

EXHIBIT F
To
Riverwalk Development Agreement

SMALL BUSINESS ENTERPRISE AGREEMENT
FOR
THE RIVERWALK IMPROVEMENT

This Small Business Enterprise Agreement is entered into as of the _____ day of April, 2013 by and between the **CITY OF MILWAUKEE** ("CITY"), and **TOMICH RIVERFRONT PROPERTIES, LLC** ("DEVELOPER").

RECITALS

WHEREAS, the parties to this Agreement acknowledge and understand that this Agreement shall become part of the Riverwalk Development Agreement for the construction of the Riverwalk Improvement (as defined in the Riverwalk Development Agreement) (the "PROJECT") and part of any financing agreements to be signed by the aforementioned parties related to the PROJECT.

WHEREAS, DEVELOPER acknowledges that CITY has established policies regarding the utilization of Small Business Enterprises ("SBEs") which are consistent with Chapters 355 and 370 of the Milwaukee Code of Ordinances.

WHEREAS, DEVELOPER acknowledges that the CITY's approval and execution of the Riverwalk Development Agreement between the parties related to the PROJECT was conditioned upon DEVELOPER and its agents agreeing to achieve SBE participation in development and constructing the PROJECT as required herein.

AGREEMENT

I. DEFINITIONS

- A. SBEs are businesses that have been certified by the City of Milwaukee Office of Small Business Development based on the requirements of Section 370-25, Milwaukee Code of Ordinances.
- B. JOINT VENTURE is an association of two or more persons or businesses carrying out a single business enterprise for profit for which purpose they combine their property, capital, efforts, skills and/or knowledge.

II. SMALL BUSINESS ENTERPRISE PROGRAM

DEVELOPER shall use good faith efforts to utilize SBEs in developing and constructing the PROJECT in an amount equal to 25% of the costs in the categories identified in **Exhibit A** (collectively, the “SBE Percentage Goal”).

A. **Additional SBE Requirements.** DEVELOPER shall be deemed to have used good faith efforts to utilize SBEs in developing and constructing the PROJECT in accordance with this Agreement if DEVELOPER shall complete the following:

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. Complete **Exhibit B “SBE Marketing Plan – Publications/Advertising Contacts”** and submit it to the Office of Small Business Development.
2. Provide interested SBEs and the agencies listed in **Exhibit C “SBE Marketing Plan – Community Agency Contacts”** with adequate information about the PROJECT plans, specifications, and contract/subcontract requirements at least two weeks prior to the date the contract bidding process commences. DEVELOPER shall document Community Agency Contacts by completing the Contact Sheet attached as **Exhibit C1** and submitting the completed Contact Sheet to the Office of Small Business Development prior to commencement of the bidding process.
3. Complete and submit **Exhibit D “SBE Participation Form A”** to the Office of Small Business Development. This form must be submitted upon execution of the prime contractor’s contract, if any, or upon commencement of construction.
4. Conduct pre-bid or selection conferences and a walk-through at least two weeks in advance of the date that bids are due.
5. Provide written notice of the PROJECT to all pertinent construction trade SBEs listed in the current City of Milwaukee Directory soliciting their services in sufficient time (at least two weeks) to allow those businesses to participate effectively in the contract bidding or selection process. To identify SBEs for the PROJECT, utilize the current *Official City of Milwaukee SBE Directory* published by the City of Milwaukee Office of Small Business Development. The directory can be accessed on-line at:

<https://milwaukee.diversitycompliance.com/FrontEnd/VendorSearchPublic.asp?TN=milwaukee&XID=2276>
6. Follow-up with SBEs who show an interest in the PROJECT during the initial solicitation process and document contact with SBE firms using **Exhibit E “SBE Solicitation Form.”**

7. Select trade areas for SBE awards wherein the greatest number of SBEs exist to perform the work, thereby increasing the likelihood of contracts or subcontracts being awarded to SBEs. Where appropriate, split contracts or subcontracts into smaller, economically feasible units to facilitate SBE participation.
 8. Negotiate in good faith with interested SBEs, not reject SBE bids or proposals as unqualified or too high without sound reasons based on a thorough review of the bid or proposal submitted and maintain documentation to support the rejection of any SBE bid or proposal. Bids that are not cost effective and/or are not consistent with the PROJECT schedule will be considered “rejectable.” Rejected bids or proposals shall be documented on **Exhibit F “Bid Rejection Form.”**
 9. Utilize the services available from public or private agencies and other organizations for identifying SBEs available to perform the work.
 10. Include in the PROJECT bid, RFP or selection documents and advertisements an explanation of PROJECT requirements for SBE participation to prospective contractors and subcontractors.
 11. As necessary and whenever possible, facilitate the following:
 - a) Joint ventures, limited partnerships or other business relationships intended to increase SBE areas of expertise, bonding capacity, credit limits, etc.
 - b) Training relationships
 - c) Mentor/protégé agreements
- B. **Meeting a Percentage.** If at any point during this Agreement, DEVELOPER meets or exceeds the 25% SBE Percentage Goal for the PROJECT, DEVELOPER shall notify the Office of Small Business Development, and it shall be deemed that DEVELOPER has achieved the SBE Percentage Goal - subject to a successful close-out audit by the Office of Small Business Development. If DEVELOPER meets the overall SBE Percentage Goal for the Project, DEVELOPER shall be deemed to have satisfied all DEVELOPER'S obligations under this Agreement.
- C. **Special Provision Regarding Manufacture of Goods.** Contract or subcontract amounts awarded to SBE suppliers of goods that do not manufacture the goods they supply may only be counted for up to 20% of the 25% SBE “goods and services” SBE participation requirement.

III. REPORTING

DEVELOPER agrees to report to CITY’s Office of Small Business Development on DEVELOPER’s utilization of SBEs in its contracting activities for the PROJECT. In order to monitor the PROJECT’s SBE participation, CITY requires and DEVELOPER agrees to:

- A. Provide CITY's Office of Small Business Development with documentation of DEVELOPER'S efforts to solicit bids or proposals from SBEs. Upon request, DEVELOPER shall make information related to SBE bids or proposals available to the CITY's Office of Small Business Development.
- B. Complete and submit **Exhibit G "SBE Final Report Form D"** to the Office of Small Business Development upon completion of all construction for the PROJECT. Also, submit **Exhibit H "SBE Subcontractor Payment Form"** with the SBE Final Report Form D.

IV. DEVELOPER VIOLATION

Any violation of this Agreement by DEVELOPER may be considered an event of Default under the Riverwalk Development Agreement between the parties related to the PROJECT.

IN WITNESS WHEREOF, the parties have executed this SBE AGREEMENT as of the day and date first above written.

<p>TOMICH RIVERFRONT PROPERTIES, LLC, A WISCONSIN LIMITED LIABILITY COMPANY</p> <p>BY:</p> <p>BY:</p> <p>BY _____ _____</p> <p>1050-2013-122:191094</p>	<p>CITY: CITY OF MILWAUKEE</p> <p>By _____ Tom Barrett, Mayor</p> <p>Attest: _____ James R. Owczarski, City Clerk</p> <p>COUNTERSIGNED</p> <p>By: _____ Martin Matson, Comptroller</p> <p>Common Council Resolution File No. _____</p> <p><u>CITY ATTORNEY</u></p> <p>_____, Assistant City Attorney, hereby approves the signatures of the CITY representatives above under MCO § 304-21.</p> <p>By: _____ Assistant City Attorney</p>
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EXHIBIT A
(Insert Spreadsheet)

EXHIBIT B
SBE MARKETING PLAN – PUBLICATIONS/ADVERTISING CONTACTS

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 C
SBE MARKETING PLAN – COMMUNITY AGENCY CONTACTS

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

EXHIBIT C1
Small Business Enterprise (SBE)
Contact Sheet

Name of Agency	Address of Agency	Contact Person	Date of Contact	Time of Contact

**CITY OF MILWAUKEE - DEPARTMENT OF ADMINISTRATION
OFFICE OF SMALL BUSINESS DEVELOPMENT
SBE PARTICIPATION FOR SUBCONTRACTORS AND/OR MATERIAL SUPPLIERS**

PRIME CONTRACTOR'S NAME: _____ CONTRACT NAME OR NUMBER: _____

START DATE: _____ TOTAL CONTRACT AMOUNT: _____ TOTAL SBE AMOUNT: _____

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

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

Authorized Signature: _____ Print Name & Title: _____

RETURN THIS FORM TO DOA-OFFICE OF SMALL BUSINESS DEVELOPMENT
THIS FORM MUST BE SUBMITTED WITH THE PRIME CONTRACTORS BID OR PROPOSAL OR UPON
COMMENCEMENT OF CONSTRUCTION.

Reviewed By: _____ Date: _____
PROJECT MANAGER TITLE

Reviewed By: _____ Date: _____
BUSINESS ANALYST SENIOR (DOA) - SBE Program

REF: SBE FORMS/ FORM A SBE PARTICIPATION DCD.DOC

Exhibit E
SMALL BUSINESS ENTERPRISE (SBE)
SOLICITATION FORM

Name & Address of SBE Firm _____

Name of Individual Contacted _____ Phone Number _____

Type of Work _____ Date and Time of Contact _____

Quotation or Proposal Received _____

REMARKS: THESE SHOULD INCLUDE ANY FOLLOW UP ACTIONS. IN THE EVENT THAT THE SMALL 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:

EXHIBIT F
SMALL BUSINESS ENTERPRISE (SBE)
Rejection of Bid or Proposal Form

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

EXHIBIT G
DEPARTMENT OF ADMINISTRATION
OFFICE OF SMALL BUSINESS DEVELOPMENT

SBE FINAL REPORT (FORM D)

(1) Report for the _____ **PROJECT**

(2) Prime Contractor/Firm _____

(3) Full Address & Phone Number: _____

(4) Description of service performed and/or material supplied _____

(5) Purchase Order /Contract # _____ (6) Project Number _____

(7) Start Date: _____ (8) Prime Contractors Total \$: _____

(9) Completion Date: _____ (10) Prime Contractor YTD \$: _____

(11) SBE % goal _____ and \$ goal _____

List all SBE subcontractor firm(s) utilized in connection with the above contract, either as service performed and/or supplier for the Project. This form shall be signed and returned. **If this represents the final report, be sure to indicate at the top of form.**

NAME OF SBE FIRM(s)	SERVICE PERFORMED/ MATERIAL SUPPLIED	AMOUNT PAID FOR THE PROJECT	TOTAL \$ PAID
TOTAL PAID TO SBE(s)			

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 to **Office of Small Business Development, 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
OFFICE OF SMALL BUSINESS DEVELOPMENT**

SBE SUBCONTRACTOR PAYMENT CERTIFICATION

SBE 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 SBE 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 **FORM D** (SBE Final Report) and return to:

Department of Administration
Office of Small Business Development
City Hall – Room 606
200 East Wells St
Milwaukee, WI 53202
(or fax to 414-286-8752)

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 FORM D
(SBE FINAL REPORT)**

Ref: SBE Forms/ Form E – Payment Certification Form