

**IDLE INDUSTRIAL SITES REDEVELOPMENT GRANT AGREEMENT
BETWEEN
THE WISCONSIN ECONOMIC DEVELOPMENT CORPORATION
AND
CITY OF MADISON**

This Agreement is entered into pursuant to Chapter 238 of the Wisconsin Statutes between the Wisconsin Economic Development Corporation (“WEDC”) and City of Madison (the “Recipient”).

WITNESSETH

WHEREAS, the Recipient has submitted an Application to WEDC, requesting funds from WEDC’s Idle Industrial Sites Redevelopment grant program (“Idle Sites Grant”);

WHEREAS, the Recipient is a City located in Wisconsin;

WHEREAS, WEDC has determined that the Recipient is an eligible recipient of an Idle Sites Grant; and

WHEREAS, in reliance upon the Recipient’s Application, WEDC has approved the Recipient for up to Five Hundred Thirty Four Thousand and 00/100 Dollars (\$534,000) in an Idle Sites Grant.

NOW, THEREFORE, for valid consideration, the receipt of which is hereby acknowledged, and in consideration for the promises and covenants in this Agreement, WEDC and the Recipient agree as follows:

1. Definitions. For purposes of this Agreement, the following terms shall have the following meanings:

(a) “Agreement” means this agreement, to include all documents required to be delivered contemporaneously with the execution and delivery of this Agreement, and the attached Exhibits, together with any future amendments executed in compliance with Paragraph 21 of this Agreement.

(b) “Application” means the materials submitted by the Recipient to WEDC relating to this allocation of Idle Sites Grant.

(c) “Effective Date” means the date on which this Agreement is fully executed by both parties.

(d) “Eligible Project Costs” means costs for which the Idle Sites Grant may be used, as outlined in Paragraph 3 (f) of this Agreement, which the Recipient incurs between December 18, 2013 and September 30, 2015.

(e) “Idle Sites Grant” means the grant monies the Recipient is eligible to receive from WEDC’s Idle Industrial Sites Redevelopment grant program in accordance with this Agreement.

(f) “Matching Funds” means non-WEDC funds secured by the Recipient to meet the funding requirement of the Idle Sites Grant under this Agreement.

(g) “Project” means the Recipient’s grant funds to be used in conjunction with TIF funds and the Recipient’s in-kind match to improve the sections of Cottage Grove Road and Dempsey Road that border the vacant 28 acre former Royster-Clark fertilizer manufacturing plant site, in accordance with the Recipient’s Application and the terms of this Agreement.

(h) “Project Location” means the site or sites at which the Project will take place, specifically 902 Dempsey Road, Madison, Wisconsin.

2. Idle Sites Grant. Subject to the terms and conditions set forth in this Agreement, and in Wisconsin law, WEDC shall provide to the Recipient a grant of up to Five Hundred Thirty Four Thousand and 00/100 Dollars (\$534,000), in an Idle Sites Grant.

3. Recipient’s Obligations. The Recipient will:

(a) Complete the Project as contemplated by the Application and in accordance with the terms of this Agreement.

(b) Secure Matching Funds from non-WEDC sources equal to at least one million, two hundred and forty-six thousand dollars (\$1,246,000) to achieve the match requirement of the Idle Sites Grant under this Agreement.

(c) Provide signage, according to WEDC’s specifications, at the Project Location indicating WEDC’s financial participation in the Project.

(d) Provide acknowledgement, according to WEDC’s specifications, of WEDC’s participation in the Project in any and all planning and feasibility documents related to the Project.

(e) Provide reports to WEDC as further described in Paragraph 5 of this Agreement, in such form as required by WEDC, a sample of which is attached to this Agreement as Exhibit B.

(f) Use the Idle Sites Grant for Eligible Project Costs, incurred between December 18, 2013 and September 30, 2015, as outlined in the following budget and ensure that such Eligible Project Costs are incurred by a qualified and independent third party:

Code	Eligible Project Costs	Idle Sites Grant	TIF Funds	Total
0430	Exterior Streets	\$534,000	\$1,246,000	\$1,780,000
Total Eligible Costs		\$534,000	\$1,246,000	\$1,780,000
%		\$30%	70%	

The amount incurred by the Recipient on each Eligible Project Cost may vary by up to ten percent (10%) of the amount delineated in the table above, provided that the total amount of the WEDC Idle Sites Grant will not exceed the amount awarded under this Agreement.

4. Release of Funds. WEDC will release the Idle Sites Grant contemplated by this Agreement to the Recipient on a disbursement basis. The Recipient may request the Idle Sites Grant in up to ten (10) disbursements and will be contingent on the following:

(a) The Recipient submitting to WEDC a request for disbursement of funds in such form as required by WEDC, a sample of which is attached to this Agreement as Exhibit A.

(b) For the first disbursement, the Recipient submitting to WEDC a copy of the Recipient's redevelopment plan relevant to the Project and an executed developer agreement.

(c) The Recipient submitting to WEDC a report detailing the dollar amount and purpose of the Eligible Project Costs included in the request for disbursement as well as the dollar amount and purpose of each expenditure that the Recipient has contributed to the Project since the date of the previous disbursement of the Idle Sites Grant.

(d) The Recipient submitting to WEDC documentation of the Eligible Project Costs incurred. Such documentation may include, but not be limited to, purchase orders or invoices.

5. Reporting. The Recipient shall provide reports to WEDC according to the following requirements:

(a) Semi-Annual performance reports in such form as required by WEDC, as sample of which is attached to this Agreement as Exhibit B, covering activities between December 18, 2013 and September 30, 2015, which shall include a financial overview and narrative summary on the progress of the Project to date.

(b) Annual performance reports, in such form as required by WEDC, covering the two (2) year period after September 30, 2015. Such annual performance reports shall include details on the following metrics, specific to the Project:

- (i) Jobs created;
- (ii) Jobs retained;
- (iii) Public sector dollars leveraged;
- (iv) Private sector dollars leveraged; and
- (v) Redevelopment data, to include:
 - (i) Acres prepared for redevelopment;
 - (ii) Square feet of new construction;
 - (iii) Square feet of rehabilitated space; and
 - (iv) Tax or tax increment generated.

(c) **Schedule of Reporting:**

PERIOD COVERED	DOCUMENTATION	DUE DATE
See Paragraph 6 Below	Schedule of Expenditures	See Paragraph 6 Below
12/18/2013 – 06/30/2014	Semi-Annual Performance Report	07/31/2014
07/01/2014 – 12/31/2014	Semi-Annual Performance Report	01/31/2015
01/01/2015 – 06/30/2015	Semi-Annual Performance Report	07/31/2015
06/30/2015 – 09/30/2015	Semi-Annual Performance Report	10/31/2015
10/01/2015 - 09/30/2016	Annual Performance Report	10/31/2016
10/01/2016 - 09/30/2017	Annual Performance Report	10/31/2017

6. Schedule of Expenditures. Consistent with Wis. Stat. § 238.03(3) (a), the Recipient must submit to WEDC, within 120 days after the end of the Recipient’s fiscal year in which any grant or loan funds were expended, a schedule of expenditures of the grant or loan funds, including expenditures of any matching cash or in-kind match, signed by the director or principal officer of the recipient to attest to the accuracy of the schedule of expenditures. The Recipient shall engage an independent certified public accountant to perform procedures, approved by WEDC and consistent with applicable professional standards of the American Institute of Certified Public Accountants, to determine whether the grant or loan funds and any matching cash or in-kind match were expended in accordance with the grant or loan contract. The Recipient must make available for inspection the documents supporting the schedule of expenditures.

7. Event of Default. The occurrence of any one or more of the following events shall constitute an Event of Default for the purposes of this Agreement:

(a) The Recipient ceases operation or relocates operations outside of Wisconsin within five (5) years of the Effective Date of this Agreement.

(b) The Recipient supplies false or misleading information to WEDC in connection with this Agreement.

(c) The Recipient fails to comply with or perform, in any material respect, any of its obligations under this Agreement.

8. Remedies in Event of Default.

(a) Upon the occurrence of an Event of Default, WEDC shall send a written notice of default to the Recipient, setting forth with reasonable specificity the nature of the default. If the Recipient fails to cure any such Event of Default to the reasonable satisfaction of WEDC within thirty (30) calendar days, WEDC may, without further written notice to the Recipient, declare the

Recipient in default. In the Event of Default, WEDC may terminate the Agreement and recover from the Recipient:

- (i) One hundred percent (100%) of the total amount of Idle Sites Grant disbursed under this Agreement; and
- (ii) All court costs and reasonable attorney's fees incurred by WEDC in terminating the Agreement and recovering the amounts owed by the Recipient under this provision.

(b) These amounts shall be paid to WEDC within 30 calendar days of demand by WEDC hereunder. If the Recipient fails to pay these amounts to WEDC, the Recipient will be liable for the full unpaid balance plus interest at the annual rate of twelve percent (12%) from the date of the notice of Event of Default.

(c) The thirty (30) day cure period set forth in (a) above may be extended by WEDC, provided that the Recipient begins to cure such matter and thereafter diligently pursues a cure.

9. Recipient's Warranties and Representations. In addition to the other provisions of this Agreement, the Recipient hereby warrants and represents to the best of its knowledge that as of the date of this Agreement:

(a) The Recipient is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it, the violation of which would have a material, adverse effect on the Recipient's ability to perform its obligations under this Agreement.

(b) The financial statements and other information provided by the Recipient to WEDC are complete and accurate in accordance with Generally Accepted Accounting Principles where applicable, and have been relied on by WEDC in deciding whether to enter into this Agreement with the Recipient.

(c) The undersigned officer of the Recipient is fully authorized to execute and deliver this Agreement on behalf of the Recipient.

(d) In making these warranties and representations, the Recipient has not relied on any information furnished by WEDC.

(e) The Recipient's warranties and representations herein are true and accurate as of the Effective Date of this Agreement, and shall survive the execution thereof.

10. Wisconsin Public Records Law and Confidential Documents.

(a) The Recipient understands that this Agreement and other materials submitted to WEDC may constitute public records subject to disclosure under Wisconsin's Public Records Law, §§ 19.31-.39.

(b) Except as otherwise required or provided by court order, legal process or applicable law including §§ 19.31-.39, WEDC shall not, without the Recipient's consent, reveal or disclose to any non-government person or entity financial or other information or materials provided by the Recipient if the Recipient has indicated that such information or materials are sensitive and

should be kept confidential. The Recipient must indicate that such materials are to be protected under this paragraph by marking the documents “confidential.”

(c) If the Recipient contends that any document provided to WEDC is exempt from disclosure under Wisconsin’s Public Records Law, for reasons including that the document qualifies as a trade secret under § 134.90, the Recipient shall:

- (i) Clearly mark the document as not subject to disclosure under the Public Records Law. If the Recipient contends the document is a trade secret under § 134.90, the Recipient shall specifically mark the documents as “Confidential Trade Secrets.”
- (ii) Provide WEDC with a concise, written explanation describing the basis for contending the document is not subject to the Public Records Law.
- (iii) If applicable, provide WEDC with two copies of the document the Recipient contends is exempt – a clean copy and a copy with the exempted information redacted.

(d) WEDC agrees to notify the Recipient if it receives a public records request for documents marked under Paragraph (c).

11. Additional Requirements.

(a) **Project Records.** The Recipient shall prepare, keep and maintain such records as may be reasonably required by WEDC to validate the Recipient’s performance under this Agreement and the performance reports provided to WEDC.

(b) Inspection.

- (i) WEDC and its respective agents, shall, upon 48 hours advance written notice to the Recipient, have the right to enter the Recipient’s premises, during normal business hours, to inspect the Recipient’s operations documentation relating to this Agreement, provided, however, that such access does not unreasonably disrupt the normal operations of the Recipient.
- (ii) The Recipient shall produce for WEDC’s inspection, examination, auditing and copying, upon reasonable advance notice, any and all records which relate to this Agreement.
- (iii) WEDC reserves the right to conduct a physical site visit of the Project while the Project is ongoing and after Project completion.

(c) **Nondiscrimination in Employment.** Consistent with Wis. Stat. § 16.765: In connection with the performance of work under this contract, Recipient agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in § 51.01(5), sexual orientation or national origin. This provision shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training,

including apprenticeship. Except with respect to sexual orientation, Recipient further agrees to take affirmative action to ensure equal employment opportunities. Recipient agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.

Furthermore, consistent with Madison General Ordinance 39.02(9) (b): In the performance of the services under this Agreement the Parties agree not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. The Parties further agrees not to discriminate against any subcontractor or person who offers to subcontract on this contract because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

(d) **Consolidation or Merger.** During the term of this Agreement, the Recipient shall provide written notice to WEDC of any consolidation or merger with or into any other unrelated corporation or business entity.

(e) **Public Announcement.** The Recipient agrees to work with WEDC in making a public announcement of this Agreement.

12. Conflicts. In the event of any conflict between the provisions of this Agreement and any accompanying documents, the terms of this Agreement control.

13. Choice of Law. THIS AGREEMENT AND ALL MATTERS RELATING TO IT OR ARISING FROM IT – WHETHER SOUNDING IN CONTRACT LAW OR OTHERWISE – SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED PURSUANT TO, THE LAWS OF THE STATE OF WISCONSIN.

14. Venue, Jurisdiction. Any judicial action relating to the construction, interpretation, or enforcement of this Agreement, or the recovery of any principal, accrued interest, court costs, attorney's fees and other amounts owed hereunder, shall be brought and venued in the U.S. District Court for the Western District of Wisconsin or the Dane County Circuit Court in Madison, Wisconsin. **EACH PARTY HEREBY CONSENTS AND AGREES TO JURISDICTION IN THOSE WISCONSIN COURTS, AND WAIVES ANY DEFENSES OR OBJECTIONS THAT IT MAY HAVE ON PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS.**

15. Waiver of Right to Jury Trial. EACH PARTY WAIVES ITS RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY JUDICIAL ACTION OR PROCEEDING THAT MAY ARISE BY AND BETWEEN WEDC AND THE RECIPIENT CONCERNING OR RELATING TO THE CONSTRUCTION, INTERPRETATION OR ENFORCEMENT OF THIS AGREEMENT, OR THE RECOVERY OF ANY PRINCIPAL, ACCRUED INTEREST, COURT COSTS, ATTORNEY'S FEES AND OTHER AMOUNTS THAT MAY BE OWED BY THE RECIPIENT HEREUNDER.

16. LIMITATION OF LIABILITY. RECIPIENT HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER FROM WEDC ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR DAMAGES OF ANY OTHER

NATURE OTHER THAN ACTUAL DAMAGES INCURRED OR SUFFERED BY RECIPIENT.

- 17. Severability.** The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions, which shall remain in full force and effect to govern the parties' relationship.
- 18. WEDC Not a Joint Venturer or Partner.** WEDC shall not, under any circumstances, be considered or represented to be a partner or joint venturer of the Recipient or any beneficiary thereof.
- 19. Captions.** The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.
- 20. No Waiver.** No failure or delay on the part of WEDC in exercising any power or right under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such power or right preclude any other exercise of any other power or right.
- 21. Entire Agreement.** This Agreement embodies the entire agreement of the parties concerning WEDC's and the Recipient's obligations related to the subject of this Agreement. This Agreement may not be amended, modified or altered except in writing signed by the Recipient and WEDC. This Agreement supersedes all prior agreements and understandings between the parties related to the subject matter of this agreement.

IN WITNESS WHEREOF, WEDC and the Recipient have executed and delivered this Agreement effective the date set forth next to WEDC's signature below.

WISCONSIN ECONOMIC DEVELOPMENT CORPORATION

By: _____ Date _____
Jake Kuester
Vice President, Credit & Risk

CITY OF MADISON

By: _____ Date _____
Paul R. Soglin,
Mayor

Maribeth Witzel-Behl, City Clerk Date _____

Countersigned:

David P. Schmiedicke, Finance Director Date _____

Eric Veum, Risk Manager Date _____

Approved as to form:

Michael P. May, City Attorney Date _____

Execution of this Agreement by City is authorized by Resolution Enactment No. RES __-_____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 20__.

Notices to the Recipient hereunder shall be effective upon mailing by first class mail, postage prepaid, and addressed to the following person and address or such other person and address as the Recipient may designate in writing:

City of Madison
210 Martin Luther King, Jr. Blvd
Madison, WI 53703
Attn: Dan Kennelly

Notices to WEDC hereunder shall be effective upon mailing by first class mail, postage prepaid, and addressed as follows:

Wisconsin Economic Development Corporation
Division of Credit & Risk
P.O. Box 1687
Madison, WI 53701
Attn: Idle Industrial Site Redevelopment Program
Contract # ISR FY14-22202

**EXHIBIT A
REQUEST FOR WEDC PAYMENT**

Pearl Number: ISR FY14-22202	Rep:	Recipient:
FEIN #		Request Number:
Program: Idle Industrial Sites Redevelopment		Award Type ISR Grant:
Funding Period Covered by this Request		
From: _____ To _____		

PROJECT EXPENSES INCURRED/PAID DURING THIS PERIOD

Budget Code	Description	WEDC Funding This Period	+	Company Match (if applicable)	=	Total This Period
0430	Streets					
TOTAL:						
Cumulative to Date TOTAL						

PAYMENT/PROJECT EXPENSE/MATCH DESCRIPTION (to be completed by WEDC)

Payment Method: Disbursement

Eligible Expense Description: Exterior Streets

Match Description: Exterior Streets

Total Match % Required: 70% of total Project costs (\$1,246,000) **Match % Met To-Date:**

Documentation Required:

- (a) For the first disbursement, the Recipient submitting to WEDC a copy of the Recipient's redevelopment plan relevant to the Project and an executed developer agreement.
- (b) The Recipient submitting to WEDC a report detailing the dollar amount and purpose of the Eligible Project Costs included in the request for disbursement as well as the dollar amount and purpose of each expenditure that the Recipient has contributed to the Project since the date of the previous disbursement of the Idle Sites Grant.
- (c) The Recipient submitting to WEDC documentation of the Eligible Project Costs incurred. Such documentation may include, but not be limited to, purchase orders or invoices.

I hereby certify that the expenses reported on this form are in accordance with the terms of the agreement and that complete and accurate records are being kept to substantiate such expenses.	
_____	_____
Authorized Recipient Signature	Date

WEDC Underwriter or Vice President

Date

WEDC Finance Specialist

Date

WEDC Controller or Chief Financial Officer

Date

Retain a copy of the completed form for your records and mail the original and documentation to:
Wisconsin Economic Development Corporation, P.O. Box 1687, Madison, Wisconsin 53701

EXHIBIT B
SAMPLE PERFORMANCE REPORT
ECONOMIC DEVELOPMENT PROJECT PERFORMANCE REPORT



PLEASE RETURN YOUR COMPLETED REPORT AND REQUIRED SUPPORTING DOCUMENTATION TO:
reporting@wedc.org

PROJECT INFORMATION		
CONTRACT #: ISR FY14-22202 AWARDEE: Madison, City of PROJECT SITE: Madison, City of	REPORTING DESIGNEE: Dan Kennelly Email:	REPORTING PERIOD: -
PROJECT FUNDING	Planned	Actual -
TOTAL PROJECT BUDGET	\$1,780,000.00	
Awardee (Madison, City of) Direct Expenditures	please enter → amounts	\$
Other Privately Funded Expenditures (investors, financial institutions)		\$
Other Publicly Funded Expenditures (state, federal, other public aid)		\$
TOTAL PROJECT EXPENDITURES		\$
WEDC Funds Disbursed	\$ 0.00	\$0.00

SUMMARY OF PROGRESS
<p>Provide a comprehensive summary of project activities that have been accomplished as of the end of the reporting period. Please describe any progress towards project deliverables, as well as any factors that may have had an adverse effect on the project or slowed progress on expected performance. Briefly address project plans for the coming year including what steps will be taken to ensure performance within agreed-upon timelines. Attach additional pages if needed.</p> <p>Percentage Completion of Project: <input type="text"/>%</p> <p>What project activities have been completed as of the end of the reporting period, and which would not have occurred if not for WEDC assistance? <input style="width: 100%; height: 15px;" type="text"/></p> <p>What contract deliverables were completed during the reporting period? (Please provide an explanation for any deliverables that were not met) <input style="width: 100%; height: 15px;" type="text"/></p> <p>What actions are being taken within the next year to ensure contractual performance? <input style="width: 100%; height: 15px;" type="text"/></p>

SUPPORTING DOCUMENTATION
<p>As required by your contract, please attach the following documentation to this report and indicate which are being submitted below:</p> <p><input checked="" type="checkbox"/> Financial Statements (instructions): Interim Dated: <input type="text"/>/ <input type="text"/>/ <input type="text"/> Fiscal Year End Dated: <input type="text"/>/ <input type="text"/>/</p> <p><input type="checkbox"/> Payroll Statements (instructions): Tax Year End: <input type="text"/>/ <input type="text"/>/</p>

PRINCIPAL/PROJECT DIRECTOR AFFIDAVIT
<p>As the authorized representative for this project, I hereby attest and certify that the information provided in this report is true and correct to the best of my knowledge.</p> <div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 20px;"> <div style="width: 70%;"> <p>_____</p> <p>(SIGNATURE)</p> <p><input style="width: 100%; height: 15px;" type="text"/></p> <p>(PRINT NAME)</p> </div> <div style="width: 25%; text-align: right;"> <p>rptid: ECD ISR 22202 (04-ReportForm)</p> <div style="border: 1px solid black; width: 100%; height: 50px; margin-top: 10px;"></div> <p style="text-align: center; font-weight: bold;">WEDC Review</p> </div> </div>

PROGRESS ON ACTIVITIES AND DELIVERABLES

Summarize your organization's progress towards completion of planned metrics outlined in the award agreement; these metrics may cover a variety of areas including scope of work, affirmative covenants, and performance deliverables. Attach additional pages if necessary, or provide additional details in the "Summary of Progress" section on page 1.

Deadline	Deliverable	Description	Baseline	Required by Deadline	Actual To Date
9/30/2017	Taxable Property Value	tax increment generated	0	\$0.00	\$<Placeholder>

CAPITAL INVESTMENT

Total expenditures related to the purchase, acquisition, construction, replacement, rehabilitation or modernization of non-current, tangible, permanent fixed or capital assets.

Planned**\$1,780,000.00****Actual -****Enter Totals Below****Investment Breakdown**

Land, Buildings & Real Estate

\$

Fixtures, Vehicles & Permanent Equipment

\$

Other Capital Assets

\$