

FIRST SOURCE EMPLOYMENT AGREEMENT

Contract Number: **Zoning Commission Case No. 05-23A**

Contract Amount: **N/A**

Project Name: **Eckington One**

Project Address: **Eckington Place, N.E. and Harry Thomas Way, N.E.**

Ward: **5**

Nonprofit Organization: **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 **NoMa West Residential I, LLC** (hereinafter, referred to as "EMPLOYER"). Under this Agreement, the EMPLOYER will use DOES as its first source for recruitment, referral and placement of new hires or employees for 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 of Columbia 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 hired for jobs created at this Project.
- B. The EMPLOYER shall require all contractors and subcontractors for this Project with contracts totaling \$100,000 or more to enter into a First Source Employment Agreement with DOES consistent with the terms hereof.
- 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 until construction of the Project has been completed.

- F. The EMPLOYER agrees to encourage retail tenants located at the Project to list employment opportunities connected to the opening of the business with DOES. In addition, the EMPLOYER will provide to DOES the name, address, contact person and telephone number of all retail tenants. The EMPLOYER will provide DOES with the information on the initial Project retail tenants no later than five (5) days from the date the lease is signed.
- G. 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.
- H. DOES and the EMPLOYER agree that for purposes of this Agreement, new hires and jobs created by the Project (both union and nonunion) means those jobs created at the Project as a result of internal promotions, terminations and expansions of the EMPLOYER'S workforce, through this Project.
- I. For purposes of this Agreement, apprentices as defined in D.C. Law 2-156 are included.
- J. If applicable, 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.
- K. 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.
- L. 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 to be created at the Project, salary range, hiring dates, and union requirements, if any. The EMPLOYER will notify DOES of its specific need for new employees for jobs created at the Project 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 three (3) 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 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

- 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. 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 three (3) 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 hire 51% District residents for the new jobs created at the Project consistent with D.C. Laws No. 5-93 and No. 14-24.
- 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

- A. 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 laws, including labor laws, or governmental regulations, the laws or regulations shall prevail. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior understandings with respect thereto.
- B. DOES will make every effort to work within the terms of all collective bargaining agreements to which the EMPLOYER may be a party. However, the existence of any collective bargaining agreement(s), alone, shall not supersede the terms of this Agreement.
- C. The EMPLOYER will provide DOES with written documentation that the EMPLOYER has made available, to the representative of any involved collective bargaining unit, 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. Such comments or objections alone, however, will not alter, or be grounds to alter, the terms of this Agreement.

VII. EXEMPTIONS

- A. Contracts, subcontracts or other forms of government-assistance valued at less than \$100,000.
- B. Employment openings the contractor will fill with individuals already employed by the EMPLOYER.
- 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 ownership or control of all or substantially all of its business concerns affected by this Agreement to any other party by lease, sale, 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.
3. EMPLOYER shall advise DOES within ten (10) business 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 on a monthly basis.

C. To assist DOES in the conduct of the monitoring review, the EMPLOYER will make available for review payroll and employment records for the review period indicated.

D. If additional information relevant to the Agreement is needed during the review, the EMPLOYER will provide such information as may be reasonably necessary for DOES to determine compliance by EMPLOYER obligations under this Agreement.

E. With the submission of the final request for payment from the District (if applicable), the EMPLOYER shall: (i) 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 (ii) 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. The "good faith effort" as described in the previous sentence shall mean commercially reasonable attempts to comply with the procedures and requirements set forth in this Agreement and the First Source Employment Program.

F. If applicable, 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: (a) a good faith effort to comply is demonstrated by the contractor; (b) 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, Loudon, Stafford, Clarke, Warren, Fauquier, Culpepper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson; (c) the EMPLOYER enters into a special workforce development training or placement arrangement with DOES; or (d) 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. The EMPLOYER and DOES, or such other agent as DOES may designate, may mutually agree to modify this Agreement.

H. Willful breach of this 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; provided, however, that this provision does not apply to the terms or obligations set forth under Sections I.I, I.J., VIII.E, and VIII.F. hereof.

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

J. Non-compliance by the EMPLOYER with the provisions of this Agreement may result in appropriate sanctions as permitted by applicable District of Columbia laws existing as of the date of this Agreement.

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

Yes _____ No **X**

If yes, please provide certification number: _____

X. Does your firm have an apprenticeship program registered with the D.C. Apprenticeship Council?

Yes _____ No **X**

If yes, please provide registration number: _____

XI. Is your firm a subcontractor on the Project?

Yes _____ No **X**

If yes, please name the prime contractor: _____

Dated this _____ day of _____, 2007

NoMa West Residential I, LLC

DEPARTMENT OF EMPLOYMENT SERVICES

Signature

Printed Name

Address:

6110 Executive Boulevard, Suite 315
Rockville, MD 20852

EMPLOYMENT PLAN

Instructions:

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

NAME OF

FIRM NoMa West Residential I, LLC

ADDRESS 6110 Executive Boulevard, Suite 315, Rockville, MD 20852

TELEPHONE NUMBER (301-355-6027) FEDERAL IDENTIFICATION NO. _____

CONTACT

PERSON Samuel P. Simone TITLE _____

TYPE OF

BUSINESS Real Estate Developer

ORIGINATING DISTRICT

AGENCY _____

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					

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
Samuel P. Simone	
Joshua Wooldridge	

Signature: _____ Date: _____

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