

DUPLICATE

ORIGINAL

EBE Agreement

This Emerging Business Enterprise Agreement is entered into by and between the CITY, RACM, and LEGACY:

WHEREAS, the parties to this Agreement acknowledge that this Agreement is required pursuant to the terms of the Development Agreement dated ~~August 26~~ *July 26* 2007 by and among the City of Milwaukee ("the City"), Legacy Development Partners, LLC ("LEGACY"), and the Redevelopment Authority of the City of Milwaukee ("RACM"); and

WHEREAS, under the Development Agreement, LEGACY is obligated to construct and complete the Project on the Property (as the terms "Project" and "Property" are defined in the Development Agreement); and

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

WHEREAS, LEGACY acknowledges that City and RACM entry into the Development Agreement, and TID financing for Public Improvements (as defined in the Development Agreement) were conditioned upon the LEGACY and its agents agreeing to reach a requirement of 25% EBE participation in the construction of the 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.

II. EMERGING BUSINESS ENTERPRISE PROGRAM

This Agreement requires LEGACY, 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 25% of the total PROJECT costs deemed eligible pursuant to City's EBE guidelines.

A. When LEGACY selects Home Builders, and if LEGACY hires a general contractor to build town houses, and when LEGACY awards other contracts for the PROJECT, LEGACY shall:

1. Advertise in general circulation and trade association media, as well as in community newspapers regarding home building and including subcontracting opportunities. Advertising in the Daily Reporter and two other publications shall be the minimum acceptable level of performance (**Exhibit 1**).
2. Provide interested EBEs and the agencies listed in **Exhibit 2**, with adequate information about the PROJECT;
3. Submit **EBE Participation Form A (Exhibit 3)** to EBEP. This form must be submitted with the prime contractor's bid.
4. Conduct an informational meeting in the community, providing an overview of the project and contracting opportunities.
5. Provide written notice to all pertinent construction trades and professional services EBEs listed in the current City of Milwaukee Directory, soliciting their services and allowing those businesses to participate effectively in the PROJECT. 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.ci.mil.wi.us/ciggov/doa/sp/ebep/ebedirectoryv.htm
6. Follow-up with EBEs who show an interest in the PROJECT during the initial solicitation process (**See Exhibit 4 EBE Solicitation Form**).
7. 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 should increase. Include where appropriate, the breaking down of contracts or subcontracts into smaller, economically feasible units to facilitate EBE participation.

8. 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 5 Bid Rejection Form)**.
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
11. Throughout the project, demonstrate an ongoing commitment to maximizing EBE participation.

B. If the LEGACY completes the aforementioned activities and demonstrates "good cause" for not meeting the 25% requirement for EBE participation, it shall be deemed that the LEGACY has acted in "good faith" to achieve the requirement.

C. If the LEGACY meets or exceeds the 25% EBE requirement in conjunction with said PROJECT, it shall be deemed that the LEGACY 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 25% EBE participation requirement. In addition, 20% of the trucking performed by a non-EBE firm that is a sub to an EBE firm will be counted towards the overall trucking total.

III. LEGACY agrees to report to the City's EBEP Manager on LEGACY's utilization of EBEs in its contracting activities for the PROJECT, pursuant to Chapter 360 of the Milwaukee Code of Ordinances. In order to monitor the EBE participation in the Project, the CITY requires, and LEGACY 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 LEGACY's knowledge and experience, which are conducive to EBE participation one month prior to any bids being solicited or awarded.

B. Provide the City's EBEP Office with documentation supporting efforts extended to solicit bids from EBEs. Upon request, LEGACY 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 20s' of each month on the form attached as **Exhibit 6**. Also submit EBE Subcontractor Payment Form (**Exhibit 7**) 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) Termination, suspension or cancellation of the contract in whole or in part.
- (2) Denial to participate in any further contracts awarded by the City.

In addition, the LEGACY 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 LEGACY 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 as of this 26th day of July, 2007.

CITY:

CITY OF MILWAUKEE

By: Tom Barrett
Tom Barrett, Mayor

Attest: Ronald Leonhardt
Ronald Leonhardt, City Clerk

Countersigned by Comptroller's Office:

Name Printed: [Signature]
Title: SPECIAL DEPUTY

REDEVELOPMENT AUTHORITY OF THE CITY OF MILWAUKEE

By: Kathryn West
Attest: [Signature]

APPROVED BY City Attorney's Office (Milw. Code of Ordinances § 304-41)

By: Ken P. Sullivan
Assistant City Attorney

LEGACY DEVELOPMENT PARTNERS, LLC:

By: _____
Name Printed: Sally Peltz
Title: Administrative Member

Attest: _____
Name Printed: James Sayers
Title: DCD

NOTE:
**ALL EXHIBITS AND EXAMPLES REFERRED TO HEREIN ARE AVAILABLE
FORM THE CITY'S EBE OFFICE AND WILL BE REQUIRED TO BE
APPENDED TO THE ACTUAL EBE AGREEMENT ENTERED INTO BY THE
PARTIES. SEE, ALSO, WWW.CLMILWLUS/CITYGOV/DOA/SP/EBEP/EBEP.**

EXHIBIT 1 TO EBE AGREEMENT

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 _____

The Spanish Times, Inc.
(Published weekly)
505 South 5th Street
Milwaukee, WI 53204
Tele No: (414) 276-0222
Fax: (414) 276-0703
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 2 TO EBE AGREEMENT
COMMUNITY AGENCY CONTACTS

Milwaukee Urban League
2802 West Wright Street
Milwaukee, WI 53210
(414) 374-5850
Contacted _____yes _____no
Contact Person _____
Date and Time _____

Hmong Chamber of Commerce
3726 W. National Avenue
Milwaukee, WI 53215
(414)649-8331
Contacted _____yes _____no
Contact Person _____
Date and Time _____

Milwaukee Minority Chamber of Commerce
509 West Wisconsin Avenue, Suite 606
Milwaukee, WI 53203
(414) 226-4105
Contacted _____yes _____no
Contact Person _____
Date and Time _____

Lao Family, Inc.
2331 W. Vicau Place
Milwaukee, WI 53208
(414) 385-3380
Contacted _____yes _____no
Contact Person _____
Date and Time _____

Hispanic Chamber of Commerce
816 West National Avenue
Milwaukee, WI 53204
(414) 643-6963
Contacted _____yes _____no
Contact Person _____
Date and Time _____

National Minority Contractors' Association
4380 North Green Bay Avenue
Milwaukee, WI 53209
(414) 265-5800
Contacted _____yes _____no
Contact Person _____
Date and Time _____

African American Chamber of Commerce
6203 W. Capitol Drive
Milwaukee, WI 53216
(414) 462-19450
Contacted _____yes _____no
Contact Person _____
Date and Time _____

EXHIBIT 3 TO EBE AGREEMENT

EBE Participation Form

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) OWNER/REPRESENTATIVE 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.

EXHIBIT 4 TO EBE AGREEMENT

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

Name and address of EBE Firm:

Name of individual contacted _____

Title of individual contacted _____

Type of work _____

Quotation or Proposal Received _____

REMARKS: THESE SHOULD INCLUDE ANY FOLLOW UP ACTIONS. IN THE EVENT THAT THE EMERGING BUSINESS ENTERPRISE WILL NOT BBE UTILIZED, INCLUDE AND 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 5 TO EBE AGREEMENT

Emerging Business Enterprise Program (EBEP)

Rejection Form

Name & Address of EBE Firm	Type of Work	Bid Submitted by EBE	Actual Award	Reason for bid rejection	Approved by
1.					
2.					
3.					
4					
5.					

EXHIBIT 6 TO EBE AGREEMENT
DEPARTMENT OF ADMINISTRATION
EMERGING BUSINESS ENTERPRISE PROGRAM

Form D - EBE MONTHLY REPORT

(1) Report for the Month of _____ (Final: yes ___ no ___)

(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) EBE % goal _____ and \$ goal _____

List all EBE subcontractor firm(s) utilized in connection with the above contract, either as service performed and/or supplier for the month. This form shall be signed and returned. **If this represents the final report, be sure to attach EBE Payment Certification Form (Form E).**

NAME OF EBE FIRM(s)	SERVICE PERFORMED/ MATERIAL SUPPLIED	AMOUNT PAID FOR THE MONTH	TOTAL \$ PAID Y-T-D
TOTAL PAID TO EBE(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 no later than the **20th of every month** to **DOA- Emerging Business Enterprise Program, Room 606, City Hall, 200 E. Wells, Room 606, Milwaukee, WI** or fax to **(414) 286-8752**.

DIRECTIONS FOR EBE MONTHLY REPORT (FORM D)

1. List the month that the report is being submitted. **Note: If this is the final report, check yes and submit Form E Subcontractor Payment Certification Form.**
2. Prime contractor's or firm's registered company name.
3. List full registered business address to include city/state, zip code and telephone number.
4. Brief description service performed and/or material supplied on this contract.
5. List the official Purchase Order or Contract Number, as represented on the contract or purchase order.
6. List the project number as represented on the front page of the contract.
7. List the start date of the project.
8. List the total dollars awarded to the prime contractor.
9. List the completion date of the project.
10. Prime contractor's total dollar amount paid to each EBE firm(s), for the month being reported, for service performed and/or materials supplied.
11. List the EBE percentage goal on this project and the dollar amount.
12. List the name of the name, title and phone number of the individual who prepared the report.
13. Provide the authorized signature and title of the individual who approves the report.
14. List the date that the report is completed.

THIS REPORT IS DUE THE 20TH OF EVERY MONTH FOR THE PREVIOUS MONTH'S ACTIVITY. FAILURE TO RETURN THIS FORM BY THE SPECIFIED TIME MAY CAUSE A DELAY IN PAYMENTS.

Ref: EBECentral/EBE Forms/Monthly Report -FormD.doc

EXHIBIT 7 TO EBE AGREEMENT

FORM E

**CITY OF MILWAUKEE – DEPARTMENT OF ADMINISTRATION
EQUAL OPPORTUNITIES 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 DBE 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** (DBE Monthly Report) and return to:

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

FAILURE TO ATTACH THIS FORM WITH DBE MONTHLY REPORT (FORM D) CAN SLOW THE PAYMENT PROCESS.

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 (DBE MONTHLY REPORT)

EXHIBIT E

Form of Certificate

Document Number	CERTIFICATE OF COMPLETION Document Title	
CERTIFICATE OF COMPLETION		Recording Area
		Name and Return Address Bret A. Roge, Esq. Michael Best & Friedrich LLP 100 East Wisconsin Avenue, Suite 3300 Milwaukee, Wisconsin 53202-4108
		Parcel Identification Number (PIN)

3500003000	3500971000	3502713000
3500004000	3502140000	3502804110
3500505100	3502143000	3503007110
3500519000	3502144100	3503011100
3500520000	3502145000	3500001000
3500521000	3502146000	3500002000
3500522000	3502147000	3500020110
3500876110	3502801000	3500020120
3500962100	3503004000	3500504110
3500965000	3503007120	3500507000
3500972000	3503825000	3500518100
3500973000	3503826000	3500523000
3502139000	3503831000	3500603000
3502141000	3503832000	3500813100
3502142000	3503841000	3500814100
3502148100	3503842000	3500871200
3502150100	3503843000	3500872100
3502151100	3503845000	3500873100
3502704110	3503846000	3500874000
3500963000	3503847000	3500875000
3500964000	3503848000	3500892110
3500966000	3500506100	3500898100
3500970000	3502712000	3500914100

Urban Renewal Project:	Park West Area "E" Urban Renewal Project
Redeveloper:	Legacy Development Partners, LLC
Development Agreement (including Agreement for Sale):	Dated as of _____, 2007, recorded on _____, 2007 as Document No. _____, Reel _____, Image _____
Limited Warranty Deed:	For Property from Redevelopment Authority of the City of Milwaukee ("RACM") to Redeveloper, recorded on _____, 2007 as Document No. _____, Reel _____, Image _____
Legal Description:	Legal description of the Property referred to herein is attached hereto as Exhibit A.

THIS IS TO CERTIFY that the undersigned, on behalf of RACM, caused the inspection of the above-described real estate and physical improvements constructed thereon, and that construction of said physical improvements has been completed in accordance with construction plans submitted pursuant to the Development Agreement (the "Agreement").

Construction commenced on _____, 200__, and was deemed by RACM to be completed on _____, 200__.

THIS CERTIFICATE when signed by RACM shall constitute a conclusive determination of satisfaction and termination of the covenants in the Development Agreement and the above-referenced Limited Warranty Deed with respect to the Redeveloper's obligation to construct improvements on the above-described real estate and the date for completion thereof.

Upon recording of this CERTIFICATE, the real estate described above shall specifically be "released" of record from the Development Agreement and the restrictions against the real estate set forth therein. As among Redeveloper, RACM and the City of Milwaukee (and their respective successors and assigns), however, the Development Agreement provisions shall otherwise remain in place (e.g. Redeveloper's indemnification and hold harmless duties to RACM and City in the Development Agreement remain unaffected; etc.).

This CERTIFICATE relates only to the real estate described above and does not apply to any other parcel in the above-referenced urban renewal project area.

Approved by RACM on _____, 200__, by passage of Resolution No. _____.

Dated at Milwaukee, Wisconsin this _____ Day of _____, 200__.

(SEAL)

**RACM: REDEVELOPMENT AUTHORITY
OF THE CITY OF MILWAUKEE**

By: _____
Name

Printed: _____

Title: _____

Attest:

Name

Printed: _____

Title: _____

