

December 5, 2007

DENNIS R. HUGHES
202 419 2448
dennis.hughes@hklaw.com

Via Hand Delivery and E-Mail

Sharon Schellin
Office of Zoning
441 4th Street, NW
Suite 210S
Washington, DC

Re: Case No. 06-34
Comstock East Capitol, LLC


Dear Ms. Schellin:

Enclosed please find fully executed copies of the following agreements executed by the Applicant in the above-referenced application:

1. Certified Business Enterprise Utilization Agreement with the D.C. Department of Small and Local Business Development, and
2. First Source Employment Agreement with the D.C. Department of Employment Services.

It is my understanding that with the addition of these signed documents to the official record, the Final Order shall be released to the *D.C. Register* for publication. Please let me know if you require any additional information. Thank you for your assistance.

Sincerely,


Dennis R. Hughes

Enclosures
cc: John Dapogny

4978813_v1

ZONING COMMISSION
District of Columbia
CASE NO. 06-34
EXHIBIT NO. 60

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Department of Employment Services



Dennis R. Hughes
Holland & Knight LLP
2099 Pennsylvania Avenue, N.W., Suite 100
Washington, DC 20006

AUG 20 2007

Dear Mr. Hughes:

Enclosed is your copy of the signed First Source Employment Agreement between the D.C. Department of Employment Services (DOES) and Comstock East Capitol, LLC.

Under the terms of the agreement, Comstock East Capitol, LLC is required to use DOES as the first source to fill all new jobs created as a result of Zoning Commission Case Number: 06-34. In addition, at least 51% of the newly created jobs must be filled by D.C. residents, as well as at least 51% apprentices and trainees must be District residents.

Comstock East Capitol, LLC should post their job vacancies to the Department of Employment Services' Virtual One-Stop (VOS) at www.dcnetworks.org. VOS is an advanced web-based workforce development system, which allows employers to place job orders and search for applicants by skill-set or position. The system also accommodates the employer looking for specific industrial and economic data and has a series of Internet links to a variety of issues and topics of interest to employers. Should you or your client need assistance in posting the job vacancies, please contact Job Bank at (202) 698-6001.

Also, enclosed is a Contract Compliance Form, which must be completed and submitted by Comstock East Capitol, LLC and their subcontractors each month. This form collects data on all new hires employed on the project. A DOES contract monitor will compare the information provided on this form with the actual employment and payroll records. If you have any questions regarding the Contract Compliance Form, please contact Shirley McKoy at (202) 698-5772.

Thank you for participating in the First Source Employment Agreement Program, and we are looking forward to working with you.

Sincerely,

A handwritten signature in cursive script that reads "Malika Abdullah".

Malika Abdullah
Manager
Office of Employer Services
Workforce Development Bureau

Enclosures

FIRST SOURCE EMPLOYMENT AGREEMENT

Contract Number: _____

Contract Amount: _____

Project Name: Comstock East Capitol Street

Project Address: 1705-1729 East Capitol Street, SE Ward: 6

Nonprofit Organization with 50 Employees of Less (Yes) ___ (No) X

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 Comstock East Capitol LLC, hereinafter, referred to as EMPLOYER. Under this Employment Agreement, the EMPLOYER will use DOES as its first source for recruitment, referral, and placement of new hires or employees for the new jobs created by this project and will hire 51% District of Columbia residents for all new jobs created, as, as 51% of apprentices employed in connection with the project shall be District residents registered in programs approved by the District of Columbia Apprenticeship Council.

I. GENERAL TERMS

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

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

II. RECRUITMENT

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

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

III. REFERRAL

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

IV. PLACEMENT

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

V. TRAINING

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

VI. CONTROLLING REGULATIONS AND LAWS

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

VII. EXEMPTIONS

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

VIII. AGREEMENT MODIFICATIONS, RENEWAL, MONITORING, AND PENALTIES

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

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

The Washington Standard Metropolitan Statistical Area includes the District of Columbia, the Virginia Cities of Alexandria, Falls Church, Manassas, Manassas Park, Fairfax, and Fredericksburg; the Virginia Counties of Fairfax, Arlington, Prince William, Loudoun, Stafford, Clarke, Warren, Fauquier, Culpeper, Spotsylvania, and King George; the Maryland Counties of Montgomery, Prince Georges, Charles, Frederick, and Calvert; and the West Virginia Counties of Berkeley and Jefferson.

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

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

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

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

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

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

IX. Is your firm a certified Local, Small, Disadvantaged Business Enterprise (LSDBE)?
YES NO
If yes, certification number: _____

X. Do you have a registered Apprenticeship program with the D.C. Apprenticeship Council?
 YES NO
If yes, D.C. Apprenticeship Council Registration Number: _____

XI. Indicate whether your firm is a subcontractor on this project: YES NO
If yes, name of prime contractor: _____

Dated this 15 day of August 2007

Malika Abdullah
Signature Dept. of Employment Services

[Signature]
Name of Employer
COMSTOCK EAST CAPITAL, L.L.C.
6 Virginia Limited Liability Company
Name of Company
BY: COMSTOCK EAST BUILDING COMPANIES, INC
MANAGER

Address

Telephone

E-mail

AUG 15 2007

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EMPLOYMENT PLAN

NAME OF FIRM Comstock Homebuilding Companies, Inc.

ADDRESS 11465 Sunset Hills Road, Fifth Floor, Reston, VA 20190

TELEPHONE NUMBER 703-883-1700 FEDERAL IDENTIFICATION NO. 20-1164345

CONTACT PERSON David Howell TITLE Division President

E-mail: dhowell@comstockhomebuilding.com TYPE OF BUSINESS: Residential Developer

ORIGINATING DISTRICT AGENCY D.C. Zoning Commission (PUD approval)

CONTRACTING OFFICER: _____ TELEPHONE NUMBER: _____

TYPE OF PROJECT Residential FUNDING AMOUNT _____

PROJECTED START DATE June 2008 PROJECT DURATION 18 months

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	Proj. Manager	1 F/T	\$75-85,000	N/A	May 2008
B	Sr. Proj. Man.	1 F/T	\$105-125,000	N/A	May 2008
C					
D					
E					
F					
G					
H					
I					
J					
K					

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

NAME OF EMPLOYEE	SOCIAL SECURITY NUMBER or EMPLOYEE IDENTIFICATION NUMBER
Mark Beckett - Entitlement and Acquisition	
John Dapogny - Entitlement and Acquisition	
No other employees identified for this project at this time, although it is currently anticipated that existing employees shall be utilized for positions such as purchasing, accounting, sales management, construction management and legal services.	

***For Office Use Only:**
 Profile No: _____

**Contract Compliance Form
 Reporting Compliance with D.C. Law 14-24, Mayor's Order 83-265, and D.C. Law 5-93
 First Source Employment Agreement**

Instructions:

To be completed by the employer and submitted on the 10th of each month until completion of the project. Forward to:

**Department of Employment Services (DOES)
 609 H Street, N.E., Room 416
 Washington, D.C. 20002**

**Telephone: (202) 698-5772/6001 Fax: (202) 698-5717 TTD: (202) 698-4817
 Toll Free Number: 1-877-319-7346 Website: www.does.dc.gov**

Reporting Period: _____, 20

Name of Firm: _____

Address: _____

Contact Person: _____ E-mail: _____

Title: _____ Telephone Number: _____

Employer Federal Identification Number: _____

Contract/Loan Number: _____

Project Location: _____

Project Start Date: _____ Project End Date _____

Contracting/Lending Agency: _____

I. Vacancies, Referrals and Hires

Please provide monthly and cumulative statistics for the number of jobs created, referrals made, and hires.

	This Month	Cumulative
Number of Vacancies Currently Available		
Number of Vacancies Listed with DOES		
Total Number of Hires		
Number of District Residents Hired		
Number of DOES Referrals Hired		
Number of Current Employees Transferred to Work on Project		
Referrals Made by Other Sources		
DOES Referrals Made		

II. New Hires This Month

List the name, social security number, job title, hire date and place of residence for all new hires. Referral sources are (1) DOES and (2) Other Referral Sources (specify).

NAME	SSN	ADDRESS	WARD (DC ONLY)	JOB TITLE	HIRE DATE	REFERRAL SOURCE

III. Current Workforce This Month

List the name, social security number, address, job title and hire date of all current employees transferred to work on the project this month.

NAME	SSN	ADDRESS	JOB TITLE	HIRE DATE

IV. Laid-Off Employees This Month

List the name, social security number, address, job title, and hire date for all laid-off employees recalled to work on the project this month.

NAME	SSN	ADDRESS	JOB TITLE	HIRE DATE

V. Terminations This Month

List the names of all employees employed on the project that were terminated and/or resigned during this reporting period.

NAME	SSN	JOB TITLE	TERMINATION DATE	PLACE OF RESIDENCE

VI. Indicate whether your firm is a subcontractor on this project: YES NO
If yes, name of prime contractor: _____

VII. Comments:
Describe any problems you have experienced in meeting your job creation projections in implementing the First Source Employment Agreement.

Signature

Date

CERTIFIED BUSINESS ENTERPRISE UTILIZATION AGREEMENT

THIS CERTIFIED BUSINESS ENTERPRISE UTILIZATION AGREEMENT (this "Agreement") is made by and between the **DISTRICT OF COLUMBIA DEPARTMENT OF SMALL AND LOCAL BUSINESS DEVELOPMENT**, ("DSLBD") and **COMSTOCK EAST CAPITOL, LLC**, a Virginia limited liability company, or its designees, successors or assigns ("Developer").

RECITALS

A. Pursuant to approval given by the District of Columbia, c/o the Zoning Commission, an instrumentality of the District of Columbia (the "Zoning Commission") to the Developer in Zoning Commission Case No. 06-34, a Planned Unit Development for property located at 1705-1729 East Capitol Street, SE (the "PUD"), Developer intends to construct a four-story apartment house consisting of approximately 133 units and 113 parking spaces in Square 1096, Lots 51-55 (the "Project").

B. Pursuant to the Zoning Commission approval, Developer covenants that it has executed and will comply in all respects with this Certified Business Enterprise Utilization Agreement.

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

ARTICLE I UTILIZATION OF CERTIFIED BUSINESS ENTERPRISES

Section 1.1 CBE Utilization Requirements. Developer, on its behalf and/or on behalf of its successors and assigns (if any), shall hire and contract with Certified Business Enterprises (each a "CBE") certified pursuant to the Small, Local and Disadvantaged Business Enterprise Development and Assistance Act of 2005, as amended (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*) (the "Act") in connection with the predevelopment and development phases of the Project, including, but not limited to, professional and technical services, construction management, and 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 Project. 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 Development Budget (the "CBE Minimum Expenditure"). As detailed in Attachment 1 hereto, the Adjusted Development Budget is Seventeen Million Four Hundred Fifty Thousand Dollars (\$17,450,000.00). The CBE Minimum Expenditure is therefore Six Million One Hundred Seven Thousand Five Hundred Dollars (\$6,107,500.00).

Section 1.2 Capacity Building Incentives. Developer acknowledges that a priority of the District of Columbia 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 for engaging in activities that are likely to create opportunities for CBEs generally, and to facilitate capacity building for Disadvantaged Business Enterprises certified pursuant to the Act (each a “DBE”) in particular. Such incentives when earned by Developer, will be applied by DSLBD to reduce Developer’s CBE utilization requirements set forth in Section 1.1 of this Agreement.

(a) Within thirty (30) days of execution of this Agreement, the parties shall mutually devise 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 in construction projects of this nature and size (e.g., construction management; electrical contracting; mechanical contracting; structural steel erection; and specialty roofing) and such list shall be attached hereto as Attachment 2 and made a part of this Agreement (“Target Sector”).

(1) For every dollar expended with a CBE that is not a DBE for services that fall within a Target Sector, Developer shall receive credit for \$1.25 against the CBE Minimum Expenditure. For example, a \$200,000 contract award paid to a CBE Construction Management firm would be counted as \$250,000 by DSLBD when measuring Developer’s performance against the CBE Minimum Expenditure. In addition, for every dollar expended with a DBE for services that fall within a Target Sector Developer shall receive credit for \$1.50 against the CBE Minimum Expenditure (collectively, the “Reporting Bonus”).

(2) In order to encourage utilization of DBEs, for every dollar expended with a DBE for services *not* included in a Target Sector, Developer shall receive a credit for \$1.25 against the CBE Minimum Expenditure.

(b) Every contract, purchase or task order (as applicable) issued by Developer to CBE firms, 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”) to ensure that the scope of work is properly characterized within a Target Sector. The Reporting Bonus will not be credited to Developer unless the Director approves the specific contract or procurement, provided, however, that a negative determination will not preclude Developer from receiving standard credit (either 1:1 or 1.25:1, as applicable) for the expenditure as set forth herein. If the Director does not complete his/her review within 10 business days of receipt of the relevant information, the Reporting Bonus will be deemed approved.

(c) 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 for participation on the mixed-use projects. 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.

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 (<http://dslbd.dc.gov>). In particular, Developer shall publish all contracting opportunities within the CBE Business Center's Business Opportunities area. Developer shall use the CBE Company Directory as the primary source for identifying CBEs. The primary contact regarding CBE referrals shall be the Director or such other DSLBD representative as the Director may designate. Developer may use other resources to identify individuals or businesses that could qualify as CBEs and is encouraged to refer any such firms to DSLBD's Certification unit for certification. Throughout the duration of the Expenditure Period, Developer or its general contractor/construction manager 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 that could qualify as CBEs, about the business opportunities at Developer. In the event that Developer currently uses or develops a website for its contracting and procurement activities, such website shall (i) advertise upcoming bid packages; (ii) present instructions on how to bid; and (iii) directly link to DLSBD's website.

ARTICLE III INFORMATION SUBMISSIONS AND REPORTING

Section 3.1 CBE Utilization Plans. Developer shall require its general contractor to submit a CBE utilization plan to DSLBD for approval no less than thirty (30) days following the selection of said general contractor, which plans shall be automatically incorporated and made a part of this Agreement as Attachment 3 following approval by DSLBD (each, a "Utilization Plan"). Each Utilization Plan shall list 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 CBEs. Developer may not deviate materially from the steps and actions set forth in each Utilization Plan without first obtaining the written consent of the Director. For ease of monitoring, Developer agrees to work with DSLBD to implement procedures for its general contractor to submit Utilization Plans electronically through the DSLBD compliance administration database, as applicable.

Section 3.2 Quarterly Reports. Throughout the duration of the Project, Developer will submit quarterly contracting and subcontracting expenditure reports that identify:

- (i) those contracts where the party providing services, goods or materials was a CBE, including the amount of the contract;
- (ii) the nature of the contract;
- (iii) the amount actually paid by the Developer to the CBE under such contract that month and to date;
- (iv) the certification categories for each vendor/contractor;
- (v) the work performed by vendors/contractors in Target Sector(s) and relevant multipliers; and
- (vi) the percentage of overall expenditures which were to CBEs.

These reports shall be submitted no later than thirty days (30) after the end of each calendar year quarter. The reports shall be submitted on a form provided by DSLBD (a prototype of this form is included as Attachment 4). However, DSLBD reserves the right to reasonably amend this form, after consultation with Developer. This report shall also describe Developer's 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 to Developer. Companies that may be eligible for certification, but are not yet certified, or whose certification is pending with DSLBD shall not be included in these reports unless and until the company is certified. Further, only amounts expended after a company is certified shall be counted towards the CBE Minimum Expenditure. Concurrently with submission of the quarterly reports, Developer shall also submit vendor verification forms (each, a "Vendor Verification Form") substantially in the form of Attachment 5.

ARTICLE IV GENERAL CONTRACTORS AND CONSTRUCTION MANAGERS

Section 4.1 Adherence to CBE Minimum Expenditure. For each Construction Project, Developer shall require in its contractual agreements with the general contractor and/or construction manager for each construction project, as applicable, (the "General Contractor"), that the General Contractor comply with the relevant terms and conditions of this Agreement, with respect to achieving the CBE Minimum Expenditure. Developer further agrees to inform the General Contractor and subcontractors of the other obligations and requirements applicable to Developer under this Agreement. Developer shall inform the General Contractor about the implications of non-compliance with this Agreement that may negatively impact future opportunities for the Developer and the General Contractor respectively. Developer will obtain the following commitments from its General Contractor ("GC"):

- (i) The GC will publish a public notice in a newspaper whose primary circulation is in the District of Columbia (*e.g. Afro American, Washington Informer, El Tiempo Latino, Asian Fortune, the Current Newspapers, etc.*) for the purpose of soliciting bids for products or services being sought for construction and renovation projects and will allow a reasonable time (*e.g., no less than 30 business days*) for all

bidders to respond to the invitations or requests for bids.

- (ii) The GC will contact DSLDB to obtain a current listing of all certified business enterprises qualified to bid on procurements as they arise and will make full use of the CBE Business Center found at <http://dslbd.dc.gov> for listing opportunities and for subcontracting compliance monitoring.
- (iii) The GC will negotiate with all bidders pre-qualified by Developer 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.
- (v) The GC will include in all contracts and subcontracts to CBEs, a process for alternative dispute resolution. This process shall afford an opportunity for documentation of work performed and invoices by CBEs 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 and subcontractors shall strictly adhere to their contractual obligations to pay all subcontractors in accordance with the contractually agreed upon schedule for payments. In the event that there is a delay in payment to the general contractor, the 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 CBEs, within thirty (30) days following the GC's receipt of a payment which includes funds for such subcontractors, from Developer. Developer also agrees to establish a procedure for giving notice to the subcontractors of Developer's payment to the GC.

ARTICLE V PERFORMANCE REVIEW

Section 5.1 Performance Review. The District may consider Developer's compliance with obligations pursuant to this Agreement in connection with and as part of any future applications by Developer or the entities that comprise Developer, to the District for any PUDs, land transfers, financing or other economic assistance. DSLBD reserves the right to report Developer's CBE contracting and procurement performance to other District agencies and/or the Council of the District of Columbia as DSLBD deems necessary.

If Developer fails to meet its contracting and procurement obligations pursuant to this Agreement, in evaluating Developer's performance, DSLBD may consider whether Developer has taken all actions reasonably necessary (as reasonably determined by DSLBD based on

Developer's reports and other verifiable evidence) to achieve the CBE Minimum Expenditure. Developer may demonstrate it has taken all actions reasonably necessary to achieve its CBE Minimum Expenditure by (1) fulfilling all CBE outreach and recruitment efforts identified in Article II of 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 by taking the following actions, among other things¹:

- (i) 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;
- (ii) Throughout the duration of the Project place advertisements in media outlets that address the above 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;
- (iii) Fax and/or email new procurement opportunity alerts to targeted CBEs according to trade category;
- (iv) 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;
- (v) Make presentations and conduct pre-bid conferences advising of contracting opportunities for the Target Audience either one-on-one or through targeted business organizations;
- (vi) For construction projects, provide up to ten (10) sets of free plans and specifications for business organizations representing target audiences upon request;
- (vii) Commit to promoting opportunities for joint ventures between non-CBE and CBE firms to further grow CBEs and increase contract participation.

Section 5.2 Other Remedies. In the event that 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 Developer that might otherwise be available at law or in equity.

¹ See Attachment 6 for a list of suggested outreach activities.

**ARTICLE VI
MISCELLANEOUS**

Section 6.1 Primary Contact. The Director, or his or her designee, shall be Developer's primary point of contact for the purposes of collecting or providing information or carrying out any of the activities under this Agreement. The Director and a representative of Developer with contracting and/or procurement authority shall meet regularly.

Section 6.2 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 4th Street, N.W., Suite 970 North
Washington, DC 20001
Attention: Director
Tel: (202) 727-3900
Fax: (202) 724-3786

and Office of Planning
801 North Capitol Street, NE, Suite 4000
Washington, DC 20002
Attention:
Tel: (202) 442-7600
Fax: (202)

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: Comstock East Capitol, LLC
11465 Sunset Hills Rd., Ste.510
Reston, VA 20190
Attention: John Dapogny
703-883-1700 ext. 1137
703-760-1520 fax

with copies to: Holland & Knight LLP
2099 Pennsylvania Avenue, NW, Suite 100
Washington, DC 20006
Attention: Dennis R. Hughes
Tel: (202) 955-3000
Fax: (202) 955-5564

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 6.3 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 6.4 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 Developer without prior written notice to DSLBD.

Section 6.5 Amendment; Waiver. This Agreement may be amended from time to time by written supplement hereto and executed by both DSLBD and 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 6.6 Governing Law. This Agreement shall be governed by the laws of the District of Columbia.

Section 6.7 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

Section 6.8 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 6.9 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 6.10 Attachments. The following exhibits shall be deemed incorporated into this Agreement in their entirety:

- Attachment 1:*** CBE Minimum Expenditure
- Attachment 2:*** Target Sector List
- Attachment 3:*** Utilization Plans
- Attachment 4:*** Quarterly CBE Reports
- Attachment 5:*** Vendor Verification Form
- Attachment 6:*** Suggested Outreach Activities

Section 6.11 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.

SIGNATURE PAGE FOLLOWS

AGREED TO AND EXECUTED THIS 7th DAY OF December, 2007

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

BY: Erik A. Moses, Inc.
ERIK A. MOSES
DIRECTOR

COMSTOCK EAST CAPITOL, LLC

BY: COMSTOCK HOMEBUILDING COMPANIES, INC., LLC

BY: _____

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



COMSTOCK EAST CAPITOL, LLC

CONSTRUCTION OF FOUR-STORY APARTMENT BUILDING PROJECT
PLANNED UNIT DEVELOPMENT AND ZONING MAP AMENDMENT
ZONING COMMISSION CASE No. 06-34
SQUARE 1096, LOTS 51-55

A FOUR-STORY APARTMENT BUILDING OF 133 DWELLING UNITS AND 113 PARKING SPACES
LOCATED AT
1705-1729 E. CAPITOL STREET, SE.
WASHINGTON, DC

PROJECT OVERVIEW

PUD Applicant:	Comstock East Capitol, LLC
Property Owner/Developer:	Comstock East Capitol, LL a- Virginia Limited Liability Company
Architect:	PGN Architect, PLLC
Transportation, Traffic & Parking Consultant:	Gorove/Slade Associates, Inc.
Consulting Engineers:	A Morton Thomas Associates, Inc.
Land Use Counsel:	Holland & Knight, LLP
General Contractor:	TBD

PRELIMINARY BUDGET ESTIMATE OF DEVELOPMENT COSTS

I. INDIRECT - SOFT COSTS

Architect / Engineer	\$1,200,000.00
Architect / Engineer Additional Services	200,000.00
Miscellaneous Consultants	<u>100,000.00</u>
 Total Indirect -Soft Costs:	 \$1,500,000.00

II. DIRECT - HARD COSTS

Payment & Performance Bond	150,000.00
Survey	50,000.00
Demolition	250,000.00
Excavation	200,000.00
Sheeting/ Shoring/ Underpinning	400,000.00
Asphalt Paving	75,000.00
Unit Paving	75,000.00
Site Utilities	60,000.00
Site Concrete	25,000.00
Dewatering	10,000.00
Site and Street Furnishings	10,000.00
Miscellaneous Site Improvements	40,000.00
Landscaping	100,000.00
Cast In Place (CIP) Concrete	1,750,000.00
Precast Concrete	25,000.00
Unit Masonry	400,000.00
Stone	400,000.00
Miscellaneous Metals	300,000.00
Rough Carpentry	2,000,000.00
Architectural Woodwork	1,000,000.00
Thermal & Moisture Protection	500,000.00
Manufacturer Roof and Wall Panels	150,000.00
Roofing	500,000.00
Joint Sealants	60,000.00
Doors/Frames/Hardware	150,000.00
Coiling Doors	20,000.00
Windows	120,000.00
Glass and Glazing	30,000.00
Canopy	75,000.00
Drywall and Acoustical	1,250,000.00

Attachment 1

Ceramic Tile	160,000.00
Wood Flooring	500,000.00
Carpet & VCT	75,000.00
Painting & Wall covering	400,000.00
Misc. Specialty Items	20,000.00
Toilet Partitions	25,000.00
Louvers and Vents	25,000.00
Identifying Devices	10,000.00
Fire Extinguishers	5,000.00
Toilet Accessories	25,000.00
Storage Lockers	15,000.00
Window Treatment	30,000.00
Elevators	500,000.00
Appliances	375,000.00
HVAC	1,500,000.00
Electrical	2,000,000.00
Telephone and Data Cabling	200,000.00
Project Contingency	500,000.00
Printing	50,000.00
Construction Contingency	500,000.00
General Contractor Fee	<u>800,000.00</u>
Total - Direct Costs:	\$17,900,000.00

Total Development Budget:	\$19,400,000.00

V. ESTIMATED CERTIFIED LOCAL, SMALL AND DISADVANTAGED-BUSINESS ENTERPRISE PARTICIPATION IN THE DEVELOPMENTPROJECT

Total Development Budget:	\$19,400,000.00
<u>Less:</u>	
Payment & Performance Bond	150,000.00
Project Contingency	500,000.00
Construction Contingency	500,000.00
General Contractor Fee	<u>800,000.00</u>
Total Adjustments:	<u>(\$1,950,000.00)</u>

Attachment I

Adjusted Development Budget:	\$17,450,000.00
Projected Development Budget available for CBEs Participation in the Comstock East Capitol, LLC Project:	\$17,450,000.00
Certified LSDBEs Participation in the Comstock East Capitol, LLC's Adjusted Development Budget:	\$ 6,107,500.00
Certified LSDBEs Percentage of the Adjusted Development Budget:	35%

Mna/cecllc/PUD/ZC/0908'07*****

SAMPLE CBE PLAN

CONSULTANTS							
Legal Services							
Civil Engineer							
Traffic Consultant							
Landscape Architecture							
Facade Architecture							
Printing Services							
CBE Consultant							
Lighting Consultant							
Marketing Consultant							
Retail Sales Broker							
CONSTRUCTION							
General Requirements							
Sitework							
Concrete							
Masonry							
Metals							
Wood and Plastic							
Thermal & Moisture Protection							
Doors & Windows							
Finishes							
Specialties							
Equipment							
Furnishings							
Special Construction							
Conveying Systems							
Mechanical							
Electrical							
OPERATIONS							
Janitorial							
Security							
Maintenance							
Management							

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

Attachment 5

_____, 2007

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

Attention: Mr. Erik A. Moses, Director

Reference: Comstock East Capitol, LLC

Subject: Verification of Subcontract with Comstock East Capitol, LLC

Dear Mr. Moses:

I am a CBE subcontractor to _____ [*name of GC or prime contractor*] on the Comstock East Capitol, LLC 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: _____

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 Comstock WSast Capitol, LLC ("Comstock East Capitol") submit quarterly reports to DSLBD regarding contracting and procurement of certified businesses on construction of property located at 1705-1229 East Capitol Street, SE. Comstock East Capitol's records show that your company received a subcontract in the amount of _____ and, as of _____ 2007, 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 Comstock East Capitol 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 Comstock East Capitol 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 our Assistant Director for Certification, Compliance and Enforcement, Moses Animashaun, at (202) 727-3900 or Moses.Animashaun@dc.gov. Thank you for your attention to this matter.

Sincerely,

Erik A. Moses
Director

ATTACHMENT 6

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.