

Document Number	Document Title
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State of Wisconsin
Department of Natural Resources
Box 7921
Madison, WI 53707

**LAND USE AGREEMENT
(5 Year and Under)**

Section 23.09(2)(h), Wis. Stats.
Form 2200-118c
Rev. 12/2021

THIS LAND USE AGREEMENT (Agreement) is made by and between the State of Wisconsin Department of Natural Resources (Owner) and Friends of Lapham Peak Unit – Kettle Moraine State Forest, Inc. (Permittee).

RECITALS

WHEREAS, the Owner owns certain real property located in the **SW ¼ of the NW ¼ of Section 29, T. 7 N., R. 18 E., Town of Delafield, Waukesha County, Wisconsin**, that is further depicted in Exhibit A and referred to in this Agreement as the Premises;

WHEREAS, the Permittee desires to construct a new Lapham Lodge at Lapham Peak Unit of the Kettle Moraine State Forest, an approximately 5,000 square foot, one-story building, on a 40-acre site that will include a water well, service pipe, septic system, sanitary service pipe, culverts, concrete sidewalk, gravel path, new asphalt pavement, flagpole, site restoration, fuel and service line, and all related appurtenances; and;

WHEREAS, the Owner is willing to permit said construction under the terms of this Agreement and will assume ownership of the constructed building upon project completion providing said building has been built as per approved building specs;

WHEREAS, the Permittee is financially responsible for all construction costs including all cost overruns. The Owner is not responsible for any costs associated with this project unless otherwise outlined;

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the Owner and Permittee agree to the following terms and conditions:

- Purpose.** Owner agrees that Permittee may construct a new Lapham Lodge at Lapham Peak, an approximately 5,000 square foot, one-story building on a 40-acre site that will include a water well, service pipe, septic system, sanitary service pipe, culverts, concrete sidewalk, gravel path, new asphalt pavement, flagpole, site restoration, fuel and service line, and all related appurtenances. Permittee is responsible for complying with Construction Specific Award Conditions from the U.S. DEPARTMENT OF COMMERCE (DOC) Economic Development Administration, included here as Exhibit B.
- Parties.** The terms Owner and Permittee, when used herein, shall mean either singular or plural, as the case may be, and the provisions of this Land Use Agreement shall bind the parties mutually, as well as their employees, agents, contractors and legal representatives.

Recording Area
Return: Department of Natural Resources Bureau of Facilities & Land - LF/6 P.O. Box 7921 Madison, WI 53707-7921 (LaTS: 39487)
Parcel Identification Number (PIN): DELT 0834995

3. **Term.** This Agreement shall be in effect for a five-year period commencing upon date of execution and ending September 30, 2027, or upon acceptance of the completed project by the Owner, whichever comes first.
4. **Termination.** The Owner may terminate this Agreement by providing 90 days' written notice to Permittee if the Owner determines that the continued use of the Premises by the Permittee will interfere with the future management objectives of the Owner. In the event of a breach of any term or condition of this Agreement, the Owner may terminate this Agreement upon 90 days' written notice to the Permittee if, after reasonable effort by Permittee to correct the default, it is determined that conditions still exist contrary to this Agreement.
5. **Non-Assignment.** Neither this Agreement nor any right or duty in whole or in part by the Permittee under this Agreement may be assigned, delegated or subcontracted without the prior written consent of the Owner.
6. **Maintenance.** The Permittee shall maintain the Premises in a safe condition at all times.
7. **No Parking or Storage.** Permittee shall ensure that its contractor submits and receives approval for a contractor parking and storage plan. Said plan must be approved by the Property Manager prior construction.
8. **Construction.** The Permittee has or shall submit for approval to the Owner a plan describing the intended placement or construction of any items on the Premises. No deviations from this approved plan shall be allowed except with the prior written approval of the Owner. Within ten (10) days after the termination or expiration of this Agreement, the Permittee shall remove all temporary construction-related structures placed on the Premises. If the Permittee's structures remain on the property more than 10 days after termination or expiration, (1) title to the structure(s) shall vest in the Owner, or (2) the Owner may remove the structure and the Permittee shall reimburse Owner for all removal costs within thirty (30) days of billing.
9. **Signage.** Any signs, postings and other markers proposed by Permittee to be located on the Premises shall be approved by the Owner prior to placement and adhere to guidelines provided in Exhibit B.
10. **Vegetative Management.** No cutting or trimming of trees shall be done without the prior written approval of the Owner, except for dead and down trees that obstruct passage of the Premises may be removed without such written approval. Any trees removed from the Premises remain the property of the Owner. All trees having commercial value including firewood shall be cut in standard lengths and be piled at a location on the Premises designated by the Owner. All stumps, slash, waste materials and other debris shall be disposed of by the Permittee as directed by the Owner. Use of pesticides and herbicides shall only be allowed with the prior written approval of the Owner. Any pesticides or herbicides used as part of a management plan must conform to the Forest Stewardship Council list found at <https://ic.fsc.org/en/our-impact/program-areas/forest-program/pesticides>. Permittee shall report to the Owner at least annually, the chemicals that are applied on the Premises including the date, product trade name, active ingredient(s) and corresponding CAS number(s), purpose, rate, location with a map, total area treated, and total amount of chemical used.
11. **Public Use.** The Permittee understands that the Premises are open to the public. The construction site shall not be open to the public and must be secured to ensure safety and no public access. Once open upon completion, the Premises are open for use to all members of the general public without regard to race, creed, marital status, color, sex, national origin, age, handicap, ancestry, sexual orientation, arrest record or conviction record.
12. **Indemnity.** The Permittee agrees to save, keep harmless, defend and indemnify the Owner and all its officers, employees and agents, against any and all liability claims, costs of whatever kind and nature, for injury to or death of any person or persons, and for loss or damage to any property (state or other) occurring in connection

with or in any way incident to or arising out of the occupancy, use, service, operation or performance of work in connection with this Agreement or with any actions or omissions of Permittee's employees, agents or representatives.


13. **Prohibitions.** The Permittee shall not allow grazing on the Premises. The Permittee shall not disturb or harass wildlife or disturb wildlife habitat on the Premises.
14. **NR 45 Enforcement.** The Owner retains management, supervision and control over the Premises for the purpose of enforcing pertinent state laws needed to protect the Premises, its natural resources or the general public, including Chapter NR 45, Wis. Admin. Code, which governs the conduct of visitors to state lands.
15. **Hunting and Fishing.** This Agreement does not give the Permittee, its guests, members or agents, any rights pertaining to hunting, fishing, or trapping. These rights remain under the control of the State of Wisconsin.
16. **Renewal.** This Agreement may be extended at the Owner's sole discretion in accordance with provisions contained in Exhibit B. If Permittee seeks a renewal based on the same terms and conditions, it must submit a written request to the Owner at least 90 days prior to the expiration of this Agreement.
17. **Non-Discrimination.**
 - a) In connection with the performance of work under this contract, the Permittee agrees not to discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental handicap as defined in s. 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, the contractor further agrees to take affirmative action to ensure equal employment opportunities. The Permittee 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.
 - b) If the Permittee employs 50 or more employees and engages in work on the Premises that is estimated to cost fifty thousand dollars (\$50,000) or more, Permittee acknowledges they have a written affirmative action plan in place and upon request will provide it to the Owner.
18. **Entire Agreement.** This Agreement, together with the specifications in any required plan and its referenced parts and attachments, shall constitute the entire agreement and previous communications or agreements pertaining to this Agreement are hereby superseded. Any contractual revisions including cost adjustments and time extensions must be made by an amendment to this Agreement or other written documentation, signed by both parties at least 30 days prior to the ending date of this Agreement.
19. **Notices.** All notices to either the Owner or the Permittee shall be delivered in person or sent by certified mail, postage prepaid, return receipt requested, to the other party to the address listed below or to the address to which the other party's property tax bills are sent. Either party may change its address for notice by providing written notice to the other party.
 - a) To the Owner: Wisconsin Department of Natural Resources, Bureau of Facilities and Lands, 101 South Webster Street, Madison, WI 53707.
 - b) To the Permittee: Friends of Lapham Peak Unit-Kettle Moraine State Forest, Inc., W329 N846 County Road C, Delafield, WI 53018.

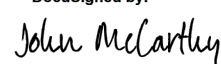
20. **Invalidity.** If any term or condition of this Agreement shall be deemed invalid or unenforceable, the remainder of this Agreement, or the application of the term or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and condition shall be valid and enforceable to the fullest extent permitted by law.
21. **Enforcement.** It is intended that this Agreement shall be construed as being adequate and legally enforceable. Enforcement of this Agreement may be by proceedings at law or in equity against any person or persons violating or attempting or threatening to violate any term or condition in this Agreement, either to restrain or prevent the violation or to obtain any other relief.
22. **Headings.** The headings of clauses contained in this Easement are used for convenience and ease of reference only and do not limit the scope or intent of the clause.
23. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Wisconsin.
24. **Additional Conditions.** Additional terms and conditions that apply to this Agreement are enumerated below:
1. Prior to Permittee's use, Permittee will provide the Owner with a Certificate of Insurance, demonstrating adequate liability coverage and naming the Owner as an additional insured.
 2. Design
 - a. Plan Review & Approval
 - i. The Permittee shall send three (3) sets of WI Engineer or Architect stamped construction documents and specifications to property manager for review.
 - ii. The Permittee shall send one (1) set electronically of WI Engineer or Architect stamped construction documents to DNR Parks Central Office for Parks, Facility & Lands, and DOA review.
 - iii. The Permittee shall send the requested number of drawings to the Department of Commerce for review and approval.
 - iv. Note that all plans should be sent out at the same time so that all reviews are performed at the same time.
 - v. If required by DOA, the project shall be approved by the State Building Commission.
 - b. Parking
 - i. The Permittee's architecture and engineering team must confirm in writing the number of standard and accessible parking stalls needed for the project. Include a site map of current and any additional parking stalls.
 - c. As-Built Drawings
 - i. Upon completion of the project the Permittee shall turn over to the DNR Construction Representative two (2) sets of final "as-built" drawings in both paper and electronic format.
 - d. Value Engineering
 - i. Any value engineering done to the project after approval of the 95% completion drawings must be reviewed and approved by DNR Construction Representative.
 - e. Furniture, Fixtures & Equipment (FFE)
 - i. FFE included in the project must be outlined in writing, included in the budget, reviewed and approved by Owner prior to construction start. Specific FFE models/manufacturers etc. must be approved by Owner prior to purchase.
 - f. Building Signage
 - i. All building signage shall be included in construction documents and approved by Owner.
 - g. Names
 - i. Any names will be chosen by Owner with input from the Permittee.
 - h. Landscape/Planting Plan

- i. The Permittee shall submit detailed landscaping and planting plans as part of the Design Plan Review and Approval process.
- 3. Construction
 - a. Project Oversight
 - i. Project oversight shall be the sole responsibility of the Permittee. DNR Construction Representative shall be included in all project meetings and construction decision making. Owner reserves the right to deny any construction changes or modifications to the approved project plans.
 - b. Change Orders
 - i. All change orders and any cost implications must be reviewed and approved by the DNR Construction Representative prior to implementation.
 - ii. All change orders or cost adjustments shall be the responsibility of the Permittee.
 - c. Permits
 - i. It shall be the sole responsibility of the Permittee to obtain all necessary permits and/or approvals for this project.
 - d. Occupancy, Inspections & Code Compliance
 - i. It shall be the sole responsibility of the Permittee to obtain all necessary occupancy permits, inspections and assurance of code compliance prior to building turnover to Owner.

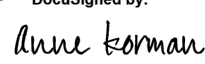
END OF TERMS AND CONDITIONS

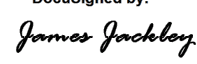
IN WITNESS WHEREOF, the Permittee and Owner hereby accept and consent to the terms and conditions of this Agreement.

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John Hillmer, President, Friends of Lapham Peak Unit – Kettle Moraine State Forest, Inc. Date

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John McCarthy, Board Member, Friends of Lapham Peak Unit – Kettle Moraine State Forest, Inc. Date

State of Wisconsin
Department of Natural Resources
For the Secretary

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5F280F56A8274F6... 2/23/2023 | 8:54 AM CST
Anne Korman
Property Manager Date

DocuSigned by:

600D6A1EC92244E... 2/17/2023 | 5:36 PM CST
James Jackley
SER Real Estate Specialist Date

*please print name

This instrument drafted by:
State of Wisconsin
Department of Natural Resources

Exhibit A

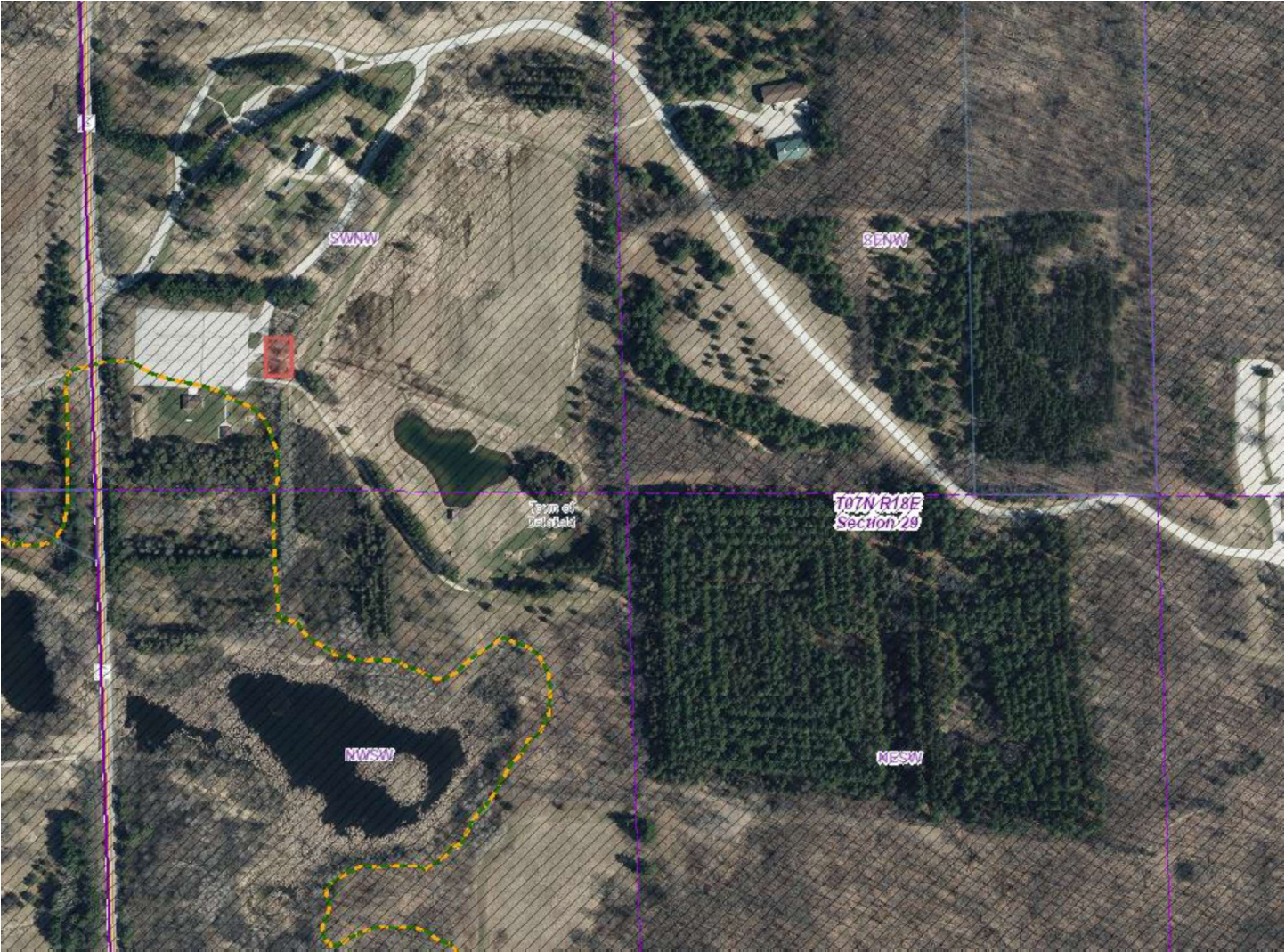


Exhibit B

EDA grant Site Specific Award Conditions

SPECIFIC AWARD CONDITIONS
U.S. DEPARTMENT OF COMMERCE (DOC)
Economic Development Administration (EDA) (“Government”)

CONSTRUCTION PROJECTS: Public Works and Economic Adjustment Assistance
under Sections 201 and 209 of the Public Works and Economic Development Act (PWEDA) as
amended, 42 U.S.C. §§ 3141 and 3149

Project Title: Lapham Lodge	
Recipient Names:	
<ul style="list-style-type: none"> • Friends of Lapham Peak Unit – Kettle Moraine State Forest, Inc. • Wisconsin Department of Natural Resources (co-applicant) 	
Award Number: 06-79-06412	URI: 119858

1. This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the *Authorized Scope of Work*. All work on this Project should be consistent with this *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized by a fully executed Form CD-451.

The *Authorized Scope of Work* for this Award is as follows:

The Friends of Lapham Peak, Delafield, WI project will construct a new Lapham Lodge at Lapham Peak, a 4975 SF one story building on an 80-acre site that will include a water well, 25 LF of 2-inch water service pipe, septic system, 190 LF of 6-inch sanitary service pipe, 160 LF of 4-inch to 12-inch culverts, 5-foot wide to 12-foot wide x 200 feet long concrete sidewalk, 15-foot wide x 100 feet long gravel path, adding 440 square feet of new asphalt pavement, removing 1800 square feet of existing asphalt pavement, flagpole, site restoration, propane tank and service line, and all related appurtenances. All dimensions are approximate.

2. RECIPIENT INFORMATION:

Louise Borzynski President Phone: 262-646-8583 Email: lborzynski10@gmail.com	Friends of Lapham Peak Unit – Kettle Moraine State Forest, Inc. W329N846 County Road C Delafield, WI 53018-2504
Jennifer Gihring Federal Aid Coordinator Phone: 608-264-6138 Email: Jennifer.gihring@wisconsin.gov	Wisconsin Department of Natural Resources 101 S Webster St PO Box 7921 Madison, WI 53707-7921

3. EDA INFORMATION:

Roles and Responsibilities	EDA Project Team
<u>Chicago Regional Office Management</u>	

<u>Grants Officer</u> : Authorized to award, amend, suspend, and terminate financial assistance awards.	Susan M. Brehm Regional Director Phone: 312-789-9749 Email: sbrehm@eda.gov
<u>Program Officer</u> : Oversees the programmatic aspects of this Award.	Dennis Foldenauer Area Director Phone: 312-882-2382 Email: dfoldenauer1@eda.gov
<u>General Project Management</u>	
<u>Project Officer</u> : Responsible for day-to-day administration of this Award; liaises with Recipient and receives all reports and payment requests.	Ngozi Lopez Civil Engineer Phone: 773-758-1780 Email: nlopez@eda.gov

4. ADDITIONAL INCLUDED DOCUMENTS:

In addition to the regulations, documents, or authorities incorporated by reference on the Financial Assistance Award (Form CD-450), the following additional documents are included with and considered to be part of the Award's terms and conditions:

- A. Recipient's final completed application (this item not enclosed in the Award package)
- B. EDA Standard Terms and Conditions for Construction Projects
- C. Any other plans, schedules, or documents included in the original application, including subsequently submitted documentation, attached hereto, not already captured in other documents (if applicable, named in Attachment 1)

If there is a discrepancy among these documents, the Specific Award Conditions (this document) and any associated attachments shall control.

5. PROJECT DEVELOPMENT TIME SCHEDULE: The Recipient agrees to the following project development time schedule:

Item	Due Date
Return of executed Financial Assistance Award	30 days from <i>Date of Award</i>
Return of OIG Fraud Awareness Training Certificate	60 days from <i>Date of Award</i>
Start of Construction	18 months from <i>Date of Award</i>
Construction Completed	42 months from <i>Date of Award</i>
Authorized Award End Date	46 months from <i>Date of Award</i>

The Recipient shall diligently pursue the development of the Project so as to ensure completion within this time schedule. Moreover, the Recipient shall promptly notify EDA in writing of any event that could substantially delay meeting any of the proscribed time limits for the Project as set forth above. The Recipient further acknowledges that failure to meet the

development time schedule may result in EDA's taking action to terminate the Award in accordance with the regulations set forth at 2 C.F.R. §§ 200.339 – 200.343.

All work, including any construction activities, under this Award must be completed by **May 31, 2027** to allow for closeout and final disbursement prior to **September 30, 2027**. By operation of the Account Closing Statute (31 U.S.C. §§ 1552(a)), on September 30, 2027 any remaining balances will be cancelled and no longer available for expenditure for any purpose. Nothing in this paragraph is intended to alter the Project Development Time Schedule set forth above.

6. PROJECT REPORTING AND FINANCIAL DISBURSEMENTS:

- A. Award Disbursements: **Reimbursement basis only**. EDA will make disbursements under this Award on a reimbursement basis only, based on actual costs incurred, after all preconditions set forth in these Specific Award Conditions have been met.

The "Request for Reimbursement" (Form SF-271 or any successor form) is used to request a disbursement, which must be approved in writing by the Project Officer.

Please note that prior to the initial disbursement, the Recipient must complete the Form SF-3881 (or any successor form) "ACH Vendor/Miscellaneous Payment Enrollment Form" and submit it to NOAA's Accounting Office by FAX at (301) 528-3675. (FAX is required to secure confidentiality of sensitive information.) The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

- B. Project Progress Reports: The Recipient shall submit project progress reports to the Construction Project Manager on a quarterly basis for the periods ending **December 31, March 31, June 30, and September 30**, or any portion thereof until the final grant payment is made by EDA. Reports should be submitted using the approved EDA template, which will be provided by the Construction Project Manager and discussed during the project kick-off meeting. Reports are due no later than 30 days following the end of the quarterly period. The final report is due no later than 120 days after the Authorized Award End Date.
- C. Financial Reports: The Recipient shall submit a "Federal Financial Report" (Form SF-425) on a semi-annual basis for the periods ending **March 31, and September 30**, or any portion thereof, for the entire Award period. Reports are due no later than 30 days following the end of the semi-annual period. The final report is due no later than 120 days after the Authorized Award End Date.

7. **ALLOWABLE COSTS AND AUTHORIZED BUDGET**: Total allowable costs will be determined at the conclusion of the Award period in accordance with the administrative authorities applicable pursuant to the *Financial Assistance Award* (Form CD-450), including the applicable *Cost Principles* and *Uniform Administrative Requirements*, after final financial documents are submitted.

Except as otherwise expressly provided for within these Specific Award Conditions, the Investment Rate for the Award (*see* 13 C.F.R. §§ 300.3 and 301.4) shall apply to allowable

costs incurred by the Recipient in connection with the Project. The Federal share in the allowable costs shall be based on the Investment Rate (*see* 2 C.F.R. § 200.41). In the event of an underrun in total allowable costs for this Project, the Federal share of allowable costs shall be determined by the Investment Rate established in the Form CD-450, or previously executed Form CD-451. The Federal share of total allowable costs shall not exceed the dollar amount of the original Award and subsequent amendments, if any, absent a determination by the Assistant Secretary.

A. Under the terms of the Award, the total approved Authorized Budget is:

Federal Share (EDA)	\$1,299,900
Non-Federal Matching Share	\$669,600
Total Project Cost	\$1,969,500

B. Under the terms of the Award, the total approved Line Item Budget is:

COST CLASSIFICATION	
Administrative and legal expenses	\$8,400
Land, structures, rights-of-way, etc.	-
Relocation expenses and payments	-
Architectural and engineering fees	\$64,500
Other architectural and engineering fees	\$8,500
Project inspection fees	\$8,800
Site work	-
Demolition and removal	-
Construction	\$1,708,400
Equipment	-
Miscellaneous	-
Contingencies	\$170,900
Total Project Costs	\$1,969,500

8. **MATCHING SHARE:** The Recipient agrees to provide the Recipient's Non-Federal Matching Share contribution for eligible Project expenses in proportion to the Federal share requested for such Project expenses (*see* 13 C.F.R. § 300.3). The Recipient also certifies that, in accepting the Financial Assistance Award, the Recipient's Matching Share of the Project costs is committed and unencumbered, from authorized sources, and shall be available as needed for the Project. The Recipient further acknowledges that, prior to EDA authorizing the construction contract award, the Recipient will provide evidence satisfactory to the Government that all Matching Share funds necessary to complete the Project are available and unencumbered.
9. **REFUND CHECKS, INTEREST, OR UNUSED FUNDS:** The U.S. Department of the Treasury has given EDA two options for having payments deposited to EDA's account:

- A. The first option is the pay.gov website. This option allows the payee to pay EDA electronically. The payee will have the option to make a one-time payment or to set up an account to make regular payments.
- B. The second option is Paper Check conversion. All checks must identify on their face the name of the DOC agency funding the award, award number, and no more than a two-word description to identify the reason for the refund or check. A copy of the check should be provided to the EDA Construction Project Manager. This option allows the payee to send a check to NOAA's Accounting Office, which processes EDA's accounting functions at the following address:

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Finance Office, AOD, EDA Grants
20020 Century Boulevard
Germantown, MD 20874

The accounting staff will scan the checks into an encrypted file and transfer to the Federal Reserve Bank, where the funds will be deposited in EDA's account. While this process will not be an issue with most payees, there are occasionally issues for entities remitting funds to EDA via check. If the Recipient is remitting funds to EDA via check, it should make note of the following:

- If a check is sent to EDA, it will be converted into an electronic funds transfer (EFT) by copying the check and using the account information to electronically debit the account for the amount of the check. The debit will usually occur within 24 hours and will appear on any regular account statement.
- EDA will not return an original check; the original will be destroyed and a copy will be maintained by EDA. If the EFT cannot be processed for technical reasons, the copy will be processed in place of the original check. If the EFT cannot be completed because of insufficient funds, EDA will charge a one-time fee of \$25.00, which will be collected by EFT.

Regardless of the method used, the Recipient shall contact the Project Officer prior to processing any payments as described in this Specific Award Condition.

10. USEFUL LIFE: The useful life of this project is hereby determined to be 20 years from the date of construction completion.

11. GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION: Department of Labor regulations set forth in 41 C.F.R. § 60-4 establishes 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 C.F.R. § 60-4 from contractors and subcontractors employed in the completion of the Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. § 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%**

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

The goal for the participation of minorities in the trade area shall be as follows until further notice: **8.0%**

Goals for minority participation shall be as prescribed by Appendix B-80 of the Federal Register notice published October 3, 1980 at 45 Fed. Reg. 65984–65991, or any subsequently published amendments. The Recipient shall include the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” (or cause them to be included, if appropriate) in all Federally-assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 C.F.R. § 60-4.6

12. PROCUREMENT: The Recipient agrees that all procurement transactions shall be in accordance with the Uniform Administrative Requirements at 2 C.F.R §§ 200.317 through 200.327 and EDA regulations contained in 13 CFR Chapter III, especially 13 CFR part 305 and 13 CFR § 302.17 (“Conflicts of Interest”).

13. ARCHITECT/ENGINEER AGREEMENT: Prior to advertisement for construction bids, the Recipient must submit to the Government, an Architect/Engineer Agreement that meets the requirements in EDA’s Standard Terms and Conditions for Construction Projects, as well as the competitive procurement standards at 2 C.F.R §§ 200.317 through 200.327. The fee for basic Architect/Engineer Services will be a lump sum or an agreed maximum, and no part of the fees for other services will be based on a cost-plus-a-percentage-of-cost or a cost using a multiplier.

14. EVIDENCE OF GOOD TITLE: In accordance with Section H of EDA’s Standard Terms and Conditions for Construction Projects, prior to advertising for construction bids, the Recipient shall provide an opinion of counsel, satisfactory to the Government, that the Recipient has acquired good and marketable title to land, free of all encumbrances, as well as rights-of-way and easements necessary for the completion of the project, or of a long-term leasehold interest in accordance with 13 C.F.R. Part 314.

15. NONRELOCATION: In signing this Award, the Recipient attests that the EDA funded project will not be used to induce the relocation or the movement of existing jobs from one region to another region by a primary beneficiary of the Award (see 13 C.F.R. § 300.3). If EDA determines that its assistance was used for such relocation purposes, EDA reserves the right to pursue all rights and remedies, including suspension of disbursements and termination of the Award by agreement or unilaterally for noncompliance; disallowance of any costs attributable, directly or indirectly, to the relocation; and the recovery of the Federal share.

For purposes of ensuring that EDA assistance will not be used for relocation purposes, each applicant must inform EDA of all employers that constitute primary beneficiaries of the

Project. EDA considers an employer to be a “primary beneficiary” if, in seeking EDA assistance, the applicant estimates that such employer will create or save 100 or more permanent jobs as a result of the investment assistance and specifically names the employer in its application. In smaller communities, EDA may consider a primary beneficiary to be an employer of 50 or more permanent jobs so identified.

- 16. PERFORMANCE MEASURES:** The Recipient agrees to report on program performance measures and program outcomes in such a form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993, and the Government Performance and Results Modernization Act of 2010.

At this time, all Awards for construction assistance require Recipients to report actual job creation/retention and private investment leveraged three, six, and nine years after an EDA investment. Recipients are to retain sufficient documentation so that they can submit these required reports. Failure to submit the required reports can adversely impact the Recipient's likelihood of securing future funding from EDA.

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 staff will notify the Recipient in writing within a reasonable period prior to the deadline for submission of the reports with information on how this data should be submitted. The Recipient should ensure adequate and sufficient records are kept to support the methodology for computing initial job and private investment estimates and all subsequent actual performance data calculations so that this information can be made available to EDA during audits or performance site visits.

- 17. REAFFIRMATION OF APPLICATION:** The Recipient acknowledges that its application for this Award may have been submitted to the Government and signed by the Recipient, or by an authorized representative of the Recipient, electronically. Regardless of the means by which the Recipient submitted its application to the Government or whether the Recipient or an authorized representative of the Recipient submitted its application to the Government, the Recipient 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; and c) 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.

- 18. EDA PROJECT SIGN:** The Recipient must erect and maintain in good condition and repair a sign or signs in accordance with current EDA 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.

19. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE:

- A. General Reporting Requirement. If the total value of the Recipient's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Award, then the Recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph b of this condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.
- B. Proceedings About Which a Recipient Must Report. The Recipient must submit the information required about each proceeding that:
1. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
 2. Reached its final disposition during the most recent five-year period; and
 3. Is one of the following:
 - a. A criminal proceeding that resulted in a conviction, as defined in paragraph e of this award term and condition;
 - b. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
 - c. An administrative proceeding, as defined in paragraph e of this condition, that resulted in a finding of fault and liability and the Recipient's payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - d. Any other criminal, civil, or administrative proceeding if:
 - i. It could have led to an outcome described in paragraph B.3.a, b, or c of this condition;
 - ii. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on the Recipient's part; and
 - iii. The requirement in this condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. Reporting Procedures. The Recipient must enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph b of this condition. The Recipient does not need to submit the information a second time under assistance awards if it already provided the information through SAM because it was required to do so under Federal procurement contracts that the Recipient was awarded.

D. Reporting Frequency. During any period of time when the Recipient is subject to the requirement in paragraph a of this condition, it must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding that it has not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about criminal, civil, and administrative proceedings.

E. Definitions. For purposes of this condition:

1. “Administrative proceeding” means a nonjudicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
2. “Conviction,” for purposes of this condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
3. Total value of currently active grants, cooperative agreements, and procurement contracts includes
 - b. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - c. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

20. WASTE, FRAUD, AND ABUSE: Consistent with 2 CFR part 200, Recipient personnel responsible for managing the Recipient’s finances and overseeing any contractors, sub-contractors or sub-grantees, will complete the training entitled “Compliance with EDA American Rescue Plan Program Requirements” and return the signed Certificate of Training Completion (page 38 of the training) to EDA within 60 days of receipt.

Further, the Recipient will monitor award activities for common fraud schemes, such as:

- false claims for materials and labor,
- bribes related to the acquisition of materials and labor,
- product substitution,

- mismarking or mislabeling on products and materials, and
- time and materials overcharging.

Should the Recipient detect any suspicious activity, the Recipient will contact EDA staff listed above and the Office of Inspector General, as indicated at <https://www.oig.doc.gov/Pages/Contact-Us.aspx>, as soon as possible.

21. LEAD RECIPIENT DESIGNATION AND OBLIGATIONS: This Award is made to multiple Recipients as identified in the Financial Assistance Award Form CD-450 to which these Specific Award Conditions are attached. EDA requested that one of the Recipients be designated as the lead recipient to facilitate the administration of this Award. The Recipient named first in the Recipient name block on the CD-450 has agreed to be designated as lead recipient. The co-Recipients acknowledge, agree with and consent to this designation. The co-Recipients agree that all funds available pursuant to this Award will be disbursed by EDA to the Lead Recipient. The Lead Recipient agrees to be responsible for the further disbursement of all such funds received from EDA to the co-Recipients in accordance with the Budget attached to this Award. Such disbursement by the Lead Recipient to the co-Recipients will be made in accordance with all applicable Federal requirements as identified and set forth on the Financial Assistance Award Form CD-450. The Lead Recipient further agrees to be responsible for accumulating all necessary information for and the submission of all reports required to be submitted to EDA pursuant to this Award.

22. RECORDED MORTGAGE OR COVENANT OF USE: To better memorialize and protect the Federal Interest in real property improved, in whole or in part, with the funds made available under this Award, the Recipient shall, prior to advertising for construction bids, execute and cause to be recorded a first priority mortgage lien or, based on a legal opinion demonstrating that state law prohibits mortgaging state property, a covenant of use in favor of EDA, which shall be satisfactory to EDA in form and substance. Upon request by EDA, the Recipient shall furnish an opinion of counsel for the Recipient that the mortgage or covenant of use is a valid and enforceable agreement according to its terms and that it has been duly recorded in the appropriate office where mortgages or covenants of use are recorded for the applicable jurisdiction.

The Recipient further agrees that:

- A. Except as provided in 13 C.F.R. § 314.3(b), (c) or (d), whenever, during the expected useful life of the project, any property acquired or improved in whole or in part with grant assistance is disposed of, or no longer used for the authorized purpose of the project, the Government must be compensated by the Recipient for the Federal Share of the value of the property.
- B. If property is disposed of or encumbered without EDA approval, EDA may assert its interest in the property to recover the Federal Share of the value of the property for the Government. EDA may pursue its rights under both paragraphs (a) and (b) of this section to recover the Federal Share, plus costs and interest.

- C. The Federal Share of the value of the property is that percentage of the current fair market value of the property attributable to EDA's participation in the project after deducting actual and reasonable fix-up and marketing expenses, as more fully defined at 13 C.F.R. § 314.5. The Federal Share excludes that value of the property attributable to acquisition or improvements before or after EDA's participation in the project and not included in project costs.

The mortgage or covenant of use must remain in effect throughout the useful life of the Project.

- 23. INCIDENTAL DISCOVERY:** During construction of the EDA project, if any prehistoric or historic archaeological artifacts or human remains are uncovered during construction, demolition, or earthmoving activities, or if the scope of work changes in any way, the recipient shall immediately stop work and notify EDA along with the Forest County Potawatomi Community of Wisconsin Tribal Historic Preservation Office and the Wisconsin State Historic Preservation Offices immediately. The recipient acknowledges that failure to do so may result in the disallowance of project costs or termination of the Award.
- 24. U.S. ARMY CORPS OF ENGINEERS:** Prior to awarding the construction contract, the Recipient shall provide evidence satisfactory to the Government that it has obtained a U.S. Army Corps of Engineers permit or that one is not necessary for the project. The Recipient shall comply with any conditions of said permit.
- 25. U.S. FISH AND WILDLIFE SERVICE:** Prior to advertising for bids for the EDA Project, the Recipient shall provide evidence satisfactory to EDA that it will comply with the guidance of the U.S. Fish and Wildlife Service outlined in the March 21, 2022, letters and any further guidance received:

Follow guidance on when to schedule activities or implement avoidance and minimization measures to reduce impacts to migratory birds and the Bald and Golden eagle, review the PROBABILITY OF PRESENCE SUMMARY included in the USFWS IPaC resource list to see when these birds are most likely to be present and breeding in the EDA Project area.