

LOCAL BUSINESS PARTICIPATION PLAN AGREEMENT

This Local Business Participation Plan Agreement (“Agreement”) is entered into as of August ___, 2016 (the “Effective Date”) by and between the ECONOMIC DEVELOPMENT GROWTH ENGINE INDUSTRIAL DEVELOPMENT BOARD OF THE CITY OF MEMPHIS AND COUNTY OF SHELBY, TENNESSEE, a public not-for-profit corporation of the State of Tennessee, with an office in Memphis, Tennessee (“EDGE”), and the UNIVERSITY NEIGHBORHOOD DEVELOPMENT CORPORATION, a not-for-profit corporation of the State of Tennessee (“UNDC”) with respect to the following:

PRELIMINARY STATEMENTS

A. EDGE will assist certain economic development initiatives to be conducted by UNDC and its affiliates or contractors in a designated area along South Highland Street between Poplar Avenue and Park Avenue in Memphis, Tennessee (the “Highland Strip”), including certain streetscape and infrastructure improvements on the Highland Strip and areas surrounding the Highland Strip (the “Project”).

B. Such assistance from EDGE will include a tax increment financing incentive for the Project (the “Economic Incentive”), and EDGE has requested that UNDC and its contractors and affiliates receiving funds from Economic Incentive participate in a Local Business Participation plan as contemplated in this Agreement (“LBP Plan”) in connection with the construction of the Project.

C. This Agreement will set out the terms and conditions among the parties to establish and enforce the LBP Plan.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and the mutual obligations created hereby, EDGE and UNDC, intending to be legally bound, agree as follows:

1. **Local Business Participation Plan.** UNDC shall document its contracts with local qualified minority or women-owned business enterprises (“MWBE”) and locally owned small businesses (“LOSB”) that are certified and registered with either the City Of Memphis or Shelby County firms in the construction of the Project based on targeted goals that are agreed as outlined below. Over the initial ___ year period of the Term, as defined below, UNDC’s estimated construction budget for the Project, and the targeted goal for MWBE and LOSB participation in UNDC’s construction expenses, are as follows:

	Total Spending	MWBE & LOSB	Percent
Construction	\$10,000,000.00	\$2,500,000.00	25%

Notwithstanding the foregoing, (i) UNDC’s construction budget is subject to available revenues from the Economic Incentive, and (ii) this Agreement and the LBP Plan shall not apply to the Project to the extent that construction is completed by the City of Memphis, Memphis Light, Gas

and Water, or any other governmental entity or agency (i.e., the targeted goal for MWBE and LOSB participation applies only to work performed directly by UNDC or its affiliates or contractors).

2. **Term.** This Agreement is effective on the Effective Date and shall expire six months after the expiration of the Economic Incentive (the “Term”).

3. **Reporting by UNDC.** Starting January 1, 2017, and continuing annually until expiration of the Economic Incentive, UNDC shall submit a full and complete certified report to EDGE regarding compliance with this Agreement by March 1st of each year. Such report shall describe the compliance that UNDC has made regarding the obligations in Section 1 above for the preceding year pursuant to the annual report form attached herein as Exhibit A (“Report Form”), which lists the names and amounts for specific qualified vendors. Additionally, each annual report shall state the total expenditures during such year for the Project. Each such Report Form shall be signed by an authorized officer or other designated representative of UNDC.

4. **Recordkeeping and Accounting.** Expenditures made in furtherance of the purposes of the LBP Plan shall appear on the books and records of UNDC. UNDC shall keep back-up records and receipts to substantiate such expenditures. UNDC shall make such books and records regarding compliance with this Agreement available to EDGE at reasonable times and upon reasonable prior notice, as requested by EDGE or its agents. UNDC shall keep copies of all books and records regarding compliance with this Agreement and all reports to EDGE regarding compliance with this Agreement for at least one year after the end of the Term of this Agreement. EDGE is hereby authorized to conduct an audit of UNDC’s books and records regarding compliance with this Agreement, and UNDC shall cooperate fully with any such audit authorized or conducted by EDGE. UNDC further agrees that EDGE and any of its duly authorized agents shall have the right at all reasonable times upon reasonable prior notice to UNDC to examine and inspect the Project to determine that UNDC and any of its applicable affiliates and contractors are in compliance with the terms and conditions of this Agreement; provided that any such inspection will be conducted in a manner that will minimize any intrusion on the operations of the Project.

5. **Failure to Perform Covenants.** Upon (i) the failure of UNDC to comply with Section 1 above (ii) UNDC’s receipt of written notice from EDGE specifying such failure and requesting that it be remedied, and (iii) the failure of UNDC to utilize good faith efforts during the calendar year for which such notice was given and the next calendar year after which such notice was received to meet the requirements of Section 1, UNDC shall pay to EDGE the positive difference between (x) the amount that should have been expended by UNDC or its affiliates or contractors with certified MWBEs or LOSBs during such period to meet the requirements of Section 1 and (y) the amount actually spent by UNDC or its affiliates or contractors with certified MWBEs or LOSBs during such period for the benefit of the Project. The amount shall be remitted to EDGE within thirty (30) days of receipt of written demand from EDGE. UNDC shall pay interest at an annual rate equal to the lesser of 7% or the maximum lawful rate for any amount outstanding after the expiration of the thirty (30) day notice period.

6. **Agreement to Pay Attorneys' Fees and Expenses.** In the event EDGE should employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the UNDC, then UNDC agrees that it will on demand therefor pay to EDGE the reasonable fee of such attorneys and such other reasonable expenses incurred by EDGE.

7. **Governing Law.** This Agreement shall be governed by the laws of the State of Tennessee. All actions, whether sounding in contract or tort, relating to the validity, construction, interpretation and legal effect of this Agreement shall be instituted and litigated in the courts of Shelby County, Tennessee or the United States District Court for the Western District of Tennessee. The parties hereto irrevocable submit to the jurisdiction of said courts.

8. **Notices and Communications.** Any notice, request or other communication under this Agreement shall be given in writing and shall be deemed to have been given by either party to the other party at the addresses shown below upon any of the following dates:

(a) The date of notice by telefax, telecopy, similar telecommunications or an email as an attached scanned PDF document, which is confirmed promptly by hard copy;

(b) Three business days after the date of the mailing thereof, as shown by the post office receipt if mailed to the other party hereto by registered or certified mail;

(c) The date of the receipt thereof by such other party if not given pursuant to (a) or (b) above.

All notices and communications to EDGE shall be directed to:

Reid Dulberger, President & CEO
Economic Development Growth Engine
Industrial Development Board of the City
Of Memphis and County of Shelby, Tennessee
100 Peabody Place, Suite 1100
Memphis, TN 38103-3652
Email: rdulberger@growth-engine.org

With Copy to:

Mark Beutelschies
General Counsel
Farris Bobango Branan PLC
999 S. Shady Grove Road, Suite 500
Memphis, TN 38120
Email: mbeutelschies@farris-law.com

All notices and communications to UNDC shall be directed to:

University Neighborhood Development Corporation
460 S. Highland
Memphis, TN 38111
Attn: Board President

With a copy to:

Richard Spore
Bass, Berry & Sims PLC
100 Peabody Place, Suite 1300
Memphis, TN 38103
Email: rspore@bassberry.com

9. **Severability.** Should any provision of this Agreement be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity or enforceability of the remaining provisions.

10. **Entire Agreement; Amendments and Waivers.** This Agreement shall supersede any prior oral or written understandings or communications between the parties hereto and constitutes the entire agreement of the parties hereto with respect to the subject matter hereof. This Agreement may not be amended or modified, except in a writing signed by both parties hereto.

11. **Counterparts.** This Agreement may be signed in counterparts, meaning that the Agreement is valid if signed by both parties, even if the signatures of the parties appear on separate copies of the same Agreement rather than on a single document.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Diversity Plan Agreement to be executed on the dates set forth below.

ECONOMIC DEVELOPMENT GROWTH
ENGINE INDUSTRIAL DEVELOPMENT
BOARD OF THE CITY OF MEMPHIS
AND COUNTY OF SHELBY,
TENNESSEE

Date: _____

By: _____

Name: _____

Title: _____

UNIVERSITY NEIGHBORHOOD
DEVELOPMENT CORPORATION

Date: _____

By: _____

Name: _____

Title: _____

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