



PARTNER AGREEMENT CONTRACT # FY13-21830
BETWEEN
THE WISCONSIN ECONOMIC DEVELOPMENT CORPORATION
AND
FOREIGN TRADE ZONE #41 – PORT OF MILWAUKEE

This Agreement is between the Wisconsin Economic Development Corporation (WEDC) and Foreign Trade Zone #41 (Administrator), also known as the Port of Milwaukee. In consideration for the promises and covenants in this Agreement, WEDC and Administrator agree as follows:

- 1. Contract for Services.** Subject to the terms and conditions set forth in this Agreement, and in Wisconsin law, WEDC will provide, to Administrator, funds for reimbursement of actual eligible expenses incurred by approved companies up to \$50,000 for completion of its services under this Agreement. The goal of this proposed grant program, and the partnership between the WEDC and the Administrator, is to increase the competitiveness of Wisconsin companies in the global marketplace by promoting the use of the Foreign Trade Zone benefits through financial assistance. Companies may apply to become Foreign Trade Zone operators. The grant will be awarded to Wisconsin companies to accomplish two separate functions: (1) to help offset costs for a company applying for new or expanded Foreign Trade Zone status, and (2) to help offset costs of a current Foreign Trade Zone operator for attending ongoing staff education. The maximum amount a company is eligible to receive between the two functions is a total of \$10,000 per WEDC fiscal year which is from July 1 – June 30. The period of availability will begin upon final approval of this agreement and end on June 30th, 2014.
- 2. Allocation of Funds and Administrator's Obligations.** To assist WEDC in achieving its economic development mission, WEDC and Administrator agree to the following:
 - (a) Administrator shall manage all components of the Initiative from application, implementation, reimbursement, and reporting:
 - (i) Applications - To qualify for funding, the Wisconsin company must:
 1. Be an established business operating in Wisconsin that manufactures, processes, assembles and/or distributes a product or performs a service with a potential to be exported. The company does not need to be headquartered in Wisconsin but must have export-related operations located within the state.
 2. Provide assurance that at least 51% of manufactured value of the product or of the performance value of the service is provided in Wisconsin.
 3. Comply with all program requirements from application to reporting.
 4. The company will certify to the Administrator that it meets all of the application requirements.

- (ii) Reporting Requirements - Reports are to be submitted by December 30, 2013 and the final report in no later than August 31, 2014.
 - 1. The name of the company
 - 2. How much and for what the grant was awarded
 - 3. If any of these companies were owned by minorities, women, veterans, or by individuals who have a disability
 - 4. The location of the company by city, county, and zip
 - 5. The industry of the company including the NAICS number
 - 6. Documentation that the awarded funds were disbursed to the company
- (b) The Administrator's marketing goal is to acquire 3-4 new Foreign Trade Zone operators per year. Funds not used to assist a company applying for new or expanded status may be applied to the secondary function of continuing education.

Primary Function- Foreign Trade Zone Application/Activation/Expansion expenses

- (i) To help Wisconsin companies offset costs associated with establishing a new Foreign Trade Zone site or expanding current Foreign Trade Zone operations to encourage exporting and improve competitiveness in the global market.
 - (ii) In order to be eligible, a company must submit an application to become a Foreign Trade Zone approved site, or must be expanding their current Foreign Trade Zone operations.
 - (iii) The maximum grant for an individual company is \$10,000 per fiscal year for eligible expenses, and it will require a 25% company match portion that must also be obtained with eligible expenses.
 - 1. Eligible expenses are limited to the following items:
 - (a) Grantee application fee
 - (b) Foreign Trade Zones Board application fee (if applicable)
 - (c) 1st year's grantee fee
 - (d) Security upgrades required for activation with Customs and Border Protection
 - (e) Inventory software upgrades required for activation with Customs and Border Protection
 - 2. Foreign Trade Zone Consulting fees do not qualify as an eligible expense and may not be used to satisfy a company's match requirement.
- (c) Secondary Function- Continuing Training and Education for Current Operators
- (i) To provide financial assistance to current Foreign Trade Zone operators for continuing staff education.
 - (ii) The maximum grant amount a company may receive for this portion is \$1,000 per fiscal year and it will require 25% company match portion that must be obtained with other eligible expenses.
 - (iii) The total amount of this portion of the grant shall not exceed \$10,000 across all eligible recipients.
 - 1. Eligible expenses include the following items:
 - (a) NAFTAZ national conferences and seminars
 - (i) Registration fees
 - (b) Customs compliance courses and training
 - (i) Individual courses will need to be approved prior to enrollment to be eligible
 - (ii) Proof of completion required for reimbursement
 - (c) Any other Foreign Trade Zone related education or training must be approved prior to enrollment to be eligible for the grant
 - 2. Ineligible expenses (this list is not exhaustive)
 - (a) Meals, snacks, or refreshments during travel
 - (b) Membership fees for industry organizations or associations

- (c) Communication costs incurred while traveling (cell phone charges, internet charges, or other business center charges)
- (d) Local transportation or fuel costs incurred traveling to and from an eligible course
- (e) Office supplies needed for an eligible course
- (f) Parking fees
- (g) Travel and lodging costs (may be used towards the company match)

3. Deliverables and Disbursement of Funds. WEDC will disburse funds to the Administrator in compliance with any specific disbursement guidelines under this Agreement. Upon receiving the funds from WEDC, Administrator will disburse the funds to the appropriate company or companies for reimbursement of their approved expenses. Administrator will submit to WEDC the Request for Disbursement form, attached as Exhibit A, along with any other required accompanying documents WEDC requests in order to be eligible for disbursement. All eligible funds expensed for FY14 (July 1, 2013-June 30, 2014) must be requested by June 30, 2014.

- (a) WEDC, in its sole discretion, may withhold disbursements until the Administrator provides adequate documentation of Eligible Project Costs such as the company name and grant amount awarded or is otherwise in default under the terms of this Agreement.

4. Event of Default. Consistent with Wis. Stat. § 238.03(3)(b), any of the following events constitutes an Event of Default for the purposes of this Agreement:

- (a) Administrator's submission to WEDC false or misleading information.
- (b) Administrator's failure to comply with or perform, in any material respect, any of its obligations under this Agreement.

Remedies in Event of Default. Upon the occurrence of an Event of Default, WEDC will send a written notice of default to Administrator, setting forth with reasonable specificity the nature of the default. If Administrator fails to cure the Event of Default to the reasonable satisfaction of WEDC within 30 calendar days, or if the breach is not capable of being cured within a 30 day period, Administrator fails to undertake, in good faith, commercially reasonable efforts to cure the breach and fails to continue until the breach is cured to the reasonable satisfaction of WEDC, WEDC may, without further written notice to the Administrator, declare Administrator in default. The period to cure may not be extended beyond 90 days.

- (c) In the Event of Default, WEDC may, consistent with Wis. Stat. § 238.03(3)(b), terminate the Agreement and recover from Administrator:
 - (i) The funds disbursed to Administrator under this Agreement;
 - (ii) All court costs and reasonable attorney's fees incurred by WEDC to recover the amounts owed by Administrator under this provision; and
 - (iii) A financial penalty of up to 1% of the total amount of funds to which Administrator was eligible to receive.
- (d) The amount under (a) above will be paid to WEDC within 30 calendar days of demand by WEDC. If Administrator fails to pay these amounts to WEDC, Administrator will be liable for the full unpaid balance plus interest at the annual rate of 12% from the date of the notice of Event of Default.

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

- (a) Administrator is duly organized and validly existing under the laws of the state of its incorporation and is authorized to engage in business in the State of Wisconsin.
- (b) Administrator is qualified to engage in business in every jurisdiction where the nature of its business makes such qualification necessary, except where the failure to be so authorized would not have a material and adverse effect on Administrator's ability to perform its obligations under this Agreement.
- (c) Administrator 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 Administrator's ability to perform its obligations under this Agreement.
- (d) The undersigned officer of Administrator is fully authorized to execute this Agreement on behalf of Administrator.

6. Wisconsin Public Records Law and Confidential Documents.

- (a) Administrator understands 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) If Administrator determines that information provided to WEDC is confidential, the document should be marked "Confidential." If Administrator contends the information also is not subject to disclosure under the public records law because it falls within the scope of an exception under Wisconsin law, Administrator should:
 - (i) Clearly mark the document "Confidential -- Not subject to the Public Records Law." If Administrator contends the document is a trade secret under Wis. Stat. § 134.90, Administrator should also specifically mark the document as "Confidential Trade Secrets."
 - (ii) Provide WEDC with a written statement specifically identifying the public records exception under which the document falls.
 - (iii) If applicable, provide WEDC with two copies of the document Administrator contends is exempt under the public records law – one clean copy and one copy with the exempted information redacted.
- (c) WEDC agrees to notify Administrator prior to release if it receives a public records request for documents marked under paragraph (b) above.

7. Relocation. Consistent with Wis. Stat. § 238.12(2), if within five years from the date of this Agreement Administrator relocates out of Wisconsin the economic development activity covered in or related to this Agreement, Administrator will be responsible for the repayment of funds disbursed to Administrator under this Agreement.

8. Inspection. Administrator will produce for WEDC's inspection, examination, auditing and copying, any and all records which relate to this Agreement, so long as WEDC provides at least 48 hours' notice.

- 9. Nondiscrimination in Employment.** Consistent with Wis. Stat. § 16.765: In connection with the performance of work under this contract, the Administrator 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, the Administrator further agrees to take affirmative action to ensure equal employment opportunities. The Administrator agrees to post in conspicuous places, available for employees and applicants for employment, notices to be provided by the Administrator officer setting forth the provisions of the nondiscrimination clause.
- 10. Public Announcement.** Administrator agrees to work with WEDC in preparing and publishing a public announcement of this Agreement or the underlying award.
- 11. Publicity.** Any publications, including but not limited to, newsletters, websites, resource materials, reports and news releases issued by the Administrator shall either include a WEDC logo or state that the Administrator is supported and financed by WEDC.
- 12. 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.** If any provisions of the Agreement shall be prohibited by or ruled invalid under Wisconsin law, such provisions shall be ineffective only to the extent of such prohibition or invalidity, without affecting the validity or enforceability of the remaining provisions thereof.
- 13. 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.**
- 14. 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 Administrator 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 Administrator HEREUNDER.**
- 15. Severability.** The invalidity of any provision of this Agreement shall not affect the validity of the remaining provisions, which will remain in full force and effect to govern the parties' relationship.
- 16. Relationship Between Parties.** WEDC and Administrator will not, under any circumstances, be considered or represented to be a joint venture, a beneficiary of the other, nor will any employees of WEDC or Administrator be considered an employee of the other.

17. Documents. All documents required to be delivered contemporaneously with the execution and delivery of this Agreement is expressly made a part of this Agreement, and all references to this Agreement will be deemed to refer to and include all such documents.

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

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

20. Entire Agreement. This Agreement embodies the entire agreement of the parties concerning WEDC's and Administrator's obligations related to the subject of this Agreement. This Agreement may not be amended, modified or altered except in writing signed by Administrator 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 Administrator have executed and delivered this Agreement effective the date set forth next to WEDC's signature below.

WISCONSIN ECONOMIC DEVELOPMENT CORPORATION

By: _____
Lora Klenke, Vice President - International

Date

FOREIGN TRADE ZONE #41

By: _____
Paul Vornholt, Director of Trade and Operations

Date

Notices to Administrator will 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 Administrator may designate in writing:

Attn: Nick Grahovac, Trade Development Representative
2323 S. Lincoln Memorial Drive
Milwaukee, WI 53207

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

Wisconsin Economic Development Corporation
International Business Division
Attn: Monica Wahlberg, International Market Development Coordinator
201 West Washington Avenue
P.O. Box 1687
Madison, WI 53701-1687



PO # _____

EXHIBIT A

REQUEST FOR DISBURSEMENT

Contract Number: #FY13-21830	Market Devel Coord: Monica Wahlberg	Company/Organization: Foreign Trade Zone #41 – Port of Milwaukee
INTACCT#:	FEIN #	Request Number:
Disbursement Period Covered by this Request		
From:	To:	

PROJECT EXPENSES INCURRED DURING THIS PERIOD

Company Receiving Port of Milwaukee support	Total Expenses	=	Company Match	+	Grant Reimbursable Expenses
TOTAL:					

Administrator will submit to WEDC the Request for Disbursement form, along with any other required accompanying documents WEDC requests in order to be eligible for disbursement. All eligible funds expended for FY14 (July 1, 2013-June 30, 2014) must be requested by June 30, 2014. Reports are to be submitted by December 30, 2013 and the final report in no later than August 31, 2014.

- The name of the company
- How much and for what the grant was awarded
- The number of companies exporting to new markets who received funds
- If any of these companies were owned by minorities, women, veterans, or by individuals who have a disability.
- Where were they located by city, county, and zip?
- What industry do they represent?
- Proof that the company received the funds (may be submitted post reimbursement but by Request for Disbursement deadlines)

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 Company Signature	Date

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