

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (this "MOU") is entered into as of the 2nd day of August, 2011 (the "Effective Date"), by and between the City of New Haven, a municipal corporation organized and existing under the laws of the State of Connecticut, with a mailing address of 165 Church Street, New Haven, Connecticut 06510 (the "City") and Live Work Learn Play Inc., a private corporation organized and existing under the laws of Canada, with a mailing address at 147 St. Paul West, suite 100, Montreal, Quebec H2Y 1Z5, Canada ("LWLP"). It is understood that LWLP may transfer its rights and obligations under this MOU to an LWLP affiliate corporation to be setup.

### BACKGROUND

The City is the owner of a parcel of land known as Block F located at 275 South Orange Street, New Haven, Connecticut (the "Property"). The City issued a Request For Proposal in 2008 seeking a development team to develop the Property and chose a preferred developer. However, in 2010 the City and the preferred developer mutually agreed that the preferred developer would no longer pursue its proposed development. Accordingly, the City reached out to four of the other development teams that responded in 2008 to determine whether they continued to have an interest in developing the Property. LWLP responded to such solicitation for renewed development proposals for the Property and, based upon a favorable review of LWLP's proposals by City staff and an ad-hoc Coliseum Development Review Committee, the City has selected LWLP as the preferred developer for the Property (the "Project"). The City and LWLP have entered into this MOU in order to outline the expectations of the parties and to summarize in brief the principal proposed obligations of the City and LWLP with respect to the Project, so as to facilitate the negotiation and execution of legally binding agreements between the City and LWLP, to include (without limitation) a Development Agreement and Land Disposition Agreement (the "Definitive Agreements"). It is understood that development of the Property may occur in phases, in which event the Project may be subdivided which may result in the negotiation, execution and delivery of multiple Land Disposition Agreements in order to reflect such phasing.

**NOW THEREFORE**, in consideration of the foregoing, it is agreed as follows:

1. **Effect of MOU** It is agreed, stipulated and understood by the City and LWLP, that this MOU is designed to summarize in brief the principal proposed obligations of the City and LWLP with respect to the Project so as to advance the Project to a position whereby the Definitive Agreements may be executed by the City and LWLP. This MOU does not, and is not intended to, impose any binding legal commitments on the City and LWLP, other than



- (a) the commitment to proceed in good faith with the predevelopment activities described in this MOU, so as to facilitate the final negotiation and execution of the Definitive Agreements; and
- (b) the commitment of the City set forth in Section 3 below.

2. Term of MOU

- (a) This MOU shall take effect as of the Effective Date and shall continue in full force and effect for a period of Three Hundred and Sixty Five (365) days, whereupon this MOU shall automatically terminate and be null and void and of no further force and effect without the need for any notice or other instrument of termination (the "Expiration Date").
- (b) Notwithstanding the provisions of Section 2(a) above, in the event that this MOU remains in full force and effect as of the Expiration Date, the City and LWLP may extend the term of this MOU for a further period of not more than Three Hundred Sixty Five (365) days upon the terms and conditions herein contained or upon such other terms and conditions as may be mutually agreed upon by the City and LWLP.
- (c) Notwithstanding the provisions of Section 2(a) above, it is agreed and understood that in the event that LWLP determines that there is no reasonable prospect of the negotiation and execution of mutually acceptable Definitive Agreements then LWLP may at any time deliver thirty (30) days prior written notice to the City terminating this Agreement, whereupon this MOU shall be null and void and of no further effect.
- (d) Notwithstanding the provisions of Section 2(a) above, this MOU shall automatically terminate upon the execution and delivery by the City and LWLP of the Definitive Agreements. It is acknowledged and understood that following the negotiation and agreement of mutually acceptable Definitive Agreements, the same must be approved by various institutions of the City, as more particularly detailed in Section 4 below. Upon such termination, this MOU shall have no further effect so that all rights duties and obligations of the City and LWLP shall be as set forth in the Definitive Agreements.
- (e) Notwithstanding the provisions of Section 2(a) above, in the event that the City shall reasonably determine that LWLP is failing to move the Project forward in accordance with the provisions contained in this MOU (in particular, but without limitation, the provisions of Section 19(b) below), and LWLP shall fail, upon written notice from the City setting



forth the remedial actions required by LWLP, to rectify such failure within ninety (90) days or such reasonable time required for such remediation as agreed upon between the parties, acting reasonably, and in writing, then the City may terminate this MOU upon delivery of a further written notice to LWLP of such termination, whereupon this MOU shall be null and void and of no further effect.

### 3. Exclusivity

- (a) For so long as this MOU remains in full force and effect, the City shall not enter into negotiations or any other discussions concerning the development of the Property, or any part thereof, with any party other than LWLP or a designated affiliated entity thereof, provided that the City may, with the express written approval of LWLP, enter into discussions with possible occupants of any portion of the Project and it is agreed and understood that the City may be seeking to introduce LWLP to potential development partners for the Project.
- (b) If, during the term of this MOU, any potential commercial or retail tenant for any part of the Project is identified by the City, then the City will share this information with LWLP, introduce such potential tenant to LWLP, and proactively endorse the Project. However, to the extent that any such potential tenant is not already an occupant of any other development owned or operated by LWLP, LWLP hereby expressly covenants and agrees that it will make no attempt to attract any such potential tenant to any other project within 50 miles of New Haven owned or operated by LWLP or owned or operated by any other entity in which LWLP has an interest, without express written consent of the City, which will not be unreasonably withheld. LWLP hereby acknowledges that any default by LWLP under this Section 3(b) shall result in irreparable harm to the City and that the City shall be entitled to immediately terminate this MOU by written notice to LWLP and seek such monetary damages and/or such injunctive or other equitable relief as the City may deem recoverable or desirable.

### 4. Property

- (a) The Property consists of one parcel of land comprising approximately 4.48 acres known as 275 South Orange Street in New Haven, Connecticut and more particularly depicted as Block F on the certain survey entitled "Property Survey for the Veterans Memorial Coliseum and Parking Garage on Church Street, George Street, State Street, and Martin Luther King Boulevard in New Haven, Connecticut" prepared by URS Corporation AES in October 2004, which survey shall be updated by the City prior to



the Definitive Agreements in order to inform the Definitive Agreements. It is understood by LWLP that the Property falls within the Gateway Downtown Development Project thereby falling within the authority of the City of New Haven Development Commission (the "Commission") and is also a parcel falling within the residual authority of the City of New Haven Redevelopment Agency (the "Agency"), so that the Definitive Agreements will require the approval of both the Commission and the Agency as well as the approval of the City's Board of Aldermen. The City has previously conducted a Phase I Site Assessment of the Property and will share these findings with LWLP.

- (b) It is agreed and understood that the Definitive Agreements will most likely provide that the Project shall be completed in two or more segments (which individually shall be defined by land use and development type). All segments shall be developed in accordance with a master plan developed in close collaboration with and to be approved by the City, acting reasonably. It is understood by the parties that segments of the property will be developed subject to market conditions and conveyed independently to LWLP, such that no portion of the Property must be developed unless it is commercially feasible to do so, provided that the Development Agreement shall provide that the entire Project shall be completed within seven (7) years of the commencement of construction of the first segment, failing which LWLP shall, at the City's option, sell the undeveloped segment(s) back to the City for the same price initially paid by LWLP.

5. Title

The Definitive Agreements shall provide that the Property (or such portion thereof as may comprise a segment of the Project) shall be conveyed by the City to LWLP by way of Quit Claim Deed provided that LWLP shall not be required to accept any such Quit Claim Deed unless it shall be able to obtain Title Insurance with respect to its interest in the Property, insuring a good and marketable fee simple title. If the City shall be unable to convey such title then the Development Agreement shall provide that LWLP shall have the option of accepting such title as the City can transfer or requiring the City to use its best efforts and such additional time as may be agreed upon between the City and LWLP to provide such title, or cancelling the Project. Marketability of title shall be determined in accordance with the Standards of Title of the Connecticut Bar Association.

6. Public Approvals Following agreement on mutually acceptable forms of Definitive Agreements the City shall be responsible for seeking Development

approval of the same from the Commission, the Agency and the Board of Aldermen. While LWLP will seek and obtain all other approvals for the Project from all relevant public and quasi-public agencies, commissions, and departments, including Board of Zoning Appeals, City Plan Commission, and from the State Traffic Commission, the City will make good faith efforts to assist LWLP by coordinating with these various bodies to streamline the approvals process and make it as efficient and expedient as possible, provided that it is agreed and understood by LWLP that the City does not have control over the independent municipal boards or commissions referred to under this Section 6 and has no control over any State or Federal agencies. In addition, the City will support all reasonable applications made by LWLP for City, State and Federal funding for the Project including without limitation appearing at meetings and hearings to the extent requested by LWLP, provided that any such applications shall be considered in the context of other development priorities at that time.

7. **ProPark Agreement** LWLP hereby acknowledges receipt of a copy of the City's existing agreement with ProPark concerning ProPark's operations at the Property, and that LWLP has read and understood the same. In particular (but without limitation), LWLP acknowledges the obligations of the City as regards to termination and vacation of the Property by ProPark.
8. **Access and Inspections** The City shall ensure that LWLP and its designees and consultants are able to obtain reasonable access to the Property to perform such inspections and testing (including environmental surveys) as deemed reasonably necessary by LWLP. It is agreed and understood that LWLP shall provide its employees, designees and consultants with appropriate safety equipment for accessing the Property, and that LWLP shall be responsible for causing LWLP's contractor to observe all applicable workplace safety rules and regulations. LWLP shall itself carry and shall cause its designees and consultants to carry appropriate insurance for their anticipated activities on the Property with limits reasonably acceptable to the City, naming the City as additional insured on such insurance policies. LWLP agrees that all such activities shall be carried out in such a manner as to cause as little disruption as possible to the operations of ProPark at the Property and ProPark shall be afforded not less than Forty-eight (48) hours written notice of any proposed entry onto the Property containing reasonable details of the work to be performed.
9. **Use** In accordance with the proposals submitted by LWLP, it is anticipated that the Project will be a mixed-use development and that LWLP will use all reasonable commercial efforts to ensure the Project includes commercial, residential, retail and parking uses, with due regard to a sense of scale and the City's goals for the Property. At the discretion of LWLP, the Project may include a hotel component, having regard to market feasibility. It is understood that the density of specific uses within the Project will be subject to change as the Project

becomes more defined pursuant to the planning, market studies and negotiation process, but it is further understood that the Definitive Agreements shall contain the following requirements, the development of which will always be subject to LWLP's reasonable commercial efforts and market feasibility: It is agreed that the City and LWLP shall mutually agree upon an affordable housing plan (the "AHP") to be incorporated within the Project, which AHP shall be attached as an exhibit to the Development Agreement and that the City shall work with LWLP in securing such approvals, waivers, consents or modifications to existing agreements as may be necessary to implement the AHP. In addition, it is agreed and understood that the Development Agreement shall also contain, subject to commercial feasibility and subject to LWLP using all commercially reasonable efforts:

- (a) a number identifying a minimum square footage of store front retail which retail shall provide direct pedestrian connections between each establishment and the street, as opposed to a single point of entry and interior connections in the manner of a shopping mall;
- (b) a number identifying a minimum square footage of office space;
- (c) reference to the use of Transportation Demand Management ("TDM") strategies, such as the encouragement of ridesharing, the creation of pedestrian-oriented elements to the greatest extent possible, connection of the Project with public transportation, the creation of bicycle friendly facilities and the provision of sufficient parking facilities for the specific uses of the space within the Project;
- (d) a prohibition on any portion of the retail spaces within the Project being occupied by a discount department store, "dollar" store, firearms and/or ammunition store establishment, charity thrift shop or the like, adult book store or adult entertainment establishment, or liquor store, provided that a wine shop that does not sell single beers or hard liquor in containers holding less than a pint of liquor may be located within the Project.

10. **Real Estate Taxes** The Definitive Agreements shall provide that except to the extent expressly approved in writing by the City, the entire Project shall remain taxable for a minimum period of thirty (30) years. Notwithstanding the foregoing, the Definitive Agreements shall also provide that during said thirty (30) year period, an owner of the Property (or portion thereof) may, with the consent of the City (not to be unreasonably withheld) convey the Property (or a portion thereof) to a tax exempt entity, provided that such transferee shall enter into a Payment In Lieu Of Taxes Agreement ("PILOT").

11. **Design Considerations** The Definitive Agreements shall provide for the following:

- (a) At least two (2) community workshops conducted by LWLP (and additional community workshops to the extent reasonably requested by the City) together with a general good-faith effort on the part of LWLP to otherwise solicit community input prior to seeking site plan approval;
- (b) To the extent that any parking structure must be above grade due to financial feasibility concerns, a requirement that the same be "wrapped" by active uses and/or screening on all street frontages, the precise method of wrapping or screening to be determined by LWLP in consultation with the City (taking into account both design issues and economic feasibility) with the overall intent of ensuring that the parking blends into the overall Project, while still allowing for natural ventilation;
- (c) LWLP's acknowledgement of the existence of Design Guidelines for the Gateway Downtown Development Project and LWLP's agreement to work within said guidelines to the extent reasonably commercially feasible;
- (d) A requirement that LWLP design and construct the Project employing practices currently in use to ensure sustainability. To the extent commercially possible, LWLP shall strive to achieve sustainability standards for the various components of the Project, measured against LEED standards, which standards shall be agreed between LWLP and the City and set forth in the Development Agreement and which shall be determined in light of feasibility and prevailing market conditions for similar construction. In particular, given the nature and goals of delivering active, street-level retail space, it is understood that any such retail space will not meet LEED standards of construction. It is further understood that the City will work with LWLP to identify and target available grants and incentives for sustainable building methods that reduce the costs of operation.

12. **Traffic Improvements** LWLP understands that the planning, design and construction of future roadway infrastructure must comply with the City's Complete Street Design Manual. In addition, LWLP shall be responsible for carrying out a traffic study to determine the projected effect of the Project on traffic flow around the Property and preparing a suitable plan to manage the same (the "Draft Traffic Plan") for the City's review. The Draft Traffic Plan shall include such road and signaling improvements and modifications as may be reasonably necessary in order to mitigate the impact of the additional traffic resulting from the completion of the Project, including TDM strategies. The City

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and LWLP shall review the Draft Traffic Plan and seek to agree upon the same and to allocate responsibility for implementing the provisions of the Draft Traffic Plan and the costs associated therewith. To the extent that the input and/or approval of the State Traffic Commission to the Draft Traffic Plan is required, LWLP shall be responsible for obtaining all such approvals and for liaising with the State Traffic Commission to the extent necessary. The City shall support LWLP in this respect, including without limitation appearing at meetings and hearings to the extent reasonably requested by LWLP.

13. **Downtown Crossing** The City is currently working towards the realization of its Downtown Crossing Project which would include (inter alia) converting the existing Route 34 East to urban boulevards and reconnecting Orange Street at-grade between Union Avenue and the Property, as part of the Second Phase/Full Build. This section of Orange Street is further envisioned to be a direct and highly-used pedestrian and bike route between Downtown and Union Station. It is the intention of the City to complete the Downtown Crossing Project in phases and it is hereby acknowledged that the Downtown Crossing Project is a top priority for the City and that, as envisioned, it will take up to 10 years. The City commits to keeping LWLP updated with the most current information available as the status and timing of the Downtown Crossing Project evolves, in order to inform access, egress, phasing and other planning and development decisions that impact the Project and shall ensure that the City's team of consultants working on the Downtown Crossing Project are fully aware of said commitment.
14. **Sale Price** The City and LWLP shall mutually determine a Purchase Price for the Property, which will be included in the Definitive Agreements. LWLP will provide the City with a pro forma for the Project, in order to help inform such negotiations. Financial feasibility is a factor which shall be taken into account in determining the Purchase Price and any schedule for payment of the same.
15. **Minimum Equity Contribution** LWLP and its associates and affiliates agree to secure the necessary equity required to finance the Project's pre-development costs, and the equity required to finance and launch each development phase, all in keeping with good underwriting standards currently in use in comparable markets for comparable developments, and subject to the commercial feasibility of the Project and/or any phase thereof.
16. **Public Funding for AHP** Subject to clause 9 of this MOU, it is understood that public funding would be needed to support the implementation of the AHP. The City and LWLP will cooperate in obtaining the appropriate subsidies to finance the implementation of the AHP from local, state, federal and other affordable housing sources. As part of its determination of Project feasibility, LWLP shall investigate the availability of public grants or incentives which will be necessary to implement the AHP to be set forth in the Definitive Agreements.



17. **Permanent Jobs** The Definitive Agreements shall provide a framework for the creation of job training programs for residents of the City to enable such residents to be best positioned to obtain the permanent jobs which will be created as a result of the Project, and the City shall work with LWLP in seeking funding for such programs.
18. **Workforce and Small Business Utilization Requirements** As is customary with any City sponsored or funded project, the Definitive Agreements shall provide that in carrying out the Project, LWLP shall abide by all applicable workforce requirements, now or hereafter existing, including, without limitation, all Equal Employment Opportunity requirements and Small Business Construction Initiative requirements, all as more particularly described on Exhibit A, attached hereto. The requirements identified in Exhibit A are existing programs operated and funded by the City to assist developers and contractors in meeting the requirements.
19. **Preliminary Tasks, Schedule and Funding Commitment**
- (a) During the term of this MOU, LWLP shall undertake the tasks detailed in Exhibit B attached hereto, in accordance with the schedule and predevelopment budget therein set out, to the extent reasonably commercially feasible. Exhibit B is understood to be in preliminary form and subject to continued refinement by the City and LWLP.
  - (b) Without prejudice to the designed flexibility of Section 19(a) above, LWLP hereby acknowledges the critical milestone dates identified in Exhibit B (the "Milestone Dates") and understands that the City shall carry out a review of the level of progress made as of each such Milestone Date, both in terms of the extent of progress towards completion of the tasks anticipated to be completed or commenced as of such Milestone Date and the general direction in which the Project is moving. In the event the City, in the exercise of the City's reasonable discretion (and based upon the tasks set forth in Exhibit B) is dissatisfied with the level/direction of progress towards realization of the Project, then the City may seek to terminate this MOU in accordance with the provisions of Section 2(e) above.
20. **Notices** Any notices required hereunder shall be sent by certified mail, return receipt requested as follows:

Handwritten signature in black ink, appearing to be 'KM' followed by a stylized flourish.

If to the City:

Kelly Murphy, AICP  
Economic Development Administrator  
The City of New Haven  
165 Church Street, 4R  
New Haven, CT 06510

With a copy to:

John R. Ward  
Special Counsel to Economic Development  
The City of New Haven  
165 Church Street, 4R  
New Haven, CT 06510

If to LWLP:

Max Reim  
Co-Managing Partner and Principal  
Live Work Learn Play Inc.  
147 St. Paul West, Suite 100  
Montreal, Quebec  
H2Y 1Z5  
Canada

With a copy to:

William Reim  
Co-Managing Partner and Principal  
Live Work Learn Play Inc.  
147 St. Paul West, Suite 100  
Montreal, Quebec  
H2Y 1Z5  
Canada

**21. Amendments** This MOU may be modified only by a written amendment executed by the City and LWLP.


Handwritten signature of Kelly Murphy, consisting of the initials 'EM' above a stylized signature.

**IN WITNESS WHEREOF**, the City and LWLP have executed and delivered this MOU as of the day and date first above written.

CITY OF NEW HAVEN

  
\_\_\_\_\_  
Kelly Murphy, AICP  
Economic Development Administrator

Live Work Learn Play Inc.

  
\_\_\_\_\_  
per William Reim  
Co-Managing Partner and Principal

08-22-2011.

# **Exhibit A**

## **Workforce & Small Business Utilization**

### **Requirements**

**Workforce Utilization**  
**Commission on Equal Opportunity**  
**(CEO)**

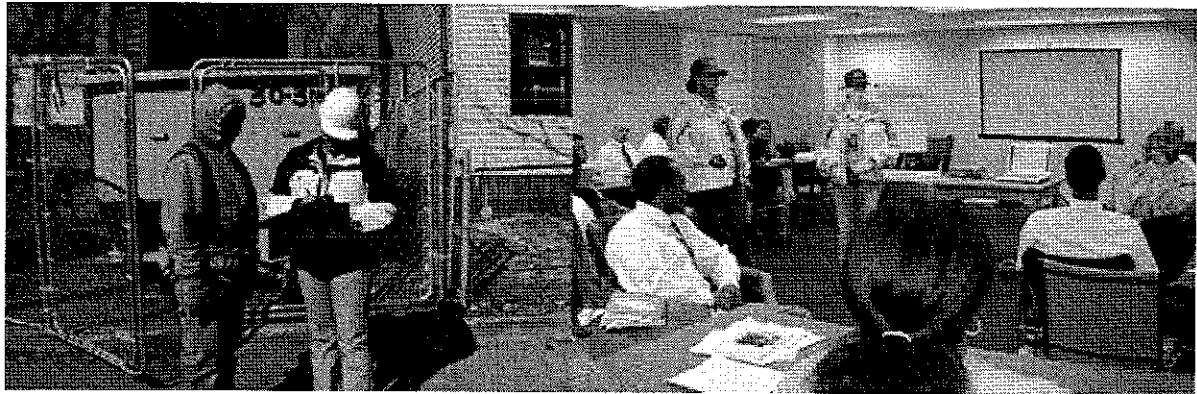
## **CONTRACT COMPLIANCE**

### **Welcome! What is Contract Compliance?**

The City of New Haven and State of Connecticut spends more than one billion dollars each year to purchase supplies and public works contracting services. Those who contract with the city to provide these services have a special responsibility to assure that the employment and subcontracting procedures promote equal opportunity for all persons.

Contract Compliance laws were enacted as a means of providing equal employment opportunities for minorities and female workers and economic development and business growth opportunities for small contractors and minority and women owned businesses through the distribution of city, state, and federal contracting dollars.

The Commission on Equal Opportunities has the responsibility to review, monitor and enforce the equal opportunity, affirmative action and contract compliance laws of the city, state and federal regulations as they apply to contractors, subcontractors, and goods and services vendor suppliers doing business with the city of New Haven.



### **Cooperation**

In carrying out these responsibilities, the Commission ask that all departments, boards, commissions, agencies, bureaus, officers, officials and employees of the city cooperate with the Commission in implementing contract compliance. The awarding department heads thereof shall furnish the Commission with information in their possession when the Commission requests it. Section 12 \_\_-8

### **Designating a Contract Compliance Officer**

An example of interdepartmental/agency/board cooperation is that all agencies appoint a designated employee as its contract compliance officer who will remain

in place for as long as a city agency shall have and continues to award contracts, or so long as such agency continues to award contracts directly.

Other examples of cooperation are the completion and return of CEO Project Fact Sheet and Contractor Information sheet regarding HUD-assisted projects.

### **What A Contract Compliance Officer Should Say To A Contractor**

The compliance officer should inform the awarding agency/department, developer, contractor(s) that they should communicate with the CEO regarding compliance and labor standard issues.

Important! At no time, should a department head or compliance officer authorize a contractor(s) to begin work without first having the contractors attend a pre award conference with the CEO.

At no time should a compliance officer advise a contractor(s) to omit the submission of weekly-certified payrolls and/or other required documents to the CEO.

### **Minority and Women Apprenticeship Training Programs**

The Department of Labor administers apprenticeship programs in the state of Connecticut. Apprenticeship, in simple terms, is a program of "Learning While Earning". Any contract with a value of \$500,000.00 and over must have an apprenticeship program in place prior to the start of work on a project. Such apprenticeship programs MUST be registered and approved by the State Department of Labor.

If the workers are not registered and approved by the State, then journeypersons wages are paid. In the apprenticeship system, proficiency in the job is known as "journey person status." An apprentice rest upon the journeyperson who in turn conducts training under guidelines set forth by the employer. These guidelines conform to State and Federal standards.

[Defined in Article II, Section 12 1/2 -33 (b)] 15% of the workforce per craft and trade must be apprentice, and 50% of the 15% MUST be 1st year apprentice. (Example: if 100 laborers are workers 15%, which is 15 people, need to be apprentice. Of the 15% or 15 people, 7.5% or 8 people need to be 1st year apprentice.

Contractors for construction projects, as defined in Article II, Hiring Practices In The Construction Trades, Section 12\_22(c)(1) 12\_22 (c)(3) 12\_22 (4) (a) (b) (c)

The CEO is the only authorized city agency delegated to enforce labor standards. If there are ever any questions as to the legal authority, refer to HUD handbook 1344.1 or Federal regulations.

### **Sanctions**

Failure to comply with city, state, and federal regulations could result in sanctions being imposed on the contractor and/or subcontractor. Sanctions are withholding of payment, prevention of future bidding on city projects, cancellation of contracts, and debarment.

### **Powers & Duties**

Article II Section 12 \_ 19 through 12 \_ 33 of the City Ordinance gives enforcement authority to the Commission On Equal Opportunity Contract Compliance division with respect to employing women and minorities in the construction trade.

The City of New Haven defines a minority as follows:

Black Americans, including all persons having origins in any of the Black African racial groups not of Hispanic origin; Hispanic Americans, including all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin regardless of race; Asian Pacific Americans and Pacific Islanders; or American Indians and persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.

All contractors are required to prepare a written affirmative action plan stating forth the company's plan and implementation. Should a contractor fail to comply with the affirmative action plan, future payments can be withheld, sanctions imposed or debarment.

The contracting agency and/or administrating agency may use pre-construction conferences to explain the EEO requirements to the contractors and/or other interested parties.

The Executive Director or Contract Compliance Director, shall set the targeted minority and women employment goals for each craft and trade at least once every five years. Assist the contractors and unions in the implementation and maintenance of the goals. Recommendation to the commission of remedial action or penalties in the event of noncompliance.

### **What is Davis Bacon?**







The Davis Bacon Act provides prevailing wage protection to non-government laborers and mechanics working on federally funded projects. According to Davis Bacon, the employer must post in a conspicuous place the wages and benefits for each craft and trade. As part of the employer's compliance, the employer must submit weekly-certified payrolls and a monthly utilization report.

The local public agency that administers HUD programs has to submit to HUD Semi-Annual Report dealing with contracts that was awarded during this period. The local public agency is responsible for the enforcement of the Davis Bacon rules and regulations. One aspect of enforcement is on site monitoring and interviewing of workers.

Davis Bacon Residential Rates apply to buildings of four stories or less.

What are the minimum thresholds for Davis Bacon wages? Federal Projects: \$2,000.00 State Projects: Remodeling \$100,000.00 State Projects New Construction \$400,000.00 and City Projects: \$50,000.00.

Exceptions to the minimum thresholds occurs when Section 8 housing has less than nine units or, residential property rehabilitation that is designed for dwelling units less than eight units(CDBG) or the construction of residential property designed dwelling units of less than twelve units (HOME).

### **What are Prevailing Wages?**

Prevailing wages are wages and benefits paid to similarly employed workers in the requested occupation in the area of intended employment. Apprentices must be in a state approved and registered program and receive wages based on their apprentice percentage. If a job category is not on the prevailing wage list write to the federal or state labor department and request a wage rate.

A way to monitor the payment of prevailing wages and benefits is the preparation, by all contractors working on the project, the submission of weekly-certified payrolls and the submission of monthly reports.

All employees should read this rate schedule to make sure the employee receives the correct pay rate. Contractors may pay wages high than the prevailing wage and benefit rates, not lower then the posted rates.

A prevailing wage project nets the taxpayer the best possible finished product. All contractors who bid on the project know in advance what the wages and benefits rates should be paid to employees and can calculate their bid based on these rates. Skilled craftsmen were working on a project and were able to instruct apprentices by giving on the job training.

The employer should maintain accurate payroll records because if an employee works in more than one classification and accurate records are not kept, the employee receives the highest wage classification.

Another reason for the maintenance of accurate payroll records concerns employees who are paid on piecework. These employees are paid on how much work they produce in a day. The weekly earnings have to be sufficient to satisfy the wage requirement based upon actual hours which includes overtime.

### **Section 3**

In the construction trade, Section 3 deals with new hires. The pool of Section 3 applicants are residents of public housing or low-income persons living in an area of HUD assisted housing project.

Section 3 provided economic opportunities in administrative/management, services and construction. Priority for training and employment is given to persons living in public housing and assisted housing. Persons in the neighborhood, participants in HUD youth build programs and homeless persons. Section 3 has criteria for business in that a Section 3 resident owns, employs Section 3 residents or subcontracts to businesses that provide economic opportunities to low income persons.

### **Summary**

Davis Bacon is the Federal Law that established Prevailing Wages and Benefits. Section 3 provides economic assistance to low income persons entering various trades.

### **PRE-AWARD CONFERENCE**

#### **Purpose**

The purpose of a pre award conference is to ensure that all participants are apprised of their responsibilities and obligations regarding all applicable laws, rules, regulations and Ordinances contained in the contract documents.

Pre-award documentation is a must. No project shall commence before a pre award conference is held.

### **Ordinance Requirements**

Section 12 \_ -19 through 33 of the New Haven Code of Ordinances, ensures that contractors doing work on city and/or city related construction projects must comply with established goals which have been set in place for utilization of protected classes as follows:

Minority-group: 25 % utilization in each craft or trade working on site per contractor. Female-group: 6.9 % utilization in each craft or trade working on site per contractor.

A city related construction contract is defined as any construction contract which the city makes any cash payment, payment of in-kind services, or provision of land for construction, and includes any and all contracts involved in any part of an official redevelopment plan of the city where said redevelopment plan requires the city to furnish cash, noncash equivalents or credits, in in-kind services, or any other expenditure of city staff, money or material. Section 12 \_ -19 (e).

A third party contract is defined as a contract agreement between the city and developer and the developer and the contractor. Projects involving construction contracts, which are defined as city-related or third party are subject to the same requirements as a city construction project, and must comply with established goals

A supplier, vendor and service contract is defined as non construction providing a service to the city.

The successful bidder and his subcontractors shall be required to attend a pre-award conference. Contractors who are awarded contracts over \$50,000.00 shall submit an affirmative action plan and EEO documents subject to review and approval by the CEO before a Pre Award conference is convened. Section 12 1/2-26

No contract over \$50,000.00 may be finally awarded until the contract compliance director, or his representative, has had reasonable time to review submissions (Equal Employment Opportunities Package) from the contractor, sub contractor(s), and vendors, and then convene a pre-award conference.

CEO will notify the awarding department, and the contractor or vendor at once as to the intention to schedule the pre-award conference. Section 12- \_ -26 (c)

No major subcontractor on any construction project over fifty thousand dollars (\$50,000.00) shall arrive on such project until such time as the necessary pre-construction information (EEO Package) has been submitted. Failure to submit EEO Package information shall prohibit the awarding authority from authorizing such a subcontractor to begin work. Section 12 \_ - 26 (d)

### **Pre-Award Procedures**

After receiving notification of the successful bidder and intent to award a contract, the CEO will:

- Review and examine names of firms,

- check the contractors' name, its shareholders names, and company name against the State and Federal debarment listing.
- Review and enter the contract award information received from the awarding agency.
- Forward a letter and EEO pre-award packet to the successful contractor requesting that packet be completed and returned to the CEO.
- After return and review of a contractor's EEO packet and Affirmative Action Plan, and there are no deficiencies, the Contract Compliance Pre-Award Specialist will schedule a pre-award conference with the successful bidder and all available subcontractors prior to the start of any construction activities.

Attendees of a pre-award conference shall include the contractor, subcontractors, project managers, and awarding department. Forms

Fact sheet. The project manager of the awarding department, agency, authority, or board must provide a CEO Fact Sheet on all projects over \$50,000.00. Department project managers will be notified if the project has the appropriate documents and which documents are delinquent.

Contractor Information Sheet for HUD-Assisted Projects should also be completed and returned to the CEO

### **Minutes Of the Pre Award Conference**

Minutes of the pre award conference and a record of conference items discussed shall be prepared and placed in the successful bidder's file at each pre-award conference. The report will contain and review the following:

Contain

- Fact Sheet detailing the project description, name, number, and project location.
- Name, address, and telephone number of the successful bidder
- Contract dollar amount and funding sources
- Place and date of pre-award conference
- Names of attendees
- Summary of conference starting date and duration
- of project activities
- Check list of labor standards requirements and the Anti-Kickback (Copeland) Act
- Minutes of Pre Award meeting
- Review
- Affirmative action Plan
- The successful bidder's present hiring practices and workforce for present bid project.

- The successful bidder's contract and scope of work
- Workforce goals for minority and female workers
- Total estimate of minority and female commitment workforce utilization and work hours by craft/trade.
- Apprentice and training programs if required
- Davis Bacon Acts of wage rates, classification, benefits, vacation, etc.
- Reporting requirements, i.e., original weekly-certified payroll form W-H347 and monthly summary report form #257.



## MONITORING AND SITE INSPECTIONS

### Purpose

The purpose for site inspections is to verify the accuracy of written reports and submitted certified payrolls, and also to survey the initial compliance difficulties before hiring is completed.

### Site Visits

Site visits should be made at least twice in one month, depending on the total assigned projects. All monitors must complete a fact-finding folder on all sites regarding minority and, female compliance prior to site visits. The folder must include:

- List of all contractors to be monitored.
- Breakdown of all contractors, subcontractors on site.
- A review of contractors, subcontractors' certified payrolls regarding minorities & females workforce percentages that previous week ending.
- Comments regarding non-compliance on the submission of certified payrolls.
- Interview Sheets
- Daily work force sheets
- Citation Booklet

It is important that all utilization monitors be prepared with proper equipment, have some knowledge of that project and personnel, be ready to provide technical assistance and solve issues before enforcement applies:

### **Site Visits Procedure**

The following procedure should be taken during site visits:

- Drive to an area where the entire project can be observed. (visual)
- Drive/Walk to office or trailer, etc.
- Locate the person in charge (i.e., foreman, supervisor, etc).
- Identify yourself and state the reason for your visit (leave a business card.)
- Show data breakdown regarding minorities and female workforce percentages recorded from certified payrolls of contractors, subcontractors on that project. Explain the contractors who are in non-compliance regarding payroll submission and minority and female utilization. Finally, offer assistance before issuing enforcement requirements.
- Ask if any additional subcontractors have been hired prior to the last site visit.
- Request a listing of all contractors, subcontractors working on the project.
- Explain that you may interview certain workers on project.
- Check to ensure that wage determinations and non-discrimination laws are posted in a conspicuous site.

### **Monitoring Procedures**

It is important that all utilization monitors be an advocate for the workforce while conducting on site inspections or interviews.

The following procedures should be taken while monitoring:

- Count and document the total number of workers observed.
- Count and document the total number of minorities and females observed.
- Observe the workers craft or trade performing.
- Select a few workers and interview them. Ask the following questions:
  - Their name, address.
  - Last date they worked on project, prior to that day also, hours worked.
  - Their hourly rate of pay
  - Their job classification/ along with duties.
  - Are they an apprentice.
  - Their tools or equipment used.
  - Have they been paid time and one-half for hours worked in excess of 40 hrs in a work week
  - Have they ever been threatened, intimidated, or coerced into giving up any
  - part of pay.



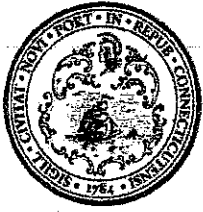
- Document all information received on interview sheet, etc.
- Write a statement regarding your remarks.
- Give the employee your business card, and explain to them what issues arrived.

### **Non-Compliance**

It is important that all utilization monitors should view non-compliance as the failure of a contractor to utilize minorities, females, and handicapped to the extent reasonable and within his/her ability. This is measured by failure to meet previous goals, labor force assistance or justification, and the failure of a contractor to document any extenuating circumstances.

Reporting non-compliance should be conducted using the following procedures:

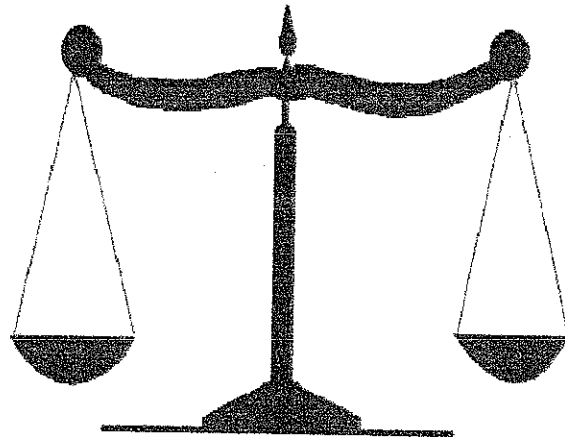
- After reviewing all proper documents,
- notify the on site foreman/supervisor of
- non-compliance contractors/subcontractors



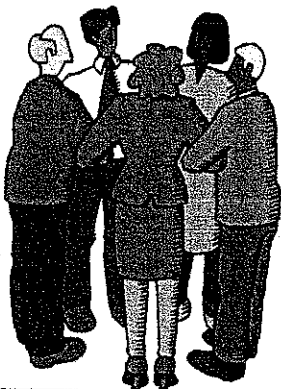
# City of New Haven Code of Ordinance



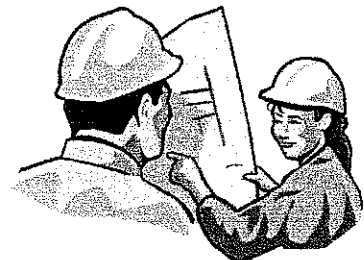
*Contract Compliance*  
Section 12 1/2 -19  
*to*  
Section 12 1/2 - 33



City of New Haven  
Commission on Equal Opportunities  
Reference Material



**Nichole Jefferson**  
*Executive Director*



- (f) Unless otherwise directed by the commission, tribunal or court, commencement of review proceedings under this section shall operate as a stay of any order.
- (g) Petitions filed under this section shall be heard expeditiously and determined upon the transcript filed, without requirement of printing. Hearings in the court or before any judge thereof under this chapter shall take precedence over all other matters, except matters of the same character, to the extent consistent with the general statutes and the rules of the court. (Ord. of 5-14-64, § 7; Ord. of 1-21-86; Ord. of 1-6-92; Ord. of 6-1-92; Ord. of 3-12-01)

#### **Sec. 12 1/2-8. Cooperation.**

All departments, boards, commissions, agencies, bureaus, officers, officials and employees of the city shall cooperate with the commission in implementing this chapter, and the heads thereof shall furnish the commission information in their possession when the commission upon the approval of the mayor, so requests.

(Ord. of 5-14-64, § 8)

Secs. 12 1/2-9--12 1/2-18. Reserved.

## **ARTICLE II. HIRING PRACTICES IN THE CONSTRUCTION TRADES**

#### **Sec. 12 1/2-19. Definitions.**

As used in this article, the following terms mean:

- (a) *Agency*: Any agency, authority, board, commission or department of the city.
- (b) *Apprentice*: A person employed under a written agreement enrolled in a registered program approved by the state to work at and to learn a specific trade, as defined in Connecticut General Statutes section 31-51a.
- (c) *Bidder*: Any person, partnership, corporation, association or joint venture to be awarded a public contract.
- (d) *Building trade or commission*: Any of those trades, crafts or occupations normally associated with the preparation for and construction, maintenance or removal of manmade structures or parts thereof, the member of which trades, crafts and occupations include, without limitation, plumbers, iron workers, electrical workers, bricklayers, carpenters, marble polishers, operating engineers, steamfitters, painters, laborers, sheet metal workers, boilermakers, elevator constructors, asbestos workers, lathers, plasterers and roofers.
- (e) *City-related construction contract*: Any construction contract toward which the city makes any cash payment, payment of in-kind services, or provision of land for construction thereon and includes any and all contracts involved in any part of an official redevelopment plan of the city where said redevelopment plan requires the city to furnish cash, noncash equivalents or credits, in-kind services, or any other expenditure of city staff, money or material.

- (f) *Construction contract*: Any public contract for the construction, rehabilitation, alteration, conversion, extension or repair of buildings, streets or other improvements to real property.
- (g) *Contractor*: Any person, partnership, corporation, association or joint venture which has been awarded a public contract, and included is every subcontractor on such a contract.
- (h) *Director*: The director of the office of contract compliance.
- (i) *Discriminate, discriminates, and discrimination*: Distinguish, differentiate, separate or segregate solely on the basis of race, religion, color, sex, age, physical disability of national origin.
- (j) *Equal employment opportunity goals*: A minimum percentage figure set for each construction trade, craft or occupation established by the director as provided in this article, expressed as a percentage of the total work force in a particular building trade, craft or occupation.
- (k) *Journeyman*: A fully-trained and fully-accredited member of a building trade union.
- (l) *Member*: Any person who is enrolled with a building trade union at the apprentice level or higher.
- (m) *Minority-group employee*: Any minority employee.
- (n) *Minority*: (1) Black Americans, including all persons having origins in any of the Black African racial groups not of Hispanic origin; (2) Hispanic Americans, including all persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race; (3) Asian Pacific Americans and Pacific Islanders; or (4) American Indians and persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification.
- (o) *Public contract*: Any agreement or formal commitment entered into by the city if the city is authorized to expend or does expend funds in return for work, labor services, supplies, equipment, materials or any combination of the foregoing, or any lease, lease by way of concession, concession agreement, permit, or permit agreement whereby the city leases, grants or demises property belonging to the city, or otherwise to grant a right or privilege to occupy or to use said property of the city. The granting of tax abatement agreements shall be included.
- (p) *Referral union*: A labor organization under whose normal methods of operation individuals customarily and regularly seek or gain employment through the union or the agent of the union.
- (q) *Subcontractor*: Any person, partnership, corporation, association or joint venture which supplies any of the work, labor, services, supplies, equipment, materials or any combination of the foregoing under a contract with the contractor on a public contract.
- (r) *Target minority and women employment goal*: A minimum percentage figure set

for each construction trade, craft or occupation established by the director as provided in this article, expressed as a percentage of the total work force in a particular building trade, craft or occupation.

- (s) *Union*: A building trades referral union.
- (t) *Women group employee*: Any female employee.

(Ord. of 12-5-77; Ord. of 6-6-83; Ord. of 6-18-90, § 1(a), (j); Ord. of 7-6-99, § 2)

## **Sec. 12 1/2-20. Office of contract compliance.**

### (a) *Contract compliance director.*

- (1) There is hereby established in the New Haven Commission on Equal Opportunities (hereinafter referred to as "the commission") a contract compliance office, headed by a contract compliance director.
- (2) The contract compliance director shall be subject to the supervision of the executive director of the commission, shall administer and enforce the city's equal contract opportunity programs established by sections 12 1/2-19 through 12 1/2-33, establish procedures to effectuate such sections, make all determinations as to compliance with the program, and shall meet with said contracting parties for such purposes. He shall have at his disposal the resources of all city agencies which may be under contract with the city.

### (b) *Contract compliance officers*: Any city agency which has awarded at least four (4) city-related construction contracts each valued at one hundred thousand dollars (\$100,000.00) or more, or at least one such contract valued at two hundred fifty thousand dollars (\$250,000.00) or more, during a fiscal year beginning no earlier than the effective date of this article, or any agency which solicits bids and contracts directly, shall designate an employee within such agency to act as a contract compliance officer.

- (1) Each such agency shall propose to the director the name of an employee to be designated as its contract compliance officer.
- (2) The director shall approve the name so submitted, but shall retain the power to request at any later date the substitution of another employee of said agency in the position of contract compliance officer. Such substitution shall be requested by the director only after an adequate showing by him to the affected agency of the failure of the employee in question to properly discharge his duties as contract compliance officer, as set forth in section 12 1/2-21(b) of this article.
- (3) Once established, the position of contract compliance officer shall remain filled as long as a city agency shall have in the process of construction any city-related construction contract or so long as such agency continues to award contracts directly.
- (4) In their capacity as contract compliance officers, all employees so designated shall report to the director.

(Ord. of 12-5-77; Ord. of 6-6-83; Ord. of 6-18-90, § 1(b); Ord. of 7-6-99, § 3)

**Sec. 12 1/2-21. Duties.**

- (a) The duties of the director shall include:
- (1) The setting of a target minority and women employment goal for each trade or craft at least once every five (5) years, in consultation with the commission, the construction contractors in the New Haven area, and the building trades referral unions in the New Haven area;
    - a. This goal shall be set based on factors such as, but not limited to the percentage of minority and women group population to the total population to the total population in New Haven, the availability of minority group and women group personnel, the training requirements for potential minority group and women group construction trade workers, and conditions of the construction labor market in the New Haven area;
    - b. Under no circumstances, shall the minimum minority employment goal be less than sixty-six and two-thirds ( $66 \frac{2}{3}$ ) percent of the percentage of minority group population in relation to the total population of New Haven, as derived from the latest available Connecticut Department of Labor figures or working estimates, and the minimum women employment goal shall be not less than six and nine-tenths (6.9) percent of the workforce or as modified by the director upon review of the factors set forth in this section;
  - (2) Establishment of requirements which outline specified percentages of minority and women apprentices, trainees, et al, which have failed to take affirmative action to increase the number of minority and women group members within their ranks;
  - (3) Set equal employment opportunity goals for the occupational groups utilized by supply contractors, vendors, and service contractors doing business with the city. Such ranges shall reflect the following:
    - a. Present minority and women participation in analogous occupational groups within the labor market area; and
    - b. Percent of unemployed which are represented by minority persons and women in the employer's labor market area; and
    - c. Potential for recruitment of qualifiable minority persons, women and physically disabled individuals;
  - (4) *Reserved.*
  - (5) Final approval, rejection, or modification, after consultation with legal counsel for the commission, of all minority and women personnel plans subject to appropriate judicial review;
  - (6) Assistance to contractor and unions in the implementation and maintenance of minority and women personnel play goals;
  - (7) Supervision of contract compliance officers;

- (8) Recommendation to the commission of remedial action or penalties in the event of noncompliance, as set forth in section 12 1/2-35 of this article;
- (b) The duties of the contract compliance officers shall include:
- (1) Assistance in the negotiation of specific minority and women personnel plans with building trades unions;
  - (2) Liaison activities with building trades referral unions, including assistance in the establishment of recruitment methods for obtaining minority group and women group employees;
  - (3) Obtaining semi-annual minority and women personnel employment data reports from all contractors, vendors and suppliers working under the provisions of this article.
  - (4) Assistance to state training council, building trades, referral unions and contractors in meeting the requirements of section 12 1/2-33; monitoring compliance with the requirements of section 12 1/2-33 including obtaining certified payrolls which shall be filed with the board of aldermen as said board may request.

(Ord. of 12-5-77; Ord. of 6-6-83; Ord. of 6-18-90, § 1(c)--(e), (j); Ord. of 7-6-99, § 4)

#### **Sec. 12 1/2-22. Affirmative action plans.**

- (a) Effective with the date upon which the director sets the target minority and women employment goals, no construction contractor who obtains his labor force through building trades referral unions shall be awarded any city-related construction contract with an estimated total value of fifty thousand dollars (\$50,000.00) or more, or aggregate total value of two hundred fifty thousand dollars (\$250,000.00) annually, unless he/she demonstrates to the satisfaction of the director that he/she and all subcontractors, with contracts valued at twenty-five thousand dollars (\$25,000.00) or more, will obtain all their construction labor force for that project from building trades referral unions which have adopted personnel plans in accordance with this article for the increasing of minority group and women group membership in each trade or craft. All such minority and women personnel plans shall be incorporated in appropriate construction contract document between affected construction contractors and city agencies.
- (b) (1) Each building trades referral union having jurisdiction over members of that trade within the city which, on the effective date of this article, has one (1) or more members working on any city related construction contract shall adopt, within six (6) months of the effective date of this article, a minority and women personnel plan after consultation with the director, the contract compliance officers, and the construction contractors in the New Haven area. Each minority and women personnel plan shall describe the market minority and women employment goal for each trade or craft and means by which the union, with the assistance of the contractors in the New Haven area, through existing maximum efforts, shall attempt to meet those goals provided that the minimum goal of minority-group and women-group employees shall not be required to exceed the target minority and women employment range as set by the director.

- (2) Any building trade referral union which does not, as of the effective date of this article, have one (1) or more members working on any city-related construction contract shall be required to adopt minority and women personnel plan pursuant to this subsection (b) within six (6) months after the date on which one (1) or more of its members begins working on any city related construction contract.
  - (3) In order to achieve the target minority and women employment goals, each building trade referral union, in consultation with construction contractors, the director and the contract compliance officers, shall adopt all necessary policies to promote compliance with the target goals. Such policies may include, without limitation:
    - a. Development of and/or intensification of efforts to obtain minority group and women group membership at the apprentice or higher levels through minority group and women group organizations and informal contracts in predominantly minority communities and women groups.
    - b. Referral of minority group and women group union members to employers without regard to any seniority system imposed by contract or custom; and
    - c. Relaxation of present union requirements to allow contractors to seek qualified minority group and women group employees outside the normal union hiring hall arrangements.
  - (4) Contractors and unions shall make every effort to shorten the period of apprenticeship training required for advancement to full journeyman status in order to help meet the minority group and women group target employment goals, and shall exert maximum effort toward rapid development of alternative means of achieving union entry for unskilled workers.
  - (5) Contractors and unions shall to the extent feasible in light of existing minority and women work force conditions, attempt to achieve the target minority and women employment goal through a balanced minority and women recruitment effort, with the purpose of providing entry into the building trades unions for both experienced nonunion, minority group craftsmen and women group craftsmen and unskilled minority group youth and unskilled women group youth.
- (c) Minority/women apprenticeship training programs.
- (1) Notwithstanding any other ordinance or regulation of the city to the contrary, programs to encourage the advancement of minority and women apprenticeship training, approved and registered by the Connecticut Department of Labor, and filed for monitoring purposes with the commission on equal opportunities of the city, shall be in place on all construction projects commenced after the effective date of this section, which meet the following criteria:
    - a. Construction projects involving construction contracts which are defined as city-related in section 12 1/2-19 of the Code of General Ordinances.
    - b. Construction projects which are taking place upon land which was sold by the city through a land disposition agreement on or after the effective date of this section [October 18, 1986].



- c. Construction projects taking place on property (1) which has received tax abatement and/or assessment deferral on or after the effective date of this section or (2) for which the board of aldermen has, on or after the effective date of this amendment [March 15, 1983], approved a tax abatement and/or assessment deferral. For the purposes of this section, "construction projects" shall include projects which involve a construction contract as defined in section 12 1/2-19 of the Code of General Ordinances involving the construction trades.
- (2) Prior to, and as a condition of, the execution of contracts involving any of the benefits described in section 12 1/2-19 which constitute city assistance, proposed contractors and developers shall submit a written plan for implementation of such programs to encourage the advancement of minority and women apprenticeship training, as described in section (1) above, to begin with the commencement of construction on any project not exempted from the requirements of this section. The plan shall have specific goals for minorities and women participants in the various trades as set by the commission on equal opportunities pursuant to section 12 1/2-21(a)(1), and which may, according to that section, be changed from time to time.
- (3) The contract compliance officer for each project, under the direction of the contract compliance director, shall monitor all hereinabove described construction projects to ensure the existence and operation of a registered and approved apprenticeship program as required herein. All reports required by the contract compliance officer shall be filed by the contractor.
- (4) The following contractors shall be required to comply with the requirements of this section regarding submission of plans:
  - a. Contractors for construction projects, as defined in section 12 1/2-22(c)(1), above, for construction projects with a value of more than five hundred thousand dollars (\$500,000.00).
  - b. Contractors for more than one (1) concurrent construction project which have a cumulative value of more than five hundred thousand dollars (\$500,000.00).
  - c. Contractors performing services pursuant to city-related construction contracts for which there is no general contractors and having a value of more than fifty thousand dollars (\$50,000.00); provided that nothing in this subsection (c)(4)c. is intended or shall be construed to apply to any contractor covered under subsection (c)(4)a. of this section.
- (5) Contractors for projects exempted, pursuant to section 12 1/2-22(c)(4), above, from the requirements of this section shall be required to maintain records, in a form prescribed by the commission of equal opportunities, attesting to their hiring practices and the results of hiring referrals. Said records shall be made available to the contract compliance officer upon written request from that officer.
- (6) Enforcement of the provisions of this section shall be included with and conducted according to the provisions of section 12 1/2-26(a)(2) of the Code of General Ordinances.

- (7) All contractors in compliance with this section 12 1/2-22(c) shall be deemed, without further action, to be in compliance with [sections] 12 1/2-22(a) and 12 1/2-22(b).
- (8) The goals for minorities and women apprentices, as specified in subsection (c)(2) of this section 12 1/2-22, shall be the same as those set under the powers and duties as set forth in section 12 1/2-21 of this chapter, and nothing in this section 12 1/2-22 as amended herein shall be so construed as to change, limit or otherwise affect those powers and duties contained in section 12 1/2-21 of this chapter, as they apply to the commission on equal opportunities or its executive director.
- (9) All contractors subject to the requirements of section 12 1/2-22(b) who comply with the requirements of said section 12 1/2-22(b) shall be deemed without further action to be in compliance with section 12 1/2-22(c).
- (10) Subsections (1) through (9) of section 12 1/2-22(c) shall be reviewed formally by the commission on equal opportunities and the board of aldermen on the third year anniversary of its effective date [October 18, 1986].

(Ord. of 12-5-77; Ord. of 6-6-83; Ord. of 10-6-86; Ord. of 3-1-93; Ord. of 3-12-01)

#### **Sec. 12 1/2-23. Equal employment opportunity clause.**

All public contracts hereinafter entered into by the city shall incorporate an equal employment opportunity clause, which shall read as follows:

"During the performance of this contract, the contractor agrees:

- (a) To comply with all provisions of Executive Order 11246, Executive Order 11375, and Executive Order 12138 Connecticut Fair Employment Practices Act, and the contract compliance ordinance of the city, including all standards and regulations which are promulgated by the government authorities who established such acts and requirements; and all standards and regulations are incorporated herein by reference;
- (b) Not to discriminate against any employee or applicant for employment because of race, color, religion, age, sex, physical disability or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to race, color, religion, sex, age or national original and physical handicap. Such action shall include but not be limited to the following: Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship;
- (c) To post, in conspicuous places available to employees and applicants for employment notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- (d) To state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex,

- age, physical disability, or national origin;
- (e) To send to each union or representative of workers with whom he has a collective bargaining agreement, or other contract or understanding, a notice advising the labor union or worker's representative of the contractor's commitments under the equal opportunity clause of the city, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor shall register all workers in the skilled trades, who are below the journeyman level, with the Apprentice Training Division of the Connecticut State Labor Department;
  - (f) To utilize labor department and city sponsored manpower programs as a source of recruitment and to notify the contract compliance unit and such programs of all job vacancies;
  - (g) To take affirmative action to negotiate with qualified minority and women contractors for any work which may be proposed for subletting or for any additional services, supplied, or work which may be required as a result of this contract;
  - (h) To cooperate with city departments in implementing required contract obligations for increasing the utilization of minority and women business enterprises;
  - (i) To furnish all information and reports required by the contract compliance director pursuant to section 12 1/2-19 through section 12 1/2-32 and to permit access to his/her books, records and accounts by the contracting agency, the contract compliance officer, and the secretary of labor for purposes of investigation to ascertain compliance with the program;
  - (j) To take such action, with respect to any subcontractor, as the city may direct as a means of enforcing the provisions of subparagraphs (a) through (m) herein, including penalties and sanctions for noncompliance, provided however that, in the event the contractor becomes involved in or is threatened with litigation as a result of such direction by the city, the city will intervene in such litigation to the extent necessary to protect the interest of the city and to effectuate the city's equal employment opportunity program. In the case of contracts funded directly or indirectly, in whole or in part, under one (1) or more federal assistance programs, the contractor or the city may ask the United States to enter into such litigation to protect the interest of the United States;
  - (k) To file, along with his subcontractors, if any, compliance reports with the city in the form and to the extent prescribed in the contract by the contract compliance director of the city. Compliance reports filed at such times as directed shall contain information as to the employment practices, policies, programs and statistics of the contractor and his subcontractors, if any;
  - (l) To include the provisions of subparagraphs (a) through (m) of this equal opportunity clause in every subcontract or purchase order so that said provisions will be binding upon each such subcontractor or vendor;

- (m) That a finding, as hereinafter provided of a refusal by the contractor, or subcontractor, to comply with any portion of this program as herein stated and described, may subject the offending party to any or all of the penalties;
- (1) Withholding of all future payments under the involved public contract to the contractor in violation until it is determined that the contractor, or subcontractor is in compliance with the provisions of the contract;
  - (2) Refusal of all future bids for any public contract with the city, or any of its departments or divisions, until such time as the contractor, or subcontractor, is in compliance with the provisions of the contract;
  - (3) Cancellation of the public contract;
  - (4) Recovery of specified monetary penalties;
  - (5) In case of substantial or material violation, or the threat of substantial or material violation, of the compliance procedure or as may be provided for by contract, appropriate equitable or legal proceedings may be brought to enforce these provisions against contractors; subcontractors; or other organizations, individuals or groups who directly or indirectly are not in compliance with the policy as herein outlined.

(Ord. of 12-5-77; Ord. of 6-6-83; Ord. of 6-18-90, § 1(f); Ord. of 3-12-01)

**Sec. 12 1/2-24. Contract compliance requirements.**

- (a) All notices to prospective bidders published on behalf of the city shall include, as part of the contract specifications, the conditions that all bidders must be required to comply with the New Haven contract compliance program regarding equal employment opportunity. All reports required herein shall be submitted in duplicate to the agency letting the contract. Each bidder shall file, as part of bid documents, contract employment records with the city contracting agency or as may be directed by the contract compliance director, such employment and subcontracting practices, policies, programs and statistics of the contractor; and shall be in such form as the contract compliance director may prescribe. Subcontractors shall also submit such contract employment and subcontracting reports to the city before approval by the city as subcontractor.
- (b) Suppliers, vendors and services shall provide an equal opportunity assurance and/or an affirmative action plan which is acceptable to the director of contract compliance.
- (c) All firms doing business with the city shall utilize city sponsored recruitment and training programs to the most feasible extent in order to ensure the hiring of qualifiable minority, women and physically disabled employees, trainees and apprentices.
- (d) Any firm which fails to meet compliance requirements as set by the contract compliance director and has failed to furnish evidence of meaningful contact with department of

labor sponsored or other recognized sources of minority, women and physically disabled employees shall be deemed in noncompliance with the contract compliance program.

- (e) Failure of a contractor, or major subcontractor, to file forms prescribed by the contract compliance director shall be cause for determination of noncompliance with the terms of this article.
- (f) A contractor who refuses to agree to and comply with an affirmative action plan designed to effectuate the purpose of this article is precluded from being a "responsible bidder" as that term is used in the City Charter.
- (g) Any subcontractor who refuses to agree to or comply with an affirmative action plan designed to effectuate the purpose of this article shall be rejected as a subcontractor by the contracting agency involved.

(Ord. of 12-5-77; Ord. of 6-6-83; Ord. of 3-12-01)

### **Sec. 12 1/2-25. Enforcement provisions.**

- (a) Any building trade referral union which fails to reach the target minority and women employment goals shall not automatically be deemed in noncompliance with the terms of this article, provided it affirmatively demonstrates to the office of contract compliance that every effort was made to achieve compliance.
  - (1) If the director determines, after proper investigation, that the union has failed to exert maximum effort to ensure compliance, the director shall order all contractors using that union as their labor source for a building trade or craft to draw from other nonunion resources in order to bring the level of minority group and women group employment in that building trade or craft city-related contract to up to the applicable percentage of the required minority and women employment goals;
  - (2) If in the judgment of the director, any contractor involved does not exert maximum effort to increase minority group and women group employment as per section 12 1/2-21(a)(3), or violates the obligations of section 12 1/2-23, section 12 1/2-22(c) as it applies to apprenticeship training, and section 12 1/2-24, the director shall recommend to the commission that it:
    - a. Recommend to the appropriate city agency that all payments be canceled, terminated or suspended on the contract(s) involved until such time as the contractor provides specific assurances of future compliance and a specific plan of achievement of such compliance; and/or
    - b. Recommend to all city agencies that they refrain from entering into further contracts, or extensions or other modifications of existing contracts, with any noncomplying contractor until such time as such contractor provides specific assurance of future compliance; and/or
    - c. Recommend to appropriate city agencies the recovery by the administering agency, from the general contractor of one-tenth ( 1/10) of one (1) percent of the contract award price in the nature of liquidated damages, or if a subcontractor is in noncompliance, the recovery by the administering agency from the general contractor as a back charge

against the subcontractor, of one-tenth ( 1/10) of one (1) percent of the subcontract price, in the nature of liquidated damages, for each week that such contractor fails or refuses to comply; and/or

- d. Publish, or cause to be published, the names of contractors or subcontractors or unions which have been found, after appropriate proceedings to be in violation of this article or any rules, regulations, or orders of said office.
- e. If a majority of the commission so recommends, its findings shall be legally binding on each appropriate city agency, subject to appropriate judicial review initiated by the contractor involved, until such time as the commission shall determine that a satisfactory, specific plan of compliance, using either complying union or nonunion sources, has been given by the contractor and that said plan is being properly pursued.

(Ord. of 12-5-77; Ord. of 6-6-83; Ord. of 10-6-86; Ord. of 6-18-90, § 1(h), (j); Ord. of 3-12-01)

**Editor's note:** Former § 12 1/2-25 was repealed by § 1(g) of an ordinance of June 18, 1990. The repealed provisions pertained to minority and women bidders, vendors and contractors and derived from an ordinance of Dec. 5, 1977 as amended by an ordinance of June 6, 1983. Sec. 1(j) of the June 18, 1990 ordinance then renumbered former §§12 1/2-26--12 1/2-33 as 12 1/2-25--12 1/2-32.

#### Sec. 12 1/2-26. Pre-award conference.

- (a) Following receipt and review of the employment information required by the contract compliance division and prior to award of a contract, the apparent successful bidder and his major subcontractors shall be required to attend a pre-award conference, if called by the contract compliance director, at which time such bidder and major subcontractors shall submit affirmative action programs to promote equal opportunity in employment. At such pre-award conference the contract compliance director shall notify the apparent successful bidder and his major subcontractors about section 12 1/2-31 and the penalties for noncompliance. The contract compliance director shall determine whether or not the apparent successful bidder has complied with sections 12 1/2-22 through 12 1/2-25, and then shall submit his determination and recommendation thereon to the commission and the director of the department involved. After receiving the recommendation of the contract compliance director, the executive director of the commission shall process the award recommendation to the awarding agency.
- (b) In the event of noncompliance, the executive director shall recommend that the apparent successful bidder be declared nonresponsive.
- (c) No contract over fifty thousand dollars (\$50,000.00) may be finally awarded until the contract compliance director, or his representative, has had reasonable time to review submissions from contractors, vendors and convene a pre-award conference. The contract compliance director shall notify the awarding department, at once, as to the intention to convene such a conference.
- (d) No major subcontractor on any construction project over one hundred thousand dollars (\$100,000.00) shall arrive on such project until such time as the necessary pre-construction compliance information, as designated by the contract compliance

director, has been submitted. Failure to submit such information shall prohibit the awarding authority from authorizing such a subcontractor to begin work.

- (e) Contractor's affirmative action plans shall address the possibility of inclusion of handicapped persons in their labor forces. The contracting agency shall be responsible for collection necessary information to determine the degree of compliance, if any, and the apparent ability to comply. This data must be submitted to the contract compliance division for review and approval.

(Ord. of 12-5-77; Ord. of 6-6-83; Ord. of 6-18-90, § 1(i), (j); Ord. of 1-5-98, § 2; Ord. of 3-12-01; Ord. No. 1292, § 2, 11-19-01)

### **Sec. 12 1/2-27. Project site reports.**

Where a construction contract exceeds fifty thousand dollars (\$50,000.00), a project site report shall be completed and submitted by both the contractor and subcontractor not more than thirty (30) days from the beginning of work on the site.

- (a) Such project site reports shall include such information as to employment practices and statistics of the contractor, and each subcontractor, and shall be in such form as the contract compliance director may prescribe.
- (b) Where the terms of the contract exceed thirty (30) days, a project site report shall be submitted each month, or more frequently if the contract compliance director determines that such additional information is necessary for the continuing evaluation of the work force composition.
- (c) Subcontractors shall complete and submit such project reports to the contractor for the transmittal to the city.
- (d) Post-award reports shall be reviewed as one means of determining contract compliance.

(Ord. of 12-5-77; Ord. of 6-6-83; Ord. of 6-18-90, §(j); Ord. of 3-12-01; Ord. No. 1292, § 3, 11-19-01)

### **Sec. 12 1/2-28. Intergovernmental cooperation.**

In the event that specific discriminatory practices are found in the administration and enforcement of this article, to the sanctions that may be imposed as provided for the terms of the contract, the city may forward all pertinent information to the appropriate federal and state agencies.

(Ord. of 12-5-77; Ord. of 6-18-90, § 1(j); Ord. of 3-12-01)

### **Sec. 12 1/2-29. Inter-departmental cooperation.**

- (a) The contract compliance director shall conduct periodic reviews of the practices and policies of all city departments which purchase goods and services, and undertake capital projects with respect to equal opportunity in contracting; and shall report to the commission as to their success in promoting the participation of minority and women businesses. In connection with this task, the contract compliance director may require contracting agencies to file pertinent reports with said office. All city departments will

cooperate with the commission to promote the participation of minority-owned firms in their purchasing.

- (b) At the time of preparation and prior to notice to bid or final negotiation for all city contracts, the contract documents prepared concerning equal opportunity provisions shall be forwarded to the commission's legal counsel for review, and shall meet with the approval of the commission to ensure that the purposes of this article are met.
  - (1) All city agencies are to notify the commission in a timely fashion of all notices to bid and the results of all bid openings.
  - (2) All city departments will cooperate with the commission to arrange for the integration of contract compliance procedures into existing departmental procedures.

(Ord. of 12-5-77; Ord. of 6-6-83; Ord. of 6-18-90, § 1(j); Ord. of 3-12-01)

### **Sec. 12 1/2-30. Contract disposition.**

- (a) In the event a contractor fails to cooperate in reaching mutually satisfactory solutions or to implement contract compliance agreements, the contract compliance director shall review such cases to determine:
  - (1) Whether further efforts or alternative approaches are desirable; (such alternatives may involve contact with industry, related labor unions, or requesting the assistance of the office of federal contract compliance and the particular federal agency involved by further negotiations); or
  - (2) Whether any of the penalties set forth in section 12 1/2-23(m) are appropriate to the case.
- (b) In the event the contract compliance director determines that the contractor is in violation with the equal opportunity employment requirements of the contract, after affording such contractor a reasonable time to take corrective steps, and where negotiations have been futile, he shall make said findings pursuant to subsections (a)(1) and (a)(2) of this section and shall transmit said findings to the commission for appropriate redress.

(Ord. of 12-5-77; Ord. of 6-18-90, § 1(j); Ord. of 3-12-01)

### **Sec. 12 1/2-31. Minimum wage requirements.**

The minimum wage paid on the following projects shall correspond to the State of Connecticut prevailing wages, or if applicable, the prevailing wages promulgated in accordance with the Federal Davis Bacon Act. The applicable prevailing wages to be paid shall be posted by the contractor in a prominent and easily accessible place at the site of work, and weekly payroll reports shall be submitted therefor:

- (a)
  - (1) Contracts for the construction, repairing or remodeling of public buildings or public works of any kind by the city or any of its divisions where the contract exceeds fifty thousand dollars (\$50,000.00).
  - (2) For contracts for the construction, repairing or remodeling of public



buildings or public works of any kind by the city or any of its divisions where the contract exceeds ten thousand dollars (\$10,000.00) and is less than fifty thousand dollars (\$50,000.00), the minimum wage paid shall be no less than the amount specified as the living wage for the city as established by section 2-228 of this Code of Ordinances.

- (b) Any contracts for projects which are subject to the provisions of section 12 1/2-22 of this Code of General Ordinances, except those projects consisting of rental rehabilitation projects administered by the city and consisting of less than twelve (12) units, those projects consisting of residential rehabilitation contracts and/or projects administered by the city and consisting of less than eight (8) units, and those programs which may from time to time be exempted from the provisions of the Federal Davis Bacon Act as published on CFR 24.
- (c) Payroll reports shall be submitted immediately upon completion of the work week, but in no case later than thirty (30) days from the end of each work week. All notices to prospective bidders published on behalf of the city shall include as part of the contract specifications, the condition that bidders must comply in all respects with this section 12 1/2-31.
- (d) The director of contract compliance shall review all said wage reports on a weekly basis. A finding of late submission or noncompliance with any part of this section 12 1/2-31 shall subject the offending party to any or all of the following penalties:
  - (1) Withholding of all future payments under the involved public contract to the contractor in violation until it is determined that the contractor or subcontractor is in compliance;
  - (2) Refusal of all future bids for any public contract with the city, or any of its departments or divisions, until such time as the contractor or subcontractor is in compliance;
  - (3) Cancellation of the public contract;
  - (4) Recovery of specified monetary penalties;
  - (5) In case of substantial or material violation, or the threat of substantial or material violation of the compliance procedure, appropriate equitable or legal proceedings may be brought to enforce these provisions against contractors, subcontractors who directly or indirectly are not in compliance with this section 12 1/2-31.

(Ord. of 12-5-77; Ord. of 2-21-84; Ord. of 2-22-89, § 1; Ord. of 6-18-90, § 1(j); Ord. of 1-5-98, § 1; Ord. of 3-12-01; Ord. No. 1292, § 4, 11-19-01)

### **Sec. 12 1/2-32. Severability clause.**

Sections 12 1/2-9 through 12 1/2-33, and each part of such sections are hereby declared to be independent sections and parts of sections and, notwithstanding any other evidence of legislative intent, if any provision of said sections, or the application thereof to any person or circumstance, is held invalid, the remaining sections, or parts of sections, and the application of such provisions to any person or circumstances, other than those as to which it is

held invalid, shall not be affected thereby, and it is hereby declared that this article would have been passed independently of such section, sections, or parts of sections so held to be invalid.

(Ord. of 12-5-77; Ord. of 6-18-90, § 1(j); Ord. of 3-12-01)

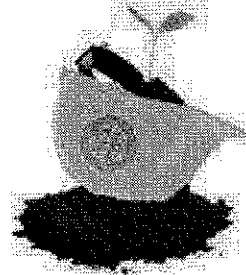
**Sec. 12 1/2-33. Apprentice hiring.**

All contractors for construction projects which utilize apprenticeable trades or occupations in the performance of contracts subject to the following requirements:

- (a) The contractor shall be affiliated with a state certified apprenticeship program for each apprenticeable trade or occupation represented in its workforce.
- (b) A minimum of fifteen (15) percent of the workforce by trade employed by contractors on any and all city contracts subject to the requirements of this section shall be apprentices and, of this number, a minimum of fifty (50) percent shall be in the first year of apprenticeship training.

# **Small Business Utilization**

**Small Contractors' Development Program**  
**Lil Snyder – Program Manager**  
**lsnyder@newhaven.ct.net**  
**203-948-6550**



## **Information Sheet**

The City of New Haven is committed to developing and nurturing a competitive local construction industry in which Contractors for publicly financed projects provide efficient, high quality services, pay competitive wages to their employees, and represent New Haven's ethnic diversity.

The City of New Haven has adopted a program for small, minority and women participation in construction contracts that are financed (in whole or in part) by the City Of New Haven.

### **Benefits of Registration**

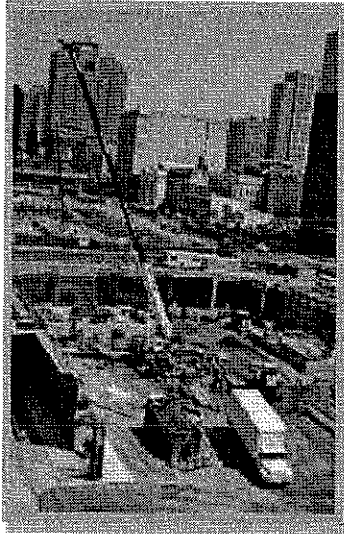
- Weekly email broadcast notification of current opportunities
- Weekly contractors' tips
- Blueprints and specifications located in office
- Workshops and technical assistance
- Networking events with owners, developers and construction managers
- Construction contracts valued under \$150,000 will be reserved for bid to registered contractors on the basis of competitive bidding.
- For construction contracts valued at \$50,000 or less, the purchasing agent must receive at least three informal bids or quotes from registered contractors, and at least two of the three bids must be from registered MBEs (Minority Business Enterprise).
- No bond requirement for projects \$100,000 or under.



**Contractors interested in the program must register through the Small Contractors' Development Office: 165 Church Street, 6th Floor, New Haven.**

**Eligibility Requirements**

- Been in business under the same ownership and management for a period of at least one year immediately prior to the date of application for registration.
- Maintained the principal place of business in the New Haven Market Area for a period of at least one year immediately prior to the date of application.
- Gross revenues have not exceeded three million dollars in the most recently completed fiscal year prior to application.



**Application Requirements**

- Completed application, including notarized Oath
- Complete current Tax Return (Sole proprietorships, Schedule C only)
- Current Secretary of the State Annual Report
- Copies of current trade and professional licenses

Contractors interested in the program must register through the Small Contractors' Development Office: 165 Church Street, 6th Floor, New Haven.

AN AMENDMENT TO THE NEW HAVEN CODE OF  
ORDINANCES REGARDING CONTINUATION OF THE NEW HAVEN  
SMALL BUSINESS ENTERPRISE CONSTRUCTION OPPORTUNITY INITIATIVE

The Board of Aldermen of the City of New Haven does ordain as follows:

1. **First:** Section 12-1/4 of the New Haven Code of General Ordinances is amended by substitution of the following:

**Chapter 12 ¼**

**Small Business Enterprise Construction Opportunity Initiative**

**Sections:**

- 12 ¼ - 1. Declaration of Policy
- 12 ¼ - 2. Scope
- 12 ¼ - 3. Definitions
- 12 ¼ - 4. Registration of SBEs and MBEs
- 12 ¼ - 5. Utilization Goals for City Construction Contracts
- 12 ¼ - 6. Small Business Enterprise Contractor Capability Building
- 12 ¼ - 7. Set Aside Opportunities for Small Business Enterprises
- 12 ¼ - 7.1. Set-Aside Opportunities – School Construction Contracts.
- 12 ¼ - 8. Minority Business Enterprise Requirements for Informal Bids
- 12 ¼ - 9. MBE Subcontractor Utilization and Good Faith Efforts Requirements
- 12 ¼ -10. Compliance
- 12 ¼ -11. Exceptions
- 12 ¼ -12. Prompt Payment Provisions for Registered Small Business Enterprises
- 12 ¼ -13. Protest Procedures
- 12 ¼ -14. Administration
- 12 ¼ -15. Monitoring Compliance
- 12 ¼ -16. Dissemination of Ordinance Provisions
- 12 ¼ -17. Duration of Ordinance

**Sec. 12 ¼ - 1. Declaration of Policy**

- (a) The City of New Haven is committed to developing and nurturing a competitive local construction industry in which Contractors for publicly financed projects provide efficient, high-quality services, pay competitive wages to their employees, and represent New Haven's ethnic diversity.
  
- (b) Based on a study of the utilization of construction contractors in New Haven ("Utilization Study") and further research, it has been determined that there is a serious need to help small contractors and minority business enterprises to be considered for and awarded City contracts for the construction, reconstruction or rehabilitation of public buildings and the construction and maintenance of highways and other public spaces. This construction business opportunity initiative is intended to ensure that there is no discrimination against Small Business Enterprises or Minority Business Enterprises. That equal opportunities for construction and construction related contracts are available while encouraging competitive practices and long term sustainable small business development.
  
- (c) Accordingly, the City of New Haven hereby adopts a program of contractor utilization goals, contractor capability-building measures, internal policy and procedure changes, and monitoring requirements with respect to the participation of small and minority businesses in construction contracts that are financed (in whole or in part) by the City of New Haven. To enable underutilized

construction and construction related firms to overcome a history of disadvantages based on race and gender by providing targeted opportunities and support for women and minority firms.

- (d) All City Departments and all contractors shall fully comply with the City's Equal Opportunity Policy, and shall not discriminate against or grant preferential treatment to any contractor on the basis of race, color, religious creed, age, sex, marital status, sexual orientation, familial status, national origin, ancestry or disability as set forth in the Americans with Disabilities Act of 1990 in the performance of City contracts.

**Sec. 12 ¼ - 2. Scope**

The provisions of this Ordinance shall apply to all contracts for construction and construction related services to which the City of New Haven is a party.

**Sec. 12 ¼ - 3. Definitions**

For the purpose of this chapter, the following terms have the following meanings:

- (a) **"Affiliated"** means the relationship in which a person directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with another person.
- (b) **"City"** shall mean the City of New Haven, a municipal corporation organized and existing under the laws of the State of Connecticut, and shall include any agency, department, board and commission of the City of New Haven.



- (c) **"City Construction Contract"** shall mean any contract, development agreement, School Construction Contract, purchase\_order or other such agreement with the City involving any type of construction work (including demolition, renovation or repair work), or related services (including the different or allied building trades whose work is necessary for the completion of a construction project) where such work is paid for in whole or in part out of City funds or other public funds, or by any developer that has received (or is to receive) any type of subsidy from the City, financial or otherwise.
- (d) **"Contractor"** shall mean any individual, partnership, corporation, limited liability company, or other such business entity that enters into a City Construction Contract.
- (e) **"Control"** means the power to direct or cause the direction of the management and policies of any person, whether through the ownership of voting securities, by contract, or through any other direct or indirect means. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing twenty percent or more of any voting securities of another person.
- (f) **"Informal Bid"** shall mean and include a solicitation, request, invitation or advertisement for quotation or bid by the City to perform or provide services on a City construction contract valued at less than \$50,000 and limited to Small Business Enterprises.

- (g) **“Joint venture”** shall mean any arrangement, subject to review by and approval of the City and formalized in writing, whereby two or more persons combine their property, money, efforts, skill, resources or knowledge in a common undertaking without any actual partnership or corporate designation.
- (h) **“Minority Business Enterprise” (“MBE”)**, for the purposes of this ordinance, shall mean any small business enterprise fifty-one percent or more of the capital stock, if any, or assets of which are owned by a person or persons:
- (1) Who exercise operational authority over the daily affairs of the enterprise,
  - (2) Who have the power to direct the management and policies and receive the beneficial interest of the enterprise,
  - (3) Who are members of a minority group that has been identified through a utilization study or other analysis of New Haven contractor utilization records to be the victim of statistically significant underutilization for construction and construction-related services by the City and private contractors. As such, and in accordance with court rulings, the designated Minority groups are:

- (A) **"African American,"** which shall mean all persons having origins in any Black racial groups of Africa, and not of Spanish culture origin.
  
  - (B) **"Hispanic American,"** which shall mean all persons Puerto Rican, Cuban, Mexican, Central American or South American or other Spanish culture origin.
  
  - (C) **Women** (can be of any ethnic background).
- 
- (i) **"New Haven Market Area"** for the purposes of this ordinance means the geographic area in which the majority of contractors who perform City Construction Contracts are physically clustered. Contractors and subcontractors located within New Haven County will be considered part of the New Haven Market Area.
  
  - (j) **"Purchasing Agent"** shall mean the official of the City described in Section 71(a) of the City Charter, or any other person designated to perform the purchasing function.
  
  - (k) **"Set Aside Bid"** shall mean and include a solicitation, request, invitation or advertisement for quotation or bid by the City to perform or provide services on a City Construction Contracts that is limited to Small Business Enterprises.

(l) **Small Business Enterprise** ("SBE"), for the purposes of this ordinance [as defined herein,] shall mean any business entity that:

- (1) Has been doing business as an independent, operating business under the same ownership and management and has maintained its principal place of business in the New Haven Market Area for a period of at least one year immediately prior to the date of application for registration. [ as a SBE] ;
  - (2) Has gross revenues not exceeding three million dollars in the ten years [the most recently completed fiscal year] prior to application for registration. [ as an SBE] ;
  - (3) At least fifty-one percent of the ownership of which is held by a person or persons who exercise operational authority over the daily affairs of the business and who have the power to direct the management and policies and receive the beneficial interests of the business.
- (m) "Subcontractor" shall mean any individual, partnership, corporation, Limited Liability Company or other such business entity that enters into a contract with a contractor to perform a portion of the work specified under a City Construction Contract.
- (n) **"Utilization Study"** shall mean a study commissioned by the City to determine whether there is a historical disparity

between the availability and utilization of MBEs as defined in this Ordinance in the City's market area. Utilization Studies are available at the City's Small Business Initiative offices and are incorporated in this Ordinance for all purposes.

- (o) "Program Graduate" shall mean a Small Business Initiative contractor who has completed a two year period in the program and has earned three million dollars or more in revenues for any fiscal year.
- (p) Independent Business shall mean a business whose viability does not depend on its relationship with another firm or firms.

**Sec. 12 ¼ - 4. Registration [of SBEs and MBEs]**

- (a) Registration will enable the City to target enhanced services and opportunities for SBEs and MBEs, and will facilitate utilization goal setting and performance monitoring.
- (b) SBEs and MBEs that wish to take advantage of the opportunities and support services established pursuant to this Ordinance must qualify as an SBE as defined in Sec, 12 ¼ - 3(m) or MBE as defined in Sec.12 ¼ - 3(g) of this Ordinance and be current on all city taxes, loans, and any other obligations to the City of New Haven; and [ either] which have not graduated from the Small Business Initiative Program; and
  - (1) Must be certified by the State of Connecticut Department of Administrative Services as an SBE or

MBE, pursuant to State of Connecticut Public Act 99-233 as amended, or

- (2) Must be "pre-certified" by the New Haven Small Business Initiative or its designee. A contractor is qualified for pre-certification if the contractor can demonstrate that it is eligible for certification and that it is in the process of becoming certified by the State of Connecticut Department of Administrative Services but needs additional time or assistance to assemble the documentation required for State certification. A qualified contractor shall be pre-certified for a period of no greater than 12 months. After 12 months, the contractor must either be certified by the State of Connecticut or be removed from the City "pre-certification" list. A pre-certified contractor is entitled to participate in the following programs established pursuant to this Ordinance:

- (A) City-sponsored training and support programs;
- (B) Bidding on contracts under [\$100,000] \$125,000.

The Small business Initiative may promulgate additional policies and procedures to facilitate and manage the [pre-certification] registration process;

[Support services to assists Contractors with the application for State of Connecticut certification]. The Small Business

Initiative or its designee will coordinate the support services [for certification] with the State Department of Administrative Services.

- (e) Registered Sees and Mobs must comply with all the obligations of the State of Connecticut Certification, including re-certification procedures, audits, penalties, or other requirements as may be established from time to time.
- (f) [Registration with the City shall be automatic for Contractors who are certified by the State of Connecticut and who satisfy New Haven SBE and/or MBE criteria.] Add: There will be no fee for registration
- (g) The Director of the Small Business Initiative shall evaluate all registration applications for final determination as to whether the applicant meets the requirements, criteria, and intent of the program.
- (h) Registration may be denied by the Director of the Small Business Initiative if the applying business or the owners, officers or key personnel are debarred, suspended or have otherwise been denied bidding privileges by any federal, state, or local agency.
- (i) The Small Business Initiative shall rescind registration of eligibility to any small business contractor found to have obtained the registration through the use of false information, or misrepresentation, denied bidding privileges by any federal, state, or local agency, or which has been

found to have participated in any fraudulent, criminal or otherwise illegal activities.

- (j) When a small business is denied registration it will receive a letter of explanation from the Small Business Initiative as to why it was denied registration. The business may appeal to the Small Business Initiative, in writing, for a review of its application. To appeal a decision, the applicant must submit a letter explaining why the applicant considers that it is entitled to registration, which must be received by the director of the Small Business Initiative within 30 days of the denial. The Small Business Initiative Director shall upon receipt of such letter, forward the same to the review committee consisting of the Small Business Initiative, Corporation Counsel, and Economic Development

**Sec. 12 ¼ - 5. Utilization Goals for City Construction Contracts.**

- (a) **Purpose.** In accordance with the findings of the utilization study, the evidence supports the conclusion that MBE firms have been disadvantaged by discriminatory practices when competing for participation as contractors or subcontractors on City Construction Contracts. In order to eliminate the disparity between the availability and utilization of MBEs, the City is establishing goals to achieve an adequate level of MBE participation in City Construction Contracts. The MBE utilization goals represent a reasonable expectation of MBE utilization based on current utilization levels and the availability of MBE firms as determined by the utilization study. The goals are not quotas, but rather a public statement of the City's aspiration for diversity among its contractors and an



approximate benchmark to measure the City's progress in overcoming the disparity.

(b) **Ethnicity-Specific Utilization Goals.** The utilization study identified differences in the level of utilization of contractors and subcontractors from various minority groups as defined in this Ordinance. The City seeks to achieve MBE participation in City Construction Contracts proportionate to the availability of qualified MBE firms within the construction industry.

(1) The City hereby establishes the following ethnic specific goals for City Construction Contracts for the 12-month period following the effective date of this ordinance.

(A) For African American firms, 10% of the total value of City Construction Contracts and 10% of the total value of subcontracts on City Construction Contracts.

(B) For Hispanic American firms, 2.5% of the total value of City Construction Contracts and 6% of the total value of subcontracts on City Construction Contracts.

(c) **Gender-Specific Utilization Goals.** The Utilization Study identified differences between the level of utilization of women-owned firms and other firms. The City seeks to achieve participation by women-owned firms in City funded contracts proportionate to the availability of such firms within the construction industry. The City hereby establishes gender specific goals for women-owned firms for the 12-month period following the effective date of this ordinance at 11% of the total value of City Construction

Contracts and 15% of the total value of subcontracts on City Construction Contracts.

- (d) **Revision of Goals.** The goals will be revised on an annual basis in accordance with current utilization and availability data. The goals from any previous year will remain in effect until the Economic Development Administrator approves the new goals.

**Sec. 12 ¼ - 6. Small Business Enterprise Contractor Capability-building**

- (a) **Purpose.** The purpose of this section is to nurture small and underutilized contractors who have the potential for long-term, sustainable success on a level playing field, by helping them to improve business operations.
- (b) **Outreach.** The [City] Small Business Initiative will provide outreach to underutilized firms regarding registration as SBEs and MBEs pursuant to this Ordinance, bid opportunities, training and other services. Outreach will include a variety of print and electronic media, as well as leveraging local organizations where appropriate. Notification of bid opportunities will be accomplished through a combination of the following:
  - (1) [Legal notice in the New Haven Register] Facsimile broadcast to contractors
  - (2) E-mail notification to registered [SBEs and MBEs] contractors within the relevant industry segment.
  - (3) Posting of the information on a publicly accessible website

(4) Posting of the information at a central physical location with after-hours access

[(5) Announcement in three relevant targeted publications aimed at underutilized contractors. At the City's discretion, announcement may be consolidated with ongoing permanent advertisements that specifically list upcoming bid opportunities, relevant training opportunities, and the address for the publicly accessible website.]

(c) **Training and Support Services**

(1) In order to facilitate first-time contracts or larger contracts between the City and SBEs, the City may offer seminars to introduce contractors to City personnel and procedures. These seminars would provide an opportunity for SBE Contractors to become registered, to learn the requirements for submitting bids, to meet relevant City Department Heads, to learn how to access City resources, and to learn how to accommodate wage rates and other labor requirements.

(2) The City will sponsor construction management training and mentoring programs to assist SBEs in developing and strengthening their management capabilities. The City may also sponsor and/or co-sponsor educational programs for contractors on financial management, business development, technology, and other programs as necessary.

(3) The City will coordinate training and support services with other public and private entities that provide services to contractors.

- (4) The City will encourage and facilitate voluntary mentor-protégé relationships between high-potential, under-utilized firms with larger contractors.

**Sec. 12 ¼ - 7            Set Aside Opportunities for Small Business Enterprises**

- (a) **Purpose.** The purpose of this section is to enable SBEs to compete for City Construction Contracts on smaller projects without being unduly disadvantaged by their size or other diseconomies of smaller scale.
- (b) **Procedure.** The City shall set aside, for award to registered SBEs, on the basis of competitive selection procedures, City Construction Contracts valued at One Hundred Twenty-Five Thousand Dollars (\$125,000.00) or less.
  - (1) The provisions of this Section shall apply to the following types of City Contracts:
    - (A) City Construction Contracts valued at \$50,000 dollars or less for which informal bidding is required.
    - (B) City Construction Contracts valued at more than \$50,000 dollars and up to a maximum of One Hundred Twenty-Five\_\_\_\_Thousand Dollars (\$125,000.00) for which competitive bidding is required;
  - (2) If the apparent, responsive low bidder for set-aside contracts submits a bid that exceeds One Hundred Twenty-Five Thousand\_Dollars (\$125,000.00) the Purchasing Agent may

in his sole discretion accept the bid if it is within 10% of the set-aside ceiling of One Hundred Twenty-Five Thousand Dollars (\$125,000.00).

- (3) If bids for non-set-aside contracts fall below the set-aside limit of One Hundred Twenty-Five Thousand Dollars (\$125,000.00) the Purchasing Agent in his or her sole discretion may accept the bids or rebid the contract as a set-aside contract. However, the Bureau of Purchasing shall maintain a record of all such bids and analyze such bids to ensure that the intent of this Ordinance has not been violated or otherwise defeated.
- (4) Contracts may be exempted from the set-aside provisions of this Ordinance if any of the following conditions apply:
  - (A) There are fewer than two registered SBE firms for the particular trade or project type,
  - (B) Fewer than two registered SBE firms submitted a bid,
  - (C) No responsive bids are submitted as determined by the Purchasing Agent
  - (D) The Purchasing Agent determines that an exemption should be granted in accordance with Section 12 ¼ - 11 of this Ordinance.

**12 ¼ - 7.1**

**Set-Aside Opportunities-School Construction Contracts.**

- (a) **Purpose.** The purpose of this section is to enable SBE firms to participate in the School Construction Program, a major initiative to

renovate existing schools and build new schools in the City. The School Construction Program is a joint program between the City and the New Haven Public Schools that is funded in part by proceeds from the School Construction Trust Fund and with eligible matching grant funds from the State of Connecticut. School Construction projects represent a significant portion of the City's construction projects and a major source of construction opportunities for underutilized firms.

- (b) **Procedure.** The City shall set aside, for award to registered SBE firms, on the basis of competitive selection procedures, School Construction Contracts valued at 10% of the total amount expended for School Construction Contracts. This provision shall include all School Construction Contracts awarded pursuant to construction management agreements. No single contract awarded to a prime contractor or a first tier subcontractor shall receive more than \$500,000 credit towards the requirements of this subsection. All subcontractor work awarded to an SBI contractor under the first tier shall receive full credit toward meeting the requirements of this subsection.

**Section 12 ¼ - 8. Minority Business Enterprise Requirements for Informal Bids Up To \$50,000.**

- (a) **Purpose.** The purpose of this provision is to increase the utilization of underutilized MBEs by facilitating the competitive selection of MBE Contractors for City Construction Contracts valued at less than \$50,000.

(b) **Procedure.** This provision is applicable to City Construction Contracts under \$50,000 for which informal bidding is required.

- (1) Pursuant to New Haven Ordinance 2-151 (as amended), City Construction Contracts under \$50,000 shall be awarded in accordance with the informal quotation and informal bidding procedures established by the Purchasing Agent.
- (2) For procurement of construction and construction related services under \$50,000, the Purchasing Agent or his/her designee must receive at least three informal bids or quotes from registered SBEs, and at least two of the three bids must be from registered MBEs.
- (3) If the purchasing agent or his/her designee is unable to obtain at least three bids from registered SBEs, or at least two bids from registered MBEs, the City Construction Contract will be re-bid unless the Small Business Initiative agrees that a waiver should be granted. A waiver may be granted if it can be shown that a good faith effort was made to reach a sufficient number of potential Set Aside bidders or that there are extraordinary circumstances relating to the project such that a waiver is warranted.
- (4) If under these provisions, the apparent responsive, low informal bidder submits an informal bid that exceeds the limit of \$50,000 the bids may be accepted in the sole discretion of the Purchasing Agent if it is within 10% of the informal bid limit.

- (c) **Annual Limit.** To deter program manipulation or dependence upon these provisions, once a contractor has been awarded a contract or contracts in an aggregate amount of \$175,000 through the City of New Haven in any one fiscal year, such contractor will not be eligible to participate in additional informal bids in that fiscal year.
- (d) **Audit.** The Informal Bid program shall be audited on an annual basis to ensure compliance with Bureau of Purchases procedures established for such purchases.

**Sec. 12 ¼ - 9 MBE Subcontractor Utilization and Good Faith Effort Requirements.**

- (a) The City's specific goals for utilization of MBE subcontractors are defined in Section 12 ¼ -5 of this Ordinance. The City hereby requires that all parties bidding or otherwise seeking to be qualified as a contractor with respect to a City Construction Contract (a "Potential Contractor") shall aggressively make every effort to obtain MBE participation in order to achieve the utilization goals.
- (b) The provisions of this section 12 ¼ - 9 shall apply to all City construction contracts that are over One Hundred Twenty-Five Thousand Dollars\_ (\$125,000.00) and that are not bid through the Set-Aside\_program.
- (c) The City intends to award City Construction Contracts to the lowest responsible bidder that has achieved or made a good faith effort to achieve the MBE utilization goals. Failure by any potential contractor to demonstrate that they have either achieved the utilization goals, or that they have made good faith efforts to achieve the utilization goals as required hereunder, will result in a



determination by the Purchasing Agent that the potential contractor is not a responsible bidder with respect to the City construction contract in question.

- (d) In order to achieve the MBE utilization goals, a contractor may award contracts to subcontractors that are certified as MBEs for the purpose of this program, or may enter into a joint venture (or other commercially reasonable relationship which is satisfactory to the City for the purposes of this program) with one or more MBEs, for the purpose of carrying out the City Construction Contract. The MBE(s) must perform actual construction work (or construction-related work such as site preparation, etc.) and not merely act as a passive conduit.
- (e) A potential contractor shall submit signed contracts or letters of commitment with the MBEs that will be utilized by the potential contractor in the carrying out of such City Construction Contract, together with a list of the respective dollar amounts payable to each such MBE. For credit to be given, each MBE must be registered as an MBE prior to submittal of such list by the potential contractor.
- (f) A potential contractor will be considered in compliance with the goals if they have achieved at least 25% overall MBE utilization on their subcontracts for a particular project.
- (g) If the potential contractor can demonstrate that it has successfully achieved the 25% overall MBE utilization goals for subcontracting, the Bureau of Purchases is not required to evaluate other efforts the prime bidder made to achieve the goal. If, however, the potential contractor has failed to meet the goals and desires to be considered for the bid, the potential contractor's good faith effort

will be evaluated, verified and will generally be recognized if a contractor has accomplished at least four of the following:

(1) The placement of the subcontracting opportunity on an approved City Construction opportunity website, at least 10 days in advance of selection.

(2) The placing of advertisements in at least two local newspapers and at least one specialist publication aimed at small contractors not less than two weeks prior to submittal of its bid or proposal, which advertisements shall have described the type of work being solicited, set forth the name, address and telephone number of a contact person at the Potential Contractor with knowledge of the project to which the City Construction Contract relates and stated where appropriate plans and specifications could be obtained.

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(3) The mailing of notices (certified mail, return receipt requested) to at least four business associations and/or development agencies which disseminate bid and other construction-related information to businesses within the Greater New Haven area, not less than two weeks prior to its bid or proposal, which advertisements shall have described the type of work being solicited, set forth the name, address and telephone number of a contact person at the Potential Contractor with knowledge of the project to which the City Construction Contract relates and stated where appropriate plans and specifications could be obtained.

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- (4) Verification of quotes received from subcontractors that were denied because of cost, quality, availability, etc.
  - (5) Verification of outreach to and collaboration with the Regional Contractor's Alliance.
  - (6) A detailed description of any attempts made to enter into joint ventures or other such arrangements with MBEs and /or assistance provided to MBEs relative to review of plans and specifications or other documents issued by the City, review of work to be performed, encouragement of other subcontractors to utilize MBEs, and any other such efforts undertaken to encourage the participation of MBEs and all actions taken by the Potential Contractor with respect to any proposals received from MBEs, including, where appropriate, the reasons for the rejection of any such proposals.
  - (7) Other efforts as determined in advance by the Purchasing Agent.
- (h) The burden of proof is on the bidder. Whether or not any such Potential Contractor made a good faith effort to achieve the utilization goals shall be a question of fact to be decided by the City, acting in its reasonable discretion. A committee composed of a representative from Small Business Initiative the Corporation Counsel's Office, and the Bureau of Purchasing will evaluate whether such good faith effort was achieved in accordance with the provisions of this Ordinance.

- (i) The potential contractor shall be required to document their good faith efforts in the form of an affidavit signed by a principal or other authorized person of the Contractor and submitted at the pre-award meeting. If the affidavit or other the documentation submitted by the potential contractor does not provide compelling, verifiable evidence of a good faith effort, the bidder will be considered a non-responsive bidder for failing to meet the City's good faith effort requirements, and the bid may be rejected. If a bidder submits more than one non-responsive bid within a 12-month period, that bidder will be disqualified from all future bids within the next 12 months.
  
- (j) If at least one bidder has met the utilization goal or demonstrated a good faith effort, all non-responsive bids will be rejected, and the contract shall be awarded to the bidder who has demonstrated a good faith effort, so long as rejection of the non-responsive bids, in the discretion of the Purchasing Agent, will not lead to gross inefficiency of public resources
  
- (k) If all potential contractors are non-responsive bidders as defined in the provisions of this section, the Purchasing Agent will have discretion to reject all bids and to rebid the project, or to accept the lowest, non-responsive bidder

**Sec. 12 ¼ - 10. Compliance.**

- (a) Bid specifications or requests for proposals shall require potential contractors to do the following:

- (1) Demonstrate in their bid or proposal that they have made good faith efforts to utilize MBE subcontractors as required in Sec. 12 ¼ - 9; and
  - (2) Identify the particular MBE subcontractors to be utilized in performing the contract, including a signed contract or commitment letter specifying for each subcontractor the dollar value of the participation, the type of work to be performed and such information as may be reasonably required to determine responsiveness of the bid or proposal.
- (b) Except as otherwise provided elsewhere in this Ordinance, bidders not meeting the requirements of this subsection shall be declared non-responsive.

**Sec. 12 ¼ - 11. Exceptions**

(a) In the event that a City construction contract is funded in whole or in part by the State or Federal government or any agency thereof and there is a conflict between the City goals and State or Federal goals, the relevant policies and goals of the state or Federal government or agency will apply.

(b) The utilization goal requirements and set aside provisions will not apply to the following procurements:

- (1) Construction services that the Purchasing Agent certifies are available only from a sole source and the prospective contractor is not currently disqualified from doing business with the City or from doing business or with any governmental agency based on a failure to fulfill MBE requirements. Copies of all construction related sole source approvals by the Purchasing Agent shall be forwarded to the Office of Small Business Initiative and shall serve as the certification of the Purchasing Agent.
- (2) Construction contracts certified in writing by the Purchasing Agent to the office of Small Business Initiative that are necessary to respond to an emergency situation that is a threat to the public health, safety or welfare.
- (3) Construction contracts certified in writing by the Purchasing Agent to the office of Small Business Initiative that are made through cooperative purchasing arrangements with other governmental entities when, in the judgment of the City Purchasing Agent such contracts are in the best interest of

the City and such arrangements involve competitive purchasing procedures.

- (1) Construction contracts made in a manner approved by the Board of Aldermen upon the recommendation of the Purchasing Agent, where the Purchasing Agent has advised the Board of Aldermen in writing that in his opinion it would not be practicable or in the best interest of the City to proceed in accordance with provisions of this Ordinance and where the Board of Aldermen shall find that the making of such a contract in such manner is in the best interest of the City. The Purchasing Agent shall notify in writing the Office of Small Business Initiative of the Purchasing Agent's intent to seek such a finding by the Board of Aldermen.

(c) Any certifications or notices submitted to the Office of Small Business Initiative under this provision shall be made prior to the contract being awarded or submitted to the Board of Aldermen for consideration.

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**Sec.12 ¼ - 12: Prompt Payment for Registered Small Business Enterprises.**

- (a) To improve opportunities for underutilized firms, it is essential for the City to reduce the firm's costs of doing business with the City as a contractor. The City, through its Department of Finance, will implement a program for registered SBE and MBE firms that will ensure prompt and faster payment of invoices for work performed and accepted by the City.
- (b) The goal of the City is to pay registered SBEs within 30 days of receipt of a complete and proper invoice. The Department of

Finance is required to track the speed of payment to SBEs and MBEs and maintain a record of payment schedules for all City Construction Contracts. A monthly record of such payments shall also be forwarded to the Office of Small Business Initiatives.

- (c) Non-SBE contractors that have achieved a minimum threshold for MBE subcontractor utilization of 20% on a current project will also be targeted for fast payment on that particular project, so as to provide an incentive to contractors to use underutilized subcontractors.
- (d) Following payment by the City to a contractor for a portion of the work required under a City Construction Contract where such portion of the work comprises all or a portion of the work carried out by a subcontractor which is an SBE, the Contractor must pay the subcontractor for the work in question within ten (10) days of its receipt of such payment. However, a contractor may withhold payment if the contractor has a bona-fide reason for doing so, provided that within said ten (10) day period, the Contractor shall notify the affected subcontractor in writing of the reason for withholding payment and shall deliver a copy of such notice to the Purchasing Agent and the Finance Director, and shall thereafter take all reasonable steps to promptly settle the dispute.
- (e) Subcontractors who believe that they are not being paid according to these requirements may submit an inquiry/complaint to the Director of the Small Business Initiative who will record the complaint and perform an investigation if necessary. If a contractor routinely fails to pay subcontractors promptly, the firm may be deemed non-responsive to MBE goals on subsequent bids.



12 ¼ - 13. Protest Procedure

- (a) If at the time of a bid opening there is an apparent low responsible bidder that should be awarded a City Construction Contract in accordance with the provisions of this Ordinance but an unsuccessful party (a "Protesting Party") is of the opinion that the apparent low bidder did not comply with the provisions of this Ordinance, then the Protesting Party or Parties shall have a period of five (5) working days from the date on which the bids were public opened in order to protest such award.
- (b) Any such protest shall be made in writing and mailed to the Purchasing Agent by certified mail, return receipt requested, with a post mark no later than five days from the date of the bid opening.
- (c) The Purchasing Agent shall, upon immediate receipt of such protest letter, forward such protest letter to the Contract Review Committee consisting of a representative from the Small Business Initiative, the Office of Corporation Counsel, and the Department of Finance.
- (d) The Contract Review Committee shall, after notice, convene a meeting within five working days from the date of its receipt of the protest letter to consider the matter. The Committee shall consider such documentation or testimonial evidence, or other evidence provided to it by the protesting party and others, including the apparent low bidder, and the Purchasing Agent. At the conclusion of this meeting, the Committee shall consider all the evidence provided to it and reach a decision.

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(e) Within five working days from the date of its meeting to consider the protest, the Contract Review Committee shall issue a written opinion as to whether the apparent low bid or bidder met the requirements of this Ordinance. The written opinion shall be sent by certified mail, return receipt requested, to both the Protesting Party or Parties and the apparent low bidder, and a copy of said opinion shall be sent to the Purchasing Agent.

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(f) The opinion of the Contract Review Committee shall be binding on the Purchasing Agent. It shall form the basis of the Purchasing Agent's decision as to whether to proceed with the award of the contract, to award to the next lowest responsible bidder, or to reject all bids and rebid the contract.

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**12 ¼ - 14. Administration**

- (a) The Economic Development Administrator shall be responsible for the overall administration of this Ordinance.
- (b) The following City Offices and City Departments shall have the specific duties and responsibilities described herein:

(1) **Powers and Duties of the Office of Small Business Initiative**

In addition to the duties and powers given to the office of Small Business Initiative elsewhere in this Ordinance, the Small Business Initiative shall have the following duties and powers:

- (A) Coordinate with the State of Connecticut Department of Administrative Services to maintain a list of certified [registered SBEs and MBEs] contractors and manage [pre-certification] the registration process consistent with the criteria established in Sec. 12 ¼ -4.
- (B) Establish the necessary programs to provide business assistance, training, support, and other measures for SBEs and MBEs, consistent with the provisions of this Ordinance.
- (C) (Reserved.)
- (D) At the end of the City's fiscal year, and annually thereafter, prepare a report on the utilization of SBEs and MBEs for the previous 12 months and

recommend utilization goals for the subsequent 12-month period. This report shall include an assessment of the Small Business Enterprise Construction Opportunity Ordinance and be submitted to the City Economic Development Administrator, the Mayor, the Board of Aldermen and the public.

(2) **Powers and Duties of the Bureau of Purchases**

In addition to the duties and powers given to the Bureau of Purchases elsewhere in this Ordinance, the Bureau of Purchases shall have the following duties and powers:

- (A) Within 30 days of the effective date of this Ordinance, develop and revise purchasing procedures and guidelines as necessary to implement the provisions of this Ordinance. Prepare standard bid documents and templates as appropriate. Train other departments as necessary to ensure compliance with procedures.
- (B) Administer the SBE set-aside bidding process for City Construction Contracts less than One Hundred Twenty-Five Dollars (\$125,000.00)
- (C) Administer the Informal Bid process, incorporating the MBE quote opportunity requirement as established in Sec. 12 ¼ - 8.
- (D) Administer the City Construction Contracting Bid process, incorporating MBE subcontractor utilization

goals and the contractor good faith effort requirement as established in Sec. 12 ¼ -9.

- (E) Collect and maintain contract award data and provide information on a semi-annual basis to the Office of Small Business Initiative and as requested by the Department of Finance.

**(3) Powers and Duties of the Department of Finance**

In addition to the duties given to the Department of Finance elsewhere in this Ordinance, the Department of Finance shall have the following duties and powers:

- (A) The Department of Finance shall develop and implement fast payment procedures to enable SBE contractors to be paid within 30 days from the date the City receives a complete and proper invoice, consistent with the provisions of Sec. 12 ¼-14 of this Chapter. Deleted:
- (B) The Department of Finance shall prepare a quarterly report for the Small Business Initiative on the performance of the fast payment program.
- (C) Administer an annual audit of City Construction Contracts to ensure compliance with City policies and the provisions of this Ordinance.

**(4) Powers and Duties of the Economic Development Administrator.**

- (A) In addition to the powers and duties given elsewhere, the Economic Development Administrator shall promulgate additional regulations, procedures and guidelines necessary to implement or clarify any provisions of this SBE Program.
- (B) The Economic Development Administrator shall review periodic monitoring and compliance reports and recommendations submitted by the Small Business Initiative.
- (C) The Economic Development Administrator shall make periodic reports to the Mayor and the Board of Aldermen on the status of the SBE Program.
- (D) By July 1 of each fiscal year, the Economic Development Administrator shall issue notices to all City departments informing them of their duties under this Ordinance. The notice shall contain the following information:
  - (i) The Citywide MBE participation goals that the departments are expected to attain during the fiscal year.
  - (ii) The data each department is required to provide the Finance Department, or any other City department on each contract award.

(E) The Economic Development Administrator shall coordinate cooperation and compliance by all City departments with this Ordinance.

(5) **Powers and Duties of the Department of Engineering & Public Works**

(A) Prepare an annual report establishing SBE and MBE utilization goals for Engineering and Public Works for the twelve-month period beginning July 1 of each fiscal year. Each such report shall be submitted to the Economic Development Administrator, the Bureau of Purchasing, and the Small Business Initiative.

(B) Develop strategies to increase utilization of under-utilized firms by dividing large projects into smaller projects where appropriate.

(C) Coordinate with Small Business Initiative for outreach and training programs.

(6) **Powers and Responsibilities of Developers.**

Each developer shall have responsibility for monitoring its compliance with the provisions of pertinent sections of this Ordinance and the rules and regulations implementing this Ordinance, including obtaining and analyzing reports, conducting preliminary investigations to determine compliance or noncompliance with this Ordinance, and taking any other action which may be appropriate to assure that all project contractors comply with these provisions.

(7) **Powers and Duties of the Department of Education.**

The Department of Education shall work with the City's Purchasing Agent and the Small Business Initiative to administer the provisions of Section 12 ¼ - 7.1 and other applicable provisions of this ordinance, as well as other City ordinances and state laws relating to school construction contracts. The Department, through the School Construction Program, shall submit to the [City's Purchasing Agent on a quarterly] Small Business Initiative on a monthly basis a written report on contract award data and the utilization of SBE and MBE firms for school construction contracts awarded in the prior three months.



Sec 12 ¼ - 15. Monitoring Compliance

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- (a) The Office of Small Business Initiative shall monitor the City's progress toward achievement of the City's goals set forth in Section 12 ¼ - 5.

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- (b) **Noncompliance by Contractors.** In cases where the Office of Small Business Initiative or the Purchasing Agent has cause to believe that a bidder, contractor or developer has failed to comply with any of the requirements of this Ordinance, rules or regulations adopted pursuant to this Ordinance, or contract provisions pertaining to MBE utilization, the office of Small Initiative or the Purchasing Agent shall notify the Contract Review Committee and shall attempt to resolve the noncompliance through conciliation. The Contract Review Committee shall be empowered to require the bidder, contractor or developer to participate in this conciliation process. If the noncompliance cannot be resolved, the Contract Review Committee shall submit a written finding of noncompliance to the Economic Development Administrator and the bidder, contractor or developer. The Contract Compliance Committee in consultation with the affected City department shall take such action as will effectuate the purposes of this Ordinance, and may impose sanctions as appropriate. Such sanctions may include, but are not limited to:

- (1) Declaring the bidder or contractor to be nonresponsive and ineligible to receive the award of the contract;
- (2) Declaring the bidder or contractor to be an irresponsible bidder and disqualifying the bidder or contractor from

eligibility for providing goods or services to the City for a period of up to 12 months;

- (3) Removing the bidder or Contractor from the list of registered SBEs or MBEs.
- (4) Imposing a civil penalty of up to \$10,000 in any instance in which the noncompliance is determined to be willful or persistent or with blatant disregard for the provisions of this Ordinance.

**Sec 12 ¼ -16. Dissemination of Ordinance Provisions**

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The City Town Clerk shall send copies of this Chapter, and any amendments thereto, to every City department, agency and the Bureau of Purchases for the City of New Haven.

**Sec. 12 ¼ -17. Duration of Ordinance**

The provisions of this Chapter 12 ¼ shall be reviewed no later than June 30,2010 for a determination as to whether or not the City should continue, or modify any or all of the provisions herein.

**Section 2. Severability**

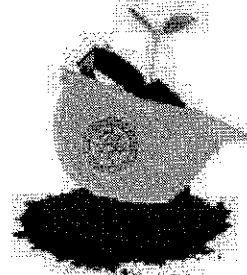
The provisions of this Ordinance are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this Ordinance or the invalidity of the application thereof to any person or circumstances shall not affect the validity of the remainder of this Ordinance, or the validity of its application to other persons or circumstances.

**Section 3. Effective Date**

This Ordinance shall take effect on the date of passage and shall govern all City Construction Contracts for which a bid has not been solicited by the effective date.

2. **Second:** Section 12-1/2 -22 (4) c delete \$50,000; and insert in its place One Hundred Twenty Five Thousand Dollars (\$125,000).

**Small Contractors' Development Program**  
**Lil Snyder – Program Manager**  
 lsnyder@newhaven.ct.net  
 203-946-8550



## **Information Sheet**

The City of New Haven is committed to developing and nurturing a competitive local construction industry in which Contractors for publicly financed projects provide efficient, high quality services, pay competitive wages to their employees, and represent New Haven's ethnic diversity.

The City of New Haven has adopted a program for small, minority and women participation in construction contracts that are financed (in whole or in part) by the City Of New Haven.

### Benefits of Registration

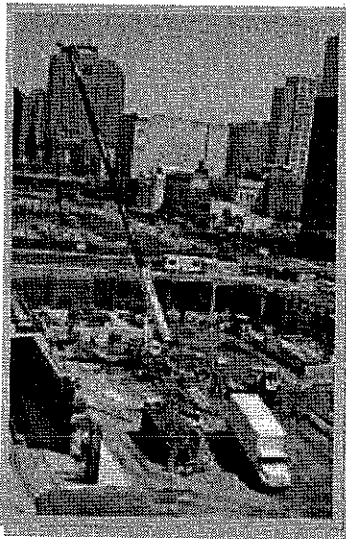
- Weekly email broadcast notification of current opportunities
- Weekly contractors' tips
- Blueprints and specifications located in office
- Workshops and technical assistance
- Networking events with owners, developers and construction managers
- Construction contracts valued under \$150,000 will be reserved for bid to registered contractors on the basis of competitive bidding.
- For construction contracts valued at \$50,000 or less, the purchasing agent must receive at least three informal bids or quotes from registered contractors, and at least two of the three bids must be from registered MBEs (Minority Business Enterprise).
- No bond requirement for projects \$100,000 or under.



Contractors interested in the program must register through the Small Contractors' Development Office: 165 Church Street, 6th Floor, New Haven.

**Eligibility Requirements**

- Been in business under the same ownership and management for a period of at least one year immediately prior to the date of application for registration.
- Maintained the principal place of business in the New Haven Market Area for a period of at least one year immediately prior to the date of application.
- Gross revenues have not exceeded three million dollars in the most recently completed fiscal year prior to application.



**Application Requirements**

- Completed application, including notarized Oath
- Complete current Tax Return (Sole proprietorships, Schedule C only)
- Current Secretary of the State Annual Report
- Copies of current trade and professional licenses

Contractors interested in the program must register through the Small Contractors' Development Office, 165 Church Street, 6th Floor, New Haven.

**Exhibit B**

**Preliminary Task Schedule &**

**Funding Commitment**

# LiveWorkLearnPlay

## Revised Exhibit A

### Predevelopment Costs

We are estimating that our first twelve months of capital costs for the coliseum project will be approximately \$1,820,000.

Our estimated budget for calendar years 2011-2012:

Item	12 Month Budget - 2011/2012												TOTAL		
	2011					2012									
	September	October	November	December	January	February	March	April	May	June	July	August			
<b>1. General Project Expenses</b>															
Travel & Expenses	\$2,500	\$2,500	\$2,500	\$2,500	\$5,000	\$5,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$7,000	\$62,000
<b>2. Market Analysis, Master Planning &amp; Business Planning</b>															
Commercial Planning and Economic Study	\$32,000	\$32,000	\$32,000	\$32,000											\$128,000
Various Housing and Business Studies and Strategic Business Plans	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$25,000	\$300,000
Retail and Office Studies and Strategic Development Plans	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$420,000
Hotel Study					\$25,000										\$25,000
Community Outreach	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$60,000
Site Plan/Concept Plan & Architectural Services			\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$35,000	\$350,000
<b>3. Additional Studies, Reports &amp; Services</b>															
Insurance	\$10,000														\$10,000
Legal	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$60,000
Title Reports/Legal	\$20,000			\$5,000	\$5,000			\$10,000							\$40,000
Environmental	\$35,000				\$10,000	\$10,000		\$20,000							\$75,000
Appraisals		\$20,000							\$20,000						\$40,000
Surveys					\$5,000			\$10,000							\$20,000
Engineering					\$25,000	\$25,000		\$35,000							\$140,000
Traffic/Parking Studies						\$10,000		\$10,000							\$60,000
Geotechnical Reports					\$10,000	\$10,000		\$10,000							\$30,000
<b>TOTAL</b>	<b>\$169,500</b>	<b>\$124,500</b>	<b>\$139,500</b>	<b>\$149,500</b>	<b>\$180,000</b>	<b>\$155,000</b>	<b>\$132,000</b>	<b>\$207,000</b>	<b>\$197,000</b>	<b>\$122,000</b>	<b>\$122,000</b>	<b>\$122,000</b>	<b>\$122,000</b>	<b>\$122,000</b>	<b>\$1,820,000</b>

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Conceptual Schedule:

Action	2011												2012				
	S	O	N	D	J	F	M	A	M	J	J	A	S	O	N	D	
1. Envisioning, Strategic Analysis and Programming																	
2. Master Planning, Development and Business Planning																	
3. Implementation & Activation (Anchor Deal-Making, TLC™ & CDA™)																	
4. Financing																	
5. Operations and Governance (Beginning in 2012/2013)																	
6. Municipal & State Approvals																	
7. Horizontal & Vertical Development (Beginning in 2012; continuing into 2013)																	

## Our Suggested Process

### 1. Envisioning, Strategic Analysis and Programming

LiveWorkLearnPlay applies comprehensive demand-based market analysis to formulate strategic recommendations and lay down the critical foundation for every project. By substantiating residential and/or commercial market demand and values, quantifying revenue potential, and prescribing the scope, timing, and next steps of a project, we are able to create a roadmap for planning and obtaining approvals for mixed-use development.

Our planning process – undertaken in collaboration with urban planners, architects, engineers, and legal specialists – produces customer-driven specific site plans, while our business planning process serves to quantify the expected financial performance of the project as well as provide a clear and flexible development program for a mixed-use project.

### Results to Achieve

#### Assessment and reconnaissance

- Project vision and defining attributes
- SWOT Analysis
- Regional and local history, heritage, and culture assessment
- Stakeholder feedback and consensus building
- Preliminary use recommendations



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- Demand-based market analysis

## Competitive and target market analysis

- Demand-based economic studies
- Analysis of development conditions and mixed-use strategies
- Comparable precedents studies

## Neighborhood Stories and Programming

- Preliminary program and tenant mix for commercial development

## 2. Master Planning, Development and Business Planning

During this phase, LiveWorkLearnPlay processes the information gathered in Step 1, and applies these findings in the completion of the business and master plans. Beyond the planning, the implementation of the mixed-use project comes to fruition in this stage, as financial commitments are made for Phase I and the targeted recruitment process begins.

### Results to Achieve

#### Program and design development, site planning, business planning

- Planning of density and development schematics, urban grid, site plan
- Full understanding and plans of maximal views, sun-shade, density, flow of customers
- Mixed-use programming, design and development plans based on a collaborative planning process with key stakeholders
- Infrastructure, phasing and implementation plans and strategies, including parking and all other infrastructure
- Complete set of Master Plans, including site plan, development plan, retail plan, office plan, various typologies of housing plans, landscaping and streetscaping plans,
- Financial pro forma, financing and funding strategies to support development decision-making and budgeting
- 3 Dimensional renderings
- Development Phasing Plan
- Detailed Drawings of Phase 1 vertical project

## 3. Implementation & Activation (Anchor Deal-Making, TLC™ & CDA™)

### Targeted Leasing and Casting (TLC™) – Office and Retail

As mentioned in Question # 3, Targeted Leasing and Casting (TLC™) is LiveWorkLearnPlay's branded process of developing long-term partnerships and commercial leasing and sales; deals with the "best of the best" local, regional, and national businesses, as well as anchor deals with iconic hoteliers and educational and cultural institutions, that help to drive the overall economic and experiential performance of a development.

Through our TLC™ process, carefully chosen operators become catalysts in the activation of a project's public street life and urban fabric. Our projects attract partners with track records of success in retail, food and beverage, recreation and activity services, hotels, creative or cultural offerings, education, environmental sustainability, and innovation.

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LiveWorkLearnPlay's TLC™ process has helped shape proven long-term financial and experiential blueprints for both private and public projects throughout North America, the Caribbean, and Europe.

## TLC™ Results to Achieve

- Tenant mix strategy, detailed leasing & phasing plan
- Timelines, targets, tools & materials (architectural, marketing, legal)
- Targeted regional tenant/buyer prospecting strategy
- Leasing/Sales program management and implementation (leasing, negotiation)
- Financial budgets for deal structures and term sheets
- Retail asset management strategies and tools
- Tenant/buyer coordination process
- LOI's on key first phase anchor office or retail deals.

## Community Drivers and Animation (CDA™) – Neighborhood and Project Activation

LiveWorkLearnPlay helps to activate its projects with its Community Drivers and Animation (CDA™) methodology that plans, funds, and implements local activities, events, festivities and rituals: this attracts visitation, fosters relationships and creates a vibrant community life, even during the early years of development or redevelopment of a city, town, or neighborhood.

CDA™ provides the vitality and momentum needed to help sustain most great commercial neighborhoods. The proper set-up, organization, and implementation of a CDA™ program will ensure the long-term health and viability of the TLC™ process and the overall success of the mixed-use heart of a community.

## CDA™ Results to Achieve

- Activities and events assessment
- Business plan and program outline
- Marketing, branding, and web program and strategy
- Communications strategy
- Operations and management
- Organizational set-up and overall reporting structure
- Establishment of ongoing rituals, festivities, and events program

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## 4. Financing

LiveWorkLearnPlay will make all reasonable commercial efforts to arrange project financing to move the development forward.

### Results to Achieve

- Secure interim financing term sheet
- Secure take-out financing term sheet
- Definitive interim and permanent mortgage commitments

## 5. Operations & Governance

LiveWorkLearnPlay is involved in the initiation and administration of operations and stakeholder relationships, including commercial occupancy and asset management, residential property management, homeowner and merchant association governance, ongoing community programming, and many other aspects of operating mixed-use neighborhoods.

### Results to Achieve

- Set-up and implementation of property management programs and governance
- Continued integration of support from key public stakeholders
- Governance, asset management and legal strategies
- Exit strategy planning and implementation

## 6. Municipal & State Approvals

Regular communication with the City of New Haven and all relevant city and state approval authorities, as directed by the city, will ensure that any development planning concerns are addressed throughout the planning process and that approvals can be expediently obtained once the development plan is set.

### Results to Achieve

- Regular, up to date communication with and feedback from key authorities on development planning and progress
- Obtain all necessary development approvals from city and state authorities

## 7. Vertical Development and Construction Management

LiveWorkLearnPlay is heavily invested in the long-term success of each project and is committed to leading and delivering vertical development through to completion. Our organization has demonstrated proven results on the vertical development of many mixed-use projects throughout North America, Europe and the Caribbean.

Whether our focus is identifying and obtaining the required funding, managing the development process, or assembling the commercial, residential, civic, cultural, recreational, educational, health care and social components of a community, we are committed to seeing each project come to life.

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## Results to Achieve

- Sourcing and securing funding for the individually phased real estate ventures
- Detailed project research to support design, budgeting, and financing
- Oversight and management of design and development of individual projects
- Lead and support functions for pursuit of public funding, grants, subsidies, and private financing opportunities
- Development and management of soft costs and consultant budgets
- Lead and manage residential leasing, sales and marketing
- Preparation of real estate equity investment packages and debt financing prospectuses
- Nurturing key financial relationships
- Identifying and concluding key anchor real estate deals
- Project and construction management services

## Project Management and Work Process

- All phases outlined above shall include meetings, workshops & planning sessions and ongoing regular communication, planning and development processes in New Haven as LWLP will commit to relocating and hiring our planning and development team to be located at a new office in New Haven (tbd)
- Feedback and Communication: Internal and External Process:
  - Collect extensive public stakeholder feedback through a truly engaging and collaborative process
  - Incorporate public stakeholder input (based on who the City deems to be part of the process)