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FIRST SOURCE EMPLOYMENT AGREEMENT

Contract Number: Z.C. Case No. 04-22

Contract Amount: _____

Project Name: _____

Project Address: 220 H Street, NE Ward: 6

This Employment Agreement, in accordance with D.C. Law 5-93 and Mayor's Order 83-265 for recruitment, referral, and placement of D.C. residents, is between the District of Columbia, **Department of Employment Services**, hereinafter referred to as **DOES**, and **Abdo Development L.L.C. and Broadway Capitol. L.L.C.**, hereinafter collectively 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% D.C. 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

ZONING COMMISSION
District of Columbia
CASE NO.04-22
EXHIBIT NO.12F

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 extension 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 Metropolitan 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, 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 a loan, bond, grant, Exclusive Right Agreement, street or alley closing, or a leasing agreement of real property for 1 year or more.

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, but need not be limited to, 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 EMPLOYERS'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

A. 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 as agreed. 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 cannot 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. In this event, the EMPLOYER will still be required to meet the 51% goal.

D. After the EMPLOYER has selected its employees, DOES will not be responsible for the employees'

actions and the EMPLOYER hereby releases DOES 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 covered in a separate Training Agreement.

VI. Controlling Regulations and Laws

A. If this Agreement conflicts with any labor laws or governmental regulations, the laws or regulations shall prevail.

B. DOES will 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 provide them to DOES.

VII. Agreement Modifications, Renewal, and Monitoring

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, sales, assignment 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) 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. The EMPLOYER and DOES, or such other agent as DOES may designate, may mutually agree to modify this Agreement.

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

Dated this _____ day of _____, 2004

Signed:

DEPARTMENT OF EMPLOYMENT SERVICES

ABDO DEVELOPMENT, L.L.C.

BROADWAY CAPITOL., L.L.C.

1404 14th Street, NW
Second Floor
Washington, DC 20009
ADDRESS

(202)265-9393
TELEPHONE

EMPLOYMENT PLAN

Instructions:

- Submit original to the Department of Employment Services (DOES) with First Source Employment Agreement.
- Upon approval of project by the originating agency, DOES will contact Employer.

NAME OF FIRMS Abdo Development, L.L.C. and Broadway Capitol. L.L.C.

ADDRESS 1404 14th Street, NW Second Floor, Washington, DC 20009

TELEPHONE NUMBER 202-265-9393 FEDERAL IDENTIFICATION NO. _____

CONTACT PERSON Toby Millman TITLE _____

TYPE OF BUSINESS Real Estate Development

ORIGINATING DISTRICT AGENCY _____

TYPE OF PROJECT Planned Unit Development 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	N/A **				
B					
C					
D					
E					

** At the present time, the Employer has not selected the general contractor for this project. The general contractor will be required to satisfy all the requirements of this Agreement.

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.

NAME OF EMPLOYEE	SOCIAL SECURITY
N/A **	

Signature: _____ Date: _____

** At the present time, the Employer has not selected the general contractor for this project. The general contractor will be required to satisfy all the requirements of this Agreement.

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MEMORANDUM OF UNDERSTANDING

ABDO DEVELOPMENT, L.L.C. and BROADWAY CAPITOL L.L.C. (collectively, the "DEVELOPER"), 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 granting DEVELOPER's Planned Unit Development **("PUD")** and Zoning Map Amendment application, known as **D.C. Zoning Commission Case No. 04-22, for the property located at 220 H Street, NE in Square 751, Lot 13, to construct a residential project that includes the restoration of the historic portions of the building that was most recently the home of the National Capital Children's Museum and new residential buildings of approximately 599,134 square feet of gross floor area that will include approximately 500 new residential units and approximately 500 parking spaces (the "Project")**, does hereby commit to make a bona fide effort to utilize Local Small and Disadvantaged Business Enterprises **("LSDBEs")** in order to achieve, at a minimum, the goal of thirty-five percent **(35%)** LSDBE participation in the DEVELOPER'S adjusted development budget of _____ (the "35% Goal"). The 35% Goal in the amount of _____ is to be achieved 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 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. **DEVELOPER** 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 **DEVELOPER** who negotiate, sign and are responsible for the implementation of the Memorandum of Understanding with the OLBD agree to meet with OLBD procurement and project officers to explore and develop ways for achieving the 35% Goal.

C. **DEVELOPER** agrees to make a continuing bona fide effort to utilize LSDBEs for certain goods and services as may be required by **DEVELOPER** to conduct its daily operations and understands that such efforts will accrue toward the 35% Goal.

D. Not later than **(45)** days following the approval of the PUD Project, **DEVELOPER** agrees to submit a local business plan **(Attachment A)** 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, DEVELOPER** 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 35% Goal may vary according to the types of goods and services contracted for and the current availability of Certified LSDBBEs. However, **DEVELOPER** agrees to make a bona fide effort to achieve, at a minimum, the 35% Goal over the life of the project.

G. **DEVELOPER** further agrees to submit quarterly LSDBE contracting and subcontracting reports to OLBD 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. The quarterly report shall be submitted on a form provided by OLBD (**Attachment B**). These reports should include detailed documentation of outreach efforts to LSDBEs in order to determine bona fide efforts.

H. **DEVELOPER** agrees to meet quarterly with OLBD staff on a mutually agreeable schedule to discuss LSDBEs participation on the project.

I. In the event that there are no LSDBEs in the District of Columbia which manufacture, construct, distribute, install, or otherwise supply the goods and services required to develop, construct, renovate and/or maintain the Project, **DEVELOPER** agrees to make bona fide efforts to achieve the 35% Goal through a broad scale approach to contracts with other local business enterprises certified by the District.

J. **DEVELOPER** 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 which puts the Contractor on notice that the contractor is expected to make a bona fide effort to achieve the 35% Goal in: (1) its own contracting with respect to the Project; and (2) engaging subcontractors to perform work on the Project.

K. **DEVELOPER** will publish, in a timely manner, 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, a public notice 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 **DEVELOPER** will obtain the following commitments from its General

Contractor ("GC"):

1. The GC will publish, 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, a public notice designed to inform the business community as a whole of specific contracting and subcontracting procurement opportunities.

2. The GC 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 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 **DEVELOPER.** 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 of payments. In the event that there is a delay in payment to the GC, the GC is to immediately notify the subcontractor and advise the subcontractor 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 **DEVELOPER. DEVELOPER** agrees to require the project manager to establish a procedure for giving notice to the subcontractors of **DEVELOPER** payments to the GC.

M. In order to encourage **DEVELOPER** to develop creative, cost competitive ways in which to meet its 35% 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, **DEVELOPER** is unable to comply with the proposed local business utilization plan for the Project, representatives of **DEVELOPER** 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.

DATE THIS _____ DAY OF _____, 2004

OFFICE OF LOCAL BUSINESS DEVELOPMENT

BY: _____

Director

ABDO DEVELOPMENT, L.L.C.

BY: _____

BROADWAY CAPITOL, L.L.C.

BY: _____

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