

**SPECIMEN**

**EMERGING BUSINESS ENTERPRISE AND R.P.P. AGREEMENT**

(\_\_\_\_\_ **Project**)

This Emerging Business Enterprise Agreement is entered into by and between the CITY OF MILWAUKEE (hereinafter the "CITY"), and \_\_\_\_\_ ("DEVELOPER") as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**WHEREAS**, DEVELOPER acknowledges that the CITY has established policies regarding the utilization of Emerging Business Enterprises ("EBEs"), which are consistent with Chapter 360 of the Milwaukee Code of Ordinances ; and

**WHEREAS**, DEVELOPER has agreed that execution of the Purchase and Sale Agreement was conditioned upon DEVELOPER and its agents agreeing to utilize "best efforts" to reach a requirement of 18% EBE participation in the renovation of the PROJECT.

**NOW, THEREFORE**, the parties agree as follows:

**I. DEFINITIONS**

A. EMERGING BUSINESS ENTERPRISE ("EBE") is a small business concern that is owned, operated and controlled by one or more individuals who are at a disadvantage, as defined in Chapter 360 of the Milwaukee Code of Ordinances. The individuals must have day-to-day operational and managerial control, interest in capital, financial risks and earnings commensurate with the percentage of their ownership. Emerging Business Enterprises are certified as such by the City of Milwaukee Certification Program.

B. JOINT VENTURE is an association of two (2) or more persons or businesses to carry out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and/or knowledge.

## **EMERGING BUSINESS ENTERPRISE PROGRAM**

- II. DEVELOPER shall, in renovating the PROJECT, exercise “best efforts” utilize Emerging Business Enterprises, as defined in Chapter 360, Milwaukee Code of Ordinances, (“EBEs”) for an amount equal to 18% of the total PROJECT costs deemed eligible pursuant to EBE guidelines.
- A. Best efforts, when exercised by DEVELOPER in conjunction with the PROJECT, is defined as DEVELOPER completing the following activities:
1. Advertise in general circulation and trade association media, as well as in community newspapers, regarding contracting and subcontracting opportunities. Advertising in the Daily Reporter and two other publications shall be the minimum acceptable level of performance **(Exhibit A)**.
  2. Provide interested EBEs and the agencies listed in **Exhibit B**, with adequate information about PROJECT plans, specifications, and contract/subcontract requirements at least two (2) weeks prior to the contract bidding process.
  3. Submit **EBE Participation Form A (Exhibit C)** to CITY’s EBE Office. This form must be submitted with the prime contractor’s bid.
  4. Conduct pre-bid conferences and a pre- bid walk-through two (2) weeks in advance of the contract bid date.
  5. Provide written notice to all pertinent construction trades and professional services EBEs listed in the current City of Milwaukee Directory, soliciting their services in sufficient time (at least 2 weeks) to allow those businesses to participate effectively in the contract bidding process. To identify EBEs for the PROJECT, utilize the current *Official City of Milwaukee EBE Directory* published by the City of Milwaukee Emerging Business Enterprise (EBE) Program. The directory can be accessed on-line at: [www.milwaukee.gov/ebe](http://www.milwaukee.gov/ebe)  
  
Follow-up with EBEs who show an interest in the PROJECT during the initial solicitation process (**See Exhibit D EBE Solicitation Form**).
  6. Select trade and professional service areas for EBE awards wherein the greatest number of EBEs exist to perform the work. Thereby, the likelihood of contracts or subcontracts being awarded to EBE businesses would increase. Include where appropriate, the breaking down of contracts or subcontracts into smaller, economically feasible units to facilitate EBE participation.

7. Negotiate in "good faith" with interested EBEs, not rejecting EBE bids as unqualified or too high without sound reasons based on a thorough review of the bid submitted and maintain documentation to support the rejection of any EBE bid. Bids that are not cost effective, and/or time prohibitive will be considered "rejectable" bids. (See **Exhibit E Bid Rejection Form**).
  8. Utilize the services available from public or private agencies and other organizations in identifying EBEs available to perform the work.
  9. Include in PROJECT bid documents and advertisements an explanation of PROJECT requirements for EBE participation to prospective contractors and subcontractors.
  10. As necessary and when ever possible, facilitate the following:
    - a) Joint ventures, limited partnerships or other business relationships intended to increase EBEs' areas of expertise, bonding capacity, credit limits, etc.
    - b) Training Relationships
    - c) Mentor/protege Agreements
- B. If DEVELOPER completes the aforementioned activities and demonstrates "good cause" for not meeting the 18% requirement for EBE participation, it shall be deemed that DEVELOPER has acted in "good faith" to achieve the requirement.
- C. If at any point during this contract term, DEVELOPER meets or exceeds the 18% EBE requirement in conjunction with said PROJECT, it shall be deemed that DEVELOPER has achieved or exceeded CITY's EBE requirement, for the purposes of fulfilling the terms of this Agreement.
- D. Contract or subcontract amounts awarded to EBE suppliers, that do not manufacture products they supply, may only be counted for up to 20% of the 18% EBE participation requirement.
- III. DEVELOPER agrees to report to CITY's EBE Office on DEVELOPER's utilization of EBEs in its contracting activities of the PROJECT, pursuant to Chapter 360 of the Milwaukee Code of Ordinances. In order to monitor the PROJECT's EBE participation, CITY requires, and DEVELOPER agrees to take the following steps:
- A. Provide a list of all categories of work on the PROJECT with budget allowances, for which bids will be solicited and highlight those categories, based upon DEVELOPER's knowledge and experience, which are conducive to EBE

participation one month prior to any bids being solicited or awarded. (See Exhibit F)

- B. Provide CITY's EBE Office with documentation supporting efforts extended to solicit bids from EBEs. Upon request, DEVELOPER shall make information related to EBE bids available to the City's EBE Office.
- C. Submit an EBE Monthly Report Form D to EBEP the 20<sup>th</sup> of each month on the form attached as Exhibit G. Also submit EBE Subcontractor Payment Form (Exhibit H) with the final Form D.

IV. CITY may impose any or all of the sanctions set forth in Section 360-08, Milwaukee Code of Ordinances, for violation of this Agreement.

V. DEVELOPER shall also utilize best efforts to utilize unemployed residents of CITY for 21% of the worker hours on the Project in accordance with Sec. 309-41 of the Milwaukee Code of Ordinances. DEVELOPER shall evidence this commitment by providing certified payrolls from each contractor and subcontractor on the Project to CITY's EBE Office in reasonably acceptable form.

**IN WITNESS WHEREOF**, the parties have executed this EBE AGREEMENT

CITY OF MILWAUKEE

By: \_\_\_\_\_  
Tom Barrett, Mayor

By: \_\_\_\_\_  
Ronald D. Leonhardt, City Clerk

By: \_\_\_\_\_  
\_\_\_\_\_ Comptroller

[DEVELOPER]

By: \_\_\_\_\_  
By: \_\_\_\_\_

Approved as to form and execution this \_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
Assistant City Attorney

**EXHIBIT A  
EBE MARKETING PLAN**

**PUBLICATIONS/ADVERTISING CONTACTS**

Milwaukee Times  
(Published weekly)  
2216 North King Drive  
Milwaukee, WI 53212  
Tele. No: (414) 263-5088  
Fax: (414) 263-4445  
Contacted \_\_\_\_\_yes \_\_\_\_\_no  
Contact Person \_\_\_\_\_  
Date and Time \_\_\_\_\_

The Milwaukee Courier  
(Published weekly)  
2431 West Hopkins Street  
Milwaukee, WI 53206  
Tele No: (414) 449-4860  
Fax: (414) 449-4872  
Contacted \_\_\_\_\_yes \_\_\_\_\_no  
Contact Person \_\_\_\_\_  
Date and Time \_\_\_\_\_

Milwaukee Community Journal, Inc.  
(Published twice weekly)  
3612 North King Drive  
Milwaukee, WI 53212  
Tele No: (414) 265-5300  
Fax: (414) 265-1536  
Contacted \_\_\_\_\_yes \_\_\_\_\_no  
Contact Person \_\_\_\_\_  
Date and Time \_\_\_\_\_

Daily Reporter  
(Published daily M-F)  
704 West Wisconsin Avenue  
Milwaukee, WI 53233  
Tele No: (414) 276-0273  
Fax: (414) 276-8057  
Contacted \_\_\_\_\_yes \_\_\_\_\_no  
Contact Person \_\_\_\_\_  
Date and Time \_\_\_\_\_

**EXHIBIT B**  
**EBE MARKETING PLAN**

**COMMUNITY AGENCY CONTACTS**

**National Association of Minority Contractors**

3100 West Concordia Ave  
Milwaukee, WI 53216  
(414) 449-0837

**The Milwaukee Urban League**

435 West North Avenue  
Milwaukee, WI 53212  
(414) 374-5850

**African American Chamber-Commerce**

6203 West Capitol Dr  
Milwaukee, WI 53216  
(414) 462-9450

**Hispanic Chamber of Commerce of Wisconsin**

816 West. National Ave.  
Milwaukee, WI 53204  
(414) 643-6963

**Wisconsin Minority Business Opportunity Center**

1915 North Dr. Martin Luther King Jr. Drive, Suite 213-F  
Milwaukee, WI 53212  
(414) 372-3773

**Hmong Wisconsin Chamber of Commerce**

3616 West National Avenue. Suite 99  
Milwaukee, WI 53215  
(414)649-8331

**Lao Family Community Inc.**

2331 West Vieau Place Milwaukee, WI 53204  
414-385-3380



**CITY OF MILWAUKEE - DEPARTMENT OF ADMINISTRATION  
EMERGING BUSINESS ENTERPRISE PROGRAM  
EBE PARTICIPATION FOR SUBCONTRACTORS AND/OR MATERIAL SUPPLIERS**

PRIME CONTRACTOR'S NAME: \_\_\_\_\_ CONTRACT NAME OR NUMBER: \_\_\_\_\_

START DATE: \_\_\_\_\_ TOTAL BID AMOUNT: \_\_\_\_\_ TOTAL EBE AMOUNT: \_\_\_\_\_

Please list below **all** proposed subcontractor(s) and/or material supplier(s) for this project.

EBE FIRM(S) NAME ADDRESS/CONTACT PERSON AND PHONE NUMBER	% OF BID	SUB- CONTRACTOR/OR SUPPLIER	WORK PERFORMED/ MATERIAL SUPPLIED	AMOUNT	AUTHORIZED EBE(S) GRANTEE/OWNER/REPRESENTATI VE SIGNATURE OF ACKNOWLEDGMENT
1. _____ _____					
2. _____ _____					
3. _____ _____					
4. _____ _____					

Authorized Signature: \_\_\_\_\_ Print Name & Title: \_\_\_\_\_

**RETURN THIS FORM TO DOA-EMERGING BUSINESS ENTERPRISE PROGRAM**  
**THIS FORM MUST BE SUBMITTED WITH THE PRIME CONTRACTORS BID.**

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_  
PROJECT MANAGER TITLE

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_  
BUSINESS ANALYST SENIOR (DOA) - EBE Program

**Exhibit D**  
**EMERGING BUSINESS ENTERPRISE (EBE)**  
**SOLICITATION FORM**

Name & Address of EBE Firm

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Name of Individual Contacted \_\_\_\_\_ Phone Number \_\_\_\_\_

Type of Work \_\_\_\_\_ Date and Time of Contact \_\_\_\_\_

Quotation or Proposal Received \_\_\_\_\_

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REMARKS: THESE SHOULD INCLUDE ANY FOLLOW UP ACTIONS. IN THE EVENT THAT THE EMERGING BUSINESS ENTERPRISE WILL NOT BE UTILIZED, INCLUDE AN EXPLANATION OF THE REASON (S) WHY THE FIRM WILL NOT BE USED. FOR EXAMPLE: IF THE ONLY REASON FOR NON-UTILIZATION WAS PRICE, THE EXPLANATION SHOULD REFLECT WHAT STEPS WERE TAKEN TO REACH A COMPETITIVE PRICE LEVEL.

REMARKS:

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**EXHIBIT E**  
**Emerging Business Enterprise (EBE)**  
**Rejection of Bid Form**

Name and Address of EBE firm	Type of Work	Bid Submitted by EBE	Actual Bid Award	Reasons for bid rejection	Approved By
1					
2					
3					
4					
5					
6					
7					
8					

**EXHIBIT F**  
**CATEGORIES OF WORK**

Use Excel Spreadsheet



I/we hereby certify that I/we have read the above and approved this information to be precise and confirmed.

(12) Report Prepared By: \_\_\_\_\_  
(Name) (Title) (Phone Number)

(13) Authorized Signature: \_\_\_\_\_  
(Name) (Title) (Phone Number)

(14) Date \_\_\_\_\_

**Note: This form should be submitted no later than the 20<sup>th</sup> of every month to Emerging Business Enterprise Program, 200 East Wells Street, Room 606, Milwaukee, WI or fax to (414) 286-8752, Attn: Ossie Kendrix**

**Exhibit H  
FORM E**

**CITY OF MILWAUKEE – DEPARTMENT OF ADMINISTRATION  
EMERGING BUSINESS ENTERPRISE PROGRAM**

**EBE SUBCONTRACTOR PAYMENT CERTIFICATION**

EBE Subcontractor's Firm Name: \_\_\_\_\_

Prime Contractor Name: \_\_\_\_\_

Prime Contractor's Bid or RFP#: \_\_\_\_\_ Purchase Order or Contract # \_\_\_\_\_

This certificate is to be signed by the EBE subcontractor firm that was utilized in connection with the above contract, either for service performed, and/or as a supplier. Attach this form to the Prime Contractor's final **FORM D** (EBE Monthly Report) and return to:

Department of Administration  
Emerging Business Enterprise Program  
City Hall – Room 606  
200 East Wells St  
Milwaukee, W 53202  
(or fax to 414-286-8752)

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I \_\_\_\_\_ hereby certify that our firm has received  
(PLEASE PRINT NAME)

\$ \_\_\_\_\_ from \_\_\_\_\_  
(PRIME CONTRACTORS NAME)

for subcontract work performed and/or material supplied on the above contract.

Signature & Title \_\_\_\_\_ Date: \_\_\_\_\_

Subcontractor

Signature & Title \_\_\_\_\_ Date: \_\_\_\_\_

Prime Contractor

**NOTE: THIS FORM MUST BE ATTACHED TO PRIME CONTRACTORS FINAL FORM D  
(EBE MONTHLY REPORT)**