

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is entered into this _____ day of _____, 2009, by the City of Las Vegas ("City"), City of Las Vegas Redevelopment Agency ("Agency"), Urban Chamber of Commerce ("UCC") and the Board of Regents of the Nevada System of Higher Education on behalf of the College of Southern Nevada ("NSHE"). The City, Agency, UCC and NSHE are sometimes referred to herein collectively as the "Parties."

WHEREAS, the City and the UCC entered into a Disposition and Development Agreement on March 17, 2004 ("DDA") for the disposition and development of a three (3.0) acre site ("Site") in the Las Vegas Enterprise Park for the development of a Multi-use Business Incubator and Services Center (the "Project"); and

WHEREAS, the City and the UCC entered into a First Amendment to the DDA on June 15, 2005 ("First Amendment"), in order to increase the size of the Site to three and three hundred forty-four hundredths (3.344) acres, as well as, amend the rights and obligations of the City and the UCC, including but not limited to the schedule of performance; and

WHEREAS, the City and the UCC entered into a Second Amendment to the DDA on November 9, 2005 ("Second Amendment"), in order to amend the legal description of the Site (the DDA, the First Amendment and the Second Amendment are collectively referred to as the "Initial Agreement"); and

WHEREAS, the City and the UCC entered into an Amended and Restated Disposition and Development Agreement dated September 19, 2007 ("Restated DDA"), in order to amend and restate the Initial Agreement, as well as, establish new construction deadlines and new Schedule of Performance for the Project; and

WHEREAS, the City and the UCC entered into a First Amendment to Restated DDA on November 5, 2008, in order to establish a new Commencement of Construction Date and new Schedule of Performance for the Project; and

WHEREAS, the UCC has achieved approval of a Site Development Plan and approval of a technical drainage study for the Project; and

WHEREAS, the UCC has obtained approval for City and other Governmental permits necessary to commence construction; and

WHEREAS, the City and the UCC entered into a Second Amendment to Restated DDA on April 1, 2009, in order to establish a new Commencement of Construction Date and new Schedule of Performance for the Project (the Restated DDA, First Amendment to Restated DDA and Second Amendment to Restated DDA are collectively referred to as the "Restated Agreement"); and

WHEREAS, the UCC has secured a commitment from the Economic Development Administration (“EDA”) in the amount of Two Million (2,000,000) Dollars, EDA Award No. 07-01-05466 (“EDA Grant”); and

WHEREAS, due to current economic conditions, the UCC has found it difficult to raise the remaining funds to construct the Project;

WHEREAS, the EDA has agreed to allow the UCC to request a final extension of time for the EDA Grant in order to identify a suitable co-applicant that can partner with the UCC to raise the remaining funds to construct the Project;

WHEREAS, the NSHE has the capability of raising the remaining construction funds through an appropriation by the Nevada Legislature, and possesses the ability to contract with other public and private sector organizations to operate the Project as a green jobs training center and renewable energy business incubator, specifically through the expertise available through the College of Southern Nevada, labor management organizations and trade associations with existing job training/apprenticeship programs.

WHEREAS, the City, UCC and community stakeholders all concur that the NSHE would be a suitable partner for the UCC to help raise the remaining funds, construct and operate the Project as a green jobs training and incubator facility;

WHEREAS, the Parties desire collectively to further explore the feasibility of the UCC and NSHE: 1. Entering into a partnership; 2. Submit a joint request to the EDA for a final extension of time to the EDA Grant; and, 3. Complete and operate the Project after it is reprogrammed as a green jobs training and incubator facility;

WHEREAS, the City owns the Las Vegas Business Center (LVBC) at 1951 Stella Lake Street and desires to transfer the title for the LVBC to the Agency;

WHEREAS, the Agency desires to lease the LVBC to a suitable non-profit organization capable of operating a green jobs training facility and business incubator and managing the commercial office space in the LVBC;

WHEREAS, the UCC is a suitable non-profit organization and has expressed its interest to the Agency to lease the LVBC;

NOW, THEREFORE, in consideration of the foregoing mutual recitals, the parties agree as follows:

1. Purpose. The Parties agree that the purposes of this MOU are:
 - a. For the UCC and NSHE to explore entering into a partnership to complete the Project and negotiate terms of a partnership agreement;

b. For the UCC and NSHE, as co-applicants, to prepare and submit a application to the EDA for a final extension of time to the EDA Grant and consent to reprogram the Project as a green jobs training and incubator facility ("Southern Nevada Sustainability Center");

c. For the Parties to negotiate terms of and bring before the Las Vegas City Council for its consideration an Assignment of Restated Agreement from the UCC to a new entity made up of the UCC and the NSHE ("Partnership"); and,

d. For the City to transfer title for the LVBC to the Agency in order for the Agency to negotiate with the UCC on terms of and bring before the Las Vegas Redevelopment Agency Board ("Agency Board") for its consideration a Lease and Operating Agreement with Option for the LVBC.

2. Term of MOU. The term of this MOU ("Term") shall begin on the date of this MOU and expire upon the sooner of:

a. Final approval by the Parties of a mutually acceptable Assignment of Amended and Restated Agreement and final approval by the Agency and the UCC of a mutually acceptable Lease and Operating Agreement with Option for the LVBC;

b. Termination of the EDA Grant or Restated Agreement; or,

c. September 1, 2009.

3. Intent of Partnership between UCC and NSHE. It is the intent of the UCC and NSHE to enter into a partnership for the purposes of:

a. Adding NSHE as a co-applicant to the EDA grant; and,

b. Completing construction of the Southern Nevada Sustainability Center with modifications suitable to support the reprogramming of the facility to include the primary use of training for jobs in weatherization and renewable energy consistent with NSHE's mission.

4. Intent of the Parties. It is the intent of the Parties that:

a. NSHE will function as the owner of the Southern Nevada Sustainability Center during its construction;

b. The City will subordinate its interest in the Southern Nevada Sustainability Center site to the EDA as required by the terms of the EDA Grant when commitments for all of the funding needed to construct the Southern Nevada Sustainability Center has been secured and documented to the satisfaction of the City;

c. City staff will provide “fast track” assistance to the Southern Nevada Sustainability Center during construction as provided for similar projects in the Redevelopment Area;

d. The Southern Nevada Sustainability Center will be constructed under a project labor agreement;

e. The City will consent to and the UCC agrees to convey to NSHE ownership of the completed Southern Nevada Sustainability Center upon issuance of a Certificate of Occupancy for said Southern Nevada Sustainability Center.

f. The operation of the facility will be the sole responsibility of NSHE and will be consistent with its fiduciary responsibility, legal obligations, training mission and existing standards; and,

g. The City and UCC will impose no special conditions on NSHE other than the successful construction and operation of a green jobs training and incubator facility that meets NSHE’s fiduciary responsibility, legal obligations, mission and existing standards.

5. Assignment of Amended and Restated Disposition and Development Agreement (“Assignment Agreement”).

The Parties (with each Party bearing their respective costs and expenses including attorney’s fees) shall proceed to negotiate terms to and draft a mutually acceptable Assignment Agreement setting forth their respective rights and obligations with respect to the funding, construction and operation of the Southern Nevada Sustainability Center.

Terms of the Assignment Agreement shall include but not be limited to:

a. The City’s assignment of its interest in the Amended DDA to the Partnership that will construct the Southern Nevada Sustainability Center.

b. Role of the UCC to provide: (i) Its entitled and building permit ready project; and, (ii) EDA Grant to expedite the construction of the Southern Nevada Sustainability Center.

c. Role of NSHE to provide: (i) The remaining \$1.5 – 2.0 million needed for construction (to the extent funded by legislative appropriation); and, (ii) A portion of the \$30 million in Federal green jobs training dollars from the American Recovery and Reinvestment Act to be administered in Nevada through the Green Jobs Bill, SB 152.

d. The Assignment Agreement will contain language to clearly retain the City’s right to re-enter the title to the Southern Nevada Sustainability Center

site for failure by the UCC, NSHE or the Partnership to start and/or complete construction of the Green Jobs Training Facility.

Upon the Parties achieving mutually acceptable terms for an Assignment Agreement, the decision for the City to enter into said Assignment Agreement or any other agreement with either the UCC or NSHE will be subject to final approval by the Las Vegas City Council ("City Council") as to any and all proceedings and decisions in connection herewith.

6. Lease and Operating Agreement with Option ("Lease Agreement").

The City (or its designee) and the UCC (with each Party bearing their respective costs and expenses including attorney's fees) shall proceed to negotiate terms to and draft a mutually acceptable Lease Agreement for the Las Vegas Business Center at 1951 Stella Lake Street.

Terms of the Lease Agreement shall include but not be limited to:

a. Conditions Precedent to Lease Agreement:

- (i) City Council approval of the Assignment Agreement;
 - (ii) Repayment of \$1.3 million to HUD for CDBG funds originally used to construct the LVBC;
 - (iii) Written consent from the EDA to transfer title of the LVBC from the City to the Las Vegas Redevelopment Agency ("Agency"); and,
 - (iv) Transfer of title to the LVBC from City to Agency.
- b. Lease Term - 5 years.
- c. Performance Period – 5 years (concurrent with Lease Term).
- d. Option Period – 20 years.
- e. Acknowledgement of EDA Deed Covenant & Use Requirement:
- (i) Lease Agreement shall contain language whereby UCC acknowledges the EDA deed covenant; and,
 - (ii) Requirement to utilize a minimum percentage of the LVBC to operate a business incubator for the entire term of its tenancy. The minimum percentage of the LVBC to be utilized for a business incubator will be defined in the Lease Agreement.

f. Employment Plan – UCC will be required to provide the Agency with an Employment Plan.

g. Policies and Procedures:

(i) Within 6 months from lease inception, the UCC will develop and implement policies and procedures for the LVBC based on principles and best practices for successful business incubation and commercial property management; and,

(ii) The Agency will have the right to review and approve the final policies and procedures for the LVBC.

h. LVBC Operating Subsidy

(i) Starting from the date of lease inception, Agency will provide up to \$150,000/yr. towards any deficit in operating costs for the LVBC (excluding UCC staff salaries and benefits, as well as, any other costs prohibited for subsidy by the Agency by applicable NRS statute) provided that UCC submits an annual budget to Agency for review and approval prior to the start of each calendar year;

(ii) The timing of subsidy payments from and costs eligible for subsidy by the Agency will be defined in the Lease Agreement; and,

i. Annual Non-Appropriations Clause - The Agency will require that the Lease Agreement contain an Annual Non-Appropriations Clause (to be further defined by the Agency) which states that the payment of any LVBC operating subsidy costs by the Agency will be subject to an annual budget approval by the Agency Board and availability of Agency funds.

i. Operating Reports – UCC will be required to provide periodic operating reports:

(i) Quarterly to Agency staff; and,

(ii) Annually to Agency Board.

j. Right to Terminate Lease – Agency will have the right to terminate the Lease Agreement for financial non-performance if the annualized operating deficit for the LVBC exceeds \$150,000 for two consecutive quarterly reports after the first 12 months of occupancy.

k. Option – To request for a long-term, 20 yr. lease from Agency:

(i) UCC can earn the right to exercise the Option by demonstrating the ability to successfully operate the LVBC to generate revenues and control operating costs to achieve break-even or excess revenues within the 5 yr. term.

(ii) The granting of a long-term lease will be at the sole discretion of the Agency Board at the time of the request.

(iii) Upon Agency Board approval of a long-term lease, Agency will have no further obligation to subsidize operating costs of the LVBC.

7. UCC Ownership. Pursuant to Resolution R-105-99 adopted by the City of Las Vegas effective October 1, 1999, the UCC warrants that it has disclosed on the form attached hereto as Exhibit "A", all principals, including, partners or members of the UCC, as well as, all persons and entities holding more than 1% interest in the UCC or any principal, partner or member of the same. Throughout the Term hereof, the UCC shall provide written notification of any material change in the above disclosures within 15 days of any such change.

8. Non-Binding Agreement. The provisions of this MOU are non binding on any of the Parties and are intended only to set forth the current intent of the Parties hereto and the general scope of the items to be conducted or negotiated during the Term, which agreement shall then be binding. The final Assignment Agreement and Lease Agreement must be approved by the City Council of the City and Agency Board respectively as well as by appropriate authority on behalf of NSHE.

9. Counterparts. This MOU may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

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IN WITNESS WHEREOF, the parties hereto have caused this MOU as of the date set forth above.

ATTEST:

City of Las Vegas

Beverly K. Bridges, CMC, City Clerk

By _____
Oscar B. Goodman, Mayor
"City"

ATTEST:

City of Las Vegas Redevelopment Agency

Beverly K. Bridges, CMC, Secretary

By _____
Oscar B. Goodman, Chairman
"Agency"

APPROVED AS TO FORM:

J. P. [Signature] 5/12/09
Deputy City Attorney Date

Urban Chamber of Commerce,
a Nevada not-for-profit corporation

By _____
Cornelius Eason, President
"UCC"

Nevada System of Higher Education

By _____
Name _____
Title _____
"NSHE"

Exhibit "A"

DISCLOSURE OF PRINCIPALS

The principals and partners of Urban Chamber of Commerce and all persons and entities holding more than 1% (one percent) interest in Urban Chamber of Commerce Or any principal of Urban Chamber of Commerce are the following:

	<u>FULL NAME</u>	<u>BUSINESS ADDRESS</u>	<u>BUSINESS PHONE</u>
1.	Cornelius Eason President	1048 W Owens Ave Las Vegas, NV 89106	702-648-6222
2.	Debra Nelson Vice President	1048 W Owens Ave Las Vegas, NV 89106	702-648-6222
3.	Al Barber Treasurer	1048 W Owens Ave Las Vegas, NV 89106	702-648-6222
4.	Jerric Merritts Secretary	1048 W Owens Ave Las Vegas, NV 89106	702-648-6222
5.	Dr. William Dougan Board Member	1048 W Owens Ave Las Vegas, NV 89106	702-648-6222
6.	Tony Gladney Board Member	1048 W Owens Ave Las Vegas, NV 89106	702-648-6222
7.	Napoleoni McCallum Board Member	1048 W Owens Ave Las Vegas, NV 89106	702-648-6222
8.	Diane Pollard Board Member	1048 W Owens Ave Las Vegas, NV 89106	702-648-6222
9.	Eric James Board Member	1048 W Owens Ave Las Vegas, NV 89106	702-648-6222
10.	Janice Spens-Tork Board Member	1048 W Owens Ave Las Vegas, NV 89106	702-648-6222
11.	Aaron Ford Board Member	1048 W Owens Ave Las Vegas, NV 89106	702-648-6222

I hereby certify under penalty of perjury, that the foregoing list is full and complete.

By: Cornelius Eason
Its: Cornelius Eason

State of Nevada County of Clark
Subscribed and sworn to before me this

27 day of April, 2009

Hesha S. Laine
Notary Public

