Memorandum

TO: Administration Committee
From: Greg Keil, CDD
Date: July 16, 2015
RE: WEDC Site Assessment Grant and Warehousing of Wisconsin (WOW) Logistics Development Agreements

The City of Menasha has received a grant award of $150,000 to facilitate the redevelopment of the property at 867 Valley Road. The project involves the acquisition of the property by WOW. The short term plan is to clear the site to increase parking capacity and to improve traffic circulation on site with longer term consideration for expanding the adjoining warehouse facility. The improvements associated with the grant will facilitate the retention of 100 jobs at WOW's existing warehouse facility and will create the possibility for adding at least 10 jobs in the future.

This is a pass through grant where there will be no direct financial contribution to the project by the city. There will however be indirect expense associated with city staff time spent on grant administration. The grant funds are to be used for site investigation, asbestos abatement building demolition and soil vapor assessment. The requirement for matching grant funds is to be met through the purchase of the 867 Valley Road property by WOW at a cost of $175,000. Acquisition and site clearance is to be completed by the end of this year, with the site improvements for parking, etc., to occur in 2016 and be completed in mid-2017.

The Community Development Department is requesting that the Administration Committee recommend approval of the Site Assessment Grant Agreement between the Wisconsin Economic Development Corporation and City of Menasha, and further requests that the committee recommend approval the Development Agreement for Receipt and Reimbursement of SAG Grant Funds agreement between the City of Menasha and WOW Logistics Company.*

**Note: The draft of this agreement has been modified from the original version submitted by WOW based on comments from myself and the City Attorney. The City Attorney has not had an opportunity to review this version, and additional changes may be necessary.*

SITE ASSESSMENT GRANT AGREEMENT
BETWEEN
THE WISCONSIN ECONOMIC DEVELOPMENT CORPORATION
AND
CITY OF MENASHA

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

WITNESSETH

WHEREAS, the Recipient has submitted an Application to WEDC, requesting funds from WEDC's Site Assessment Grant ("SAG") program, as established by § 238.133 of the Wisconsin Statutes;

WHEREAS, the Recipient is a Local Governmental Unit located in Wisconsin;

WHEREAS, WEDC has determined that the Recipient is an eligible recipient of a SAG; and

WHEREAS, in reliance upon the Recipient's Application, WEDC has approved the Recipient for up to One Hundred Fifty Thousand dollars ($150,000) in a SAG.

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

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

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

(b) "Application" means the materials submitted by the Recipient to WEDC relating to this allocation of SAG.

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

(d) "Eligible Project Costs" means costs for which the SAG and Matching Funds may be used, as outlined in Paragraph 3 of this Agreement, which the Recipient incurs between May 4, 2015 and December 31, 2016.

(e) "Eligible Site or Facility" means one or more contiguous industrial or commercial facilities or site with common or multiple ownership that are abandoned, idle, or underused, the expansion or redevelopment of which is adversely affected by actual or perceived environmental contamination.

(f) "Full-Time Position" means a position for which the individual holding that position is required to work at least two thousand and eighty (2,080) hours, including paid leave and holidays, and for which the individual receives pay that is equal to or at least one hundred and fifty percent (150%) of the federal minimum wage and benefits that are not required by federal or state law.

(g) "Ineligible Costs" means costs for new construction; amounts due pursuant to lien claims of the Department of Natural Resources, Environmental Protection Agency, or taxing authorities; costs related to grant applications; costs which may be covered by other statutory programs, including PECFA; and soft costs including relocation costs, insurance premiums, legal or accounting fees, architectural fees, fees related to Project financing, or project administration costs.

(h) "Local Governmental Unit" means a city, village, town, county, redevelopment authority, community development authority, or housing authority.

(i) "Matching Funds" means non-WEDC funds secured by the Recipient to meet the match requirement of the SAG under this Agreement. Eligible Matching Funds expenditures may be incurred between May 4, 2015 and December 31, 2016. Matching Funds must be, at a minimum, One Hundred Seventy-Five Thousand dollars ($175,000) and shall not include in-kind contributions.

(j) "Petroleum Product" means gasoline, gasoline-alcohol fuel blends, kerosene, fuel oil, burner oil, diesel fuel oil or used motor oil.

(k) "Project" means the Recipient's Brownfields Redevelopment or Environmental Remediation Activities, in accordance with the Recipient's Application and the terms of this Agreement. Specifically, eligible environmental site work that will include contamination testing, asbestos abatement and site clearance activities on a 3.89 acre property.

(l) "Project Location" means the site or sites at which the Project will take place, specifically 867 West Valley Road, Menasha, Wisconsin.

(m)"SAG" means the grant monies the Recipient is eligible to receive from WEDC's Site Assessment Grant program in accordance with this Agreement.

(n) "Underground Hazardous Substance Storage Tank System" means an underground storage tank used for storing a hazardous substance other than a Petroleum Product together with any on-site integral piping or dispensing system with at least ten percent (10%) of its total volume below the surface of the ground.

(o) "Underground Petroleum Product Storage Tank" means an underground storage tank used for storing Petroleum Products together with any on-site integral piping or dispensing system with at least ten percent (10%) of its total volume below the surface of the ground.

(p) "WEDC" means the Wisconsin Economic Development Corporation, together with its successors and assigns.

2. **SAG.** Subject to the terms and conditions set forth in this Agreement, and in Wisconsin law, WEDC shall provide to the Recipient a grant of up to One Hundred Fifty Thousand dollars ($150,000), in a SAG.

3. **Recipient's Obligations.** The Recipient will:

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

(b) Use the SAG and Matching Funds for Eligible Project Costs, incurred between May 4, 2015 and December 31, 2016, as outlined in the following budget:

Code	Project Activities	WEDC SAG Grant	City of Menasha Matching Funds	Total
0235	Environmental Site Work	$150,000	$0	$150,000
0110	Real Estate Acquisition	$0	$175,000	$175,000
Total Eligible Costs		**$150,000**	**$175,000**	**$325,000**

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

- Demolition and asbestos abatement
- Soil and groundwater investigation

(c) Not use the SAG for any Ineligible Costs.

(d) Secure Matching Funds from non-WEDC sources equal to at least One Hundred Seventy-Five Thousand dollars ($175,000), to achieve the match requirement of the SAG under this Agreement. Examples of activities for which Matching Funds may be used may include:

- Project site acquisition

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

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

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

(h) Notify WEDC in writing within thirty (30) days of any event or occurrence that may adversely impact the completion of the Project as presented in Recipient's Application. Adverse impacts include, but are not limited to, lawsuits, regulatory intervention, and inadequate capital to complete the Project.

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

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

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

(c) The Recipient submitting to WEDC documentation of the Eligible Project Costs incurred against the SAG and Matching Funds, in an amount pro rata with the amount incurred against the SAG. Such documentation may include, but not be limited to, purchase orders or invoices.

(d) The Recipient must request all SAG funds no later than December 31, 2016.

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

(a) The Recipient shall prepare and maintain such records as may be reasonably required by WEDC to demonstrate Project performance, including, but not limited to:

(i) The number of Full-Time Positions created and/or retained by the Recipient during the term of this Agreement;

(ii) The amount and disposition of funds provided and disbursed under this Agreement; and

(iii)The total cost of the Project.

(b) The Recipient shall provide to WEDC Semi-Annual performance reports in such form as required by WEDC, as sample of which is attached to this Agreement as Exhibit B, covering activities between May 4, 2015 and December 31, 2016, which shall include a financial overview and narrative summary on the progress of the Project to date. The Final Semi-Annual performance report shall additionally include information on the increase of the property value of the Project Location.

(c) The Recipient shall provide to WEDC copies of any Project-related documents that are submitted to the Wisconsin Department of Natural Resources, PECFA, Agricultural Chemical Cleanup Program, or the United States Environmental Protection Agency. Examples of such reports include, but are not limited to, site investigation, remediation, monitoring, initial notice of release of contamination, and closure request reports.

(d) **Schedule of Reporting:**

PERIOD COVERED	DOCUMENTATION	DUE DATE
See Paragraph 6 Below	Schedule of Expenditures	See Paragraph 6 Below
5/4/2015 – 12/31/2015	Semi-Annual Performance Report	3/1/2016
1/1/2016 – 6/30/2016	Semi-Annual Performance Report	9/1/2016
7/1/2016 – 12/31/2016	Final Semi-Annual Performance Report	3/1/2017

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

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

(a) The Recipient fails to conduct the Project and related activities in Wisconsin for a minimum of five (5) years after of the Effective Date of this Agreement.

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

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

8. **Remedies in Event of Default.**

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

(i) One hundred percent (100%) of the total amount of SAG disbursed under this Agreement;

(ii) A financial penalty of up to one percent (1%) of the SAG; and

(iii) All court costs and reasonable attorney's fees incurred by WEDC in terminating the Agreement and recovering the amounts owed by the Recipient under this provision.

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

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

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

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

(b) The Recipient is a Local Unit of Government as defined in Section 238.133(1)(b) of the Wisconsin Statutes.

(c) The Recipient is not in default under the terms of any loan, lease or financing agreements with any creditor where such default would have a material adverse effect on the Recipient's ability to fulfill their obligations under this Agreement.

(d) The Recipient is unaware of any conditions which could subject it to any damages, penalties or clean-up costs under any federal or state environmental laws which would have a material and adverse effect on the Recipient's financial ability to comply with this Agreement.

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

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

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

10. Wisconsin Public Records Law and Confidential Documents.

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

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

Recipient if the Recipient has indicated that such information or materials are sensitive and should be kept confidential. The Recipient must indicate that such materials are to be protected under this paragraph by marking the documents "confidential."

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

(i) Clearly mark the document as not subject to disclosure under the Public Records Law. If the Recipient contends the document is a trade secret under § 134.90, the Recipient shall specifically mark the documents as "Confidential Trade Secrets."

(ii) Provide WEDC with a concise, written explanation describing the basis for contending the document is not subject to the Public Records Law.

(iii) If applicable, provide WEDC with two copies of the document the Recipient contends is exempt – a clean copy and a copy with the exempted information redacted.

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

11. Additional Requirements.

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

(b) **Inspection.**

(i) WEDC and its respective agents, shall, upon 48 hours advance written notice to the Recipient, have the right to enter the Recipient's premises, during normal business hours, to inspect the Recipient's operations documentation relating to this Agreement, provided, however, that such access does not unreasonably disrupt the normal operations of the Recipient.

(ii) The Recipient shall produce for WEDC's inspection, examination, auditing and copying, upon reasonable advance notice, any and all records which relate to this Agreement.

(iii) WEDC reserves the right to conduct a physical site visit of the Project while the Project is ongoing and after Project completion.

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

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

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

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

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

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

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

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

16. **LIMITATION OF LIABILITY. RECIPIENT HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER FROM WEDC ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, OR DAMAGES OF ANY OTHER NATURE OTHER THAN ACTUAL DAMAGES INCURRED OR SUFFERED BY RECIPIENT.**

17. **Severability.** The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions, which shall remain in full force and effect to govern the parties' relationship.

18. **WEDC Not a Joint Venturer or Partner.** WEDC shall not, under any circumstances, be considered or represented to be a partner or joint venturer of the Recipient or any beneficiary thereof.

19. **Captions.** The captions in this Agreement are for convenience of reference only and shall not define or limit any of the terms and conditions set forth herein.

20. **No Waiver.** No failure or delay on the part of WEDC in exercising any power or right under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such power or right preclude any other exercise of any other power or right.

21. **Entire Agreement.** This Agreement embodies the entire agreement of the parties concerning WEDC's and the Recipient's obligations related to the subject of this Agreement. This Agreement may not be amended, modified or altered except in writing signed by the Recipient and WEDC. This Agreement supersedes all prior agreements and understandings between the parties related to the subject matter of this agreement.

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

WISCONSIN ECONOMIC DEVELOPMENT CORPORATION

By: _____ _____

Jake Kuester
Vice President, Credit & Risk

Date

CITY OF MENASHA

By: _____ _____

Don Merkes,
Mayor

Date

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

City of Menasha
140 Main St.
Menasha, WI 54952
Attn: Greg Keil

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

Wisconsin Economic Development Corporation
Division of Credit & Risk
P.O. Box 1687
Madison, WI 53701
Attn: Site Assessment Grant Program
Contract # SAG FY15-22934

EXHIBIT A

REQUEST FOR WEDC PAYMENT

Award Number: SAG FY15-22934	Rep: A. Rabin	Recipient: City of Menasha
FEIN # 39-6005525		Request Number:
Program: Site Assessment Grant		Award Type: Grant
Funding Period Covered by this Request From: To		

PROJECT EXPENSES INCURRED/PAID DURING THIS PERIOD

Budget Code	Description	WEDC Funding This Period	Match Funding This Period	Total This Period
0235	Environmental Site Work			
0110	Real Estate Acquisition			
TOTAL:				

PAYMENT/PROJECT EXPENSE/MATCH DESCRIPTION - Disbursement

Prior to the release of funds, the following requirements must be met (to be initialed by WEDC staff):

- The Recipient submitting to WEDC a report detailing the dollar amount and purpose of the Eligible Project Costs included in the request for disbursement as well as the dollar amount and purpose of each expenditure that the Recipient has contributed to the Project since the date of the previous disbursement of the SAG. _____
- The Recipient submitting to WEDC documentation of the Eligible Project Costs incurred against the SAG and Matching Funds, in an amount pro rata with the amount incurred against the SAG. Such documentation may include, but not be limited to, purchase orders or invoices. _____
- The Recipient must request all SAG funds no later than December 31, 2016. _____

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

_____ _____

Authorized Recipient Signature **Date**

_____ _____

WEDC Underwriter Date

_____ _____

WEDC Controller or Finance Department Date

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

EXHIBIT B
ECONOMIC DEVELOPMENT PROJECT PERFORMANCE REPORT
(SAMPLE ONLY)

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

PROJECT INFORMATION		
CONTRACT #: SAG FY15-22934 AWARDEE: City of Menasha PROJECT SITE: Menasha, WI	REPORTING DESIGNEE: Email:	REPORTING PERIOD:

PROJECT FUNDING	Planned	Actual
TOTAL PROJECT BUDGET	$325,000	
Awardee Direct Expenditures	please enter → amounts	$
Other Privately Funded Expenditures (investors, financial institutions)		$
Other Publicly Funded Expenditures (state, federal, other public aid)		$
TOTAL PROJECT EXPENDITURES		$
WEDC Funds Utilized	$150,000	

SUMMARY OF PROGRESS

Provide a comprehensive summary of project activities that have been accomplished as of the end of the reporting period. Please describe any progress towards project deliverables, as well as any factors that may have had an adverse effect on the project or slowed progress on expected performance. Briefly address project plans for the coming year including what steps will be taken to ensure performance within agreed-upon timelines. Attach additional pages if needed.

Percentage Completion of Project: _____%

What project activities have been completed as of the end of the reporting period, and which would not have occurred if not for WEDC assistance?

_____

What contract deliverables were completed during the reporting period? (Please provide an explanation for any deliverables that were not met)

_____

What actions are being taken within the next year to ensure contractual performance?

_____

GENERAL CERTIFICATIONS

No WEDC funds were utilized to outsource jobs from the state of Wisconsin.
☐ Agree ☐ Disagree (attach an explanation)

PRINCIPAL/PROJECT DIRECTOR AFFIDAVIT

As the authorized representative for this project, I hereby attest and certify that the information provided in this report is true and correct to the best of my knowledge.

_____
(SIGNATURE)

_____ _____
(PRINT NAME) **(EMAIL ADDRESS)**

rplid:

WEDC Review

PROGRESS ON ACTIVITIES AND DELIVERABLES

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

Scope of Work Item/Affirmative Covenant/Deliverable	Progress on Metric
Complete Project site acquisition	
Complete demolition and asbestos abatement	
Complete soil and groundwater investigation	

CAPITAL INVESTMENT	Planned	Actual
Total expenditures related to the purchase, acquisition, construction, replacement, rehabilitation or modernization of non-current, tangible, permanent fixed or capital assets.	$	Enter Totals Below

Investment Breakdown	
Land, Buildings & Real Estate	$ ____
Fixtures, Vehicles & Permanent Equipment	$ ____
Other Capital Assets	$ ____

Supporting Environmental Documentation

1. Please provide a comprehensive summary of the work that has been accomplished during the reporting period. This summary should also include any proposed changes to the project since it was presented in the application. The summary should be ½ to 1 page long.

2. Please provide photographs demonstrating the progress of the project since the last Semi-Annual Report was submitted.

3. Please submit to the SAG Program copies of any Project related documents that are submitted to the Wisconsin Department of Natural Resources, Petroleum Environmental Cleanup Fund Award, Agricultural Chemical Cleanup Program, or the United States Environmental Protection Agency. Examples of such reports include, but are not limited to, site investigation, remediation, monitoring, initial notice of release of contamination, and closure request reports. The submittal date and type of report should be identified on all copies of the above referenced requested government documents sent to WEDC.

4. Failure to submit required records may result in the denial of future payment requests.

DEVELOPMENT AGREEMENT
FOR RECEIPT AND REIMBURSEMENT OF SAG GRANT FUNDS

The parties to this Development Agreement are City of Menasha (herein "City") and WOW Logistics Company (herein "WOW"). The parties may be referred to herein individually as "party" or collectively as "parties".

Background Recitals

The City and WOW are making this Agreement in connection with WOW purchasing the property at 867 Valley Road, Menasha, WI (herein "Property") at a price of $175,000 constituting the "matching funds" required by the Wisconsin Economic Development Corporation ("WEDC") and the City obtaining a WEDC Site Assessment Grant ("SAG") on May 4, 2015 by letter attached as **Exhibit A** for building demolition and environmental site assessment which grant funds will be passed through to WOW for payment of out of pocket expenses, with the objective of clearing up environmental conditions to make the site ready and available for development (the "Project").

1. **Purpose of this Agreement**. The purpose of this Agreement is to allocate the responsibilities between the City and WOW to complete the Project. WOW needs assurance that the City has approved this Agreement before WOW can close the purchase of the Property. If WOW does not close the purchase of the Property, this Agreement will become null and void. The City will accept SAG grant funds from WEDC and transmit those funds (as a "pass through") for payment of SAG Services invoices either to WOW or WOW's Contractor as described below.

~~1.~~2. **WEDC Grant Application**. The terms and conditions of the WEDC grant application are made part of this Agreement and incorporated herein for reference and WOW is required to comply with those terms and conditions contained therein, subject to the further acknowledgement and agreement that the timing of developing improvements on this site will be determined by the needs of WOW in accordance with the needs of its tenants for expansion in the adjoining property which is presently fully occupied, and further acknowledging that when those needs arise, WOW must have this site available and ready for development and risk losing a large tenant and over 100 jobs in the City of Menasha currently associated with this site if expansion cannot be promptly provided.

~~2.~~3. **WEDC Grant Approval for SAG Services**. On May 4, 2015 WEDC approved the Application submitted by Key Engineering Group, Ltd. for SAG grant funds up to a total of $150,000 for demolition, asbestos abatement, and groundwater and soil investigation ("SAG Services") as further detailed in the Application naming the City as "Recipient" of the grant.

~~3.~~4. **City Approval of WEDC Contract**. The City will approve the WEDC "Site Assessment Grant Agreement" ("WEDC Agreement") and perform all obligations therein as "Recipient", subject to the condition that WOW closes the purchase of the Property.

~~4.~~5. **City Not to Incur Out of Pocket Expenditures**. The City does not agree to pay from its own funds any expenses, charges, or fees to WEDC, WOW, or the environmental consultant/contractor ("Contractor") that will be hired to perform the SAG Services. The City involvement will be internal administration only of the WEDC Agreement, recordkeeping, reporting, and disbursement requests required by the City as "recipient of the grant" and transmittal of those grant funds to WOW or the Contractor.

~~5.~~6. **WOW Purchase of Property**. WOW is evaluating its remaining conditions that need to be satisfied in order to proceed with closing the Offer to Purchase of the Property from the current owner Realty Opus, Inc. The closing is to occur on or before ~~September 20, 2015~~ October 31, 2015 at a price of $175,000.

~~6.~~7. **WOW to Hire Contractor to Perform SAG Services**. WOW will enter directly into a contract with Key Engineering as Contractor to perform the SAG Services. WOW, not the City, will be responsible to pay Key Engineering either with SAG grant funds received from the City or with WOW's own funds.

~~7.~~8. **WOW Holds Harmless and Indemnifies City**. WOW agrees to hold the City harmless and agrees to indemnify the City from any payment obligation associated with purchase of the Property, SAG Services, and any other subsequent environmental remediation expenses associated with the Property incurred after the purchase of the Property by WOW.

~~8.~~9. **Commencement and Payment for SAG Services**. WOW will arrange for its Contractor to commence SAG Services as soon as possible after closing the purchase of the Property. As invoices are received from the Contractor the City will apply to WEDC for grant funds reimbursements from WEDC. The City will transfer grant funds it receives either to WOW or the Contractor for payment of Contractor's invoices for SAG Services.

~~9.~~10. **WOW Cooperation for Record Keeping and Reports.** WOW will cooperate with the City with regard to the necessary assembly and submission of documents, records, and invoices associated with the SAG Services to enable the City to maintain required records, file reports, and file grant fund reimbursement requests with WEDC as required under the SAG Agreement.

~~10.~~11. **WOW/Permits/Compliance with Law.** WOW and/or its Contractor will apply for and obtain appropriate permits ~~from the City~~ for the demolition work to be done at the Property, and the demolition will be conducted, followed by appropriate disposition of the demolition rubble, all in accordance with City, ~~and~~ State, and Federal ordinances, laws, and regulations.

~~11.~~12. **Additional Environmental Property Remediation Expenses**. SAG grant funds do not apply to environmental remediation expenses. Such expenses will be the sole responsibility of WOW either with its own fund or from other grant funds awarded to WOW separately and independently of this Agreement.

~~12.~~13. **Final Objective/Site Ready for Development**. WOW will ultimately make the site ready for development. The City will not require a time limit for building or other improvements to be constructed on the site which will be left up to the business discretion of WOW in accordance with its needs. WOW will plant grass or make parking areas and manage storm water drainage facilities on the site until WOW is ready for further development.

Dated and effective, subject to the conditions stated herein, on the date that this Agreement is conditionally approved (subject to the purchase of the Property by WOW and City approval of the WEDC Agreement) by the City Council of the City of Menasha.

CITY OF MENASHA

BY: _____
Don Merkes, Mayor

WOW LOGISTICS COMPANY

BY: _____
Howard Kamerer, President and CEO