

**EMERGING BUSINESS ENTERPRISE
AGREEMENT**

(NORRIS PARK REDEVELOPMENT)

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This Emerging Business Enterprise Agreement (“AGREEMENT”) is entered into as of _____, 2009, by and between the CITY OF MILWAUKEE (“CITY”), and MARQUETTE UNIVERSITY (“MARQUETTE”).

WHEREAS, the parties to this Agreement acknowledge and understand that this Agreement is executed in conjunction with a Lease for the Norris Park property dated as of _____, 2009 (the “LEASE”) executed by the parties;

WHEREAS, MARQUETTE acknowledges that the CITY has established policies regarding the utilization of EBEs (defined below), which are consistent with Chapter 360 of the Milwaukee Code of Ordinances; and

WHEREAS, MARQUETTE acknowledges that CITY’s execution of the LEASE was conditioned upon MARQUETTE, its Affiliates and their agents, agreeing to use best efforts to reach a requirement of 25% EBE participation and 40% Resident Preference Participation in the construction of the Norris Park Redevelopment Project (“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. **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.** Notwithstanding anything to the contrary contained herein, MARQUETTE may rely on the CITY’s certification that a particular business qualifies as an EBE and all work performed by a business certified by the CITY as an EBE shall qualify as work to be applied toward the 18% of total Project Costs more particularly described below.
- B. EBEP means CITY’s EBE Program.
- C. 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.

- D. PROJECT means the redevelopment of the Norris Park property as more particularly described on **EXHIBIT A**.
- E. PROJECT COSTS means costs of the PROJECT, but less and excluding all PROJECT COSTS associated with the purchase, lease or right to use any land; permit fees paid to the City of Milwaukee or any other governmental entity or quasi-governmental entity; utility company fees; financing and interest expenses; insurance premiums; attorney and accounting fees; work within trades for which there is no available EBE participation; other work not contracted through MARQUETTE and over which MARQUETTE does not have direction or control in the selection of contractors or material providers for the same; and other costs approved by MARQUETTE and the CITY's EBEP Office, with such approval not being unreasonably withheld. Prior to the commencement of the PROJECT, MARQUETTE or its representatives and the EBEP Office shall meet and confer to determine the eligible PROJECT COSTS for the PROJECT.

II. EMERGING BUSINESS ENTERPRISE PROGRAM

Commencing as of the date of this AGREEMENT, MARQUETTE shall, in developing and constructing the PROJECT, voluntarily use best efforts to utilize EBEs for 25% of the total PROJECT COSTS deemed eligible pursuant to EBE guidelines.

- A. MARQUETTE from and after the date of this Agreement in conjunction with the PROJECT, shall undertake the following activities:
1. Advertising in general circulation and trade association media, as well as in community newspapers, regarding contracting and subcontracting opportunities. See **EXHIBIT B**.
 2. Providing interested EBEs and the agencies listed in **EXHIBIT C**, with adequate information about PROJECT plans, specifications, and contract/subcontract requirements prior to the contract bidding process.
 3. Obtaining and submitting the Affidavit of Participation Plan, **EXHIBIT D**, to the EBEP Office, upon request. This form should be submitted with contractor's or subcontractor's bids.
 4. Providing written notice to pertinent construction trades and professional services EBEs listed in the current City of Milwaukee Directory, soliciting their services in sufficient time (at least 1 week) to allow those businesses to participate effectively in the contract bidding process. To identify EBEs for the PROJECT, the current *Official City of Milwaukee EBE Directory* published by the EBEP should be utilized. The directory can be accessed on-line at: www.milwaukee.gov/ebe.

Following-up with EBEs which show an interest in the PROJECT during the initial solicitation process and maintaining documentation of any contact with such EBE.

5. Selecting trade and professional service areas for EBE awards in which the greatest number of EBEs exist to perform the work, and where appropriate, breaking down contracts or subcontracts into smaller, economically feasible units to facilitate EBE participation.
 6. Negotiating 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 which are not timely or consistent with the PROJECT schedule will be considered “rejectable” bids by the EBEP Office.
 7. Using commercially reasonable efforts to utilize the services offered by public or private agencies and other organizations in identifying EBEs available to perform work.
 8. Including in PROJECT bid documents and advertisements an explanation of PROJECT goals for EBE participation.
 9. As necessary and whenever possible, using commercially reasonable efforts to facilitate the following:
 - a) Joint ventures, limited partnerships or other business relationships intended to increase EBE areas of expertise, bonding capacity, credit limits, etc.
 - b) Training relationships
 - c) Mentor/protégé agreements
- B. If MARQUETTE completes the aforementioned activities for any portion of the PROJECT, it shall be deemed that MARQUETTE has acted in “good faith” and used best efforts to achieve its voluntary goal with respect to such portion.
- C. If at any point during the term of this Agreement, MARQUETTE meets or exceeds the 25% EBE goals in conjunction with any portion of the PROJECT, whether commenced before or after the date hereof, it shall be deemed that MARQUETTE has achieved or exceeded the EBE goal with respect to such portion, for the purposes of fulfilling the terms of this Agreement. The parties acknowledge that fulfillment of the EBE goal for the PROJECT shall be determined on an aggregate basis for all portions of the PROJECT, whether commenced before or after the date hereof. Accordingly, to the extent that MARQUETTE exceeds the EBE goal for any portion of the PROJECT, the EBEP Office shall consider and reflect

such excess in analyzing fulfillment of the EBE goal for other portions of the PROJECT.

- 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 goal.

III. REPORTING

MARQUETTE agrees to report to the City's EBEP Office on MARQUETTE'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 Project's EBE participation, the CITY requires, and MARQUETTE agrees to take the following steps:

- A. Provide a list of all categories of PROJECT work for each phase or portion of the PROJECT, with budget allowances, for which bids will be solicited and highlight those categories, based upon MARQUETTE's knowledge and experience, which are conducive to EBE participation.
- B. Provide the City's EBEP Office with documentation supporting efforts extended to solicit bids from EBEs. Upon request, MARQUETTE shall make information related to EBE bids available to the City's EBEP Office.
- C. Submit an EBE Monthly Report to EBEP on or before the 20th of each month, or a quarterly report with the approval of the EBEP Office, on the form attached as EXHIBIT E.

IV. RESIDENT PREFERENCE PROGRAM.

Commencing as of the effective date of this AGREEMENT, MARQUETTE shall, in developing and constructing the PROJECT, use best efforts to utilize RPP certified employees for no less than 40% of the total hours expended on "Construction," as defined in sec. 309.41 of the Milwaukee Code of Ordinances, included in Project Costs but less and excluding all non-Construction project Costs. Prior to the commencement of the PROJECT, MARQUETTE or its representatives and the EBEP Office shall meet and confer to determine the eligible Project Costs for the PROJECT.

MARQUETTE shall file the reports attached as EXHIBIT F to evidence compliance with RPP requirements with CITY's EBEP Office.

V. SANCTIONS

This is a voluntary agreement and as a result thereof is not subject to and the CITY shall not enforce against MARQUETTE or any of its affiliates or any of their agents, any of the sanctions or penalties set forth in Chapter 360 or exercise any other rights or remedies that may be available at law or in equity, except in the event of intentional fraud or misrepresentation by MARQUETTE.

IN WITNESS WHEREOF, the parties have executed this EBE AGREEMENT as of _____, 2009.

CITY OF MILWAUKEE

By: _____
Tom Barrett, Mayor

By: _____
Ronald D. Leonhardt, City Clerk

By: _____
W. Martin Morics, City Comptroller

MARQUETTE UNIVERSITY

By: _____
Rev. Robert Wild, S.J.
President

1050-2009-1404:150356

EXHIBIT A

PROJECT DESCRIPTION

(The PROJECT is described on EXHIBIT “B” to the LEASE.)

EXHIBIT B

Conquistador
3206 West National Avenue
Milwaukee, WI 53215
Telephone 414.383.1000
Fax 414.383.8885
(Published weekly)

Daily Reporter
225 East Michigan Street
Milwaukee, WI 53202
Telephone 414.276.0273
Fax 414.276.4416
(Published weekly)

Milwaukee Community Journal, Inc.
3612 N. Dr. Martin Luther King Jr. Drive
Milwaukee, WI 53212
Telephone 414.265.5300
Fax 414.265.1536
(Published twice weekly)

The Milwaukee Courier
2431 West Hopkins Street
Milwaukee, WI 53206
Telephone 414.449.4860
Fax 414.449.4872
(Published weekly)

Milwaukee Times
1938 N. Dr. Martin Luther King, Jr. Drive
Milwaukee, WI 53212
Telephone 414.263.5088
Fax 414.263.4445
(Published weekly)

EXHIBIT C

African American Chamber of Commerce
6203 West Capitol Drive
Milwaukee, WI 53216
Phone: 414.462.9450

Hispanic Chamber of Commerce
816 West National Avenue
Milwaukee, WI 53204
Phone: 414.643.6963

American Indian Chamber of Commerce
10809 West Lincoln Avenue
West Allis, WI 53227
Phone: 414.604.2044

National Association of Minority
Contractors
3100 West Concordia Avenue
Milwaukee, WI 53216
Phone: 414.449.0837

Hmong Wisconsin Chamber of Commerce
3616 W. National Avenue, Suite 99
Milwaukee, WI 53215
Phone: 414.645-8828

EXHIBIT D
AFFIDAVIT OF PARTICIPATION PLAN

Professional Service Provider/Contractor _____

Total Bid Amount \$ _____

The bidder's minimum EBE commitment is _____% of their base contract.

Consultants, Subcontractor or Supplier	Address	EBE Certified	Type of Work	Contract Value	% of Total Contract

I certify that the firm(s) identified the service and quoted the cost. If awarded this contract, our firm _____ intends to enter into subcontract agreements with the firm(s) listed for the services specified. The information on this form is true and accurate to the best of my knowledge. I further understand that falsification, fraudulent statement, or misrepresentation will result in appropriate sanctions under application Local, State or Federal laws.

Signature: _____

Print Name: _____

Title: _____

Date: _____

State of _____, County of _____

Subscribed and sworn to before me this ____ day of _____, 20__

My Commission Expires _____ SEAL

Signature of Notary Public

EXHIBIT E **City of Milwaukee EBE Monthly Report**

Project Name:
 Project Address:
 Contractor Name:
 Contractor Address:
 Phone Number:
 Project Start Date:

City Contractor Number:
 Total Project Budget:
 Construction Budget:
 Land Acquisition Amt:
 Construction Draw YTD:
 Project End Date:
 EBE Goal: **25%** **or**

List all Emerging Business Enterprises utilized in connection with the above Project, either as subcontractors or suppliers.

NAME OF EBE FIRM	EBE	SERVICE PERFORMED OR MATERIALS SUPPLIED	SUBCONTRACT AWARD AMOUNT	AMOUNT PAID TO DATE
TOTAL EBE PARTICIPATION			\$ -	\$
EBE PARTICIPATION, AS PERCENT OF TOTAL CONTRACT VALUE AND PAID TO DATE				

If the EBE participation does not equal proposed goal amounts, state what actions will taken to achieve prior to end of the project.

Information is to
 be completed by
 EBEP Analyst:
 For Statistical
 Purposes Only

AA-African for EBEP Use Only

Signed: _____

American

Submitted By:

ASPA-Asian

Pacific American

A-Native

Received

By:

Title:

American Indian

Date

Received:

Date: _____

H-Hispanic

EXHIBIT “F”

Norris Park Redevelopment Project Construction RPP Hours Calculation

Total Construction Hours Worked	
Multiplied by 40%	
Applicable RPP Goal	
Total RPP Construction Hours	
RPP Hour Surplus/Shortfall	
RPP Percentage (Total RPP Construction Hours/Total Construction Hours Worked)	