

**EMERGING BUSINESS ENTERPRISE AGREEMENT**  
**FOR THE**  
**LAYTON BOULEVARD WEST NEIGHBORS PROJECT**

This Emerging Business Enterprise Agreement is entered into by and between the CITY OF MILWAUKEE (hereinafter the "CITY"), and 3500 West National Avenue, LLC. (hereinafter "DEVELOPER").

**WHEREAS**, the aforementioned parties to this Agreement acknowledge and understand that this Agreement shall become part of any development and/or financing agreement to be signed by the aforementioned parties.

**WHEREAS**, DEVELOPER acknowledges that the CITY have established policies regarding the utilization of Emerging Business Enterprises ("EBEs") which are consistent with Chapter 360 of the Milwaukee Code of Ordinances (Copy available upon request).

**WHEREAS**, DEVELOPER agrees that the provision of the above-referenced offer was conditioned upon the DEVELOPER and its agents agreeing to reach a requirement of 18% EBE participation in the construction of said PROJECT.

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. **It is important to note that those businesses that were certified under the old name (Disadvantaged Business Enterprise (DBE)) will continue to qualify for the 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. The DEVELOPER shall enter into a EBE Agreement requiring the DEVELOPER

in developing and constructing the PROJECT, to 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. "PROJECT costs" as used herein shall not include costs associated with the acquisition of the Property by the DEVELOPER and its related members.

A. Demonstrable efforts, when exercised by the 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 5)** to EBEP. 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) <<http://www.milwaukee.gov/ebe>>

Follow-up with EBEs who show an interest in the PROJECT during the initial solicitation process (**See Exhibit 1 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 2 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 the DEVELOPER completes the aforementioned activities and demonstrates "good cause" for not meeting the 18% requirement for EBE participation, it shall be deemed that the DEVELOPER has acted in "good faith" to achieve the requirement.
- C. If at any point during this contract term, the DEVELOPER meets or exceeds the 18% EBE requirement in conjunction with said PROJECT, it shall be deemed that the DEVELOPER has achieved or exceeded the 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 the City's EBEP Manager on Developer's utilization of EBEs in its contracting activities of the aforementioned PROJECT, pursuant to Chapter 360 of the Milwaukee Code of Ordinances. In order to monitor the Project's EBE participation, the CITY requires, and DEVELOPER agrees to take the following steps:
- A. Provide a list of all categories of work on the above-described PROJECT with budget allowances, for which bids will be solicited and highlight those categories, based upon Developer's knowledge and experience,

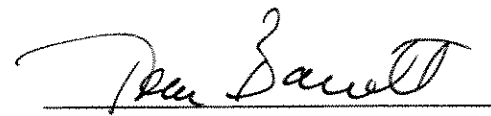
which are conducive to EBE participation one month prior to any bids being solicited or awarded. (See Attachment: Example 1)

- B. Provide the City's EBEP 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 EBEP 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 3. Also submit EBE Subcontractor Payment Form (Exhibit 4) with the final Form D.
- IV. The CITY may impose any or all of the sanctions set forth in Section 360-08, Milwaukee Code of Ordinances, for violation of this Agreement, namely:
- (1) Withholding of payment.
  - (2) Termination, suspension or cancellation of the contract in whole or in part.
  - (3) Denial to participate in any further contracts awarded by the city.

In addition, the DEVELOPER may be liable for liquidated damages to the CITY for that percentage of the total PROJECT dollars, which represent the difference between the EBE participation requirement herein defined and the actual EBE participation attained during the PROJECT. Prior to the imposition of any liquidated damages hereunder, the CITY must demonstrate that the DEVELOPER failed to undertake the actions set forth in sec. II.A. of this Agreement in attaining EBE participation in said PROJECT.

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

This \_\_\_\_\_ day of \_\_\_\_\_ of 2005.

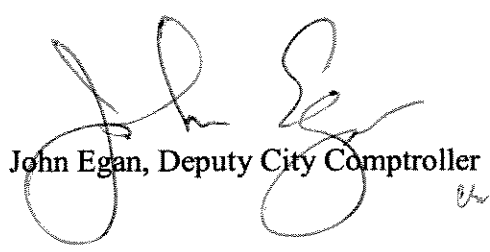


By: Tom Barrett, Mayor

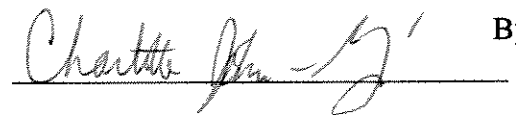
  
Ronald D. Leonhardt, City Clerk

By:

\_\_\_\_\_

  
John Egan, Deputy City Comptroller

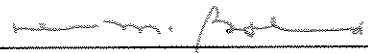
By:

  
\_\_\_\_\_

By:

Developer

Approved as to form and execution this 14<sup>TH</sup> day of MARCH, 2005.

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

