

SUBGRANTEE AGREEMENT

Subgrantee Agreement dated this _____ day of _____, 2011 (“Agreement”) by and between the Capital Area Regional Planning Commission (“CARPC”) and City of Madison (“Subgrantee”).

Recitals

A. CARPC has entered into a 36-month Cooperative Agreement (“Cooperative Agreement”), Instrument Number WIRIP0045-10, effective February 15, 2011, with the U.S. Department of Housing and Urban Development (HUD) to serve as the lead agency of the Capital Region Consortium (“Consortium”), to administer the Capital Region’s Sustainable Communities Regional Planning Grant (SCRPG).

B. Subgrantee joined as a member of the Consortium for the purposes of seeking SCRPG funds and furthering the Capital Region’s Regional Plan for Sustainable Development (RPSD), as described in the SCRPG Notice of Funding Availability (NOFA), the Capital Region’s SCRPG application (“Application”) and the Cooperative Agreement.

C. The SCRPG includes funding for “Catalytic Projects” that implement components of the RPSD. One of the Catalytic Projects is the Madison Sustainability Commerce Center (“Project”). The Cooperative Agreement includes funding in the amount of three hundred thousand dollars (\$300,000.00) for this Project (the “Award”) to be administered by Subgrantee, as described in the Application.

D. CARPC and the Subgrantee desire to enter into an Agreement for the performance by Subgrantee of services to administer the Project.

E. The Subgrantee represents that it has sufficient knowledge and experience to perform the services described in this Agreement.

F. CARPC and the Subgrantee intend to be bound by the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the parties agree as follows:

1. **Subgrantee Services.** The Subgrantee will contract for consultant services described in the attached scope of work, which is marked **Exhibit A** and which is incorporated by reference (“Scope of Work”). The Subgrantee shall ensure that consultants have the complete professional, managerial, or technical responsibility for the validity, accuracy and reliability of the Scope of Work. Prior to executing contracts with consultants, Subgrantee will provide CARPC with a statement of consultant qualifications. The statement of qualifications shall include a description of relevant skills, experiences and work samples. Subgrantee and consultants will cooperate with each other and provide timely information and timely status to

the other party regarding their efforts in order to facilitate the success of the Scope of Work. Subgrantee shall assume full responsibility for completion of all activities necessary to the Scope of Work.

2. **Match.** It is a condition precedent that Subgrantee will provide the following matching funds to be used for the Project during the term of this Agreement

EPA Brownfields k6 grant (via Delta Institute) - \$34,000

DOE Solar America grant - \$30,000

Salary (Mikolajewski, 275 hours @ \$43.48 + 41% fringe = \$16,859)

3. **Payment.** CARPC shall reimburse Subgrantee for its payments to consultants for services performed under the Scope of Work. Any additional compensation for services commissioned by Subgrantee outside the Scope of Work for which Subgrantee expects to be reimbursed from Award funds must be approved in advance by CARPC in writing. Upon receipt of any consultant invoice from Subgrantee, CARPC will request funds of an equal amount from HUD. CARPC will pay the Subgrantee within five business days of its receipt of funds from HUD. The Subgrantee is responsible for the cost of any subcontractors, materials, supplies or disbursements necessary for the consultants to perform the Scope of Work.

4. **Term.** This Agreement shall commence upon execution by the parties and, unless terminated as described below, shall continue in full force and effect until satisfactory completion of the Scope of Work has been achieved by the Subgrantee, or until December 31, 2013, whichever occurs sooner.

5. **Flow Down Provisions.** The Terms and Conditions of the Cooperative Agreement, which is incorporated herein by reference, flow down to Subgrantee. Subgrantee is required to obtain a DUNS numbers (or update its existing DUNS record), and register with the Central Contractor Registration (CCR; www.ccr.gov) no later than June 15, 2011. To the extent that the Terms and Conditions of the Cooperative Agreement apply to the work of any Subgrantee consultant or subcontractor, the Subgrantee agrees to bind every consultant or subcontractor to all the provisions of the Cooperative Agreement. If there is an irreconcilable conflict between the terms of this Agreement and the Cooperative Agreement, the provision imposing the greater obligation on the Subgrantee shall apply.

6. **Standard of Performance.** Subgrantee shall perform, and shall require its consultants and subcontractors to perform services with care, skill and diligence, in accordance with any applicable professional standards, and shall be responsible for the professional quality, technical accuracy, completeness, and coordination of all reports, designs, drawings, plans, information, specifications, and other items and services furnished under this Agreement. Subgrantee shall also comply with all applicable federal, state, and local laws, ordinances, codes, and regulations in performing its services.

7. **Consortium Agreement.** Subgrantee will enter into a Consortium Agreement or Memorandum of Understanding with CARPC no later than June 15, 2011 that generally includes Consortium goals, member roles and functions, accountability mechanisms, decision-making protocols, governance structure, joinability, and benefits and expected contributions.

8. Publications and News Releases. All deliverables, or any part thereof, and any independent products and special products arising from this Agreement, when published by the Subgrantee or other participants in the work shall contain the following acknowledgment and disclaimer:

"The work that provided the basis for this publication was supported by funding under an award with the U.S. Department of Housing and Urban Development. The substance and findings of the work are dedicated to the public. The author and publisher are solely responsible for the accuracy of the statements and interpretations contained in this publication. Such interpretations do not necessarily reflect the views of the Government."

Copies of all press releases, formal announcements, and other planned, written issuances containing news or information concerning work products or activities of this award that may be made by the Subgrantee or other person or organization participating in the work of the award, shall be provided to CARPC to forward to the HUD Government Technical Representative (GTR) for review and comment before the planned release. Whenever possible, these should be provided to CARPC to forward to the GTR for review and comment at least two weeks before the planned release, but in no event simultaneously with the release.

The use of Social Media, such as web feeds, wikis, blogs, photo and video-sharing, podcasts, and microblogs is acceptable under HUD Office of Sustainable Housing and Communities (OSHC) grant programs. Information to be released through Social Media must be provided to CARPC to forward to the GTR for review and comment at least 2 business days before the planned release.

9. Copyrights. HUD reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for Federal government purposes: (a) the copyright in any work developed under this Agreement; and (b) any rights of copyright to which Subgrantee or a contractor purchases ownership with award funds.

10. Limitation on Consultant Payments. Per the requirements of the Cooperative Agreement, federal funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant, whether retained by the federal Government or the Subgrantee, at a rate more than the equivalent of General Schedule 15, Step 10 base pay rate. See the Office of Personnel Management Website, www.opm.gov, and its Salaries and Wages link for the current base rate, which may be lower than the local rate.

11. Reporting. Subgrantee will submit to CARPC financial reports documenting expenditures of SCRPG funds and Project match (above) on the following dates:

May 31, 2011
August 31, 2011
November 30, 2011
February 28, 2012
May 31, 2012
August 31, 2012
November 30, 2012
February 28, 2013

May 31, 2013
August 31, 2013
November 30, 2013
February 28, 2014

Subgrantee will submit to CARPC biannual reports, using a template to be provided by HUD to CARPC and forwarded to Subgrantee, no later than the following dates:

August 31, 2011
February 28, 2012
August 31, 2012
February 28, 2013
August 31, 2013
February 28, 2014

12. **Default and Disputes.** The Subgrantee is in default if one or more of the following occurs:

1. Any use of Award agreement funds for a purpose other than as authorized by this Agreement;
2. Any material noncompliance with Federal, State, or local laws or regulations as determined by HUD;
3. Any other material breach of this Award Agreement, or
4. Any misrepresentation in the application submissions which, if known to HUD, would have resulted in this award not being provided.
5. Failure to meet any reporting requirement.

If HUD determines preliminarily that Subgrantee is in default as described in items 1-5, above, CARPC will give Subgrantee advance written notice of this determination and the corrective or remedial action proposed by HUD. Subgrantee shall have an opportunity to demonstrate, within the time prescribed by HUD (not to exceed 30 days from the date of the Subgrantee's receipt of the notice), and on the basis of facts and data, that it is not in default, or that the proposed corrective or remedial action is inappropriate, before HUD implements the corrective or remedial action.

Where HUD determines that corrective or remedial actions by Subgrantee have not been undertaken as instructed, or will not be effective to correct the default and to prevent further default, HUD may take the following additional corrective and remedial actions under this Award Agreement:

1. Reduce the award in the amount affected by the default.
2. Demand repayment of all award amounts.
3. Temporarily withhold cash payments pending correction of the deficiency by the grantee or Subgrantee.

4. Withhold further payments.
5. Take any other remedial action legally available.

In the event that HUD takes any of the above corrective and remedial actions, CARPC will apply those actions to Subgrantee as necessary to comply with HUD requirements.

13. **Indemnification.** Each party shall be responsible for the consequences of its own acts, errors or omissions and those of its employees, officers, officials, agents, boards, committees, commissions, agencies and representatives and shall be responsible for any losses, claims and liabilities which are attributable to such acts, errors or omissions including providing for its own defense. In situations involving joint liability, each party shall be responsible for the consequences of its own acts, errors or omissions and those of its employees, officers, officials, agents, boards, committees, commissions, agencies and representatives. It is not the intent of the parties to waive any statutory protections or impose liability beyond that imposed by state statutes.

14. **Insurance.** During the term of this Agreement, Subgrantee shall provide and maintain at its own expense the following kinds of insurance with limits of liability as set forth below:

<u>Insurance</u>	<u>Limits of Liability</u>
Workers Compensation	Statutory
Commercial general liability	\$2,000,000
Automobile liability	\$1,000,000

Subgrantee agrees to provide CARPC with a Certificate of Insurance evidencing the coverages required above. This Certificate of Insurance shall also provide for 30 days' prior notice to CARPC in the event of cancellation.

15. **Non-Assignability.** Subgrantee shall not subcontract or assign this Agreement, or otherwise dispose of its right, title or interest therein, without obtaining the prior written consent of CARPC. CARPC retains the right to approve or disapprove the assignment at its discretion.

16. **Equal Employment Provisions.** In performing the service hereunder, Subgrantee agrees to comply with all applicable local, state and federal laws, regulations and orders relating to fair and equal employment opportunity practices and policies.

17. **Severability.** The invalidity, illegality, or unenforceability of any provision of this Agreement shall not affect the validity, legality or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

18. **Attorneys' Fees.** If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party will be entitled to its reasonable

attorneys' fees, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which that party may be entitled.

19. **Entire Agreement.** This Agreement, together with **Exhibit A**, supersedes any previous agreement or undertakings. It may not be modified except in writing executed by both parties.

Dated as of the date set forth on the first page, above.

SUBGRANTEE
CITY OF MADISON

CAPITAL AREA REGIONAL
PLANNING COMMISSION

By: _____
_____, Mayor

By: _____
Authorized Representative

By: _____
Maribeth Wizel-Behl, Clerk

Approved:

Dean Brasser, Comptroller

Approved as to form:

Michael P. May, City Attorney

EXHIBIT A

SCOPE OF WORK

Madison Sustainability Commerce Center (MSCC)

Subgrantee will enter into agreements with consultants to perform the following services:

1. Prepare a Project Proposal/Business Plan to be used in the recruitment of tenants and the selection of a private developer to construct and operate the MSCC (Months 1-15)
2. Prepare architectural and engineering plans for building and site (Months 6-24)
3. Prepare a description of the public benefits envisioned for the MSCC which will include consideration of the following: (Months 1-18)
 - Public education of sustainability
 - Workforce development
 - Incubator space
 - Public gathering space
 - Sustainability design center
 - Other as appropriate
4. Conduct predevelopment and site planning work (Months 1-30)
 - Marketing
 - Tenant recruitment and negotiations
 - Developer recruitment
 - Public outreach and education
 - Site and facility planning