

## PERC COMPLIANCE PLAN

Developer: \_\_\_\_\_

Project: \_\_\_\_\_

### **OVERVIEW**

DEVELOPER proposes to utilize this PERC Compliance Plan with Milwaukee County to fulfill its obligations under the Development Agreement dated \_\_\_\_\_ to provide perceptible community benefits for the taxpayers of Milwaukee County. It is the intent of DEVELOPER to successfully establish relationships with certified DBE construction contractors and professional service providers to participate on contracts awarded for the completion of this Project. It is the intent of DEVELOPER to provide employment opportunities for Milwaukee County residents and persons in need of additional training, and to adhere to labor standards related to the payment of prevailing wages. Thus, in an effort to provide such benefits, and to remain in compliance with the Park East Redevelopment Compact (PERC), DEVELOPER has set the following goals with respect to employing disadvantaged business enterprises, members of the local workforce (residents) and persons involved in apprenticeship and other job training programs:

#### DBE PARTICIPATION GOALS:

Hard Construction Project Costs: 25%

Professional Services Project Costs: 17%

#### RESIDENTIAL HIRING GOALS:

Project Hours by Milwaukee County Residents: \_\_\_\_\_%

#### APPRENTICESHIP/JOB TRAINING GOALS:

Project Hours by participants in Apprenticeship/Job Training Program: \_\_\_\_\_%

\*NOTE: Payment of prevailing wage is not a goal, it is a requirement.

### **SECTION ONE: DBE PARTICIPATION**

#### *General Information*

The County's Community Business Development Partners (CBDP) department administers the provision of the PERC that ensures compliance with Chapter 42 of the Milwaukee County Ordinances, which requires good faith efforts (GFE) to achieve participation of certified Disadvantaged Business Enterprise (DBE) firms. CBDP knows the DBE market, handles the certification of firms, can assist in the portioning out of contracts to increase DBE participation and be instrumental in the facilitation of contractor/DBE relationships.

CBDP reserves the right to adjust more or less participation to DBE categories, as it deems necessary to meet the PERC program requirements, based upon knowledge of the available DBE firms to perform on specific project work.

### *Commitment*

As a condition of receiving a contract on the Project, each prime contractor shall agree not to discriminate against any person or business on the basis of sex, race, color, national origin, sexual orientation, religious belief, age or disability. Prime contractors further agree to take affirmative action to ensure that DBE firms have the maximum opportunity to compete for and substantively perform on the Project. Accordingly, each prime contractor shall commit to achieve the participation requirements established above.

All construction bidders further commit that they will not require DBE firms to engage in exclusive relationships with them (other than joint venture relationships approved by Milwaukee County) as a condition to their participation in the construction services being bid. Bidders who engage in such restraint of trade or attempts to monopolize utilization of DBE firms may have their bids rejected.

### *Certification*

In reviewing the initial participation plan, firms must be certified prior to award. No DBE credit can be given for expenditures with a non-certified firm.

A DBE firm must be certified by one of the members of the Unified Certification Program Partners ("UCP"): the Wisconsin Department of Transportation, City of Madison, Dane County and Milwaukee County. The UCP applies only to DBE certification granted under federal USDOT regulation (49 CFR Part 26). Firms that do not have current certification can find instructions and the necessary application forms at the following site:  
<http://www.county.milwaukee.gov/CertificationService12282.htm>

All DBE firms participating in the development must maintain DBE certification during the entire term of their contract. CBDP will work with firms to assist in obtaining or updating DBE certification. If documented efforts to have uncertified firms receive certification through the UCP are unsuccessful, DEVELOPER may still receive participation credit, at the discretion of CBDP, if the firm is certified under one of the following reputable programs: City of Milwaukee SBE, MMSD SWMBE, or State of Wisconsin Supplier Diversity Program (State of Wisconsin DOA). The CBDP office should be contacted directly at 414-278-4747 with specific questions and concerns.

### *Participation Calculation*

The DBE participation credited towards the contract goals for both DBE and non-DBE prime contractors is calculated on the following criteria:

1. One hundred percent (100%) participation credit will be allowed for all work self-performed where the **prime contractor is a DBE firm**. DBE firms at the first tier are encouraged to subcontract with other DBE firms.
2. One hundred percent (100%) participation credit will be granted for all contracts and purchase orders awarded to DBE firms if the identified scope of work has a **commercially useful function** in the actual work of the contract and is performed

directly by the DBE firm with its own workforce. CDBP shall determine and evaluate whether or not the firm is performing a commercially useful function on the project.

- a. To determine whether a firm is performing a commercially useful function, CDBP may evaluate the amount of work subcontracted, reasonable and customary industry practices, and other relevant factors. The participation credit allowed shall be based upon an analysis by CDBP of the specific duties that will be performed by the DBE firm(s). Each DBE firm shall be expected to actually manage and supervise the work contemplated for it by any subcontract or agreement through the use of its own employees and equipment and shall perform that portion of the actual work which is reasonable and customary within their industry.
  - b. CDBP reserves the right to deny or limit participation credit to the contractor where any DBE firm is found to be engaged in subcontracting without prior approval of CDBP. DBE firms must be independent businesses.
3. One hundred percent (100%) participation credit granted for contracts held with **lower tier DBE subcontractors** performing work with its own workforce.
  4. One hundred percent (100%) participation credit will be granted for contracts held with **lower tier DBE subcontractors who subcontract with other DBE firms**. If DBE further subcontracts a portion of its work to another firm, the value of the subcontracted work will be counted towards DBE goal only if the work is performed by another DBE firm.
  5. One hundred percent (100%) participation credit will be granted for the **cost of all materials and supplies purchased and installed by the DBE** for the work of the project. Credit shall also be given for the cost of leasing equipment provided the DBE subcontractor does not lease the equipment from the prime contractor, construction manager or affiliates thereof.
  6. One hundred percent (100%) participation credit for all purchases for materials or supplies from **DBE manufacturers or fabricators**. A DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises goods from raw materials or substantially alters the materials or supplies obtained by the contractor.
    - a. CERTIFICATION ALONE IS NOT ACCEPTABLE. Contractors should submit a copy of the official and legal wholesale distributor agreement(s) between the supplier and the manufacturer for all brands to be supplied by the wholesaler. If legal agreements are not provided, products supplied by the wholesaler may not be counted for participation credit, or at best, credit towards participation will be limited to the amount of profit actually realized by the supplier.
  7. Sixty percent (60%) participation credit will be granted on expenditures for materials or supplies purchased from a DBE "Regular Dealer." A **Regular Dealer** is a firm that owns, operates or maintains a store, warehouse, or other establishment in which the materials or supplies are kept in stock, and regularly sold to the public in the usual course of business. A Regular Dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock, if it owns and operates distribution equipment.

- a. Brokers, packagers and manufacturers' representatives or other persons who arrange or expedite transactions are **not** regarded as Regular Dealers. DBE firms may be utilized to assist in the procurement of materials and supplies, but credit will be allowed only from the amount of fees or commissions realized by the DBE firm and not the full price of the merchandise provided under any circumstance.
8. One hundred percent (100%) participation credit will be granted for the **fees or transportation charges** for the delivery of materials or supplies by a DBE to a job site, provided the Developer determines that the fee is reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the material and supplies transported under this provision will not be considered towards DBE participation unless the materials or supplies are from DBE manufacturers as covered elsewhere in this document.
9. One hundred percent (100%) participation credit will be granted for **transportation expenditures with DBE trucking firms** provided the DBE firm is responsible for the management and supervision of the entire trucking operation for which it has contracted. The DBE must also use trucks it owns, insures, and operates using drivers it employs. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. However, the DBE who leases trucks from a non-DBE firm is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE. (Concrete ready-mix operators may not get credit for leased concrete delivery trucks from non-DBE firms).
10. DBE participation credit will be affected proportionately by **approved change orders**. On change orders, Contractor shall be expected to achieve the level of participation for the change order segment of work in the contract documents, i.e., if a scope of work is contracted at 25% DBE, then change orders for that scope of work should also have at least the 25% DBE participation. This applies equally to construction costs and professional services costs.
11. Prorated participation credit will be granted for contracts where the Contractor is a legal joint venture. Credit for participation of DBE firms as joint venture partners shall be based upon an analysis of the duties, responsibilities and risks undertaken by the DBE firms as specified by the joint venture's executed joint venture agreement, as approved by CBDP prior to the bid due date. CBDP reserves the right to deny or limit BE participation credit to the contractor where any DBE joint venture partner is found to have duties, responsibilities, risks or loss and management control over the joint venture that are not commensurate with or in proportion to its joint venture ownership percentage.

CBDP may request, and a proposer or prime contractor shall promptly furnish, additional information to assist in the making of participation credit determinations, including, without

limitation: (1) specific information concerning any supplier's broker fees, mark-up, and/or commissions; (2) intended suppliers or other sources of labor, equipment, materials and/or services; (3) specific financial or other risks to be assumed by the DBE firm; and (4) identification of employees and supervisory personnel assigned to perform the project.

### *Reporting Forms*

Throughout the excavation and construction period, DEVELOPER will issue several bid packages. The individual monitoring DBE participation shall inform CDBP and DAS-Economic Development of the bid release date, date of pre-bid meeting(s) and provide copies of the bid documents/specifications. This will allow CDBP to promote the event/opportunity with certified firms, and to attend the meeting to answer questions, if any. Prior to award, DEVELOPER must submit to CDBP, with copies to DAS-Economic Development, form DBE-01, Certificate of Good Faith Efforts. Prior to beginning the work specified in said bid documents, DEVELOPER shall submit to CDBP, with copies to DAS-Economic Development, forms DBE-14 (Commitment to Contract with DBE Firms) and DBE-02 (Subcontractor/Subconsultant/Supplier Information). Listing a DBE on these forms shall constitute a written representation and commitment that the prime contractor has communicated and negotiated directly with the DBE firm(s) listed and intends to utilize them. The prime contractor will be required to enter into subcontract agreements or execute purchase orders with the DBE firm(s) for the work and price set forth on the commitment form. Copies of agreements and/or purchase orders with all DBE firms shall be submitted to CDBP and DAS-Economic Development at least seven (7) days prior to the DBE firm beginning work on the project.

DEVELOPER must also maintain DBE participation and performance logs, which will be reported to the CDBP and DAS-Economic Development on a monthly basis using form DBE-16 (DBE Utilization Report). If a DBE firm listed on DBE-14 cannot perform, or the DEVELOPER or prime contractor has a problem meeting the DBE goal, or any problem relative to the PERC requirements, DEVELOPER shall immediately contact CDBP at 414-278-4747, or via email at [cbdpcpliance@milwcnty.com](mailto:cbdpcpliance@milwcnty.com). No DBE subcontractor shall be replaced without written approval from CDBP. Requests for substitution must be made in writing and include the reason for the request.

Project subcontractors under a prime contractor (whether DBE or non-DBE) must be paid, upon satisfactory performance of its subcontract, no later than seven (7) calendar days from the receipt of each payment the prime contractor receives. CDBP requires DEVELOPER to submit form DBE-18 (DBE Payment Certification) to aid in the tracking and verification of these payments. Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written notice to CDBP. If CDBP determines there is no good cause for delaying or withholding payment, the prime contractor must pay the subcontractor within five (5) calendar days of such written decision from CDBP. All prime contractors are required to ensure that all subcontractors will include this prompt payment provision in all subcontracts at all level or tiers of subcontracting.

The County reserves the right to require DEVELOPER to utilize B2Gnow, or other internet-based system for reporting purposes.

### *Good Faith Efforts*

DEVELOPER has pledged to also undertake the following activities, all of which shall be recorded on form DBE-01. Unless otherwise approved by CBDP in writing, DEVELOPER shall complete the following:

- Designate an individual on the project that will dedicate a significant portion of their time to ensuring the DBE goal is met;
- Utilize the UCP directory to locate DBE firms;
- Utilize other local directories to find firms certified by other reputable agencies; encourage them to seek certification from the County and bid on the work;
- Publish notices to bid with various organizations, groups and industries that support the efforts of the DBE community so that Developer may reach DBE firms that it may not be familiar with or that may not be familiar with Developer and its project;
- Publish notices to bid with the Daily Reporter and other daily publications that may be subscribed to by the organizations;
- Follow up on notices with personal phone calls encouraging DBE firms to participate;
- Offer DBE firms assistance in submitting the proper bid documents;
- Have both print and electronic plan rooms to easily distribute plans to DBE groups on a large scale;
- Reduce various scopes of work to a scale that makes bidding the work feasible for DBE firms that are not equipped to take on larger scale project;
- Require DBE participation from larger subcontractors.

### *Compliance Review and Sanctions*

DEVELOPER shall be subject to periodic compliance review by CBDP and DAS-Economic Development. In situations of noncompliance, the County may retain all or a portion of DEVELOPER'S performance deposit, and/or prohibit the DEVELOPER from participating in future Milwaukee County contracting opportunities. In the event DEVELOPER consistently submits late or incomplete reports, it shall be in the discretion of the County whether to seek remediation via withholding a portion of the performance deposit.

## **SECTION TWO: PREVAILING WAGES**

### *General Information*

DAS-Economic Development administers the prevailing wage provision of the PERC. All development agreements subject to the PERC require adherence to payment of prevailing wages for construction employees. The prevailing wage rates are set annually by the Wisconsin Department of Workforce Development.

### *Reporting Forms*

DEVELOPER is required to provide copies of the certified weekly payroll reports of its contractors and subcontractors to the County on a monthly basis. The certified payroll form will likewise be used for local workforce (residential) hiring and apprenticeship/job training reporting. DEVELOPER may be required to use LCPTracker, or other internet-based system to submit the payroll reports.

### *Failure to Comply*

If DEVELOPER fails to pay prevailing wages to construction employees, the County may retain all or a portion of DEVELOPER'S performance deposit, require the DEVELOPER to pay restitution to the affected employees, and prohibit the DEVELOPER from participating in future Milwaukee County contracting opportunities. In the event DEVELOPER consistently submits late or incomplete reports, it shall be in the discretion of the County whether to seek remediation via withholding a portion of the performance deposit.

## **SECTION THREE: RESIDENTIAL HIRING**

### *General Information*

DAS-Economic Development administers the local workforce (residential) hiring provision of the PERC. All development agreements subject to the PERC require good faith efforts on behalf of DEVELOPERS to hire Milwaukee County residents at levels consistent with their stated goal.

### *Reporting Forms*

DEVELOPER will be required to submit to DAS-Economic Development a Certificate of Good Faith Efforts – Workforce Hiring (ECD-01) prior to beginning work to document how DEVELOPER went about achieving its stated residential hiring goal. This Certificate will also document DEVELOPER'S efforts to achieve its job training goal.

Further, DEVELOPER is required to provide the certified weekly payroll reports of its contractors and subcontractors to the County on a monthly basis. The certified payroll form will likewise be used for tracking prevailing wage payments and apprenticeship/job training reporting. In addition to these payroll reports, DEVELOPER shall be required to submit affidavits from its employees affirming their resident status, with included proof of residency. DEVELOPER may be required to use LCPTracker, or other internet-based system to submit the payroll reports.

### *Good Faith Efforts*

DEVELOPER has pledged to undertake the following activities, all of which shall be recorded on form ECD-01. Unless otherwise approved by DAS-Economic Development in writing, DEVELOPER shall complete the following:

- Advertise in notices that Developer is looking for County resident participation
- Sit down with unions to discuss what tools they can utilize to help find local workers
- Connect with local organizations such as Esperanza Unida, Milwaukee Urban League and Big Step to assist in locating resident workers

### *Failure to Comply*

DEVELOPER shall be subject to periodic compliance review by DAS-Economic Development. In situations of noncompliance, the County may retain all or a portion of DEVELOPER'S performance deposit, and/or prohibit the DEVELOPER from participating in future Milwaukee County contracting opportunities. In the event DEVELOPER consistently submits late or incomplete reports, it shall be in the discretion of the County whether to seek immediate remediation via withholding a portion of the performance deposit.

## **SECTION FOUR: APPRENTICESHIP/JOB TRAINING HIRING**

### *General Information*

DAS-Economic Development administers the enhanced apprenticeship/job training provision of the PERC. All development agreements subject to the PERC require good faith efforts on behalf of DEVELOPERS to employ apprentices and other persons involved in job training programs at levels consistent with their stated goal.

### *Reporting Forms*

DEVELOPER will be required to submit to DAS-Economic Development a Certificate of Good Faith Efforts – Workforce Hiring (ECD-01) prior to beginning work to document how DEVELOPER went about achieving its stated apprenticeship/job training goal. This Certificate will also document DEVELOPER'S efforts to achieve its residential hiring goal. Further, DEVELOPER is required to provide the certified weekly payroll reports of its contractors and subcontractors to the County on a monthly basis. The certified payroll form will likewise be used for tracking prevailing wage payments and residential hiring. Whether additional reporting will be needed to verify the status of those workers coming from job training programs will be determined with the assistance of the job training program. DEVELOPER may be required to use LCPTracker, or other internet-based system to submit the payroll reports.

### *Good Faith Efforts*

DEVELOPER has pledged to undertake the following activities, all of which shall be recorded on form ECD-01. Unless otherwise approved by DAS-Economic Development in writing, DEVELOPER shall complete the following:

- Work with Job-Training programs such as Big Step and Job Corps
- Require each union contractor/subcontractor to put at least one (1) apprentice on a crew. Whether more are permitted depends on the size of the crew and union rules.

### *Failure to Comply*

DEVELOPER shall be subject to periodic compliance review by DAS-Economic Development. In situations of noncompliance, the County may retain all or a portion of DEVELOPER'S performance deposit, and/or prohibit the DEVELOPER from participating in future Milwaukee County contracting opportunities. In the event DEVELOPER consistently submits late or



incomplete reports, it shall be in the discretion of the County whether to seek immediate remediation via withholding a portion of the performance deposit.

**SECTION FIVE: REPORTING SCHEDULE**

All reports referenced in this PERC Compliance Plan are attached hereto. Their submittal should be consistent with the following schedule. Should DEVELOPER desire to utilize different reports, written consent from DAS-Economic Development and CBDP is required.

The following reports are due PRIOR to the award of any contracts:

- DBE-01: Certificate of Good Faith Efforts - DBE
- ECD-01: Certificate of Good Faith Efforts – Workforce Hiring

The following reports are due 7 DAYS PRIOR TO BEGINNING WORK on the contract:

- DBE-14: Commitment to Utilize DBE
- DBE-02: Bidder Information
- Copies of agreements and/or purchase orders with all DBE firms listed in DBE-14

The following reports are due on a MONTHLY BASIS and shall be submitted within 7 days of the end of a month:

- DBE-16: DBE Utilization Report
- Copies of Certified payroll reports

The following reports are due on a VARIABLE BASIS, as laid out below:

- Employee affidavits and proof of residency due when the employee commences work on the project
- DBE-18: DBE Payment Certification - due within 7 days of a payment being made to a prime contractor

All reports shall be submitted to:

Community Business Development Partners  
Milwaukee County Dept. of Admin. Services  
633 W. Wisconsin Avenue, Suite 902  
Milwaukee, WI 53203

With a copy to:

DAS-Economic Development  
Milwaukee County Dept. of Admin. Services  
633 W. Wisconsin Avenue, Suite 903  
Milwaukee, WI 53203