

COMMUNITY WORKFORCE AGREEMENT BETWEEN THE CITY OF MILWAUKEE AND THE WISCONSIN ENERGY CONSERVATION CORPORATION

This Community Workforce Agreement (“CWA”) is made and effective as of the 27th day of July, 2010 (“Effective Date”), by and between the City of Milwaukee, Wisconsin, a municipal corporation, (“the City”) and the Wisconsin Energy Conservation Corporation (“WECC”), a non-profit corporation with its principal business address at 431 Charmany Drive, Madison, Wisconsin 53719 (“the Parties”).

W I T N E S S E T H:

WHEREAS, WECC, on behalf of the Cities of Milwaukee, Madison, and Racine, Wisconsin (“Partner Cities”), filed an application for and received a grant from the United States Department of Energy (“DOE”) in Funding Opportunity Announcement Number DE-FOA-0000148 Recovery Act: Energy Efficiency and Conservation Block Grant; Competitive Solicitation: Retrofit Ramp-up and General Innovation Fund Programs in the amount of \$20 million to carryout the Wisconsin Energy Efficiency (“WE2”) Project, a project designed to provide energy efficiency retrofit residential and non-residential projects within the Partner Cities. WE2 is the common name given to the project across the Cities of Milwaukee, Madison and Racine. The Milwaukee Energy Efficiency (“ME2”) Program represents the WE2 Project activities as they are carried out in the geographic limits of the City of Milwaukee; and

WHEREAS, The Cooperation Agreement between WECC and the City (“Cooperation Agreement”), of which this CWA is made a part as Exhibit E to the Cooperation Agreement, sets forth the roles and responsibilities of the Parties in developing, administering, and delivering the WE2 Project and ME2 Program; and

WHEREAS, through its participation in the WE2 Project and ME2 Program, the City of Milwaukee seeks to promote energy efficient retrofit projects using American Recovery and Reinvestment Act (ARRA) funding and other sources of capital in order to reduce energy costs for the owners of homes and businesses in our community, lower Milwaukee’s carbon footprint, and create jobs for local workers. In order to achieve this “triple bottom line,” a diverse group of stakeholders has been assembled to create this CWA to guide the implementation of energy retrofit projects in a manner that ensures the inclusion of workforce standards and benefits that will foster employment opportunities for historically disadvantaged or underrepresented groups and the creation of a long-term construction career pathway that will be seeded with these investments; and

WHEREAS, By requiring the inclusion of the CWA in the Request for Qualifications to be issued by WECC for purposes of qualifying contractors, the Parties seek to guide the implementation of energy retrofit projects in a manner that provides pathways to prosperity for local workers at varying levels of preparation, offers family-supporting wages that lead to a lasting career track, involves stakeholders and community members in developing and enacting policies and processes, and drives accountability and continuously evaluates performance towards goals; and

WHEREAS, This CWA reflects the following guidance the Office of Management and Budget has given to agencies implementing American Recovery Reinvestment Act programs (OMB April 3, 2009):

- a. Ensuring compliance with equal opportunity laws and principles;
- b. Promoting local hiring: Departments and agencies should seek to maximize the economic benefits of a Recovery Act-funded investment in a particular community by supporting

projects that seek to ensure that the people who live in the local community get the job opportunities that accompany the investment;

- c. Providing maximum practicable opportunities for small businesses;
- d. Providing equal opportunity for Disadvantaged Business Enterprises;
- e. Encouraging sound labor practices: The federal government invests substantial resources in enforcing wage and hour, occupational safety and health, and collective bargaining laws, to ensure that American workers are safe and treated fairly. All other things being equal, agencies awarding Recovery Act funds should seek to support entities that have a sound track record on these issues and are creating good jobs. This will strengthen the recovery effort and the economic prospects of American workers; and
- f. Engaging with community-based organizations.

WHEREAS, The Common Council of the City of Milwaukee authorized execution of this CWA pursuant to Resolution No. _____ adopted _____, 2010; and

NOW, THEREFORE, in consideration of the mutual promises contained in this CWA and other good and valuable consideration, the City and WECC agree as follows:

- 1. Scope of Agreement. This CWA is applicable to the ME2 Program. The scope of this agreement covers positions related to the construction trades, including but not limited to electricians, insulation installers, laborers, HVAC mechanics, plumbers, and weatherization techs. This CWA does not cover energy auditors/consultants, energy advocates, or administrative or program delivery staff. Any direction to be exercised on the part of the City or any approvals to be granted under this CWA shall be given by the City's Department of Administration ("DOA") or its designee.
- 2. Qualified Contractors – RFQ. Pursuant to the Cooperation Agreement, WECC shall issue a Request for Qualifications (RFQ) to qualify contractors to perform retrofit work under the ME2 program. The RFQ shall contain the requirements set forth in this CWA. The RFQ will also contain technical requirements for contractors, which requirements are not enumerated in this CWA. WECC shall re-qualify contractors annually and shall disqualify contractors who fail to meet the requirements of this CWA.
- 3. Labor Standards. To be qualified, a contractor must agree to the following labor standards:
 - a. Resident Preference. On ME2 program energy efficiency retrofit work, contractors shall agree to utilize UNEMPLOYED or UNDEREMPLOYED RESIDENTS of the city of Milwaukee in a minimum amount equal to the percentage of WORKER HOURS set forth in this paragraph. Forty percent (40%) of the sum total of WORKER HOURS performed on ME2 program work by each contractor in a six-month period must be performed by UNEMPLOYED or UNDEREMPLOYED RESIDENTS of the city of Milwaukee, except where WECC, after consulting with a participating training program identified pursuant to Section 5 of this CWA, and with the consent of the City, determines that there is sufficient reason to impose a lesser requirement. In responding to the RFQ issued by WECC, the contractor shall submit a city resident utilization plan detailing how the level of required participation will be achieved.

The contractor, prior to commencing work as a qualified ME2 program contractor, shall submit an affidavit (on a form to be provided to WECC by the City) with proof of residency for all employees utilized by the contractor and subcontractors to meet the Resident Preference requirements, stating that each employee is either UNEMPLOYED or UNDEREMPLOYED and is a RESIDENT of the City and/or a plan to recruit and employ workers under the RPP program requirements in the ensuing six-month period. The contractor shall prepare and submit accurate and timely resident utilization forms and reports to WECC. Time Reports shall be submitted weekly as the work progresses and within ten (10) days following completion of work. The reports shall identify the name, address, work classification, and hours worked of all employees utilized on the contract by the contractor and all subcontractors. Failure to submit the required forms and reports to WECC may result in de-qualification of the contractor. On July 1 of each year, WECC shall submit to DOA an annual report on the performance of contractors qualified by WECC in carrying out the requirements of the resident preference program.

The contractor shall maintain, and shall ensure that all subcontractors maintain, personnel records listing the name and address of all employees utilized for each ME2 program contract and any records demonstrating that the employees utilized by the contractor to meet the Resident Preference are RESIDENTS. These records shall be maintained for one (1) year after completion of work and shall be made available to WECC upon reasonable notice.

1. RESIDENT – A person who maintains his or her place of permanent abode in the city of Milwaukee. Domiciliary intent is required to establish that a person is maintaining his or her place of permanent abode in the city. Mere ownership of real property is not sufficient to establish domiciliary intent. Evidence of domiciliary intent includes, without limitations, the location where a person votes, pays personal income taxes, or obtains a driver’s license.
2. UNEMPLOYED or UNDEREMPLOYED – a RESIDENT that has worked less than 1,200 hours in the preceding 12 months or has not worked in the preceding 30 days or, regardless of employment status, has household income at or below the federal poverty guidelines as adjusted by the Wisconsin department of public instruction to define eligibility for reduced lunch in public schools. A RESIDENT will continue to qualify as unemployed or underemployed for five (5) years from the date he or she first participates on a ME2 program project. If a RESIDENT becomes an apprentice for a contractor or becomes a participant in an on-the-job training program immediately after or in the course of performing on a particular construction contract, he or she shall continue to qualify as unemployed or underemployed for a period not exceeding 5 years from the date the person became an apprentice or participant in such on-the-job training program.
3. WORKER HOURS – means the total hours worked on a ME2 program contract by skilled and unskilled trade workers, whether those workers are employed by the contractor or any subcontractor. “Worker hours” includes work performed by persons filling apprenticeships and participating in on-the-job training programs and excludes the number of hours of work performed by all non-Wisconsin residents.

- b. Proper Classification of Employees. Contractors shall utilize only employees to perform work on a ME2 program energy efficiency retrofit project, rather than independent contractors, temporary workers, or any other individuals holding non-employee status. Contractors shall classify all workers performing work on the ME2 program as employees of the company and pay appropriate taxes, unemployment insurance, workers compensation, and other benefits as required by law. General contractors may contract with subcontractors to perform work on the ME2 program, provided that those subcontractors have a registered Dunn and Bradstreet Data Universal Numbering System (DUNS) number and provided that the general contractor require all subcontractors to comply with the provisions of this CWA.
 - c. Davis-Bacon Wage Rate Requirement. Contractors shall pay wages to their employees performing work on a ME2 program project at rates not less than those prevailing on projects of a character similar in the locality as determined by subchapter IV of Chapter 31 of Title 40, United States Code (“Davis-Bacon Act”). WECC shall be responsible for monitoring contractor compliance with this requirement.
 - d. Safety-Trained Workforce. Contractors shall utilize a safety-trained workforce in which all on-site workers have completed an OSHA 10-hour safety course and an Environmental Hazard Awareness Course. As applicable, contractors shall comply with State of Wisconsin laws regarding Lead Renovator training and certification for their workforce.
 - e. Certified/Accredited Workforce. By September 1, 2010 or as soon thereafter as reasonably practicable, the City, in consultation with WECC, shall select nationally recognized certification/accreditation standards for workers covered under Section 1 of this CWA and whose trade does not already have a nationally recognized certification/accreditation in place (e.g. insulators and other building shell trades). Contractors shall ensure that their workers covered by this paragraph (e.g. those performing insulating and other building shell installations) are certified/accredited under the selected standard(s) within six (6) months of selection of the standards.
4. Pre-Qualification Standards. In addition to the Labor Standards set forth in this Agreement, to establish a standard of quality for the work to be completed and to build consumer confidence, the CWA establishes a Pre-qualification Standard for contractors who will perform the work. The City and WECC will communicate with existing City-certified Emerging Business Enterprises and other local firms to encourage their participation in the RFQ process and connect them to resources that can assist them in meeting the following minimum criteria.

Contractors must meet the following minimum criteria to be considered for qualification by WECC:

- a. Contractors on ME2 program residential projects shall be licensed and insured. Contractors on ME2 program non-residential projects shall be licensed, bonded, and insured.
- b. Contractors listed on the federal Excluded Parties List System (<https://www.epls.gov/>) or the Wisconsin Department of Workforce Development Consolidated List of Debarred Contractors will not be qualified.

- c. Contractors shall be registered as a Focus on Energy Program Ally or be willing to sign on as a Focus on Energy Program Ally and commit to participate in training/mentoring provided by Focus on Energy Staff.
 - d. Per DOE Special Terms and Conditions, contractors shall provide a documented waste disposal plan for sanitary and hazardous waste, which includes but is not limited to old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, and asbestos.
 - e. Contractors shall agree to maintain and provide access to records to verify compliance with all provisions contained within this CWA. At any time during normal business hours and as often as WECC or the City, or if federal or state grants or aids are involved, as the appropriate state or federal agency may deem necessary, there shall be made available to WECC or the City for examination all of the contractor's or subcontractor's records with respect to the matters covered by this CWA and the contractor or subcontractor shall permit WECC or the City to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this CWA.
5. Training Programs. The City shall identify training programs to supply contractors with a trained workforce. WECC shall provide staff assistance to the identified training programs to prepare them to provide energy efficient retrofits training based on certification/accreditation standards to be selected by the City pursuant to Section 3.e. of this CWA. Participating training programs will also provide training that includes health & safety, as well as hazardous material recognition (asbestos, mold, lead).

In addition to their capacity to execute the training functions described above, to be identified as a participating training program, a training program will:

- a. Have defined partnerships with pre-apprenticeship programs or community organizations that serve historically disadvantaged or underrepresented populations, including women, and people of color;
 - b. In conjunction with those partner organizations, endeavor to promote participation in the training program among individuals who are unemployed, women, people of color, residents of low-income communities, or other disadvantaged or underrepresented people;
 - c. Offer mentoring, follow-up monitoring and/or other support to assure retention of participants in the program and in weatherization careers; and
 - d. Demonstrate a track record of graduating and placing trainees from underrepresented communities in career-track construction jobs.
6. Term of Agreement. The term of this CWA shall commence upon the Effective Date of the CWA and shall remain in force for the entire duration of the term of the Cooperation Agreement between WECC and the City, of which this CWA is a part as Exhibit E.

7. WECC/City Cooperation Agreement Provisions Binding. This CWA is attached to and made a part of the Cooperation Agreement between WECC and the City as Exhibit E. All provisions set forth in the Cooperation Agreement are made a part of this CWA and are binding on the parties.

8. Review. The objectives to be achieved in this CWA are secondary to the primary ME2 program objectives of stimulating the market for energy efficient building improvements. On May 1, 2011 or as soon thereafter as reasonably practical, the DOA or its designee, in consultation with WECC, shall assess whether the requirements of this CWA substantially impair the primary objectives of the ME2 program. The DOA or its designee shall conduct this assessment every six months thereafter during the term of this CWA. The DOA or its designee reserves the right to revise the terms of this CWA, based on this assessment, to reduce or eliminate contractor qualification requirements where the DOA or its designee determines that such revisions will remove obstacles to participation in the ME2 program. All other amendments to this CWA shall be agreed upon by the Parties and in writing and shall be communicated to the Common Council.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day, month, and year set forth above.

CITY OF MILWAUKEE

TOM BARRETT, Mayor

RONALD D. LEONHARDT, City Clerk

COUNTERSIGNED:

W. MARTIN MORICS, City Comptroller

WISCONSIN ENERGY CONSERVATION CORPORATION

Mary Woolsey Schlaefer
Executive Director

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