

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 the 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 Thousand and no/100ths Dollars (\$500,000.00) 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) “Award Date” means the date the Idle Sites Grant was approved by WEDC, specifically, June 30, 2016.

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

(e) “Eligible Project Costs” means costs for which the Idle Sites Grant and Matching Funds may be incurred, as outlined in Paragraph 3(b) of this Agreement, between the Award Date and June 30, 2018. Eligible Project Costs shall not include soft costs.

(f) “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, which may be used for infrastructure, including costs for an access road into the Project site interior from Fair Oaks Avenue, parking, and upgrades to sewer, water, gas and electric facilities.

(g) “Ineligible Costs” means costs incurred before the Award Date, in-kind contributions, new construction, costs related to grant application preparation, professional fees, and financing fees or other debt.

(h) “Matching Funds” means non-WEDC funds secured by the Recipient to meet the pro rata match requirement of the Idle Sites Grant under this Agreement, which may be used for infrastructure, remediation and demolition.

(i) “Project” means the Recipient’s redevelopment of the 10.5-acre site that was the former location of the Garver Feed Mill, in accordance with the Recipient’s Application and the terms of this Agreement.

(j) “Project Location” means the site or sites at which the Project will take place, specifically 109 and 115 South Fair Oaks Avenue, Madison, Wisconsin.

(k) “WEDC” means the Wisconsin Economic Development Corporation, together with its successors and assigns.

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 Thousand and no/100ths Dollars (\$500,000.00), 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) Use the Idle Sites Grant and Matching Funds for Eligible Project Costs, incurred by the Recipient or on behalf of the Recipient by Garver Feed Mill, LLC between the Award Date and June 30, 2018, as outlined in the following budget:

| Budget Code | Eligible Project Costs | SOURCES | | | | TOTAL |
|--|------------------------|-----------------------|--------------------|-----------------------|-----------------|---------------------|
| | | WEDC Idle Sites Grant | City of Madison | Garver Feed Mill, LLC | Focus on Energy | |
| 0415 | Infrastructure* | \$500,000 | \$1,125,000 | \$1,491,300 | | \$3,116,300 |
| 0232 | Remediation | | | \$280,000 | | \$280,000 |
| 0190 | Demolition | | | \$220,000 | | \$220,000 |
| **Eligible Project Costs Subtotal | | \$500,000 | \$1,125,000 | \$1,991,300 | | \$3,616,300 |
| Other Activities | | | | | | |
| 0385 | Renovations | | | \$9,524,000 | \$50,000 | \$9,574,000 |
| 0200 | New Construction | | \$700,000 | \$3,532,700 | | \$4,232,700 |
| 0310 | Soft Costs | | | \$2,743,000 | | \$2,743,000 |
| ***Ineligible Costs Subtotal | | | \$700,000 | \$15,799,700 | \$50,000 | \$16,549,700 |
| | TOTAL | \$500,000 | \$1,825,000 | \$17,791,000 | \$50,000 | \$20,166,000 |

*Infrastructure can include costs for an access road into the site interior from Fair Oaks Avenue, parking, and upgrades to sewer, water, gas and electric facilities.

**Costs eligible for Idle Site Funds and Matching Funds. Idle Site Funds cannot exceed 30% of the eligible project costs. Matching funds must equal at least \$1,166,666 in order for Recipient to obtain the maximum amount of the Idle Site Funds, and must be documented prior to the final disbursement. Eligible Costs in excess of the Matching Funds amount will be reported as leverage on performance reports.

***Costs ineligible for Idle Site Funds or Matching Funds. These costs should be reported as leverage on performance reports.

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.

(c) Secure Matching Funds from non-WEDC sources equal to at least \$1,166,666.00, to achieve the funding requirement to the Idle Sites Grant under this Agreement.

(d) Include acknowledgement of WEDC's financial participation in the Project in any signage at the Project Location.

(e) Provide acknowledgement of WEDC's participation in the Project in any and all planning and feasibility documents related to the Project.

(f) 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.

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 payment of funds in such form as required by WEDC, a sample of which is attached to this Agreement as Exhibit A.

(b) The Recipient submitting to WEDC confirmation that private financing has been secured.

(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, and Matching Funds in an amount pro rata with the Idle Sites Grant funds being requested, incurred. Such documentation may include, but not be limited to, purchase orders or invoices.

(e) The Recipient must request all Idle Sites Grant funds no later than September 30, 2018.

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 the Award Date and June 30, 2018, which shall include a financial overview and narrative summary on the progress of the Project to date, and details on the following metrics, specific to the Project:

- (i) Capital Investment;
- (ii) Leverage;
- (iii) Site work Remediation;
- (iv) Job creation; and
- (v) Taxable property value.

(b) Schedule of Reporting:

| PERIOD COVERED | DOCUMENTATION | DUE DATE |
|-----------------------------------|--------------------------|-----------------------|
| See Paragraph 6 Below | Schedule of Expenditures | See Paragraph 6 Below |
| June 30, 2016 – December 31, 2016 | Performance Report | January 31, 2017 |
| January 1 – June 30, 2017 | Performance Report | July 31, 2017 |
| July 1 – December 31, 2017 | Performance Report | January 31, 2018 |
| January 1 – June 30, 2018 | Performance Report | July 31, 2018 |

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 the Project within five (5) years of the Effective Date of this Agreement and commences substantially the same economic activity outside of Wisconsin.

(b) The Recipient supplies false or misleading information to WEDC in connection with this Agreement, without providing a satisfactory explanation, in WEDC's sole discretion, for the noncompliance.

(c) The Recipient fails to comply with or perform, in any material respect, any of its obligations under this Agreement, without providing a satisfactory explanation, in WEDC's sole discretion, for the noncompliance.

8. Remedies in Event of Default.

(a) Upon the occurrence of any 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 extend the cure period if WEDC determines, in its sole discretion, that the Recipient has begun to cure the Event of Default and diligently pursues such cure, or, without further written notice to the Recipient, declare the Recipient in default. The cure period shall in no event be extended more than ninety (90) days. In the Event of Default, WEDC shall terminate the Agreement and recover from the Recipient:

- (i) One Hundred percent (100%) of the funds disbursed to the Recipient under this Agreement;
- (ii) All court costs and reasonable attorneys' fees incurred by WEDC in terminating the Agreement and recovering the amounts owed by the Recipient under this provision; and
- (iii) A financial penalty of up to one percent (1%) of the Idle Sites Grant.

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

(c) Upon an Event of Default, WEDC shall, without further notice withhold remaining disbursements of the Idle Sites Grant.

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

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

(d) 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. 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 and any successor statutes and regulations (the "Public Records Law").

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 during the term of this Agreement.

(c) **Nondiscrimination in Employment.** Consistent with Wis. Stat. § 16.765, as the same may be renumbered or amended from time to time: 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.

(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: _____
Mark R. Hogan
Secretary & CEO

_____ Date

CITY OF MADISON

By: _____
Paul Soglin,
Mayor

_____ Date

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
215 Martin Luther King, Jr. Blvd.
Madison, WI 53701
Attn: Paul Soglin

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 FY16-23254

**EXHIBIT A
REQUEST FOR WEDC PAYMENT**

| | | |
|---|------|----------------------------|
| Award Number: ISR FY16-23254 | Rep: | Recipient: City of Madison |
| FEIN # | | Request Number: |
| Program: Idle Industrial Site Redevelopment | | Award Type: Grant |
| Funding Period Covered by this Request From: _____ To: _____ | | |

PROJECT EXPENSES INCURRED/PAID DURING THIS PERIOD

| Budget Code | Description | WEDC Funding This Period | Matching Funds | Total This Period |
|---------------|-----------------|--------------------------|----------------|-------------------|
| 0415 | Infrastructure* | | | |
| 0232 | Remediation | | | |
| 0190 | Demolition | | | |
| | | | | |
| TOTAL: | | | | |

*Infrastructure can include costs for an access road into the site interior from Fair Oaks Avenue, parking, and upgrades to sewer, water, gas and electric facilities.

PAYMENT/PROJECT EXPENSE/MATCH DESCRIPTION - Disbursement

- 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. _____
- The Recipient submitting to WEDC documentation of the Eligible Project Costs, and Matching Funds in an amount pro rata with the Idle Sites Grant funds being requested, incurred. Such documentation may include, but not be limited to, purchase orders or invoices. _____
- The Recipient must request all Idle Sites Grant funds no later than September 30, 2018. _____

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

Date

WEDC Controller or Finance Department

Date

Retain a copy of the completed form for your records and email the form and documentation to
disbursements@wedc.org.

reporting@wedc.org

| PROJECT INFORMATION | | |
|---|---|--|
| CONTRACT #: <input type="text"/> AWARDEE: <input type="text"/> PROJECT SITE: <input type="text"/> | REPORTING DESIGNEE: <input type="text"/> Email: <input type="text"/> | REPORTING PERIOD: <input type="text"/> |
| PROJECT FUNDING | Planned | Actual |
| TOTAL PROJECT BUDGET | <input type="text"/> | |
| Awardee Direct Expenditures | please enter → amounts | \$ <input type="text"/> |
| Other Privately Funded Expenditures (investors, financial institutions) | | \$ <input type="text"/> |
| Other Publicly Funded Expenditures (state, federal, other public aid) | | \$ <input type="text"/> |
| TOTAL PROJECT EXPENDITURES | | \$ <input type="text"/> |
| WEDC Funds Utilized | <input type="text"/> | <input type="text"/> |
| | | |

| SUMMARY OF PROGRESS | |
|---|--------------------------|
| 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. | |
| Percentage Completion of Project: | <div><div></div></div> % |
| 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? | |
| <div></div> | |
| What contract deliverables were completed during the reporting period? (Please provide an explanation for any deliverables that were not met) | |
| <div></div> | |
| What actions are being taken within the next year to ensure contractual performance? | |
| <div></div> | |

| GENERAL CERTIFICATIONS | |
|---|--|
| <p>No WEDC funds were utilized to outsource jobs from the state of Wisconsin.</p> <p> <input checked="checked" type="checkbox"/> Agree <input type="checkbox"/> Disagree (attach an explanation) </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="border-bottom: 1px solid black; height: 20px; margin-bottom: 5px;"></div> <p>(SIGNATURE)</p> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%; border-bottom: 1px solid black; height: 20px;"></div> <div style="width: 45%; border-bottom: 1px solid black; height: 20px;"></div> </div> <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="width: 45%;">(PRINT NAME)</div> <div style="width: 45%;">(EMAIL ADDRESS)</div> </div> | <p style="text-align: right; margin-bottom: 20px;">rptid:</p> <div style="border: 1px solid black; height: 100px; margin-top: 20px;"></div> <p style="text-align: right; margin-top: 10px;">WEDC Review</p> |

PROGRESS ON ACTIVITIES AND DELIVERABLES

Summarize your organization's progress towards completion of planned metrics outlined in the award agreement by providing quantitative responses, such as the number/unit attained or the percentage toward completion. Include all items in the agreement's scope of work, affirmative covenants, and performance deliverables sections. Attach additional pages if necessary, or provide additional details in the "Summary of Progress" section on page 1

| Scope of Work Item/Affirmative Covenant/Deliverable | Progress on Metric |
|---|--------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |

CAPITAL INVESTMENT**Planned****Actual**

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

\$

Enter Totals Below**Investment Breakdown**

Land, Buildings & Real Estate

\$

Fixtures & Permanent Equipment

\$

Other Capital Assets

\$

Supporting Environmental Documentation

1. Please provide a comprehensive summary of the work that has been accomplished during the reporting period. This summary should also include any proposed changes to the project since it was presented in the application. The summary should be ½ to 1 page long.
2. Please provide photographs demonstrating the progress of the project since the last Semi-Annual Report was submitted.
3. Please submit to the Idle Industrial Sites Redevelopment Program copies of any Project related documents that are submitted to the Wisconsin Department of Natural Resources, Petroleum Environmental Cleanup Fund Award, Agricultural Chemical Cleanup Program, or the United States Environmental Protection Agency. Examples of such reports include, but are not limited to, site investigation, remediation, monitoring, initial notice of release of contamination, and closure request reports. The submittal date and type of report should be identified on all copies of the above referenced requested government documents sent to WEDC.
4. Failure to submit required records may result in the denial of future payment requests.