



Community Development Authority Board of Directors

Whitewater Municipal Building Community Room,
312 West Whitewater St., Whitewater, WI 53190
*In Person and Virtual

Thursday, February 19, 2026 - 5:30 PM

**Citizens are welcome (and encouraged) to join our webinar via computer, smart phone, or telephone.
Citizen participation is welcome during topic discussion periods.**

Please click the link below to join the webinar:

<https://teams.microsoft.com/meet/21189804496547?p=RSpuSw3hjtQBAANctM>

Dial in by phone

+1 929-229-5663,,129564377# United States, New York City

Find a local number

Phone conference ID: 129 564 377#

Please note that although every effort will be made to provide for virtual participation, unforeseen technical difficulties may prevent this, in which case the meeting may still proceed as long as there is a quorum. Should you wish to make a comment in this situation, you are welcome to call this number: (262) 473-0108.

AGENDA

CALL TO ORDER

ROLL CALL

CONFLICT OF INTEREST

Would any board member wish to declare any known Conflict of Interest with the items presented on today's CDA Board Agenda?

GOOD GOVERNANCE MANUAL

Below is a link to the City of Whitewater's Governance Manual. This document serves as our central guide for operational excellence, outlining our commitment to accountability, transparency, and strategic oversight.

<https://mccmeetingsystem.blob.core.usgovcloudapi.net/session-1145bc051c5b485b9d35d2eb0a5a9e58-read/Governance%20Manual%202024-06-18.pdf?sv=2021-06-08&st=2026-02-05T20%3A23%3A05Z&se=2026-02-05T20%3A53%3A05Z&sr=b&sp=racwdl&sig=PprMOxir4DmqWg3F0%2Fqd3um08BK1ONHkxRRt8qqksis%3D>

Please feel free to refer to this manual often.

APPROVAL OF AGENDA

A committee member can choose to remove an item from the agenda or rearrange its order; however, introducing new items to the agenda is not allowed. Any proposed changes require a motion, a second, and approval from the Committee to be implemented. The agenda shall be approved at each meeting even if no changes are being made at that meeting.

CONSENT AGENDA

Items on the Consent Agenda will be approved together unless any committee member requests that an item be removed for individual consideration.

- [1.](#) Approval of January Minutes
- [2.](#) Community Development Dashboard
- [3.](#) Memo regarding TIF Requests
- [4.](#) Update on Habitat for Humanity project
- [5.](#) Update on Innovation Center

HEARING OF CITIZEN COMMENTS

No formal Committee action will be taken during this meeting although issues raised may become a part of a future agenda. Participants are allotted a three minute speaking period. Specific items listed on the agenda may not be discussed at this time; however, citizens are invited to speak to those specific issues at the time the Committee discusses that particular item.

To make a comment during this period, or during any agenda item: On a computer or handheld device, locate the controls on your computer to raise your hand. You may need to move your mouse to see these controls. On a traditional telephone, dial *6 to unmute your phone and dial *9 to raise your hand.

CONSIDERATIONS / DISCUSSIONS / REPORTS

- [6.](#) DPA loan applicant(s) discussion and approval(s)
 - a. Down Payment Assistance Loan Application, 815 E North St
 - b. Down Payment Assistance Loan Application, 202 W North St
- [7.](#) Demo quote for 116 E Main St.

EXECUTIVE SESSION

Adjourn to Closed Session, TO RECONVENE, pursuant to Wisconsin Statutes 19.85(1)(e) "Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session. Items to be discussed:

8. Review and discussion of Open Records Request for Closed session meeting minutes (October 2025)

9. Update on Becker & Bolton
10. Update on Fine Food Arts
11. Update on Royal Hounds
12. Review and Discussion of 136 N. Jefferson St
13. Review and discussion of Stonehaven DA progress

RECONVENE INTO OPEN SESSION

FUTURE AGENDA ITEMS

ADJOURNMENT

A quorum of the Common Council may be present. This notice is given to inform the public that no formal action will be taken at this meeting.

Anyone requiring special arrangements is asked to call the Office of the City Manager / City Clerk (262-473-0102) at least 72 hours prior to the meeting.



Community Development Authority Board of Directors

Whitewater Municipal Building Community Room,
312 West Whitewater St., Whitewater, WI 53190

*In Person and Virtual

Thursday, January 15, 2026 - 5:30 PM

AGENDA

CALL TO ORDER

Meeting was called to order at 5:30pm. Authorization to waive the 72 hour notice period was approved.

Motion made by Board Member Coburn, Seconded by Board Member Kachel.

Voting Yea: Board Member Coburn, Board Member Kachel, Board Member Kromholz, Board Member Price, Board Member Christon, Council Representative Schanen

ROLL CALL

PRESENT

Board Member Thayer Coburn
Board Member Jon Kachel
Board Member Joseph Kromholz
Board Member Kelsey Price
Board Member Christ Christon
Council Representative Brian Schanen

ABSENT

Council Representative Orin O.Smith

APPROVAL OF AGENDA

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Agenda was approved.

Motion made by Board Member Coburn, Seconded by Council Representative Schanen.

Voting Yea: Board Member Coburn, Board Member Kachel, Board Member Kromholz, Board Member Price, Board Member Christon, Council Representative Schanen

CONSENT AGENDA

Items on the Consent Agenda will be approved together unless any committee member requests that an item be removed for individual consideration.

Consent agenda was approved.

Motion made by Board Member Kachel, Seconded by Board Member Price.
Voting Yea: Board Member Coburn, Board Member Kachel, Board Member Kromholz, Board Member Price, Board Member Christon, Council Representative Schanen

1. Review and Approval of December Minutes
2. Preliminary December Financials for review

HEARING OF CITIZEN COMMENTS

No formal Committee action will be taken during this meeting although issues raised may become a part of a future agenda. Participants are allotted a three minute speaking period. Specific items listed on the agenda may not be discussed at this time; however, citizens are invited to speak to those specific issues at the time the Committee discusses that particular item.

To make a comment during this period, or during any agenda item: On a computer or handheld device, locate the controls on your computer to raise your hand. You may need to move your mouse to see these controls. On a traditional telephone, dial *6 to unmute your phone and dial *9 to raise your hand.

CONSIDERATIONS / DISCUSSIONS / REPORTS

3. Facade Loan Program Update

An update was provided regarding the Facade Loan Program. The recommendations to cap the program at \$15,000 with a lien to the property for a period of three years was approved. The program will be on-going.

Motion made by Board Member Kachel, Seconded by Board Member Coburn.
Voting Yea: Board Member Coburn, Board Member Kachel, Board Member Kromholz, Board Member Price, Board Member Christon, Council Representative Schanen

4. Innovation Center Update

Mason Becker, Community Development Director provided an update.

Richelle Walenton (1004 E Main St), Jeffrey Knight (405 Panther Ct), Brad Ceranske (N9503 Woodward Rd), John Pio (1004 E Main St), Larry Kachel (457 S. Buckingham Blvd.), Jill Gerber (234 S. Pleasant St.,) provided comments.

5. Black Sheep Loan update

Staff recommended to not incur any further legal costs. The additional cost of \$10,000-\$16,000 outweighs any realistically expected potential benefits as there is no substantial collateral to recoup against the legal fees already incurred.

Staff to provide a list of collateral against Fine Food Arts, LLC to the CDA at their next meeting.

6. Discussion and possible action on Down Payment Assistance Loan request for 455 Howard Road (/A518200003)

The CDA approved the Down Payment Assistance Loan request for 455 Howard Road.

Motion made by Board Member Coburn, Seconded by Board Member Kachel.
Voting Yea: Board Member Coburn, Board Member Kachel, Board Member Kromholz,
Board Member Price, Board Member Christon, Council Representative Schanen

7. Discussion and possible action on Down Payment Assistance Loan request for 204 N Queen St (/PC 00012)

The CDA approved the Down Payment Assistance Loan request for 204 N Queen St.

Motion made by Board Member Price, Seconded by Board Member Kachel.
Voting Yea: Board Member Coburn, Board Member Kachel, Board Member Kromholz,
Board Member Price, Board Member Christon, Council Representative Schanen

8. Discussion on CDA-owned parcels BIRW 00003A, BIRW 00002, & BIRW 00001 on Jefferson St

Mason Becker, Community Development Director provided an update regarding CDA-owned parcels BIRW 00003A, BIRW 00002, & BIRW 00001 on Jefferson St.

John Pio (1004 E Main St) provided comments.

9. Update on downtown activities

Mason Becker, Community Development Director provided an update.

Whitewater’s downtown remains a central economic and community asset, supported by a diverse mix of businesses, but current data shows a ground-floor vacancy rate of approximately 15 percent—above generally accepted benchmarks for a healthy downtown corridor. In response, the City of Whitewater, through the Community Development Department and Community Development Authority, is actively pursuing targeted redevelopment of underutilized properties, reinvestment through long-standing loan programs, nearby housing development, infrastructure support, resumed business retention efforts, and strengthened partnerships with local and state organizations. These actions reflect a deliberate strategy to stabilize occupancy, return properties to productive use, and position the downtown for sustained reinvestment and long-term vitality rather than relying on market forces alone.

Jeffrey Knight (405 Panther Court) suggested that the CDA review the Bowers House Development Agreement.

10. Pre-3 TIF Request: Review and Discussion

Mason Becker, Community Development Director provided an update. The Common Council will be reviewing the TIF request along with the rezoning and plan amendment recommendations from the PARC at the January 20, 2026 Common Council meeting. If approved at that time, staff will continue working on a full Development Agreement which will come back to the CDA board for review and approval.

Representatives from Ehlers summarized their review of the financial request and made recommendations for the assistance to be provided on the project.

Staff to respond to citizen asked questions: How many projects throughout the state have TIF funding? What's the average amount of TIF that's given to a developer? Who requests

the TIF assistance - the community or the developer? Can the number of units be brought down so it is within budget and not need any TIF assistance?

Bob Murray of Pre/3 provided comments.

Citizen Comments: Brad Ceranske (N9503 Woodward Rd), Richelle Walenton (1004 E Main St), Aubrey Thompson (318 W North St), Chuck Mills (336 Whiton St), Nancy Boyer (1270 E Jakes Way), Jeffrey Knight (405 Panther Ct), Larry Kachel (457 S Buckingham Blvd.) and Jill Gerber (234 S Pleasant St) provided comments.

EXECUTIVE SESSION

Adjourn to Closed Session, TO RECONVENE, pursuant to Wisconsin Statutes 19.85(1)(e) "Deliberating or negotiating the purchasing of public properties, the investing of public funds, or conducting other specified public business, whenever competitive or bargaining reasons require a closed session. Items to be discussed:

11. Pre-3 TIF: Review and Discussion
12. Community Engagement Center discussion

RECONVENE INTO OPEN SESSION

Motion to reconvene into open session

Motion made by Council Representative Schanen, Seconded by Board Member Price.

Voting Yea: Board Member Coburn, Board Member Kachel, Board Member Kromholz, Board Member Price, Board Member Christon, Council Representative Schanen

FUTURE AGENDA ITEMS

Council Representative Brian Schanen requested a cost breakdown of expenses related to the Habitat for Humanity project.

ADJOURNMENT

Motion made by Board Member Kachel, Seconded by Council Representative Schanen.

Voting Yea: Board Member Coburn, Board Member Kachel, Board Member Kromholz, Board Member Price, Board Member Christon, Council Representative Schanen

Community Development Monthly Report

Item 2.

JANUARY 2026

Response Time

- **Permit processing:** 7–10 business days
- **First response to inquiries:** 24–48 hours
- **Code case resolution:** ~30 days- *may vary on the case*

Strategic activity

- Updated Façade Loan Guidelines
- Commercial business location discussions
- Potential manufacturing discussions
- Responded to 1 RFI

Monthly
Contacts

116

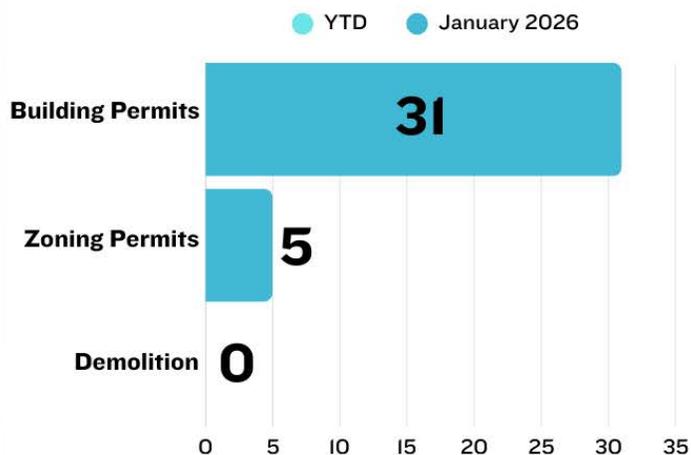
Total
Contacts

116

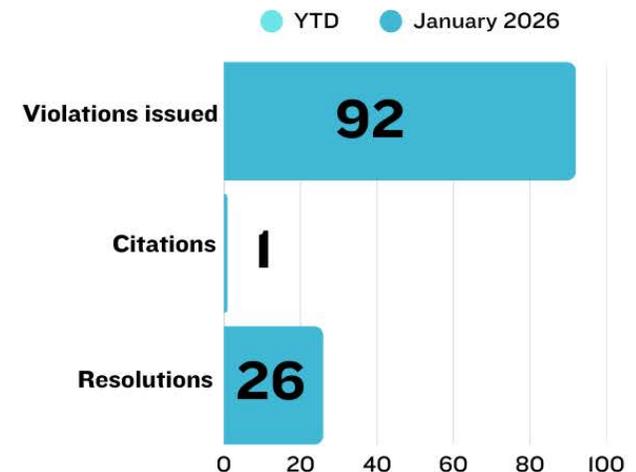
New
Construction

0

Permits



Enforcement/Outcome



Local Impact:

Down payment assistance: 2 households / \$50,000 YTD

Note: Implementation of iWorQ will provide a more accurate measure of response times, code violations, process and inquiries. Available after 1st quarter 2026.



Community Development Authority

Meeting Date: February 19, 2026

Agenda Item: Response to Public Questions Regarding Use of Tax Increment Financing (TIF)

Staff Contact: Mason Becker, mbecker@whitewater-wi.gov

BACKGROUND

At the Community Development Authority (CDA) meeting held January 15, 2026, members of the public raised several questions regarding the City of Whitewater’s use of Tax Increment Financing (TIF) as an economic development and redevelopment tool. The questions focused on the typical level of TIF assistance provided, who initiates requests for TIF support, whether TIF obligations can be paid off early to reduce interest costs, and how the use of TIF benefits taxpayers.

This memorandum is intended to provide factual background, policy context, and plain-language explanations to assist the CDA and the public in understanding how TIF is used in Wisconsin generally and in Whitewater specifically. TIF has existed in Wisconsin for 50 years and remains one of the primary tools for local communities authorized under state law to remediate blight, support infrastructure, and enable development that would not otherwise occur “but for” the use of tax incremental financing.

HISTORIC CONTEXT: TIF IN WISCONSIN

Wisconsin adopted Tax Increment Financing in 1975 as a redevelopment tool to help communities address blighted areas, obsolete industrial sites, and underutilized properties. The TIF statute has been amended over time to expand eligible uses, establish maximum district lifespans, and strengthen financial accountability requirements.

Key elements of Wisconsin’s TIF framework include:

- A statutory requirement that development would not occur “but for” the use of TIF
- Defined maximum lifespans for districts, generally 20 to 27 years depending on district type
- Annual reporting to the Wisconsin Department of Revenue
- Annual review by a Joint Review Board consisting of representatives from all the associated taxing jurisdictions as well as one citizen-member
- Closure of districts once project costs are paid
- Some TIF reforms are currently being considered by the state legislature, including potential creation of a new type of TIF specifically for developer financed housing

TIF has since become a widely used economic development tool across Wisconsin, supporting downtown redevelopment, industrial parks, housing development, and infrastructure investments while maintaining transparency and taxpayer protections.



www.whitewater-wi.gov
 Community Dev. Director: 262-473-0148
 Economic Dev. Coordinator: 262-473-0145
 Zoning Specialist: 262-473-0144

Community Development Department
 312 W. Whitewater St.
 Whitewater, WI 53190

QUESTIONS AND RESPONSES

1. What is the average level of assistance for TIF projects?

There is no single statewide database that tracks average TIF assistance levels across all municipalities or projects in Wisconsin. Each TIF district and each development agreement is unique, reflecting site conditions, market feasibility, infrastructure needs, and the projected tax increment generated by the project.

However, the City’s municipal financial advisor, Ehlers, has provided the following professional perspective based on their experience advising communities across Wisconsin:

“We don’t have a way to aggregate the data on Ehlers-involved TIF assistance or number of requests. We’re also not aware that the State has any of that data. What we can offer is that the average assistance is 5-15 years of TIF at 60-90% of the increment generated annually. But, we’d stress that each project is different and that is why we ‘do the math’. Some need more or less than those averages.”

– Schane Rudlang, Ehlers

I can add that in my professional experience, I have previously reached out to the Wisconsin Economic Development Association (WEDA), and they also expressed they do not have statewide data on statewide levels of assistance. A general rule of thumb for TIF assistance is that it should cover no more than 10-15% of project costs, or up to 20% for extraordinary or high-priority projects.

In practice, this means that TIF assistance is typically calibrated to the *minimum amount necessary* to make a project financially feasible, consistent with the statutory “but-for” test required under Wisconsin law (Wis. Stat. § 66.1105). Whitewater follows this same principle by reviewing project pro formas, development costs, and projected increment to ensure assistance is proportionate and justified.

2. Who typically makes the request for TIF assistance?

Requests for TIF assistance are typically initiated by the developer or property owner proposing a project within a Tax Increment District (or before creation of a new TID). In most cases, this occurs after the developer has evaluated the site and identified a financial gap caused by extraordinary costs such as:

- Environmental remediation or demolition
- Extension or upsizing of public infrastructure
- Site engineering constraints
- Market conditions that limit achievable rents or sale prices, which may include projected rental or sale prices, construction costs, interest rates, etc



City staff do not proactively offer TIF as an entitlement. Instead, staff evaluate requests when they are brought forward, applying statutory requirements, City policy direction, and financial analysis. Staff work with Ehlers to review these requests. Any TIF assistance agreement ultimately requires review and approval by the CDA and the Common Council at public meetings.

3. Can the City pay off a TIF agreement early to save on interest?

Yes. Wisconsin law allows municipalities to retire TIF project costs and close Tax Incremental Districts early when sufficient increment has been generated to pay eligible costs. If debt has been issued to fund public improvements or development incentives, the City may have the option—subject to the specific bond or note terms—to refinance or prepay that debt to reduce interest expense.

In Whitewater, the City has historically emphasized conservative TIF management, including:

- Monitoring increment performance annually, which is also reviewed in an annual Joint Review Board meeting, as required by state statute
- Using “pay-as-you-go” development agreements when feasible, which avoid issuing debt and associated interest costs
- Consideration of closing TIDs as soon as project costs are paid, returning the full tax base to overlapping taxing jurisdictions

Early payoff and closure can reduce long-term interest costs and accelerate the return of value to the tax rolls.

4. How does the use of TIF benefit taxpayers?

When used appropriately, TIF benefits taxpayers in several important ways:

- **No increase in tax rates:** TIF does not raise property tax rates. It reallocates the *growth* in property tax value within a district to pay for eligible improvements or development costs.
- **Enables development that would not otherwise occur:** By addressing financial gaps, TIF helps catalyze projects that expand the tax base beyond its pre-development value.
- **Long-term tax base growth:** Once a TID is closed, the full increased value is shared by all taxing jurisdictions, including the City, School District, County, and Technical College.
- **Reduces pressure on general revenues:** Infrastructure and redevelopment costs funded through TIF do not rely on the City’s general fund or existing taxpayers.

In effect, TIF allows future value created by a project to pay for the public costs needed to make that project possible, aligning costs with benefits over time.



www.whitewater-wi.gov
Community Dev. Director: 262-473-0148
Economic Dev. Coordinator: 262-473-0145
Zoning Specialist: 262-473-0144

Community Development Department
312 W. Whitewater St.
Whitewater, WI 53190

In conclusion, TIF remains a valuable tool for communities like Whitewater, and allows development to happen that would not otherwise occur in this city. The CDA and City should continue working with Ehlers in reviewing each TIF request on an as-needed basis, based on the individual merits of each project, to ensure responsible use of this economic and community development resource.

This memo is provided only for informational purposes. No action is required by the CDA board.



Community Development Authority

Meeting Date:	February 19, 2026
Agenda Item:	Memo on Habitat for Humanity project at 212/216 E Main St
Staff Contact (name, email, phone):	Mason Becker, mbecker@whitewater-wi.gov , 262.443.4458

BACKGROUND
(Enter the who, what when, where, why)

This memo is provided in response to recent questions regarding the Habitat for Humanity redevelopment project located at 212/216 E Main Street, near the intersection of E Main Street and E Milwaukee Street.

The subject property was acquired by the Whitewater Community Development Authority (CDA) in March 2024 for a purchase price of \$50,100.52. At the time of acquisition, the site contained an existing structure that was subsequently removed to prepare the property for redevelopment. The cost of demolition for the previous structure totaled \$35,648.00. The property is not located in a Tax Increment District (TID).

For reference, the assessed value of the property in 2024 was \$60,700. Habitat for Humanity is redeveloping the site with two zero-lot-line duplex buildings, resulting in four total owner-occupied housing units. Based on comparable new construction in the community and feedback from Habitat of Humanity of Walworth County’s director, John Dawson, it is anticipated that each of the four new homes will assess at approximately \$300,000.00, for an estimated total post-development assessed value of approximately \$1.2 million.

Based on this and using the city’s current mill rate in Walworth County, the project should generate \$19,864.95 in tax increment initially (which will adjust over time depending on changes in assessments and the mill rate). Essentially, in less than five years, the taxpayers should recapture all of the initial investment used for acquisition and demolition on the property. It should be noted the CDA used already on-hand funds for activities related to this property, not general tax levy dollars.

PREVIOUS ACTIONS – COMMITTEE RECOMMENDATIONS
(Dates, committees, action taken)

- Habitat for Humanity of Walworth County, Inc submitted an initial Offer to Purchase the property in March 2025.
- The Common Council passed Resolution # 2025-R-415 approving the sale of the property to Habitat for Humanity of Walworth County, Inc. on April 15, 2025.
- A revised Offer to Purchase and Amendment extending the acceptance date was signed on July 15, 2025.
- Habitat for Humanity of Walworth County, Inc closed on the property on November 10, 2025.
- The PARC approved a Conditional Use Permit for the project on November 10, 2025.
- Certified Survey Map for the site was recorded January 7, 2026.

FINANCIAL IMPACT
(If none, state N/A)

- Along with providing much needed single-family owner-occupied housing, this project is greatly increasing the tax value of this previously blighted property, representing a positive financial contribution to the city.

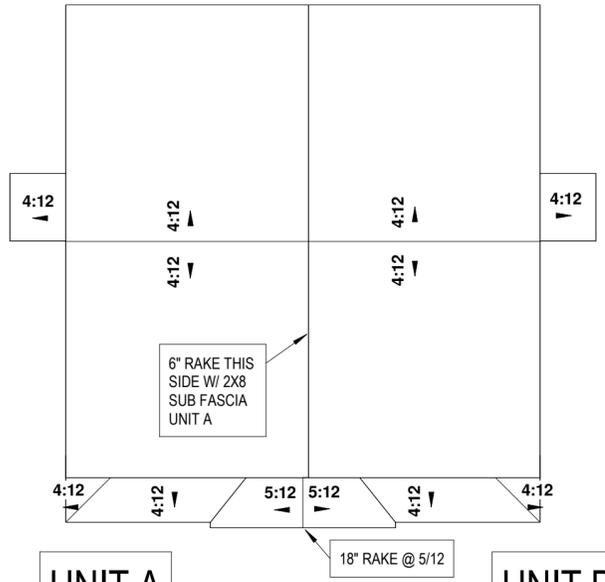
STAFF RECOMMENDATION

- This information is provided for background and informational purposes only.

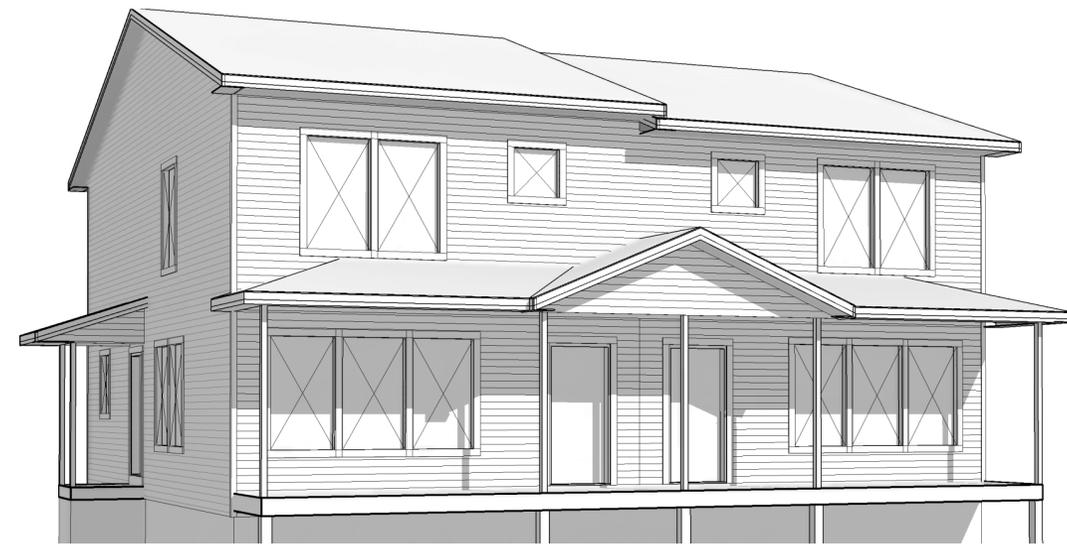
ATTACHMENT(S) INCLUDED

(If none, state N/A)

- Habitat for Humanity site plan and example rendering
-



ROOF PLAN
3/32" = 1'-0"



FRONT-LEFT VIEW

CUSTOMER APPROVAL
 WE APPROVE THIS PLAN AS SHOWN, AND UNDERSTAND THAT NO STRUCTURAL CHANGES WILL BE MADE ONCE APPROVED.
 SIGNED: _____ DATE: _____
 CUSTOMER SIGNATURE
 CHECK BELOW IF APPLICABLE:
 CERTIFIED SIGNED AND SEALED TRUSS DRAWINGS FOR THE STATE OF _____ WILL BE REQUIRED FOR PERMITTING PURPOSES PRIOR TO SHIPMENT OF HOME.

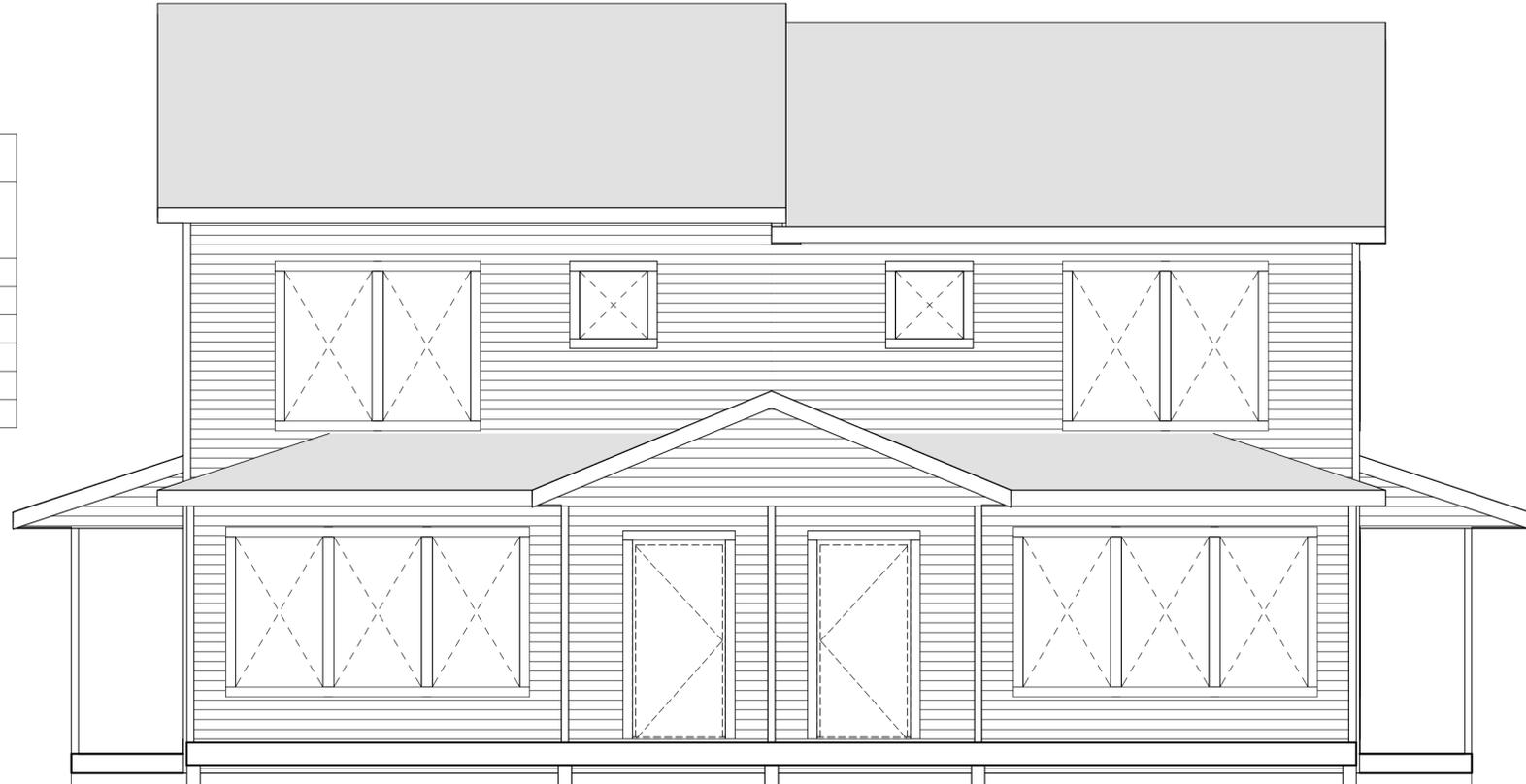
PLEASE SIGN AND RETURN THIS COPY TO AMWOOD

Amwood BUILDING SYSTEMS, INC.
 2017 N. Harmony Town Hall Road
 Janesville, WI 53546
 608-756-2989 fax: 608-756-3443
 www.amwoodhomes.com

GENERAL NOTATIONS:

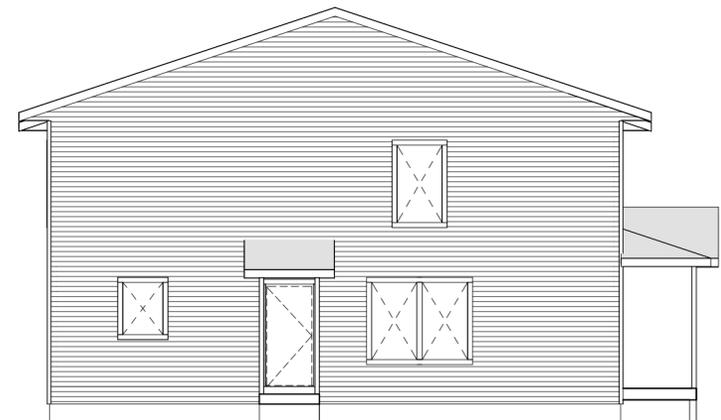
- Although every effort has been made in preparing these plans, and checking them for accuracy, the contractor must check all dimensions and details, and must be responsible for the same.
- This print and/or set is the property of Amwood Homes, Inc., and use of this print is prohibited without the written consent of Amwood Homes, Inc.
- Amwood Homes, Inc. and/or its dealer shall have construction lien rights for use of their blueprints, drawings, plans and/or specifications.

VENT CALCULATIONS						
Name	Area	Minimum total Venting (ft ²)	Upper Venting Required (ft ²)	Required RidgeVent (LN ft)	Required Ridge Pots (EA)	Required SoffitVent (ft ²)
UNIT A 2ND	886 ft ²	2.95	1.48	17	4	1.48
UNIT A DECK	83 ft ²	0.28	0.14	2	0	0.14
UNIT A STOOP	30 ft ²	0.10	0.05	1	0	0.05
UNIT A STOOP	30 ft ²	0.10	0.05	1	0	0.05
UNIT B 2ND	886 ft ²	2.95	1.48	17	4	1.48
UNIT B DECK	83 ft ²	0.28	0.14	2	0	0.14

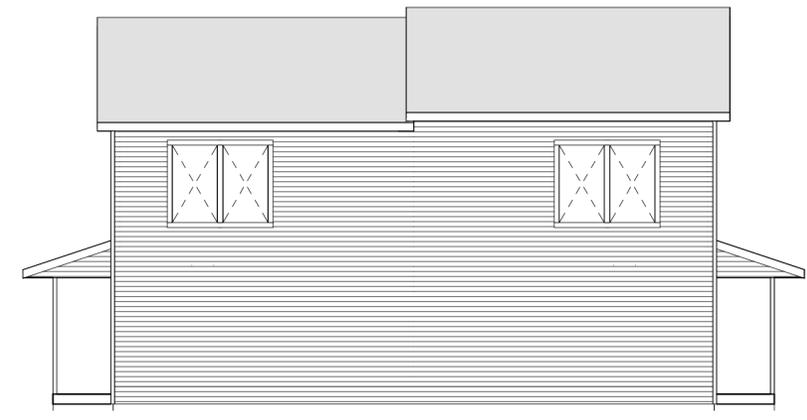


FRONT VIEW
1/4" = 1'-0"

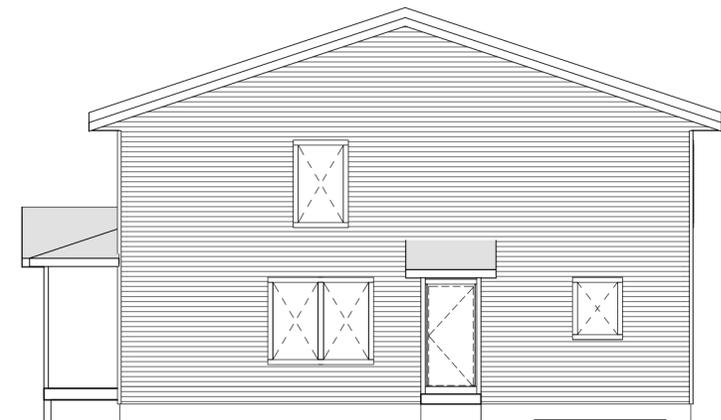
PITCH	OVERHANG	HEEL
4/12	24"	1'-8" UNIT A
4/12	24"	1'-0" UNIT B
5/12	12"	0'-10" PORCH
4/12	24"	0'-3 15/16" STOOP



LEFT VIEW
1/8" = 1'-0"



REAR VIEW
1/8" = 1'-0"



RIGHT VIEW
1/8" = 1'-0"

BASE PLAN: CUSTOM
TITLE: HABITAT WALWORTH WHITEWATER DUPLEX

BY	CODE	DATE
MKH	WP	08/13/25

Elevations A-3.00

JOB NO. DH-2509

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 8/13/2025 9:58:49 AM



FLOOR PLAN NOTES
 (1) FLOOR SQUARE FOOTAGE IS CALCULATED TO SHEATHING FACE
 (2) ALL DIMENSIONS ARE TO STUD FACE UNLESS NOTED
 (3) WALL INSULATION BY OTHERS - AMWOOD TO INSULATE CORNERS AND TUB/SHOWER AREAS
 (4) LOAD-BEARING DOOR AND WINDOW HEADERS TO BE (2) 2X10 #2 & BTR SPF UNLESS NOTED

CUSTOMER APPROVAL
 WE APPROVE THIS PLAN AS SHOWN, AND UNDERSTAND THAT NO STRUCTURAL CHANGES WILL BE MADE ONCE APPROVED.
 SIGNED: _____ DATE: _____
 CUSTOMER SIGNATURE
 CHECK BELOW IF APPLICABLE:
 CERTIFIED SIGNED AND SEALED TRUSS DRAWINGS FOR THE STATE OF _____ WILL BE REQUIRED FOR PERMITTING PURPOSES PRIOR TO SHIPMENT OF HOME.

PLEASE SIGN AND RETURN THIS COPY TO AMWOOD

GENERAL NOTATIONS:
 THESE DRAWINGS ARE THE PROPERTY OF WINDSOR BUILDING SYSTEMS, LLC. AND SHALL NOT BE REPRODUCED, USED OR RELIED UPON IN ANY MANNER WITHOUT THE EXPRESSED WRITTEN CONSENT OF WINDSOR BUILDING SYSTEMS, LLC. WINDSOR BUILDING SYSTEMS, LLC. IS NOT RESPONSIBLE FOR ANY IS DIRECTED TO CONTACT WINDSOR BUILDING SYSTEMS, LLC. IN ORDER TO DETERMINE WHETHER CHANGES, MODIFICATIONS OR ADDITIONS HAVE BEEN MADE TO THESE DRAWINGS. WINDSOR BUILDING SYSTEMS, LLC. EXPRESSLY DISCLAIMS ALL RESPONSIBILITY AND LIABILITY WHERE THESE DRAWINGS ARE USED IN A PROJECT WHERE WINDSOR BUILDING SYSTEMS, LLC. HAS NO CONTROL OR RESPONSIBILITY FOR THE QUALITY OF MATERIALS AND WORKMANSHIP USED.

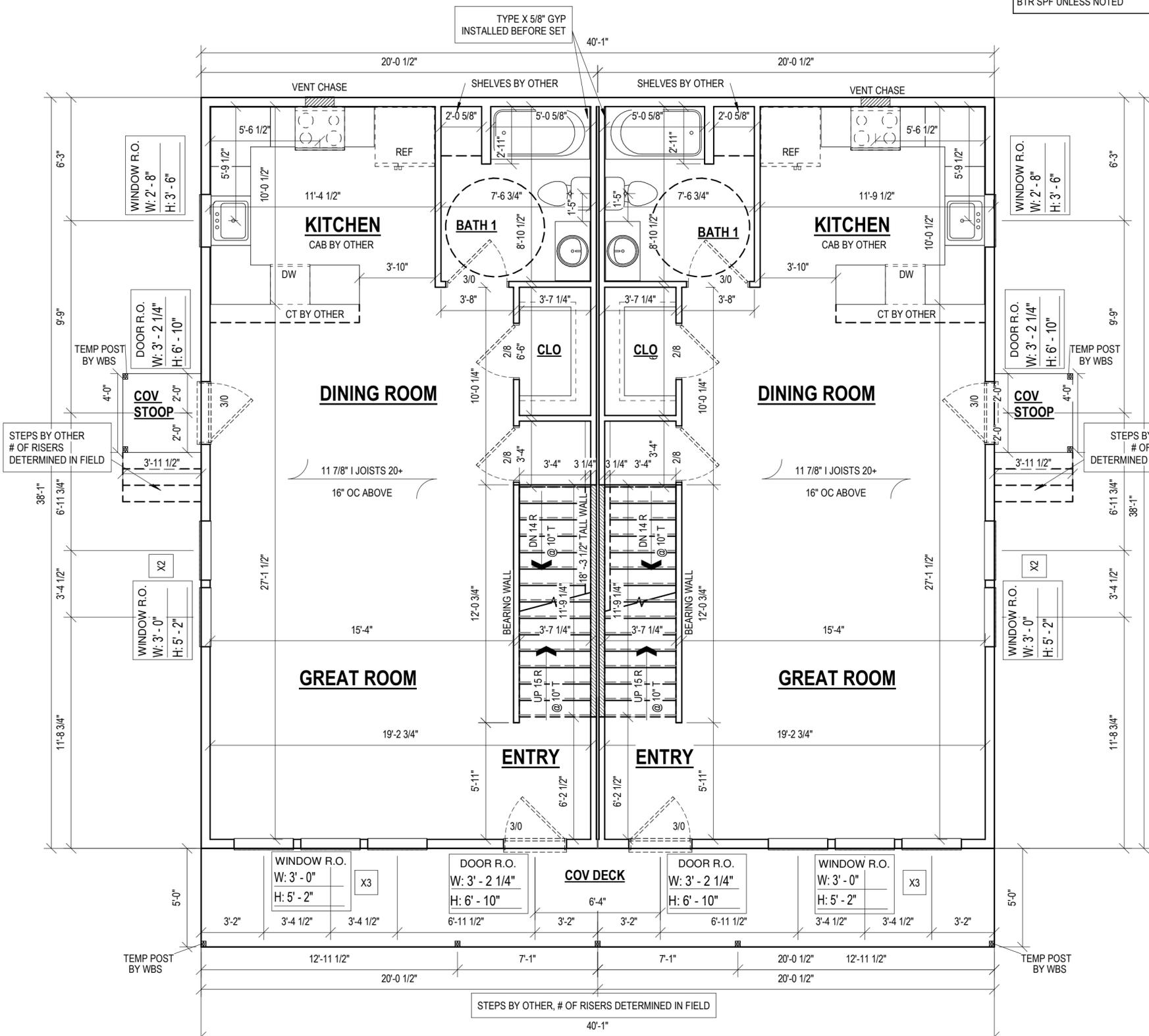
BASE PLAN: CUSTOM
TITLE: HABITAT WALWORTH WHITEWATER DUPLEX

BY	CODE	DATE
MKH	WP	08/13/25

1st Floor Plan A-2.10

JOB NO. DH-2509

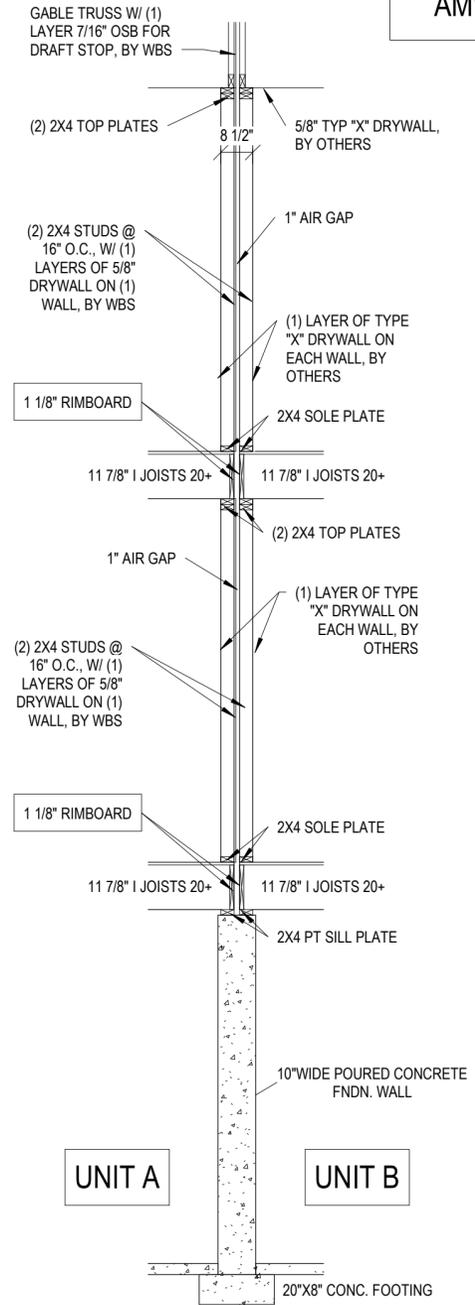
© 2019 AMWOOD, INC. 8/13/2025 9:58:49 AM



1ST FLOOR PLAN

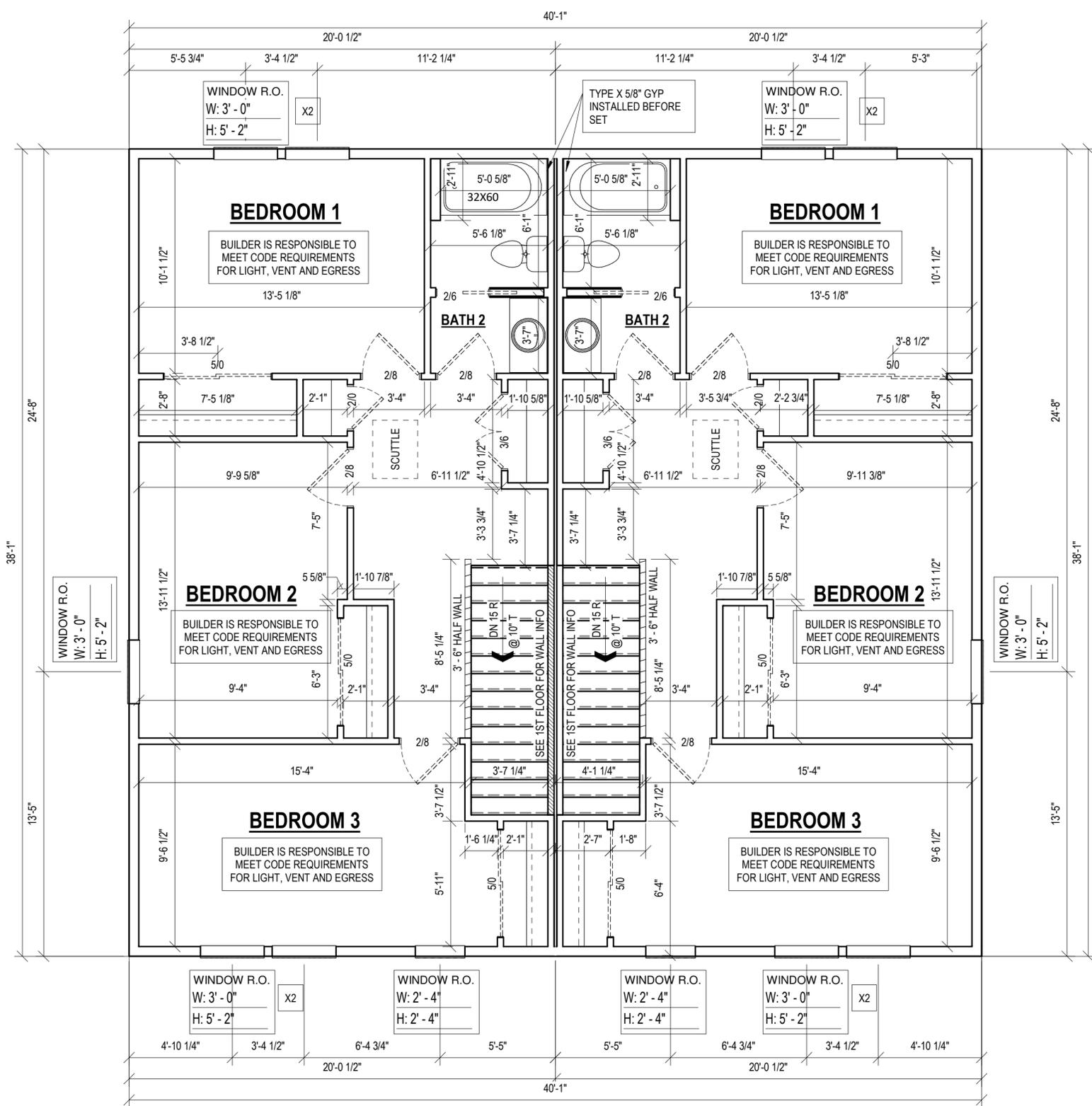
1/4" = 1'-0"

UNIT A 1ST FLOOR	761 SF
UNIT B 1ST FLOOR	761 SF



PARTI SECTION

3/8" = 1'-0"



UNIT A

2ND FLOOR PLAN
1/4" = 1'-0"

UNIT A 2ND FLOOR	761 SF
UNIT B 2ND FLOOR	761 SF

UNIT B

CUSTOMER APPROVAL

WE APPROVE THIS PLAN AS SHOWN, AND UNDERSTAND THAT NO STRUCTURAL CHANGES WILL BE MADE ONCE APPROVED.

SIGNED: _____ DATE: _____
CUSTOMER SIGNATURE

CHECK BELOW IF APPLICABLE:
CERTIFIED SIGNED AND SEALED TRUSS DRAWINGS FOR THE STATE OF _____ WILL BE REQUIRED FOR PERMITTING PURPOSES PRIOR TO SHIPMENT OF HOME.

PLEASE SIGN AND RETURN THIS COPY TO AMWOOD

FLOOR PLAN NOTES

- (1) FLOOR SQUARE FOOTAGE IS CALCULATED TO SHEATHING FACE
- (2) EXTERIOR DIMENSIONS ARE TO STUD FACE UNLESS NOTED, INTERIOR DIMENSIONS ARE TO STUD FACE
- (3) WALL INSULATION BY OTHERS - AMWOOD TO INSULATE CORNERS AND TUB/SOWER AREAS
- (4) LOAD-BEARING DOOR AND WINDOW HEADERS TO BE (2) 2X10 #2 & BTR SPF UNLESS NOTED

Amwood BUILDING SYSTEMS, INC.
2017 N. Harmony Town Hall Road
Janesville, WI 53546
608-756-2989 fax: 608-756-3443
www.amwoodhomes.com

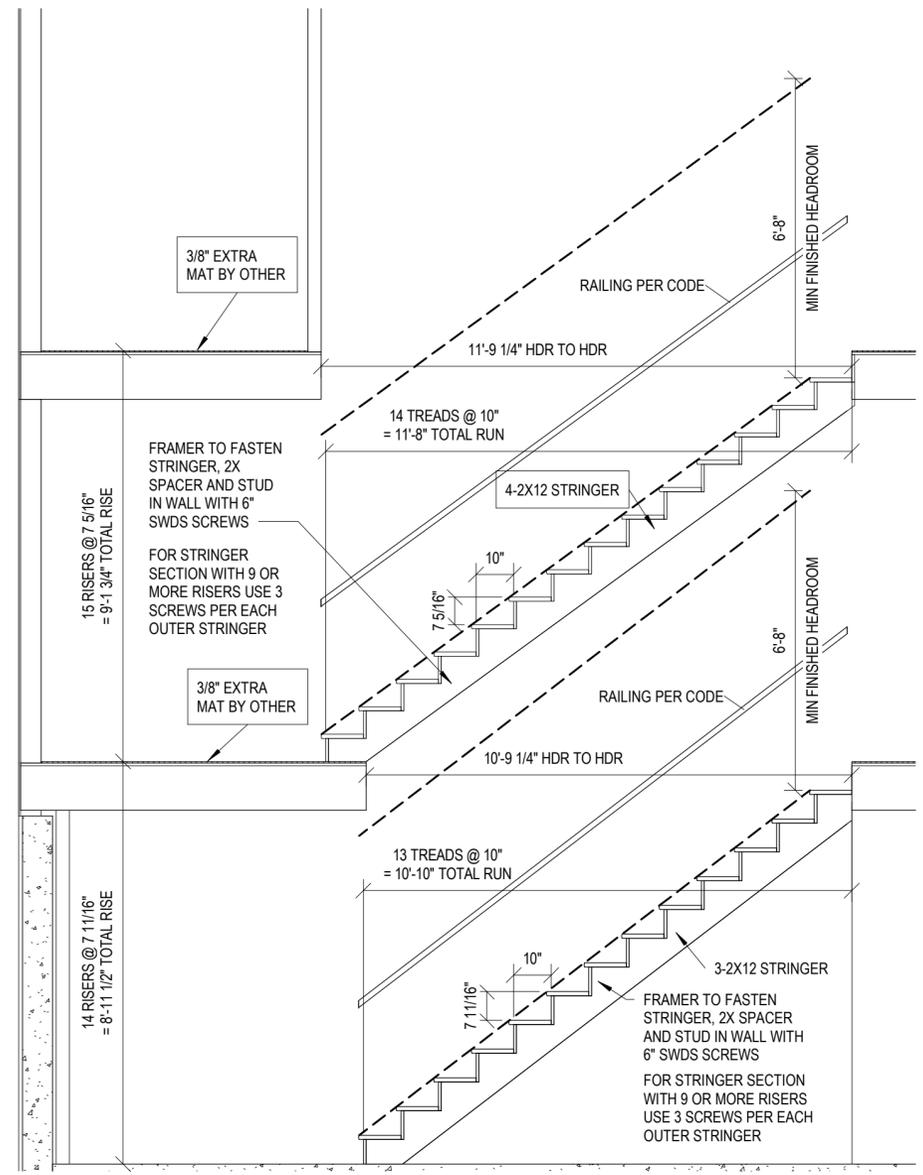
GENERAL NOTATIONS:

- Although every effort has been made in preparing these plans, and checking them for accuracy, the contractor must check all dimensions and details, and must be responsible for the same.
- This print and/or set is the property of Amwood Homes, Inc., and use of this print is prohibited without the written consent of Amwood Homes, Inc.
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BASE PLAN: CUSTOM

TITLE: HABITAT WALWORTH WHITEWATER DUPLEX

BY	CODE	DATE
MKH	WP	08/13/25



STAIRS ARE NOT TO BE INSTALLED UNTIL FLOOR IS POURED AND MUST BE FASTENED TO WALLS PER THE ABOVE NOTES

STAIR SECTION
3/8" = 1'-0"

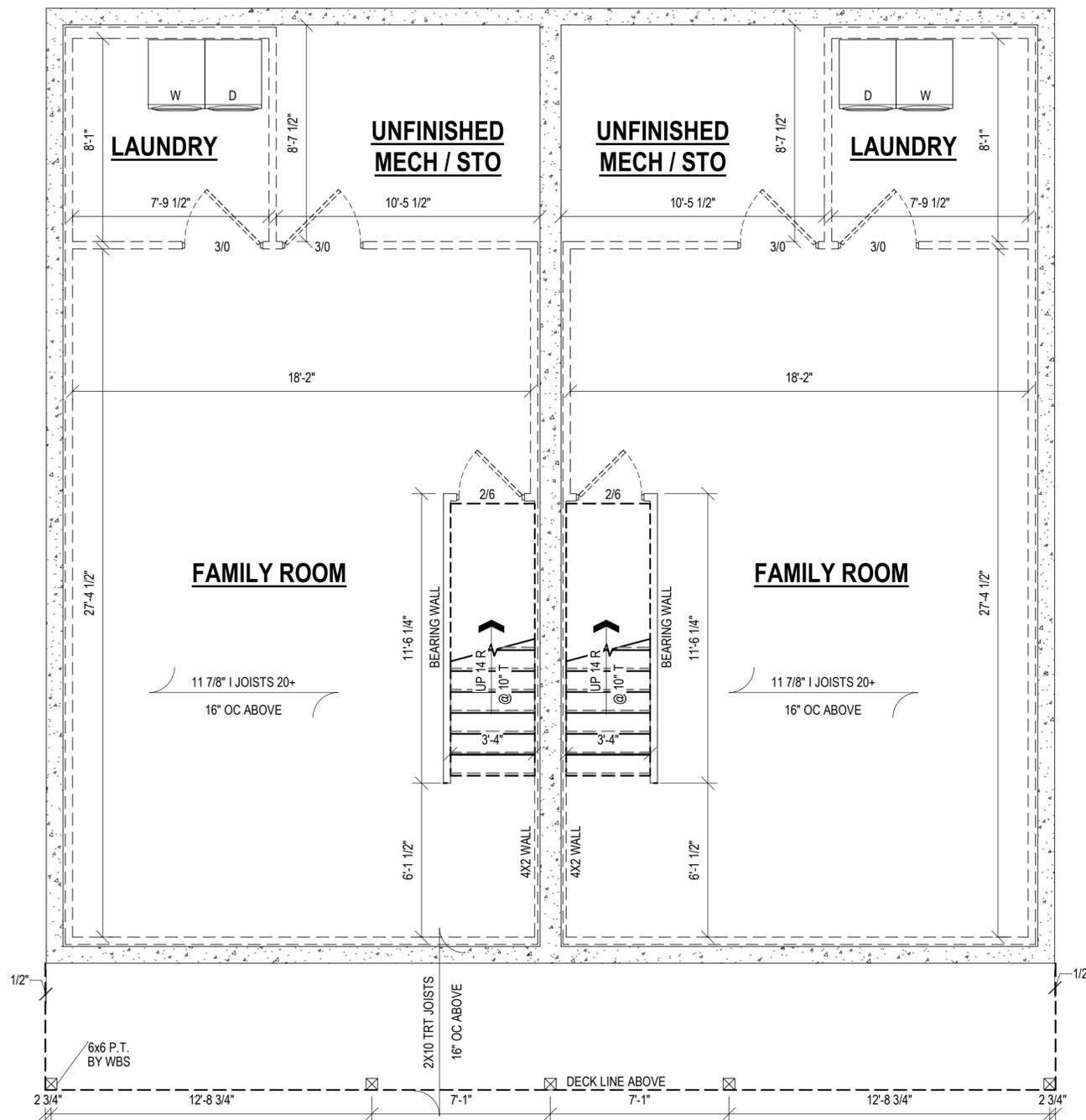
2nd Floor Plan A-2.20

JOB NO. **DH-2509**

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8/13/2025 9:58:50 AM

BASEMENT

STAIR WALLS MATERIAL BY WINDSOR FIELD FRAMED BY OTHERS
 NON-BEARING WALLS MATERIAL BY WINDSOR FIELD FRAMED BY OTHERS
 PERIMETER WALLS MATERIAL BY WINDSOR FIELD FRAMED BY OTHERS
 ALL OTHER WALLS BY OTHERS
 DOORS BY OTHERS
 TRIM BY OTHERS
 CABINETS BY OTHERS



BASEMENT FLOOR PLAN

1/4" = 1'-0"

UNIT A FINISHED BASEMENT	558 SF
UNIT B FINISHED BASEMENT	558 SF

BASEMENT NOTES

1. BASEMENT WINDOWS OTHER THAN NOTED, TO BE SIZED AND LOCATED BY BUILDER.
2. CONCRETE FOOTINGS AND SLABS SHALL BE REINFORCED IN ACCORDANCE WITH LOCAL, AND/OR STATE BUILDING CODES.
3. REGARDLESS OF DETAILS, BOTTOM OF FOOTINGS SHALL BE PLACED ON FIRM UNDISTURBED SOIL.

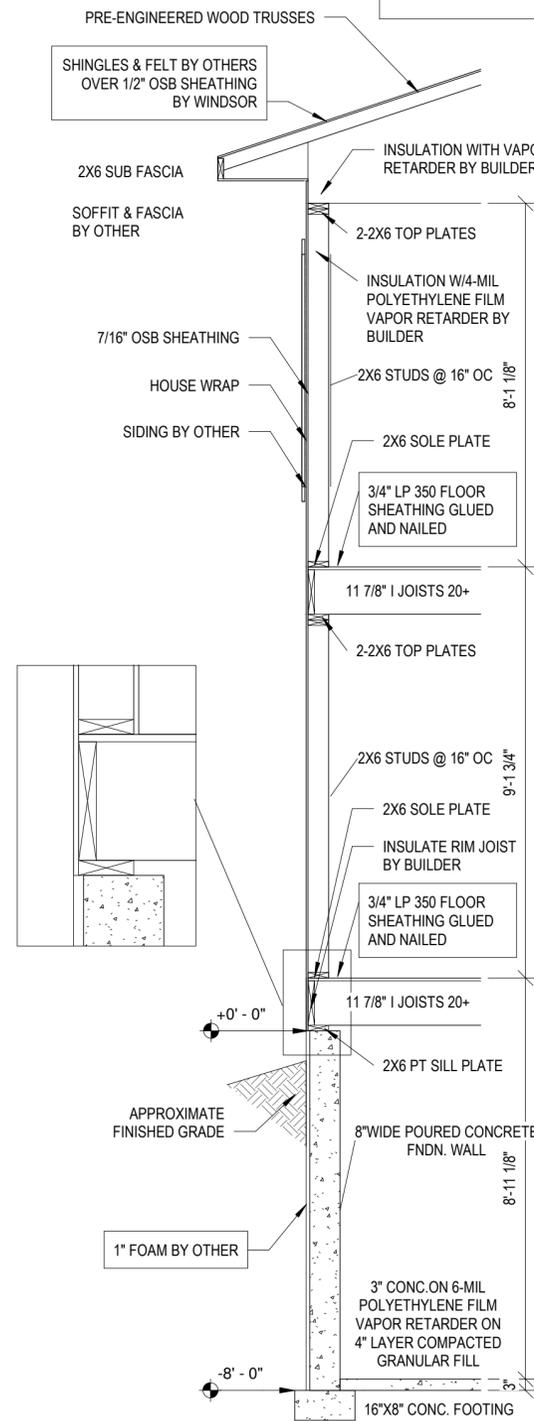
CUSTOMER APPROVAL

WE APPROVE THIS PLAN AS SHOWN, AND UNDERSTAND THAT NO STRUCTURAL CHANGES WILL BE MADE ONCE APPROVED.

SIGNED: _____ DATE: _____
 CUSTOMER SIGNATURE

CHECK BELOW IF APPLICABLE:
 CERTIFIED SIGNED AND SEALED TRUSS DRAWINGS FOR THE STATE OF _____ WILL BE REQUIRED FOR PERMITTING PURPOSES PRIOR TO SHIPMENT OF HOME.

PLEASE SIGN AND RETURN THIS COPY TO AMWOOD



NOTE: REGARDLESS OF DETAILS, BOTTOM OF FOOTINGS SHALL BE PLACED ON FIRM UNDISTURBED SOIL.

NOTE: CONCRETE FOOTINGS AND SLABS SHALL BE REINFORCED IN ACCORDANCE WITH LOCAL AND / OR STATE BUILDING CODES.

WALL SECTION

3/8" = 1'-0"

Amwood BUILDING SYSTEMS
 2017 N. Harmony Town Hall Road
 Janesville, WI 53546
 608-756-2989 fax: 608-756-3443
 www.amwoodhomes.com

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- Amwood Homes, Inc. and/or its dealer shall have construction lien rights for use of their blueprints, drawings, plans and/or specifications.

BASE PLAN: CUSTOM

TITLE: HABITAT WALWORTH WHITEWATER DUPLEX

BY	CODE	DATE
MKH	WP	08/13/25

Basement Plan A-2.00

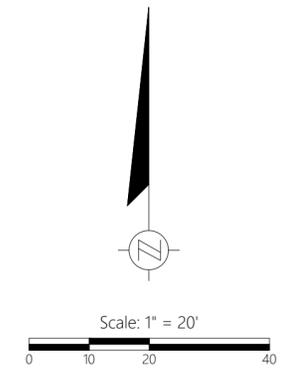
JOB NO. **DH-2509**



Batterman
engineers surveyors planners
BELOIT | ELKHORN | JANESVILLE
2857 S. Bartells Dr., Beloit, WI 53511
608.365.4464 | www.batterman.com

PLAT OF SURVEY AND BUILDING EXHIBIT

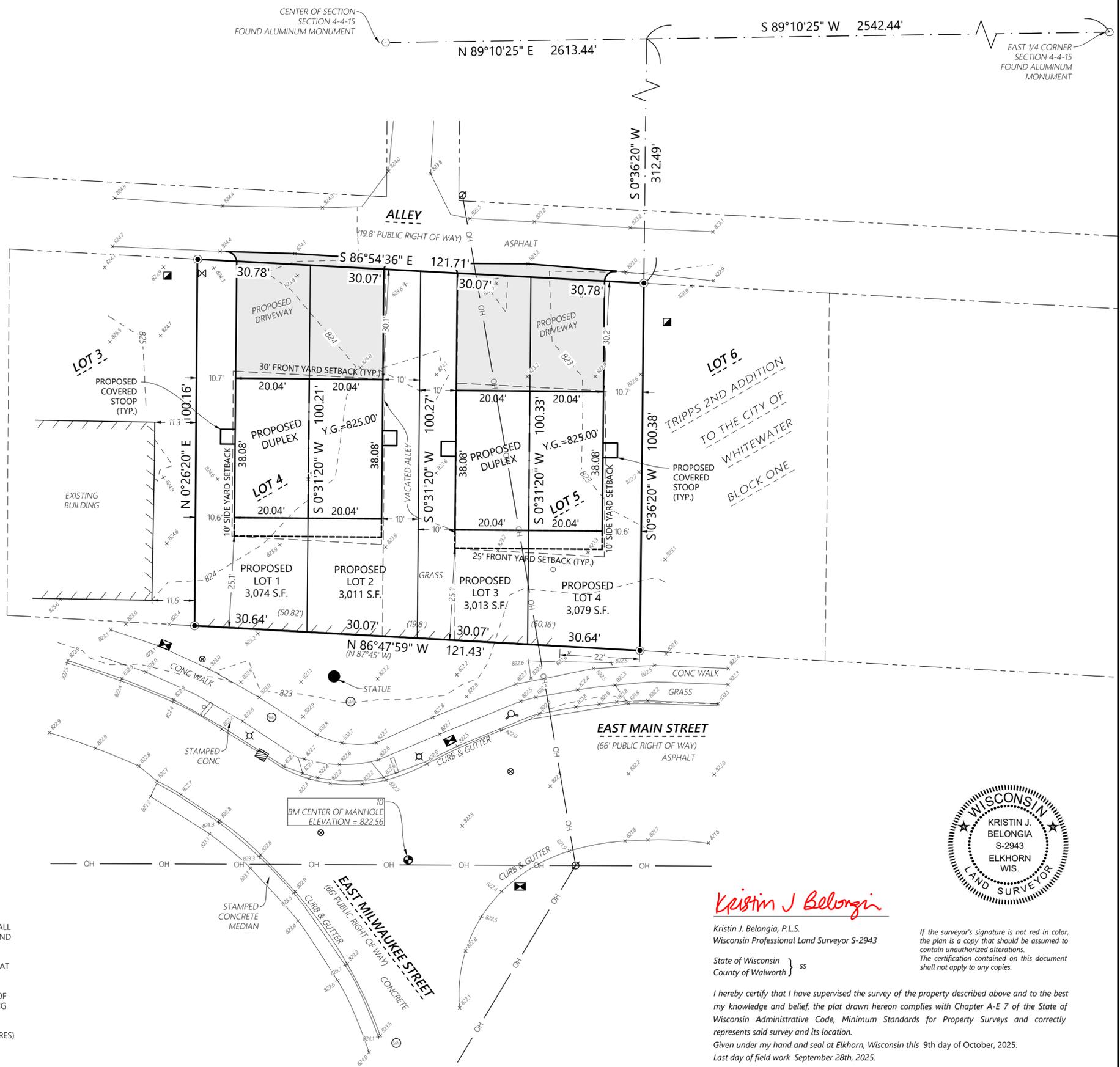
OF LOTS 4 & 5 AND THE VACATED ALLEY BETWEEN SAID LOTS 4 & 5 IN BLOCK ONE OF TRIPP'S SECOND ADDITION TO THE CITY OF WHITEWATER LYING AND BEING IN THE NE 1/4 OF THE SW 1/4 & NW 1/4 OF THE SE 1/4 OF SECTION 4, T. 4 N., R. 15 E., OF THE 4TH P.M., CITY OF WHITEWATER, WALWORTH COUNTY, WISCONSIN



DISTANCE UNITS BASED ON THE UNITED STATES SURVEY FOOT
BEARINGS BASED ON THE WISCONSIN COORDINATE REFERENCE SYSTEM, WALWORTH ZONE. THE NORTH LINE OF THE SOUTHEAST 1/4 BEARING NORTH 89° 10' 25" EAST.
VERTICAL DATUM BASED ON NAVD-88 (2012) GEOID 18 WISCONSIN

LEGAL DESCRIPTION FOR DOC. NO. 1091685

LOTS 4 AND 5 AND THE DISCONTINUED ALLEY BETWEEN LOTS 4 & 5 IN BLOCK 1 OF TRIPP'S SECOND ADDITION TO THE CITY OF WHITEWATER, WALWORTH COUNTY, WISCONSIN. EXCEPT PARCEL 15 OF TRANSPORTATION PROJECT PLAT NO. 1407-075-4.01 RECORDED DECEMBER 30, 2013 AS DOCUMENT NO. 877927 AND EXCEPT PARCEL 11 OF TRANSPORTATION PROJECT PLAT NO. 1407-075-4.02 RECORDED DECEMBER 30, 2013 AS DOCUMENT NO. 877932.



- LEGEND**
- Existing Boundary Line
 - - - Existing Right-of-Way
 - - - Existing Adjacent Property
 - - - Existing Centerline
 - - - Existing Section Line
 - ⊠ Existing Telephone Pedestal
 - ⊠ Existing Utility Vault
 - OH Existing Overhead Power
 - ⊙ Existing Utility Pole
 - ⊙ Existing Light Pole
 - ⊙ Existing Water Valve
 - ⊙ Existing Fire Hydrant
 - ⊙ Existing Sanitary Manhole
 - ⊙ Existing Gas Valve
 - ⊙ Existing Sign
 - x-23.4 Existing Spot Elevation

SURVEY NOTES

1. SURVEYED PROPERTY SUBJECT TO ANY AND ALL EASEMENTS AND AGREEMENTS RECORDED AND UNRECORDED.
2. NO BUILDINGS EXIST ON SUBJECT PROPERTY AT THE TIME OF THIS SURVEY.
3. THIS SURVEY IS A RETRACEMENT OF A PLAT OF SURVEY PREPARED BY LAND-MARK SURVEYING DATED MAY 13, 2024.
4. SURVEYED LAND AREA = 12,180 S.F. (0.280 ACRES)

MONUMENT KEY

- ⊙ 3/4" Iron Rebar Found
- ⊙ Benchmark
- (XXX.XX) Record Information



Kristin J. Belongia

Kristin J. Belongia, P.L.S.
Wisconsin Professional Land Surveyor S-2943

State of Wisconsin } ss
County of Walworth }

I hereby certify that I have supervised the survey of the property described above and to the best of my knowledge and belief, the plat drawn hereon complies with Chapter A-E 7 of the State of Wisconsin Administrative Code, Minimum Standards for Property Surveys and correctly represents said survey and its location.
Given under my hand and seal at Elkhorn, Wisconsin this 9th day of October, 2025.
Last day of field work September 28th, 2025.

If the surveyor's signature is not red in color, the plan is a copy that should be assumed to contain unauthorized alterations. The certification contained on this document shall not apply to any copies.

PLAT OF SURVEY AND BUILDING EXHIBIT

FOR THE EXCLUSIVE USE OF:
Habitat for Humanity for Walworth County
PO Box 174
Lake Geneva, WI 53147

ORDER NO: 35726
FIELD CREW: JLK
DRAWN BY: JRT
SHEET 1 OF 1



February 24, 2026

**To: City of Whitewater Finance Committee
CC: Community Development Authority**

RE: Status of Innovation Center EDA Grant and ECEC

As committee members may recall, on December 16, 2025, the work group for the Whitewater Early Childhood Education and Childcare Center (ECEC) concept presented to the council on their plans for a new childcare center and potential use of a portion of the Innovation Center (1221 Innovation Drive) for such a purpose. It should be noted this potential new center is made possible by a generous \$10 million donation from Billie and Steve Moksnes, stipulating that the funds can be used for childcare operations, programming, teacher wage support, etc, but not building renovations or construction.

The Innovation Center, which is owned by the City of Whitewater, was constructed in 2010 and opened in early 2011, utilizing a grant from the Economic Development Administration, a federal agency which is a bureau of the US Department of Commerce. The grant stipulates that the original purpose of the facility must be maintained for at least 20 years, or at least a portion of the original grant must be repaid.

Following the December 16, 2025 Common Council meeting, city staff sent an official request to Susan Brehm, Regional Director of the EDA, based in Chicago. The included letter and memo were straightforward and sought guidance on two items:

- Whether a portion of the Innovation Center could be repurposed for a childcare center, while still maintaining the rest of the building for existing purposes, under the terms of the grant. The request was clarified to state that the ECEC would likely be utilizing 7,000 sq ft of the first floor and possibly 1,500 sq ft of the second floor. The rest of the facility, including all common areas, would exist as they do now, and continue to be accessible by the other building tenants and visitors.
- Whether the Innovation Center could be sold to a non-profit group before the end of the 20-year duration of the grant commitment without repayment of the grant.

It should be stressed that the second request was made simply for informational and future planning purposes. There has not been any offer made from any entity to purchase the Innovation Center, and the Common Council has not been requested to consider putting the property up for sale.

It should further be noted and made clear that at no point during discussions regarding a potential childcare facility did city staff consider moving forward with any change in use at the Innovation Center, or remodel plans that would have been necessary, without consulting with the EDA first. The requirement to gain clearance for any change in use for this was made clear in the terms of the original grant and was reiterated in the legal



opinion provided by Stafford Rosenbaum, dated January 16, 2025. However, city staff did not want to take this step before the Common Council received a briefing on the project, as well as an opportunity to ask questions, which occurred at the December 16, 2025 Common Council meeting.

The EDA’s regional office was responsive. After reviewing, Director Brehm shared the following in an email:

“Unfortunately, at this time childcare centers are not within EDA’s authorities, and using the proposed portion of the building for this purpose would take the grant out of compliance.

In response to your second question about selling the property to a non-profit organization, that would be acceptable as long as the original purpose of the grant (or another economic development purpose approved by EDA) is still being met and the purchaser agrees to the limitation of use for the remainder of the useful life (usually 20 years from construction completion). Sales to a for-profit company or a non-profit engaging in activities other than economic development would require repayment of the grant.”

The above response was received on Monday, January 26, 2026. At that time, after consulting the city attorney who expressed that the EDA’s communication was clear, city staff promptly notified the ECEC work group about the EDA’s decision. While expressing some disappointment, the ECEC group expressed that they understood the EDA’s communication, and that they would pursue potential alternative locations for a future childcare center within the City of Whitewater. In fact, they are currently exploring a different location in the community that only very recently presented itself as an opportunity.

On January 28, 2026, the Community Development Department also shared this information with all current tenants at the Innovation Center. One current tenant is already expressing interest in a lease extension.

The Community Development Department will continue working to manage and respond to inquiries regarding rentals and leases at the Innovation Center. Further, staff will assist the ECEC work group if requested, much as the department would work to assist any business or non-profit seeking a location in the community.

Regarding future sale of the Innovation Center property, it should be noted that the Innovation Center was issued final occupancy permit and opened in early February 2011. Under the terms of the grant, the property could be sold by the city without any repayment of the grant or other obligations as early as February 2031. This is an option that can be considered by a future Common Council.



www.whitewater-wi.gov
Community Dev. Director: 262-473-0148
Economic Dev. Coordinator: 262-473-0145
Zoning Specialist: 262-473-0144

Community Development Department
312 W. Whitewater St.
Whitewater, WI 53190

Regarding questions on the whereabouts of the original application that was sent to the EDA in 2009/2010, staff have exhaustively searched both digital and paper records on hand, including those previously kept by the CDA. It should be noted that the city did not start formally maintaining digital records until 2015. No copy of such application has been found.

Staff also inquired with UW-Whitewater personnel to see if they had a copy of same application. No copy has been found. A request was sent to the EDA office in Chicago, asking if they retained a copy that could be shared. A response to this request has not been received at time of this writing.

No action is requested from the Finance Committee currently. This information is being provided to the committee per direction of the Common Council.

CITY OF WHITEWATER
312 W. Whitewater Street
Whitewater, Wisconsin 53190
(262) 473-0148

Date: December 22, 2025

To:

Susan Brehm - Regional Director
U.S. Department of Commerce
Economic Development Administration – Chicago Regional Office
230 S. Dearborn Street, Suite 3280
Chicago, IL 60604

From:

City of Whitewater, WI
Whitewater Community Development Authority (CDA)

Subject: Request for EDA Guidance and Confirmation – Proposed Partial remodel and Potential Sale of the Whitewater Innovation Center

Dear Director Brehm,

The City of Whitewater, in partnership with the University of Wisconsin–Whitewater and the Whitewater Community Development Authority (CDA), respectfully requests the Economic Development Administration's (EDA) guidance and formal approval concerning the proposed partial remodel of the Whitewater Innovation Center and clarification regarding the potential future sale of the facility.

Background

The Innovation Center was developed in 2010 through an EDA Public Works grant (EDA Project # 06-01-05479) awarded to the University of Wisconsin–Whitewater to support business incubation, entrepreneurship, and regional economic growth. Since its completion, the Center has served as a mixed-use hub for innovation, with operations managed collaboratively by the City, University, and CDA.

The City of Whitewater holds title to the Innovation Center property, while the original EDA grant agreement remains binding on the property under 2 C.F.R. § 200.311(d). We understand that EDA consent is required prior to any change in use, disposition, or substantial modification of the property.

Proposed Partial Remodel

The City, University, and CDA are jointly developing a proposal to remodel a portion of the Innovation Center for use as an Early Childhood Education Center operated through the Early

Childhood Education Center, Inc. The center would form part of a new Early Childhood Education Institute at UW–Whitewater. The new facility would provide high quality childcare and early education, serve as a training and research site, support regional workforce participation, and continue to advance the EDA’s mission of fostering workforce development and economic vitality. This effort would also help address the “childcare desert” status in Whitewater, as identified in a 2022 study conducted by the Walworth County Economic Development Association (WCEDA).

All renovation and operational costs will be covered by separate grants and private donations, without use of EDA funds.

Request for EDA Guidance and Approval

We respectfully request the EDA’s written consent for this proposed partial remodel under 2 C.F.R. § 200.311(d)(1). Additionally, we request EDA’s guidance regarding the feasibility of a future sale of the property. The City has been approached about the possibility of selling the Innovation Center to a nonprofit entity. We seek EDA’s interpretation on whether such a sale would constitute a 'disposition' under 2 C.F.R. § 200.311(d)(2), whether repayment of EDA’s original cost share (approximately 60%) would be required, and whether continued operation for educational and workforce purposes by a nonprofit successor could satisfy EDA’s ongoing economic development objectives, thus avoiding repayment.

Supporting Materials and Next Steps

We are prepared to provide supplemental materials, including a project narrative and floor plan, a property appraisal, a memorandum of understanding among the parties, and documentation of ongoing business incubation activities. We would welcome an opportunity to meet with EDA staff to discuss this request and ensure that all requirements are met prior to implementation.

Closing

The City of Whitewater, University of Wisconsin–Whitewater, and the Whitewater CDA remain committed to furthering the EDA’s mission of economic development, workforce readiness, and innovation. We appreciate your consideration and look forward to your guidance

Respectfully submitted,

Mason Becker
Executive Director, Whitewater CDA
mbecker@whitewater-wi.gov

John Weidl
City Manager, City of Whitewater
jweidl@whitewater-wi.gov

CC:

Steven Chesebro, City Attorney

Dr. Corey A. King, Chancellor, University of Wisconsin-Whitewater

January 16, 2025

To: City of Whitewater Community Development Authority
From: Rick Manthe City Attorney
RE: Innovation Center Property

The City of Whitewater Community Development Authority (“CDA”) Director requested an opinion as to the ownership of the Innovation Center and any property restrictions related to the property. In sum, (1) the City of Whitewater (“City”) owns the Innovation Center property, and (2) there is likely a restriction on the sale of the property related to an economic development grant received in 2009.

Innovation Center Background

In 2009 the University of Wisconsin-Whitewater (“University”) submitted a grant application with the federal Economic Development Administration (“EDA”) to aid the development of the Innovation Center. In 2010, the grant was awarded to the University to develop the Innovation Center. The Innovation Center has since been constructed, and the City, CDA, and University jointly operate the Innovation Center.

Analysis

1. Ownership of Innovation Center.

The Innovation Center property is owned by the City of Whitewater. In 2012, a certified survey map (“CSM”) created the Innovation Center parcel. The CSM certificate indicates that the City of Whitewater owned the property and had the original parcel split. There is no notation on the CSM indicating a conveyance of the Innovation Center property. Additionally, no deeds or other documents conveying ownership have been recorded against the property since the CSM. Based on the documents currently available to us, it is our opinion that the City of Whitewater actually owns the Innovation Center property.

2. Conveying the Innovation Center Property.

Conveying the Innovation Center will likely be difficult as it would require approval from the EDA and likely repaying a portion of the original grant funds.

Madison Office
222 West Washington Avenue 608.256.0226
P.O. Box 1784 888.655.4752
Madison, Wisconsin Fax 608.259.2600
53701-1784 www.staffordlaw.com

Milwaukee Office
1200 North Mayfair Road 414.982.2850
Suite 430 888.655.4752
Milwaukee, Wisconsin Fax 414.982.2889
53226-3282 www.staffordlaw.com

The original grant agreement between the University and EDA provides that “[t]he recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from” the EDA grant officer. Section K.02 Grant Agreement.¹

Additionally, the EDA grant has federal regulations that encumber the property, and the property could not be sold or undergo a change in use without consent of the EDA. 2 C.F.R. § 200.311(d). If the City did sell the property, it must pay the EDA approximately sixty percent of the sale price as that was the EDA’s original cost share for the project. 2 C.F.R. § 200.311(d)(2). If the City were to change the use of the property, but retain ownership, then either the City or University would need to pay the EDA an amount equal to approximately sixty percent of the fair market value of the property and improvements. 2 C.F.R. § 200.311(d)(1). As explained below, it is unclear whether the City or University would make the payment based on available documents.

What complicates this restriction is that the grant agreement is between the University and the federal government. The City would likely be considered a “subrecipient” of the grant since the property is owned by the City. It is very likely the sale and use restrictions also apply to the City as a subrecipient of the grant funds. Typically there would be an agreement between the grant recipient (the University) and the subrecipient (the City). No agreement has been found though. Regardless, various federal regulations make clear that subrecipients are also bound by the original terms of the grant. Thus, even though the grant agreement is between the University and EDA, it is very likely those same restrictions apply to the City.

Further, given that the CDA currently plays an active role in managing the Innovation Center, it is important to note that a change in use or a sale of the property will likely require collaboration between the CDA, City, and University in any dealings with the EDA to get consent for selling or changing the use of the property. If the parties are not aligned, EDA may not approve any changes to the Innovation Center property.

Conclusion

In summary, the City of Whitewater owns the Innovation Center property, and it would require EDA approval to change the use or sell the property.

¹ There is also a requirement that the grant recipient record a security interest to the federal government for the real estate. We have not been able to find such a recording.



www.whitewater-wi.gov
Economic Dev. Director: 262-473-0148
Economic Dev. Coordinator: 262-473-0145
Zoning Specialist: 262-473-0144

Community Development Department
312 W. Whitewater St.
Whitewater, WI 53190

MEMORANDUM

To: U.S. Economic Development Administration – Chicago Regional Office

From: City of Whitewater, Wisconsin

Date: December 22, 2025

Subject: Summary Overview – Request for EDA Review and Guidance on Innovation Center Use Modification

Purpose of Submission

This memorandum accompanies the City of Whitewater’s formal letter requesting EDA review and confirmation regarding a potential lease for the Whitewater Innovation Center and clarification regarding the feasibility of a potential future sale of the property.

Project Summary

- Facility: Whitewater Innovation Center, 1221 Innovation Drive, Whitewater, WI 53190
- EDA Project No.: 06-01-05479
- Ownership: City of Whitewater.
- Proposed Lessee: Whitewater Early Childhood Education and Childcare Center (WECEC)
- Lessee’s Proposed Use: Remodel a portion of the Innovation Center for an Early Childhood Education Center operated by WECEC Center, Inc..
- Funding: Fully covered through separate grants and private donations.

EDA Actions Requested

1. Approval of Partial Remodel: Confirmation that the proposed childcare and education use qualifies as consistent with EDA’s economic development mission under 2 C.F.R. § 200.311(d)(1).
2. Clarification Regarding Potential Sale: Guidance on whether a sale of the Innovation Center to a nonprofit entity would be permissible, and whether continued adherence to economic development objectives could avoid repayment under § 200.311(d)(2).

Rationale and Benefits

- Expands the Innovation Center’s role in workforce development and family support.
- Provides training opportunities for future educators.
- Improves regional labor force participation by increasing childcare access near several major local employers.
- Sustains the Innovation Center’s function as an innovation-based community asset.



Requested Follow-Up

The City requests a formal written response, in-person meeting, or scheduled call with EDA staff to confirm procedural requirements and documentation needed for compliance. We hope to proceed with formal EDA consideration within the coming months.

Prepared by:
Mason Becker, Executive Director, Whitewater CDA
John Weidl, City Manager, City of Whitewater



U.S. DEPARTMENT OF COMMERCE Item 5.
Economic Development Administration
CHICAGO REGIONAL OFFICE
111 N. CANAL ST., SUITE 855
CHICAGO, ILLINOIS 60606-7208

SEP 11 2009

In reply refer to:
Investment No.: 06-01-05479

Ms. Mary S. Nimm
Coordinator
Whitewater Community Development Authority
312 West Whitewater Street
Whitewater, Wisconsin 53190-0178

Mr. Kevin M. Brunner
City Manager
City of Whitewater
312 West Whitewater Street
Whitewater, Wisconsin 53190-0178

Ms. Denise Ehlen
Authorized Institutional Official for Grants and Contracts
University of Wisconsin - Whitewater
Research and Sponsored Programs, 2237 Anderson Library
800 West Main Street
Whitewater, Wisconsin 53190-0178

Dear Ms. Nimm, Mr. Brunner, and Ms. Ehlen:

We are pleased to inform you that the Economic Development Administration (EDA) has approved a Financial Assistance Award in an amount not to exceed \$4,740,809 in response to your application for public works assistance for construction of the Whitewater University Technology Park and Innovation Center.

The total Project cost is \$11,051,728 which is based on the line item estimates contained in Attachment No.1.

Enclosed are five signed copies of the Financial Assistance Award. Your agreement to the terms and conditions of the Award should be indicated by the signature of your principal officials on all five copies of the Award. Two of the executed copies should be returned to the Regional Director, Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, Illinois 60606-7208. If not signed and returned within 30 days of receipt, the Grants Officer may declare the Award null and void.

You are cautioned not to make any commitments in reliance on this Award, nor to enter into negotiations relative hereto, until you have carefully reviewed the terms and conditions and have determined that you are in compliance or that you can comply therewith. Any commitments or undertakings entered into prior to obtaining the approval of the Government in accordance with its regulations and requirements will be at your own risk.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Robert Sawyer".

C. Robert Sawyer
Regional Director

Enclosures

FINANCIAL ASSISTANCE AWARD

AWARD PERIOD
From Date of approval to 25 Item 5.
after approval

RECIPIENT NAME Whitewater Community Development Authority / City of Whitewater / University of Wisconsin - Whitewater

AWARD NUMBER
060105479

STREET ADDRESS 312 W. Whitewater Street/312 W Whitewater Street / Research and Sponsored Programs, 2237 Anderson Library

FEDERAL SHARE OF COST
\$ 4,740,809

CITY, STATE, ZIP CODE Whitewater, Wisconsin 53190-0178 / Whitewater, Wisconsin 53190-0178 / Whitewater, Wisconsin 53190-0178

RECIPIENT SHARE OF COST
\$ 6,310,919

AUTHORITY Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*), as amended, including the comprehensive amendments made by the Economic Development Administration Reauthorization Act of 2004 (P.L. 108-373)

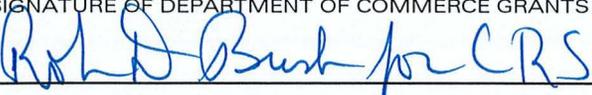
TOTAL ESTIMATED COST
\$11,051,728

CFDA NO. AND PROJECT TITLE 11.300 Whitewater University Technology Park and Innovation Center

BUREAU	FUND	FCFY	PROJECT-TASK	ORGANIZATION	OBJECT CLASS
EDA	40	09	0605479-00	06	41102200

This Award approved by the Grants Officer is issued in quintuplicate and constitutes an obligation of Federal funding. By signing the five documents, the Recipient agrees to comply with the Award provisions checked below and some of which are attached. The other applicable requirements are available from the Office of Management and Budget's, the Department of Commerce's and the Government Printing Office's websites. Upon acceptance by the Recipient, two signed Award documents shall be returned to the Grants Officer and three documents shall be retained by the Recipient. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally terminate this Award.

- Department of Commerce Financial Assistance Standard Terms and Conditions
- Special Award Conditions
- Line Item Budget
- 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations
- 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments
- OMB Circular A-21, Cost Principles for Educational Institutions
- OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments
- OMB Circular A-122, Cost Principles for Nonprofit Organizations
- 48 CFR Part 31, Contract Cost Principles and Procedures
- OMB Circular A-133, Audits of States, Local Governments, and Nonprofit Organizations
- Other(s): EDA Standard Terms and Conditions - Construction Program, dated October 2007, as amended on December 13, 2007

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER 	TITLE Regional Director	DATE 9/11/09
TYPED NAME AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL	TITLE	DATE
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FINANCIAL ASSISTANCE AWARD

AWARD PERIOD
From Date of approval to 25 Item 5.
after approval

RECIPIENT NAME Whitewater Community Development Authority / City of Whitewater / University of Wisconsin - Whitewater

AWARD NUMBER
060105479

STREET ADDRESS 312 W. Whitewater Street/312 W Whitewater Street / Research and Sponsored Programs, 2237 Anderson Library

FEDERAL SHARE OF COST
\$ 4,740,809

CITY, STATE, ZIP CODE Whitewater, Wisconsin 53190-0178 / Whitewater, Wisconsin 53190-0178 / Whitewater, Wisconsin 53190-0178

RECIPIENT SHARE OF COST
\$ 6,310,919

AUTHORITY Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*), as amended, including the comprehensive amendments made by the Economic Development Administration Reauthorization Act of 2004 (P.L. 108-373)

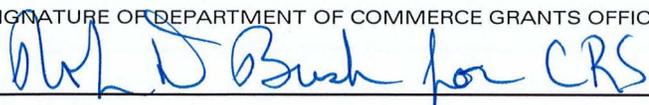
TOTAL ESTIMATED COST
\$11,051,728

CFDA NO. AND PROJECT TITLE 11.300 Whitewater University Technology Park and Innovation Center

BUREAU	FUND	FCFY	PROJECT-TASK	ORGANIZATION	OBJECT CLASS
EDA	40	09	0605479-00	06	41102200

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- Department of Commerce Financial Assistance Standard Terms and Conditions
- Special Award Conditions
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- 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit, and Commercial Organizations
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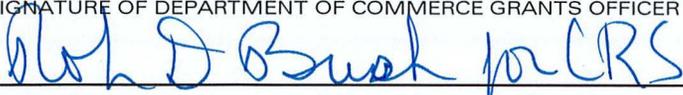
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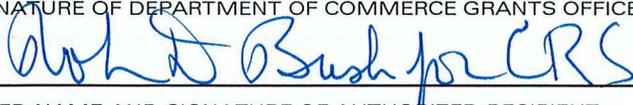
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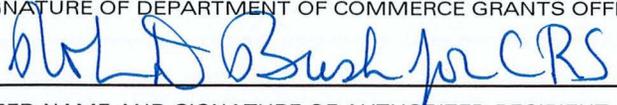
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DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE
CONTACTS AND INSTRUCTIONS

A. AWARD NUMBER AND PROJECT DESCRIPTION

This Award Number 06-01-05479, supports the work described in the Recipient's application for Public Works Assistance received by EDA on March 16, 2009, as amended. Where the terms of this award and the application differ, the terms of the award shall prevail.

B. AWARD CONTACTS

1. The Recipient Contact's name, address and telephone number are:

Whitewater Community Development Authority
312 West Whitewater Street
Whitewater, Wisconsin 53190-0178
Ms. Mary S. Nimm
(262) 473-0525

City of Whitewater
312 West Whitewater Street
Whitewater, Wisconsin 53190-0178
Ms. Mary S. Nimm
(262) 473-0525

University of Wisconsin - Whitewater
Research and Sponsored Programs, 2237 Anderson Library
800 West Main Street
Whitewater, Wisconsin 53190-0178
Ms. Mary S. Nimm
(262) 473-0525

2. The Federal Program Officer is responsible for the programmatic, technical and/or scientific aspects of this award. The Federal Program Officer's name, address and telephone number are:

Jack Price, Area Director, Northern Tier Team
Economic Development Administration
Chicago Regional Office
111 North Canal Street, Suite 855
Chicago, Illinois 60606-7208
(312) 353-1919, Ext. 159

3. The Grants Officer is responsible for all administrative aspects of this award and is authorized to award, amend, suspend, and terminate financial assistance awards. Grants Officer's name, address, and telephone number are:

C. Robert Sawyer, Regional Director
Economic Development Administration
Chicago Regional Office
111 North Canal Street, Suite 855
Chicago, Illinois 60606-7208
(312) 353-7706, Ext. 121

4. The Economic Development Specialist is responsible for administrative coordination and liaison with the Recipient. This individual receives appropriate material from the Federal Program Officer and/or the Recipient for administrative processing. The Economic Development Specialist's name, and telephone number are:

Wayne Schroeder
(312) 353-8580, Ext. 147

C. REFUND CHECKS

The Recipient shall submit all refund checks to the Department of Commerce (DoC) accounting office. Please contact the Economic Development Specialist identified above for specific details on how to process a refund check.

-2-

Form ED-508
(Rev. 4-94)

U. S. DEPARTMENT OF COMMERCE
Economic Development Administration
PUBLIC WORKS PROJECT COST CLASSIFICATIONS/
ECONOMIC ADJUSTMENT ASSISTANCE CONSTRUCTION COMPONENTS

Attachment No. 1

EDA AWARD No. 06-01-05479State WisconsinCOUNTY Walworth

<u>COST CLASSIFICATION</u>	<u>PROPOSED</u>	<u>APPROVED</u>
Administration and legal expenses	\$ 502,000	\$ 40,000
Land, structures, rights-of-way, appraisals, etc.		
Relocation expenses and payments		100
Architectural and engineering fees	516,147	623,103
Other architectural and engineering fees	454,155	53,929
Project inspection fees	454,360	146,059
Site Work	2,792,063	
Demolition and removal		
Construction	4,339,530	9,598,589
Equipment	319,000	85,120
Miscellaneous		25,000
Contingencies	331,852	479,828
TOTAL PROJECT COSTS	\$ 9,709,107	\$ 11,051,728

Remarks:

1. Admin & legal expenses reduced by removing non-construction costs
2. Relocation expenses and payments line established for costs incidental to transfer of title
3. Architectural and engineering fees, Other architectural and engineering fees, and project inspection fees adjusted per revised estimates.
4. Site work reclassified to construction per revised cost estimates.
5. Construction cost per revised cost estimates.
6. Miscellaneous line added for cost of LEED Certification.
7. Contingencies adjusted per revised cost estimates, reduced by \$100 for cost incidental to transfer of title.
8. Green Building related costs of \$442,260 included in construction line item, and \$51,800 in Other architectural and engineering fees.

U.S. DEPARTMENT OF COMMERCE
Economic Development Administration

Special Award Conditions of Financial Assistance Award
for Public Works and Development Facilities
and Economic Adjustment Assistance Construction Components
under Section 201 and 209 of the
Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*), as amended,
including the comprehensive amendments made by the
Economic Development Administration Reauthorization Act of 2004 (P.L. 108-373)

Award Number: 06-01-05479

Recipient: Whitewater Community Development Authority
Address: 312 West Whitewater Street
Whitewater, Wisconsin 53190-0178

Recipient: City of Whitewater
Address: 312 West Whitewater Street
Whitewater, Wisconsin 53190-0178

Recipient: University of Wisconsin - Whitewater
Address: Research and Sponsored Programs, 2237 Anderson Library
800 West Main Street
Whitewater, Wisconsin 53190-0178

1. **PROJECT DESCRIPTION AND SCOPE:** For purposes of this grant award, the Recipient acknowledges the following as the Project Description and Scope:

This investment will provide water, sewer, storm sewer and street improvements to serve the 125 acre Whitewater University Technology Park, a multi-use trail through the Park, extension of Starin Road to improve access between the University Campus and the Technology Park, and construction of a 37,200 square foot Innovation Center, which will serve as a training center and incubator. Both the Technology Park and the Innovation Center will be owned and operated by the Whitewater Community Development Authority. The design of the two story building will incorporate green design features leading to LEED certification.

2. **PROJECT DEVELOPMENT TIME SCHEDULE:** The Recipient agrees to the following Project development time schedule:

Time allowed from the date of approval of grant award for:

Start of Construction ----- 9 months
Construction Period -----12 months

Project Closeout - All Project closeout documents including final financial information and any required program reports shall be submitted to the Government not more than ninety days after the date the Recipient accepts the completed Project from the Contractor(s).

The Recipient shall pursue diligently the development of the Project so as to ensure completion of the Project and submission of closeout documents within this time schedule. The Recipient shall submit a detailed Project timeline at the construction management conference (CMC) or at such other time specified by the Government. The Project timeline, in such form and substance determined by the Government in accordance with information provided in the application for this Award, shall provide a specific time frame for the conduct of all activities in sufficient detail to ensure that construction will commence at or before the allowable time specified hereinabove. The Project timeline must be approved by EDA and agreed to by the Recipient at the CMC or at such alternate time as determined by EDA. Moreover, the Recipient shall notify the Government in writing of any event which could delay substantially the achievement of the Project within prescribed time limits. The Recipient further acknowledges that failure to meet the development time schedule may result in the Government's taking action to terminate the Award in accordance with the regulations set forth at 15 CFR 24.43 (53 Fed. Reg. 8048-9, 8102, March 11, 1988).

- 3. GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION: Department of Labor requirements set forth in 41 CFR 60-4 establish goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all Federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with these regulations and shall obtain compliance with 41 CFR 60-4 from contractors and subcontractors employed in the completion of this Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 CFR 60-4. The goal for the participation of women in each trade area shall be as follows:

From April 1, 1981, until further notice: 6.9 percent.

All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 CFR 60-4.6, or any other successor regulations, shall hereafter be incorporated by reference into these Special Conditions.

The goal for the participation of minorities in the trade area shall be as follows until further notice: 7.0 percent.

Goals for minority participation shall be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The Recipient shall

include the "Standard Federal Equal Opportunity Construction Contract Specifications" (or cause them to be included, if appropriate) in all Federally assisted contracts and subcontracts of this Project. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 CFR 60-4.6.

4. **LOCAL SHARE:** In affirming this Award, the Recipient certifies that the non-federal share of Project costs is committed and is available as needed for the Project, that the non-federal share is from sources which can be used as match for the EDA Project, and that the non-federal share will not affect ownership of, or title to, the Project facilities. The Recipient further acknowledges that, prior to award of any construction contracts, it will be required to provide evidence satisfactory to the Government that all funds necessary to complete the Project are available.
5. **IMPLEMENTATION SCHEDULE:** In keeping with the need for prudent grant administration, the time permitted for full disbursement of the grant funds may not extend beyond five years from the date of award.
6. **EVIDENCE OF TITLE:** For purposes of Standard Term and Condition M.3.a., evidence of title to the property necessary for this Project shall be provided to EDA prior to advertising for bids for this Project. Such evidence must include evidence of title to the 125 acres being developed under this award.
7. **USEFUL LIFE:** The useful life of this Project for purposes including, but not limited to, establishing a first priority unsubordinated lien required by paragraph M.3.b. of the Standard Terms and Conditions, is hereby determined to be 20 years from the date of Project completion.
8. **PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act of 1993 (GPRA). Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA will advise Recipients in writing within a reasonable period prior to the time of submission of the reports, and in the event that there are any modifications in the performance measures.
9. **REAFFIRMATION OF APPLICATION:** Recipient(s) acknowledges that Recipient's application for this Award may have been submitted to the Government and signed by Recipient(s), or by an authorized representative of Recipient, electronically. Regardless of the means by which Recipient(s) submitted its application to the Government or whether Recipient or an authorized representative of Recipient submitted its application to the Government, Recipient(s) hereby reaffirms and states that a) all data in said application and documents submitted with the application are true and correct as of the date of this Award

and were true and correct as of the date of said submission; b) said application was as of the date of this Award and as of the date of said application duly authorized as required by local law by the governing body of the Recipient(s); and c) Recipient(s) confirms that it will comply with the Assurances and Certifications submitted with or attached to said application. The term application includes all documentation and any information provided to the Government as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by the Government after submission of the initial application.

10. ENVIRONMENTAL: Prior to awarding of construction contracts for the EDA Project, the Recipient shall provide evidence satisfactory to the Government that it has obtained a Section 404 permit for this Project from the U.S. Army Corps of Engineers or that none is required. The Recipient shall comply with any conditions of said permit.
11. LIEN ON MACHINERY AND EQUIPMENT: The use and disposition of the machinery and equipment acquired in whole or in part with the funds made available through this Financial Assistance Award shall be in accordance with the Property Management Standards set forth in 15 CFR Part 24 or 15 CFR Part 14, as applicable.

Prior to disbursement of funds by EDA, the Recipient shall grant to EDA a first priority security interest in the machinery and equipment acquired in whole or in part with funds made available through this Award. This first priority security interest must be perfected in accordance with local law. The Government will, in its sole discretion determine whether the security interest which has been granted to the Government is satisfactory, and it may require an opinion of counsel for the Recipient to substantiate that the security interest has been properly recorded and a valid security interest has been created. The Recipient must maintain EDA's security interest in accordance with local law for the useful life of the machinery and equipment.

12. ARCHITECT/ENGINEER AGREEMENT: Prior to the disbursement of funds by EDA, the Recipient shall submit to the Government for approval an Architect/Engineer agreement that meets the requirements of Department of Commerce Regulations at 15 CFR 24.36 or 15 CFR 14, as applicable. The fees for basic Architect/Engineer services shall be a lump sum or an agreed maximum and no part of the fees for other services shall be based upon a cost-plus-a-percentage-of-cost or a cost using a multiplier.
13. EDA PROJECT SIGN: The Recipient must erect and maintain in good condition and repair, a sign or signs, in accordance with EDA's specifications. Prior to on-site construction, a reproducible photograph of the sign must be submitted to EDA along with evidence that the sign is located at the project site.
14. GLOBAL CLIMATE CHANGE MITIGATION INCENTIVE FUND-LEED Green Building: Before the final disbursement of Global Climate Change Mitigation Incentive

Fund financial assistance by the Government, the Recipient shall submit to the Government evidence of final Leadership in Energy and Environmental Design (LEED) certification from the United States Green Building Council (“USGBC”) and invoices from design and construction service providers clearly delineating costs related to obtaining LEED certification. Reimbursement also may be made for the cost of obtaining LEED certification by USGBC. The Recipient shall be reimbursed for actual costs incurred not to exceed the amount approved for LEED certification in the originally approved budget or amended investment budget.

15. **LEAD ENTITY AGREEMENT:** Prior to the initiation of any Project activities, the Recipient shall submit an agreement, satisfactory to the Government, that one Recipient has been designated the lead agent to act with full legal authority to bind the other Recipient and to act as official representative of the Recipients in connection with all actions necessary to complete the Project.
16. **INDIVIDUAL BACKGROUND SCREENING:**
 1. **Name Check Requirement; Exemptions.** An individual background screening will be performed by the OIG on key individuals of organizational units associated with the application at the beginning of the Award and at three year intervals thereafter for the life of the Award unless (a) the proposed Award amount is \$100,000 or less; (b) applicants are accredited colleges and universities; (c) applicants are units of a State or local government; (d) applicants are economic development districts designated by EDA, including those entities whose designations are pending, and councils of governments; or (e) the key individual(s) is/are elected officials of State and local governments who are serving in capacities other than their elected capacities when applying for assistance. In addition, if there is a change in the status of the organization and/or key individuals, or the program officer, OIG, or Grants Officer believes there is good reason to conduct a review sooner, a background screening may be required more frequently. Individual background screenings are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges (e.g., fraud, theft, perjury), or other matters which significantly reflect on the applicant’s business integrity, responsibility, or financial integrity. Key individuals of non-exempt organizations associated with this Award shall complete Form CD-346, “Applicant for Funding Assistance.” An original signature is required. The form is to be submitted to the Grants Specialist named in the Award document within 30 days of receipt of this Award.
 2. **Results of Individual Background Screening.** EDA reserves the right to take any of the actions described in section H.3. if any of the following occurs as a result of the individual background screening:
 - a. A key individual fails to submit the required Form CD-346, “Applicant for Funding Assistance,” within 30 days of receipt of this Award;

- b. A key individual makes a false statement or omits a material fact on the Form CD-346; or
 - c. The individual background screening reveals significant adverse findings that reflect on the business integrity or responsibility of the Recipient and/or key individual.
3. Action(s) Taken as a Result of Individual Background Screening. If any situation noted in H.2. occurs, the Department, at its discretion, may take one or more of the following actions:
- a. Consider suspension/termination of an Award immediately for cause;
 - b. Require the removal of any key individual from association with management and/or implementation of the Award and require Grants Officer approval of personnel replacements;
 - c. Require the Recipient to make other changes as appropriate; and/or
 - d. Designate the Recipient as high risk and amend the Award to assign special award conditions, as appropriate, including making changes with respect to the method of payment and/or financial reporting requirements.

**U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**

**STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS**

Title II
Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components



OCTOBER 2007
(as amended on December 13, 2007)

**U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**

**STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS**

**Title II
Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components**

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APPENDIX38

PREFACE

Terms and Conditions of the Award. This financial assistance award on Form CD-450 (this "Award"), executed by the Economic Development Administration ("EDA") and the Recipient, together with the EDA-approved project budget and scope of work, these construction standard terms and conditions, special award conditions, and all applicable federal statutory and regulatory requirements as incorporated by reference (e.g., all applicable statutes, regulations, Executive Orders, and Office of Management and Budget (OMB) Circulars), constitute the complete requirements, hereinafter referred to as the "Terms and Conditions," applicable to the EDA investment.

The Recipient and any subrecipient must, in addition to the assurances made as part of the application for investment assistance, comply with and require each of its contractors and subcontractors employed in the completion of the project to comply with the Terms and Conditions of this Award.

This Award is subject to the laws and regulations of the United States. Any inconsistency or conflict in the Terms and Conditions specified in this Award will be resolved according to the following order of precedence: public laws, regulations (including applicable notices published in the *Federal Register*), Executive Orders, OMB Circulars, EDA's construction standard terms and conditions, and special award conditions. A special award condition may take precedence on a case-by-case basis over a construction standard term or condition when warranted by specific project circumstances.

Some of EDA's construction terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes or regulations published in the *Federal Register* or the *Code of Federal Regulations* ("C.F.R."), Executive Orders, OMB Circulars, or the assurances required of the Recipient (See Forms SF-424B and SF-424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, Executive Order, OMB Circular, or assurance.

ECONOMIC DEVELOPMENT ADMINISTRATION
STANDARD TERMS AND CONDITIONS
FOR CONSTRUCTION PROJECTS

Title II - Public Works and Economic Development Facilities
and
Title II - Economic Adjustment Construction Components

A. General Requirements and Responsibilities.

1. **Purpose.** The Economic Development Administration's ("EDA") grants for (i) public works (42 U.S.C. § 3141) and (ii) economic adjustment (42 U.S.C. § 3149) projects are designed to enhance regional competitiveness and promote long-term economic development in regions experiencing substantial economic distress. EDA provides construction, design, and engineering grants to assist distressed communities and regions revitalize, expand, and upgrade their physical infrastructure to attract new industry, encourage business expansion, diversify local economies, and generate or retain long-term private sector jobs and investment. The requirements set forth in these construction standard terms and conditions (the "Construction Standard Terms and Conditions") are applicable to construction, design, and engineering projects funded in whole or in part by EDA. Any necessary modifications of these requirements will be addressed in special award conditions to accommodate individual projects. In addition, these Construction Standard Terms and Conditions apply to construction projects of revolving loan funds ("RLFs") awarded between 1975 and 1999 under EDA's Title IX Economic Adjustment Assistance Program, as well as to RLFs funded after February 11, 1999 under section 209 of PWEDA (42 U.S.C. § 3149).
2. **Authority and Policies.** EDA is a bureau within the U.S. Department of Commerce established under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) ("PWEDA"). (*See also* 13 C.F.R. § 300.1.) As a federal agency, EDA is obligated to promulgate regulations and establish policies and procedures to:
 - a. Ensure compliance with applicable federal requirements;
 - b. Safeguard the public's interest in the grant assets; and
 - c. Promote the effective use of grant funds in accomplishing the purpose(s) for which they were awarded.

The Department or EDA may issue changes from time to time to the regulations and other requirements and policies that apply to this Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering this Award in a manner that is mutually beneficial to EDA and to the Recipient. The implementation of any such regulatory, administrative, or programmatic change in administering this Award must have prior EDA written approval.

EDA's policy is to administer all Awards uniformly; however, there may be special circumstances that warrant a variance. To accommodate these circumstances and to encourage innovative and creative ways to address economic development problems, EDA will consider requests for variances to the procedures set out in these Construction Standard Terms and Conditions if they do not conflict with applicable federal statutory and regulatory requirements, are consistent with the goals of EDA's programs, and make sound economic and financial sense.

3. **Definitions.** Whenever used in these Construction Standard Terms and Conditions, the following words and phrases shall have the following meanings:
- a. "Assistant Secretary" refers to the Assistant Secretary of Commerce for Economic Development;
 - b. "Award" – *see* the definition set out in the first paragraph of the *Preface* above;
 - c. "Closeout" or "Project Closeout" refers to the process by which the Grants Officer determines that all applicable administrative actions and all required work under the Award has been completed by the Recipient and EDA;
 - d. "Department" or "DOC" refers to the U.S. Department of Commerce;
 - e. "Government" or "Federal Government" refers to EDA;
 - f. "Grants Officer" refers to the Regional Director in the appropriate Regional Office;
 - g. "Project Officer," refers to the EDA official responsible for technical or other programmatic aspects of the Award. During the post-approval stage of the Award, EDA generally assigns this role to an EDA Engineer/Construction Manager.
 - h. "Project" refers to the activity for which the EDA grant was awarded;
 - i. "Recipient" refers to the undersigned grantee of U.S. government funds under the Award to which this document is made a part;
 - j. "Regional Office" refers to an EDA regional office;
 - k. "Subrecipient" or "Subgrantee" refers to the legal entity to which a subaward is made and which is accountable to the Recipient for the use of grant funds (this term does not include subcontractors with whom the Recipient enters into a contractual agreement); and
 - l. "Terms and Conditions of the Award" – *see* the definition set out in the first paragraph of the *Preface* above.

Capitalized terms used but not otherwise defined in these Construction Standard Terms and Conditions have the meanings ascribed to them in EDA's regulations at 13 C.F.R. §§ 300.3, 302.20, 307.8, and 314.1.

4. **Grant Recipient as Trustee.** The Recipient holds grant funds and any EDA-assisted Project property in trust for the purpose(s) for which the Award was made. The Recipient's obligation to the Federal Government continues for the estimated useful life of the Project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the "Federal Interest") in the property improved, in whole or in part, with the EDA investment. *See* 13 C.F.R. § 314.2.

If EDA determines that the Recipient fails or has failed to meet this obligation, the agency may exercise any rights or remedies with respect to its Federal Interest in the Project. However, EDA's forbearance in exercising any right or remedy in connection with the Federal Interest does not constitute a waiver thereof.

B. Financial Requirements.

1. Financial Reports.

- a. While EDA generally does not advance funds under an Award, the Recipient must submit Form SF-272, "*Report of Federal Cash Transactions*," for any Award where funds are to be advanced to the Recipient. Form SF-272 is due 15 working days following the end of each quarter for an Award under \$1 million, 15 working days following the end of each

month for an Award totaling \$1 million or more per year, or as otherwise specified in a special award condition. See 15 C.F.R. §§ 14.52(a)(2) or 24.41(c), as applicable.

- b. Any Recipient whose Award has not been fully disbursed is required to submit Form SF-269, "*Financial Status Report*" to EDA semi-annually to report on the status of unreimbursed obligations. This report will provide information on the amount of allowable Project expenses that have been incurred, but not claimed for reimbursement by the Recipient. The first report shall be as of March 30 of each year and shall be submitted to EDA no later than April 30 of each year, and the second report shall be of September 30 of each year and shall be submitted to EDA no later than October 30 of each year. Instructions for completing and submitting Form SF-269 will be furnished to the Recipient at least 60 days before the report is due.
- c. The Recipient must submit a final financial report using Form SF-269 within 90 days of the expiration date of the Award (or from the date the Recipient accepts the Project from the contractor, whichever occurs earlier).
- d. Noncompliance with these requirements will result in the suspension of disbursements under this Award.
- e. Financial reports are to be submitted to the Project Officer.

2. Disbursement Requests.

- a. *Method of Payment.* The Grants Officer determines the appropriate method of payment. Unless otherwise specified in a special award condition, the method of payment under this Award will be reimbursement. Payments will be made through electronic funds transfers directly to the Recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3720B *et seq.*). The Award number shall be included on all payment-related correspondence, information, and forms.
- b. *Disbursement Requests.* The Recipient shall use Form SF-271, "*Outlay Report and Request for Reimbursement for Construction Programs*," to request reimbursement under the Award. Substantiating invoices and/or vouchers also must be provided. Each request for the disbursement of funds shall be made to the Project Officer. Form SF-271 can be downloaded from OMB's website at www.whitehouse.gov/omb/grants/grants_forms.html.
- c. *Initial Disbursement Request.* For the initial disbursement only, the Recipient must complete and submit Form SF-3881, "*ACH Vendor/Miscellaneous Payment Enrollment Form*," along with Form SF-271, to the Project Officer.
- d. *Interim Disbursement Requests.* All requests for interim disbursement shall be submitted using Form SF-271 and include substantiating invoices and/or vouchers.

3. Federal and Non-Federal Cost Sharing.

- a. Awards that include the federal and non-federal share incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the federal share and non-federal share, or "Matching Share," shall be calculated by applying the approved federal and non-federal cost share ratios to

actual allowable costs. *See also* 13 C.F.R. §§ 305.10 and 308.2. If actual allowable costs are greater than the total approved estimated budget, the federal share shall not exceed the total federal dollar amount authorized by this Award.

- b. The Matching Share, whether cash or in-kind, shall be paid out at the same rate as the federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the Recipient must meet its cost share commitment over the Award period.
 - c. The Recipient shall show that the Matching Share is committed to the Project, available as needed, and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 C.F.R. § 301.5.
4. **Budget Revisions and Transfers of Funds Among Budget Categories.** The EDA-approved budget is the budget plan for the Project. The Recipient must notify EDA of any deviation from the budget or program plans, including any change in scope of work or the objective of the Project (even if there is no associated budget revision requiring prior written approval). *See* 15 C.F.R. §§ 14.25 or 24.30, as applicable.
- a. Requests for budget revisions to the EDA-approved budget in accordance with the provisions provided below must be submitted to the Grants Officer, who shall make the final determination on such requests and notify the Recipient in writing.
 - b. Amendments to this Award require preparation of Form CD-451, "*Amendment to Financial Assistance Award*," for execution by both the Grants Officer and the Recipient. Form CD-451 is required for the following:
 - (i) Changes to the Project scope of work;
 - (ii) Budget revisions requiring additional EDA or non-EDA funds;
 - (iii) Budget revisions that result in cumulative transfer among direct cost categories in excess of 10 percent of the project cost and the federal share is greater than \$100,000;
 - (iv) The inclusion of costs for which EDA's prior approval is needed under the following OMB Circulars: Circular A-21, "*Cost Principles for Educational Institutions*" (2 C.F.R. part 220); Circular A-87, "*Cost Principles for State, Local, and Indian Tribal Governments*" (2 C.F.R. part 225); and Circular A-122, "*Cost Principles for Non-Profit Organizations*" (2 C.F.R. part 230), as applicable;
 - (v) Change of site location;
 - (vi) Change or addition of Recipient;
 - (vii) Time extensions; and
 - (viii) Modifications to the Terms and Conditions of the Award, other than time extensions.
 - c. When an Award supports both construction and non-construction work, the Recipient must obtain prior written approval from the Grants Officer before making any fund or budget transfer from non-construction to construction or vice versa. *See* 15 C.F.R. §§ 14.25(j) or 24.30(c)(3), as applicable.
 - d. Transfers shall not be permitted if such transfers would cause any federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget

unless the Grants Officer has provided prior written approval. In addition, this does not prohibit the Recipient from requesting the Grants Officer's approval for revisions to the budget. See 15 C.F.R. §§ 14.25(e) and (f) or 24.30(c), as applicable.

- e. The Recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.
- f. *Project Underrun Amounts.* Underrun amounts shall be transferred to the contingencies line item. Contingency funds are to be used to address situations resulting from unknown conditions and changes required for the fulfillment of authorized activities under this Award. EDA may approve the use of underrun funds to increase the federal share of the Project or further improve the Project, as long as the improvements are approved by EDA and consistent with the original purpose of the approved EDA investment. See 13 C.F.R. § 308.1.
- g. *Additional EDA Funding in Case of Project Overrun Amounts.* In accepting the Award, the Recipient agrees to fund any overrun amounts. Additional EDA assistance for an approved Project may not be approved.

5. Indirect Costs.

- a. Indirect costs are generally not applicable under this Award.
- b. When indirect costs are applicable, they will not be allowable charges against the Award unless specifically included as a line item in the EDA-approved budget. For Recipients that are educational institutions, the term "indirect cost" has been replaced with the term "facilities and administrative cost" under OMB Circular A-21, "Cost Principles for Educational Institutions" (see 2 C.F.R. part 220).
- c. Excess indirect costs may not be used to offset unallowable direct costs.
- d. If the Recipient has not previously established an indirect cost rate with a federal agency, the negotiation and approval of a rate is subject to the procedures in applicable cost principles and the following subparagraphs:
 - (i) *State, local, and Indian Tribal Governments; Educational Institutions; and Non-Profit Organizations (Non-Commercial Organizations)*

For the above-listed organizations, "cognizant federal agency" is generally defined as the agency that provides the largest dollar amount of direct federal funding. For those organizations for which DOC is cognizant or has oversight, DOC or its designee will either negotiate a fixed rate with carry-forward provisions for the Recipient or, in some instances, will limit its review to evaluating the procedures described in the Recipient's cost allocation methodology plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

- (ii) Within 90 days of the Award start date, the Recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The Recipient shall provide the Grants Officer with a copy of the transmittal letter.

Office of Acquisition Management
 U.S. Department of Commerce
 14th Street and Constitution Avenue, N.W., Room # 6054
 Washington, DC 20230

- (iii) The Recipient can use the fixed rate proposed in the indirect cost plan until such time as DOC provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carry-forward provision used in calculating next year's rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. An organization that has previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of the Recipient's fiscal years.
- e. When DOC is not the oversight or cognizant federal agency, the Recipient shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight federal agency requesting a negotiated rate agreement.
- f. If the Recipient fails to submit the required documentation to DOC within 90 days of the Award start date, the Grants Officer may amend the Award to preclude the recovery of any indirect costs under the Award. If the DOC, oversight, or cognizant federal agency determines there good and sufficient cause to excuse the Recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.
- g. Regardless of any approved indirect cost rate applicable to the Award, the maximum dollar amount of allocable indirect costs for which DOC will reimburse the Recipient shall be the lesser of:
 - (i) The line item amount for the federal share of indirect costs contained in the approved budget of the Award; or
 - (ii) The federal share of the total allocable indirect costs of the Award based on the indirect cost rate approved by a cognizant or oversight federal agency and current at the time the cost was incurred, provided the rate is approved on or before the Award end date.
- 6. **Incurring Costs Prior to Award.** Project activities carried out prior to EDA's approval of this Award shall be carried out at the sole risk of the Recipient. Such activity is subject to the rejection of the application, the disallowance of costs, or other adverse consequences as a result of noncompliance with EDA or federal law, including but not limited to procurement requirements, civil rights requirements, federal labor standards, or environmental and historic preservation requirements. Costs must be included in the EDA-approved budget and must be allowable costs under federal cost principles and under the Award. *See* 13 C.F.R. § 302.8.
- 7. **Incurring Costs or Obligating Funds Beyond the Project Expiration Date.**
 - a. The Recipient shall not incur costs or obligate funds for any purpose pertaining to the Project, program, or activities beyond the expiration date stipulated in this Award (or the

date of acceptance of the Project by the contractor, whichever occurs earlier), unless a written time extension of this Award is granted by the Grants Officer. The only costs that are authorized for a period of up to 90 days following that date are those strictly associated with Closeout activities. Closeout activities are generally limited to the preparation of final reports. See 15 C.F.R. §§ 14.71 or 24.50, as applicable.

- b. The Recipient shall adhere to the development time schedule and time limits set out in the Terms and Conditions of this Award. Any such Term or Condition supersedes the development time schedule and time limits set out in these Construction Standard Terms and Conditions.

8. Time Extensions.

- a. Unless otherwise authorized in 15 C.F.R. §§ 14.25(e)(2) or 24.30, as applicable, or a special award condition, any extension of the Project period can only be authorized by the Grants Officer in writing. A verbal or written assurance of funding from other than the Grants Officer, including Regional Office staff other than the Grants Officer, does not constitute authority to obligate funds for programmatic activities beyond the expiration date.
- b. The Recipient is responsible for implementing the Project in accordance with the development time schedule contained in this Award. As soon as the Recipient becomes aware that it will not be possible to meet the development time schedule, the Recipient must notify the Grants Officer. The Recipient's notice to EDA must contain the following:
 - (i) An explanation of the Recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site, major re-engineering required in order to obtain State or federal approvals, unplanned environmental mitigation required);
 - (ii) A statement that no other changes to the Project are contemplated;
 - (iii) Documentation that demonstrates there is still a bona fide need for the Project; and
 - (iv) A statement that no further delay is anticipated and that the Project can be completed within the revised time schedule.

EDA reserves the right to withhold disbursements while the Recipient is not in compliance with the time schedule. EDA reserves the right to suspend or terminate this Award if the Recipient fails to proceed with reasonable diligence to accomplish the Project as intended.

- c. EDA has no obligation to provide any additional prospective funding. Any amendment of this Award to increase funding or to extend the period of performance is at the sole discretion of EDA.
9. **Tax Refunds.** Refunds of Federal Insurance Contributions Act and Federal Unemployment Tax Act ("FICA/FUTA") taxes received by the Recipient during or after the Project period must be refunded or credited to DOC where the benefits were financed with federal funds under the Award. The Recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The Recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the expiration of this Award.

10. **Program Income.** For Projects that create long-term rental revenue (e.g., buildings or real property constructed or improved for the purpose of renting or leasing space), the Recipient agrees to use such income generated from the rental or lease of any Project facility in the following order of priority:

- a. Administration, operation, maintenance, and repair of Project facilities for their estimated useful life (as determined by EDA) in a manner consistent with good property management practice and in accordance with established building codes. This includes, where applicable, repayment of indebtedness resulting from any EDA-approved encumbrance (e.g., approved mortgage) on the EDA-assisted facility.
- b. Economic development activities that are authorized for support by EDA, provided such activities meet the economic development purposes of PWEDA.

See 15 C.F.R. §§ 14.24 or 24.25, as applicable.

C. Programmatic Requirements.

1. Quarterly Reporting.

- a. Quarterly performance reports must be submitted in accordance with the procedures set out in 15 C.F.R. parts 14 or 24, as applicable, and as indicated below. Failure to submit required reports in a timely manner may result in the withholding of payments under this Award; deferral of processing of new awards, amendments, or supplemental funding pending the receipt of the overdue report(s); or the establishment of an account receivable for the difference between the total federal share of outlays last reported and the amount disbursed. *See 13 C.F.R. § 302.18(a).*
- b. Unless otherwise specified in this Award, the quarterly performance report will contain the following information for each Project program, function, or activity:
 - (i) A comparison of planned and actual accomplishments according to the timetable or list of Project objectives in this Award;
 - (ii) An explanation of any delays or failures to meet the Project timetable or Project goals; and
 - (iii) Any other pertinent information including, when appropriate, analysis, and explanation of cost overruns or high unit costs.
- c. Quarterly performance reports shall be submitted for each calendar quarter to the Project Officer. Each performance report will be due not later than January 15, April 15, July 15, and October 15 for the immediate previous quarter. The final Project performance report shall be submitted to EDA no more than 90 days after the Project Closeout date. This reporting requirement begins with the Recipient's acceptance of this Award and ends when EDA approves Project Closeout. *See 15 C.F.R. §§ 14.51 or 24.40, as applicable.*

The Recipient shall submit quarterly performance reports to the EDA Project Officer in hardcopy or electronically as specified in the special award conditions.

2. **Interim Reporting.** The Recipient must report any event that will or may have significant impact upon the Project, including delays or adverse conditions that materially may affect the

ability of the Recipient to attain Project objectives within established time periods or meet the development time schedule. The Recipient should report such events to the Project Officer in the most time-expedient way possible and then, if the initial report was not in writing, report the event to the Project Officer in writing. Such a report shall include a statement of the event or issue, a statement of the course of action contemplated to resolve the matter, and any federal assistance needed to resolve the situation. If budget changes are required, the Recipient must submit a written budget revision request. *See* 15 C.F.R. §§ 14.25(h) or 24.30(c)(2), as applicable.

3. **Government Performance and Results Act Reporting.** In addition to quarterly performance reports, EDA may require the Recipient to report on Project performance beyond the Project Closeout date for Government Performance and Results Act (GPRA) purposes. In no case shall the Recipient be required to submit any report more than ten years after the Project Closeout date. Data used by the Recipient in preparing reports shall be accurate and from independent sources whenever possible. *See* 13 C.F.R. § 302.16.
4. **Unsatisfactory Performance.** Failure to perform the work in accordance with the Terms and Conditions of the Award and maintain at least satisfactory performance at the discretion of EDA may result in the designation of the Recipient as high-risk and assignment of special award conditions or further action as specified in section C.7. of these Construction Standard Terms and Conditions. *See* 15 C.F.R. §§ 14.14 or 24.12, as applicable.
5. **Programmatic Changes.**
 - a. The Recipient must report to the Grants Officer, and request prior approval for any programmatic change to the Award, in accordance with 15 C.F.R. §§ 14.25 or 24.30, as applicable.
 - b. The Recipient must obtain the Grants Officer's written approval for any programmatic changes to the Award. Any changes made to the Project without EDA's approval are made at the Recipient's risk of nonpayment of costs, suspension, termination, or other EDA action with respect to the Award. *See* 13 C.F.R. § 302.7(b).
 - c. *Contract Change Orders.* After construction contracts for the Project have been executed, it may become necessary to alter them. This requires a formal contract change order that must be issued by the Recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. Work on the Project may continue pending EDA review and approval of the change order, but all such work shall be at the Recipient's risk as to whether the cost of the work is eligible for EDA participation until the Recipient receives EDA approval for the change order. *See* 13 C.F.R. § 305.13.
6. **Other Federal Awards with Similar Programmatic Activities.** The Recipient shall immediately provide written notification to the Project Officer and the Grants Officer in the event that, subsequent to receipt of this Award, other financial assistance is received to support or fund any portion of the scope of work incorporated into this Award. EDA will not pay for costs that are funded by other sources.
7. **Noncompliance with Award Provisions.** Failure to comply with any or all of the Terms and Conditions of this Award may have a negative impact on the Recipient's ability to receive

future funding from the Department, including EDA, and may be considered grounds for any or all of the following actions: (a) the establishment of an account receivable; (b) withholding payments under any EDA or DOC Award(s) to the Recipient; (c) the imposition of additional special award conditions; (d) the suspension of any active DOC Awards; or (e) the termination of any active DOC Awards.

The Recipient hereby agrees that the Government may at its option withhold disbursement of any Award funds if the Government learns or has knowledge that the Recipient has failed to comply in any manner with any Term or Condition of the Award. *See* 13 C.F.R. § 302.18. The Government may withhold funds until the violation or violations have been corrected to the Government's satisfaction. The Recipient further agrees to reimburse the Government for any ineligible costs paid from Award funds, or if the Recipient fails to reimburse the Government, the Government shall have the right to offset the amount of such ineligible costs from any undisbursed award funds held by the Government. The Recipient agrees to repay the Government for all ineligible costs incurred in connection with the Project and paid from the Award including but not limited to those costs determined to be ineligible if the Government learns of any Award violations after all Award funds have been disbursed. *See* 15 C.F.R. §§ 14.72-14.73 or 24.51-24.52, as applicable.

8. **Use by Beneficiary.** In the event a beneficiary of the Project fails to comply in any manner with certifications, assurances, or agreements that such beneficiary has entered into in accordance with EDA's requirements, the Recipient will reimburse the Government the Award amount or an amount to be determined by the Government pursuant to 13 C.F.R. §§ 314.4 and 314.5. Where the Government determines that the failure of a beneficiary to comply with EDA requirements affects a portion of the property benefited by the Award, the Recipient will reimburse the Government proportionately.
9. **Prohibition Against Assignment by the Recipient.** Except as provided in a special award condition, the Recipient shall not transfer, pledge, mortgage, or otherwise assign the Award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions.
10. **Disclaimer Provisions; Hold Harmless Requirement.**
 - a. The United States expressly disclaims any and all responsibility or liability to the Recipient or third persons for the actions of the Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Award or any subaward or subcontract under this Award.
 - b. The acceptance of this Award by the Recipient does not in any way constitute an agency relationship between the United States and the Recipient.
 - c. To the extent permitted by law, the Recipient agrees to indemnify and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an Award to assist, directly or indirectly, in the preparation of the Project site or construction, renovation, or repair of any facility on the Project site, to the extent that such liabilities are incurred because of toxic or hazardous contamination or groundwater, surface water, soil, or other conditions caused by operations of the Recipient or any of its predecessors (other than the Government or its agents) on the property.
See 13 C.F.R. § 302.19.

11. **Prohibition on Use of Third Parties to Secure Award.** Unless otherwise specified in the special award conditions to this Award, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this Award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by the Recipient for the purpose of securing business. For breach or violation of this warrant, the Government has the right to annul this Award without liability, or at its discretion, to deduct from the Award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
12. **Payment of Attorneys' or Consultants' Fees.** No Award funds shall be used, directly or indirectly, to reimburse attorneys' or consultants' fees incurred in connection with obtaining investment assistance under PWEDA, such as, for example, preparing the application for EDA investment assistance. However, ordinary and reasonable attorneys' and consultants' fees incurred for meeting Award requirements, such as, for example, conducting a title search or preparing plans and specifications, may be eligible Project costs and may be paid out of Award funds, provided such costs are otherwise eligible. *See* 13 C.F.R. § 302.10.
13. **Commencement of Construction.**
 - a. *Delayed Construction Starts.* If significant construction (as determined by EDA) is not commenced within two years of the Award date or by the date estimated for start of construction in this Award (or the expiration of any extension granted in writing by EDA), whichever is later, this Award will be automatically suspended and may be terminated if EDA determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously. If significant construction has not been commenced within three years of the Award date, an extension must be approved by the Assistant Secretary.
 - b. *Early Construction Starts.* The Recipient shall make a written request to EDA for early construction start permission (that is, after the date of Award, but before EDA gives formal approval for construction to commence). For Project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the Project facilities is in compliance with the Terms and Conditions of this Award. If construction commences prior to EDA's determination, the Recipient proceeds at its own risk until EDA's review and concurrence. *See* 13 C.F.R. § 305.11.
 - c. *Project Sign.* The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the Project site indicating that the Federal Government is participating in the Project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with State or local law. *See* 13 C.F.R. § 305.12.
14. **Efficient Administration of Project.** The Recipient agrees to properly and efficiently administer, operate, and maintain the Project for its estimated useful life, as required by section 504 of PWEDA (42 U.S.C. § 3194). If the Government determines, at any time during the estimated useful life of the facility, that the Project is not being properly and efficiently

administered, operated, and maintained, the Government may terminate this Award and require the Recipient to repay the Federal Share. *See* 13 C.F.R. §§ 302.12, 302.18, and 314.2-314.5.

15. Conflicts-of-Interest Rules.

- a. An “Interested Party” is defined in 13 C.F.R. § 300.3 as “any officer, employee, or member of the board of directors or other governing board of the Recipient, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the Recipient, such as agents, advisors, consultants, attorneys, accountants, or shareholders.” An Interested Party includes the Interested Party’s “Immediate Family” (defined in 13 C.F.R. § 300.3 as a person’s spouse, parents, grandparents, siblings, children, and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person) and other persons directly connected to the Interested Party by law or through a business organization. In addition, “Immediate Family” includes an Interested Party’s “significant other” or partner.
- b. The Recipient must establish safeguards to prohibit an Interested Party from using its position for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or of personal gain. *See* 13 C.F.R. § 302.17(a) and (b), 15 C.F.R. §§ 14.42 or 24.36(b)(3), as applicable, and Forms SF-424B (“*Assurances – Non-Construction Projects*”) and SF-424D (“*Assurances – Construction Projects*”).
- c. An Interested Party must not receive any direct or indirect financial or personal benefits in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It also could result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field. *See* 13 C.F.R. § 302.17(b).

16. Record-Keeping Requirements.

- a. *Records.* The Recipient must maintain records that document compliance with the Terms and Conditions of this Award. At a minimum, the Recipient’s records must fully disclose:
 - (i) The amount and disposition of EDA investment assistance;
 - (ii) All Project expenditures and procurement actions;
 - (iii) The total cost of the Project that the Award funds;
 - (iv) The amount and nature of the portion of Project costs provided by non- EDA sources;
 - (v) Contractor compliance with applicable federal requirements; and
 - (vi) Such other records as EDA determines will facilitate an effective audit.

b. *Records Retention.*

In general, all records pertinent to this Award must be kept retained for a period of three years from the date of submission of the final project expenditure report (the final Form SF-271 for disbursement). The only exceptions are the following:

- (i) If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved and final actions taken.
- (ii) Records for real property and equipment acquired with federal funds must be retained for three years after final disposition.
- (iii) When records are transferred or maintained by EDA, the three-year retention requirement is not applicable to the Recipient.

Records relating to indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations on the rate at which a particular group of costs is chargeable are subject to different retention requirements. See 15 C.F.R. §§ 14.53 or 24.42, as applicable.

The Recipient is responsible for monitoring any subrecipients and contractors to ensure their compliance with the records retention requirements. The Recipient must immediately notify the Project Officer in case records are not retained for the general retention periods noted above. See 13 C.F.R. § 302.14 and 15 C.F.R. §§ 14.50-14.53 or §§ 24.40-24.42, as applicable.

17. Termination Actions.

- a. *Termination for Cause.* If the Recipient materially fails to comply with any of the Terms and Conditions of this Award, EDA has the right to terminate for cause all or any part of its obligation hereunder, including if:
 - (i) Any representation made by the Recipient to the Government in connection with the application for Government assistance is incorrect or incomplete in any material respect;
 - (ii) The intent and purpose and/or the economic feasibility of the Project is changed substantially so as to affect significantly the accomplishment of the Project as intended (including an unauthorized use of property as provided in 13 C.F.R. § 314.4);
 - (iii) The Recipient has violated commitments it made in its application and supporting documents or has violated any of the Terms and Conditions of this Award;
 - (iv) The conflicts-of-interest rules in 13 C.F.R. § 302.17 are violated; or
 - (v) The Recipient fails to report immediately to the Government any change of authorized representative(s) acting in lieu of or on behalf of the Recipient.

In addition, EDA may take one or more of the actions set out in 15 C.F.R. §§ 14.62(a) or 24.43(a), as applicable.

- b. *Termination for Convenience.* The Recipient may request at any time termination for convenience of this Award upon sending to the Grants Officer written notification in a form acceptable to EDA setting forth the reasons for requesting the termination and the effective date of such termination. See 15 C.F.R. §§ 14.61 or 24.44, as applicable.

- 18. **Project Closeout Procedures.** After construction is completed and the Project is closed out financially, the Recipient has an ongoing responsibility to properly administer, operate, and maintain the Project for its estimated useful life (as determined by EDA) in accordance with its original purpose. See 13 C.F.R. § 302.12. The Recipient must comply with all Award

requirements and maintain records to document such compliance, which shall be made available for inspection by EDA or other Government officials as required.

- a. *Final Disbursement.* When Project construction and final inspection have been completed, or substantially completed as determined by EDA, and the Recipient has accepted the Project from the contractor, the Recipient can begin the Closeout process by submitting the following documentation to EDA:
- (i) A request for final disbursement on an executed Form SF-271;
 - (ii) A written certification that all costs claimed are for eligible activities under this Award, for which there is documentation in the Recipient's records;
 - (iii) An executed certificate of final acceptance signed by the Recipient and the Recipient's architect/engineer;
 - (iv) The Recipient's certification that its currently valid single or program-specific audit in accordance with OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*," if applicable, does not contain any material findings (if the Recipient's currently valid OMB Circular A-133 audit does contain material findings, the Recipient shall submit the applicable audit in hardcopy to the Grants Officer);
 - (v) The Recipient's certification that its currently valid audit (in accordance with OMB Circular A-133), if applicable, has been submitted to the Federal Audit Clearinghouse; and
 - (vi) Other documentation as may be required by EDA.

EDA shall advise the Recipient of costs determined to be eligible and ineligible. If a balance of this Award is due to the Recipient, the balance will be paid by wire transfer. If the Recipient has received an amount in excess of the amount due the Recipient, the Recipient must refund the excess to EDA. The Recipient shall contact the Project Officer for refund instructions.

As noted above, if the Recipient's currently valid OMB Circular A-133 audit contains material findings, the Recipient shall submit the audit in hardcopy to the Grants Officer before final disbursement.

- b. The Recipient shall submit, within 90 calendar days after the Project Closeout date, all financial, performance, and other reports as required by the Terms and Conditions of this Award. Additional GPRA reporting requirements also may apply.
- c. Unless EDA authorizes an extension, the Recipient shall liquidate all obligations incurred under this Award no later than 90 calendar days after acceptance of the Project from the contractor or before the expiration date of this Award, whichever occurs earlier.
- d. The Closeout of this Award does not affect any of the following:
- (i) Audit requirements per OMB Circular A-133 and the related "*Compliance Supplement*;"
 - (ii) The right of EDA to disallow costs and recover funds on the basis of a later audit or other Project review;
 - (iii) The Recipient's obligation to return any funds due as a result of later corrections or other transactions; and

- (iv) Requirements for property management, records retention, and performance measurement reports.

D. Additional Requirements Relating to Construction Projects.

The Recipient and any subrecipient(s) must, in addition to other statutory and regulatory requirements detailed in these Construction Standard Terms and Conditions and the assurances made to EDA in connection with the Award, comply and require each of its contractors and subcontractors employed in the completion of the Project to comply with all applicable federal, State, territorial, and local laws, and in particular, the following federal public laws (and the regulations issued thereunder), Executive Orders, OMB Circulars, and local law requirements.

1. **The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141-3144, 3146, 3147; 42 U.S.C. § 3212)**
Requiring minimum wages for mechanics and laborers employed on Federal Government public works projects to be based on the wages the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the Project is to be performed, or in the District of Columbia if the Project is to be performed there.
2. **The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701 – 3708)**
Providing work hour standards for every laborer and mechanic employed by any contractor or subcontractor in the performance of a federal public works project.
3. **The National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470 *et seq.*), and the Advisory Council on Historic Preservation Guidelines**
Requiring projects involving federal funds to follow the requirements of the National Historic Preservation Act, which requires stewardship of historic properties.
4. **The Historical and Archeological Data Preservation Act of 1974, as amended (16 U.S.C. § 469a-1 *et seq.*)**
Requiring appropriate surveys and preservation efforts if a federally-licensed project may cause irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data.
5. **Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*), and the regulations issued thereunder,** which prescribe standards for the design and construction of any building or facility intended to be accessible to the public or that may house handicapped employees.
6. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*), and implementing regulations issued at 49 C.F.R. part 24,** which establish uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation, or demolition of real property acquired for a Project financed wholly or in part with federal financial assistance.
7. **The Energy Conservation and Production Act (42 U.S.C. § 6834 *et seq.*)**
Establishing energy efficiency performance standards for the construction of new residential and commercial structures undertaken with federal financial assistance.

8. **Requirements for New Construction.** For new building construction projects, the Recipient will comply with current local building codes, standards, and other requirements applicable to the Project.

E. **Non-Discrimination Requirements.** No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. The Recipient agrees to comply with the following non-discrimination requirements.

1. **Statutory Provisions.**

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*) and DOC implementing regulations published at 15 C.F.R. part 8, which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
- b. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*), which prohibits discrimination on the basis of sex under federally-assisted education programs or activities;
- c. Pub. L. No. 92-65, 42 U.S.C. § 3123, which proscribes discrimination on the basis of sex in EDA assistance provided under PWEDA; Pub. L. No. 94-369, 42 U.S.C. § 6709, which proscribes discrimination on the basis of sex under the Local Public Works Program; and the Department's implementing regulations at 15 C.F.R. §§ 8.7-8.15;
- d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. part 8b, which prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from federal assistance;
- e. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*) and DOC implementing regulations published at 15 C.F.R. part 20, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance;
- f. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation; and
- g. Other applicable federal statutes, regulations, and Executive Orders.

2. **Other Provisions.**

- a. Parts II and III of Executive Order 11246 (30 Fed. Reg. 12319, 1965), as amended by Executive Order 11375 (32 Fed. Reg. 14303, 1967) and 12086 (43 Fed. Reg. 46501, 1978), requiring federally-assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that Executive Order and Department of Labor regulations implementing Executive Order. 11246 (41 C.F.R. § 60-1.4(b), 1991).

- b. Executive Order 13166 (August 11, 2000), "*Improving Access to Services for Persons With Limited English Proficiency*," and DOC policy guidance issued on March 24, 2003 (68 Fed. Reg. 14180) to federal financial assistance Recipients on the Title VI prohibition against national origin discrimination affecting Limited English Proficient ("LEP") persons.

3. Title VII Exemption for Religious Organizations.

Generally, Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000e *et seq.*), provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

F. Audits.

Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq.*), an audit of the Award may be conducted at any time. The Department's Inspector General ("OIG"), or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Recipient, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. When the OIG requires a program audit on a DOC Award, the OIG will usually make the arrangements to audit the Award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other federal, State, or local audit entity.

1. Requirement to Have an OMB Circular A-133 Audit Performed; Organization-Wide, Program-Specific, and Project Audits.

- a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*," and the related "*Compliance Supplement*." Recipients that expend federal awards of \$500,000 or more in a fiscal year shall have an audit conducted for that year in accordance with the requirements contained in OMB Circular A-133. A copy of the audit shall be submitted to the Bureau of the Census, which has been designated by OMB as a central clearinghouse. The address is:

Federal Audit Clearinghouse
1201 E. 10th Street
Jeffersonville, IN 47132

- b. In accordance with 15 C.F.R. § 14.26 (c) and (d), for-profit hospitals, commercial, and other organizations not covered by the audit provisions of OMB Circular A-133 that expend federal awards of \$500,000 or more in a fiscal year, are required to have a program-specific audit performed at the conclusion of the Project, but no less than once every five years. Some DOC programs have specific audit guidelines that will be incorporated into

the Award. If DOC does not have a program-specific audit guide available for the program, the auditor should follow *Generally Accepted Government Auditing Standards* and the requirements for a program-specific audit as described in OMB Circular A-133 § ___.235. A copy of the program-specific audit shall be submitted to the OIG at the following address with a copy of the transmittal letter to the Grants Officer:

Office of Inspector General
U.S. Department of Commerce
Atlanta Regional Office of Audits
401 West Peachtree Street, N.W., Suite 2742
Atlanta, GA 30308

2. **Requirement to Submit Audit to EDA.** If the Recipient's currently valid audit required under OMB Circular A-133 contains materials findings, the Recipient must submit the audit in hardcopy to the Grants Officer. *See also* section C.18.a. of these Construction Standard Terms and Conditions.
3. **Audit Resolution Process.**
 - a. An audit of the Award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due to EDA. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.
 - b. In accordance with the *Federal Register* notice dated January 27, 1989 (54 Fed. Reg. 4053), a Recipient whose Award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
 - (i) Unless the OIG determines otherwise, the Recipient has 30 days from the date of the transmittal of the "Draft Audit Report" to submit written comments and documentary evidence.
 - (ii) The Recipient has 30 days from the date of the transmittal of the "Final Audit Report" to submit written comments and documentary evidence. There shall be no extension of this deadline.
 - (iii) EDA shall review the documentary evidence submitted by the Recipient and shall notify the Recipient of the results in an "Audit Resolution Determination Letter." The Recipient has 30 days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There shall be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the Audit Resolution Determination Letter.
 - (iv) An appeal of the Audit Resolution Determination Letter does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on such debt. If the Audit Resolution Determination Letter is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.

EDA shall review the Recipient's appeal and notify the Recipient of the results in an Appeal Determination Letter. After the opportunity to appeal has expired or after the

Appeal Determination Letter has been rendered, EDA will not accept any further documentary evidence from the Recipient. No other administrative appeals are available in the Department.

G. Debts.

1. Payment of Debts Owed the Federal Government.

Any debt determined to be owed to the Federal Government must be paid promptly by the Recipient. In accordance with 15 C.F.R. § 21.4, a debt will be considered delinquent if it is not paid within 15 days of the established due date or, if there is no due date, within 30 days of the billing date. Failure to pay a debt by the due date or, if there is no due date, within 30 days of the billing date, shall result in the imposition of late payment charges as noted below. In addition, failure to pay the debt or establish a repayment agreement by the due date or, if there is no due date, within 30 days of the billing date, will also result in the referral of the debt for collection action, including referral to the Treasury Offset Program (31 C.F.R. § 285.5) and may result in EDA taking further action as specified in section C.7. of these Construction Standard Terms and Conditions. The Recipient also may be suspended or debarred from further federal financial and non-financial assistance and benefits, as provided in 2 C.F.R. part 1326, "*Nonprocurement Debarment and Suspension*" until the debt has been paid in full or until a repayment agreement has been approved and payments are made in accordance with the repayment agreement. Payment of a debt may not come from other federally-sponsored programs. Verification that other federal funds have not been used will be made during future program visits and audits.

2. Late Payment Charges.

- a. An interest charge shall be assessed on the delinquent debt as established by the Debt Collection Act of 1982, as amended (31 U.S.C. § 3701 *et seq.*). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury's "Current Value of Funds Rate" ("CVFR"). See www.fms.treas.gov/cvfr/index.html. The U.S. Department of Treasury annually publishes the CVFR in the *Federal Register*. The assessed rate shall remain fixed for the duration of the indebtedness.
- b. A penalty charge will be assessed on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent.
- c. An administrative charge will be assessed to cover processing and handling the amount due.

3. Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees.

Pursuant to 31 U.S.C. § 3720B, unless waived, the Department is not permitted to extend financial assistance in the form of a loan, loan guaranty, or loan insurance to any person delinquent on a non-tax debt owed to a federal agency. This prohibition does not apply to disaster loans.

4. **Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs.**

Pursuant to 28 U.S.C. § 3201(e), unless waived by DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the U.S. or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

H. **Name Check Reviews.**

1. **Name Check Requirement.** A name check review will be performed by the OIG on key individuals associated with nonprofit organization applicants, unless: (a) the proposed award amount is \$100,000 or less; (b) the applicant has been a Recipient of financial assistance from the Department for three or more consecutive years without any adverse programmatic or audit finding; or (c) the applicant is a unit of a State or local government. See "*Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements*" (69 Fed. Reg. 78389, December 30, 2004).
2. **Exemptions.** The following individuals who are acting on behalf of their respective entities in applying for assistance are exempt from the name check review process:
 - a. Officials of State and local governments;
 - b. Officials of accredited colleges and universities; and
 - c. Officials of economic development districts designated by EDA, including those entities whose designations are pending.
3. **Results of Name Checks.** EDA reserves the right to take any of the actions described in section H.4. below if any of the following occurs as a result of the name check review:
 - a. A key individual fails to submit the required Form CD-346, "*Applicant for Funding Assistance*;"
 - b. A key individual makes an incorrect statement or omits a material fact on Form CD-346; or
 - c. The name check reveals significant adverse findings that reflect on the business integrity or responsibility of the applicant and/or key individual.
4. **Action(s) Taken as a Result of Name Check Review.** If any situation listed in section H.3. above occurs, the Department, at its discretion, may take one or more of the following actions:
 - a. Consider suspension or termination of the Award;
 - b. Require the removal of any key individual from association with the management or implementation of the Award; or
 - c. Make appropriate provisions or revisions as needed (in the special award conditions to the Award) with respect to the method of payment and/or financial reporting requirements.

- I. **Governmentwide Debarment and Suspension (Non-procurement).** The Recipient shall comply with the provisions of subpart C of 2 C.F.R. part 1326, "*Non-Procurement Debarment and Suspension*," which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in federal non-procurement transactions either through primary or lower-tier covered transactions.
- J. **Drug-free Workplace.** The Recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 702), and the Department's implementing regulations found at 15 C.F.R. part 29, "*Government-wide Requirements for Drug-Free Workplace (Financial Assistance)*," which require that the Recipient take steps to provide a drug-free workplace.
- K. **Lobbying Restrictions.**
1. **Statutory Provisions.** The Recipient must comply with the provisions of 31 U.S.C. § 1352 and the Department's implementing regulations published at 15 C.F.R. part 28, "*New Restrictions on Lobbying*." These provisions generally prohibit the use of federal funds for lobbying the executive or legislative branches of the United States government in connection with the Award and require the disclosure of the use of non-federal funds for lobbying.
 2. **Disclosure of Lobbying Activities.** A Recipient receiving in excess of \$100,000 in federal funding must submit a completed Form SF-LLL, "*Disclosure of Lobbying Activities*," regarding the use of non-federal funds for lobbying. The Form SF-LLL must be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Recipient must submit Form SF-LLL from all applicable parties, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.
 3. **Special Provisions Relating to Indian Tribes.** As set out in 31 U.S.C. § 1352, there are special provisions applicable to Indian Tribes, tribal organizations, or other Indian organizations eligible to receive federal contracts, grants, loans, or cooperative agreements. In accordance with Departmental policy, EDA recognizes Tribal Employment Rights Ordinances ("TEROs"), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, firing, and the payment of a TERO fee generally are allowable provisions under federal awards granted to American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an Award, as provided under the applicable cost principles set out in 2 C.F.R. part 225.
- L. **Codes of Conduct and Subaward, Contract, and Subcontract Provisions.**
1. **Code of Conduct for Recipients.** Pursuant to the certification in Form SF-424B, paragraph 3, the Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or personal gain in the administration of this Award.

2. Applicability of Award Provisions to Subrecipients.

- a. The Recipient shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of this Award, including applicable cost principles, administrative, and audit requirements.
- b. A Recipient is responsible for subrecipient monitoring, including the following:
 - (i) *Award Identification* – At the time of the Award, identifying to the subrecipient the federal award information (e.g., *Catalog of Federal Domestic Assistance* (“CFDA”) title and number, name of the federal agency, and the Award number) and applicable compliance requirements.
 - (ii) *During-the-Award Monitoring* – Monitoring the subrecipient’s use of federal awards through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient administers federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
 - (iii) *Subrecipient Audits* – Ensuring that a subrecipient expending federal awards of \$500,000 or more during the subrecipient’s fiscal year has met the audit requirements of OMB Circular A-133 and that the required audits are completed within nine months of the end of the subrecipient’s audit period. In addition, the Recipient is required to issue a management decision on audit findings within six months after receipt of the subrecipient’s audit report and ensure that the subrecipient takes timely and appropriate corrective action on all audit findings. In cases of a subrecipient’s continued inability or unwillingness to have the required audits, the pass-through entity shall take appropriate action using sanctions.

3. Competition and Codes of Conduct for Subawards.

- a. All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The Recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.
- b. The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the Award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by federal funds if a real or apparent conflict-of-interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the Recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, the Recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary

actions to be applied for violations of such standards by officers, employees, or agents of the Recipient.

- c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

4. Applicability of Provisions to Subawards, Contracts, and Subcontracts.

- a. The Recipient shall include the following notice in each request for applications or bids:

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a DOC official) are subject to 2 C.F.R. part 1326, subpart C, "*Governmentwide Debarment and Suspension (Nonprocurement)*." In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of federal funds at any tier are subject to 15 C.F.R. part 28, "*New Restrictions on Lobbying*." Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, applications for a lower tier covered transaction must include a Form CD-512, "*Certification Regarding Lobbying—Lower Tier Covered Transactions*," completed without modification.

- b. The Recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts), that the Award is subject to subpart C of 2 C.F.R. part 1326, "*Governmentwide Debarment and Suspension (Nonprocurement)*."
- c. The Recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding \$100,000 in federal funds, that the subaward, contract, or subcontract is subject to 31 U.S.C § 1352, as implemented at 15 C.F.R. part 28, regarding new restrictions on lobbying. The Recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed Form SF-LLL, "*Disclosure of Lobbying Activities*," regarding the use of non-federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the Recipient. The Recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

- 5. **Minority-Owned Business Enterprise.** DOC encourages Recipients to utilize minority- and women-owned firms and enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist Recipients in matching qualified minority owned enterprises with contract opportunities. For further information contact:

U.S. Department of Commerce
 Minority Business Development Agency
 1401 Constitution Avenue, N.W.
 Washington, D.C. 20230

Website: www.mbda.gov/

6. Subaward and/or Contract to a Federal Agency.

The Recipient, subrecipient, contractor and/or subcontractor shall not subgrant or subcontract any part of the approved Project to any agency or employee of DOC or other federal department, agency, or instrumentality without the prior written approval of the Grants Officer.

Requests for approval of such action must be submitted to the Project Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer shall make the final determination and will notify the Recipient in writing of the final determination.

- 7. EDA Contracting Provisions for Construction Projects.** The Recipient shall use the “*EDA Contracting Provisions for Construction Projects*” as guidance in developing all construction contracts. The “*EDA Contracting Provisions for Construction Projects*” lists applicable EDA and other federal requirements for construction contracts.

M. Property.

1. **Standards.** With respect to any property acquired or improved in whole or in part with EDA investment assistance under this Award, the Recipient shall comply with the property management standards found in EDA’s regulations at 13 C.F.R. part 314. Property acquired or improved in whole or in part by the Recipient under this Award may consist of real personal property, including intangible property such as money, notes, and security interests. Any inventory listings stipulated under the applicable uniform administrative requirements must be submitted to the Grants Officer on Form CD-281, “*Report of Government Property in Possession of Contractor.*”
2. **Retention of Title.**
 - a. The Government shall determine who retains title to all nonexpendable personal property in accordance with 15 C.F.R. parts 14 or 24, as applicable. Use, management, and the disposition of such property will be in accordance with the requirements set out at 15 C.F.R. parts 14 or 24, as applicable, and EDA’s regulations at 13 C.F.R. part 314.
 - b. Title to real property (whether acquired partly or wholly with federal funds) will vest with the Recipient subject to the condition that the Recipient uses the real property for the authorized purpose of the Project.
3. **EDA’s Interest in Award Property.**
 - a. *Evidence of Title.* Prior to the advertisement of bids or at such other time as EDA requires, the Recipient must furnish evidence, satisfactory in form or substance to the Government, that title to real property required for the Project (other than property of the United States

and as provided in 13 C.F.R. § 314.7(c)) is vested in the Recipient and that such easements, rights-of-way, State or local government permits, long-term leases, or other items required for the Project have been or will be obtained by the Recipient within an acceptable time, as determined by the Government. All liens, mortgages, other encumbrances, reservations, reversionary interests, or other restrictions on title or the Recipient's interest in the property must be disclosed to EDA. With limited exceptions set forth in 13 C.F.R. § 314.6(b) or as otherwise authorized by EDA, Recipient-owned property acquired or improved in whole or in part with EDA investment assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered. *See* 13 C.F.R. § 314.6.

b. *Recording EDA's Interest in Property.*

- (i) For all Projects involving the acquisition, construction, or improvement of a building, as determined by EDA, the Recipient shall execute and furnish to the Government, prior to initial Award disbursement, a lien, covenant, or other statement, satisfactory to EDA in form and substance, of EDA's interest in the property acquired or improved in whole or in part with the funds made available under this Award. EDA may require such statement after initial Award disbursement in the event that grant funds are being used to acquire such property. The statement must specify the estimated useful life of the Project and shall include but not be limited to the disposition, encumbrance, and the Federal Share compensation requirements. *See* 13 C.F.R. §§ 314.1 and 314.8(a).
- (ii) This lien, covenant, or other statement of the Government's interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with applicable law. EDA shall require an opinion of counsel for the Recipient to substantiate that the document has been properly recorded. *See* 13 C.F.R. § 314.8(b).
- (iii) Facilities in which the EDA investment is only a small part of a larger project, as determined by EDA, may be exempted from the requirements listed in paragraphs M.3.b.(i) and (ii) above. *See* 13 C.F.R. § 314.8(c).

- c. The Recipient acknowledges that the Government retains an undivided equitable reversionary interest in the property acquired or improved in whole or in part with grant funds made available through this Award throughout the estimated useful life (as determined by EDA) of the Project, except in applicable instances set forth in 13 C.F.R. § 314.7(c). *See also* 13 C.F.R. § 314.2(a).
- d. The Recipient agrees that in the event that any interest in property acquired or improved in whole or in part with EDA investment assistance is disposed of, encumbered or alienated in any manner, or no longer used for the authorized purpose(s) of the Award during the Project's estimated useful life without EDA's written approval, the Government will be entitled to recover the Federal Share, as defined at 13 C.F.R. § 314.5. If, during the Project's estimated useful life, the property is no longer needed for the purpose(s) of the Award, as determined by EDA, EDA may permit its use for other acceptable purposes consistent with those authorized by PWEDA and 13 C.F.R. chapter III. *See* 13 C.F.R. § 314.3(b).

- e. For purposes of any lien or security interest, the amount of the Federal Share shall be the portion of the current fair market value of any property (after deducting any actual and reasonable selling and repair expenses incurred to put the property into marketable condition) attributable to EDA's participation in the Project. *See* 13 C.F.R. § 314.5.
- f. The alienation of Award property includes sale or other conveyance of the Recipient's interest, leasing or mortgaging the property, or granting an option for any of the foregoing.

4. **Insurance and Bonding.**

- a. *Recipients that are Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations.* The Recipient shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with federal funds as provided to property owned by the Recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award. *See* 15 C.F.R. § 14.31.
- b. *Recipients that are State and Local Governments.* If the Award exceeds the simplified acquisition threshold, EDA may accept the Recipient's or subrecipient's bonding policy and requirements if EDA determines that the Federal Interest is adequately protected. If not, the following minimum requirements shall apply:
 - (i) *A bid guarantee from each bidder equivalent to five percent of the bid price.* The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the proffered bid, execute such contractual documents as may be required within the time specified;
 - (ii) *A performance bond on the part of the contractor for 100 percent of the contract price.* A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
 - (iii) *A payment bond on the part of the contractor for 100 percent of the contract price.* A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. *See* 15 C.F.R. § 24.36(h)

5. **Leasing Restrictions.** Leasing or renting of facilities or property is prohibited unless specifically authorized by EDA. The Recipient agrees that any leasing or renting of any facilities or property involved in this Project will be subject to the following:

- a. That said lease arrangement is consistent with the authorized general and special purpose of the Award;
- b. That said lease arrangement is for adequate consideration; and
- c. That said lease arrangement is consistent with applicable EDA requirements concerning but not limited to nondiscrimination and environmental compliance.

6. **Use of Eminent Domain Prohibited.** The Recipient will use funds solely for the authorized use of the Project. Pursuant to Executive Order 13406, "*Protecting the Property Rights of the American People*," the Recipient agrees:

- a. Not to use any power of eminent domain available to the Recipient (including the commencement of eminent domain proceedings) for use in connection with the Project for the purpose of advancing the economic interests of private parties; and
- b. Not to accept title to land, easements, or other interests in land acquired by the use of any power of eminent domain for use in connection with the Project for such purposes.

The Recipient agrees that any use of the power of eminent domain to acquire land, easements, or interests in land, whether by the Recipient or any other entity that has the power of eminent domain, in connection with the Project without prior written consent of EDA is an unauthorized use of the Project. If the Recipient puts the Project to an unauthorized use, the Recipient shall compensate EDA for its fair share in accordance with 13 C.F.R. §§ 314.4 and 314.5, as same may be amended from time to time.

7. Disposal of Real Property.

- a. If EDA and the Recipient determine that property acquired or improved in whole or in part with EDA investment assistance is no longer needed for the original purpose(s) of this Award, the Recipient must obtain approval from the Government to use the property in other federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and 13 C.F.R. chapter III. *See* 13 C.F.R. § 314.3(b).
- b. When property is not disposed of as provided in section M.7.a. above, the Government shall determine final disposition and must be compensated by the Recipient for the Federal Share of the value of the property, plus costs and interest, as provided in 13 C.F.R. § 314.4.

N. Environmental Requirements.

Environmental impacts must be considered by federal decision-makers in their decisions whether or not to: (i) approve a proposal for federal assistance; (ii) approve the proposal with mitigation; or (iii) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate a planning process with early consideration of potential environmental impacts that Project(s) funded with federal assistance may have on the environment. The Recipient and any subrecipients shall comply with all environmental standards, to include those prescribed under the following statutes and Executive Orders, and shall identify to the awarding agency any impact the Award may have on the environment. In some cases, the Grants Officer can withhold Award funds under a special award condition requiring the Recipient to submit additional environmental compliance information sufficient to enable the Department to make an assessment on any impacts that a Project may have on the environment.

1. **The National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*)**
The National Environmental Policy Act ("NEPA") and the Council on Environmental Quality ("CEQ") implementing regulations (40 C.F.R. parts 1500 – 1508) require that an environmental analysis be completed for all major federal actions significantly affecting the environment. NEPA applies to the actions of federal agencies and may include a federal agency's decision to fund non-federal projects under grants and cooperative agreements. Recipients of federal assistance are required to identify to the awarding agency any impact an award will have on the quality of the human environment and assist the agency to comply with NEPA. Recipients may also be requested to assist EDA in drafting an environmental

assessment if EDA determines an assessment is required. If additional information is required during the period of the Award, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit additional environmental compliance information sufficient to enable EDA to make an assessment on any impacts that the Project may have on the environment.

2. **Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. §§ 4371 – 4375)**
Federally-supported public works facilities and activities that affect the environment shall be implemented in compliance with policies established under existing law.
3. **Executive Order 12088, “Federal Compliance with Pollution Control Standards,” (43 Fed. Reg. 47707, October 13, 1978), as amended**
All necessary actions shall be taken for the prevention, control, and abatement of environmental pollution with respect to federally-supported facilities and activities
4. **Executive Order 11514, “Protection and Enhancement of Environmental Quality,” (35 Fed. Reg. 4247, March 5, 1970), as amended**
Federally-supported facilities and activities shall be maintained and directed to meet national environmental goals.
5. **Executive Order 11593, “Protection and Enhancement of the Cultural Environment,” (36 Fed. Reg. 8921, May 13, 1971), as amended**
Federally-owned sites, structures, and objects of historical, architectural, or archaeological significance shall be preserved, restored, and maintained.
6. **Clean Air Act, Clean Water Act, and Executive Order 11738**
Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Clean Water Act (42 U.S.C. § 1251 *et seq.*), and Executive Order 11738, and shall not use a facility on the Environmental Protection Agency’s (“EPA”) *List of Violating Facilities* in performing any Award that is nonexempt under 2 C.F.R. § 1532, and shall notify the EDA Project Officer in writing if it intends to use a facility that is on EPA’s *List of Violating Facilities* or knows that the facility has been recommended to be placed on the List.
7. **The Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f *et seq.*)**
This Act precludes federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.
8. **Executive Order 11988, “Floodplain Management,” (42 Fed. Reg. 26951, May 24, 1977) and Executive Order 11990, “Protection of Wetlands,” (42 Fed. Reg. 26961, May 24, 1977)**
Recipients must identify proposed actions in federally-defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.
9. **The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4002 *et seq.*), and regulations and guidelines issued thereunder by the U.S. Federal Emergency Management Administration (“FEMA”) or by EDA**
Flood insurance, when available, is required for federally-assisted construction or acquisition in flood-prone areas.

10. **The Coastal Zone Management Act of 1972, as amended (16 U.S.C. § 1451 *et seq.*)**
Funded projects must be consistent with a coastal State's approved management plan for the coastal zone.
11. **The Coastal Barrier Resources Act, as amended, (16 U.S.C. § 3501 *et seq.*)**
Restrictions are placed on federal funding for actions within a Coastal Barrier System.
12. **The Wild and Scenic Rivers Act, as amended, (16 U.S.C. § 1271 *et seq.*)**
This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.
13. **The Fish and Wildlife Coordination Act, as amended, (16 U.S.C. § 661 *et seq.*)**
Requiring the evaluation the impacts to fish and wildlife from federally-assisted proposed water resource development projects.
14. **The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 *et seq.*)**
The Recipient must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that federal awards do not adversely affect protected species or habitats and must conduct the required reviews under the Endangered Species Act.
15. **The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA") (42 U.S.C. § 9601 *et seq.*), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9662 *et seq.*)**
These requirements address responsibilities of hazardous substance releases, threatened releases, and environmental cleanup. There is also a requirement to impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards.
16. **The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. § 6901 *et seq.*)**
This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that Recipients of federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.
17. **Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 Fed. Reg. 7629, February 11, 1994)**
This Order identifies and addresses adverse human health or environmental effects of programs, policies, and activities on low-income and minority populations.
18. **The Lead-Based Paint Poisoning Prevention Act, as amended, (42 U.S.C. § 4821 *et seq.*)**
Use of lead-based paint in residential structures constructed or rehabilitated by the Federal Government or with federal assistance is prohibited.
19. **The Farmland Protection Policy Act, as amended, (7 U.S.C. §§ 4201 – 4209)**
Projects are subject to review under this Act if they may irreversibly directly or indirectly convert farmland, including forest land, pastureland, cropland, or other land, to nonagricultural use.

20. **The Noise Control Act of 1972, as amended, (42 U.S.C. § 4901 *et seq.*)**
Federally-supported facilities and activities shall comply with federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements.
21. **The Native American Graves Protection and Repatriation Act, as amended, (25 U.S.C. § 3001 *et seq.*)**
This Act provides a process for returning certain Native American cultural items to lineal descendants, culturally affiliated Indian Tribes, and Native Hawaiian organizations.

O. **Compliance with Environmental Requirements.** The Recipient agrees to notify the Grants Officer of any environmental requirement or restriction, regulatory or otherwise, with which it must comply. Before Project Closeout and final disbursement of Award funds, the Recipient further agrees to provide evidence satisfactory to the Grants Officer that any required environmental remediation has been completed: (1) in compliance with all applicable federal, State and local regulations; and (2) as set forth in the applicable Lease, Finding of Suitability to Lease ("FOSL"), Lease in Furtherance of Conveyance, Quitclaim Deed, or other conveyance instrument and any amendments, supplements, or succeeding documents. Compliance with said laws or restrictions shall be included in any contract documents for Project construction. The Recipient must certify compliance before final disbursement of grant funds.

P. **Miscellaneous Requirements.**

1. **Criminal and Prohibited Activities.**

- a. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including grants, loans, or other benefits).
- b. The Criminal False Claims Act and the False Statements Act (18 U.S.C. §§ 287 and 1001) provide for criminal prosecution of a person who knowingly makes or presents any false, fictitious, or fraudulent statements or representations or claims against the United States. Such person shall be subject to imprisonment of not more than five years and shall be subject to a fine.
- c. The Civil False Claims Act (31 U.S.C. § 3729) provides that suits under this Act can be brought by the Federal Government, or a person on behalf of the Federal Government, for false claims under federal assistance programs.
- d. The Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), prohibits a person or organization engaged in a federally-supported Project from enticing an employee working on the Project from giving up a part of his compensation under an employment contract.

2. **Foreign Travel.**

- a. The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 – 301-10.143.

- b. The Fly America Act requires that federal travelers and others performing federal government-financed foreign air travel must use United States flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a United States flag air carrier is unavailable, or use of United States flag air carrier service will not accomplish the agency's mission.
 - c. Use of foreign air carriers may also be used only if bilateral agreements permit such travel pursuant to 49 U.S.C. § 40118(b). The Department is not aware of any bilateral agreements that meet these requirements. Therefore, it is the responsibility of the Recipient to provide the Grants Officer with a copy of the applicable bilateral agreement if use of a foreign carrier under a bilateral agreement is anticipated.
 - d. If a foreign air carrier is anticipated to be used, the Recipient must receive prior approval from the Grants Officer. When requesting such approval in accordance with the guidance provided by 41 C.F.R. § 301-10.142, the Recipient must provide a "certification" the Grants Officer with the following: (i) his or her name; (ii) dates of travel; (iii) the origin and destination of travel; (iv) a detailed itinerary of travel; (v) the name of the air carrier and flight number for each leg of the trip; (vi) and a statement explaining why the Recipient meets one of the exceptions to the applicable regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the Recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the Recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the Recipient not being reimbursed for any transportation costs for which the Recipient improperly used a foreign air carrier.
3. **American-Made Equipment and Products.** Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.
4. **Intellectual Property Rights.**
- a. **Inventions.** The intellectual property rights to any invention made by a Recipient under a DOC Award are determined by the Bayh-Dole Act, as amended (Pub. L. No. 96-517), and codified in 35 U.S.C. § 200 *et seq.*, except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 C.F.R. part 401, and in the particular, in the standard patent rights clause in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this Award.
 - (i) *Ownership.*
 - (a) **Recipient.** The Recipient has the right to own any invention it makes (conceived or first reduced to practice) or that is made by its employees. The Recipient may not assign its rights to a third party without the permission of the Department unless it is to a patent management organization (i.e., a university's research foundation.) The Recipient's ownership rights are subject to the Federal Government's nonexclusive paid-up license and other rights.
 - (b) **Department.** If the Recipient elects not to own or does not elect rights or file a patent application within the time limits set forth in the standard patent rights clause, the Department may request an assignment of all rights, which is

normally subject to a limited royalty free non-exclusive license for the Recipient. The Department owns any invention made solely by its employees, but may license the Recipient in accordance with the procedures in 37 C.F.R. part 404.

- (c) **Inventor/Employee.** If neither the Recipient nor the Department is interested in owning an invention by a Recipient employee, the Recipient, with the written concurrence of the Department's Patent Counsel, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 C.F.R. § 401.9.
 - (d) **Joint Inventions.** Inventions made jointly by a Recipient and a Department employee will be owned jointly by the Recipient and DOC. However, the Department may transfer its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 C.F.R. § 401.10 if the Recipient is willing to patent and license the invention in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one Recipient and Department employee). The agreement will be prepared by the Department's Patent Counsel and may include other provisions, such as a royalty free license to the Federal Government and certain other entities. The Recipient also is authorized to transfer its rights to the Federal Government, which can agree to share royalties similarly as described above (35 U.S.C. § 202(e)).
 - (ii) **Responsibilities –iEdison.** The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The Recipient is expected to comply with all the requirements of the standard patent rights clause and 37 C.F.R. part 401. Recipients of DOC Awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. The Recipient may obtain a waiver of this electronic submission requirement by providing DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.
- b. **Patent Notification Procedures.** Pursuant to Executive Order 12889, the Department is required to notify the owner of any valid patent covering technology whenever the Department or its Recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the Recipient uses or has used patented technology under this Award without a license or permission from the owner, the Recipient must notify the Grants Officer:
- However, this notice does not necessarily mean that the Government authorizes and consents to any copyright or patent infringement occurring under the financial assistance.
- c. **Data, Databases, and Software.** The rights to any work produced or purchased under a DOC Award are determined by 15 C.F.R. §§ 14.36 or 24.34, as applicable. Such works may include data, databases, or software. The Recipient owns any work produced or purchased under a DOC Award subject to the Department's right to obtain, reproduce, publish, or otherwise use the work or authorize others to receive, reproduce, publish, or otherwise use the data for Federal Government purposes.

d. **Copyright.** The Recipient may copyright any work produced under a DOC Award subject to the Department's royalty-free, non-exclusive, and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Federal Government purposes. Works jointly authored by the Department and Recipient employees may be copyrighted, but only the part authored by the Recipient is protected under 17 U.S.C. § 105, which provides that works produced by Federal Government employees are not copyrightable in the United States. If the contributions of the authors cannot be separated, the copyright status of the joint work is questionable. On occasion, the Department may ask the Recipient to transfer to the Department its copyright in a particular work when the Department is undertaking the primary dissemination of the work. Ownership of copyright by the Federal Government through assignment is permitted under 17 U.S.C. § 105.

5. **Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally-owned vehicles.

6. **Research Involving Human Subjects.**

- a. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. part 27, "*Protection of Human Subjects*." No research involving human subjects is permitted under this Award unless expressly authorized by special award condition or otherwise authorized in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- c. The Department's regulations at 15 C.F.R. part 27 require that Recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in carrying out the purpose(s) of this Award, the Recipient shall submit appropriate documentation to the Project Officer for approval. This documentation may include:
 - (i) Documentation establishing approval of the Project by an institutional review board ("IRB") approved for government-wide use under Department of Health and Human Services guidelines (*see* 15 C.F.R. § 27.103);
 - (ii) Documentation to support an exemption for the Project under 15 C.F.R. § 27.101(b);
 - (iii) Documentation to support deferral for an exemption or IRB review under 15 C.F.R. § 27.118; or
 - (iv) Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken, conducted, or costs incurred or charged for human subjects research until the appropriate documentation is approved in

writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred or charged to the Project for protocol or instrument development related to human subjects research.

7. **Federal Employee Expenses.** Federal agencies are generally barred from accepting funds from a Recipient to pay transportation, travel, or other expenses for any federal employee unless specifically approved in the terms of the Award. Use of Award funds (federal or non-federal) or the Recipient's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for federal employees, from Recipients or applicants regardless of the source.
8. **Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally-Funded Construction Projects.** Pursuant to Executive Order 13202, "*Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally-Funded Construction Projects*," as amended by Executive Order 13208, unless the Project is exempted under section 5(c) of the Order, bid specifications, Project-related agreements, or other controlling documents for construction contracts awarded by Recipients or any construction manager acting on their behalf, shall not:
 - a. Include any requirement or prohibition on bidders, offerors, contractors, or subcontractors about entering into or adhering to agreements with one or more labor organizations on the same or related construction Project(s); or
 - b. Otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction Project(s).
9. **Minority Serving Institutions ("MSIs") Initiative.** Pursuant to Executive Orders 13256, "*President's Board of Advisors on Historically Black Colleges and Universities*," 13230 "*President's Advisory Commission on Educational Excellence for Hispanic Americans*," and 13270, "*Tribal Colleges and Universities*," the Department is strongly committed to broadening the participation of MSIs in its financial assistance programs. The Department's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from federal financial assistance programs. The Department encourages all applicants and Recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the U.S. Department of Education's website.
10. **Research Misconduct.** Scientific or research misconduct refers to the fabrication, falsification or plagiarism in proposing, performing, or reviewing research, or in reporting research results. It does not include honest errors or differences of opinion. The Recipient organization has the primary responsibility to investigate allegations and provide reports to the Federal Government. Funds expended on an activity that is determined to be invalid or unreliable because of scientific misconduct may result in a disallowance of costs for which the institution may be liable for repayment to the awarding agency. The Office of Science and Technology Policy at the White House published in the *Federal Register* on December 6,

2000 a final policy that addressed research misconduct (65 Fed. Reg. 76260). The policy was developed by the National Science and Technology Council. The Department requires that any allegation be submitted to the Grants Officer, who also will notify the OIG of such allegation. Generally, the Recipient organization shall investigate the allegation and submit its findings to the Grants Officer. The Department may accept the Recipient's findings or proceed with its own investigation. The Grants Officer shall inform the Recipient of the Department's final determination.

11. **Publications, Videos, and Acknowledgment of Sponsorship.** Publication of the results or findings of a research Project in appropriate professional journals and production of video or other media is encouraged as an important method of recording and reporting scientific information. It is also a constructive means to expand access to federally-funded research. The Recipient is required to submit a copy to the funding agency and when releasing information related to a funded Project include a statement that the Project or effort undertaken was or is sponsored by DOC. The Recipient also is responsible for ensuring that every publication of material (including Internet sites and videos) based on or developed under an Award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer: "This [report/video] was prepared by [Recipient name] under [Award number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce." This disclaimer also applies to videos produced under DOC Awards.
12. **Care and Use of Live Vertebrate Animals.** Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Pub. L. No. 89-544), as amended (7 U.S.C. § 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and the implementing regulations at 9 C.F.R. parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 *et seq.*); the Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Non-indigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by federal financial assistance. No research involving vertebrate animals is permitted under any DOC Award unless authorized by the Grants Officer.
13. **Homeland Security Directive.** If the performance of this Award requires the Recipient to have physical access to federal premises for more than 180 days or access to a federal information system, personal identity verification procedures must be implemented. Any items or services delivered under this Award shall comply with the Department's personal identity verification procedures that implement Homeland Security Presidential Directive – 12, FIPS PUB 201, and OMB Memorandum M-05-24. The Recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a federally-controlled facility or access to a federal information system.

14. **Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.**

- a. This clause applies to the extent that this Award involves access to export-controlled information or technology.
- b. In performing this Award, the Recipient may gain access to export-controlled information or technology. The Recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The Recipient shall establish and maintain throughout performance of this Award effective export compliance procedures at non-DOC facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled information and technology.
- c. *Definitions.*
 - (i) *Deemed Export.* The Export Administration Regulations ("EAR") define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is "deemed" to be an export to the home country of the foreign national. See 15 C.F.R. § 734.2(b)(2)(ii).
 - (ii) *Export-controlled information and technology.* Export-controlled information and technology subject to the EAR (15 C.F.R. §§ 730-774), implemented by the Department's Bureau of Industry and Security, or the "*International Traffic In Arms Regulations*" ("ITAR") (22 C.F.R. §§ 120-130), implemented by the Department of State, respectively. This includes but is not limited to dual-use items, defense articles and any related assistance, services, software, or technical data as defined in the EAR and ITAR.
- d. The Recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this Award, to ensure that access is restricted, or licensed, as required by applicable federal laws, Executive Orders, or regulations.
- e. Nothing in the Terms and Conditions of this Award is intended to change, supersede or waive the requirements of applicable federal laws, Executive Orders, or regulations.
- f. The Recipient shall include this subsection entitled "*Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations,*" including this subparagraph (f), in all lower-tier transactions (sub-awards, contracts, and subcontracts) under this Award that may involve access to export-controlled information technology.

APPENDIX

THE FOLLOWING REFERENCE MATERIALS AND FORMS ARE AVAILABLE ONLINE:

1. 2 C.F.R. part 220 (codifying OMB Circular A-21, “*Cost Principles for Educational Institutions*”)
2. 2 C.F.R. part 225 (codifying OMB Circular A-87, “*Cost Principles for State, Local and Indian Tribal Governments*”)
3. 2 C.F.R. part 230 (codifying OMB Circular A-122, “*Cost Principles for Nonprofit Organizations*”)
4. 2 C.F.R. part 1326, “*Non-Procurement Debarment and Suspension*”
5. 13 C.F.R. chapter III (EDA’s regulations)
6. 15 C.F.R. part 14, “*Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations*” (codifying OMB Circular A-110)
7. 15 C.F.R. part 24, “*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*”
8. 15 C.F.R. part 4, “*Disclosure of Government Information*”
9. 15 C.F.R. part 27, “*Protection of Human Subjects*”
10. 15 C.F.R. part 28, “*New Restrictions on Lobbying*”
11. 15 C.F.R. part 29, “*Government-wide Requirements for Drug-Free Workplace (Financial Assistance)*”
12. 48 C.F.R. part 31, “*Contract Cost Principles and Procedures*”
13. OMB Circular A-102, “*Grants and Cooperative Agreements with State and Local Governments*”
14. OMB Circular A-133, “*Audits of States, Local Governments and Nonprofit Organizations,*” and the related *Compliance Supplement*

To access EDA’s regulations, visit EDA’s Internet website at www.eda.gov/InvestmentsGrants/Lawsreg.xml.

To access the Code of Federal Regulations (C.F.R.), visit the Government Printing Office’s Internet website at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=%2Findex.tpl>.

To access the OMB Circulars, visit OMB’s Internet website at www.whitehouse.gov/omb/circulars/index.html.

To access the Davis Bacon wage rate determinations, visit the Department of Labor’s Internet website at www.wdol.gov/.

EDA FORMS:

1. Form CD-281, "Report of Government Property in Possession of Contractor"
2. Form CD-451, "Amendment to Financial Assistance Award"
3. Form CD-346, "Identification - Applicant for Funding Assistance"
4. Form SF-269, "Financial Status Report"
5. Form SF-270, "Request for Advance or Reimbursement" (with Instructions)
6. Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs"
7. Form SF-272, "Federal Cash Transaction Report"
8. Form SF-LLL, "Disclosure of Lobbying Activities"

To access Department of Commerce forms ("CD"), visit the Department's Internet website at http://ocio.os.doc.gov/ITPolicyandPrograms/Electronic_Forms/index.htm.

To access the Standard Forms ("SF"), visit the General Services Administration's Internet website at www.gsa.gov/Portal/gsa/ep/formslibrary.do?formType=SF.



**UNITED STATES DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**

SUMMARY OF EDA CONSTRUCTION STANDARDS

A REFERENCE TOOL FOR CONSTRUCTION INVESTMENTS
MADE UNDER SECTIONS 201 OR 209 OF THE
PUBLIC WORKS AND ECONOMIC DEVELOPMENT ACT OF 1965,
AS AMENDED (42 U.S.C. § 3121 *ET SEQ.*)

OCTOBER 2007
(as amended on November 28, 2007)

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I. PURPOSE AND SCOPE OF THIS SUMMARY

A. PURPOSE

1. This “*Summary of EDA Construction Standards*” (hereinafter referred to as “Summary”) describes the procedures for compliance, reporting, and record-keeping, and administrative requirements that apply to construction investments made by the Economic Development Administration (“EDA”) under sections 201 or 209 (42 U.S.C. §§ 3141 and 3149) of the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) (“PWEDA”).
2. *Terms and Conditions*. Form CD-450, “*Financial Assistance Award*,” (the “Award”), executed by EDA and the recipient, together with the EDA-approved project budget and scope of work, standard terms and conditions, special award conditions, and all applicable federal statutory and regulatory requirements as incorporated by reference, constitute the complete requirements, hereinafter referred to as the “Terms and Conditions,” applicable to the EDA investment. This Summary is designed to help clarify these requirements. In the event that any term or provision in this Summary conflicts with or is inconsistent with any provision contained in the Terms and Conditions, the provisions of the Terms and Conditions are controlling.

B. SCOPE

1. This Summary applies to all Awards for construction projects and is based on the Office of Management and Budget’s (“OMB”) administrative and programmatic requirements for federal grants as set forth in applicable OMB Circulars, and in the following regulations published in the *Code of Federal Regulations* (“C.F.R.”):
 - (a) 13 C.F.R. chapter III (*Economic Development Administration, Department of Commerce*);
 - (b) 15 C.F.R. part 14 (*Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, other Non-Profit and Commercial Organizations*);
 - (c) 15 C.F.R. part 24 (*Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*);
 - (d) 2 C.F.R. part 220 (OMB Circular A-21, *Cost Principles for Educational Institutions*);
 - (e) 2 C.F.R. part 225 (OMB Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*); and
 - (f) 2 C.F.R. part 230 (OMB Circular A-122, *Cost Principles for Nonprofit Organizations*), each as amended from time to time.
2. This Summary supplements the requirements set out in PWEDA, EDA’s regulations at 13 C.F.R. chapter III, the Terms and Conditions of the Award, and the applicable OMB Circulars listed in the Appendix to this Summary and the hyperlinks set out therein (*see* section IX.). This Summary should be used as a reference tool to implement various requirements that apply to EDA construction investments made under sections 201 or 209 of PWEDA (42 U.S.C. §§ 3141 and 3149). This Summary is not a comprehensive source of information. In addition to PWEDA, a list of primary sources of legal requirements is set out above in section I.B.1. *See also* section IX. (Appendix) of this Summary.

II. DEPARTMENT OF COMMERCE AND EDA POLICIES

- A. As a federal agency, EDA is obligated to promulgate regulations and establish policies and procedures applicable to recipients of EDA investments to:
1. Ensure compliance with applicable federal requirements;
 2. Safeguard the public's interest in the grant assets; and
 3. Promote the effective use of grant funds in accomplishing the purpose(s) for which they were awarded.
- B. EDA or the Department of Commerce (the "Department" or "Departmental") may issue changes from time to time to EDA's regulations and other requirements and policies that apply to the Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering the Award. The implementation of any such regulatory, administrative or programmatic change in administering the Award must have prior EDA written approval.
- C. EDA's policy is to administer all Awards uniformly; however, there may be special circumstances that warrant a variance. To accommodate these circumstances and to encourage innovative and creative ways to address economic development problems, EDA may consider requests for variances to the procedures set out in this Summary if they do not conflict with applicable federal statutory and regulatory requirements, are consistent with the goals of EDA's programs, and make sound economic and financial sense.

III. REQUIREMENTS APPLICABLE TO EDA INVESTMENTS

A. GRANT RECIPIENT AS TRUSTEE

The recipient of an EDA investment holds grant funds and any EDA-funded project property in trust for the purpose(s) for which the Award was made. The recipient's obligation to the Federal government continues for the estimated useful life of the project, as determined by EDA, during which EDA retains an undivided equitable reversionary interest (the "Federal Interest") in the property improved, in whole or in part, with the EDA investment. *See* 13 C.F.R. § 314.2.

If EDA determines that the recipient fails or has failed to meet this obligation, the agency may exercise any rights or remedies with respect to its Federal Interest in the project. However, EDA's forbearance in exercising any right or remedy in connection with the Federal Interest does not constitute a waiver thereof.

B. THE RECIPIENT'S RESPONSIBILITIES

1. The recipient is responsible for complying with all federal laws (and the regulations issued thereunder), federal, Departmental and EDA policies, Executive Orders, and OMB Circulars, as referenced in the Terms and Conditions, each as may be amended from time to time. These statutes, regulations, policies, Executive Orders and OMB Circulars may include administrative and audit requirements, federal cost principles, programmatic requirements, financial requirements, and property management requirements. *See* 13 C.F.R. § 302.6. The recipient is responsible for the design, bidding, construction, and operation of the project to ensure compliance with all grant requirements, including those set out at 13 C.F.R. part 305.

2. In order to facilitate timely implementation, EDA may accept the recipient's certification, accompanied by evidence satisfactory to EDA, that it meets the requirements for receiving the Award and that it will comply with its Terms and Conditions. *See* 13 C.F.R. § 302.15. EDA also may require the recipient submit specific certifications for critical issues, such as major procurement and costs claimed in requests for disbursement of grant funds. EDA will monitor project progress and compliance with the Terms and Conditions through the:
 - (a) Recipient's written reports;
 - (b) Review of the recipient's records during EDA visits to the project site;
 - (c) Department's Office of Inspector General audits; and
 - (d) Single or program-specific audit conducted in accordance with OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*," and the related *Compliance Supplement*. *See* section VIII.A. of this Summary.
3. During the construction period, the recipient is responsible for:
 - (a) Monitoring project progress and reporting progress to EDA;
 - (b) Providing for adequate construction inspection;
 - (c) Paying costs incurred for the project promptly; and
 - (d) Monitoring contractors' compliance with applicable local, State and federal requirements.
4. After construction is completed, the recipient is responsible for submitting close-out documentation and properly administering, operating and maintaining the project for its estimated useful life, as determined by EDA and as set forth in the Terms and Conditions. *See* 13 C.F.R. § 302.12.
5. Failure to satisfy any Term or Condition may result in disallowance of costs, or suspension or termination of the Award and recovery of grant funds. In addition, such failure may have a negative impact on the recipient's ability to receive future funding from the Department. *See* 13 C.F.R. § 302.18. In particular, the project development time schedule, a Term of the Award, can be extended only through the recipient's written request for an amendment to the Award and written approval by EDA. *See* 13 C.F.R. § 302.7. The Terms and Conditions of the Award place the recipient on notice that the grant may be suspended for not proceeding in accordance with the EDA-approved time schedule set out in the Award. No disbursement of EDA funds is permitted when a project has exceeded the EDA-approved time schedule, unless EDA has given written approval to a time schedule extension. *See* 13 C.F.R. § 305.9 regarding project phasing and investment disbursement.

C. EMINENT DOMAIN

In making a discretionary award for a construction project, EDA considers the policy on eminent domain set out in Executive Order 13406, "*Protecting the Property Rights of the American People*." The Terms and Conditions of the Award include appropriate provisions to ensure that the recipient has agreed:

1. Not to use any power of eminent domain available to the recipient (including the commencement of eminent domain proceedings) for use in connection with the project for the purpose of advancing the economic interests of private parties;
2. Not to accept title to land, easements or other interests in land acquired by the use of any power of eminent domain for use in connection with the project for such purposes; and

3. Any use of the power of eminent domain to acquire land, easements, or other interests in land, whether by the recipient or any other entity that has the power of eminent domain, in connection with the project without prior written consent of EDA is an unauthorized use of the project. If the recipient puts the project to an unauthorized use, the recipient will be required to compensate EDA for its fair share in accord with 13 C.F.R. §§ 314.4 and 314.5, and 15 C.F.R. §§ 14.32 or 24.31, as applicable.

D. RECORD-KEEPING REQUIREMENTS

The recipient is responsible for maintaining records that document compliance with the Terms and Conditions of the Award. At a minimum, the recipient's records must contain documentation that fully discloses:

1. The amount and disposition of the EDA investment assistance;
2. All project expenditures and procurement actions;
3. The total cost of the project that the Award funds;
4. The amount and nature of the portion of project costs provided by non-EDA sources;
5. Contractor compliance with applicable federal requirements; and
6. Such other records as EDA determines will facilitate an effective audit.

The recipient is responsible for retaining records for the time frame specified in the Terms and Conditions. See 13 C.F.R. § 302.14. See also 15 C.F.R. §§ 14.50-14.53 or §§ 24.40-24.42, as applicable.

E. THE FINANCIAL ASSISTANCE AWARD

The recipient should pay particular attention to the following provisions of the Award:

1. *Description of Project.* The description of the project in the Award, together with more detailed information provided in the Award application, determines and defines the scope(s) of work to be funded under the Award.
2. *Federal Requirements.* The listed federal requirements describe applicable administrative or programmatic obligations for which the recipient is responsible. Critical documents are listed in section IX. (Appendix) of this Summary. These publications provide important information on requirements regarding procurement, record-keeping, eligible project costs and other administrative or programmatic issues.
3. *Standard Terms and Conditions.* The standard terms and conditions are applicable to all EDA-assisted construction projects.
4. *Special Award Conditions.* The special award conditions may contain conditions that must be satisfied prior to advertisement for bids, start of construction, or disbursement of Award funds, as well as conditions unique to the Award that are ongoing for the estimated useful life of the project.

F. FINANCIAL REPORTING

1. *Semiannual financial reports.* Any recipient whose Award has not been fully disbursed is required to submit Form SF-269, "Financial Status Report" to EDA semiannually to report on the status of unreimbursed obligations. This report will provide information on the amount of allowable project expenses that have been incurred, but not claimed for reimbursement by the recipient. The first report shall be as of March 30 of each year and shall be submitted to EDA no later than April 30 of each year, and the second report shall be of September 30 of each year and shall be submitted to EDA no later than October 30

of each year. Instructions for completing and submitting Form SF-269 will be furnished to the recipient at least 60 days before the report is due.

2. *Final financial report.* The recipient must submit a final financial report using Form SF-269 within 90 days of the expiration date of the Award (or from the date the recipient accepts the project from the contractor, whichever occurs earlier).
3. *Noncompliance with financial reporting requirements.* Noncompliance with these requirements will result in the suspension of disbursements under the Award. Financial reports are to be submitted to the Project Officer.

G. MONITORING AND REPORTING PROJECT PROGRESS

1. *Quarterly performance reports.*

- (a) Quarterly performance reports must be submitted in accordance with the procedures set out in 15 C.F.R. parts 14 or 24, as applicable, and as indicated below. Failure to submit required reports in a timely manner may result in the withholding of payments under the Award; deferral of processing of new awards, amendments or supplemental funding pending the receipt of the overdue report(s); or the establishment of an account receivable for the difference between the total federal share of outlays last reported and the amount disbursed.
See 13 C.F.R. § 302.18(a)
- (b) Unless otherwise specified in the Award, the quarterly performance report will contain the following information for each project program, function, or activity:
 - (i) A comparison of planned and actual accomplishments according to the timetable or list of project objectives in the Award;
 - (ii) An explanation of any delays or failures to meet the project timetable or project goals; and
 - (iii) Any other pertinent information including, when appropriate, analysis, and explanation of cost overruns or high unit costs.
- (c) Quarterly performance reports shall be submitted for each calendar quarter to the Project Officer. Each performance report will be due not later than January 15, April 15, July 15, and October 15 for the immediate previous quarter. The final project performance report shall be submitted to EDA no more than 90 days after the project closeout date. This reporting requirement begins with the recipient's acceptance of the Award and ends when EDA approves project closeout.
See 15 C.F.R. §§ 14.51 or 24.40, as applicable.

The recipient shall submit quarterly performance reports to the Project Officer in hardcopy or electronically as specified in the special award conditions.

See 15 C.F.R. §§ 14.51 or 24.40, as applicable.

2. *Interim performance reporting.* Events may occur that have significant impact upon the project, including delays or adverse conditions that may materially affect the ability of the recipient to attain project objectives within established time periods or meet the project development time schedule. The recipient must disclose such problems to EDA in the most expedient way possible and then, if initial notification was not made in writing, report the event in writing, including a statement of the action contemplated, and any federal assistance needed to resolve the situation. If budget changes are required, the

recipient must submit a written budget revision request. *See* 15 C.F.R. §§ 14.25(h) or 24.30(c)(2), as applicable. Any changes made to the project without EDA's prior approval are made at the recipient's risk of nonpayment of costs, suspension, termination, or other applicable EDA action. *See* 13 C.F.R. § 302.7.

3. *Government Performance and Results Act reporting.* In addition to quarterly performance reports, EDA may require the recipient to report on project performance beyond the project closeout date for Government Performance and Results Act (GPRA) purposes. In no case shall the recipient be required to submit any report more than 10 years after the project closeout date. Data used by the recipient in preparing reports shall be accurate and from independent sources whenever possible. *See* 13 C.F.R. § 302.16.

IV. PRE-CONSTRUCTION REQUIREMENTS

A. ENVIRONMENTAL COMPLIANCE

EDA undertakes environmental reviews of projects in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (Pub. L. No. 91-190; 42 U.S.C. § 4321 *et seq.*, as implemented under 40 C.F.R. chapter V) ("NEPA"), and all other federal environmental statutes, regulations and Executive Orders, as listed in the Terms and Conditions of the Award. These authorities include the implementing regulations of NEPA, which require EDA to provide public notice of the availability of project-specific environmental documents, such as environmental impact statements, environmental assessments, findings of no significant impact, and records of decision, to the affected or interested public, as specified in 40 C.F.R. § 1506.6(b). The recipient must pay special attention to and comply with any special environmental conditions in the Award. *See* 13 C.F.R. § 302.1.

B. CIVIL RIGHTS COMPLIANCE

In accordance with the following authorities, discrimination is prohibited by a recipient or "Other Party" (as defined in 15 C.F.R. § 8.3(1) and 13 C.F.R. § 302.20(b)) with respect to a project receiving EDA investment assistance under PWEDA:

1. Title VI of the Civil Rights Act of 1964, as amended (Pub. L. No. 88-352, 42 U.S.C. § 2000d *et seq.*), and the Department's implementing regulations at 15 C.F.R. part 8;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*) prohibiting discrimination on the basis of sex under federally-assisted education programs or activities;
3. Pub. L. No. 92-65, 42 U.S.C. § 3123 (proscribing discrimination on the basis of sex in EDA assistance provided under PWEDA) and Pub. L. No. 94-369, 42 U.S.C. § 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), and the Department's implementing regulations at 15 C.F.R. §§ 8.7-8.15;
4. Section 504 of the Rehabilitation Act of 1973, as amended (Pub. L. No. 93-112, 29 U.S.C. § 794), and the Department's implementing regulations at 15 C.F.R. part 8b;
5. The Age Discrimination Act of 1975, as amended (Title III of Pub. L. No. 94-135, 42 U.S.C. § 6101 *et seq.*), and the Department's implementing regulations found at 15 C.F.R. part 20;
6. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation; and

7. Other federal statutes, regulations and Executive Orders, as applicable. *See generally* 13 C.F.R. § 302.20.

Consistent with 15 C.F.R. §§ 14.44(b) or 24.36(e), as applicable, the recipient and any subrecipient will take all necessary affirmative steps to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

C. START OF CONSTRUCTION

1. *Early construction starts.* The recipient must make a written request to EDA for early construction start permission. In order for project costs to be eligible for EDA reimbursement, EDA must determine that the award of all contracts necessary for design and construction of the project facilities is in compliance with the Terms and Conditions. If construction commences prior to EDA's determination, the recipient proceeds at its own risk until EDA's review and concurrence. *See* 13 C.F.R. § 305.11.
2. *Delayed construction starts.* The following requirement is applicable to all EDA-assisted construction projects: If significant construction (as determined by EDA) is not commenced within two years of the approval of the project or by the date estimated for start of construction in the grant Award (or the expiration of any extension granted in writing by EDA), whichever is later, the EDA grant will be automatically suspended and may be terminated if EDA determines, after consultation with the recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously. *See also* sections VII.B. and F. of this Summary.

D. PROJECT MANAGEMENT CONFERENCE

1. Shortly after approval of the Award, EDA may contact the recipient to arrange a project management conference. The purpose of the project management conference is to explain to the recipient its post-approval responsibilities for administration of the Award and applicable federal requirements.
2. Whenever practicable, the project management conference should be held when and where appropriate EDA regional office personnel will be available. The recipient's authorized representative, architect/engineer, attorney and possibly the recipient's financial representative should attend.

E. ARCHITECT/ENGINEER SERVICES

1. The architect/engineer agreement shall provide for all services required by the recipient for the design and engineering phases of the project. Appropriate standards or guidance developed by professional organizations, such as the American Consulting Engineers Council ("ACEC"), American Society of Civil Engineers ("ASCE"), National Society of Professional Engineers ("NSPE"), or the American Institute of Architects ("AIA"), may be used where the recipient does not have standard procurement or contracting documents.
2. The architect/engineer agreement shall cover all services necessary for the successful execution of the project including consultations, surveys, soil investigations, supervision, travel, "as-built" or record drawings, arrow diagram ("CPM/PERT") where applicable, and incidental costs. Regardless of who furnishes the construction inspector, the architect/engineer shall be held responsible for making sufficient visits to the project site

to ensure that the work proceeds in accordance with the approved plans and specifications.

3. The recipient must select the architect/engineer in accordance with the procurement standards set forth in 15 C.F.R. parts 14 or 24, as applicable. Unless EDA has approved a different type of award, the compensation to the architect/engineer for basic services must be either a fixed price or a cost reimbursement with an agreed maximum to be eligible for EDA participation. The amount of EDA participation will be based on EDA's determination (subject to audit) that the compensation is reasonable. The "cost-plus-a-percentage-of-cost" and "percentage of construction cost" methods of contracting are specifically prohibited. See 15 C.F.R. §§ 14.44(c) or 24.36(f)(4), as applicable.
4. All architect/engineer contracts awarded by recipients shall include a provision to the effect that the recipient, EDA, the Comptroller General of the United States, the Departmental Inspector General, or any of their duly authorized representatives, shall have access to any paper or electronic documents, books, correspondence, and records of the architect/engineer (which are pertinent to the Award) to verify the recipient's compliance with Award requirements. See 13 C.F.R. § 302.14.
5. The recipient must require the architect/engineer to maintain all records for at least three (3) years after the recipient makes final payment and all pending matters are closed. See 15 C.F.R. §§ 14.53(b) or 24.36(i)(11), as applicable.

F. SERVICES PERFORMED BY RECIPIENT'S OWN FORCES

The recipient may have a portion or all of the design, construction, inspection, legal services, or other work or services in connection with the project performed by personnel who are employed by the recipient either full-time or part-time ("force account construction"). See 13 C.F.R. § 305.7.

EDA may approve the use of "force account construction" subject to the following conditions:

1. The services are routinely performed by the recipient for all construction projects performed by the recipient;
2. The recipient has a special skill required for the construction of the project;
3. The recipient has made all reasonable efforts to obtain a contractor, but has failed to do so because of uncontrollable factors such as the remoteness of the project site or an overabundance of construction work in the region; or
4. The recipient demonstrates substantial cost savings.

"Force account construction" may be considered an eligible cost for EDA reimbursement if the work or services performed are in conformance with OMB Circulars A-122 ("*Cost Principles for Nonprofit Organizations*"), A-21 ("*Cost Principles for Educational Institutions*"), or A-87 ("*Cost Principles for State, Local and Indian Tribal Governments*"), as applicable. See 2 C.F.R. parts 230, 220, or 225, as applicable.

G. TRIBAL EMPLOYMENT RIGHTS ORDINANCES

In accordance with Departmental policy, EDA recognizes Tribal Employment Rights Ordinances ("TEROs"), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference(s) in contracting, hiring, and firing and the payment of a TERO fee generally are allowable

provisions under federal awards granted to American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is "necessary and reasonable for proper and efficient performance and administration" of an Award, as provided under the applicable cost principles set out in 2 C.F.R. part 225.

H. LAND, EASEMENTS AND RIGHTS OF WAY

1. Except as provided in 13 C.F.R. § 314.6(b) or as otherwise authorized by EDA, recipient-owned property acquired or improved in whole or in part with investment assistance must not be used to secure a mortgage or deed of trust or in any way otherwise encumbered.
2. The recipient must disclose to EDA all encumbrances. EDA will not accept any encumbrance that interferes with the construction, intended use, operation or maintenance of the project during its estimated useful life. See 13 C.F.R. § 314.7. Prior to the advertisement of bids or at such other time as EDA requires, the recipient must furnish evidence, satisfactory in form and substance to EDA, that title to real property needed for the project is vested in the recipient and that it has obtained any rights-of-way, easements, State or local government permits, long-term leases or other property interests required for the project.

I. RELOCATION ASSISTANCE

The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Pub. L. No. 91-646, 42 U.S.C. § 4601 *et seq.*) (the "Uniform Act"), apply to all recipients of EDA investment assistance.

The Uniform Act provides assistance to persons, businesses, or farm operations affected by the acquisition, rehabilitation or demolition of real property acquired for a project financed wholly or in part with federal assistance funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land acquisition. Recipients are required to comply fully with the intent of the Uniform Act and to provide evidence of such compliance if requested. See 13 C.F.R. § 302.5.

J. EDA REVIEW OF PLANS AND SPECIFICATIONS

1. The recipient (with the assistance of its architect/engineer) is responsible for the accuracy and completeness of the design, dimensions, details, proper selection of materials, compliance with local building codes or ordinances, and is expected to use the "*EDA Contracting Provisions for Construction Projects*," which provides a list of applicable EDA and other federal requirements as guidance in developing all construction contracts.
2. Plans, specifications, and related documents must be submitted for EDA review and concurrence prior to advertising for bids. EDA's review is to ensure compliance with the Terms and Conditions of the Award and does not attest to the accuracy of design, dimensions, details, proper selection of materials, nor compliance with local building codes or ordinances. This responsibility rests with the recipient.

EDA's review is intended to confirm that:

- (a) The project as designed complies with the scope of work as described in the project application and in the Award;

- (b) Deductive alternates, if used, are taken in a specific order as shown in the bid documents;
 - (c) Any non-EDA funded work, if included, is identified so separate project progress and separate project costs can be determined; and
 - (d) The EDA project number and applicable EDA participation appears on the cover of all contract drawings and on the face sheet of the specification document(s).
3. EDA also will review for acceptability after advertising but before award of the contract if:
- (a) The procurement is expected to exceed the simplified acquisition threshold (currently set at \$100,000) and is to be awarded without competition after one bid or offer is received in response to a solicitation;
 - (b) The proposed award is more than the simplified acquisition threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement;
 - (c) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the simplified acquisition threshold;
 - (d) The recipient's procurement procedures or operations fail to comply with the procurement standards set out in the Award; or
 - (e) The procurement, which is expected to exceed the simplified acquisition threshold, specifies a "name brand" product.
4. Until EDA has reviewed and concurred with the recipient's proposed contracts and related documents and determined they comply with the Terms and Conditions, the recipient will be proceeding at its own risk regarding the eligibility of any costs incurred. *See* 13 C.F.R. § 305.11.

K. NON-EDA WORK

If the recipient plans to include both EDA-funded and non-EDA-funded work in a single contract, the following requirements apply:

- 1. The plans and specifications must clearly define and separate costs included in the EDA project scope of work from other costs;
- 2. The recipient may offer for bid and award work in addition to the EDA project, *provided* the:
 - (a) recipient understands that EDA will participate only in the EDA-approved project; and
 - (b) additional work does not adversely affect the original intent or economic impact of the EDA-approved project;
- 3. Plans and specifications must be drawn so that the EDA project is clearly identifiable at all times during construction; and
- 4. Bid underruns cannot be applied to fund work that is not a part of the EDA project. It is the responsibility of the recipient to pay in full for all additional work beyond the scope of the EDA project. *See* 13 C.F.R. § 305.10.

Where a proposed contract includes EDA-funded and non-EDA-funded scope(s) of work, the contract will normally be awarded to the lowest bidder on all the work. EDA's participation will be determined based on the bid price for the lowest qualified bid for the EDA-funded scope of work. The recipient must include pertinent information with the contract award documentation prior to submitting it for EDA concurrence.

L. ALTERNATE CONSTRUCTION PROCUREMENT METHODS

1. Recipients may use alternate construction procurement methods to the traditional design/bid/build procedure (including lump sum or unit price-type construction contracts). These methods include but are not limited to construction management at-risk and force account. If an alternate method is used, the recipient shall submit to EDA for approval a construction services procurement plan and the recipient must use a design professional to oversee the process. *See* 13 C.F.R. § 305.6.
2. If the recipient elects to use the force account method, EDA will furnish specific guidance to the recipient to determine if the cost for such work is eligible for EDA reimbursement. *See* section IV.F. of this Summary.

M. OVERRUN AT THE BID OPENING

If there is an overrun at bid opening, the recipient may:

1. Take deductive alternatives to eliminate certain project elements in case of insufficient funds – if provided for in the bid documents – in the exact order shown on the invitation for bid until at least one of the responsive bids, less deductive alternative(s), results in a price within the budget for that item of work. It should be noted that the use of deductive alternates may result in a new low bidder. Therefore, care must be taken that the above procedure is followed exactly when deductive alternates are used to determine the lowest bid within the funds available.
2. Reject all bids and re-advertise. There should be a rational basis for believing that re-advertising will result in a lower bid (i.e., the recipient will have the project redesigned or there will be wider advertising).
3. Augment the recipient's share by an amount sufficient to cover the excess cost. If the recipient intends to finance the overrun from its own funds, it must furnish a letter to EDA identifying the source of the additional funds. The funds must be from an acceptable source and cannot include conditions that may negatively affect the project.
4. Request additional EDA financial assistance as a last resort. EDA may not approve the request for additional funds, which may require the termination of the project. *See* sections VII.C. and D. of this Summary.

N. PROTEST PROCEDURES

No protest or complaint regarding a contractor selection action shall be accepted by EDA until all administrative remedies at the recipient level have been exhausted. EDA's review will be limited in accordance with the regulations set out at 15 C.F.R. §§ 14.41 or 24.36(11) and (12), as applicable.

V. REQUIREMENTS DURING CONSTRUCTION

A. THE RECIPIENT'S RESPONSIBILITIES

1. *General.* The recipient (with the assistance of the architect/engineer) is responsible for:
 - (a) ensuring project completion in accordance with approved plans and specifications;
 - (b) monitoring project progress;
 - (c) keeping EDA advised of project progress;
 - (d) providing for adequate construction inspection;
 - (e) paying costs incurred for the

project promptly; and (f) monitoring the contractors' compliance with local, State and federal requirements. *See also* section III.B. of this Summary.

2. *EDA construction sign.* The recipient is responsible for constructing, erecting and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the project site indicating that the Federal government is participating in the project. EDA may require more than one sign if site conditions so warrant. The EDA regional office will provide specifications for the sign. If the EDA-recommended sign specifications conflict with State or local law, the recipient may modify such recommended specifications so as to comply with the State or local law. *See* 13 C.F.R. § 305.12.
3. *Inspection of construction.* The recipient must provide competent project inspection during the construction period. The inspector may be an employee of the recipient, an employee of the architect/engineer, or a person(s) under contract with the recipient. EDA must review and concur with the extent of the inspection and the selection of the inspector.
4. *Occupancy prior to completion.* If the project or any part of it is to be occupied or used prior to its acceptance from the contractor, the recipient must:
 - (a) follow the requirements of local or State law;
 - (b) notify EDA of the intent to occupy or use the facility and the effective date of the occupancy or use;
 - (c) secure the written consent of the contractor;
 - (d) secure an endorsement from the insurance carrier and consent of the surety permitting occupancy or use during the period of construction; and
 - (e) secure permanent fire and extended coverage insurance and, where applicable, grant the contractor a permit to complete construction. *See* 13 C.F.R. § 305.14.
5. *Labor standards.* All contractors on EDA-assisted projects are required to perform their work in accordance with OSHA regulations and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708), as supplemented by U.S. Department of Labor's regulations (29 C.F.R. part 5). The recipient or its architect/engineer should periodically check the contractor's compliance. The recipient shall notify EDA of all serious accidents and/or injuries that occur on the EDA-assisted project.
6. *Inspection for final acceptance.* The recipient will schedule a final inspection when all construction has been completed, the architect/engineer has accomplished his/her final inspection and all deficiencies have been corrected. The project must be complete and functional before the final inspection is performed. Representatives of the recipient, the architect/engineer and the contractor(s) will make the final inspection. EDA must be notified in advance of the final inspection so that an EDA representative also may have the opportunity to participate.
7. *Contractor payrolls.* The recipient must require each contractor and subcontractor to maintain weekly payroll records. EDA may require that copies of payroll records be furnished to the applicable regional office.
8. *Equal employment opportunities.* The regulations at 41 C.F.R. § 60-1.7 issued pursuant to Executive Order 11246, "*Equal Employment Opportunity*", as amended, require all "prime contractors" and "subcontractors," as those terms are defined in 41 C.F.R. § 60-1.3, to submit compliance reports regarding equal employment opportunities. The purpose of the regulations at 41 C.F.R. part 60-1 is to achieve the aims of parts II, III and

IV of Executive Order 11246, as amended, for promoting and ensuring equal opportunity for all persons, without regard to race, color, religion, sex, or national origin, employed or seeking employment with Federal government contractors or with contractors performing under federally-assisted construction contracts.

B. CONTRACT CHANGE ORDERS

1. After the construction contracts have been executed, it may become necessary to alter them. This requires a formal contract change order, issued by the recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. *See* 13 C.F.R. § 305.13.
2. The work on the project may continue pending EDA review and concurrence with the change order but the recipient should be aware that all such work is at the recipient's risk as to whether the cost for the work will be an eligible project cost for EDA participation until EDA concurrence is received for the change order.
3. The recipient (or its architect/engineer) shall perform a cost or price analysis in connection with every change order that affects the contract price. Generally, change orders should be submitted to EDA for review and concurrence as such changes occur. The recipient will prepare proposed contract change orders in sufficient quantity so that one (1) copy can be furnished to EDA for concurrence. Necessary supporting statements, estimates, specifications and plans should be attached. Before submission to the EDA regional office, the change order must be signed by the recipient, the architect/engineer and the contractor. The recipient will be notified in writing of EDA's concurrence if the change order is acceptable to EDA.
4. EDA will not allow changes to the authorized purpose and intent of the project. Change orders that add minimally or incidentally to the cost of the project but do not alter the project scope may be allowed by EDA, *provided*, that either:
 - (a) The recipient has agreed in writing to fund the additional cost, in which case all work involved in the accomplishment of the change order will be an ineligible project cost and no EDA funds will be used to pay for it; or
 - (b) There are sufficient funds remaining in the project budget to cover the change order without jeopardizing the completion of the project.
5. EDA will not approve EDA financial participation in change orders that are solely for the purpose of using excess funds resulting from an underrun of one or more of the items in the EDA-approved project budget. EDA will concur with a change order if the work in the change order is within the project scope and is necessary for the proper implementation of the project.
6. Unit prices are often used as a basis on which to make a contract award. In addition, they may be used for establishing actual costs where actual quantities differ from estimated quantities. Variations will normally require a change order to the contract whether or not a change in unit price is involved. Any increase in quantity that will result in an overall project cost overrun will require a change order to the contract. Any change to a unit price shown in the contract documents will require a change order to the contract. A change order also may be required at project completion to establish final quantities for unit price contracts.

C. SPECIFIC REQUIREMENTS FOR SUBCONTRACTORS

1. The recipient is responsible for ensuring that the contractor causes applicable provisions to be inserted in all subcontracts to bind subcontractors to EDA and Departmental requirements as contained in the Terms and Conditions of the Award and in 15 C.F.R. parts 14 or 24, as appropriate.
2. Each subcontractor must agree to comply with all applicable federal, State, and local requirements.
3. As required by 15 C.F.R. §§ 14.44(d) and 24.35, as appropriate, the recipient (or subrecipient) must not make any award or permit any award (sub-grant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549, "Debarment and Suspension." The recipient may access the *Excluded Parties List System* ("EPLS"), maintained by the General Services Administration, at www.epls.gov/. See also 2 C.F.R. part 1326.
4. The Terms and Conditions of the Award may impose additional requirements, which the recipient will be required to have the prime contractor impose on any subcontractor(s).

D. CONTRACTING STANDARDS

1. *States.* If a State is the recipient of EDA investment assistance, the State will follow the same policies and procedures it uses for procurements from its non-federal funds, *provided* those policies and procedures conform to applicable federal law and standards found in 15 C.F.R. § 24.36. The State must ensure that every purchase order or other contract includes clauses required by federal statutes and Executive Orders and their implementing regulations. For reimbursable cost determinations, OMB Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments," is applicable. See 2 C.F.R. part 225.
2. *Recipients other than States.* Consistent with the requirements of 15 C.F.R. §§ 14.40 or 24.36, as applicable, a recipient of EDA investment assistance other than a State will use its own procurement procedures which reflect applicable State and local laws and regulations; provided that the procedures conform to applicable federal law and the standards identified in 15 C.F.R. §§ 14.40-14.48 or 24.36(b) – (i), as applicable. A State or local government or Indian tribal government recipient may request EDA to review its procurement system to determine whether its system meets these standards. See 15 C.F.R. § 24.36(g)(3)(i).

Additionally, the recipient or subrecipient may self-certify its procurement system. Under a self-certification procedure, EDA may rely on written assurances from the recipient or subrecipient that it is complying with the standards in 15 C.F.R. § 24.36(b) – (i). The recipient or subrecipient must cite specific procedures, regulations, and standards as being in compliance with 15 C.F.R. § 24.36(b) – (i), and have its system available for EDA to review. In the absence of written procurement procedures and policies provided by the recipient that meet EDA and other federal requirements, applicable federal procurement standards will govern the project. For reimbursable cost determinations, OMB Circulars A-122, *Cost Principles for Nonprofit Organizations*, or A-21, *Cost Principles for Educational Institutions*, are applicable as appropriate. See 2 C.F.R. parts 220 and 230. See also section IV.G. for special provisions applicable to certain Indian tribal recipients.

3. *Standards of conduct.* Recipients shall maintain a written code of conduct, which shall govern the actions of any Interested Party (as defined in 13 C.F.R. § 300.3) engaged in the award and administration of contracts supported by EDA funds. No Interested Party shall participate in selection or in the award or administration of a contract supported by EDA funds if a conflict of interest, real or apparent, is or could be involved. A conflict may arise when any Interested Party has a financial or personal interest in the firms selected for award. A conflict also may exist where there is an appearance that an Interested Party's objectivity in performing his or her duties is impaired. *See* 13 C.F.R. § 302.17.
4. *Awards to responsible contractors.* Recipients will make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance and financial and technical resources.
5. *Maintenance of records.* Recipients will maintain records sufficient to detail the history of each procurement transaction related to the EDA project. These records will include but are not necessarily limited to the rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for concluding the contract price.
6. *Settlement of issues.* Recipients alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues (e.g., source evaluation, protests, disputes and claims) arising out of procurements. EDA will not substitute its judgment for that of the recipient unless the matter, as determined in EDA's sole discretion, primarily involves a federal issue.
7. *Wage rate requirements.* Wage rates paid for labor must not be less than the prevailing area wages, as determined by the U.S. Secretary of Labor and must be embodied in the construction contract pursuant to the requirements of the Davis-Bacon Act, as amended (40 U.S.C. § 276a *et seq.*). *See also* section IX. (Appendix) of this Summary.

E. COMPETITIVE PROCUREMENT REQUIREMENTS

1. *General.* All procurement transactions in relation to the EDA project must be conducted in a manner providing full and open competition consistent with applicable federal requirements. *See* 15 C.F.R. parts 14 or 24, as applicable.
2. *Geographic preferences.* Recipients must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographic preferences in the evaluation of bids or proposals, except in those cases where applicable federal statutes expressly mandate or encourage geographic preference. Nothing in this guidance preempts State licensing laws. When contracting for architectural and engineering services, geographic location may be a selection criterion, provided its application leaves an appropriate number of qualified firms (given the nature and size of the project) to compete for the contract.
3. *Written selection procedures.* Recipients must have written selection procedures for procurement actions. These procedures must ensure that all solicitations:
 - (a) Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. Such descriptions shall not contain

language that unduly restricts competition. The description may include a statement of the qualitative nature of the material, product or service, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform. Detailed product specifications should be avoided if possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a "brand name or equal" description may be used as a means to define the performance or other salient requirements of the material, product or service. The specific features of a name brand which must be met by offerors must be clearly stated; and

- (b) Identify all requirements which offerors must fulfill and all factors to be used in evaluating bids or proposals.

4. *Bids submitted for alternative materials.*

- (a) Should the recipient, acting upon the advice of his/her consultant architect/engineer, desire to obtain competitive prices for differing materials, such bids should be requested on the basis of "alternate bids." As used herein, this term refers to the method used to obtain bids on more than one material to be used for the same purpose. For example, for 2,000 linear feet of sewer line, Bid A might call for the pipe material to be cast iron. Bid B might call for the pipe material to be ductile iron. Bid C might call for the material to be asbestos cement.
- (b) If bids are asked for on the basis of two or more alternate bids, the bid documents must clearly state that the contract will be awarded to the bidder having the lowest responsible bid price based upon the availability of funds.
- (c) If the recipient wishes to use a material that will result in increased cost, EDA may permit the use of such material, but the amount of EDA's participation in the project must remain based on the lowest bid from a responsible bidder.

5. *Allowable methods of procurement and related requirements.*

- (a) *Procurement by sealed bids (formal advertising).* Bids are to be publicly solicited and a firm fixed-price contract (lump sum or unit price) is to be awarded to the bidder whose bid, conforming to all material terms and conditions of the invitation for bids, is lowest in price. The sealed bid method is the preferred method for procuring construction services. The following requirements apply to sealed bids:
 - (i) The invitation for bids is publicly advertised and solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for the opening of bids;
 - (ii) The invitation for bids includes applicable specifications and pertinent attachments and adequately defines the items or services, in order for the bidder to properly respond;
 - (iii) All bids are publicly opened at the time and place prescribed in the invitation for bids;
 - (iv) A firm fixed-price contract award will be made in writing to the lowest responsive responsible bidder; and
 - (v) Any or all bids may be rejected if there is a sound and properly documented reason. *See* 15 C.F.R. § 24.36(d)(2).

The advertising process for inviting bids should be in compliance with applicable State or local requirements where the project will be constructed. In the absence of State or local requirements, the advertisement should appear in publications of general circulation a minimum of four (4) times within a 30-day period prior to the opening of bids. Generally, a minimum of thirty (30) days should be allowed for submission of bids.

- (b) *Procurement by competitive proposals.* Competitive proposals are normally conducted with more than one source submitting an offer, and either a fixed price or cost-reimbursement type contract is awarded. This method generally is used when conditions are not appropriate for the use of sealed bids. The following requirements apply to competitive proposals:
- (i) Requests for proposals are publicized and identify all evaluation factors; any response to a request for proposals must be considered to the maximum extent practical;
 - (ii) Proposals are solicited from an adequate number of qualified sources (generally, EDA requires responses from at least three responsible firms);
 - (iii) Recipients have a method for conducting technical evaluations of the proposals received and for selecting awardees;
 - (iv) Awards are made to the responsible firm whose proposal is most advantageous to the program, with price and other factors considered, as appropriate; and
 - (v) Recipients may use competitive proposal procedures for qualification-based procurement of architectural/engineering professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of fair and reasonable compensation. This method, where price is not a selection factor, can be used only for procuring architectural/engineering professional services. See 15 C.F.R. § 24.36(d)(3).
- (c) *Procurement by noncompetitive proposals.* This technique requires EDA's prior written concurrence and is conducted by solicitation of a proposal from only one source. Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and when one of the following circumstances applies:
- (i) The item is available only from a single source;
 - (ii) The public exigency or emergency will not permit a delay resulting from competitive solicitation; or
 - (iii) After soliciting a number of sources, competition is determined inadequate. See 15 C.F.R. § 24.36(d)(4).
- (d) *Contract cost analysis.*
- (i) The recipient must perform a cost or price analysis in connection with every procurement action, including contract modifications. See 15 C.F.R. § 24.36(f).
 - (ii) Costs based on estimated costs for contracts under grants will be allowed only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with federal cost principles (see section VI.A.3. of this Summary). The recipient may reference its own cost principles that comply with applicable federal cost principles.

- (e) *Bonding and insurance requirements.* For construction or facility improvement contracts or for subcontracts exceeding \$100,000, the following minimum requirements apply:
- (i) The bonding company selected must be listed in the U.S. Treasury Department's Circular 570, "*Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.*"
 - (ii) A bid guarantee must be obtained from each bidder equivalent to five (5) percent of the bid price. The bid guarantee must consist of a firm commitment such as a bid bond, certified check or other negotiable instrument accompanying a bid as assurance that the bidder will upon acceptance of the bid execute such contractual documents as may be required.
 - (iii) A performance bond must be required from the contractor for one hundred (100) percent of the contract price.
 - (iv) A payment bond must be required from the contractor for one hundred (100) percent of the contract provisions.

The recipient shall require each construction contractor and all subcontractors to maintain, during the life of its contract, Workmen's Compensation Insurance, Public Liability Insurance, and such other types of special coverage required by applicable State or local law. Where appropriate, the recipient shall require the prime contractor to provide Builder's Risk Insurance as part of the construction contract. In all cases, the recipient is responsible for seeing that coverage is obtained and kept in force. When obtained by the recipient directly, such coverage is an eligible project cost.

VI. DISBURSEMENT OF GRANT FUNDS AND FINANCIAL ADMINISTRATION

A. PRE-DISBURSEMENT REQUIREMENTS

1. *General.* Eligible cost reimbursement is EDA's preferred method of grant disbursement. Disbursements of grant funds must be made by electronic transfer based on the recipient's actual rate of expenditure. EDA will make disbursements based on the percentage of EDA participation, but in no event for more than the total sum stated in the Award. The initial disbursement will be made only after the following conditions have been met:
 - (a) EDA determines that the recipient has satisfied all applicable Terms and Conditions of the Award (*see* 13 C.F.R. § 305.9(b));
 - (b) The recipient has requested disbursement by submitting Form SF-271, "*Outlay Report and Request for Reimbursement for Construction Programs*" (OMB Control No. 0348-0002), for incurred costs that are itemized and eligible;
 - (c) The recipient certifies that its proportionate share of funds (including overruns) is on deposit; and
 - (d) The recipient meets such other requirements as EDA may establish.

Recipients shall disburse program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds (*see* paragraph A.2. below) before requesting additional grant disbursements.

2. *Interest earned on advances.* Under OMB Circular A-102, recipients and subrecipients may retain \$100 per year of interest earned on federal advances for administrative

expenses. Under OMB Circular A-110, recipients may retain interest amounts up to \$250 per year for administrative expenses. While these are general provisions regarding interest earned on grant funds, *see* 15 C.F.R. §§ 14.22(l) or 24.21(i), as applicable, for specific requirements.

3. *Allowable costs.* EDA allowable costs are determined by reference to the following OMB Circulars: Circular A-122 titled "*Cost Principles for Nonprofit Organizations*" (2 C.F.R. part 230); Circular A-21 titled "*Cost Principles for Educational Institutions*" (2 C.F.R. part 220); and Circular A-87 titled "*Cost Principles for State, Local and Indian Tribal Governments*" (2 C.F.R. part 225). Generally, costs that are allowable include salaries, supplies and other expenses that are reasonable and necessary for the completion of the scope of work. Allowable costs must be determined in accordance with the cost principles applicable to the organization incurring the costs.
4. *Acceptable costs and contributions.* In determining the amount of the non-federal share of the cost of a project, EDA may provide credit towards the non-federal share of all contributions both in cash and in-kind, fairly evaluated, including contributions of space, equipment, assumptions of debt, and services. *See* section 204(b) of PWEDA (42 U.S.C. § 3144).

The matching share may include funds from other federal agencies only if authorized by statute that allows such use, which may be determined by EDA's reasonable interpretation of such authority. *See* 13 C.F.R. § 300.3.

Neither cash nor the value of in-kind contributions may count towards satisfying a cost-sharing requirement of a grant agreement if it has been or will be counted towards satisfying a cost-sharing requirement of another federal grant agreement, a federal procurement contract, or any other award of federal funds. The eligible applicant must show that the matching share is committed to the EDA project, will be available as needed and is not or will not be conditioned or encumbered in any way that would preclude its use consistent with the requirements of the Award. *See* 13 C.F.R. § 301.5.

B. INTERIM DISBURSEMENTS

After the initial disbursement has been made, the recipient may request interim disbursements by submitting Form SF-271, as required for reimbursement of EDA's share of eligible project costs. Interim disbursements will normally continue until ninety (90) percent of the grant funds have been disbursed, with the remaining ten (10) percent normally held pending final disbursement and project close-out.

C. FINAL DISBURSEMENT

When project construction and final inspection have been completed, and the recipient has accepted the project from the contractor, the recipient can begin the close-out process by submitting the following documentation to EDA:

1. A request for final disbursement on an executed Form SF-271;
2. A written certification that all costs claimed are for eligible activities under the grant agreement, for which there is documentation included in the recipient's records;
3. A final acceptance report;

4. A certification signed by the authorized representative of the recipient that the recipient's currently valid OMB Circular A-133 audit has been or will be transmitted to the Federal Audit Clearinghouse and that if the audit contains any material findings, a copy of the audit in its entirety has been submitted to EDA; and
5. Other documentation as may be required by EDA.

The recipient will be advised by EDA of costs found eligible, costs found ineligible and the reasons for findings of ineligibility. If a balance of the grant is due to the recipient, the balance will be paid by wire transfer. If the recipient has received a grant amount in excess of the amount due the recipient, the recipient must refund the excess to EDA, payable to the U.S. Treasury.

VII. AWARD AMENDMENTS, APPROVALS, AND NOTIFICATIONS

Between approval and closeout of an EDA construction project, modifications to the Terms and Conditions may be necessary to resolve unforeseen problems. In most instances, the proposed modification can be accomplished only if EDA agrees to a formal amendment to the Award.

A. AMENDMENTS

In order to amend the Award, the Project Officer shall prepare Form CD-451, "*Amendment to Financial Assistance Award*," for execution by both the Regional Director and the recipient's authorized representative. Form CD-451 is required for any of the following amendments to an Award:

1. Changes to project scope of work;
2. Budget revisions requiring additional EDA or non-EDA sources of funds;
3. Budget revisions that result in cumulative transfers among direct cost categories in excess of 10 percent of the total project cost when the federal share exceeds \$100,000;
4. The inclusion of certain costs for which EDA's prior approval is needed under the following OMB Circulars: Circular A-21, "*Cost Principles for Educational Institutions*" (2 C.F.R. part 220); Circular A-87, "*Cost Principles for State, Local, and Indian Tribal Governments*" (2 C.F.R. part 225); and Circular A-122, "*Cost Principles for Non-Profit Organizations*" (2 C.F.R. part 230), as applicable;
5. Change of site location;
6. Change to or addition of recipient;
7. Time extensions; and
8. Modifications to the Terms and Conditions of the Award, other than time extensions.

When Form CD-451 is required, the recipient must submit a request for amendment in writing to the EDA regional office. If the request is approved, the EDA regional office completes and transmits the Form CD-451 to the recipient. The recipient's authorized representative must execute the Form CD-451 and return it to the EDA regional office.

B. TIME SCHEDULE EXTENSIONS

1. The recipient is responsible for implementing the project in accordance with the project development time schedule contained in the Award. As soon as the recipient becomes aware that it will not be possible to meet the project development time schedule, it must notify the EDA regional office. Grant disbursements cannot be made if the recipient is not in compliance with the time schedule. The recipient's notice to EDA should contain the following information:

- (a) An explanation of the reason for the recipient's inability to complete work by the specified date (e.g., a lengthy period of unusual weather delayed the contractor's ability to excavate the site; major re-engineering required in order to obtain State or federal approvals; unplanned environmental mitigation required);
 - (b) A statement that no other changes to the project are contemplated;
 - (c) Documentation that demonstrates there is still a bona fide need for the project; and
 - (d) Confirmation that no further delay is anticipated and that the project can be completed within the revised time schedule.
2. EDA will perform a mandatory review of the project's progress for any project that is not under construction within two (2) years of the grant award date. In accordance with EDA policy, the maximum construction start time extension that any region can grant is restricted to a date three (3) years from the grant award date. Any extension beyond that limit must be approved by the Assistant Secretary of Commerce for Economic Development.
 3. EDA reserves the right to suspend or terminate an Award if the recipient fails to proceed with reasonable diligence to accomplish the project as intended.
See also sections VII.B. and F. of this Summary.

C. BUDGET REVISIONS

1. The tabulation of estimated project costs contained in the Award is the controlling budget plan for the project. Recipients shall request EDA's prior written approval for any anticipated budget revision in accordance with 15 C.F.R. §§ 14.25 or 24.30, as applicable. The recipient must notify EDA of any proposed deviation from the budget or program plans, including changes in scope or the objective of the project (even if there is no associated budget revision requiring prior written approval).
See 15 C.F.R. §§ 14.25 and 24.30.
2. The transfer of funds from line items other than the contingencies line item may be permitted, *provided* there will be no significant adverse effect on the objective of the line item from which the transfer is to be made.
3. The construction line item will be revised at the time of contract award to reflect the actual contract amount(s). Underrun amounts will be transferred to the contingencies line item. Recipients are reminded that contingency funds are to be used to cover situations resulting from unknown conditions and changes required for the fulfillment of authorized project activities under the Award. Underrun funds may be used to further improve the project, as long as the improvements are consistent with the original purpose of the approved-EDA investment and with prior approval from EDA. *See* 13 C.F.R. § 305.10.

D. ADDITIONAL EDA FUNDING

1. In accepting financial assistance from EDA, the recipient agreed to fund any overrun(s). Additional EDA assistance for an approved project is unlikely to be approved. To be considered for approval, it must compete with other requests for scarce EDA funds. If an overrun occurs as a result of the construction contract bid opening, before EDA will consider a formal request for additional EDA funds, it is necessary for the recipient to furnish the following documentation:

- (a) A written statement from the recipient's architect/engineer, giving reasons for his professional opinion that redesign of the project within the approved scope, or using new or additional deductive alternates cannot reasonably be expected to reduce the cost to within the available funds; and
 - (b) A written statement from the administrative head of the recipient's organization justifying why the recipient cannot furnish the additional funds required, why non-EDA sources of funds cannot be secured, and certifying that the recipient's borrowing capacity has been exhausted.
2. EDA's consideration of a request for additional EDA assistance does not indicate approval.

E. ADMINISTRATIVE APPROVALS AND NOTIFICATIONS

1. EDA shall issue a written administrative approval for budget revisions that result in the cumulative transfer among direct cost categories of *less than 10 percent* of the total project cost and to approve budget revisions that result in the transfer of funds between direct and indirect cost categories, as long as those transfers are also *less than 10 percent* of the total project cost.
2. EDA shall issue a written administrative notification upon EDA's approval and acceptance of the recipient's documentation of compliance with special award conditions (for example, compliance with environmental or State historic preservation law requirements) and upon EDA's change in the Project Officer or other administrative official assigned to the recipient's project, if applicable.

F. TERMINATION OF INVESTMENT ASSISTANCE

1. *Termination for cause.*
 - (a) If a recipient materially fails to comply with any Term or Condition of the Award, EDA may take one or more of the actions set out in 15 C.F.R. §§ 14.62(a) or 24.43(a), as applicable.
 - (b) In taking an enforcement action, EDA will provide the recipient an opportunity to appeal if the recipient is entitled to an appeal under any statute or regulation applicable to the action involved. *See* 15 C.F.R. §§ 14.62(b) or 24.43(b), as applicable.
 - (c) Costs resulting from obligations incurred by the recipient after notice by EDA of suspension or termination of the Award are not allowable unless EDA expressly authorizes them in the notice of suspension or intent to terminate, or subsequently. Other costs incurred by the recipient during suspension or after termination that are necessary and not reasonably avoidable are allowable if:
 - (i) The costs result from obligations that were properly incurred by the recipient before the effective date of the suspension or termination, are not in anticipation of it, and in the case of termination, are non-cancellable; and
 - (ii) The costs would be allowable if the Award were not suspended or expired normally at the end of the funding period in which the termination takes effect. *See* 15 C.F.R. §§ 14.62(c) or 24.43(c), as applicable.

- (d) The enforcement remedies identified in 15 C.F.R. §§ 14.62 or 24.43, as applicable, including suspension and termination, do not preclude the recipient from being subject to debarment or suspension under Executive Orders 12549 and 12689 and the Department's implementing regulations at 2 C.F.R. part 1326.
2. *Termination for convenience.* The recipient may request at any time termination for convenience of the Award upon sending to the Grants Officer written notification in a form acceptable to EDA setting forth the reasons and effective date of such termination. See 15 C.F.R. §§ 14.61 or 24.44, as applicable.

VIII. POST-CONSTRUCTION REQUIREMENTS

A. OMB CIRCULAR A-133 AUDIT REQUIREMENTS

1. *Requirement to have an A-133 audit performed.* The recipient is subject to the requirements contained in OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*" and the related *Compliance Supplement* (Appendix B to OMB Circular A-133), each as revised from time to time. OMB Circular A-133 is issued pursuant to the Single Audit Act of 1984 (Pub. L. No. 98-502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156, 31 U.S.C. §§ 7501-7507). OMB Circular A-133 requires any non-federal entity (i.e., non-profit organizations, including non-profit institutions of higher education and hospitals, States, local governments and Indian tribes) that expends federal awards of \$500,000 or more in one fiscal year to conduct a single or program-specific audit in accordance with the requirements set out in the Circular.
2. *Requirement to submit audit to Federal Audit Clearinghouse.* A recipient expending federal awards of \$500,000 or more in a fiscal year and therefore, having a single or program-specific audit for that year conducted in accordance with OMB Circular A-133, must submit a copy of the single or program-specific audit to the Bureau of the Census, designated by OMB as a central clearinghouse, at the following address:

Federal Audit Clearinghouse
1201 E. 10th Street
Jeffersonville, IN 47132

The recipient may contact the Federal Audit Clearinghouse by email, phone or fax:

Email: govs.fac@census.gov
Telephone: (301) 763-1551
(800) 253-0696 (toll free)
Fax: (301) 457-1592

The Federal Audit Clearinghouse operates on behalf of OMB to disseminate audit information to federal agencies and to the public, and to help auditors and auditees minimize the reporting burden of complying with Circular A-133 requirements. For more information, access the website at <http://harvester.census.gov/fac/>.

The audit will be considered "on time" if it is received by the Federal Audit Clearinghouse no later than thirty (30) days after the recipient receives the auditor's report or nine (9) months after the end of the recipient's fiscal year. The Federal Audit Clearinghouse also offers an online entry system for submission of Form SF-SAC at <http://harvester.census.gov/fac/collect/ddeindex.html>.

3. *Requirement to submit audit to EDA.* If the recipient's currently valid OMB Circular A-133 audit contains material findings, the recipient shall submit the audit in hard copy to the regional office.

B. DEPARTMENTAL AUDIT RESOLUTION PROCESS

1. Under the Inspector General Act of 1978, as amended (5 U.S.C. App. 3, § 1 *et seq.*), EDA or the Department's Office of the Inspector General ("OIG") may conduct an audit of the Award at any time. The recipient will be notified in advance if it is selected for an audit. The recipient must permit EDA, the Comptroller General of the United States, the Departmental Inspector General, or any of their duly authorized representatives, access to all books, documents, papers and records, whether written, printed, recorded, produced or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to verify the recipient's compliance with the Terms and Conditions of the Award. See 13 C.F.R. § 302.14.

When the OIG requires a program audit on the Award, the OIG will usually make the arrangements to audit the Award, whether the audit is performed by an independent accountant under contract with the Department, OIG personnel, or any other federal, State or local audit entity.

2. An audit of the Award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (an account receivable) due to the Department. For this reason, the recipient should take seriously its responsibility to respond to all audit findings, questioned costs and recommendations with adequate explanations and written evidence when disputing audit determinations.
3. A recipient whose Award is audited will have an opportunity to dispute the audit findings.
 - (a) Unless the Inspector General determines otherwise, the recipient will have thirty (30) days from the date of the transmittal of the OIG's draft audit report to submit written comments and documentary evidence.
 - (b) The recipient will have thirty (30) days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
 - (c) EDA will review any documentary evidence submitted by the recipient, and will notify the recipient of the results in an "Audit Resolution Determination Letter," which will specify the timeframe in which the Recipient is able to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence that dispute the validity of the findings in the Audit Resolution Determination Letter.
 - (d) An appeal of the findings in the Audit Resolution Determination Letter does not prevent the establishment of any audit-related debt, nor does it prevent the accrual of interest on the debt. If the findings in the Audit Resolution Determination Letter are overturned or modified on appeal, appropriate corrective action will be taken. An appeal will stay the offset of funds owed by the recipient against funds due to the recipient.
 - (e) EDA will review the recipient's appeal and notify the recipient of the results in an "Appeal Determination Letter." After the opportunity to appeal has expired or after the appeal determination has been rendered, the Department will not accept

any further documentary evidence from the recipient. No other administrative appeals are available in the Department.

C. PROPERTY MANAGEMENT

1. Any property that is acquired or improved, in whole or in part, with EDA investment assistance, whether through a grant or a cooperative agreement, is subject to the requirements of PWEDA and the regulations at 13 C.F.R. part 314. Title, authorized use, successor recipient, property disposition, and Federal Share (as defined in 13 C.F.R. § 314.5) requirements are set out at 13 C.F.R. part 314.
2. During the estimated useful life of the project, as determined by EDA, EDA retains a Federal Interest in the project property. *See* section III.A. of this Summary. The Federal Interest secures compliance with the ownership, purpose, scope and intended use of the EDA project and may be reflected by a recorded lien, statement or other recordable instrument setting forth EDA's property interest (e.g., a mortgage, covenant, or other statement of EDA's real property interest in the case of a project involving the acquisition, construction or improvement of a building). *See* 13 C.F.R. § 314.8.
3. A recipient may request a release of the Federal Interest in property acquired or improved with EDA investment assistance and fully compensate EDA for its Federal Share in the property. A release pursuant to 13 C.F.R. § 314.2(b) gives the recipient title to the property free and clear of any further governmental interest.

In contrast, a recipient may request a release of the Federal Interest in project assets that are subject to an estimated useful life in excess of the statutory twenty (20) year limitation. *See* section 601(d)(2) of PWEDA (42 U.S.C. § 3211) and 13 C.F.R. § 314.10. In that case, EDA may release its Federal Interest, however, the property acquired or improved with EDA investment assistance may not be used: (a) in violation of the nondiscrimination requirements set forth in 13 C.F.R. § 302.20; or (b) for inherently religious activities prohibited by applicable federal law.

D. CLOSEOUT PROCEDURES

1. After construction is completed and the project is closed out financially, the recipient has an ongoing responsibility to properly administer, operate and maintain the project for its estimated useful life in accordance with its original purpose. *See* 13 C.F.R. § 302.12. The recipient must comply with all Award requirements, including but not limited to ongoing compliance with applicable environmental law, performance measurement reporting requirements, and federal statutes, regulations and Executive Orders prohibiting discrimination and inherently religious activity. The recipient must maintain records to document such compliance, which shall be made available for inspection by EDA or other government officials as required. When project construction and final inspection have been completed, and the recipient has accepted the project from the contractor, the recipient may begin the closeout process. *See* section VI.C. of this Summary. The recipient must take the following actions:
 - (a) Confirm to EDA compliance with all Terms and Conditions.
 - (b) Confirm to EDA that it will procure permanent insurance for above-ground facilities.
 - (c) Notify EDA of the results of a review of the project to ensure that all changes to the project have been brought to the attention of EDA.
 - (d) Confirm to EDA that it will retain for three (3) years all records pertaining to the

- Award.
- (e) Submit to EDA a completed and executed *Certificate of Final Completion*.
 - (f) Submit and obtain from the contractor or the architect/engineer as-built drawings.
 - (g) Certify to EDA that a currently valid single or program-specific audit (in compliance with OMB Circular A-133 and the related *Compliance Supplement*) has been submitted to the Federal Audit Clearinghouse. If no single or program-specific audit is available but is required, the recipient's plan to secure the audit must be furnished to EDA. If no single or program-specific audit is required, the recipient must advise EDA.
 - (h) Submit to EDA the currently valid audit required under OMB Circular A-133 *if* the audit contains material findings. Otherwise, the recipient shall certify to EDA that the audit does not contain material findings.
 - (i) Confirm to EDA that no outstanding Davis-Bacon Act or local labor employment violations exist.
 - (j) Notify EDA of any change, lien, mortgage or other encumbrance relating to the ownership of the property acquired or improved with EDA investment assistance.
 - (k) Notify EDA of any unresolved contract/contractor disputes.
 - (l) Maintain the facility during its estimated useful life, as determined by EDA, during which period the recipient may not alienate its ownership or alter the use and purpose of the EDA-assisted facility without EDA's written permission.
2. The recipient shall submit, within ninety (90) calendar days after the completion of the project, all financial, performance and other reports as required by the Terms and Conditions of the Award.
 3. Unless EDA authorizes an extension, the recipient must liquidate all obligations incurred under the Award no later than ninety (90) calendar days after acceptance of the project from the contractor or before the end of project period, whichever occurs earlier, as specified in the Terms and Conditions of the Award.
 4. The following documentation should accompany the recipient's final disbursement request, as applicable, unless such documentation has been previously furnished:
 - (a) Copies of all executed contracts, subcontracts (if claimed separately from the prime contract), contract change orders, vouchers, canceled checks, and other evidence of costs incurred necessary to substantiate the costs claimed on the EDA investment;
 - (b) A certification signed by the authorized representative of the recipient that the recipient's currently valid OMB Circular A-133 audit has been or will be transmitted to the Federal Audit Clearinghouse;
 - (c) A certification signed by the authorized representative of the recipient that the recipient's currently valid OMB Circular A-133 audit does not contain material findings. If the recipient's currently valid OMB Circular A-133 audit *does* contain material findings, the recipient must provide the regional office with a hardcopy of the audit;
 - (d) Payroll forms, if any of the costs claimed is for work performed by force account construction;
 - (e) Title opinions, legal descriptions, appraisals, bills of sale, title records, etc., for any land cost being claimed; and
 - (f) Specifics of any administrative costs being claimed.
 5. The closeout of an Award does not affect any of the following:
 - (a) The right of EDA to disallow costs and recover funds on the basis of a later audit

- (b) or other project review;
The recipient's obligation to return any funds due as a result of later corrections or other transactions;
- (c) Requirements for property management, records retention and performance measurement reports; and
- (d) Single or program-specific audit requirements per OMB Circular A-133 and the related "*Compliance Supplement*."

IX. APPENDIX

The following documents are available from the Office of Management and Budget's, the Department of Commerce's, and the Government Printing Office's websites at www.whitehouse.gov/omb/, www.commerce.gov, www.gpoaccess.com, public libraries, and other sources. Each document listed below contains a link that will take you directly to that document on the internet.

1. 15 C.F.R. part 14, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit and Commercial Organizations*
2. 15 C.F.R. part 24, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*
3. 2 C.F.R. part 225, *Cost Principles for State, Local and Indian Tribal Governments* (OMB Circular A-87)
4. OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*, and the related *Compliance Supplement* (Appendix B to OMB Circular A-133)
5. 2 C.F.R. part 230, *Cost Principles for Nonprofit Organizations* (OMB Circular A-122)
6. 2 C.F.R. part 220, *Cost Principles for Educational Institutions* (OMB Circular A-21)
7. 48 C.F.R. part 31, *Contract Cost Principles and Procedures*
8. 2 C.F.R. part 1326, *Nonprocurement Debarment and Suspension*
9. 15 C.F.R. part 29, *Governmentwide Requirements for a Drug-Free Workplace (Financial Assistance)*
10. 15 C.F.R. part 11, *The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended*
11. Davis Bacon Wage Rate Determinations: www.wdol.gov/

The following are available as exhibits to this Summary from EDA's Internet website at www.eda.gov:

1. CHECKLIST FOR ARCHITECT/ENGINEER CONTRACTS
2. CHECKLIST FOR PLANS AND SPECIFICATIONS
3. CHECKLIST FOR INITIAL DISBURSEMENT OF EDA FUNDS
4. CHECKLIST FOR PROJECT CLOSEOUT
5. EDA CONTRACTING PROVISIONS FOR CONSTRUCTION PROJECTS
6. NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY

7. CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS AND LOBBYING (CD-512)
8. QUARTERLY PERFORMANCE REPORT
9. CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY AND EASEMENTS (INCLUDING TITLE OPINION)
10. ACH VENDOR/MISCELLANEOUS PAYMENT ENROLLMENT FORM



Economic Development Administration
GPRA Data Collection Form

Item 5.

Public Works, Economic Adjustment Infrastructure and Revolving Loan Fund Investments

Date _____

Recipient Name _____

Full Address _____

Authorized Contact _____

Telephone _____ Fax _____

Email (not optional) _____

Investment Program Public Works ____ Economic Adjustment ____ Revolving Loan Fund ____

Project Number _____

Award Date _____ Close-out Date _____
(if applicable)

Investment awarded during federal fiscal year: FY 19 ____ FY 20 ____

Data in this report:
 ____ 3 years after investment award ____ 6 years after investment award ____ 9 years after investment award

CONSTRUCTION OR LOAN FUNDING				
Total Investment	EDA Investment	Applicant Investment ¹	Private Investment ²	Other Federal Investment
\$	\$	\$	\$	\$

(Note: Total Project should be the total of the other values in this section)

GRANT RECIPIENT COMPLETE THIS SECTION

RESULT OF EDA INVESTMENT			
	3 Years After Award ³	6 Years After Award ³	9 Years After Award ³
Private Investment Generated			
Jobs Created			
Jobs Retained			
Total Jobs Created/Retained			

¹ (includes Local and State)

² private investment associated with project construction, e.g. foundation grants

³ at the time of this report (see instructions)

OMB Approved ED-915
 OMB Control Number 0610-0098
 Expires 06/30/2011

GPRA Data Collection Instructions

Public Works, and Economic Adjustment Infrastructure and Revolving Loan Fund Investments

EDA regional personnel will complete the following information prior to sending the form to the Investment Recipient. If there is not sufficient space on the data collection form, you may use additional pages with the EDA project number, date of award, and reporting period at the top of each page.

Recipient Name: Legal name of the Recipient.

Full Address: Physical address of the Recipient including city, state and zip. Include mailing address if different.

Authorized Contact: Person to contact regarding this report. Include the telephone number, if different from Recipient.

Telephone: Telephone number, including area code. **Fax:** Facsimile number, including area code.

E-mail Address: Internet address of authorized contact using the following format, (name@organization.com).

Investment Program: Check to indicate appropriate EDA investment program.

Project Number: as in OPCS

Award Date: DEC as in OPCS

Investment awarded: Identify federal fiscal year of award.

Data for this report: Check to identify the reporting period: three, six, or nine years after investment award date (DEC date in OPCS).

Construction or Loan Funding:

Total Project dollars: Total of EDA investment, applicant (local and state) dollars, private dollars, other federal dollars used in project construction or loan fund capitalization.

EDA Investment: At time of award for this project number or most current value.

Applicant dollars: Include local and state funds. Local public sources such as city or county appropriations, general obligation/ revenue bond issues, and economic development sales taxes. CDBG funds to entitlement cities are authorized for use as local shares. State sources are state appropriations or CDBG funds to the state.

Private dollars: Private sector dollars invested in project construction or loan fund capitalization, including donations, foundation grants, contributions from local financial institutions, and private donors.

Other Federal dollars: Federal sources, such as HUD, Agriculture, or Transportation funds not reported in Applicant dollars section.

Recipient Section Instructions

Private Investment Generated as a result of the EDA investment.

The total private sector investment made because of the EDA investment, including investments in new plant and equipment. Do not report private sector contributions to project construction or loan fund capitalization reported above in this section.

Direct Project Jobs:

Total Jobs: Total of jobs created and retained at the time of this report.

Jobs Generally: Only *permanent* and *direct* jobs may be counted. Part-time jobs should be converted to full-time equivalents (sum the total part-time hours worked per week and divide by the hourly work week for full-time employees, normally 35-40 hours).

Jobs Created: Private sector jobs created by businesses and other project beneficiaries as a result of the EDA project.

Jobs Retained: Private sector jobs retained as a result of the EDA project.

Direct Jobs: Include those created or retained by employers located at the project site or by firms that require services of the EDA-funded facility in order to locate, expand or operate in the project area. Recipients should report other direct or *directly-related* jobs, including subsequent employers that locate or expand in the project area as a result of the project. For some projects (e.g., roads, water and sewer lines), direct jobs may include those created by firms that were not originally anticipated as part of the project; however the firms required the facility or service provided by the EDA project in order to locate or expand in the area.

Record retention: Recipients must retain supporting performance documentation for a minimum of three years.

For RLF reporting: Actual Created Jobs are the result of and attributable to the RLF loan, and have been verified by the borrower. Created jobs may be credited if the jobs were created within five years of loan disbursement or, if construction is involved, within five years after construction completion regardless of the status of the loan. A created job must be removed if the job fails to last 18 months. For loans paid in full, borrowers may use the job data on file provided there is confidence in the reliability of the data. If there is a question on reliability, the data should be verified by the next annual reporting period. Retained Jobs are existing jobs where it can be documented that without the RLF assistance, the jobs would have been lost.

Special Provision for RLF Recapitalization: For GPRA purposes, private investment and jobs reported in years three, six and nine (3, 6 and 9) following award of an RLF recapitalization should be reported from the date of the recap, not from the date of the initial RLF award. For example, if the RLF was initially awarded in 1995 and received a recapitalization award in 1999, only those jobs and private sector investments dollars generated from 1999 to the end of the appropriate reporting period should be reported.

Burden Statement: Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number 0610-0098 Expires 06/30/2011. The public reporting burden for this collection is estimated to average 8 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

OMB Approved ED-915

9

AGREEMENT AND MORTGAGE



Item 5.

Document Number

Document Title

Doc # 810036

Recorded

February 22, 2011 2:25 PM

CONNIE J WOOLEVER
REGISTER OF DEEDS
WALWORTH COUNTY, WI
Fee Amount: \$30.00
Total Pages: 9

Recording Area

Name and Return Address

CITY OF WHITEWATER
PO BOX 070
WHITEWATER, WI 53190

Parcel Identification Number (PIN)

THIS PAGE IS PART OF THIS LEGAL DOCUMENT - DO NOT REMOVE.

This information must be completed by submitter: document title, name & return address, and PIN (if required). Other information such as the granting clause, legal description, etc., may be placed on this first page of the document or may be placed on additional pages of the document.

AGREEMENT AND MORTGAGE – Continued
EDA Project No. 06-01-05479

AGREEMENT AND MORTGAGE

WHEREAS, the City of Whitewater (hereinafter "Mortgagor"), whose address is 312 West Whitewater Street, Whitewater, Wisconsin 53190 has applied to, received and accepted from the United States Department of Commerce, Economic Development Administration (hereinafter "EDA"), whose address is c/o Chicago Regional Office, 111 North Canal Street, Suite 855, Chicago, Illinois 60606, a financial assistance award in the amount of Four Million Seven Hundred Forty Thousand Eight Hundred Nine and No/100 Dollars (\$4,740,809.00) (hereinafter "Award Amount") pursuant to a Financial Assistance Award executed by the Mortgagor on October 6, 2009, and bearing EDA Project Number 06-01-05479 (hereinafter "Project"); and

WHEREAS, pursuant to the application filed by Mortgagor requesting said financial assistance award and pursuant to the Financial Assistance Award, the Award Amount is to be used for the purpose of construction of a new 37,200 square feet Innovation Center building on the real Property described in Exhibit "A," attached hereto and made a part hereof (hereinafter "Property"); and

WHEREAS, any transfer or conveyance of a Project by an EDA Recipient must have the prior written approval of EDA. However, EDA, under authority of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. Section 3211, is not authorized to permit transfer or conveyance of a Project to parties not eligible to receive EDA financial assistance unless EDA is repaid its share of the fair market value of the Project or unless the authorized purpose of the EDA financial assistance was to develop land in order to lease it for a specific use, in which case EDA may authorize a lease of the Project if certain conditions are met; and

WHEREAS, the aforesaid Financial Assistance Award from EDA provides that the authorized purpose for which the Award Amount may be used is to develop and improve the Property in order to lease it for a specific use while further providing, inter alia, that Mortgagor will not sell, mortgage, or otherwise use or alienate any right to, or interest in the Property, other than by a lease permitted by the Financial Assistance Award, or use the Property for purposes other than and different from those purposes set forth in the Financial Assistance Award and the application made by Mortgagor therefor, such alienation or use being prohibited by 13 C.F.R. Part 314, or by 15 C.F.R. Parts 14 or 24; and

Dated: 2/22/2011

Initials: MSU

Page 1 of 6

KMS

AGREEMENT AND MORTGAGE – Continued
EDA Project No. 06-01-05479

WHEREAS, the value of EDA's right to repayment under the terms of 15 C.F.R. Parts 14 and 24 is difficult to establish; and

WHEREAS, at this time, Mortgagor and EDA desire to establish a value for EDA's share of the Project in the event that the Property is used, transferred or alienated in violation of the Financial Assistance Award, 15 C.F.R. Parts 14 and 24 or 13 C.F.R. Part 314;

NOW THEREFORE, Mortgagor does hereby mortgage, warrant, grant and convey unto EDA, its successors and assigns, a mortgage on said Property to secure a debt that shall become due and payable by Mortgagor to EDA upon the use, transfer or alienation of the Property in violation of the Financial Assistance Award or in violation of the regulations set forth in 13 C.F.R. Part 314 and 15 C.F.R. Parts 14 or 24, as such Financial Assistance Award or regulations may be amended from time to time, provided, however, that the lien and encumbrance of this AGREEMENT AND MORTGAGE shall terminate and be of no further force and effect 20 years from the date of construction completion, which period of years has been established as the useful life of the improvements to the Property. The amount of the lien, encumbrance and debt created by this Agreement and Mortgage shall be the Award Amount or the amount actually disbursed or an amount determined pursuant to 13 C.F.R. Part 314. Mortgagor does hereby acknowledge that said debt shall accrue and be due and payable upon any use, transfer, or alienation prohibited by the Financial Assistance Award, 15 C.F.R. Parts 14 or 24, or 13 C.F.R. Parts 314, and does, moreover, agree that such debt shall be extinguished only through the full payment thereof to the United States.

Mortgagor further covenants and agrees as follows:

1. Lease of Property:

If the Financial Assistance Award Application and the Financial Assistance Award authorize Mortgagor to lease the Property, all lease arrangements must be consistent with the authorized general and special purpose of the Financial Assistance Award; said lease arrangements must provide adequate employment and economic benefits for the area in which the Property is located; said lease arrangements must be consistent with EDA policies concerning, but not limited to, nondiscrimination and environmental requirements, and the proposed Lessee must provide adequate compensation to Mortgagor for said lease. Any lease agreements entered

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Initials: MSU
KMB

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AGREEMENT AND MORTGAGE – Continued
EDA Project No. 06-01-05479

into by Mortgagor of the Property shall be subordinate, junior and inferior to this AGREEMENT AND MORTGAGE.

2. Charges and Liens:

Mortgagor shall protect the title and possession of the Property, pay when due all taxes, assessments, and other charges, fines and impositions now existing or hereafter levied or assessed upon the Property and preserve and maintain the priority of the lien hereby created on the Property including any improvements hereafter made a part of the realty.

3. Hazard Insurance:

Mortgagor shall insure and keep insured all improvements now or hereafter created upon the Property against loss or damage by fire and windstorm and any other hazard or hazards included within the term "extended coverage." The amount of insurance shall be the full insurable value of said improvements. Any insurance proceeds received by Mortgagor due to loss shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, Mortgagor shall use said insurance proceeds to compensate EDA for its fair share. EDA's fair share shall be a percentage of said insurance proceeds equal to its percentage in the total cost of the grant program for which the damaged or destroyed real property was acquired or improved.

4. Preservation and Maintenance of the Property:

Mortgagor shall keep the Property in good condition and repair and shall not permit or commit any waste, impairment, or deterioration of the Property.

5. Inspection:

EDA may make or cause to be made reasonable entries upon and inspection of the Property.

6. Condemnation:

Dated: 2/22/2011

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KMB

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AGREEMENT AND MORTGAGE – Continued
EDA Project No. 06-01-05479

The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for any conveyance in lieu of condemnation shall be used by Mortgagor to compensate EDA for its fair share. EDA's fair share shall be a percentage in the total cost of the grant program for which the condemned property was acquired or improved.

7. Forbearance by EDA Not a Waiver:

Any forbearance by EDA in exercising any right or remedy hereunder, or otherwise affordable by applicable law, shall not be a waiver of or preclude the exercise of any right or remedy hereunder.

8. Recording of Mortgage - Mortgagee's Copy:

Mortgagor shall record this AGREEMENT AND MORTGAGE in the County where the Property is located, thereby securing to EDA an estate in the Property. Mortgagee shall be furnished a confirmed copy of this Mortgage at the time of execution, after recordation thereof.

9. Remedies Cumulative:

All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

10. Notice:

Any notice from EDA to Mortgagor provided for in this Mortgage shall be mailed by certified mail to Mortgagor's last known address or at such address as Mortgagor may designate to EDA by certified mail to EDA's address, except for any Notice given to Mortgagor in the manner as may be prescribed by applicable law as provided hereafter in this Mortgage.

11. Breach:

Upon Mortgagor's breach of any covenant or agreement of Mortgagor in this AGREEMENT AND MORTGAGE, EDA, its designees, successors or assigns may declare the entire indebtedness secured hereby immediately due, payable and collectible. This AGREEMENT AND MORTGAGE may

Dated: 2/22/2011

Initials: MSU
KMB

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AGREEMENT AND MORTGAGE – Continued
EDA Project No. 06-01-05479

be enforced by the Secretary of Commerce of the United States of America, the Assistant Secretary of Commerce for Economic Development or their designees, successors or assigns, by and through a foreclosure action brought either in a United States District Court, or in any State Court having jurisdiction, but such action shall not be deemed to be a waiver of the aforesaid debt or of any possible further or additional action to recover repayment thereof.

Further, upon Mortgagor's breach or default of any other covenant, note, mortgage, or agreement of Mortgagor which is secured by the Property, EDA, its designees or assigns may declare the entire indebtedness secured by this Agreement and Mortgage immediately due, payable and collectible.

After any breach on the part of Mortgagor, EDA, its designees, successors or assigns shall, upon bill filed or the proper legal proceedings being commenced for the foreclosure of this Mortgage, be entitled, as a matter of right, to the appointment by any competent court, without notice to any party, of a receiver of the rents, issues and profits of the Property, with power to lease and control the Property, and with such other powers as may be deemed necessary.

12. Governing Law; Severability:

This AGREEMENT AND MORTGAGE shall be governed by applicable Federal law and nothing contained herein shall be construed to limit the rights the EDA, its designees, successors or assigns is entitled to under applicable Federal law. In the event that any provision or clause of this instrument conflicts with applicable law, such conflict shall not affect other provisions of this instrument that can be given effect without the conflicting provision, and to this end the provisions of this instrument are declared severable.

Dated: 2/22/2011

Initials: MSU
KMB

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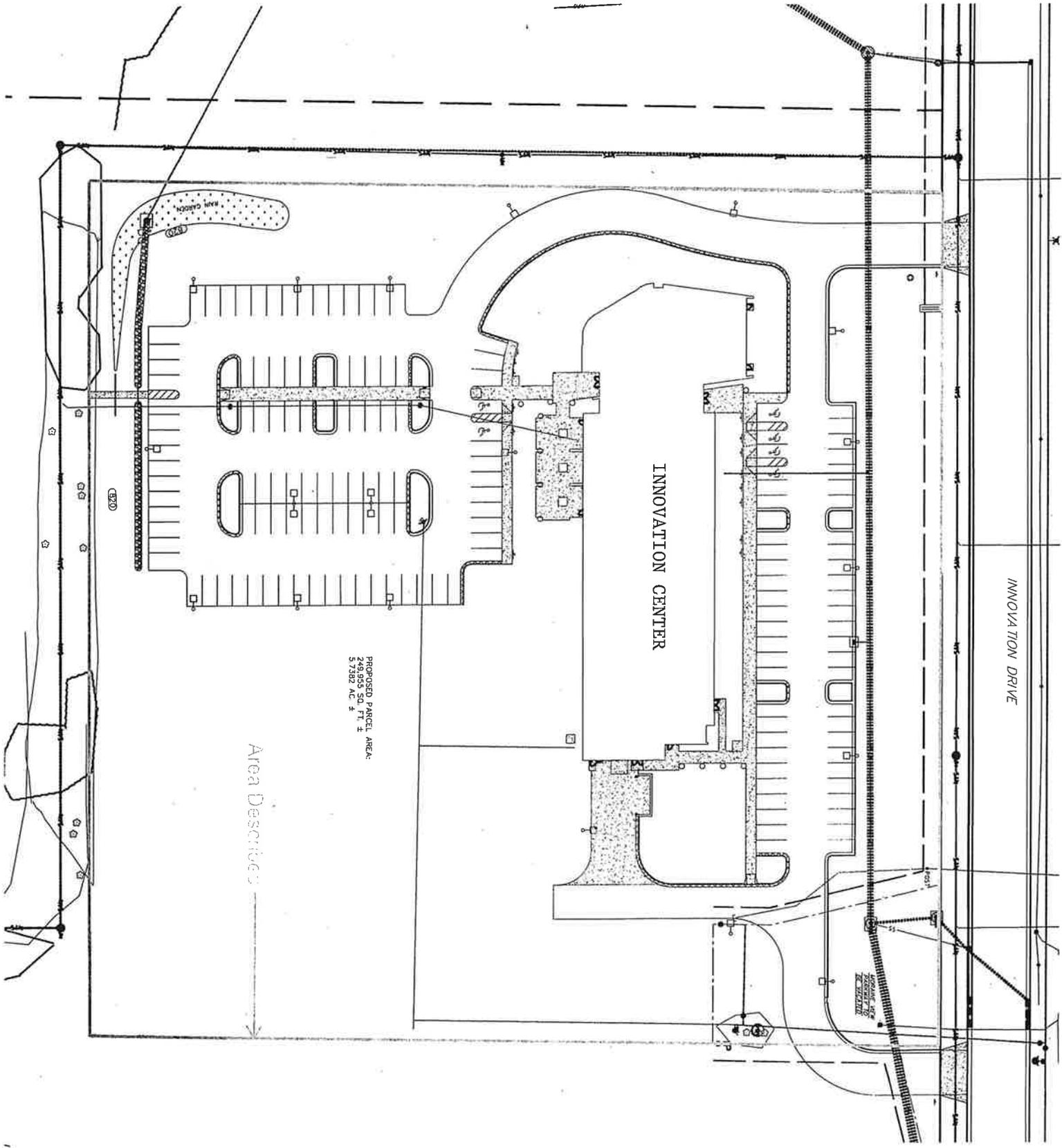
Innovation Center—Exhibit A, 1 of 2
Whitewater University Technology Park
Whitewater, Wisconsin

Part of the SW 1/4 of the NE 1/4 of Section 3, Town 4 North, Range 15 East, City of Whitewater, Walworth County, Wisconsin, more particularly described as follows:

Commencing at the Northeast corner of said Section 3;
thence South 1° 03' 10" West, 1,396.53 feet along the east line of the northeast 1/4 of said Section 3
thence South 89°58'04" West, to the point of beginning;
thence South 01° 03' 04" West, 500.30 feet;
thence South 89° 57' 30" East, 500.00 feet;
thence North 01° 03' 04" East, 500.38 feet;
thence South 89° 58' 04" West, 500.00 feet to the point of beginning;

Said parcel contains 5.7 acres or 250,123 square feet, more or less.

EXHIBIT A, 2 of 2

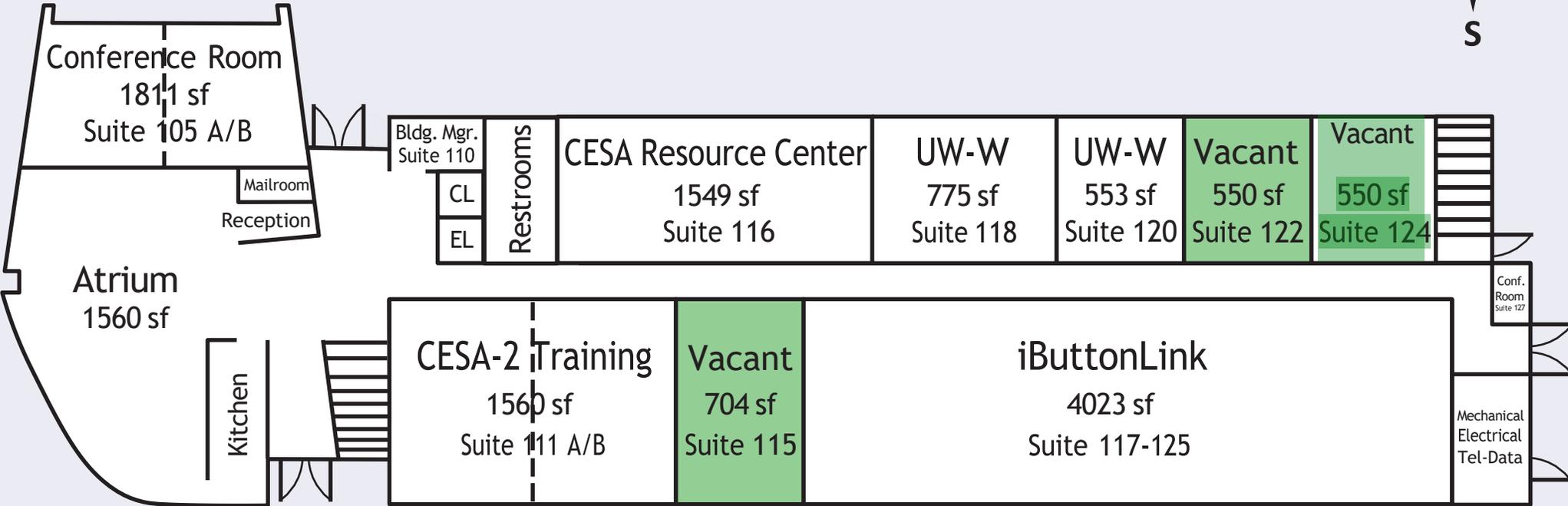
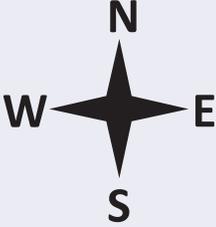


PROPOSED PARCEL AREA:
249,855 SQ. FT. ±
3.7302 AC. ±

Area Description

WHITEWATER UNIVERSITY INNOVATION CENTER

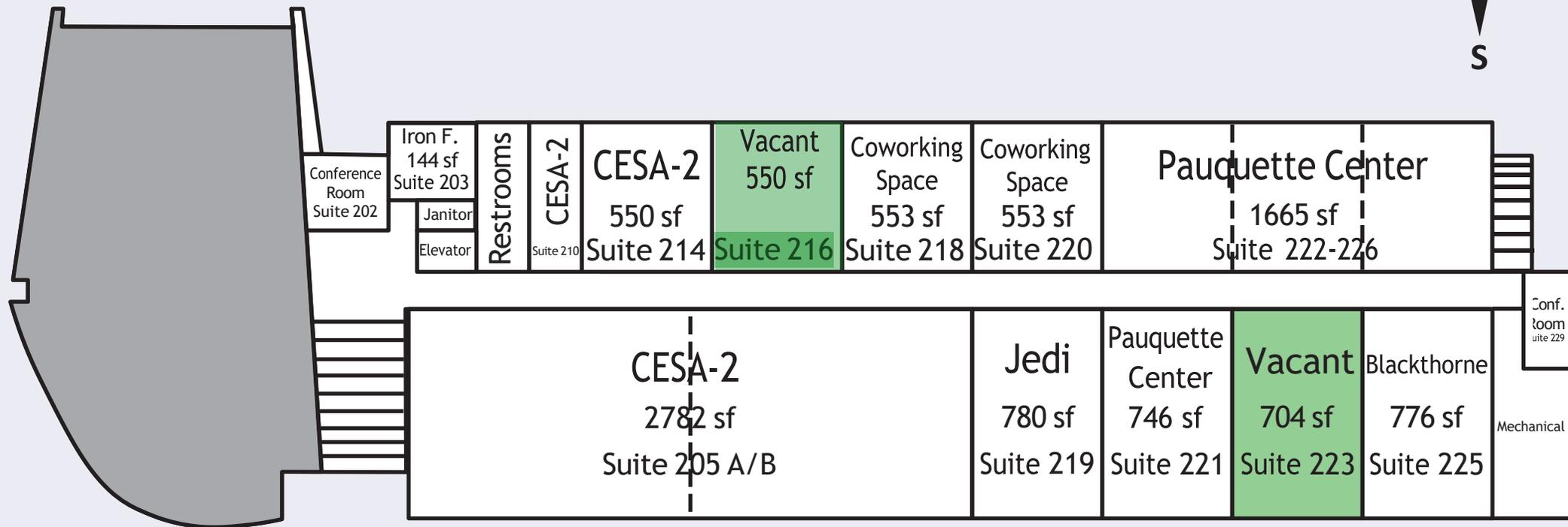
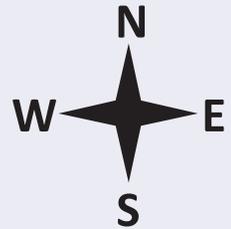
1221 Innovation Drive, Whitewater, WI 53190



1st Floor

WHITEWATER UNIVERSITY INNOVATION CENTER

1221 Innovation Drive, Whitewater, WI 53190



2nd Floor

DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE
CONTACTS AND INSTRUCTIONS

A. AWARD NUMBER AND PROJECT DESCRIPTION

This Award Number 06-01-05479, supports the work described in the Recipient's application for Public Works Assistance received by EDA on March 16, 2009, as amended. Where the terms of this award and the application differ, the terms of the award shall prevail.

B. AWARD CONTACTS

1. The Recipient Contact's name, address and telephone number are:

Whitewater Community Development Authority
312 West Whitewater Street
Whitewater, Wisconsin 53190-0178
Ms. Mary S. Nimm
(262) 473-0525

City of Whitewater
312 West Whitewater Street
Whitewater, Wisconsin 53190-0178
Ms. Mary S. Nimm
(262) 473-0525

University of Wisconsin - Whitewater
Research and Sponsored Programs, 2237 Anderson Library
800 West Main Street
Whitewater, Wisconsin 53190-0178
Ms. Mary S. Nimm
(262) 473-0525

2. The Federal Program Officer is responsible for the programmatic, technical and/or scientific aspects of this award. The Federal Program Officer's name, address and telephone number are:

Jack Price, Area Director, Northern Tier Team
Economic Development Administration
Chicago Regional Office
111 North Canal Street, Suite 855
Chicago, Illinois 60606-7208
(312) 353-1919, Ext. 159

3. The Grants Officer is responsible for all administrative aspects of this award and is authorized to award, amend, suspend, and terminate financial assistance awards. Grants Officer's name, address, and telephone number are:

C. Robert Sawyer, Regional Director
Economic Development Administration
Chicago Regional Office
111 North Canal Street, Suite 855
Chicago, Illinois 60606-7208
(312) 353-7706, Ext. 121

4. The Economic Development Specialist is responsible for administrative coordination and liaison with the Recipient. This individual receives appropriate material from the Federal Program Officer and/or the Recipient for administrative processing. The Economic Development Specialist's name, and telephone number are:

Wayne Schroeder
(312) 353-8580, Ext. 147

C. REFUND CHECKS

The Recipient shall submit all refund checks to the Department of Commerce (DoC) accounting office. Please contact the Economic Development Specialist identified above for specific details on how to process a refund check.

-2-

Form ED-508
(Rev. 4-94)

U. S. DEPARTMENT OF COMMERCE
Economic Development Administration
PUBLIC WORKS PROJECT COST CLASSIFICATIONS/
ECONOMIC ADJUSTMENT ASSISTANCE CONSTRUCTION COMPONENTS

Attachment No. 1

EDA AWARD No. 06-01-05479State WisconsinCOUNTY Walworth

<u>COST CLASSIFICATION</u>	<u>PROPOSED</u>	<u>APPROVED</u>
Administration and legal expenses	\$ 502,000	\$ 40,000
Land, structures, rights-of-way, appraisals, etc.		
Relocation expenses and payments		100
Architectural and engineering fees	516,147	623,103
Other architectural and engineering fees	454,155	53,929
Project inspection fees	454,360	146,059
Site Work	2,792,063	
Demolition and removal		
Construction	4,339,530	9,598,589
Equipment	319,000	85,120
Miscellaneous		25,000
Contingencies	331,852	479,828
TOTAL PROJECT COSTS	\$ 9,709,107	\$ 11,051,728

Remarks:

1. Admin & legal expenses reduced by removing non-construction costs
2. Relocation expenses and payments line established for costs incidental to transfer of title
3. Architectural and engineering fees, Other architectural and engineering fees, and project inspection fees adjusted per revised estimates.
4. Site work reclassified to construction per revised cost estimates.
5. Construction cost per revised cost estimates.
6. Miscellaneous line added for cost of LEED Certification.
7. Contingencies adjusted per revised cost estimates, reduced by \$100 for cost incidental to transfer of title.
8. Green Building related costs of \$442,260 included in construction line item, and \$51,800 in Other architectural and engineering fees.

**U.S. DEPARTMENT OF COMMERCE
Economic Development Administration**

**Special Award Conditions of Financial Assistance Award
for Public Works and Development Facilities
and Economic Adjustment Assistance Construction Components
under Section 201 and 209 of the
Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 *et seq.*), as amended,
including the comprehensive amendments made by the
Economic Development Administration Reauthorization Act of 2004 (P.L. 108-373)**

Award Number: 06-01-05479

Recipient: Whitewater Community Development Authority
Address: 312 West Whitewater Street
Whitewater, Wisconsin 53190-0178

Recipient: City of Whitewater
Address: 312 West Whitewater Street
Whitewater, Wisconsin 53190-0178

Recipient: University of Wisconsin - Whitewater
Address: Research and Sponsored Programs, 2237 Anderson Library
800 West Main Street
Whitewater, Wisconsin 53190-0178

1. **PROJECT DESCRIPTION AND SCOPE:** For purposes of this grant award, the Recipient acknowledges the following as the Project Description and Scope:

This investment will provide water, sewer, storm sewer and street improvements to serve the 125 acre Whitewater University Technology Park, a multi-use trail through the Park, extension of Starin Road to improve access between the University Campus and the Technology Park, and construction of a 37,200 square foot Innovation Center, which will serve as a training center and incubator. Both the Technology Park and the Innovation Center will be owned and operated by the Whitewater Community Development Authority. The design of the two story building will incorporate green design features leading to LEED certification.

2. **PROJECT DEVELOPMENT TIME SCHEDULE:** The Recipient agrees to the following Project development time schedule:

Time allowed from the date of approval of grant award for:

Start of Construction ----- 9 months
Construction Period -----12 months

Project Closeout - All Project closeout documents including final financial information and any required program reports shall be submitted to the Government not more than ninety days after the date the Recipient accepts the completed Project from the Contractor(s).

The Recipient shall pursue diligently the development of the Project so as to ensure completion of the Project and submission of closeout documents within this time schedule. The Recipient shall submit a detailed Project timeline at the construction management conference (CMC) or at such other time specified by the Government. The Project timeline, in such form and substance determined by the Government in accordance with information provided in the application for this Award, shall provide a specific time frame for the conduct of all activities in sufficient detail to ensure that construction will commence at or before the allowable time specified hereinabove. The Project timeline must be approved by EDA and agreed to by the Recipient at the CMC or at such alternate time as determined by EDA. Moreover, the Recipient shall notify the Government in writing of any event which could delay substantially the achievement of the Project within prescribed time limits. The Recipient further acknowledges that failure to meet the development time schedule may result in the Government's taking action to terminate the Award in accordance with the regulations set forth at 15 CFR 24.43 (53 Fed. Reg. 8048-9, 8102, March 11, 1988).

- 3. GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION: Department of Labor requirements set forth in 41 CFR 60-4 establish goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all Federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with these regulations and shall obtain compliance with 41 CFR 60-4 from contractors and subcontractors employed in the completion of this Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 CFR 60-4. The goal for the participation of women in each trade area shall be as follows:

From April 1, 1981, until further notice: 6.9 percent.
All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 CFR 60-4.6, or any other successor regulations, shall hereafter be incorporated by reference into these Special Conditions.

The goal for the participation of minorities in the trade area shall be as follows until further notice: 7.0 percent.

Goals for minority participation shall be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The Recipient shall

include the "Standard Federal Equal Opportunity Construction Contract Specifications" (or cause them to be included, if appropriate) in all Federally assisted contracts and subcontracts of this Project. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 CFR 60-4.6.

4. **LOCAL SHARE:** In affirming this Award, the Recipient certifies that the non-federal share of Project costs is committed and is available as needed for the Project, that the non-federal share is from sources which can be used as match for the EDA Project, and that the non-federal share will not affect ownership of, or title to, the Project facilities. The Recipient further acknowledges that, prior to award of any construction contracts, it will be required to provide evidence satisfactory to the Government that all funds necessary to complete the Project are available.
5. **IMPLEMENTATION SCHEDULE:** In keeping with the need for prudent grant administration, the time permitted for full disbursement of the grant funds may not extend beyond five years from the date of award.
6. **EVIDENCE OF TITLE:** For purposes of Standard Term and Condition M.3.a., evidence of title to the property necessary for this Project shall be provided to EDA prior to advertising for bids for this Project. Such evidence must include evidence of title to the 125 acres being developed under this award.
7. **USEFUL LIFE:** The useful life of this Project for purposes including, but not limited to, establishing a first priority unsubordinated lien required by paragraph M.3.b. of the Standard Terms and Conditions, is hereby determined to be 20 years from the date of Project completion.
8. **PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act of 1993 (GPRA). Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document. EDA will advise Recipients in writing within a reasonable period prior to the time of submission of the reports, and in the event that there are any modifications in the performance measures.
9. **REAFFIRMATION OF APPLICATION:** Recipient(s) acknowledges that Recipient's application for this Award may have been submitted to the Government and signed by Recipient(s), or by an authorized representative of Recipient, electronically. Regardless of the means by which Recipient(s) submitted its application to the Government or whether Recipient or an authorized representative of Recipient submitted its application to the Government, Recipient(s) hereby reaffirms and states that a) all data in said application and documents submitted with the application are true and correct as of the date of this Award

and were true and correct as of the date of said submission; b) said application was as of the date of this Award and as of the date of said application duly authorized as required by local law by the governing body of the Recipient(s); and c) Recipient(s) confirms that it will comply with the Assurances and Certifications submitted with or attached to said application. The term application includes all documentation and any information provided to the Government as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by the Government after submission of the initial application.

10. **ENVIRONMENTAL:** Prior to awarding of construction contracts for the EDA Project, the Recipient shall provide evidence satisfactory to the Government that it has obtained a Section 404 permit for this Project from the U.S. Army Corps of Engineers or that none is required. The Recipient shall comply with any conditions of said permit.
11. **LIEN ON MACHINERY AND EQUIPMENT:** The use and disposition of the machinery and equipment acquired in whole or in part with the funds made available through this Financial Assistance Award shall be in accordance with the Property Management Standards set forth in 15 CFR Part 24 or 15 CFR Part 14, as applicable.

Prior to disbursement of funds by EDA, the Recipient shall grant to EDA a first priority security interest in the machinery and equipment acquired in whole or in part with funds made available through this Award. This first priority security interest must be perfected in accordance with local law. The Government will, in its sole discretion determine whether the security interest which has been granted to the Government is satisfactory, and it may require an opinion of counsel for the Recipient to substantiate that the security interest has been properly recorded and a valid security interest has been created. The Recipient must maintain EDA's security interest in accordance with local law for the useful life of the machinery and equipment.

12. **ARCHITECT/ENGINEER AGREEMENT:** Prior to the disbursement of funds by EDA, the Recipient shall submit to the Government for approval an Architect/Engineer agreement that meets the requirements of Department of Commerce Regulations at 15 CFR 24.36 or 15 CFR 14, as applicable. The fees for basic Architect/Engineer services shall be a lump sum or an agreed maximum and no part of the fees for other services shall be based upon a cost-plus-a-percentage-of-cost or a cost using a multiplier.
13. **EDA PROJECT SIGN:** The Recipient must erect and maintain in good condition and repair, a sign or signs, in accordance with EDA's specifications. Prior to on-site construction, a reproducible photograph of the sign must be submitted to EDA along with evidence that the sign is located at the project site.
14. **GLOBAL CLIMATE CHANGE MITIGATION INCENTIVE FUND-LEED Green Building:** Before the final disbursement of Global Climate Change Mitigation Incentive

Fund financial assistance by the Government, the Recipient shall submit to the Government evidence of final Leadership in Energy and Environmental Design (LEED) certification from the United States Green Building Council ("USGBC") and invoices from design and construction service providers clearly delineating costs related to obtaining LEED certification. Reimbursement also may be made for the cost of obtaining LEED certification by USGBC. The Recipient shall be reimbursed for actual costs incurred not to exceed the amount approved for LEED certification in the originally approved budget or amended investment budget.

15. **LEAD ENTITY AGREEMENT:** Prior to the initiation of any Project activities, the Recipient shall submit an agreement, satisfactory to the Government, that one Recipient has been designated the lead agent to act with full legal authority to bind the other Recipient and to act as official representative of the Recipients in connection with all actions necessary to complete the Project.

16. **INDIVIDUAL BACKGROUND SCREENING:**

1. **Name Check Requirement; Exemptions.** An individual background screening will be performed by the OIG on key individuals of organizational units associated with the application at the beginning of the Award and at three year intervals thereafter for the life of the Award unless (a) the proposed Award amount is \$100,000 or less; (b) applicants are accredited colleges and universities; (c) applicants are units of a State or local government; (d) applicants are economic development districts designated by EDA, including those entities whose designations are pending, and councils of governments; or (e) the key individual(s) is/are elected officials of State and local governments who are serving in capacities other than their elected capacities when applying for assistance. In addition, if there is a change in the status of the organization and/or key individuals, or the program officer, OIG, or Grants Officer believes there is good reason to conduct a review sooner, a background screening may be required more frequently. Individual background screenings are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges (e.g., fraud, theft, perjury), or other matters which significantly reflect on the applicant's business integrity, responsibility, or financial integrity. Key individuals of non-exempt organizations associated with this Award shall complete Form CD-346, "Applicant for Funding Assistance." An original signature is required. The form is to be submitted to the Grants Specialist named in the Award document within 30 days of receipt of this Award.

2. **Results of Individual Background Screening.** EDA reserves the right to take any of the actions described in section H.3. if any of the following occurs as a result of the individual background screening:

- a. A key individual fails to submit the required Form CD-346, "Applicant for Funding Assistance," within 30 days of receipt of this Award;

- b. A key individual makes a false statement or omits a material fact on the Form CD-346; or
 - c. The individual background screening reveals significant adverse findings that reflect on the business integrity or responsibility of the Recipient and/or key individual.
3. Action(s) Taken as a Result of Individual Background Screening. If any situation noted in H.2. occurs, the Department, at its discretion, may take one or more of the following actions:
- a. Consider suspension/termination of an Award immediately for cause;
 - b. Require the removal of any key individual from association with management and/or implementation of the Award and require Grants Officer approval of personnel replacements;
 - c. Require the Recipient to make other changes as appropriate; and/or
 - d. Designate the Recipient as high risk and amend the Award to assign special award conditions, as appropriate, including making changes with respect to the method of payment and/or financial reporting requirements.



Community Development Authority

Meeting Date:	February 19, 2026
Agenda Item:	Down Payment Assistance Loan Applications-- 815 E North St & 202 W North St
Staff Contact (name, email, phone):	Mason Becker, mbecker@whitewater-wi.gov , 262.443.4458

BACKGROUND
(Enter the who, what when, where, why)

Two applications were submitted to the CDA requesting a down-payment assistance loan in the amount of \$25,000 pursuant to the terms and conditions of the City’s Affordable Housing Fund Policy (DPA Application No. 2026-012).

- Purchase of a single-family residence located at 815 E North St, at a purchase price of \$260,000 with an anticipated closing date of February 25, 2026. The borrowers are contributing a payment of \$3,000 and will be living in the home as their primary residence. Fort Community Credit Union, Inc is the primary lender offering a standard fixed-rate mortgage loan in the principal amount of \$235,000 with a 360-month term.
- Purchase of a single-family residence located at 202 W North St, at a purchase price of \$219,000 with an anticipated closing date of March 13, 2026. The borrowers are contributing a payment of \$1,000 and will be living in the home as their primary residence. Servion, Inc is the primary lender offering a standard fixed-rate mortgage loan in the principal amount of \$197,325 with a 360-month term.

All documentation required to support the requested loan has been received and reviewed by City Staff.

PREVIOUS ACTIONS – COMMITTEE RECOMMENDATIONS
(Dates, committees, action taken)

N/A

FINANCIAL IMPACT
(If none, state N/A)

The \$50,000 for the Down Payment Assistance loans will utilize monies already on hand from the city’s Affordable Housing Extension fund.

STAFF RECOMMENDATION

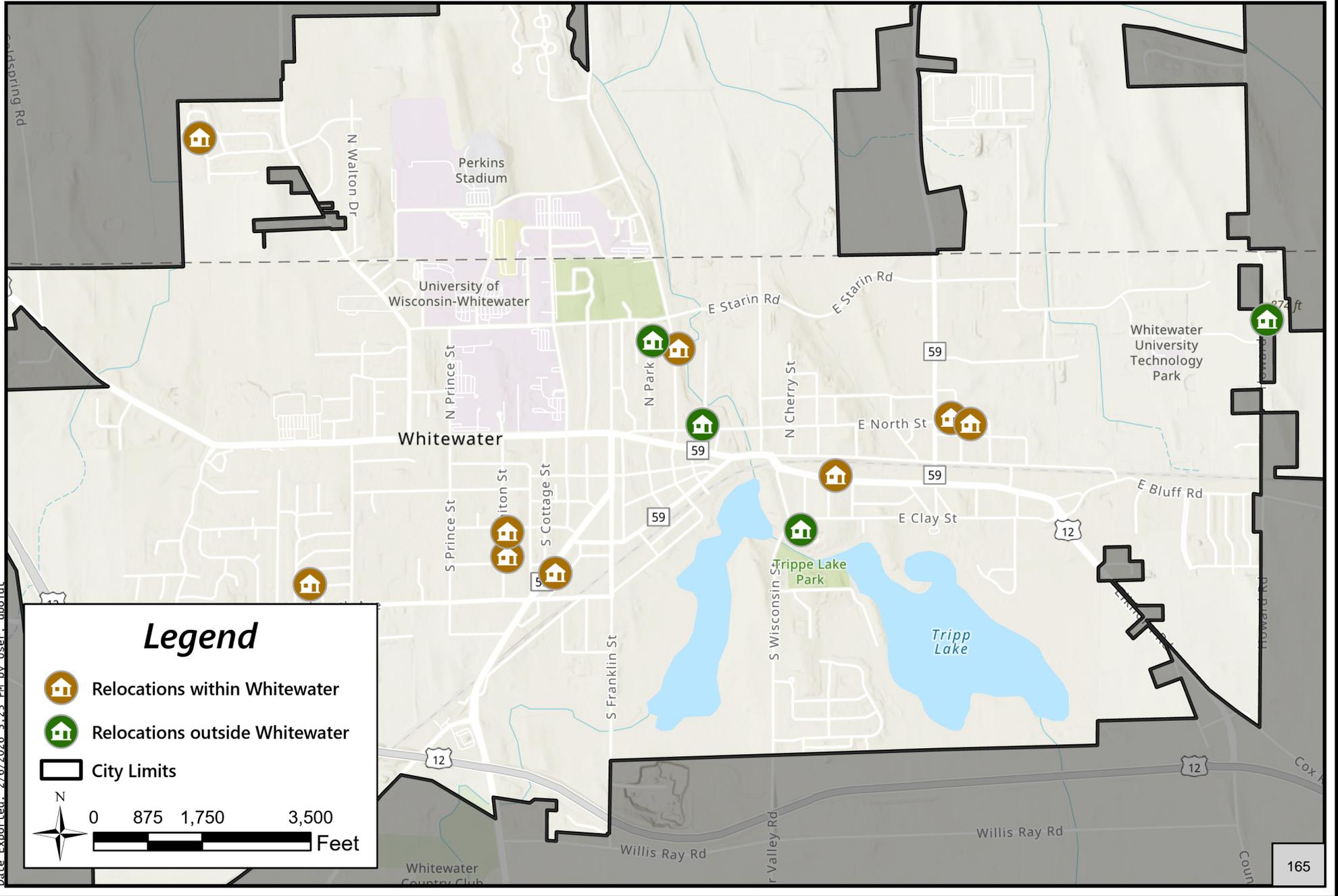
Staff recommends approval of Down Payment Assistance Loan No. 2026-012 and Down Payment Assistance Loan No. 2026-013.

ATTACHMENT(S) INCLUDED
(If none, state N/A)

- Offer to Purchase
- Promissory Note in the sum of \$25,000 to be executed at closing.
- Mortgage and Subordination Agreement to be executed at closing and recorded in the Walworth County Register of Deeds Office.

DPA PROGRAM RELOCATIONS

12/2023 - PRESENT



WB-11 RESIDENTIAL OFFER TO PURCHASE

1 LICENSEE DRAFTING THIS OFFER ON January 26, 2026 [DATE] IS (AGENT OF BUYER)
2 (AGENT OF SELLER/LISTING FIRM) (AGENT OF BUYER AND SELLER) STRIKE THOSE NOT APPLICABLE

3 The Buyer, Kaitlin Reyes and Sergio Reyes
4 offers to purchase the Property known as [Street Address] 815 E North Street, Whitewater

5
6 in the City of Whitewater, County
7 of Walworth Wisconsin (insert additional description, if any, at lines 548-570 or
8 in an addendum per line 592), on the following terms:

9 PURCHASE PRICE The purchase price is Two Hundred Sixty Thousand
10 Dollars (\$ 260,000).

11 INCLUDED IN PURCHASE PRICE Included in purchase price is the Property, all Fixtures on the Property as of the date
12 stated on line 1 of this Offer (unless excluded at lines 20-23), and the following additional items:

13
14
15
16

17 NOTE: The terms of this Offer, not the listing contract or marketing materials, determine what items are included
18 or not included.

19 NOT INCLUDED IN PURCHASE PRICE Not included in purchase price is Seller's personal property (unless included at
20 lines 12-16) and the following: Sellers Personal Property

21
22
23

24 CAUTION: Identify Fixtures that are on the Property (see lines 26-36) to be excluded by Seller or that are rented
25 (e.g., water softeners or other water treatment systems, LP tanks, etc.) and will continue to be owned by the lessor.

26 "Fixture" is defined as an item of property which is physically attached to or so closely associated with land, buildings or
27 improvements so as to be treated as part of the real estate, including, without limitation, physically attached items not easily
28 removable without damage to the premises, items specifically adapted to the premises and items customarily treated as
29 fixtures, including, but not limited to, all: garden bulbs; plants; shrubs and trees; screen and storm doors and windows;
30 electric lighting fixtures; window shades; curtain and traverse rods; blinds and shutters; central heating and cooling units
31 and attached equipment; water heaters, water softeners and treatment systems; sump pumps; attached or fitted floor
32 coverings; awnings; attached antennas and satellite dishes (but not the component parts); audio/visual wall mounting
33 brackets (but not the audio/visual equipment); garage door openers and remote controls; installed security systems; central
34 vacuum systems and accessories; in-ground sprinkler systems and component parts; built-in appliances; ceiling fans;
35 fences; in-ground pet containment systems including receiver components; storage buildings on permanent foundations
36 and docks/piers on permanent foundations.

37 CAUTION: Exclude any Fixtures to be retained by Seller or that are rented (e.g., water softeners or other water
38 treatment systems, LP tanks, etc.) on lines 20-23 or at lines 548-570 or in an addendum per line 592).

39 BINDING ACCEPTANCE This Offer is binding upon both Parties only if a copy of the accepted Offer is delivered to Buyer
40 on or before . Seller may keep the
41 Property on the market and accept secondary offers after binding acceptance of this Offer.

42 CAUTION: This Offer may be withdrawn prior to delivery of the accepted Offer.

43 ACCEPTANCE Acceptance occurs when all Buyers and Sellers have signed one copy of the Offer, or separate but identical
44 copies of the Offer.

45 CAUTION: Deadlines in the Offer are commonly calculated from acceptance. Consider whether short term
46 Deadlines running from acceptance provide adequate time for both binding acceptance and performance.

47 CLOSING This transaction is to be closed on February 18, 2026

48 at the place selected by Seller,
49 unless otherwise agreed by the Parties in writing. If the date for closing falls on Saturday, Sunday, or a federal or a state
50 holiday, the closing date shall be the next Business Day.

51 CAUTION: To reduce the risk of wire transfer fraud, any wiring instructions received should be independently
52 verified by phone or in person with the title company, financial institution, or entity directing the transfer. The real
53 estate licensees in this transaction are not responsible for the transmission or forwarding of any wiring or money
54 transfer instructions.

55 **EARNEST MONEY**

56 ■ EARNEST MONEY of \$ 0 _____ accompanies this Offer.

57 If the Offer was drafted by a licensee, receipt of the earnest money accompanying this Offer is acknowledged.

58 ■ EARNEST MONEY of \$ 0 _____ will be mailed, or commercially, electronically
59 or personally delivered within - _____ days ("5" if left blank) after acceptance.

60 All earnest money shall be delivered to and held by (listing Firm) (drafting Firm) (other identified as

61 _____) **STRIKE THOSE NOT APPLICABLE**

62 (listing Firm if none chosen; if no listing Firm, then drafting Firm; if no Firm then Seller).

63 **CAUTION: If a Firm does not hold earnest money, an escrow agreement should be drafted by the Parties or an**
64 **attorney as lines 67-87 do not apply. If someone other than Buyer pays earnest money, consider a special**
65 **disbursement agreement.**

66 ■ THE BALANCE OF PURCHASE PRICE will be paid in cash or equivalent at closing unless otherwise agreed in writing.

67 ■ **DISBURSEMENT IF EARNEST MONEY HELD BY A FIRM:** If negotiations do not result in an accepted offer and the
68 earnest money is held by a Firm, the earnest money shall be promptly disbursed (after clearance from payer's depository
69 institution if earnest money is paid by check) to the person(s) who paid the earnest money. At closing, earnest money shall
70 be disbursed according to the closing statement. If this Offer does not close, the earnest money shall be disbursed according
71 to a written disbursement agreement signed by all Parties to this Offer. If said disbursement agreement has not been
72 delivered to the Firm holding the earnest money within 60 days after the date set for closing, that Firm may disburse the
73 earnest money: (1) as directed by an attorney who has reviewed the transaction and does not represent Buyer or Seller;
74 (2) into a court hearing a lawsuit involving the earnest money and all Parties to this Offer; (3) as directed by court order; (4)
75 upon authorization granted within this Offer; or (5) any other disbursement required or allowed by law. The Firm may retain
76 legal services to direct disbursement per (1) or to file an interpleader action per (2) and the Firm may deduct from the
77 earnest money any costs and reasonable attorneys' fees, not to exceed \$250, prior to disbursement.

78 ■ **LEGAL RIGHTS/ACTION:** The Firm's disbursement of earnest money does not determine the legal rights of the Parties
79 in relation to this Offer. Buyer's or Seller's legal right to earnest money cannot be determined by the Firm holding the earnest
80 money. At least 30 days prior to disbursement per (1), (4) or (5) above, where the Firm has knowledge that either Party
81 disagrees with the disbursement, the Firm shall send Buyer and Seller written notice of the intent to disburse by certified
82 mail. If Buyer or Seller disagrees with the Firm's proposed disbursement, a lawsuit may be filed to obtain a court order
83 regarding disbursement. Small Claims Court has jurisdiction over all earnest money disputes arising out of the sale of
84 residential property with one-to-four dwelling units. Buyer and Seller should consider consulting attorneys regarding their
85 legal rights under this Offer in case of a dispute. Both Parties agree to hold the Firm harmless from any liability for good
86 faith disbursement of earnest money in accordance with this Offer or applicable Department of Safety and Professional
87 Services regulations concerning earnest money. See Wis. Admin. Code Ch. REEB 18.

88 **TIME IS OF THE ESSENCE** "Time is of the Essence" as to: (1) earnest money payment(s); (2) binding acceptance; (3)
89 occupancy; (4) date of closing; (5) contingency Deadlines **STRIKE AS APPLICABLE** and all other dates and Deadlines in
90 this Offer except: none

91 _____. If "Time is of the Essence" applies to a date or Deadline,
92 failure to perform by the exact date or Deadline is a breach of contract. If "Time is of the Essence" does not apply to a date
93 or Deadline, then performance within a reasonable time of the date or Deadline is allowed before a breach occurs.

94 **REAL ESTATE CONDITION REPORT** Wisconsin law requires owners of property that includes one-to-four dwelling units
95 to provide Buyers with a Real Estate Condition Report. Excluded from this requirement are sales of property that has never
96 been inhabited, sales exempt from the real estate transfer fee, and sales by certain court-appointed fiduciaries, (for example,
97 personal representatives who have never occupied the Property). The form of the Report is found in Wis. Stat. § 709.03.
98 The law provides: "§ 709.02 Disclosure . . . the owner of the property shall furnish, not later than 10 days after acceptance
99 of the contract of sale . . . , to the prospective Buyer of the property a completed copy of the report . . . A prospective Buyer
100 who does not receive a report within the 10 days may, within two business days after the end of that 10-day period, rescind
101 the contract of sale . . . by delivering a written notice of rescission to the owner or the owner's agent." Buyer may also have
102 certain rescission rights if a Real Estate Condition Report disclosing defects is furnished before expiration of the 10 days,
103 but after the Offer is submitted to Seller. Buyer should review the report form or consult with an attorney for additional
104 information regarding rescission rights.

105 **PROPERTY CONDITION REPRESENTATIONS** Seller represents to Buyer that as of the date of acceptance Seller has
106 no notice or knowledge of Conditions Affecting the Property or Transaction (lines 112-177) other than those identified in
107 Seller's Real Estate Condition Report dated January 22, 2026 _____, which was received by Buyer prior to Buyer signing
108 this Offer and which is made a part of this Offer by reference **COMPLETE DATE OR STRIKE AS APPLICABLE** and
109 _____

110 _____
111 **INSERT CONDITIONS NOT ALREADY INCLUDED IN THE CONDITION REPORT**

112 "Conditions Affecting the Property or Transaction" are defined to include:

113 a. Defects in the roof, basement or foundation (including cracks, seepage and bulges), electrical system, or part of the
114 plumbing system (including the water heater, water softener and swimming pool); or basement, window, or plumbing le

- 115 overflow from sinks, bathtubs, or sewers; or other water or moisture intrusions or conditions.
- 116 b. Defects in heating and air conditioning system (including the air filters and humidifiers); in a wood burning stove or
- 117 fireplace; or caused by a fire in a stove or fireplace or elsewhere on the Property.
- 118 c. Defects related to smoke detectors or carbon monoxide detectors, or a violation of applicable state or local smoke
- 119 detector or carbon monoxide detector laws.
- 120 d. Defects in any structure, or mechanical equipment included as Fixtures or personal property.
- 121 e. Rented items located on the Property such as a water softener or other water conditioner system.
- 122 f. Defects caused by unsafe concentrations of, or unsafe conditions on the Property relating to radon, radium in water
- 123 supplies, lead in paint, soil or water supplies, unsafe levels of mold, asbestos or asbestos-containing materials or other
- 124 potentially hazardous or toxic substances on the Property; manufacture of methamphetamine or other hazardous or toxic
- 125 substances on the Property; or high voltage electric (100 KV or greater) or steel natural gas transmission lines located on
- 126 but not directly serving the Property.
- 127 **NOTE: Specific federal lead paint disclosure requirements must be complied with in the sale of most residential**
- 128 **properties built before 1978.**
- 129 g. Defects caused by unsafe concentrations of, unsafe conditions relating to, or the storage of, hazardous or toxic
- 130 substances on neighboring properties.
- 131 h. The Property is served by a joint well; Defects related to a joint well serving the Property; or Defects in a well on the
- 132 Property or in a well that serves the Property, including unsafe well water.
- 133 i. A septic system or other private sanitary disposal system serves the Property; Defects in the septic system or other
- 134 sanitary disposal system on the Property; or any out-of-service septic system serving the Property not closed or abandoned
- 135 according to applicable regulations.
- 136 j. Underground or aboveground fuel storage tanks on or previously located on the Property; or Defects in the underground
- 137 or aboveground fuel storage tanks on or previously located on the Property. (The owner, by law, may have to register the
- 138 tanks with the Department of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, Wisconsin, 53708,
- 139 whether the tanks are in use or not. Department regulations may require closure or removal of unused tanks.)
- 140 k. "LP" tank on the Property (specify in the additional information whether the tank is owned or leased); or Defects in an
- 141 "LP" tank on the Property.
- 142 l. Notice of property tax increases, other than normal annual increases, or pending Property reassessment; remodeling
- 143 that may increase the Property's assessed value; pending special assessments; or Property is within a special purpose
- 144 district, such as a drainage district, that has authority to impose assessments.
- 145 m. Proposed construction of a public project that may affect use of the Property; Property additions or remodeling affecting
- 146 Property structure or mechanical systems during Seller's ownership without required permits; or any land division involving
- 147 the Property without required state or local permits.
- 148 n. The Property is part of or subject to a subdivision homeowners' association; or the Property is not a condominium unit
- 149 and there are common areas associated with the Property that are co-owned with others.
- 150 o. Any zoning code violations with respect to the Property; the Property or any portion thereof is located in a floodplain,
- 151 wetland or shoreland zoning area; or the Property is subject to a shoreland mitigation plan required by Wisconsin
- 152 Department of Natural Resources (DNR) rules that obligates the Property owner to establish or maintain certain measures
- 153 related to shoreland conditions, enforceable by the county.
- 154 p. Nonconforming uses of the Property; conservation easements, restrictive covenants or deed restrictions on the
- 155 Property; or, other than public rights of way, nonowners having rights to use part of the Property, including, but not limited
- 156 to, private rights-of-way and easements other than recorded utility easements.
- 157 q. All or part of the Property has been assessed as agricultural land; has been assessed a use-value assessment
- 158 conversion charge; or payment of a use-value assessment conversion charge has been deferred.
- 159 r. All or part of the Property is subject to, enrolled in, or in violation of a farmland preservation agreement, Forest Crop
- 160 Law, Managed Forest Law, the Conservation Reserve Program, or a comparable program.
- 161 s. A dam is totally or partially located on the Property; or an ownership interest in a dam not located on the Property will
- 162 be transferred with the Property because the dam is owned by a homeowners' association, lake district, or similar group of
- 163 which the Property owner is a member.
- 164 t. No legal access to the Property; or boundary or lot line disputes, encroachments or encumbrances (including a joint
- 165 driveway) affecting the Property.
- 166 u. Federal, state, or local regulations requiring repairs, alterations or corrections of an existing condition; or any insurance
- 167 claims relating to damage to the Property within the last five years.
- 168 v. A pier attached to the Property not in compliance with state or local pier regulations; a written agreement affecting
- 169 riparian rights related to the Property; or the bed of the abutting navigable waterway is owned by a hydroelectric operator.
- 170 w. Current or previous termite, powder-post beetle or carpenter ant infestations or Defects caused by animal, reptile, or
- 171 other insect infestations.
- 172 x. Structure on the Property designated as an historic building; all or any part of the Property in an historic district; or one
- 173 or more burial sites on the Property.
- 174 y. Agreements binding subsequent owners such as a lease agreement or extension of credit from an electric cooperative.
- 175 z. Owner is a foreign person as defined in the Foreign Investment in Real Property Tax Act in 26 IRC § 1445(f).

176 aa. Other Defects affecting the Property, including, without limitation, drainage easement or grading problems; or
177 excessive sliding, settling, earth movement or upheavals.

178 **INSPECTIONS AND TESTING** Buyer may only conduct inspections or tests if specific contingencies are included as a
179 part of this Offer. An "inspection" is defined as an observation of the Property, which does not include an appraisal or testing
180 of the Property, other than testing for leaking carbon monoxide, or testing for leaking LP gas or natural gas used as a fuel
181 source, which are hereby authorized. A "test" is defined as the taking of samples of materials such as soils, water, air or
182 building materials from the Property for laboratory or other analysis of these materials. Seller agrees to allow Buyer's
183 inspectors, testers and appraisers reasonable access to the Property upon advance notice, if necessary, to satisfy the
184 contingencies in this Offer. Buyer or licensees or both may be present at all inspections and testing. Except as otherwise
185 provided, Seller's authorization for inspections does not authorize Buyer to conduct testing of the Property.

186 **NOTE: Any contingency authorizing testing should specify the areas of the Property to be tested, the purpose of**
187 **the test (e.g., to determine if environmental contamination is present), any limitations on Buyer's testing and any**
188 **other material terms of the contingency.**

189 Buyer agrees to promptly restore the Property to its original condition after Buyer's inspections and testing are completed
190 unless otherwise agreed to with Seller. Buyer agrees to promptly provide copies of all inspection and testing reports to
191 Seller. Seller acknowledges that certain inspections or tests may detect environmental pollution which may be required to
192 be reported to the Wisconsin Department of Natural Resources.

193 **INSPECTION CONTINGENCY:** This contingency only authorizes inspections, not testing (see lines 178-192).

194 (1) This Offer is contingent upon a Wisconsin registered or Wisconsin licensed home inspector performing a home inspection
195 of the Property after the date on line 1 of this Offer that discloses no Defects.

196 (2) This Offer is further contingent upon a qualified independent inspector or independent qualified third party performing an
197 inspection of _____

198 _____ (list any Property component(s)
199 to be separately inspected, e.g., swimming pool, roof, foundation, chimney, etc.) which discloses no Defects.

200 (3) Buyer may have follow-up inspections recommended in a written report resulting from an authorized inspection, provided
201 they occur prior to the Deadline specified at line 206. Inspection(s) shall be performed by a qualified independent
202 inspector or independent qualified third party.

203 Buyer shall order the inspection(s) and be responsible for all costs of inspection(s).

204 **CAUTION: Buyer should provide sufficient time for the home inspection and/or any specialized inspection(s), as**
205 **well as any follow-up inspection(s).**

206 This contingency shall be deemed satisfied unless Buyer, within _____ days ("15" if left blank) after acceptance, delivers
207 to Seller a copy of the written inspection report(s) dated after the date on line 1 of this Offer and a written notice listing the
208 Defect(s) identified in those report(s) to which Buyer objects (Notice of Defects).

209 **CAUTION: A proposed amendment is not a Notice of Defects and will not satisfy this notice requirement.**

210 For the purposes of this contingency, Defects do not include structural, mechanical or other conditions the nature and extent
211 of which Buyer had actual knowledge or written notice before signing this Offer.

212 **NOTE: "Defect" as defined on lines 445-447 means a condition that would have a significant adverse effect on the**
213 **value of the Property; that would significantly impair the health or safety of future occupants of the Property; or**
214 **that if not repaired, removed or replaced would significantly shorten or adversely affect the expected normal life**
215 **of the premises.**

216 **RIGHT TO CURE:** Seller (shall)(shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to cure the Defects.

217 If Seller has the right to cure, Seller may satisfy this contingency by:

218 (1) delivering written notice to Buyer within _____ ("10" if left blank) days after Buyer's delivery of the Notice of Defects
219 stating Seller's election to cure Defects;

220 (2) curing the Defects in a good and workmanlike manner; and

221 (3) delivering to Buyer a written report detailing the work done no later than three days prior to closing.

222 This Offer shall be null and void if Buyer makes timely delivery of the Notice of Defects and written inspection report(s) and:

223 (1) Seller does not have the right to cure; or

224 (2) Seller has the right to cure but:

225 (a) Seller delivers written notice that Seller will not cure; or

226 (b) Seller does not timely deliver the written notice of election to cure.

227 **RADON TESTING CONTINGENCY:** This Offer is contingent upon Buyer obtaining a current written report of the
228 results of a radon test at the Property performed by a qualified third party in a manner consistent with applicable
229 Environmental Protection Agency (EPA) and Wisconsin Department of Health Services (DHS) protocols and standards
230 indicating an EPA average radon level of less than 4.0 picoCuries per liter (pCi/L), at (Buyer's) (Seller's) **STRIKE ONE**
231 ("Buyer's" if neither is stricken) expense.

232 This contingency shall be deemed satisfied unless Buyer, within _____ days ("20" if left blank) after acceptance delivers
233 to Seller a written copy of the radon test results indicating a radon level of 4.0 pCi or higher and written notice objecting to
234 the radon level in the report.

235 ■ **RIGHT TO CURE:** Seller (shall)(shall not) **STRIKE ONE** (“shall” if neither is stricken) have the right to cure.

236 If Seller has the right to cure, Seller may satisfy this contingency by:

- 237 (1) delivering a written notice of Seller's election to cure within 10 days after delivery of Buyer's notice; and,
- 238 (2) installing a radon mitigation system in conformance with EPA standards in a good and workmanlike manner and by
- 239 giving Buyer a report of the work done and a post remediation test report indicating a radon level of less than 4.0 pCi/L
- 240 no later than three days prior to closing.

241 This Offer shall be null and void if Buyer timely delivers the above written notice and report to Seller and:

- 242 (1) Seller does not have the right to cure; or
- 243 (2) Seller has the right to cure but:
 - 244 (a) Seller delivers written notice that Seller will not cure; or
 - 245 (b) Seller does not timely deliver the notice of election to cure.

246 **NOTE: For radon information refer to the EPA at epa.gov/radon or the DHS at dhs.wisconsin.gov/radon.**

247 **IF LINE 248 IS NOT MARKED OR IS MARKED N/A LINES 296-307 APPLY.**

248 **FINANCING COMMITMENT CONTINGENCY:** This Offer is contingent upon Buyer being able to obtain a written
 249 _____ [loan type or specific lender, if any] first mortgage loan commitment as described
 250 below, within _____ days after acceptance of this Offer. The financing selected shall be in an amount of not less than \$
 251 _____ for a term of not less than _____ years, amortized over not less than _____ years. Initial
 252 monthly payments of principal and interest shall not exceed \$ _____. Buyer acknowledges that lender's
 253 required monthly payments may also include 1/12th of the estimated net annual real estate taxes, hazard insurance
 254 premiums, and private mortgage insurance premiums. The mortgage shall not include a prepayment premium. Buyer agrees
 255 to pay discount points in an amount not to exceed _____% (“0” if left blank) of the loan. If Buyer is using multiple loan
 256 sources or obtaining a construction loan or land contract financing, describe at lines 548-570 or in an addendum attached
 257 per line 592. Buyer agrees to pay all customary loan and closing costs, wire fees, and loan origination fees, to promptly
 258 apply for a mortgage loan, and to provide evidence of application promptly upon request of Seller. Seller agrees to allow
 259 lender's appraiser access to the Property.

260 ■ **LOAN AMOUNT ADJUSTMENT:** If the purchase price under this Offer is modified, any financed amount, unless otherwise
 261 provided, shall be adjusted to the same percentage of the purchase price as in this contingency and the monthly payments
 262 shall be adjusted as necessary to maintain the term and amortization stated above.

263 **CHECK AND COMPLETE APPLICABLE FINANCING PROVISION AT LINE 264 or 265.**

- 264 **FIXED RATE FINANCING:** The annual rate of interest shall not exceed _____%.
- 265 **ADJUSTABLE RATE FINANCING:** The initial interest rate shall not exceed _____%. The initial interest rate
 266 shall be fixed for _____ months, at which time the interest rate may be increased not more than _____% (“2” if
 267 left blank) at the first adjustment and by not more than _____% (“1” if left blank) at each subsequent adjustment.
 268 The maximum interest rate during the mortgage term shall not exceed the initial interest rate plus _____% (“6” if
 269 left blank). Monthly payments of principal and interest may be adjusted to reflect interest changes.

270 ■ **SATISFACTION OF FINANCING COMMITMENT CONTINGENCY:** If Buyer qualifies for the loan described in this Offer
 271 or another loan acceptable to Buyer, Buyer agrees to deliver to Seller a copy of a written loan commitment.
 272 This contingency shall be satisfied if, after Buyer's review, Buyer delivers to Seller a copy of a written loan commitment
 273 (even if subject to conditions) that is:

- 274 (1) signed by Buyer; or
- 275 (2) accompanied by Buyer's written direction for delivery.

276 Delivery of a loan commitment by Buyer's lender or delivery accompanied by a notice of unacceptability shall not satisfy
 277 this contingency.

278 **CAUTION: The delivered loan commitment may contain conditions Buyer must yet satisfy to obligate the lender to
 279 provide the loan. Buyer understands delivery of a loan commitment removes the Financing Commitment
 280 Contingency from the Offer and shifts the risk to Buyer if the loan is not funded.**

281 ■ **SELLER TERMINATION RIGHTS:** If Buyer does not deliver a loan commitment on or before the Deadline on line 250.
 282 Seller may terminate this Offer if Seller delivers a written notice of termination to Buyer prior to Seller's Actual Receipt of
 283 written loan commitment from Buyer.

284 ■ **FINANCING COMMITMENT UNAVAILABILITY:** If a financing commitment is not available on the terms stated in this
 285 Offer (and Buyer has not already delivered an acceptable loan commitment for other financing to Seller), Buyer shall
 286 promptly deliver written notice to Seller of same including copies of lender(s)' rejection letter(s) or other evidence of
 287 unavailability.

288 **SELLER FINANCING:** Seller shall have 10 days after the earlier of:
 289 (1) Buyer delivery of written notice of evidence of unavailability as noted in lines 284-287; or
 290 (2) the Deadline for delivery of the loan commitment set on line 250

291 to deliver to Buyer written notice of Seller's decision to finance this transaction with a note and mortgage under the same
 292 terms set forth in this Offer, and this Offer shall remain in full force and effect, with the time for closing extended accordingly.
 293 If Seller's notice is not timely given, the option for Seller to provide financing shall be considered waived. Buyer agrees to
 294 cooperate with and authorizes Seller to obtain any credit information reasonably appropriate to determine Buyer's credit
 295 worthiness for Seller financing.

296 **IF THIS OFFER IS NOT CONTINGENT ON FINANCING COMMITMENT** Within _____ days ("7" if left blank)

297 acceptance, Buyer shall deliver to Seller either:

298 (1) reasonable written verification from a financial institution or third party in control of Buyer's funds that Buyer has, at
299 the time of verification, sufficient funds to close; or

300 (2) _____
301 _____ [Specify documentation Buyer agrees to deliver to Seller].

302 If such written verification or documentation is not delivered, Seller has the right to terminate this Offer by delivering written
303 notice to Buyer prior to Seller's Actual Receipt of a copy of Buyer's written verification. Buyer may or may not obtain
304 mortgage financing but does not need the protection of a financing commitment contingency. Seller agrees to allow Buyer's
305 appraiser access to the Property for purposes of an appraisal. Buyer understands and agrees that this Offer is not subject
306 to the appraisal meeting any particular value, unless this Offer is subject to an appraisal contingency, nor does the right of
307 access for an appraisal constitute a financing commitment contingency.

308 **APPRAISAL CONTINGENCY:** This Offer is contingent upon Buyer or Buyer's lender having the Property appraised
309 at Buyer's expense by a Wisconsin licensed or certified independent appraiser who issues an appraisal report dated
310 subsequent to the date stated on line 1 of this Offer, indicating an appraised value for the Property equal to or greater than
311 the agreed upon purchase price.

312 This contingency shall be deemed satisfied unless Buyer, within _____ days after acceptance, delivers to Seller a copy
313 of the appraisal report indicating an appraised value less than the agreed upon purchase price, and a written notice objecting
314 to the appraised value.

315 **RIGHT TO CURE:** Seller (shall) (shall not) **STRIKE ONE** ("shall" if neither is stricken) have the right to cure.

316 If Seller has the right to cure, Seller may satisfy this contingency by delivering written notice to Buyer adjusting the purchase
317 price to the value shown on the appraisal report within _____ days ("5" if left blank) after Buyer's delivery of the appraisal
318 report and the notice objecting to the appraised value. Seller and Buyer agree to promptly execute an amendment initiated
319 by either Party after delivery of Seller's notice, solely to reflect the adjusted purchase price.

320 This Offer shall be null and void if Buyer makes timely delivery of the notice objecting to appraised value and the written
321 appraisal report and:

322 (1) Seller does not have the right to cure; or

323 (2) Seller has the right to cure but:

324 (a) Seller delivers written notice that Seller will not adjust the purchase price; or

325 (b) Seller does not timely deliver the written notice adjusting the purchase price to the value shown on the appraisal
326 report.

327 **NOTE: An executed FHA, VA or USDA Amendatory clause may supersede this contingency.**

328 **CLOSING OF BUYER'S PROPERTY CONTINGENCY:** This Offer is contingent upon the closing of the sale of
329 Buyer's property located at _____

330 no later than _____ (the Deadline). If closing does not occur by the Deadline, this
331 Offer shall become null and void unless Buyer delivers to Seller, on or before the Deadline, reasonable written verification
332 from a financial institution or third party in control of Buyer's funds that Buyer has, at the time of verification, sufficient funds
333 to close or proof of bridge loan financing, along with a written notice waiving this contingency. Delivery of verification or
334 proof of bridge loan shall not extend the closing date for this Offer.

335 **BUMP CLAUSE:** If Seller accepts a bona fide secondary offer, Seller may give written notice to Buyer that another
336 offer has been accepted. If Buyer does not deliver to Seller the documentation listed below within _____ hours ("72" if
337 left blank) after Buyer's Actual Receipt of said notice, this Offer shall be null and void. Buyer must deliver the following:

338 (1) Written waiver of the Closing of Buyer's Property Contingency if line 328 is marked;

339 (2) Written waiver of _____
340 _____ (name other contingencies, if any); and

341 (3) Any of the following checked below:

342 Proof of bridge loan financing.

343 Proof of ability to close from a financial institution or third party in control of Buyer's funds which shall provide
344 Seller with reasonable written verification that Buyer has, at the time of verification, sufficient funds to close.

345 Other: _____

346 _____
347 [insert other requirements, if any (e.g., payment of additional earnest money, etc.)]

348 **SECONDARY OFFER:** This Offer is secondary to a prior accepted offer. This Offer shall become primary upon
349 delivery of written notice to Buyer that this Offer is primary. Unless otherwise provided, Seller is not obligated to give Buyer
350 notice prior to any Deadline, nor is any particular secondary buyer given the right to be made primary ahead of other
351 secondary buyers. Buyer may declare this Offer null and void by delivering written notice of withdrawal to Seller prior to
352 delivery of Seller's notice that this Offer is primary. Buyer may not deliver notice of withdrawal earlier than _____ days ("7"
353 if left blank) after acceptance of this Offer. All other Offer Deadlines that run from acceptance shall run from the time this
354 Offer becomes primary.

355 **HOMEOWNERS ASSOCIATION** If this Property is subject to a homeowners association, Buyer is aware the Property may
356 be subject to periodic association fees after closing and one-time fees resulting from transfer of the Property. Any one-

357 fees resulting from transfer of the Property shall be paid at closing by (Seller) (Buyer) **STRIKE ONE** ("Buyer" if ne
358 stricken).

359 **CLOSING PRORATIONS** The following items, if applicable, shall be prorated at closing, based upon date of closing values:
360 real estate taxes, rents, prepaid insurance (if assumed), private and municipal charges, property owners or homeowners
361 association assessments, fuel and N/A

362
363 **CAUTION: Provide basis for utility charges, fuel or other prorations if date of closing value will not be used.**

364 Any income, taxes or expenses shall accrue to Seller, and be prorated at closing, through the day prior to closing.

365 Real estate taxes shall be prorated at closing based on **CHECK BOX FOR APPLICABLE PRORATION FORMULA:**

366 The net general real estate taxes for the preceding year, or the current year if available (Net general real estate
367 taxes are defined as general property taxes after state tax credits and lottery credits are deducted). NOTE: THIS CHOICE
368 APPLIES IF NO BOX IS CHECKED.

369 Current assessment times current mill rate (current means as of the date of closing).

370 Sale price, multiplied by the municipality area-wide percent of fair market value used by the assessor in the prior
371 year, or current year if known, multiplied by current mill rate (current means as of the date of closing).

372
373 **CAUTION: Buyer is informed that the actual real estate taxes for the year of closing and subsequent years may be**
374 **substantially different than the amount used for proration especially in transactions involving new construction,**
375 **extensive rehabilitation, remodeling or area-wide re-assessment. Buyer is encouraged to contact the local**
376 **assessor regarding possible tax changes.**

377 Buyer and Seller agree to re-prorate the real estate taxes, through the day prior to closing based upon the taxes on
378 the actual tax bill for the year of closing, with Buyer and Seller each owing his or her pro-rata share. Buyer shall, within 5
379 days of receipt, forward a copy of the bill to the forwarding address Seller agrees to provide at closing. The Parties shall
380 re-prorate within 30 days of Buyer's receipt of the actual tax bill. Buyer and Seller agree this is a post-closing obligation
381 and is the responsibility of the Parties to complete, not the responsibility of the real estate Firms in this transaction.

382 **TITLE EVIDENCE**

383 ■ **CONVEYANCE OF TITLE: Upon payment of the purchase price, Seller shall convey the Property by warranty deed**
384 **(trustee's deed if Seller is a trust, personal representative's deed if Seller is an estate or other conveyance as**
385 **provided herein), free and clear of all liens and encumbrances, except: municipal and zoning ordinances and agreements**
386 **entered under them, recorded easements for the distribution of utility and municipal services, recorded building and use**
387 **restrictions and covenants, present uses of the Property in violation of the foregoing disclosed in Seller's Real Estate**
388 **Condition Report and in this Offer, general taxes levied in the year of closing and**

389
390 _____ (insert other allowable exceptions from title, if any)
391 that constitutes merchantable title for purposes of this transaction. Seller, at Seller's cost, shall complete and execute the
392 documents necessary to record the conveyance and pay the Wisconsin Real Estate Transfer Fee.

393 **WARNING: Municipal and zoning ordinances, recorded building and use restrictions, covenants and easements**
394 **may prohibit certain improvements or uses and therefore should be reviewed, particularly if Buyer contemplates**
395 **making improvements to Property or a use other than the current use.**

396 ■ **TITLE EVIDENCE:** Seller shall give evidence of title in the form of an owner's policy of title insurance in the amount of
397 the purchase price on a current ALTA form issued by an insurer licensed to write title insurance in Wisconsin. Seller shall
398 pay all costs of providing title evidence to Buyer. Buyer shall pay the costs of providing the title evidence required by Buyer's
399 lender and recording the deed or other conveyance.

400 ■ **GAP ENDORSEMENT:** Seller shall provide a "gap" endorsement or equivalent gap coverage at (Seller's)(Buyer's)
401 **STRIKE ONE** ("Seller's" if neither stricken) cost to provide coverage for any liens or encumbrances first filed or recorded
402 after the commitment date of the title insurance commitment and before the deed is recorded, subject to the title insurance
403 policy conditions, exclusions and exceptions, provided the title company will issue the coverage. If a gap endorsement or
404 equivalent gap coverage is not available, Buyer may give written notice that title is not acceptable for closing (see lines 410-
405 415).

406 ■ **DELIVERY OF MERCHANTABLE TITLE:** The required title insurance commitment shall be delivered to Buyer's attorney
407 or Buyer not less than 5 business days before closing, showing title to the Property as of a date no more than 15 days
408 before delivery of such title evidence to be merchantable per lines 383-391, subject only to liens that will be paid out of the
409 proceeds of closing and standard title insurance requirements and exceptions.

410 ■ **TITLE NOT ACCEPTABLE FOR CLOSING:** If title is not acceptable for closing, Buyer shall notify Seller in writing of
411 objections to title by the time set for closing. Seller shall have a reasonable time, but not exceeding 15 days, to remove the
412 objections, and the time for closing shall be extended as necessary for this purpose. If Seller is unable to remove said
413 objections, Buyer shall have five days from receipt of notice thereof, to deliver written notice waiving the objections, and the
414 time for closing shall be extended accordingly. If Buyer does not waive the objections, this Offer shall be null and void.
415 Providing title evidence acceptable for closing does not extinguish Seller's obligations to give merchantable title to Buyer.

416 ■ **SPECIAL ASSESSMENTS/OTHER EXPENSES:** Special assessments, if any, levied or for work actually commenced
417 prior to the date stated on line 1 of this Offer shall be paid by Seller no later than closing. All other special assessment

418 shall be paid by Buyer. "Levied" means the local municipal governing body has adopted and published a final res
 419 describing the planned improvements and the assessment of benefits. Item 6.

420 **CAUTION: Consider a special agreement if area assessments, property owners association assessments, special**
 421 **charges for current services under Wis. Stat. § 66.0627 or other expenses are contemplated. "Other expenses" are**
 422 **one-time charges or ongoing use fees for public improvements (other than those resulting in special assessments)**
 423 **relating to curb, gutter, street, sidewalk, municipal water, sanitary and storm water and storm sewer (including all**
 424 **sewer mains and hook-up/connection and interceptor charges), parks, street lighting and street trees, and impact**
 425 **fees for other public facilities, as defined in Wis. Stat. § 66.0617(1)(f).**

426 **LEASED PROPERTY** If Property is currently leased and lease(s) extend beyond closing, Seller shall assign Seller's rights
 427 under said lease(s) and transfer all security deposits and prepaid rents thereunder to Buyer at closing. The terms of the
 428 (written) (oral) **STRIKE ONE** lease(s), if any, are N/A

429 _____
 430 _____. Insert additional terms, if any, at lines 548-570 or attach as an addendum per line 592.

431 **DEFINITIONS**

432 ■ **ACTUAL RECEIPT:** "Actual Receipt" means that a Party, not the Party's recipient for delivery, if any, has the document
 433 or written notice physically in the Party's possession, regardless of the method of delivery. If the document or written notice
 434 is electronically delivered, Actual Receipt shall occur when the Party opens the electronic transmission.

435 ■ **BUSINESS DAY:** "Business Day" means a calendar day other than Saturday, Sunday, any legal public holiday under
 436 Wisconsin or Federal law, and any other day designated by the President such that the postal service does not receive
 437 registered mail or make regular deliveries on that day.

438 ■ **DEADLINES:** "Deadlines" expressed as a number of "days" from an event, such as acceptance, are calculated by
 439 excluding the day the event occurred and by counting subsequent calendar days. The Deadline expires at Midnight on the
 440 last day. Additionally, Deadlines expressed as a specific number of Business Days are calculated in the same manner
 441 except that only Business Days are counted while other days are excluded. Deadlines expressed as a specific number of
 442 "hours" from the occurrence of an event, such as receipt of a notice, are calculated from the exact time of the event, and by
 443 counting 24 hours per calendar day. Deadlines expressed as a specific day of the calendar year or as the day of a specific
 444 event, such as closing, expire at Midnight of that day. "Midnight" is defined as 11:59 p.m. Central Time.

445 ■ **DEFECT:** "Defect" means a condition that would have a significant adverse effect on the value of the Property; that would
 446 significantly impair the health or safety of future occupants of the Property; or that if not repaired, removed or replaced would
 447 significantly shorten or adversely affect the expected normal life of the premises.

448 ■ **FIRM:** "Firm" means a licensed sole proprietor broker or a licensed broker business entity.

449 ■ **PARTY:** "Party" means the Buyer or the Seller; "Parties" refers to both Buyer and Seller.

450 ■ **PROPERTY:** Unless otherwise stated, "Property" means the real estate described at lines 4-8.

451 **INCLUSION OF OPTIONAL PROVISIONS** Terms of this Offer that are preceded by an OPEN BOX () are part of
 452 this Offer ONLY if the box is marked such as with an "X". They are not part of this offer if marked "N/A" or are left blank.

453 **PROPERTY DIMENSIONS AND SURVEYS** Buyer acknowledges that any land, building or room dimensions, or total
 454 acreage or building square footage figures, provided to Buyer by Seller or by a Firm or its agents, may be approximate
 455 because of rounding, formulas used or other reasons, unless verified by survey or other means.

456 **CAUTION: Buyer should verify total square footage formula, total square footage/acreage figures, and land,**
 457 **building or room dimensions, if material.**

458 **DISTRIBUTION OF INFORMATION** Buyer and Seller authorize the agents of Buyer and Seller to: (i) distribute copies of
 459 the Offer to Buyer's lender, appraisers, title insurance companies and any other settlement service providers for the
 460 transaction as defined by the Real Estate Settlement Procedures Act (RESPA); (ii) report sales and financing concession
 461 data to multiple listing service sold databases; (iii) provide active listing, pending sale, closed sale and financing concession
 462 information and data, and related information regarding seller contributions, incentives or assistance, and third party gifts,
 463 to appraisers researching comparable sales, market conditions and listings, upon inquiry; and (iv) distribute copies of this
 464 Offer to the seller, or seller's agent, of another property that Seller intends on purchasing.

465 **MAINTENANCE** Seller shall maintain the Property and all personal property included in the purchase price until the earlier
 466 of closing or Buyer's occupancy, in materially the same condition it was in as of the date on line 1 of this Offer, except for
 467 ordinary wear and tear and changes agreed upon by Parties.

468 **PROPERTY DAMAGE BETWEEN ACCEPTANCE AND CLOSING** If, prior to closing, the Property is damaged in an
 469 amount not more than five percent of the purchase price, other than normal wear and tear, Seller shall promptly notify Buyer
 470 in writing, and will be obligated to restore the Property to materially the same condition it was in as of the date on line 1 of
 471 this Offer. Seller shall provide Buyer with copies of all required permits and lien waivers for the lienable repairs no later than
 472 closing. If the amount of damage exceeds five percent of the purchase price, Seller shall promptly notify Buyer in writing of
 473 the damage and this Offer may be terminated at option of Buyer. Should Buyer elect to carry out this Offer despite such
 474 damage, Buyer shall be entitled to the insurance proceeds, if any, relating to the damage to the Property, plus a credit
 475 towards the purchase price equal to the amount of Seller's deductible on such policy, if any. However, if this sale is financed
 476 by a land contract or a mortgage to Seller, any insurance proceeds shall be held in trust for the sole purpose of restoring

477 the Property.

478 **BUYER'S PRE-CLOSING WALK-THROUGH** Within three days prior to closing, at a reasonable time pre-approved by
479 Seller or Seller's agent, Buyer shall have the right to walk through the Property to determine that there has been no
480 significant change in the condition of the Property, except for ordinary wear and tear and changes agreed upon by Parties,
481 and that any defects Seller has agreed to cure have been repaired in the manner agreed to by the Parties.

482 **OCCUPANCY** Occupancy of the entire Property shall be given to Buyer at time of closing unless otherwise provided in
483 this Offer at lines 548-570 or in an addendum attached per line 592, or lines 426-430 if the Property is leased. At time of
484 Buyer's occupancy, Property shall be in broom swept condition and free of all debris, refuse, and personal property except
485 for personal property belonging to current tenants, or sold to Buyer or left with Buyer's consent. Occupancy shall be given
486 subject to tenant's rights, if any.

487 **DEFAULT** Seller and Buyer each have the legal duty to use good faith and due diligence in completing the terms and
488 conditions of this Offer. A material failure to perform any obligation under this Offer is a default that may subject the defaulting
489 party to liability for damages or other legal remedies.

490 If Buyer defaults, Seller may:

- 491 (1) sue for specific performance and request the earnest money as partial payment of the purchase price; or
492 (2) terminate the Offer and have the option to: (a) request the earnest money as liquidated damages; or (b) sue for actual
493 damages.

494 If Seller defaults, Buyer may:

- 495 (1) sue for specific performance; or
496 (2) terminate the Offer and request the return of the earnest money, sue for actual damages, or both.

497 In addition, the Parties may seek any other remedies available in law or equity. The Parties understand that the availability
498 of any judicial remedy will depend upon the circumstances of the situation and the discretion of the courts. If either Party
499 defaults, the Parties may renegotiate the Offer or seek nonjudicial dispute resolution instead of the remedies outlined above.
500 By agreeing to binding arbitration, the Parties may lose the right to litigate in a court of law those disputes covered by the
501 arbitration agreement.

502 **NOTE: IF ACCEPTED, THIS OFFER CAN CREATE A LEGALLY ENFORCEABLE CONTRACT. BOTH PARTIES**
503 **SHOULD READ THIS DOCUMENT CAREFULLY. THE FIRM AND ITS AGENTS MAY PROVIDE A GENERAL**
504 **EXPLANATION OF THE PROVISIONS OF THE OFFER BUT ARE PROHIBITED BY LAW FROM GIVING ADVICE OR**
505 **OPINIONS CONCERNING YOUR LEGAL RIGHTS UNDER THIS OFFER OR HOW TITLE SHOULD BE TAKEN AT**
506 **CLOSING. AN ATTORNEY SHOULD BE CONSULTED IF LEGAL ADVICE IS NEEDED.**

507 **ENTIRE CONTRACT** This Offer, including any amendments to it, contains the entire agreement of the Buyer and Seller
508 regarding the transaction. All prior negotiations and discussions have been merged into this Offer. This agreement binds
509 and inures to the benefit of the Parties to this Offer and their successors in interest.

510 **NOTICE ABOUT SEX OFFENDER REGISTRY** You may obtain information about the sex offender registry and persons
511 registered with the registry by contacting the Wisconsin Department of Corrections on the Internet at <http://www.doc.wi.gov>
512 or by telephone at (608) 240-5830.

513 **FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT (FIRPTA)** Section 1445 of the Internal Revenue Code (IRC)
514 provides that a transferee (Buyer) of a United States real property interest must pay or withhold as a tax up to 15% of the
515 total "Amount Realized" in the sale if the transferor (Seller) is a "Foreign Person" and no exception from FIRPTA withholding
516 applies. A "Foreign Person" is a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign
517 estate. The "Amount Realized" is the sum of the cash paid, the fair market value of other property transferred, and the
518 amount of any liability assumed by Buyer.

519 **CAUTION: Under this law if Seller is a Foreign Person, and Buyer does not pay or withhold the tax amount, Buyer**
520 **may be held directly liable by the U.S. Internal Revenue Service for the unpaid tax and a tax lien may be placed**
521 **upon the Property.**

522 Seller hereby represents that Seller is a non-Foreign Person, unless (1) Seller represents Seller is a Foreign Person in a
523 condition report incorporated in this Offer per lines 105-108, or (2) no later than 10 days after acceptance, Seller delivers
524 notice to Buyer that Seller is a Foreign Person, in which cases the provisions on lines 530-532 apply.

525 **IF SELLER IS A NON-FOREIGN PERSON.** Seller shall, no later than closing, execute and deliver to Buyer, or a qualified
526 substitute (attorney or title company as stated in IRC § 1445), a sworn certification under penalties of perjury of Seller's
527 non-foreign status in accordance with IRC § 1445. If Seller fails to timely deliver certification of Seller's non-foreign status,
528 Buyer shall: (1) withhold the amount required to be withheld pursuant to IRC § 1445; or, (2) declare Seller in default of this
529 Offer and proceed under lines 494-501.

530 **IF SELLER IS A FOREIGN PERSON.** If Seller has represented that Seller is a Foreign Person, Buyer shall withhold the
531 amount required to be withheld pursuant to IRC § 1445 at closing unless the Parties have amended this Offer regarding
532 amounts to be withheld, any withholding exemption to be applied, or other resolution of this provision.

533 **COMPLIANCE WITH FIRPTA.** Buyer and Seller shall complete, execute, and deliver, on or before closing, any instrument,
534 affidavit, or statement needed to comply with FIRPTA, including withholding forms. If withholding is required under IRC §
535 1445, and the net proceeds due Seller are not sufficient to satisfy the withholding required in this transaction, Seller shall

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536 deliver to Buyer, at closing, the additional funds necessary to satisfy the applicable withholding requirement. Seller shall pay to Buyer an amount not to exceed \$1,000 for actual costs associated with the filing and administration of forms, affidavits, and certificates necessary for FIRPTA withholding and any withholding agent fees.

539 **Any representations made by Seller with respect to FIRPTA shall survive the closing and delivery of the deed.**
540 Firms, Agents, and Title Companies are not responsible for determining FIRPTA status or whether any FIRPTA exemption applies. The Parties are advised to consult with their respective independent legal counsel and tax advisors regarding FIRPTA.

543 **SELLER PAYMENT OF COMPENSATION TO BUYER'S FIRM:** Seller agrees to pay to Buyer's Firm the amount of _____ (e.g., dollar amount, % of purchase price, etc.), toward Buyer's brokerage fees at closing. Payment made under this provision represents an economic adjustment only and does not create any agency relationship between Buyer's Firm and Seller, and the Parties agree Buyer's Firm is a direct and intended third party beneficiary of this contract.

548 **ADDITIONAL PROVISIONS/CONTINGENCIES**

549 _____
550 This offer to purchase is intended to formalize the terms of the Home Sale Agreement signed July 23, 2025. Regarding the required repairs outlined in that agreement, all work is completed, except correcting the electrical issues which is pending scheduling with an electrician.

553 _____
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571 **DELIVERY OF DOCUMENTS AND WRITTEN NOTICES** Unless otherwise stated in this Offer, delivery of documents and written notices to a Party shall be effective only when accomplished by one of the authorized methods specified at lines 574-589.

574 (1) **Personal:** giving the document or written notice personally to the Party, or the Party's recipient for delivery if named at line 576 or 577.

576 Name of Seller's recipient for delivery, if any: Attorney Kristine J. Williams

577 Name of Buyer's recipient for delivery, if any: Kaitlin Reyes and Sergio Reyes

578 (2) **Fax:** fax transmission of the document or written notice to the following number:

579 Seller: (_____) Buyer: (_____)

580 (3) **Commercial:** depositing the document or written notice, fees prepaid or charged to an account, with a commercial delivery service, addressed either to the Party, or to the Party's recipient for delivery, for delivery to the Party's address at line 585 or 586.

583 (4) **U.S. Mail:** depositing the document or written notice, postage prepaid, in the U.S. Mail, addressed either to the Party, or to the Party's recipient for delivery, for delivery to the Party's address.

585 Address for Seller: _____

586 Address for Buyer: _____

587 (5) **Email:** electronically transmitting the document or written notice to the email address.

588 Email Address for Seller: Kristine@transactionnexusllc.com

589 Email Address for Buyer: weaverk894@gmail.com / sbreyes133@gmail.com

590 **PERSONAL DELIVERY/ACTUAL RECEIPT** Personal delivery to, or Actual Receipt by, any named Buyer or Seller constitutes personal delivery to, or Actual Receipt by, all Buyers or Sellers.

592 **ADDENDA:** The attached Addendum O _____ is/are made part of this Offer.

593 This Offer was drafted by [Licensee and Firm] Attorney Kristine J. Williams, Transaction Nexus LLC

594 **WIRE FRAUD WARNING!** Wire Fraud is a real and serious risk. Never trust wiring instructions
 595 sent via email. Funds wired to a fraudulent account are often impossible to recover.

596 Criminals are hacking emails and sending fake wiring instructions by impersonating a real estate
 597 agent, Firm, lender, title company, attorney or other source connected to your transaction. These
 598 communications are convincing and professional in appearance but are created to steal your
 599 money. The fake wiring instructions may even be mistakenly forwarded to you by a legitimate
 600 source.

601 DO NOT initiate ANY wire transfer until you confirm wiring instructions IN PERSON or by YOU
 602 calling a verified number of the entity involved in the transfer of funds. Never use contact
 603 information provided by any suspicious communication.

604 **Real estate agents and Firms ARE NOT responsible for the transmission, forwarding, or**
 605 **verification of any wiring or money transfer instructions.**

606 (X) ^{Signed by:} Kaitlin Reyes 1/27/2026
 607 03DDC97AED22465 Buyer's Signature ▲ Print Name Here ► Kaitlin Reyes Date ▲

608 (X) ^{Signed by:} Sergio B Reyes Verdugo 1/27/2026
 609 3606029D97D2467 Buyer's Signature ▲ Print Name Here ► Sergio Reyes Date ▲

610 **SELLER ACCEPTS THIS OFFER. THE WARRANTIES, REPRESENTATIONS AND COVENANTS MADE IN THIS**
 611 **OFFER SURVIVE CLOSING AND THE CONVEYANCE OF THE PROPERTY. SELLER AGREES TO CONVEY THE**
 612 **PROPERTY ON THE TERMS AND CONDITIONS AS SET FORTH HEREIN AND ACKNOWLEDGES RECEIPT OF A**
 613 **COPY OF THIS OFFER.**

614 (X) _____
 615 Seller's Signature ▲ Print Name Here ► CHRISTOPHER S NATE Date ▲

616 (X) _____
 617 Seller's Signature ▲ Print Name Here ► Date ▲

618 This Offer was presented to Seller by [Licensee and Firm] _____
 619 _____ on _____ at _____ a.m./p.m.

620 This Offer is rejected _____ This Offer is countered [See attached counter] _____
 621 Seller Initials ▲ Date ▲ Seller Initials ▲ Date ▲

REAL ESTATE CONDITION REPORT

Note. This form is derived from the form in Wis. Stat. § 709.03, which states that the report required under Wis. Stat. § 709.02 with respect to real property, as defined in Wis. Stat. § 709.001(5)(a), shall be in substantially the following form and shall include at least all the following information.

DISCLAIMER

THIS CONDITION REPORT CONCERNS THE REAL PROPERTY LOCATED AT **815 E NORTH STREET** IN THE CITY OF **WHITEWATER** COUNTY OF **WALWORTH**, STATE OF WISCONSIN. THIS REPORT IS A DISCLOSURE OF THE CONDITION OF THAT PROPERTY IN COMPLIANCE WITH SECTION 709.02 OF THE WISCONSIN STATUTES AS OF **JANUARY 22, 2026**. IT IS NOT A WARRANTY OF ANY KIND BY THE OWNER OR ANY AGENTS REPRESENTING ANY PARTY IN THIS TRANSACTION AND IS NOT A SUBSTITUTE FOR ANY INSPECTIONS OR WARRANTIES THAT THE PARTIES MAY WISH TO OBTAIN.

A buyer who does not receive a fully completed copy of this report within 10 days after the acceptance of the contract of sale or option contract for the above-described real property has the right to rescind that contract (Wis. Stat. s. 709.02), provided the owner is required to provide this report under Wisconsin Statutes chapter 709.

NOTICE TO PARTIES REGARDING ADVICE OR INSPECTIONS

Real estate licensees may not provide advice or opinions concerning whether or not an item is a defect for the purposes of this report or concerning the legal rights or obligations of parties to a transaction. The parties may wish to obtain professional advice or inspections of the property and to include appropriate provisions in a contract between them with respect to any advice, inspections, defects, or warranties.

A. OWNER'S INFORMATION

A1. In this form, "aware" means the "owner(s)" have notice or knowledge.

A2. In this form, "defect" means a condition that would have a significant adverse effect on the value of the property; that would significantly impair the health or safety of future occupants of the property; or that if not repaired, removed, or replaced would significantly shorten or adversely affect the expected normal life of the premises.

A3. In this form, "owner" means the person or persons, entity, or organization that owns the above-described real property.

An "owner" who transfers real estate containing one to four dwelling units, including a condominium unit and time-share property, by sale, exchange, or land contract is required to complete this report.

Exceptions: An "owner" who is a personal representative, trustee, conservator, or fiduciary appointed by or subject to supervision by a court, and who has never occupied the property transferred is not required to complete this report. An "owner" who transfers property that has not been inhabited or who transfers property in a manner that is exempt from the real estate transfer fee is not required to complete this report.

(Wis. Stat. s. 709.01)

A4. The owner represents that to the best of the owner’s knowledge, the responses to the following questions have been accurately checked as “yes,” “no,” or “not applicable (N/A)” to the property being sold. If the owner responds to any question with “yes,” the owner shall provide, in the additional information area of this form, an explanation of the reason why the response to the question is “yes.”

A5. If the transfer is of a condominium unit, the property to which this form applies is the condominium unit, the common elements of the condominium, and any limited common elements that may be used only by the owner of the condominium unit being transferred.

A6. The owner discloses the following information with the knowledge that, even though this is not a warranty, prospective buyers may rely on this information in deciding whether and on what terms to purchase the property. The owner hereby authorizes the owner’s agents and the agents of any prospective buyer to provide a copy of this report, and to disclose any information in the report, to any person in connection with any actual or anticipated sale of the property.

CAUTION: The lists of defects following each question below are examples only and are not the only defects that may properly be disclosed in response to each respective question.

B. STRUCTURAL AND MECHANICAL

	Yes	No	N/A
B1. Are you aware of defects in the roof? Roof defects may include items such as leakage or significant problems with gutters or eaves.	_____	X _____	_____
B2. Are you aware of defects in the electrical system? Electrical defects may include items such as electrical wiring not in compliance with applicable code, knob and tube wiring, 60 amp service, or aluminum-branch circuit wiring.	X _____	_____	_____
B3. Are you aware of defects in part of the plumbing system (including the water heater, water softener, and swimming pool)? Other plumbing system defects may include items such as leaks or defects in pipes, toilets, interior or exterior faucets, bathtubs, showers, or any sprinkler system.	_____	X _____	_____
B4. Are you aware of defects in the heating and air conditioning system (including the air filters and humidifiers)? Heating and air conditioning defects may include items such as defects in the heating ventilation and air conditioning (HVAC) equipment, supplemental heaters, ventilating fans or fixtures, or solar collectors.	_____	X _____	_____
B5. Are you aware of defects in a woodburning stove or fireplace or of other defects caused by a fire in a stove or fireplace or elsewhere on the property?	_____	X _____	_____

Such defects may include items such as defects in the chimney, fireplace flue, inserts, or other installed fireplace equipment; or woodburning stoves not installed pursuant to applicable code.

- B6. Are you aware of defects related to smoke detectors or carbon monoxide detectors or a violation of applicable state or local smoke detector or carbon monoxide detector laws?

NOTE: State law requires operating smoke detectors on all levels of all residential properties and operating carbon monoxide detectors on all levels of most residential properties (see Wis. Stat. ch. 101).

- B7. Are you aware of defects in the basement or foundation (including cracks, seepage, and bulges)?

Other basement defects may include items such as flooding, defects in drain tiling or sump pumps, or movement, shifting, or deterioration in the foundation.

- B8. Are you aware of defects in any structure on the property?

Structural defects with respect to the residence or other improvements may include items such as movement, shifting, or deterioration in walls; major cracks or flaws in interior or exterior walls, partitions, or the foundation; wood rot; and significant problems with driveways, sidewalks, patios, decks, fences, waterfront piers or walls, windows, doors, floors, ceilings, stairways, or insulation.

- B9. Are you aware of defects in mechanical equipment included in the sale either as fixtures or personal property?

Mechanical equipment defects may include items such as defects in any appliance, central vacuum, garage door opener, in-ground sprinkler, or in-ground pet containment system that is included in the sale.

- B10. Are you aware of rented items located on the property such as a water softener or other water conditioner system or other items affixed to or closely associated with the property?

- B11. Are you aware of basement, window, or plumbing leaks, overflow from sinks, bathtubs, or sewers, or other ongoing water or moisture intrusions or conditions?

- B12. Explanation of "yes" responses
Power line not buried, smoke alarms no in every room/location needed, dryer making loud noise

C. ENVIRONMENTAL

	Yes	No	N/A
C1. Are you aware of the presence of unsafe levels of mold?	_____	_____X_____	_____
C2. Are you aware of a defect caused by unsafe concentrations of, or unsafe conditions relating to, radon, radium in water supplies, high voltage electric (100 KV or greater) or steel natural gas transmission lines located on but not directly serving the property, lead in paint, lead in soil, or other potentially hazardous or toxic substances on the property? NOTE: Specific federal lead paint disclosure requirements must be complied with in the sale of most residential properties built before 1978.	_____	_____X_____	_____
C3. Are you aware of the presence of asbestos or asbestos-containing materials on the property?	_____	_____X_____	_____
C4. Are you aware of the presence of or a defect caused by unsafe concentrations of, unsafe conditions relating to, or the storage of hazardous or toxic substances on neighboring properties?	_____	_____X_____	_____
C5. Are you aware of current or previous termite, powder post beetle, or carpenter ant infestations or defects caused by animal, reptile, or insect infestations?	_____	_____X_____	_____
C6. Are you aware of water quality issues caused by unsafe concentrations of or unsafe conditions relating to lead?	_____	_____X_____	_____
C7. Are you aware of the manufacture of methamphetamine or other hazardous or toxic substances on the property?	_____	_____X_____	_____
C8. Explanation of "yes" responses _____ _____ _____			

D. WELLS, SEPTIC SYSTEMS, STORAGE TANKS

	Yes	No	N/A
D1. Are you aware of defects in a well on the property or in a well that serves the property, including unsafe well water? Well defects may include items such as an unused well not properly closed in conformance with state regulations, a well that was not constructed pursuant to state standards or local code, or a well that requires modifications to bring it into compliance with current code specifications. Well water defects might include, but are not limited to, unsafe levels of bacteria (total Coliform and E. coli), nitrate, arsenic, or other substances affecting human consumption safety.	_____	_____X_____	_____

- | | | | | |
|------|--|-------|----------------------|-------|
| D2. | Are you aware of a joint well serving the property? | _____ | _____ <u>X</u> _____ | _____ |
| D3. | Are you aware of a defect related to a joint well serving the property? | _____ | _____ <u>X</u> _____ | _____ |
| D4. | Are you aware that a septic system or other private sanitary disposal system serves the property? | _____ | _____ <u>X</u> _____ | _____ |
| D5. | Are you aware of defects in the septic system or other private sanitary disposal system on the property or any out of service septic system that serves the property and that is not closed or abandoned according to applicable regulations?

Septic system defects may include items such as backups in toilets or in the basement; exterior pounding, overflows, or backups; or defective or missing baffles. | _____ | _____ <u>X</u> _____ | _____ |
| D6. | Are you aware of underground or aboveground fuel storage tanks on or previously located on the property? (If “yes,” the owner, by law, may have to register the tanks with the Wisconsin Department of Agriculture, Trade and Consumer Protection at P.O. Box 8911, Madison, Wisconsin, 53708, whether the tanks are in use or not. Regulations of the Wisconsin Department of Agriculture, Trade and Consumer Protection may require the closure or removal of unused tanks.) | _____ | _____ <u>X</u> _____ | _____ |
| D7. | Are you aware of defects in the underground or aboveground fuel storage tanks on or previously located on the property?

Defects in underground or aboveground fuel storage tanks may include items such as abandoned tanks not closed in conformance with applicable local, state, and federal law; leaking; corrosion; or failure to meet operating standards. | _____ | _____ <u>X</u> _____ | _____ |
| D8. | Are you aware of an “LP” tank on the property? (If “yes,” specify in the additional information space whether the owner of the property either owns or leases the tank.) | _____ | _____ <u>X</u> _____ | _____ |
| D9. | Are you aware of defects in an “LP” tank on the property? | _____ | _____ <u>X</u> _____ | _____ |
| D10. | Explanation of “yes” responses

_____ | | | |

E. TAXES, SPECIAL ASSESSMENTS, PERMITS, ETC.

- | | | Yes | No | N/A |
|-----|--|------------|----------------------|------------|
| E1. | Have you received notice of property tax increases, other than normal annual increases, or are you aware of a pending property reassessment? | _____ | _____ <u>X</u> _____ | _____ |

- E2. Are you aware that remodeling was done that may increase the property’s assessed value?
- E3. Are you aware of pending special assessments?
- E4. Are you aware that the property is located within a special purpose district, such as a drainage district, that has the authority to impose assessments against the real property located within the district?
- E5. Are you aware of any proposed construction of a public project that may affect the use of the property?
- E6. Are you aware of any remodeling, replacements, or repairs affecting the property’s structure or mechanical systems that were done or additions to this property that were made during your period of ownership without the required permits?
- E7. Are you aware of any land division involving the property for which a required state or local permit was not obtained?
- E8. Explanation of “yes” responses

F. LAND USE

- | | Yes | No | N/A |
|---|--------------------------|-------------------------------------|--------------------------|
| F1. Are you aware of the property being part of or subject to a subdivision homeowner’s association? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| F2. If the property is not a condominium unit, are you aware of common areas associated with the property that are co-owned with others? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| F3. Are you aware of any zoning code violations with respect to the property? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| F4. Are you aware of the property or any portion of the property being located in a floodplain, wetland, or shoreland zoning area? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| F5. Are you aware of nonconforming uses of the property?
A nonconforming use is a use of land, a dwelling, or a building that existed lawfully before the current zoning ordinance was enacted or amended, but that does not conform to the use restrictions in the current ordinance. | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| F6. Are you aware of conservation easements on the property?
A conservation easement is a legal agreement in which a property owner conveys some of the rights associated with | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

ownership of his or her property to an easement holder such as a governmental unit or a qualified nonprofit organization to protect the natural habitat of fish, wildlife, or plants or a similar ecosystem, preserve areas for outdoor recreation or education, or for similar purposes.

- F7. Are you aware of restrictive covenants or deed restrictions on the property? _____ X _____
- F8. Other than public rights-of-way, are you aware of nonowners having rights to use part of the property, including, but not limited to, rights-of-way and easements other than recorded utility easements? _____ X _____
- F9. Are you aware of the property being subject to a mitigation plan required under administrative rules of the Wisconsin Department of Natural Resources related to county shoreland zoning ordinances, which obligates the owner of the property to establish or maintain certain measures related to shoreland conditions and which is enforceable by the county? _____ X _____
- F10. The use value assessment system values agricultural land based on the income that would be generated from its rental for agricultural use rather than its fair market value. When a person converts agricultural land to a non agricultural use (e.g., residential or commercial development), that person may owe a conversion charge. For more information visit <https://www.revenue.wi.gov/Pages/FAQS/slf-useassmt.aspx> or (608) 266-2486.
 - a. Are you aware of all or part of the property having been assessed as agricultural land under Wis. Stat. s. 70.32 (2r) (use value assessment)? _____ X _____
 - b. Are you aware of the property having been assessed a use-value assessment conversion charge relating to this property? (Wis. Stat. s. 74.485 (2)) _____ X _____
 - c. Are you aware of the payment of a use-value assessment conversion charge having been deferred relating to this property? (Wis. Stat. s. 74.485 (4)) _____ X _____
- F11. Is all or part of the property subject to or in violation of a farmland preservation agreement? _____ X _____

Early termination of a farmland preservation agreement or removal of land from such an agreement can trigger payment of a conversion fee equal to 3 times the class 1 “use value” of the land. Visit https://datcp.wi.gov/Pages/Programs_Services/FarmlandPreservation.aspx for more information.
- F12. Is all or part of the property subject to, enrolled in, or in violation of the Forest Crop Law, Managed Forest Law, the Conservation Reserve Program, or a comparable program? _____ X _____

F13. Are you aware of a dam that is totally or partially located on the property or that an ownership in a dam that is not located on the property will be transferred with the property because it is owned collectively by members of a homeowners' association, lake district, or similar group? (If "yes," contact the Wisconsin Department of Natural Resources to find out if dam transfer requirements or agency orders apply.) _____ X _____

F14. Are you aware of boundary or lot line disputes, encroachments, or encumbrances (including a joint driveway) affecting the property? _____ X _____

Encroachments often involve some type of physical object belonging to one person but partially located on or overlapping on land belonging to another; such as, without limitation, fences, houses, garages, driveways, gardens, and landscaping. Encumbrances include, without limitation, a right or claim of another to a portion of the property or to the use of the property such as a joint driveway, liens, and licenses.

F15. Are you aware there is not legal access to the property? _____ X _____

F16. Are you aware of federal, state, or local regulations requiring repairs, alterations, or corrections of an existing condition? _____ X _____

This may include items such as orders to correct building code violations.

F17. Are you aware of a pier attached to the property that is not in compliance with state or local pier regulations? See <https://dnr.wi.gov/topic/waterways> for more information. _____ X _____

F18. Are you aware of a written agreement affecting riparian rights related to the property? _____ X _____

F19. Are you aware that the property abuts the bed of a navigable waterway that is owned by a hydroelectric operator? Under Wis. Stat. s. 30.132, the owner of a property abutting the bed of a navigable waterway that is owned by a hydroelectric operator, as defined in Wis. Stat. s. 30.132 (1) (b), may be required to ask the permission of the hydroelectric operator to place a structure on the bed of the waterway. _____ X _____

F20. Are you aware of one or more burial sites on the property? (For information regarding the presence, preservation, and potential disturbance of burial sites, contact the Wisconsin Historical Society at 800-342-7834 or <https://www.wihistory.org/burial-information>.) _____ X _____

F21. Explanation of "yes" responses
Neighbor's fence is built on the edge of 815 property line.

G. ADDITIONAL INFORMATION

	Yes	No	N/A
G1. Have you filed any insurance claims relating to damage to this property or premises within the last five years?	_____	_____X_____	_____
G2. Are you aware of a structure on the property that is designated as a historic building or that all or any part of the property is in a historic district?	_____	_____X_____	_____
G3. Are you aware of any agreements that bind subsequent owners of the property, such as a lease agreement or an extension of credit from an electric cooperative?	_____	_____X_____	_____
G4. Is the owner a foreign person, as defined in 26 USC 1445 (f)? (E.g., a nonresident alien individual, foreign corporation, foreign partnership, foreign trust, or foreign estate.) Section 1445 of the Internal Revenue Code (26 USC 1445), also known as the Foreign Investment In Real Property Tax Act or FIRPTA, provides that a transferee (buyer) of a U.S. real property interest must be notified in writing and must withhold tax if the transferor (seller) is a foreign person, unless an exception under FIRPTA applies to the transfer.			
G4. Are you aware of other defects affecting the property? Other defects might include items such as drainage easement or grading problems; excessive sliding, settling, earth movements, or upheavals; or any other defect or material condition.	_____	_____X_____	_____
G5. The owner has owned the property for <u>12</u> years.			
G6. The owner has lived in the property for <u>12</u> years.			
G7. Explanation of "yes" responses _____ _____ _____			

OWNER'S CERTIFICATION

NOTE: Wisconsin Statute section 709.035 requires owners who, prior to acceptance of a purchase contract or an option to purchase, obtain information that would change a response on this report to submit a complete amended report or an amendment to the previously completed report to the prospective buyer within 10 days of acceptance.

The owner certifies that the information in this report is true and correct to the best of the owner's knowledge as of the date on which the owner signs this report.

Owner  _____
17714D326226460...

Date 1/23/2026

Owner _____

Date _____

Owner _____

Date _____

CERTIFICATION BY PERSON SUPPLYING INFORMATION

A person other than the owner certifies that the person supplied information on which the owner relied for this report and that the information is true and correct to the best of the person’s knowledge as of the date on which the person signs this report.

Person _____

Items _____

Date _____

Person _____

Items _____

Date _____

Person _____

Items _____

Date _____

BUYER’S ACKNOWLEDGEMENT

The prospective buyer acknowledges that technical knowledge such as that acquired by professional inspectors may be required to detect certain defects such as the presence of asbestos, building code violations, and floodplain status.

I acknowledge receipt of a copy of this statement.

Prospective buyer Signed by: Kaitlin Reyes
03DDC97AE07D465...

Date 1/27/2026

Prospective buyer Signed by: Sergio B Reyes Verdugo
360602BD97D74C7...

Date 1/27/2026

Prospective buyer _____

Date _____

56 ■ **USE OF PREMISES:** Provided that Occupant performs the obligations of this Addendum, Occupant shall be entitled to
57 peacefully and quietly have, hold and enjoy the Premises during the Occupancy Period. Occupant will make no
58 changes, alterations, or improvements to the Premises without the prior written consent of Owner. There shall be no
59 assignment or subleasing of these occupancy rights. All laws and governmental regulations with respect to the use or
60 occupancy of the Premises shall be observed.

61 ■ **HOLD HARMLESS:** Occupant will hold Owner harmless for all liabilities, claims or expenses resulting from
62 Occupant's use, possession and occupancy of the Premises as described in this Addendum.

63 ■ **NOT LANDLORD-TENANT:** Pursuant to Wis. Stat. § 704.01(5), a person holding possession of real property under
64 a contract of purchase is not a tenant under the statute. Therefore, this Addendum does not create a landlord/tenant
65 relationship and thus is not subject to the provisions of Wis. Stat. Ch. 704 or Wis. Admin. Code Ch. ATCP 134.

Drafted by Attorney Debra Peterson Conrad; Copyright © 2009 by Wisconsin REALTORS® Association
No representation is made as to the legal validity of any provision or the adequacy of any provision in any specific transaction.

In Process

July 23, 2025

Home Sale Agreement

This agreement shall be made between the seller Christopher Nate and the buyers Kaitlin and Sergio Reyes. Christopher Nate agrees to sell the property 815 E North Street, Whitewater, WI to Katie and Brian Reyes for the agreed upon price of \$260,000 in early 2026.

Christopher agrees to fix the outdoor water spigots, repair the split in the rafter, correct electrical issues, paint the office bedroom, and replace the carpet in the main bathroom with tile before the sale of the property. Both parties will discuss closing cost payments at a later date.

Christopher Nate

(Christopher Nate)

7/23/25

(Date)

Kaitlin Reyes

(Kaitlin Reyes)

7/23/25

(Date)

Sergio Reyes

(Sergio Reyes)

7/23/25

(Date)



DOWN PAYMENT ASSISTANCE LOAN PROGRAM

Item 6.

APPLICATION FORM

(Maximum lock period is 90 days. Please call if an extension is needed.)

This form should be completed, signed and sent via EMAIL to mbecker@whitewater-wi.gov

LENDER INFORMATION

Lender Name Fort Community Credit Union

Address 800 Madison Ave City, State, Zip Fort Atkinson WI 53538

Telephone Number 920-563-7305 FAX Number 920-563-0327

Loan Officer Cesar Valadez Email Address cvaladez@fortcommunity.com

BORROWER INFORMATION

Borrower's Name(s) Sergio B Reyes Verduzco & Kaitlin M Reyes

Borrower's Current Address 435 S Douglas Ct City, State, Zip Whitewater WI 53190

Borrower's Telephone Number (home) 262-745-8871 Borrower's email sbreyes133@gmail.com

Household Size 2 Are there children under 6 or pregnant women in household? Yes No

Household Members (including all Borrowers): (use separate sheet for additional)

1.	Name <u>Sergio B Reyes Verduzco</u>	Age <u>27</u>	Annual Income \$ <u>63,294.36</u>
2.	Name <u>Kaitlin M Reyes</u>	Age <u>26</u>	Annual Income \$ <u>43,409.64</u>
3.	Name _____	Age _____	Annual Income \$ _____
4.	Name _____	Age _____	Annual Income \$ _____

Total Estimated Annual Household Income \$ 106,704 First-time Home Buyer? Yes No

Is Borrower interested in applying for additional funds for rehab of home? Yes No

PROPERTY INFORMATION

Property Address 815 E North St

City Whitewater State Wisconsin Zip 53190 County Walworth

Listing Agent's Name NA Listing Agent's Telephone Number NA

Listing Agent's email NA Number of Bedrooms 3 Year house was built _____

Purchase Price \$ 260,000 Amount of Subsidy Requested (maximum is \$25,000) \$ 25,000

Anticipated Closing Date 2/25/26 Is the property currently occupied by renters? Yes No

LOAN INFORMATION

First Mortgage Amount \$ 235,000 Estimated Closing Costs \$ 3,000

Borrower Contribution toward purchase \$ 3,000 Other Down Payment Assistance \$ _____

Housing Debt-to-Income Ratio 21.60 Total Debt-To-Income Ratio 36.30

I certify that the above borrower(s) annual household income is equal to, or less than, 150% of the county median income, adjusted by household size, as indicated by the HUD Annual Income Limits, and this household is qualified to receive the direct subsidy under the Whitewater Down Payment Assistance guidelines. In addition, I agree to provide all the documents required by the City's Down Payment Assistance Program following the closing.

Cesar Valadez
Name of Authorized Officer

Cesar Valadez
Signature of Authorized Officer

Mortgage Loan Officer
Title of Authorized Officer

02/04/2026
Date

MORTGAGE, RETENTION AND SUBORDINATION AGREEMENT

Date: _____

Mortgage Amount: Twenty-Five Thousand and no/100 Dollars (\$25,000).

Mortgagor: Sergio B. Reyes Verduzco and Kaitlin M. Reyes

Mortgagee: Community Development Authority of the City of Whitewater

Sergio B. Reyes Verduzco and Kaitlin M. Reyes (“Mortgagor,” whether one or more) mortgages to Community Development Authority of the City of Whitewater (“Mortgagee”), to secure payment of Twenty-Five Thousand and no/100 dollars (\$25,000.00) evidenced by a note or notes bearing an even date executed by Mortgagor to Mortgagee, and any extensions and renewals and modifications of the note(s) and refinancings of any such indebtedness on any terms whatsoever (including increases in interest) and the payment of all other sums, with interest, advanced to protect the security of this Mortgage, the following parcel of land, together with all rents, profits, improvements fixtures, and other appurtenant interests thereon (all called “Property”), in Walworth County, State of Wisconsin:

See attached Exhibit A.

RETURN TO:

Community Development Authority
P.O. Box 178
Whitewater, WI 53190

In the event of foreclosure, Mortgagee shall be entitled to elect to proceed under the accelerated redemption periods of Section 846.101 or 103, Wisconsin Statutes.

RETENTION AGREEMENT

Mortgagor’s purchase of the Property was partially funded with proceeds from the City of Whitewater Affordable Housing Fund pursuant to the Affordable Housing Fund Policy 602.01 adopted by the Common Council of the City of Whitewater on July 19, 2023 (“Downpayment Assistance Loan”). Mortgagor’s receipt of the funds are conditioned on Mortgagor’s agreement to restrictions on Mortgagor’s ability to sell, reclassify or refinance the Property for the purpose of ensuring that the funds are used for the purchase of housing which is retained as affordable housing for at least ten (10) years from the closing date (the “Retention Period”). In addition to the Downpayment Assistance Loan,

/HAS 000368
(Parcel Identification Number)

This is homestead property.

This is a Purchase Money Mortgage

Mortgagor obtained a mortgage loan from Fort Community Credit Union (“Lender”), which loan is secured by a first mortgage lien on the Property. Accordingly, Mortgagor covenants and agrees:

Mortgagor covenants and agrees as follows:

1. **Covenant of Title.** Mortgagor warrants title to the Property, except restrictions and easements of record, if any and except for a first mortgage lien on the property from mortgagor to Fort Community Credit Union.
2. **Taxes.** Mortgagor promises to pay when due all taxes and assessments levied on the Property or upon Mortgagor’s interest in it and to deliver to Mortgagee on demand receipts showing such payments.
3. **Insurance.** Mortgagor shall keep the improvements on the Property insured against any loss or damage occasioned by fire, extended coverage perils and such other hazards as Mortgagee may require, through insurers approved by Mortgagee in such amounts as Mortgagee shall require, but Mortgagee shall not require coverage in an amount more than the balance of the debt without co-insurance, and Mortgagor shall pay the premiums when due. The policies shall contain the standard mortgage clause in favor of the Mortgagee and, unless Mortgagee otherwise agrees in writing, the original of all policies covering the Property shall be deposited with Mortgagee. Mortgagor shall promptly give notice of loss to insurance companies and Mortgagee. Unless Mortgagor and Mortgagee otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided the Mortgagee deems the restoration or repair to be economically feasible.
4. **OTHER COVENANTS.** Mortgagor covenants not to commit waste or suffer waste to be committed on the Property, to keep the Property in good condition and repair, to keep the Property free from liens superior to the lien of this Mortgage, and to comply with all laws, ordinances and regulations affecting the Property. Mortgagor shall pay when due all indebtedness which may be or become secured at any time by a mortgage or other lien on the Property superior to this Mortgage and any failure to do so shall constitute a default under this Mortgage.
5. **Defense of Security.** Mortgagor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee, and shall pay all costs and expenses, including the cost of evidence of title and attorneys’ fees, in any such action or proceeding in which Mortgagee may appear.
6. Except as expressly set forth in Section 6, Mortgagor shall not transfer, sell or convey any legal or equitable interest in the Property (by deed, land contract, long-term lease or in any other way) without the prior written consent of Mortgagee, unless either the indebtedness secured by this Mortgage is first paid in full or the interest conveyed is a mortgage or other security interest in the Property, subordinate to the lien of this Mortgage. The entire indebtedness due under the Promissory Note secured by this Mortgage shall become due and payable in full at the option of Mortgagee without notice, which notice is hereby waived, upon any transfer, sale or conveyance made in violation of this Section 5. A violation of the provisions of this Section 5 will be considered a default under the terms of this Mortgage and the Promissory Note it secures.

7. If Mortgagor refinances the First Mortgage on the Property, provided the Property remains subject to the encumbrance created by this Agreement, then Mortgagor shall not be required to repay any portion of the Downpayment Assistance Loan at closing of the refinance transaction provided Mortgagor continues to own and occupy the Property.
8. To further secure the payment and performance of the Promissory Note, Mortgagor hereby grants to Mortgagee a security interest in all fixtures and personal property located on or related to the operations of the Property whether now owned or hereafter acquired. This Mortgage shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to those parts of the Property indicated above. This Mortgage constitutes a fixture filing and financing statement as those terms are used in the Uniform Commercial Code. This Mortgage is to be filed and recorded in the real estate records of the county in which the Property is located, and the following information is included: (1) Mortgagor shall be deemed the “debtor”; (2) Mortgagee shall be deemed to be the “secured party” and shall have all of the right of a secured party under the Uniform Commercial Code; (3) this Mortgage covers goods which are or are to become fixtures; (4) the name of the record owner of the land is the debtor; (5) the legal name and address of the debtor are: Sergio B. Reyes Verduzco and Kaitlin M. Reyes, 815 E North St, Whitewater, WI 53190. The address of the secured party is: 312 West Whitewater Street, Whitewater, WI.
9. The term Mortgagor shall include all Mortgagors whether one or more, and the provisions hereof for reimbursement shall not apply as long as any named Mortgagor continues to both own and occupy the Property. Any individual Mortgagor who is married represents that the obligation evidenced by this instrument was incurred in the interest of Mortgagor’s marriage or family. The covenants of this Mortgage set forth herein shall be deemed joint and several among the Mortgagors.
10. Events of Default. Each of the following shall constitute an event of default under this Mortgage:
 - a. Failure to pay the indebtedness secured by this Mortgage when due;
 - b. Failure to perform any obligation contained in this Mortgage;
 - c. Any breach of any warranty or material misrepresentation made by Mortgagor in connection with this Mortgage or the Note;
 - d. The occurrence of a default under the Primary Mortgage; or
 - e. The transfer, sale, leasing, or conveyance of the Property, or any interest therein, within ten (10) years from the date of the Note.
11. In the event of default under the terms of this Mortgage, Mortgagee may, at its option, declare the whole amount of the unpaid principal due and payable, and collect it in a suit at law or by foreclosure of this Mortgage or by the exercise of any other remedy at law or equity. A default under the First Mortgage constitutes a default under this Mortgage. In case of default, all costs and expenses, including but not limited to, reasonable attorney fees, to

the extent not prohibited by law shall be added to the principal, become due as incurred, and in the vent of foreclosure in included in the judgment.

12. Mortgagee may waive any default without waiving any other subsequent or prior default by Mortgagor.

13. In case of default, whether abated or not, all costs and expenses including reasonable attorneys' fees and expenses of title evidence to the extent not prohibited by law shall be added to the principal, become due as incurred, and, in the event of foreclosure, be included in the judgment.

14. In the event of any default by Mortgagor of any kind under this Mortgage or any note(s) secured by this Mortgage, Mortgagee may cure the default and all sums paid by Mortgagee for such purpose shall immediately be repaid by Mortgagor with interest at the rate then in effect under the note secured by this Mortgage and shall constitute a lien upon the Property.

SUBORDINATION AGREEMENT

Lender is Mortgagor’s primary lender for Mortgagor’s purchase of the Property and is the holder of a mortgage against the Property recorded on or about the closing date. To induce Lender to advance funds under its mortgage, Mortgagee does hereby unconditionally subordinate the lien created by this Agreement to the lien of Lender’s mortgage.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the above date.

_____(SEAL)
Sergio B. Reyes Verduzco and Kaitlin M. Reyes

STATE OF WISCONSIN)
) SS
_____ COUNTY)

Personally came before me this ____ day of February 2026, the above named Sergio B. Reyes Verduzco and Kaitlin M. Reyes, to me known to be the persons who executed the foregoing instrument and acknowledged the same.

_____, Notary Public
_____, County, Wisconsin
My commission expires: _____

Mortgagee executes this Mortgage solely for purposes of agreeing to the terms of the foregoing Subordination Agreement.

COMMUNITY DEVELOPMENT AUTHORITY OF
THE CITY OF WHITEWATER, Mortgagee

By: _____(SEAL)
Mason Becker, Executive Director

STATE OF WISCONSIN)
) SS
_____ COUNTY)

Personally came before me this _____ day of February, 2026, the above named Mason Becker, Executive Director of the Community Development Authority of the City of Whitewater, to me known to be the person who executed the foregoing instrument and acknowledged the same.

_____, Notary Public
_____, County, Wisconsin
My commission expires: _____

DRAFT

EXHIBIT A

Legal Description of Property

The North 90 feet of Lot Three (3), EXCEPT the East 12 feet and the North 90 feet of the East 1/2 of Lot Two (2), Block Six (6), S.C. Hall's Subdivision, City of Whitewater, Walworth County, Wisconsin.

Address: 815 E North St, Whitewater, WI 53190

Tax Identification No.: /HAS 000368

DRAFT

PROMISSORY NOTE

\$ 25, 0000

Date: _____, 202__

The undersigned, Sergio B Reyes Verduzco & Kaitlin M Reyes (“Maker”), hereby jointly and severally promise to pay to the order of the Community Development Authority of the City of Whitewater (“Payee”) at 815 E North St, Whitewater 53190, or at such other place as Payee may from time to time designate in writing, the sum of Twenty-Five Thousand and no/100 Dollars (\$25,000).

This Promissory Note (“Note”) bears no interest on the unpaid balance before maturity. All unpaid principal outstanding under this Note shall be due and payable on the earlier of (i) Maker’s transfer, sale, leasing, or conveyance of the Property (as defined in Exhibit A, incorporated herein by reference) or (ii) the time at which the Property is no longer the Maker’s primary residence (the “Maturity Date”). The funds loaned to Maker by Payee pursuant to this Note shall be used solely for the purchase of the real property commonly known as 204 N Queen Street, City of Whitewater, Walworth County, Wisconsin and legally described on Exhibit A attached hereto and incorporated herein (the “Property”).

If payment is not made on or before the Maturity Date, or Payee violates any term, condition or provision of this Note or the Mortgage (defined below), Maker shall be in default and Payee may give Maker written notice thereof. If Maker fails to cure said default within ten (10) days of the date of such notice, the unpaid balance shall, at the option of Payee and without further notice, mature and become immediately payable. The unpaid balance shall automatically mature and become immediately payable in the event Maker becomes the subject of bankruptcy or other insolvency proceedings. Payee’s receipt of any payment under this Note after the occurrence of an event of default shall not constitute a waiver of the default or the Payee’s rights and remedies upon such default. Principal not paid when due shall bear interest after the Maturity Date at the then current Applicable Federal Rate for long term notes, compounding annually, set forth under IRC Sec. 7520 from time to time.

Without affecting the liability of Maker, Payee may, without notice, renew or extend the time for payment, accept partial payments, release or impair any collateral security for the payment of this Note or agree not to sue any party liable on it.

Maker agrees to pay all costs of collection, including reasonable attorneys’ fees incurred by Payee in enforcing this Note. Maker hereby waives presentment, protest, demand and notice of dishonor. Maker may at any time and from time to time prepay all or any part of the unpaid principal of this Note, without penalty.

This Note is secured by a second Mortgage on the Property of even date herewith executed by Maker (“Mortgage”). Payee agrees that this Note is subordinate to Maker’s obligations to Provisor Inc., in connection with Loan Number _____ secured by a first mortgage lien on the Property. Upon payment in full of this Note, Payee shall promptly release the collateral security.

This Note shall be governed by and construed in accordance with the laws of the State of Wisconsin.

_____, Mortgagor

_____, Mortgagor

EXHIBIT A

Legal Description of Property

The North 90 feet of Lot Three (3), EXCEPT the East 12 feet and the North 90 feet of the East 1/2 of Lot Two (2), Block Six (6), S.C. Hall's Subdivision, City of Whitewater, Walworth County, Wisconsin.

Address: 815 E North St
Tax Identification No.: /HAS 000368



DOWN PAYMENT ASSISTANCE LOAN PROGRAM

APPLICATION FORM

(Maximum lock period is 90 days. Please call if an extension is needed.)

This form should be completed, signed and sent via EMAIL to mbecker@whitewater-wi.gov

LENDER INFORMATION

Lender Name Servion, Inc.

Address 500 Main St Suite 100 City, State, Zip New Brighton, MN 55112

Telephone Number 651-789-3309 FAX Number 651-789-7990

Loan Officer Robbie Hovda Email Address rhovda@myservion.com

BORROWER INFORMATION

Borrower's Name(s) William Lee Reiber

Borrower's Current Address W346N5682 Lake Drive City, State, Zip Oconomowoc, WI 53066

Borrower's Telephone Number (home) 262-490-9969 Borrower's email billy.reiber@outlook.com

Household Size 2 Are there children under 6 or pregnant women in household? Yes No

Household Members (including all Borrowers): (use separate sheet for additional)

- | | | | |
|----|----------------------------|---------------|-----------------------------------|
| 1. | Name <u>William Reiber</u> | Age <u>42</u> | Annual Income \$ <u>57,368.04</u> |
| 2. | Name <u>Harper Reiber</u> | Age <u>8</u> | Annual Income \$ <u>0</u> |
| 3. | Name _____ | Age _____ | Annual Income \$ _____ |
| 4. | Name _____ | Age _____ | Annual Income \$ _____ |

Total Estimated Annual Household Income \$ 57,368.04 First-time Home Buyer? Yes No

Is Borrower interested in applying for additional funds for rehab of home? Yes No

PROPERTY INFORMATION

Property Address 202 W North St

City Whitewater State Wisconsin Zip WI County Walworth

Listing Agent's Name Heather Spies Listing Agent's Telephone Number 262-391-0006

Listing Agent's email heathersellshomesw113@gmail.com Number of Bedrooms 5 Year house was built 1900

Purchase Price \$ 219,000 Amount of Subsidy Requested (maximum is \$25,000) \$ 25,000

Anticipated Closing Date 03/13/2026 Is the property currently occupied by renters? Yes No

LOAN INFORMATION

First Mortgage Amount \$ \$197,325 Estimated Closing Costs \$ 11,288.20

Borrower Contribution toward purchase \$ 1,000 Other Down Payment Assistance \$ 0.00

Housing Debt-to-Income Ratio 35.515% Total Debt-To-Income Ratio 47.397%

I certify that the above borrower(s) annual household income is equal to, or less than, 150% of the county median income, adjusted by household size, as indicated by the HUD Annual Income Limits, and this household is qualified to receive the direct subsidy under the Whitewater Down Payment Assistance guidelines. In addition, I agree to provide all the documents required by the City's Down Payment Assistance Program following the closing.

ANDRES MORALES
Name of Authorized Officer

Signature of Authorized Officer

MORTGAGE LOAN OFFICER
Title of Authorized Officer
02/03/2026
Date

MORTGAGE, RETENTION AND SUBORDINATION AGREEMENT

Date: _____

Mortgage Amount: Twenty-Five Thousand and no/100 Dollars (\$25,000).

Mortgagor: William Lee Reiber

Mortgagee: Community Development Authority of the City of Whitewater

William Lee Reiber (“Mortgagor,” whether one or more) mortgages to Community Development Authority of the City of Whitewater (“Mortgagee”), to secure payment of Twenty-Five Thousand and no/100 dollars (\$25,000.00) evidenced by a note or notes bearing an even date executed by Mortgagor to Mortgagee, and any extensions and renewals and modifications of the note(s) and refinancings of any such indebtedness on any terms whatsoever (including increases in interest) and the payment of all other sums, with interest, advanced to protect the security of this Mortgage, the following parcel of land, together with all rents, profits, improvements fixtures, and other appurtenant interests thereon (all called “Property”), in Walworth County, State of Wisconsin:

See attached Exhibit A.

RETURN TO:

Community Development Authority
P.O. Box 178
Whitewater, WI 53190

In the event of foreclosure, Mortgagee shall be entitled to elect to proceed under the accelerated redemption periods of Section 846.101 or 103, Wisconsin Statutes.

RETENTION AGREEMENT

Mortgagor’s purchase of the Property was partially funded with proceeds from the City of Whitewater Affordable Housing Fund pursuant to the Affordable Housing Fund Policy 602.01 adopted by the Common Council of the City of Whitewater on July 19, 2023 (“Downpayment Assistance Loan”). Mortgagor’s receipt of the funds are conditioned on Mortgagor’s agreement to restrictions on Mortgagor’s ability to sell, reclassify or refinance the Property for the purpose of ensuring that the funds are used for the purchase of housing which is retained as affordable housing for at least ten (10) years from the closing date (the “Retention Period”). In addition to the Downpayment Assistance Loan, Mortgagor obtained a mortgage loan from Fort Community Credit Union (“Lender”), which loan is secured by a first mortgage lien on the Property. Accordingly, Mortgagor covenants and agrees:

/WSS 00006
(Parcel Identification Number)

This is homestead property.

This is a Purchase Money Mortgage

Mortgagor covenants and agrees as follows:

1. **Covenant of Title.** Mortgagor warrants title to the Property, except restrictions and easements of record, if any and except for a first mortgage lien on the property from mortgagor to Fort Community Credit Union.
2. **Taxes.** Mortgagor promises to pay when due all taxes and assessments levied on the Property or upon Mortgagor's interest in it and to deliver to Mortgagee on demand receipts showing such payments.
3. **Insurance.** Mortgagor shall keep the improvements on the Property insured against any loss or damage occasioned by fire, extended coverage perils and such other hazards as Mortgagee may require, through insurers approved by Mortgagee in such amounts as Mortgagee shall require, but Mortgagee shall not require coverage in an amount more than the balance of the debt without co-insurance, and Mortgagor shall pay the premiums when due. The policies shall contain the standard mortgage clause in favor of the Mortgagee and, unless Mortgagee otherwise agrees in writing, the original of all policies covering the Property shall be deposited with Mortgagee. Mortgagor shall promptly give notice of loss to insurance companies and Mortgagee. Unless Mortgagor and Mortgagee otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided the Mortgagee deems the restoration or repair to be economically feasible.
4. **OTHER COVENANTS.** Mortgagor covenants not to commit waste or suffer waste to be committed on the Property, to keep the Property in good condition and repair, to keep the Property free from liens superior to the lien of this Mortgage, and to comply with all laws, ordinances and regulations affecting the Property. Mortgagor shall pay when due all indebtedness which may be or become secured at any time by a mortgage or other lien on the Property superior to this Mortgage and any failure to do so shall constitute a default under this Mortgage.
5. **Defense of Security.** Mortgagor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Mortgagee, and shall pay all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Mortgagee may appear.
6. Except as expressly set forth in Section 6, Mortgagor shall not transfer, sell or convey any legal or equitable interest in the Property (by deed, land contract, long-term lease or in any other way) without the prior written consent of Mortgagee, unless either the indebtedness secured by this Mortgage is first paid in full or the interest conveyed is a mortgage or other security interest in the Property, subordinate to the lien of this Mortgage. The entire indebtedness due under the Promissory Note secured by this Mortgage shall become due and payable in full at the option of Mortgagee without notice, which notice is hereby waived, upon any transfer, sale or conveyance made in violation of this Section 5. A violation of the provisions of this Section 5 will be considered a default under the terms of this Mortgage and the Promissory Note it secures.
7. If Mortgagor refinances the First Mortgage on the Property, provided the Property remains subject to the encumbrance created by this Agreement, then Mortgagor shall not be required

to repay any portion of the Downpayment Assistance Loan at closing of the refinance transaction provided Mortgagor continues to own and occupy the Property.

8. To further secure the payment and performance of the Promissory Note, Mortgagor hereby grants to Mortgagee a security interest in all fixtures and personal property located on or related to the operations of the Property whether now owned or hereafter acquired. This Mortgage shall constitute a security agreement within the meaning of the Uniform Commercial Code with respect to those parts of the Property indicated above. This Mortgage constitutes a fixture filing and financing statement as those terms are used in the Uniform Commercial Code. This Mortgage is to be filed and recorded in the real estate records of the county in which the Property is located, and the following information is included: (1) Mortgagor shall be deemed the “debtor”; (2) Mortgagee shall be deemed to be the “secured party” and shall have all of the right of a secured party under the Uniform Commercial Code; (3) this Mortgage covers goods which are or are to become fixtures; (4) the name of the record owner of the land is the debtor; (5) the legal name and address of the debtor are: William Lee Reiber, 202 W North St, Whitewater, WI 53190. The address of the secured party is: 312 West Whitewater Street, Whitewater, WI.
9. The term Mortgagor shall include all Mortgagors whether one or more, and the provisions hereof for reimbursement shall not apply as long as any named Mortgagor continues to both own and occupy the Property. Any individual Mortgagor who is married represents that the obligation evidenced by this instrument was incurred in the interest of Mortgagor’s marriage or family. The covenants of this Mortgage set forth herein shall be deemed joint and several among the Mortgagors.
10. Events of Default. Each of the following shall constitute an event of default under this Mortgage:
 - a. Failure to pay the indebtedness secured by this Mortgage when due;
 - b. Failure to perform any obligation contained in this Mortgage;
 - c. Any breach of any warranty or material misrepresentation made by Mortgagor in connection with this Mortgage or the Note;
 - d. The occurrence of a default under the Primary Mortgage; or
 - e. The transfer, sale, leasing, or conveyance of the Property, or any interest therein, within ten (10) years from the date of the Note.
11. In the event of default under the terms of this Mortgage, Mortgagee may, at its option, declare the whole amount of the unpaid principal due and payable, and collect it in a suit at law or by foreclosure of this Mortgage or by the exercise of any other remedy at law or equity. A default under the First Mortgage constitutes a default under this Mortgage. In case of default, all costs and expenses, including but not limited to, reasonable attorney fees, to the extent not prohibited by law shall be added to the principal, become due as incurred, and in the event of foreclosure included in the judgment.

COMMUNITY DEVELOPMENT AUTHORITY OF
THE CITY OF WHITEWATER, Mortgagee

By: _____(SEAL)
Mason Becker, Executive Director

STATE OF WISCONSIN)
) SS
_____ COUNTY)

Personally came before me this _____ day of February, 2026, the above named Mason Becker, Executive Director of the Community Development Authority of the City of Whitewater, to me known to be the person who executed the foregoing instrument and acknowledged the same.

_____, Notary Public
_____, County, Wisconsin
My commission expires: _____

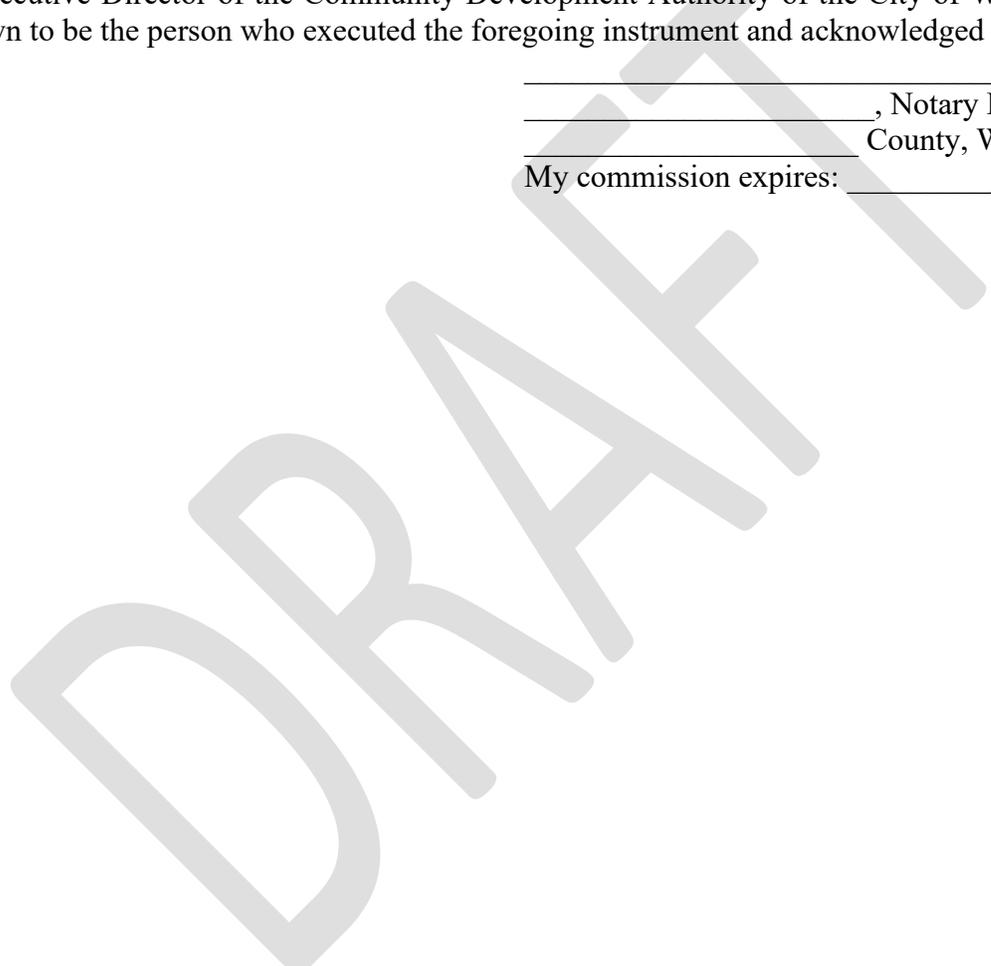


EXHIBIT A

Legal Description of Property

E 43.5' OF S 114' LOT 3 BLK 1 WILSONS ADD CITY OF WHITEWATER

Address: 202 W North St, Whitewater, WI 53190

Tax Identification No.: /WSS 00006

DRAFT

PROMISSORY NOTE

\$ 25, 0000

Date: _____, 202__

The undersigned, William Lee Reiber ("Maker"), hereby jointly and severally promise to pay to the order of the Community Development Authority of the City of Whitewater ("Payee") at 202 W North Street, Whitewater 53190, or at such other place as Payee may from time to time designate in writing, the sum of Twenty-Five Thousand and no/100 Dollars (\$25,000).

This Promissory Note ("Note") bears no interest on the unpaid balance before maturity. All unpaid principal outstanding under this Note shall be due and payable on the earlier of (i) Maker's transfer, sale, leasing, or conveyance of the Property (as defined in Exhibit A, incorporated herein by reference) or (ii) the time at which the Property is no longer the Maker's primary residence (the "Maturity Date"). The funds loaned to Maker by Payee pursuant to this Note shall be used solely for the purchase of the real property commonly known as 204 N Queen Street, City of Whitewater, Walworth County, Wisconsin and legally described on Exhibit A attached hereto and incorporated herein (the "Property").

If payment is not made on or before the Maturity Date, or Payee violates any term, condition or provision of this Note or the Mortgage (defined below), Maker shall be in default and Payee may give Maker written notice thereof. If Maker fails to cure said default within ten (10) days of the date of such notice, the unpaid balance shall, at the option of Payee and without further notice, mature and become immediately payable. The unpaid balance shall automatically mature and become immediately payable in the event Maker becomes the subject of bankruptcy or other insolvency proceedings. Payee's receipt of any payment under this Note after the occurrence of an event of default shall not constitute a waiver of the default or the Payee's rights and remedies upon such default. Principal not paid when due shall bear interest after the Maturity Date at the then current Applicable Federal Rate for long term notes, compounding annually, set forth under IRC Sec. 7520 from time to time.

Without affecting the liability of Maker, Payee may, without notice, renew or extend the time for payment, accept partial payments, release or impair any collateral security for the payment of this Note or agree not to sue any party liable on it.

Maker agrees to pay all costs of collection, including reasonable attorneys' fees incurred by Payee in enforcing this Note. Maker hereby waives presentment, protest, demand and notice of dishonor. Maker may at any time and from time to time prepay all or any part of the unpaid principal of this Note, without penalty.

This Note is secured by a second Mortgage on the Property of even date herewith executed by Maker ("Mortgage"). Payee agrees that this Note is subordinate to Maker's obligations to Provisor Inc., in connection with Loan Number _____ secured by a first mortgage lien on the Property. Upon payment in full of this Note, Payee shall promptly release the collateral security.

This Note shall be governed by and construed in accordance with the laws of the State of Wisconsin.

_____, Mortgagor

_____, Mortgagor

EXHIBIT A

Legal Description of Property

E 43.5' OF S 114' LOT 3 BLK 1 WILSONS ADD CITY OF WHITEWATER

Address: 202 W North St

Tax Identification No.: /WSS 00006

	<h2>CDA Agenda Item</h2>
<p>Meeting Date:</p>	<p>February 19, 2026</p>
<p>Agenda Item:</p>	<p>116 E Main Street Demolition</p>
<p>Staff Contact (name, email, phone):</p>	<p>Llana Dostie, Zoning Specialist</p>

BACKGROUND
(Enter the who, what when, where, why)

The City received a total of five (5) bids in response to the Request for Proposals (RFP) for the demolition of the building located at 116 E Main Street, the former Wrap and Ship.

Upon review, one bid was determined to be non-responsive, as it did not include all required elements outlined in the RFP. Two additional bids were deemed significantly higher than anticipated and were not considered further.

The two bids being presented to the Board for consideration are from **HM Brandt** and **Center Construction**. HM Brandt has previously completed the removal of three City-owned buildings and has demonstrated satisfactory performance on those projects.

PREVIOUS ACTIONS – COMMITTEE RECOMMENDATIONS
(Dates, committees, action taken)

N/A

FINANCIAL IMPACT
(If none, state N/A)

The HM Brand Bid Proposal totals \$34,277.00

The Center Construction Bid Proposal totals \$35,000

STAFF RECOMMENDATION

1. Staff recommends moving forward with consideration of these two bids

ATTACHMENT(S) INCLUDED
(If none, state N/A)

- RFP for Demolition
- Bid Tabs
- HM Brandt LLC Bid Proposal
- Center Construction Bid Proposal

Demolition Bid Proposal

116 E Main Street, Whitewater, Wisconsin

Submitted to: Community Development Authority, City of Whitewater

Submitted by: Center Construction

Date: 01/19/2026

Executive Summary

This proposal outlines the scope of work, methodology, timeline, and cost for the complete demolition and site restoration of the commercial property at **116 E Main Street, Whitewater, WI 53190** (Tax Parcel No. BIRW00003A). Center Construction is prepared to deliver a safe, efficient, and compliant demolition project meeting all local, state, and federal regulations, with completion by **April 30, 2026**.

Project Overview:

- Property Address: 116 E Main Street, Whitewater, WI 53190
- Structure Type: Commercial (former printing shop)
- Approximate Square Footage: 2,000 sf
- Construction Era: 1960s
- Scope: Complete demolition, asbestos coordination, site restoration with topsoil and seeding

Company Information & Qualifications

Company Overview

Center Construction specializes in structural demolition and site restoration for commercial properties throughout Wisconsin. With 22 years of experience, we have successfully completed projects involving asbestos coordination, utility disconnections, and full building removal in compliance with Wisconsin DHS and WDNR regulations.

Licenses & Certifications

- Wisconsin General Contractor License: 971354

Insurance & Bonding

- General Liability Insurance: \$500,000 per occurrence / \$500,000 aggregate
- Workers' Compensation Insurance: Statutory limits per Wisconsin law

- Performance and Payment Bond: Available upon award
- Certificate of Insurance naming City of Whitewater and CDA as additional insureds will be provided

Project Understanding & Scope of Work

Property Description

The property is a one-story commercial structure built in the 1960s with concrete slab foundation, concrete block walls, and built-up rubber roofing. The 2,000-square-foot building was formerly used as a commercial printing shop. A pre-demolition inspection by NorthStar Environmental Testing, LLC (Report No. 240-1327, dated November 8, 2024) identified assumed asbestos-containing materials in electrical panels and roofing materials requiring specialized handling prior to demolition.

Scope of Work

Our demolition scope includes all of the following:

1. **Permits and Approvals:** Coordinate with City of Whitewater for demolition permit and any required right-of-way or street closure approvals. (City pays permit fees per RFP.)
2. **Utility Coordination:** Disconnect and cap or abandon all utilities (water, gas, electric, phone, cable, sewer) with written confirmation from each utility provider.
3. **Asbestos Management:** Coordinate with a licensed WI DHS-certified asbestos abatement contractor for removal of assumed ACM per NorthStar report—specifically electrical panels (Cat II non-friable) and roofing materials (Cat I non-friable) where required for recycling or where demolition could make material friable. All ACM work complies with WI DHS 159 and WDNR NR 447.
4. **Site Preparation:** Erect safety barriers, fencing, and signage around site perimeter.
5. **Structural Demolition:** Mechanical demolition of building, foundation, and surface materials using appropriate equipment. All structural elements, rubble, and debris removed from site.
6. **Debris Removal & Disposal:** Separate recyclable metals and clean concrete where practicable; haul all demolition waste to approved disposal or recycling facilities. Contractor responsible for all disposal and tipping costs.
7. **Site Clearing:** Remove all remaining debris and temporary protections.
8. **Site Restoration:** Grade site for positive drainage; place minimum six inches of topsoil across all disturbed areas; apply seed and mulch or sod per RFP specifications.
9. **Final Stabilization:** Ensure all work completed and site stabilized by **April 30, 2026**.
10. **Duration:** The job has an estimated duration of 3 weeks from the date of permit approval and initial payment.

Exclusions

The following items are NOT included unless otherwise specified:

- Permits and fees (City responsibility per RFP)
- Asbestos abatement labor and costs (subcontracted; see Cost Proposal)
- Lead paint remediation beyond standard demolition precautions
- Environmental remediation or soil testing beyond site clearing

Demolition Methodology & Work Plan

Pre-Demolition Coordination

- Coordinate with City of Whitewater for permit issuance and WDNR/DHS notification if required
- Verify utility locations and arrange disconnection/abandonment confirmations
- Review NorthStar asbestos report in detail; coordinate subcontractor for ACM removal
- Conduct final site walkthrough and document existing conditions with photographs

Utility Disconnections

- Contact each utility (water, gas, electric, phone, cable, sanitary/storm sewer) for service termination
- Ensure proper capping or abandonment per utility and City standards
- Obtain written confirmation of disconnection/abandonment from each provider
- Verify no live services prior to demolition start

Hazardous Materials & Asbestos

Per NorthStar Environmental report (No. 240-1327):

- **Assumed ACM—Electrical Panels** (Storage area, 2 each, Category II Non-Friable): Licensed abatement contractor will remove and properly dispose per WI DHS 159 and WDNR NR 447.
- **Assumed ACM—Roofing Materials** (Roof area, approximately 1,300 sf, Category I Non-Friable): Will be removed by licensed abatement contractor prior to mechanical demolition if required for concrete/material recycling or if demolition could make material friable.
- **Lead-Based Paint:** No LBP detected above regulatory threshold (≥ 1.0 mg/cm²) per XRF testing. Standard dust control during demolition will be maintained.
- All ACM-containing materials disposed at approved Wisconsin landfill with proper documentation.

Demolition Activities

1. **Mobilization:** Move equipment to site, establish staging area, install fencing and signage
2. **Utility Disconnection:** Execute service terminations and verify shutoffs
3. **Asbestos Abatement:** Licensed subcontractor removes identified ACM (separate contract; abatement contractor provides warranty)
4. **Structural Demolition:** Excavator with hydraulic shear and thumb perform mechanical demolition; remove building, foundation, and slabs
5. **Debris Sorting:** Separate ferrous metals, non-ferrous metals, clean concrete for recycling; remaining demolition debris for approved landfill
6. **Dust Control:** Water suppression truck on site; continuous dust management per WDNR guidance
7. **Haul and Disposal:** Load and transport debris to approved facilities; track and document all material disposal
8. **Site Grading:** Grade site to proper slope for drainage; compact subgrade
9. **Topsoil & Seeding:** Place minimum 6 inches of topsoil; apply seed and mulch or install sod per specifications

Equipment to Be Used

- Excavator (CAT 320 or equivalent) with hydraulic shear and thumb
- Haul trucks (10-wheel, 20-yard capacity or similar)
- Loader for material staging and push-off
- Compactor/roller for site grading
- Water truck for dust suppression
- Safety fencing, signage, and temporary barriers
- Hand tools and small equipment as needed

Safety & Environmental Compliance

Safety Plan

Safety is paramount. Center Construction maintains a written Injury and Illness Prevention Program and trains all personnel in demolition safety per OSHA 29 CFR 1926.

Safety Measures:

- All crew members trained and certified in demolition safety and first aid/CPR
- Personal Protective Equipment required at all times: hard hats, safety glasses, gloves, steel-toed boots, N95/P100 dust masks or respirators as required
- Daily site safety briefings and toolbox talks
- Continuous hazard monitoring by competent person
- Site fencing, signage, and barricades preventing unauthorized access

- Emergency response plan and first aid station on site
- Equipment inspected daily; maintenance logs maintained
- Compliance with all OSHA standards and Wisconsin safety regulations

Environmental Controls

- Water truck for continuous dust suppression during demolition
- Erosion and sediment control (silt fence, erosion control blankets) around site perimeter
- Proper hazardous material handling and disposal documentation per EPA/WDNR
- Waste material segregation for recycling (metals, concrete) and approved landfill disposal
- Truck tracking control to minimize street soiling; street sweeping as needed
- Compliance with WDNR guidance WA-651 (Planning Your Demolition or Renovation Project)

Regulatory Compliance

All work conducted in accordance with:

- OSHA 29 CFR 1926 Construction Standards
- Wisconsin DHS Chapter 159 (Asbestos Regulation)
- Wisconsin WDNR NR 447 (Asbestos Material Disposal)
- WDNR WA-651 Guidance (Demolition Planning and Waste Management)
- City of Whitewater municipal ordinances and permit requirements
- EPA Clean Air Act (dust control) and Clean Water Act (erosion control)

Cost Proposal

Total Lump Sum Bid: \$35,000

All work is provided as a single lump-sum contract price inclusive of labor, equipment, materials, disposal, overhead, and profit. Pricing is based on current market conditions and valid for thirty (30) days from submission date.

Itemized Cost Breakdown

Item	Description	Unit	Lump Sum Price
1. Bonding	Performance/Payment Bond	LS	\$300
2. Labor	Demolition crew, supervision, management	LS	\$15,000

3. Debris Hauling	Transport and tipping fees for all debris	LS	\$15,000
4. Topsoil, Seed, Mulch	Grading, 6" topsoil, seeding, and mulch/sod	LS	\$4,700
TOTAL BID			\$35,000

Cost Notes

- Price includes all labor, equipment operation and rental, fuel, equipment mobilization/demobilization, and project management
- Debris disposal includes hauling to approved facilities and all tipping fees
- Asbestos abatement (if required per NorthStar report) is subcontracted and invoiced separately; Center Construction will coordinate and ensure compliance
- City-paid permit fees are excluded from this proposal per RFP
- Price assumes site access available upon notice to proceed and utility disconnections confirmed by utility companies
- Unforeseen site conditions (e.g., underground debris, additional hazardous materials) will be addressed via written change order

Payment Terms

- 50% upon contract execution and mobilization approval
- 50% no later than 30 days after final inspection, site restoration, and CDA acceptance

All invoices net 30 days.

Bid Validity

This proposal is valid for thirty (30) days from the date of submission. After thirty days, the bid is subject to revision based on market conditions.

Terms & Conditions

Scope Changes

Any changes to the scope of work discovered during demolition (e.g., additional structures, buried debris, utility complications) will be documented in a written change order and priced separately. Work will not proceed on additional items without written CDA authorization.

Site Conditions

This proposal is based on the site information provided in the RFP and NorthStar Environmental report. If field conditions differ significantly from our assessment, Center Construction will notify the CDA and submit a revised proposal if necessary.

Permits & Approvals

Center Construction will coordinate with City of Whitewater for the demolition permit and associated approvals. The CDA is responsible for permit fees per RFP terms.

Contract Documents

Upon award, Center Construction agrees to execute the City's standard demolition/construction contract form and to comply with all RFP terms, insurance requirements, and completion deadlines (April 30, 2026).

Liability & Insurance

Center Construction maintains comprehensive general liability, workers' compensation, and equipment insurance. A Certificate of Insurance naming the City of Whitewater and CDA as additional insureds will be provided prior to mobilization.

Environmental Responsibility

Center Construction is responsible for proper disposal of all demolition and hazardous materials per federal, state, and local regulations. Disposal documentation and manifests will be retained and provided to CDA upon request.

Regulatory Compliance

All work will comply with OSHA, EPA, Wisconsin DHS, WDNR, and City of Whitewater regulations. Center Construction holds the CDA and City harmless from any violations related to our performance.

Conclusion

Center Construction is committed to delivering a professional, timely, and compliant demolition of 116 E Main Street. We have the expertise, equipment, and experience to manage this project safely and efficiently, meet all regulatory requirements, and restore the site for future redevelopment.

We welcome the opportunity to discuss this proposal and answer any questions the CDA may have.

Contact Information

Center Construction

Address: 1209 Cherry St, Janesville, WI 53546
Phone: 608-290-0292
Email: centerconst23@gmail.com
Contact Person: Nate Tracey

Date: January 23, 2026
116 E Main St. - Whitewater

HM Brandt LLC hereby proposes the following terms and conditions for the job as hereinafter specified:

CUSTOMER NAME: City of Whitewater

CUSTOMER ADDRESS: 312 W. Whitewater St. Whitewater, WI. 53190

CUSTOMER CONTACT: Llana Dostie **CONTACT PHONE:** (262) 473-0144

JOB NAME: Demolition of 116 E. Main St.

JOB ADDRESS: 116 E. Main St. Whitewater, WI 53190

DEMOLITION BID

INCLUSIONS:

- 1) **Structural demolition per City of Whitewater RFI**
 1. Demo permits
 2. Sewer and water disconnects
 3. Erosion control installation
 4. Installation of temp fence
 5. Removal of asbestos per asbestos report
 - i. 10 day DNR Notification
 6. Removal of building, footings and foundation
 7. Removal of parking lot
 8. Backfill and compact
 9. Top soil and seed where building and parking lot were removed.
- 2) All trucking of debris included in the bid.
- 3) All debris to licensed landfill.
- 4) All recyclable material to the recycling facility.
- 5) Daily clean up to maintain a clean, safe working environment.
- 6) One mobilization.

NOTES:

- Dumpsters provided for HM Brandt LLC work only – **no other trades unless otherwise coordinated with GC and HM Brandt LLC.**
- **All salvage of removed contents, MEPFs, crushed stone, & copper etc. will become property of HM Brandt LLC.**
- This proposal to become part of any contract and/or any AIA documents.
- Work to be performed during normal business hours 8 hrs M-F or 10 hrs M-TH.
- Project duration to be completed within two weeks of start date

EXCLUSIONS:

- No gas or electric disconnects (by others)

HM BRANDT LLC



Item 7.

Date: January 23, 2026
116 E Main St. - Whitewater

(No back charges considered without written notification within 10 days of the occurrence and 3 days to respond)

HM Brandt LLC proposes to hereby to furnish material, labor and equipment – complete in accordance with above specifications, for the sum of all parts below:

Demolition Base Bid for the Sum of:

Thirty-Four Thousand, Two Hundred Seventy-Seven Dollars & 00/100

\$34,277.00

Payment to be made as follows: 30 days from billing based on schedule of values per phase. NO retainage to be held after approval of HM Brandt punch list.

This proposal does not take into account seasonal weather conditions, which may affect method of production and price as stated above. Any such changes in production method or price would be identified in writing and approved prior to implementation.

A SERVICE CHARGE COMPUTED BY A PERCENTAGE RATE OF 1 ½% PER MONTH WHICH IS AN ANNUAL PERCENTAGE RATE OF 18% MAY BE ASSESSED ON ALL INVOICES NOT PAID WITHIN TERMS OF SALE AS SHOWN ON INVOICE. THE CUSTOMER SHALL PAY ALL COSTS OF COLLECTION, INCLUDING ACTUAL ATTORNEYS' FEES.

NOTE: PLEASE READ NOTICE OF LIEN RIGHTS ATTACHED AND MADE A PART HEREOF

Date: January 23, 2026
116 E Main St. - Whitewater

GENERAL TERMS AND CONDITIONS

EXTRAS:

Any alteration or deviation from contract specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the contract price. Any changed or unforeseen site condition involving extra costs will be an extra charge over and above the original contract price for performance of the required changes.

CONSTRUCTION:

Owner or agent ordering this work is to establish property lines and be responsible for material placed as ordered in event of trespass, on other property, and hereby assumes responsibility for construction of improvements on property herein involved. Owner or agent shall be responsible for site conditions, including access to work area, preparatory grading, excavating and other work necessary for the proper completion of the work specified in this proposal. Extra time and material required by HM Brandt LLC (Contractor) to correct site conditions to enable its work to be completed shall be charged as an extra. Owner or agent further agrees to keep the site free from any conflicting or obstructive work that would interfere with the Contractor's performance. Prior to the commencement of our work, the work of others shall be completed to such an extent that it will not in any way conflict or interfere with our work. If Contractor is directed to commence work prior to the time such other contractor's work is completed, Owner agrees to pay the cost of any extra mobilizations or reduced productivity attributable to Contractor's commencing any of the work before any others have completed their work. Contractor will not be responsible for damage to private underground utilities or other hidden conditions if the Owner or agent fails to give advance notice of their existence and location.

DELAYS:

Contractor shall complete the job within a reasonable time, but shall not be liable for delays beyond the control of the Contractor, including, but not limited to, acts of God, inclement weather, delay by third parties or owner.

NOTICE OF LIEN RIGHTS:

As required by the Wisconsin construction lien law, Contractor hereby notifies owner that persons or companies furnishing labor or materials for construction on owner's land may have lien rights on that land and on the buildings on that land if they are not paid for such labor or materials. Those entitled to lien rights, in addition to the Contractor are those who contract directly with the owner or those who give the owner notice within 60 days after they first furnish labor or materials for the construction. Accordingly, owner probably will receive notices from those that furnish labor or materials for the construction, and should give a copy of each notice received to his mortgage lender, if any. Contractor agrees to cooperate with the owner and his lender, if any, to see that all-potential lien claimants are duly paid.



OLD REPUBLIC SURETY COMPANY

18650 W. Corporate Drive, Suite 107, Brookfield, WI 53045 | www.orsurety.com

June 27, 2024

Re: HM Brandt, LLC
Bonding Capacity

To Whom It May Concern:

We are pleased to offer this letter of recommendation on behalf of our valued client, HM Brandt, LLC.

Currently, we hold a bonding line of \$5,000,000 single for both performance and payment bonds and an aggregate program of \$10,000,000 and will consider larger single jobs and aggregate programs on a case by case basis.

Our decision to provide performance & payment bonds for HM Brandt, LLC will be based on current underwriting factors at the time the bonds are requested and would include considerations such as acceptable contract terms and bond forms, confirmation of satisfactory financing, and a favorable review of current underwriting information. This letter is not a commitment to issuing any specific bonds. Our consideration and issuance of bonds is a matter between HM Brandt, LLC and ourselves, and we do not assume any liability to you or any third party by issuance of this letter.

Very truly yours,

A handwritten signature in black ink that reads "John Steinbach". The signature is written in a cursive style with a large initial "J".

John Steinbach, AFSB
Assistant Bond Manager
Old Republic Surety Company
(262) 641-5644

HM Brandt Project References

Dirty Ducts Environmental/State of WI

Demo of Former Albertson Hall Library UW Stevens Point (Spring-Fall 2023)

We were a subcontractor to Dirty Ducts but acting as the GC on this project. The project involved the demolition of the former 7 story library building, including coordinating medium voltage power disconnects, sewer/water/storm/steam/chilled water disconnects, interior demo of the structure, mass demolition including all footings, foundations & slabs, recycling all concrete, general site demolition, clearing & grubbing & traffic control.

Value: \$1,311,202.80

Contact:

- Joe Martino DFD (608) 279-8590 joe.joseph.martino@wisconsin.gov

Waukesha County

Demo of Former Health & Human Services Demo (Mud Baths) (Fall 2022-Spring 23)

We were the GC on this project working directly for Waukesha County. This project involved the demolition of the former HHS building in Waukesha including all footings, foundations & slabs, recycling all concrete, backfilling, grading & site restoration.

Value: \$652,904.00

Contact:

- Jeff Lisiecki 262-993-5371 jlisiecki@waukeshacounty.gov

Racine Unified School District

Demo of Former Giese Elementary School (Fall 2021-Spring 22)

On this project we were the GC working directly for Racine Unified School District. This project involved the demolition of the former Giese Elementary school including abating the school (we partnered with Dirty Ducts Environmental), demolishing the structure, removing all footings/foundations & parking lots, recycling concrete onsite, grading & site restoration.

Value: \$509,625.00

Contact:

- Jim Hooper 262-631-7014 james.hooper@rusd.org

Bayland Building

Demo of former Sears Green Bay (Fall 2022)

We were a subcontractor on this project & working for Bayland Building. We were responsible for the removal of the former Sears building including mass demo, foots, foundations, slabs & parking lots.

Value: \$262,616.00

Contact:

- Scott Van Lanen 920.498.9300 svanlanen@baylandbuildings.com

Peridot CM, LLC

West Bend Brewery Demolition (Summer-Fall 2021)

On this project we performed structural demolition of the former West Bend Brewery building. This was a historical 5 story brick building which we demolished & removed all footings & foundations & crushed recyclable materials. We were working for Peridot & they have gone on to build apartment buildings on the site.

Value: \$354,248.00

Contact:

- Mikey Strom Cell: 815-529-8687 mstrom@peridotcm.com

Project Experience of HM Brandt LLC2023

UW Stevens Point
 900 Reserve St,
 Stevens Point, WI 54481
 \$1,311,202.80
 Albertson Hall Demolition
 GC, complete demo library building
 October, 2023

WHPC-Rise Madison
 3401 E. Washington Ave.
 Madison, WI. 53718
 \$447,488.00
 Gardner Bakery Demolition
 Sub. Complete demo of factory
 Sept. 2023

Former HHS Demolition
 Waukesha County
 500 Riverview Ave.
 Waukesha, WI 53188
 \$652,904.00
 GC, complete demo & site restoration
 June, 2023

Tri North Construction
 327 E. Wilson St.
 Madison, WI. 53703
 \$252,702.00
 Saddlery Lofts Renovation
 Sub. Interior demolition
 historic building
 June, 2023

Mo's Irish Pub
 10909 W Bluemound Rd
 Wauwatosa, WI
 \$150,000.00
 Commercial Building Demolition
 May, 2023

Alliance Construction
 7613 Villard Ave.
 Milwaukee, WI. 53218
 \$63,904.00
 Interior Demolition Auto Shop
 April, 2023

2022

MCP Demolition
 CMR Builds
 S98W12575 Loomis Ct,
 Muskego, WI 53150
 \$519,549.00
 Subcontractor
 Interior Demo former factory
 Nov. 2022

Bayland building Co
 3323 Bay Ridge Ct,
 Hobart, WI 54155
 \$262,616.00
 Former Sears Demo
 Sub, Complete Demolition
 December, 2022

Prime Space Capital
 55 Broadway, 10th Floor,
 New York, New York 10006
 \$338,118.00
 Self Storage Conversion
 Sub, Interior Demolition
 December, 2022

JG Development
 701 E. Washington Ave. #103
 Madison WI 53703
 \$241,421.00
 Alpine Matterhorn Renovation
 Interior Demo Factory
 December, 2022

Kinove LLC
 P.O. Box 225,
 East Troy, WI 53120
 Cobblestone Demo East Troy
 \$61,552.00
 Subcontractor, Complete Demo
 July, 2022

Catalyst Construction
 3255 Northwoods Rd.
 Saukville, WI. 53074
 \$151,761.00
 Commercial Building Demo
 Jan. 2023

2021

Racine Unified
5120 Byrd Ave,
Racine, WI. 53406
\$509,625.00

GC, Complete Demolition (School)
Giese Elementary, site restoration
June, 2022

Peridot CM LLC.
4425 W. Mitchell St.
Milwaukee, WI 53214
\$354,248.00
Sub, Complete Demolition (Historical)
West Bend Brewery
Jan. 2022

Village of Brown Deer
4800 W. Green Brook Drive,
Brown Deer, WI 53223
\$117,516.00
GC, Complete Demolition Former
Glendale Clinic
May, 2021

Matthews Gibraltar
252 RIDC Park West Drive
Pittsburgh, PA 15275
\$54,707.00
Sub. Selective Structural Demolition
Lincoln Memorial Cemetery -Mke
May, 2021

Kelly Construction
225 E St. Paul Ave Ste 205
Milwaukee, Wi 53202
\$94,000.00
Sub. Selective Interior Demolition
2nd St. Apartments
Sept. 2021

Carroll University, Inc
100 N East Ave.
Waukesha, WI 53186
\$92,919.00
Historical Restoration Demolition
Carroll University
June, 2021

The Demichele Company
334. W Brown St

Milwaukee, WI
\$97,816.00
Complete Demolition
Former YMCA Demo
February, 2022

2020

Premier Design & Build Group
1000 W. Irving Park Rd. Ste. 200
Itasca, IL
\$655,477.00
Demolition Schoeneck Storage Facility,
Wauwatosa
May, 2020

Absolute Construction Enterprises, Inc
6618 6 Mile Rd.
Racine, WI 53402
\$212,961.00
Selective Structural & Interior Demolition
WEC Energy Group Milwaukee
Feb. 2022

Rodac LLC
3346 County Hwy Ge,
Hobart, WI 54155
\$195,808.00
Complete Interior Demolition
Festival Foods Wauwatosa, WI
May, 2021

Altius Building Company
1675 N Barker Rd. Ste. B
Brookfield, WI
\$108,989.00
Demolition of Washington Co.
Humane Society
March, 2021

Catalyst Construction
833 E Michigan St. Ste 1000
Milwaukee, WI 53202
\$140,701.00
Historical Restoration Demolition
Wantable Headquarters, Milwaukee
Sept. 2020

Milwaukee Electric Tool
13135 W Lisbon Rd
Brookfield, WI
\$16,216.00

Selective Interior Demolition
May, 2020

Bear Construction / J. Jeffers & Co.
1501 Rohlwing Rd.
Meadows, IL 60008
\$48,850.00
Selective Interior Demolition
Legal Action of WI - Milwaukee
August, 2020

City of Lake Mills
200D Water St.
Lake Mills, WI
\$26,516.00
GC, Demolition & Site Restoration of Sandy
Beach Bar & Restaurant
June, 2020

One Source Construction Corp.
3065 N 124th St.
Brookfield, WI 53005
\$34,450.00
Complete Structural Demolition
Aug. 2020

2019

NCI Roberts
701 E. Washington Avenue
Madison, WI
\$96,982.00
Demolition Heartland Church,
Sun Prairie, WI

Principle Construction Corp.
9450 W. Bryn Mawr
Rosemont, IL
\$54,075.00
Demolition STAG West Allis, WI

Serafino Oliviero
British Columbia, Canada
\$93,716.00
GC, Complete Demolition
3 structures, Sussex, WI

Pinnacle Construction
S74 W16853 Janesville Rd
Muskego, WI
\$49,616.00

Demolition of Missile Bunkers,
Muskego, WI

Camosy Construction
12795 120th Ave.
Kenosha, WI
\$77,985.00
Interior Demolition at Oconomowoc
Police Station

The Redmond Company
W228 N745 Westmound Drive
Waukesha, WI
\$31,415.00
Peoples State Bank – West Allis

2018

Fresh Water LLC / Peter Mead
Demolition at River Place Lofts
Milwaukee, WI
\$65,226.00
MLG Capital
13400 Bishops Lane
Brookfield, WI
\$156,000.00
Demolition 200 W. Vogel Avenue
Milwaukee

Hunzinger Construction Company
21100 Enterprise Ave.
Brookfield, WI
\$161,731.00
Demolition
Milwaukee Electric Tool

Consolidated Construction Co. Inc.
8501 West Brown Deer Rd.
Milwaukee, WI.
\$203,698.00
Demolition MRS
Target Reno

Hoffman Planning, Design & Construction
1629 11th Ave
Grafton, WI. 53024
\$55,401.00
Demolition
Kennedy Elementary School

2017-18
The Redmond Company
W228 N745 Westmound Drive
Waukesha, WI

\$152,509
Demolition of Field's Jaguar/
Land Rover/ Volvo
Waukesha, WI

**Project Experience of Principal Individuals as Owner HMB Contractors, Inc.
Demolition**

May 2000

C.R. Meyer
895 West 20th Avenue
Oshkosh, WI
\$26,000.00
Concrete Removal, Excavating &
Grading for Ladish malting Co.

October 2000

Cargill Malting Co., Inc.
Chad Byersdorfer
N5355 Junction Road
Jefferson, WI 53549
\$67,484.00
Demolition & Site Restoration

November 2000

Tri-City National Bank/NDC Realty
Gary Kaufman
6312 South 27th Street
Oak Creek, WI 53154
\$39,325.00
Demolition of Bank

February 2001

City of Milwaukee
Dept. of Neighborhood Services
Marge Piwaron
841 N Broadway
Milwaukee, WI 53202
\$74,000.00
Demolition of City Structure

May 2001

Kotze Construction, Inc.
Joe Miotke
3722 W. Pierce Street
Milwaukee, WI 53215
\$38,000.00
Demolition of Hotel & Garage

May 2001

Williams Construction Co., Inc.
Tom Middleton
2365 North 25th Street
Milwaukee, WI 53206
\$16,500.00
Demolition of Penthouse for the
Edison School Project, North Avenue

July 2001

Gilbane
Cletus Hasslinger
N17 W24300 Riverwood Drive
Waukesha, WI 53188
\$241,000.00
Demolition & Excavation for SBC
Service, Inc., Ameritech Worldwide Inc.

September 2001

Super Western, Inc.
Bob Mertz
N60 W14224 Kaul Avenue
Menomonee Falls, 53051
\$45,000.00
Dept. of Public Works

October 2001

C.W. Purpero, Inc. /
Hunzinger Construction Co., Inc.
Sam Purpero
5770 South 13th Street
Milwaukee, WI 53221
\$53,000.00
Demolition for World Festivals

November 2001

Beyer Construction Co., Inc.
Construction Manager for the
Village of Shorewood
Bob Stroo
3200 South 166th Street
New Berlin, WI 53151
\$171,000.00
Demolition, Excavating & Grading for
Shorewood Public Library

Demolition continuedDecember 2001

Vulcan Materials Co./Franklin
 Ron Linder
 5713 W. Rawson Avenue
 Franklin, WI 53132
 \$8,600.00
 Demolition of Scale House
 for Vulcan Stone

June 2002

Hunzinger Construction Co.
 Dave Del'Angese
 21100 Enterprise Avenue
 Brookfield, WI
 \$436,016.00
 Demolition of Westwood Hotel

June 2003

Washington County Highway Dept.
 Robert Peschel / Sigma-Adam Hammond
 620 East Washington Street
 West Bend, WI
 \$309,561.00
 Demolition at Washington County
 Highway Department

City of Milwaukee
 Dept. of Neighborhood Services
 Marge Piwaron
 841 North Broadway
 Milwaukee, WI 53202
 \$166,205.00
 Demolition at 701 E. Vienna

January 2004

JP Cullen & Sons, Inc.
 Tom Pertzborn
 330 East Delevan Drive
 Janesville, WI 53547
 \$416,824.00
 Demolition & Excavation at
 Cardinal Stritch University

October 2004

CH2MHILL
 Dan MacGregor
 Demolition of the Power
 House
 CMC Shops Project
 Canal Street, Milwaukee
 \$102,902.00

2009

The Redmond Company
 \$62,784.00
 Demolition for Walgreens
 West Bend

2009

Holy Redeemer Institutional
 Church of God in Christ
 4763 N. 32nd Street
 Milwaukee, WI
 \$687,690.00
 Demolition of the former
 Greenebaum Tannery for the
 Development of Bishops Creek



Please check box to request
Optional Expedited Service

+ \$25.00

FORM **501**

**STATEMENT OF AUTHORITY
LIMITED LIABILITY COMPANY**

Sec. 183.0302, Wis. Stats.

1. Name of the entity: <u>HM Brandt LLC</u>
2. Street address of the entity's registered office: <u>N59W28135 Amsworth Rd - Sussex, WI 53089</u>
3. Name and email address of the entity's registered agent: <u>Austin Brandt abrandt@hbrandt.com</u>

4. In a separate attachment labeled "Item 4," state the authority (or limitations on the authority) of specific persons or holders of specific positions in the company to do any of the following:
 (1) Sign an instrument transferring real property held in the name of the company.
 (2) Enter into other transactions on behalf of, or otherwise act for or bind, the company.

5. This document must be signed by a person authorized by the company:

<u></u> Signature	<u>7/11/23</u> Date
<u>Cheyenne Brandt</u> Printed Name	<u>Member</u> Title

(Optional) This document has a **delayed** effective date/time of: _____
 (up to 90 days after received date)

Note: Unless renewed, a statement of authority automatically terminates after five years. It may be renewed by filing a renewal form (Form 503) with the Department during the three-month period prior to the expiration date.

Office Use Only

Item 4

- 1) Sign an instrument transferring real property held in the name of the company
 - a. Authorized Individuals
 - i. Austin Brandt
 - ii. Cheyenne Brandt
- 2) Enter into other transactions on behalf of, or otherwise act for or bind, the company
 - a. Authorized Individuals
 - i. Austin Brandt
 - ii. Cheyenne Brandt
 - iii. Michael Brandt
 - iv. Heidi Brandt

Contact Information:

Cheyenne Forandt Name
N59W28135 Amsworth Rd. Sussex, WI 53089 Mailing Address
Sussex City WI State 53089 Zip Code
cbrandt@humboldt.com Email Address 262-588-1548 Phone Number

INSTRUCTIONS (Refer to section 183.0302, Wis. Stats., for document content)

Please use BLACK ink. Submit one original to State of WI-Dept. of Financial Institutions, Box 93348, Milwaukee WI, 53293-0348. (If sent by express or priority U.S. mail, please mail to State of WI-Dept. of Financial Institutions, Division of Corporate and Consumer Services, 4822 Madison Yards Way, 4th Fl., North Tower, Madison WI, 53705.) If requesting optional expedited service, please check the expedited service box in the upper-right corner of the first page and include an additional \$25.00. Filing fees are non-refundable. This document can be made available in alternate formats upon request to qualifying individuals with disabilities. Upon filing, the information in this document becomes public and might be used for purposes other than those for which it was originally furnished. If you have any questions, please contact the Division of Corporate & Consumer Services at 608-261-7577 (hearing-impaired may call 711 for TTY) or by email at DFICorporations@dfi.wisconsin.gov.

Item 1. Provide the name of the company.

Items 2 & 3. Provide the street address of the company's registered office within the state, as well as the name and email address of the company's registered agent at that office.

Item 4. Attach the statement of authority (or limitations thereon), as provided under section 183.0302, Wis. Stats.

Item 5. The document must be executed by at least one person authorized by the company.

Optional delayed effective date/time. This document may declare a delayed effective date and time. The effective date/time may not be before, or more than 90 days after, the document is received by the Department of Financial Institutions for filing. If no effective date/time is specified, the document will take effect at the close of business on the date it is received for filing by the Department.



For Office



State of Wisconsin
Department of Financial Institutions

Endorsement

STATEMENT OF AUTHORITY - DOMESTIC LIMITED LIABILITY COMPANY - FORM 501 - Ch. 183

HM BRANDT LLC

Received Date: 7/17/2023

Filed Date: 7/18/2023

Filing Fee: \$0.00

Expedited Fee: \$25.00

Total Fee: \$25.00

Entity ID#: H060925