunity to meet

with the GC to explore the potential for the CBE to be added to the bid list of subcontractors.

- (ii) The GC will contact DSLDB to obtain a current listing of all CBEs the GC or Developer deem qualified to bid on procurements as they arise and will make full use of the CBE Business Center found on DSLBD's website for listing opportunities and for subcontracting compliance monitoring.
- (iii) The GC will negotiate with all bidders pre-qualified by Borrower and the GC, including CBEs, to obtain each bidder's best and final price as understood in the marketplace.
- (iv) The GC will not require that CBEs 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 or letter of credit from a financial institution reasonably acceptable to the GC.
- (v) The GC will include in all contracts and subcontracts with CBEs a process for alternative dispute resolution to be conducted in Washington DC. This process shall at a minimum afford an opportunity for CBEs to submit documentation of work performed and invoices regarding requests for payments. Included in the contract shall be a mutually agreed upon provision for mediation (to be conducted by DSLBD) or arbitration in accordance with the rules of the American Arbitration Association..
- (vi) The GC shall strictly adhere to its contractual obligations to pay from funds received from the Developer all subcontractors in accordance with the contractually agreed upon schedule for payments. If 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.
- (vii) The GC commits to pay all subcontractors, including CBEs, within thirty (30) days following the GC's receipt of a payment from the Developer for work performed.

## **ARTICLE V EQUITY AND DEVELOPMENT PARTICIPATION**

### **Section 5.1 LSDBE Equity Participation Requirement.**

(a) Developer shall seek and permit investors who have been certified by DSLBD as a Local, Small, and Disadvantaged Business Enterprise (as defined in the Act) (each, a "LSDBE Investor") to participate in providing equity for the Waterfront Development in an amount equal to at least five percent (5%) of the total equity requirement for the Waterfront Development, which shall for purposes of this Agreement be fixed at \$7,000,000 (the "LSDBE Equity

**Requirement**”). The minimum equity investment for each LSDBE Investor shall be no less than \$2,000,000.

(b) Developer shall use the resources of DSLBD in accordance with Article II of this Agreement and shall work together with DSLBD to identify LSDBE Investors. DSLBD may arrange meetings and attend presentations with Developer and LSDBE Investors to measure Developer’s efforts to attract equity partners.

(c) The LSDBE Investor shall receive a percentage interest in the capital and profits of the applicable owners of Developer proportionate to the amount the LSDBE Investor contributes. For example, if the LSDBE Investor contributes \$7,000,000, and the total equity capital of the applicable owners of Developer is \$90,000,000, the LSDBE Investor will have a 7.8% percentage interest in the capital and profits of the applicable owners of Developer; subject, however, to a preferred return on equity of not more than 10% invested by Developer prior to closing with any LSDBE Investor, which shall be negotiated with the LSDBE Investor.

(d) If the percentage interest of the current owners of Developer is diluted (e.g., by the admission of an institutional equity partner), then the percentage interest of the LSDBE Equity Requirement shall be diluted prorata. For example, if Developer’s percentage interest reduces by one-half in connection with the admission of an institutional equity partner, then the LSDBE Equity Requirement will also reduce by one-half.

(e) Following closing with any LSDBE Investor, if additional equity for the Waterfront Development is required (the “**Additional Capital**”), the LSDBE Investor will have the opportunity to provide its proportionate share of the Additional Capital at the same time, and on the same terms and conditions, as Developer provides its proportionate share of the Additional Capital. However, if the LSDBE Investor elects not to provide the Additional Capital, then Developer shall advance the Additional Capital on the LSDBE Investor’s behalf up to fifteen percent (15%) of the LSDBE Investor’s initial equity investment at an annual interest rate of 400 basis points over the then prime interest rate charged by national banks in the Washington, D.C. metropolitan area, but not less than ten percent (10%) (compounded annually). If the LSDBE Investor fails to fund equity requirements in excess of fifteen percent (15%) of the LSDBE Investor’s initial equity investment, Developer, at its sole discretion, may advance an additional member loan (the “**Additional Member Loan**”) on terms to be negotiated with the LSDBE Investor. The Additional Member Loan shall be treated as a member loan, will be non-recourse to the LSDBE Investor, and shall be repaid out of distributions otherwise payable to the LSDBE Investor.

(f) If Developer is unable to identify LSDBE Investors for Development Phase I in an amount equal to the LSDBE Equity Requirement, then Developer shall use commercially reasonable efforts to identify LSDBE Investors for the remaining Development Phases. This will continue until such time as the aggregate equity capital invested by LSDBE Investors equals the LSDBE Equity Requirement. The terms of the LSDBE Investor’s interest in each remaining Development Phase shall be the same as described in this Article V.

(g) The LSDBE Equity Requirement described in this Article V shall not apply to Development Phases II, III or IV if Developer elects in its sole discretion to sell or transfer such phase or phases to a non-affiliated third party.

## ARTICLE VI CONTINGENT CONTRIBUTIONS

**Section 6.1 Contingent Contributions for Failure to Meet CBE Minimum Expenditure.** At the conclusion of each Development Phase of the Waterfront Development, DSLBD shall measure the percentage difference between the Contracting Target and Developer's actual expenditures. If Developer's actual expenditures, inclusive of the Reporting Bonus, are less than the Contracting Target, DSLBD shall identify the percentage difference (the "**Shortfall**"). If Developer fails to meet its Contracting Target, within 90 days of substantial completion of each Development Phase of the Waterfront Development, which shall be determined by issuance of certificate(s) of occupancy for the final building of that Development Phase, Developer shall make the following payments (each, a "**Contingent Contribution**"), which shall be paid to the District of Columbia in the time and in a manner to be determined by DSLBD. The Contingent Contributions shall be based on six and one-half percent (6.5%) of the Contracting Target for each Phase (the "**Phase Contribution Fund**").

- (i) If the Shortfall for any given Phase is more than 50% of the Contracting Target, Developer shall make a Contingent Contribution of one hundred percent (100%) of the Phase Contribution Fund for that Development Phase. For example, if at the conclusion of a Phase, the Shortfall is 60%, Developer shall make a Contingent Contribution equal to the Phase Contribution Fund.
- (ii) If the Shortfall for any given Phase is between 15% and 50% of the Contracting Target, Developer shall make a Contingent Contribution that is the percentage of the Phase Contribution Fund that is equal to the Shortfall. For example, if the Shortfall is 40%, the Developer shall make a Contingent Contribution of 40% of the Phase Contribution Fund for that Development Phase.
- (iii) If the Shortfall for any given Phase is less than 15% of the Contracting Target, and Developer has taken all actions reasonably necessary (as reasonably determined by DSLBD based on Developer's reports and other verifiable evidence) to achieve the Contracting Target, the Developer shall not be required to make a Contingent Contribution. The Developer may meet its burden to demonstrate it has taken all actions reasonably necessary to achieve its Contracting Target by (1) fulfilling all CBE outreach and recruitment efforts identified in Article II of this Agreement and Attachment 10 to 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 things:



- 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 Waterfront Development, 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 of free plans and specifications 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 for any given Phase is less than 30% of the Contracting Target, 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 Contracting Target, Developer shall make a Contingent Contribution that is the percentage of the Phase 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 Phase Contribution Fund for that Development Phase.

**Section 6.3 Failure to Meet LSDBE Equity and Development Participation Requirements.**

In addition to the remedies stated herein, if Developer fails to meet the LSDBE Equity Requirement as described in Article V of this Agreement, and such failure shall continue for a period of thirty (30) days after DSLBD’s notice to Developer, DSLBD and/or the District shall have the right to pursue any and all remedies that may be available under the LDDA for noncompliance with this Agreement.

**Section 6.4 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. If 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 Waterfront Development and any manager of the Waterfront Development that might otherwise be available at law or in equity, including specific performance.

**Section 6.5 Waiver of Contingent Contributions.** Any Contingent Contribution required under this Article VI may be rescinded or modified by the Director upon consideration of the totality of the circumstances affecting such noncompliance.

## **ARTICLE VII RETAIL LEASING EFFORTS**

**Section 7.1 Retail Leasing Opportunities for Local and Small Businesses.** Pursuant to Section 11.7 of the LDDA, Developer acknowledges it shall use Best Commercially Reasonable Efforts (as defined in the LDDA) to have local and small businesses occupy 10,000 square feet of the retail tenant spaces in the Waterfront Development. In connection with the foregoing, Developer shall adhere to the following:

(a) To the extent reasonably necessary, Developer shall provide a discounted rental rate of ten percent (10%) below the Fair Market Rental (as defined below) for five (5) years following the occupancy of each retail space occupied by a local and small retail tenant meeting the 10,000 square foot space allocation in the Waterfront Development. Notwithstanding the provisions in Section 7.1(c) below, if any local and small retailer vacates its retail space prior to expiration of the five year period, Developer shall continue to provide the rental rate of 10% below Fair Market Rental to any additional small and local retailers for the remainder of the five year period. The “**Fair Market Rental**” shall mean the net effective fair market rental rate per square foot of rentable area that would be agreed upon between a landlord and a tenant entering into a new lease for space comparable as to location, configuration, of comparable size and use in a comparable development with comparable services as to location, quality and reputation, of comparable age with a comparable build-out and a comparable term, and excluding, among other things, tenant allowances, free rent periods or any other market concessions being granted by landlords for such space. Developer shall have the final determination of the Fair Market Rental if such determination is disputed by the applicable local and small business retail tenant.

(b) Developer in its sole discretion may divide the allocated 10,000 square foot space to the local and small businesses into multiple spaces and/or leases.

(c) Developer’s obligations under this Article VII shall expire on the date that is six (6) months after substantial completion (as evidenced by the issuance of final certificates of occupancy) of each of Development Phases V and VI, respectively.

(d) Developer shall submit all lease proposals to meet the local and small businesses 10,000 square foot allocation to the District of Columbia Office of the Deputy Mayor for Planning and Economic Development (“**ODMPED**”). ODMPED or DSLBD shall have fifteen (15) business days to approve the proposed tenant as a local and small business or such request shall be deemed approved, unless the delay is caused by failure of the proposed tenant to provide

the following information necessary to determine local and small status: a current certification letter from DSLBD *or* (1) a description of the business' product line, trade or services; (2) a list of all operating facilities or other office locations, including storage and warehouse facilities; (3) list of any affiliated entities of the business (e.g., parent company, subsidiary, etc.); (4) the name and home address of the owner(s) of the business and proof of residency (e.g., driver's license, income tax returns, etc.); (4) copies of DC or state, and federal tax returns for the last three years; and (5) Certificate of Good Standing or Notice of Tax Registration issued by the DC Office of Tax and Revenue. DSLBD acknowledges its approval rights under this Section 7.1(d) is limited solely to whether the proposed tenant qualifies as local and small, but not necessarily a CBE, and shall have no approval rights relating to the nature of the retail service provided or the terms of the proposed lease.

## **ARTICLE VIII CONSULTING SERVICES**

**Section 8.1 Agreement to Provide Consulting Services.** Developer shall provide the District of Columbia (and/or any of its agencies) and any selected CBE up to \$100,000 of consulting and other services in connection with the development of the Corporation Development (as defined in the LDDA), including, but not limited to, utilization of Developer's (and its ownership entities') development and construction employees, consultants, architects and engineers, and professional services (the "**Consulting Services**"). The Consulting Services shall be subject to the applicable provider's standard contractual terms and conditions for providing the applicable service, and shall be at the rates as specified on **Attachment 9**. Developer's obligation under this Article 8 shall expire three (3) years after the date of this Agreement.

## **ARTICLE IX MISCELLANEOUS**

**Section 9.1 Primary Contact.** Upon execution of this Agreement, the Director, shall identify a primary point of contact at DSLBD for the Developer for the purposes of collecting or providing information, or carrying out any of the activities under this Agreement. The Director's representative and a representative of the Developer shall meet regularly.

**Section 9.2 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 4<sup>th</sup> Street, N.W., Suite 970 North  
Washington, DC 20001  
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 Developer: FOREST CITY WATERSIDE, LLC  
c/o Forest City Washington  
1615 L Street, N.W., Suite 400  
Washington, D.C. 20036  
Attention: Thomas Henneberry  
Tel: (202) 496-6600  
Fax: (202) 496-6666

and NEW KAEMPFER WATERFRONT LLC  
c/o Vornado/Charles E. Smith  
2345 Crystal Drive, Suite 1000  
Arlington, VA 22202  
Attention: Mitchell N. Schear  
Tel: 703-769-8200  
Fax: 703-769-1396

With copies to: Forest City Washington, LLC  
c/o Forest City Enterprises, Inc.  
50 Public Square  
Terminal Tower, Suite 1170  
Cleveland, Ohio 44113

Attention: General Counsel  
Tel: (216) 416-3281  
Fax: (216) 416-3275

and

Nixon Peabody LLP  
Attention: ElChino Martin  
401 9th Street, N.W., Suite 900  
Washington, DC 20004  
Tel: (202) 585-8834  
Fax: (202) 585-8080

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 9.3 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 9.4 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 prior written notice to DSLBD.

**Section 9.5 Amendment; Waiver.** This Agreement may be amended from time to time by written supplement hereto and executed by both DSLBD and the 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 9.6 Governing Law; Dispute Resolution.** This Agreement shall be governed by the laws of the District of Columbia. Subject to the provisions of Section 4.1(v) of this Agreement relating to disputes between the General Contractor and the CBEs, all claims and disputes arising out of or in connection with this Agreement shall be subject to initial adjudication by the District of Columbia Office of Administrative Hearings ("OAH"), subject to OAH's agreement to preside over such matter. Unless the OAH decides otherwise in its final adjudication, each party shall pay its own costs, including attorneys' fees and the fees of witnesses, in relation to the preparation and presentation of its claims or responses in any OAH proceedings. Any ruling by the OAH shall be subject to judicial review by the Court of Appeals of the District of Columbia

**Section 9.7 Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original.

**Section 9.8 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 9.9 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 9.10 Attachments.** The following exhibits shall be deemed incorporated into this Agreement in their entirety:


<b><i>Attachment 1:</i></b>	Development Budget/CBE Minimum Expenditure
<b><i>Attachment 2:</i></b>	Development Phases
<b><i>Attachment 3:</i></b>	Exclusions
<b><i>Attachment 4:</i></b>	Phase CBE Plans
<b><i>Attachment 5:</i></b>	Target Sector List
<b><i>Attachment 6:</i></b>	CBE Reports
<b><i>Attachment 7:</i></b>	Sample Vendor Verification Response
<b><i>Attachment 8:</i></b>	Sample Vendor Verification Letter
<b><i>Attachment 9:</i></b>	Rates for the Consulting Services
<b><i>Attachment 10:</i></b>	Outreach Activities

**Section 9.11 Termination.** Unless otherwise agreed to by the parties in writing, this Agreement will automatically terminate at the later to occur of (a) the end of the last Development Phase, (b) receipt by DSLBD of all Contingent Contributions due and payable, or (c) Developer has met its LSDBE Equity Requirement pursuant to Article V.

*[SIGNATURE PAGE TO FOLLOW]*

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

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

By:   
\_\_\_\_\_  
Nicole J. Becton  
Interim Director

**WATERFRONT ASSOCIATES LLC,**  
a District of Columbia Limited Liability Company

By: K/FCE Management LLC, its Managing Member

By: Forest City Waterside, Inc., Member

By: \_\_\_\_\_  
Deborah Ratner Salzberg  
President

By: New Kaempfer Waterfront LLC, Member

By: Vornado Waterfront Holdings LLC  
Managing Member

By: Vornado KMS Holdings LLC

By: Vornado Realty L.P.

By: Vornado Realty Trust

By: \_\_\_\_\_  
Mitchell N. Schear  
President

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

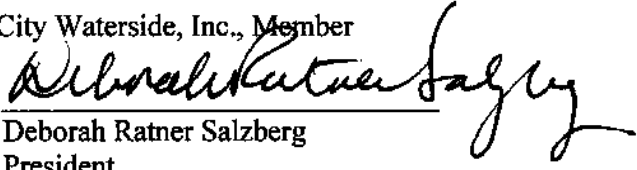
**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
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By: Vornado Realty Trust

By: \_\_\_\_\_  
Mitchell N. Schear  
President

**Attachment 1  
Waterfront Development Budget/CBE Minimum Expenditure**

**ADJUSTED PHASE BUDGET**

	Phase I				Total
	Master Planning	Road	E. 4th ST.	W. 4th ST.	
<b>PRE-DEVELOPMENT</b>	-	-	-	-	-
<b>CONSTRUCTION</b>	21,103,719	6,097,846	60,030,262	55,380,317	142,612,144
<b>A &amp; E</b>	4,388,835	1,001,162	4,083,000	3,644,000	13,116,997
<b>FF &amp; E</b>	-	-	-	-	-
<b>LEGAL &amp; ACCOUNTING</b>	2,377,398	400,000	417,000	350,000	3,544,398
<b>MARKETING</b>	1,500,000	-	100,000	100,000	1,700,000
<b>LEASING</b>	-	-	24,700,000	21,119,000	45,819,000
<b>TAXES &amp; INSURANCE</b>	15,423,292	-	2,168,000	1,914,000	19,505,292
<b>DEVELOPMENT MANAGEMENT</b>	1,644,716	255,711	4,494,000	3,979,000	10,373,427
<b>FINANCING</b>	4,984,400	613,706	10,799,000	9,966,000	26,363,106
<b>DEVELOPMENT CONTINGENCY</b>	-	239,101	2,129,000	1,869,000	4,237,101
<b>OTHER G &amp; A</b>	2,084,290	135,000	321,600	293,045	2,833,935
<b>SUNK COSTS</b>	1,667,699	-	-	-	1,667,699
<b>RENT-UP DEFICIT</b>	-	-	-	-	-
<b>TOTAL</b>	<b>55,174,349</b>	<b>8,742,526</b>	<b>109,241,862</b>	<b>98,614,362</b>	<b>271,773,099</b>
<b>ELIGIBLE EXCLUSIONS</b>	(28,014,096)	(1,643,518)	(45,128,600)	(39,590,045)	(114,376,259)
<b>NET OF EXCLUSIONS</b>	<b>27,160,253</b>	<b>7,099,008</b>	<b>64,113,262</b>	<b>59,024,317</b>	<b>157,396,840</b>
<b>38% CONTRACTING TARGET</b>	<b>9,506,088</b>	<b>2,484,653</b>	<b>22,439,642</b>	<b>20,658,511</b>	<b>55,088,894</b>

## **ADJUSTED PHASE BUDGET (continued)**

	<b>Phase II</b>	<b>Phase III</b>
	<b>Estimate</b>	<b>Estimate</b>
	<b>East Tower</b>	<b>West Tower</b>
<b>PRE-DEVELOPMENT</b>	-	-
<b>CONSTRUCTION</b>	42,796,000	42,917,000
<b>A &amp; E</b>	2,036,000	2,036,000
<b>FF &amp; E</b>	565,000	565,000
<b>LEGAL &amp; ACCOUNTING</b>	251,000	251,000
<b>MARKETING</b>	339,000	339,000
<b>LEASING</b>	-	-
<b>TAXES &amp; INSURANCE</b>	635,000	635,000
<b>DEVELOPMENT MANAGEMENT</b>	2,354,000	2,348,000
<b>FINANCING</b>	3,238,000	3,238,000
<b>DEVELOPMENT CONTINGENCY</b>	723,000	722,000
<b>OTHER G &amp; A</b>	337,000	7,116,000
<b>SUNK COSTS</b>	-	-
<b>RENT-UP DEFICIT</b>	-	179,000
<b>TOTAL</b>	<b>53,274,000</b>	<b>60,346,000</b>
<b>ELIGIBLE EXCLUSIONS</b>	(8,442,000)	(15,393,000)
<b>NET OF EXCLUSIONS</b>	<b>44,832,000</b>	<b>44,953,000</b>
<b>35% CONTRACTING TARGET</b>	<b>15,691,200</b>	<b>15,733,550</b>

### **ADJUSTED PHASE BUDGET (continued)**

	<b>Phase IV Estimate</b>	<b>Phase V Estimate</b>	<b>Phase VI Estimate</b>	<b>Total All Phases</b>
	<b>NW Tower</b>	<b>SE Tower</b>	<b>SW Tower</b>	
<b>PRE-DEVELOPMENT</b>	472,000	426,000	407,445	1,305,445
<b>CONSTRUCTION</b>	89,000,000	58,822,000	56,365,000	432,512,144
<b>A &amp; E</b>	3,519,000	4,277,000	4,094,000	29,078,997
<b>FF &amp; E</b>	978,000	-	-	2,108,000
<b>LEGAL &amp; ACCOUNTING</b>	442,000	415,000	410,000	5,313,398
<b>MARKETING</b>	1,779,000	411,000	394,000	4,962,000
<b>LEASING</b>	-	23,742,000	22,741,000	92,302,000
<b>TAXES &amp; INSURANCE</b>	1,243,000	2,590,000	2,481,000	27,089,292
<b>DEVELOPMENT MANAGEMENT</b>	4,853,000	2,961,000	2,838,000	25,727,427
<b>FINANCING</b>	9,211,000	10,895,000	10,435,000	63,380,106
<b>DEVELOPMENT CONTINGENCY</b>	1,745,000	2,132,000	2,043,000	11,602,101
<b>OTHER G &amp; A</b>	274,000	309,000	309,000	11,178,935
<b>SUNK COSTS</b>	-	-	-	1,667,699
<b>RENT-UP DEFICIT</b>	2,163,000	1,432,000	1,363,000	5,137,000
<b>TOTAL</b>	<u>115,679,000</u>	<u>108,412,000</u>	<u>103,880,445</u>	<u>713,364,544</u>
<b>ELIGIBLE EXCLUSIONS</b>	(23,160,000)	(45,313,000)	(43,421,445)	(250,105,704)
<b>NET OF EXCLUSIONS</b>	<u>92,519,000</u>	<u>63,099,000</u>	<u>60,459,000</u>	<u>463,258,840</u>
<b>35% CONTRACTING TARGET</b>	<u>32,381,650</u>	<u>22,084,650</u>	<u>21,160,650</u>	<u>162,140,594</u>

**Attachment 2  
Development Phases**

<u>Phase</u>	<u>Estimated Time Frame</u>
Development Phase I : Master Planning, West 4 <sup>th</sup> Street, East 4 <sup>th</sup> Street, 4 <sup>th</sup> Street	2007 – 2010
Development Phase II: West Tower	TBD
Development Phase III: East Tower	TBD
Development Phase IV: NW Tower	TBD
Development Phase V: West M Street	TBD
Development Phase VI: East M Street	TBD

**Attachment 3  
Eligible Costs Exclusions**

**Land Acquisition**

**District Fees and Taxes**

- Deed Recordation Fees
- Transfer Taxes
- Real Estate Taxes
- Business Improvement District Taxes
- Mortgage Recording Taxes
- Building Permit Fees
- District-Required Inspection Fees
- Bonding/Warranty Requirements
- Other Recordation/Review Fees

**Finance/Construction**

- Warranties/Letters of Credit/Guaranties/Deposits
- Builder's Risk Insurance
- Title Insurance
- Ground Lease Payments
- Utility Connection Fees (direct)
- Imputed Development Period Return/Debt Service/Principal Repayment
- Loan/Equity Application/Commitment Fees
- Escrow Agent Fees
- Bank Fees
- Contingencies
- General Conditions (not including Temporary: Construction; Temporary: Office Supplies; Temporary: Tools and Equipment; Controls: Security; Controls: Safety; Surveying; Final Cleaning)

**Marketing**

- Tenant Leasing Broker Commissions
- Developer Leasing Agent
- Developer For-Sale Housing Sales Agent
- Advertising

**Tenant Allowances**

**Fees/G&A**

- Developer Fees
- Developer Direct Salaries, Benefits, and Burden
- Developer Overhead, including Corporate Allocations, Rent, Phone, Postage and Delivery
- Property Management Fees
- Construction Management Fees

**Legal**

- Development Agreement
- Ground Lease
- Guaranties
- Escrow Agreement
- Partnership documents
- Litigation
- Zoning & Land Use

**Operating Deficits (Prior to Stabilization)**

### Attachment 4 Phase CBE Plans

PROJECTED PROCUREMENT ITEMS	ESTIMATED VALUE	BID OPENING	BID CLOSING	STARTUP	COMPLETION	RESTRICTED OR OPEN	CONTRACTS AWARDED
<b>CONSULTANTS</b>							
Legal Services							
Civil Engineer							
Traffic Consultant							
Landscape Architecture							
Facade Architecture							
Printing Services							
CBE Consultant							
Lighting Consultant							
Marketing Consultant							
Retail Sales Broker							
<b>CONSTRUCTION</b>							
General Requirements							
Sitework							
Concrete							
Masonry							
Metals							
Wood and Plastic							
Thermal & Moisture Protection							
Doors & Windows							
Finishes							
Specialties							
Equipment							
Furnishings							
Special Construction							
Conveying Systems							
Mechanical							
Electrical							
<b>OPERATIONS</b>							
Janitorial							
Security							
Maintenance							
Management							

NOTE: This list is for example purposes only and is not intended to be exhaustive

## **Attachment 5 Target Sector List**

### **Design & Engineering**

- Architecture (for firms certified a small and/or disadvantaged)
- Sustainability Consultant Services (LEED)
- Landscape Architecture
- Environmental Consultant
- Third Party Permit Review
- Permit Expediting
- Structural Engineering
- Civil Engineering
- Traffic & Parking Consultant
- Geotechnical Consulting & Services
- Interior Designers
- Graphics Consultant
- Restaurant Designers
- Vertical Transportation (Elevator) Consultant
- Acoustic Consultant
- Fire and Life Safety Code Consultant
- Utility Consultant
- Waterproofing Consultant

### **Miscellaneous**

- Commercial Brokerage
- CBE/LSDBE Compliance & Reporting (Consulting)
- Mentor Protégé Consultant
- Public Art Consulting
- Catering
- Historical Preservation Consultant
- Marketing Design Services (renderings, web design, etc)
- Courier Services
- Printing and Copy Services

### **Construction**

- Electrical Contracting
- Mechanical Contracting
- Utilities
- General Contracting
- Fire Protection (Sprinkler Systems, Installation and Alarm Systems)
- Plumbing Contracting
- Concrete
- High and Low Voltage Contracting
- Carpeting
- Materials & Supplies:
  - Doors (including frames)
  - Overhead doors
  - Glass and Glazing (including frames)
  - Gypsum Board
  - Tile, Ceramic & Quarry
  - Terrazzo
  - Marble/Slate
  - Flooring (wood, stone, carpet, resilient, etc)
  - Sealants
- Curtain Wall Design, Fabrication, and Installation
- Metals (structural steel/framing, fabrication, installation)
- Parking Equipment
- Elevators (Manufacturing, Installation and Maintenance)
- Excavation
- Glass and Glazing/Metal Panels
- Precast/Stone
- Roofing and Waterproofing
- Environmental Remediation
- Paving & Surfacing
- Security System Design & Installation





QUARTER	TOTAL AMOUNT EXPENDED THIS QUARTER	TOTAL AMOUNT EXPENDED WITH CBES THIS QUARTER	CBES (%) OF EXPENDED AMT. THIS QUARTER	TOTAL AMOUNT EXPENDED TO DATE	TOTAL ADJUSTED AMT EXPENDED WITH CBES TO DATE	CBES (%) OF EXPENDED AMT. TO DATE
1st Quarter 2008						
2nd Quarter 2008						
3rd Quarter 2008						
4th Quarter 2008						
1st Quarter 2009						
2nd Quarter 2009						
3rd Quarter 2009						
4th Quarter 2009						
1st Quarter 2010						
2nd Quarter 2010						
3rd Quarter 2010						
4th Quarter 2010						
<b>TOTAL</b>						

**Attachment 7**  
**Sample Vendor Verification Response**

\_\_\_\_\_, 2008

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

**Attention:** Mr. Erik A. Moses, Director  
**Reference:** Waterfront  
**Subject:** Verification of Subcontract for Waterfront

Dear Mr. Moses:

I am a CBE subcontractor to \_\_\_\_\_ [*name of GC or prime contractor*]

on the Waterfront 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.

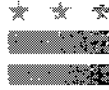
Notary signature: \_\_\_\_\_

(Seal)

My commission expires: \_\_\_\_\_

**Attachment 8  
Sample Vendor Verification Letter**

**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. \_\_\_\_\_,

As you know, the Department of Small and Local Business Development (DSLBD) has responsibility for ensuring 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 accomplish the mandates of the District government, DSLBD requires that Waterfront Associates LLC ("Waterfront") submit quarterly reports to DSLBD regarding contracting and procurement of certified businesses participating in the Waterfront Development. Waterfront's records show that your company received a subcontract in the amount of \_\_\_\_\_ and, as of \_\_\_\_\_ 2008, 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 Waterfront 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 Waterfront 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 a DSLBD compliance specialist at (202) 727-3900 Thank you for your attention to this matter.

Sincerely,

Nicole J. Becton  
Interim Director

**Attachment 9  
Rates for the Consulting Services**

<b>Consultant</b>	<b>Expertise</b>	<b>Cost/ Hour (Avg.)</b>
Shalom Baranes Assoc.	Master Plan Architect	\$200
AMT	Civil Engineer	\$150
Gorove Slade	Transportation Engineer	\$175
Holland & Knight	Zoning/Land-Use Counsel	\$400
Waterfront Associates	Project Developer	\$250
Miscellaneous/Other	TBD	\$200

## **ATTACHMENT 10**

### **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.