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February 1, 2011

Wisconsin Energy Conservation Corp.
Attn: Sue Hanson
431 Charmany Drive
Madison, WI 53719

Erick Shambarger
Office of Environmental Sustainability
City Hall, Room 603
200 East Wells Street
Milwaukee, WI 53202

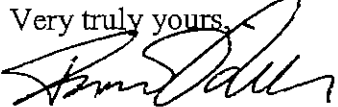
Re: Agreement between the City of Milwaukee and WECC
for Administration of Me2 Program Energy Efficiency
Consultation Subsidies

Dear Ms. Hanson and Mr. Shambarger:

I am sending to each of you for your records one fully executed original of the above-referenced agreement.

Thank you for your cooperation.

Very truly yours,


THOMAS D. MILLER
Assistant City Attorney

TDM:wt:165882

Enclosure

c: Mayor Tom Barrett (w/enclosure)
W. Martin Morics, City Comptroller (w/enclosure)
Ronald D. Leonhardt, City Clerk (w/enclosure)
Rhonda Kelsey, Purchasing Director (w/enclosure)

1052-2010-2672

OFFICE OF THE CITY ATTORNEY

**AGREEMENT BETWEEN THE CITY OF MILWAUKEE AND WISCONSIN ENERGY
CONSERVATION CORPORATION FOR ADMINISTRATION OF ME2 PROGRAM
ENERGY EFFICIENCY CONSULTATION SUBSIDIES**

THIS AGREEMENT (“Agreement”) is entered into as of January 15, 2011, (“Effective Date”) by and between the City of Milwaukee, Wisconsin, a Wisconsin municipal corporation (“City”) and Wisconsin Energy Conservation Corporation, a non-profit corporation with its principal business address at 431 Charmany Dr., Madison, Wisconsin 53719 (“WECC”).

WITNESSETH THAT:

WHEREAS, the City of Milwaukee, a block grant entitlement community, has received a formula grant from the U.S. Department of Energy (“DOE”) through the Energy Efficiency and Conservation Block Grant (“EECBG”) program and the City of Milwaukee Office of Environmental Sustainability (“OES”) has identified seven specific project areas to be implemented with the funds; and

WHEREAS, a set-aside within the City EECBG formula grant award has been designated for the Milwaukee Energy Efficiency (Me2) program; and

WHEREAS, the Common Council adopted Resolution File No. 100455 on September 21, 2010, authorizing the use of these grant funds to subsidize the cost of residential property energy consultations (“Subsidy” or “Subsidies”) conducted as a part of the Me2 program; and

WHEREAS, WECC administers various energy rebate programs, including the Focus on Energy program; and

WHEREAS, OES has established a formula for the Subsidies; and

WHEREAS, the leveraging of the City’s EECBG funding for the Subsidies will be made in conjunction with the broader Me2 program Cooperation Agreement as approved by the Common Council in File 100007; and

WHEREAS, WECC and the City acknowledge OES’s obligation to the DOE to monitor and report on the EECBG fund activities; and

WHEREAS, the Common Council adopted Resolution File No. 100770 on November 23, 2010, authorizing this Agreement.

NOW, THEREFORE, In consideration of the mutual covenants and agreements contained herein, the parties hereto mutually agree as follows:

1. Term. The Term of this Agreement shall begin as of the Effective Date of this Agreement and end October 1, 2012.
2. City Designation. The City designates the City's Department of Administration ("DOA") or its designee to carry out the roles for the City as set forth in this Agreement.
3. Payment. Under the terms set forth herein, the City shall pay to WECC up to \$1,200,000 from the City's EECBG formula grant ("Subcontract Funds") for payment of Subsidies. As soon as administratively feasible, the City shall initiate a drawdown of available funds from the Automated Standard Application for Payments ("ASAP") system. Within 10 days of City approval of the criteria and forms set forth in Section 5 of this Agreement, or City receipt of formula grant funds, whichever occurs later, the City shall transfer to WECC an advance payment of \$120,000 from the available formula grant funds.

WECC shall submit quarterly to the City, on or about the 10th day of the month preceding the upcoming quarter, 1) a forecast of Subsidy payments for the upcoming quarter, 2) a forecast of prepaid Subsidy dollars remaining from the previous quarter, and 3) a prepayment amount that WECC is requesting. The City shall pay such amounts on or before the 5th day of the upcoming quarter, provided that if the City has reasonable grounds for insecurity, it may withhold such payments until the parties have mutually resolved the City's grounds for insecurity. Following termination of this Agreement for any reason, WECC shall repay within 10 days of written notice by the City all remaining amounts of any sums advanced by the City not disbursed as Subsidy payments as set forth herein.

4. Utilization of Funds. WECC shall use the entire amount of the Subcontract Funds exclusively for Subsidies. No portion of the Subcontract Funds may be used by WECC for administrative costs.

WECC shall use its best efforts to facilitate, manage, and disburse the Subsidies. WECC shall strive to disburse the Subsidies in an expeditious manner and any disbursements shall be completed by September 1, 2012.

Any interest accrued on Subcontract Funds shall fund additional energy consultations. If DOA or its designee determines that there is insufficient demand for the energy consultations or if the Me2 program is suspended or terminated for any reason, WECC shall return control of any undisbursed Subcontract Funds plus accrued interest to the City within 10 days of written request by DOA or its designee.

WECC shall not be obligated to disburse Subsidies in excess of the Subcontract Funds identified in Section 3 of this Agreement plus interest that may accrue on the Subcontract Funds. The City shall not be obligated to provide any additional amounts beyond the Subcontract Funds identified in Section 3 of this Agreement.

5. Qualified Me2 Energy Consultants and Forms. WECC shall develop criteria, subject to City approval, for qualifying Me2 Energy Consultants for participation in the Me2 program ("Me2 Energy Consultants"). WECC shall develop, for City approval, a Subsidy request form

for use by Me2 Energy Consultants and participating property owners. WECC shall develop, for City approval, a form to be used by Me2 Energy Consultants to identify recommended energy efficiency measures.

6. Subsidy Process and Formula. WECC shall issue Subsidies directly to qualified Me2 Energy Consultants after they complete Me2 program energy consultations and in the manner set forth in this section. WECC shall use Subcontract Funds to subsidize 75% of the home energy consultation up to \$300 for a single family home or \$500 for a two to three unit residential property, with the property owner paying the difference.

After a property owner has selected a Me2 Energy Consultant and paid the owner's share of the consultation fee, the Me2 Energy Consultant will submit the Subsidy request to the WECC/Focus on Energy rebate center. WECC shall pay the Me2 Energy Consultant the remainder of the energy consultation fee from the Subcontract Funds within 45 days. If the property owner completes the top three (3) recommended energy efficiency measures recommended by the Me2 Energy Consultant or at least \$3,000 of work through a qualified Me2 contractor, WECC will rebate to the owner the owner's share of the consultation fee (up to \$100 for a single family home or \$175 for a two to three unit residential property). WECC shall not deviate from or alter this Subsidy formula without written approval from DOA or its designee.

7. Metrics for Timeliness of Energy Consultations. On a monthly basis, WECC shall report to the City metrics on the duration between the Energy Advocate visit to the homeowner and the completion of the energy efficiency consultation by the Me2 Energy Consultant. If at any point after January 1, 2011, the average duration exceeds 5 weeks or if the duration exceeds 8 weeks in 20% or more of completed energy consultations, the City may require WECC to take action to increase the pool of qualified Me2 Energy Consultants to meet customer demand on a timely basis and create new job opportunities.

8. Reporting and Compliance. As the Recipient of the EECBG formula grant, the City shall retain primary responsibility for the monitoring of compliance and related reporting to the DOE, U.S. Office of Management & Budget, and any other related federal agencies as it relates to the expenditure of these EECBG formula grant funds. In addition to any other reports required under this Agreement, by the seventh (7th) day of each month, WECC shall report to the City, in a format to be determined by DOA or its designee, data on a monthly and cumulative basis, including but not limited to, the following:

- a. The number of consultations performed;
- b. The number of consultations performed by each Me2 Energy Consultant firm;
- c. The number and total dollar amount of Subsidies provided to each Me2 Energy Consultant firm;
- d. The number and total dollar amount of Subsidies provided to participating property owners; and
- e. The hours of work performed on consultations, broken down by each Me2 Energy Consultant firm;
- f. The hours of work performed by WECC in administering the consultation Subsidies.

WECC shall provide any and all relevant WECC and external documents to DOA or its designee in order for DOA or its designee to meet the monitoring and compliance standards imposed by City, State and federal authorities, including but not limited to, WECC's EECBG Financial Management File (request for payment logs, detailed invoices, and canceled checks).

9. Flowdown Requirements. WECC shall comply and cause all sub-contractors to comply with all EECBG-ARRA Contractual Flowdown requirements set forth in Exhibit A. For purposes of the EECBG formula grant, WECC and each of its subcontractors shall be considered a "contractor". Contractors who receive federal funds under an assistance agreement shall comply with the flowdown requirements specified in the "Special Provisions Relating to Work Funded under American Recovery and Reinvestment Act of 2009" which apply to this Agreement.

10. Form 1099. WECC shall issue, or cause to be issued, a Form 1099 to participating individual homeowners, if required by 26 U.S.C. § 6041.

11. Audits and Inspections. At any time during normal business hours and as often as 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 the City or such agency for examination all of WECC's records with respect to the matters covered by this Agreement and WECC shall permit the City or such agency and/or their representatives and agents 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 Agreement.

12. Notices. Any notice given pursuant to this Agreement shall be in writing and shall be effective when delivered personally or shall be deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, in which latter event it shall be deemed given three days after the date mailed. Written notice shall be addressed to the respective parties as follows:

<u>If to City:</u> City of Milwaukee Office of Environmental Sustainability 200 East Wells St., Room 603 Milwaukee, WI 53202 Attn: Director	<u>If to WECC:</u> Wisconsin Energy Conservation Corporation 431 Charmany Drive Madison, WI 53719 Attn: Sue Hanson
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All other correspondence shall be addressed as above, but may be sent "Regular Mail" and deemed delivered upon receipt by the addressee.

13. Documents and Meetings.

a. WECC agrees to submit reports as may be required by the City at such times as may be scheduled for submittal. WECC shall be available to meet with City representatives, and to attend meetings or hearings, as requested by DOA or its designee.

b. All reports, studies, analyses, memoranda, and related data and material as may be developed during the performance of this Agreement shall be submitted to and be the exclusive property of the City, which shall have the right to use same for any purpose without any further compensation to WECC other than hereinafter provided. All of the aforesaid documents and materials prepared or assembled by WECC under this Agreement are confidential and WECC agrees that it will not, without prior written approval by the City, submit or make same available to any individual, agency, public body or organization other than the City, except as may be otherwise herein provided, subject to the provisions of the Wisconsin Public Records Law.

c. WECC shall assist the City in meeting its obligations under the Wisconsin Public Records Law. Both parties understand that the City is bound by the Wisconsin Public Records Law, and as such, all of the terms of this Agreement are subject to and conditioned on the provisions of Wis. Stat. section 19.21, *et.seq.* WECC acknowledges that it is obligated to assist the City in retaining and producing records that are subject to the Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of the Agreement, and that WECC shall defend and hold the City harmless from liability under that law, other than for such losses, expenses, damages or liabilities arising, in any way, from City's intentional or negligent acts. Except as otherwise authorized, those records shall be maintained for a period of seven years after receipt of final payment under this Agreement.

d. If this Agreement is terminated for cause or for any other reason, all finished or unfinished documents or materials prepared under this Agreement shall be timely transmitted to the City at the effective date of such termination.

e. Any and all information, plans, reports and conclusions derived or developed as a consequence or result of this Agreement may be utilized by City in such manner and purpose as City desires or determines without permission or approval of WECC or compensation to WECC therefore other than herein provided.

14. Conditions of Performance and Compensation.

a. Performance. WECC agrees that the performance of WECC's work, services and the results therefrom, pursuant to the terms, conditions and agreements of this Agreement, shall conform to such recognized high professional standards as are prevalent in this field of endeavor and like services.

b. Government Reporting. All other governmental reporting and contributions required as a consequence of WECC receiving payment under this Agreement shall be the sole responsibility of WECC.

c. Subcontracting. WECC shall not subcontract for the performance of any of the services herein set forth without prior written approval from DOA or its designee.

15. Assignability. This Agreement shall be binding upon the parties hereto, but neither this Agreement nor any of the rights, interests, or obligations hereunder shall be assigned, sublet, or transferred by WECC without the prior written consent of the City. If the City gives such consent, the terms and conditions of this Agreement shall bind the party to whom the Agreement is assigned, sublet, or transferred.

16. Conflict of Interest.

a. Interest in Agreement. No officer, employee or agent of City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement.

b. Interest of Other Local Public Officials. No member of the governing body of City and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement shall have any personal interest, direct or indirect, in this Agreement.

c. Interest of WECC and Employees. WECC covenants that no person who exercises any functions or responsibilities in connection with the Agreement has any personal financial interest, direct or indirect, in this Agreement. WECC further covenants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its services hereunder. WECC further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed.

17. Discrimination Prohibited. WECC shall not discriminate against any qualified employee of WECC or qualified applicant for employment with WECC because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories. WECC will cause the foregoing provision to be inserted in all subcontracts, if any, for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to Agreements or subcontracts for standard commercial supplies or raw materials.

18. Indemnification. WECC hereby indemnifies and holds the City, its officers, employees, and agents harmless from and against all claims, liabilities, damages, losses, costs or expenses (including but not limited to reasonable attorneys fees) arising out of the negligent acts or willful misconduct of WECC, its employees, subcontractors, and other agents of WECC or its subcontractors.

19. Entire Agreement/Amendment. This Agreement sets forth all of the covenants, provisions, agreements, conditions, and understandings between the parties and there are no covenants, promises, agreements, conditions, or understandings, either oral or written, other than are herein set forth. This Agreement may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the parties to this Agreement.

20. Termination of Agreement for Cause. If, through any cause, WECC shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if WECC shall violate any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to WECC of the termination and specifying the effective date thereof at least five days before the effective date of the termination.

Notwithstanding the above, WECC shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of the Agreement by WECC, and the City may withhold any payments to WECC for the purpose of setoff until such time as the exact amount of damages due to the City from WECC is determined.

21. Termination for Convenience of the City. The City may terminate this Agreement at any time for any reason by giving at least 10 days written notice. The parties agree and acknowledge that the City shall in no way be responsible for legal or equitable damages alleged by WECC in consequence of termination under this section.

22. Compliance with Other Provisions of 10 CFR 600.236(i). WECC shall comply, and shall require its subcontractors to comply, with the following additional requirements of 10 CFR 600.236(i):

a. Subrecipient/subcontractor must comply with 10 CFR 600.234 and 600.325, and the provisions referenced therein, and any and all other DOE requirements pertaining to patents, data, and copyrights.


b. For all contracts, subcontracts, and subgrants in excess of \$100,000, subrecipient/subcontractor must comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).

c. Subrecipient/subcontractor must comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub.L. 94-163, 89 Stat. 871).

23. Debarment Certification. This Agreement is conditioned upon WECC's execution of the Certification Regarding Suspension and Debarment attached as Exhibit B.

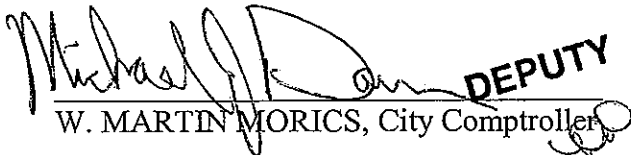
IN WITNESS WHEREOF, The parties have executed this Agreement the day and year as hereinafter set forth.

CITY OF MILWAUKEE


TOM BARRETT, Mayor

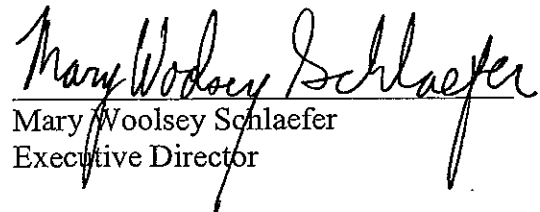

RONALD D. LEONHARDT, City Clerk

COUNTERSIGNED:


W. MARTIN MORICS, City Comptroller **DEPUTY**


RHONDA KELSEY, Purchasing Director

WISCONSIN ENERGY CONSERVATION CORPORATION


Mary Woolsey Schlaefer
Executive Director

Approved as to form, execution, and content this 31st day of January, 2010 JOM TDM


Assistant City Attorney

1052-2010-2672:162868v2

SPECIAL TERMS AND CONDITIONS

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1. RESOLUTION OF CONFLICTING CONDITIONS

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator for guidance.

2. AWARD AGREEMENT TERMS AND CONDITIONS

This award/agreement consists of the Assistance Agreement, plus the following:

a. Special Terms and Conditions.

b. Attachments:

Attachment Number	Title
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1.	Statement of Project Objectives
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2.	Federal Assistance Reporting Checklist and Instructions
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3.	Budget Pages (SF 424A)
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c. DOE Assistance Regulations, 10 CFR Part 600 at <http://ecfr.gpoaccess.gov>.

d. Application/proposal as approved by DOE.

e. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://management.energy.gov/business_doe/1374.htm.

3. ELECTRONIC AUTHORIZATION OF AWARD DOCUMENTS

Acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by the Department of Energy, specifically FedConnect, constitutes the Recipient's acceptance of the terms and conditions of the award. Acknowledgement via FedConnect by the Recipient's authorized representative constitutes the Recipient's electronic signature.

4. PAYMENT PROCEDURES - ADVANCES THROUGH THE AUTOMATED STANDARD APPLICATION FOR PAYMENTS (ASAP) SYSTEM

a. Method of Payment. Payment will be made by advances through the Department of Treasury's ASAP system.

b. Requesting Advances. Requests for advances must be made through the ASAP system. You may submit requests as frequently as required to meet your needs to disburse funds for the Federal share of project costs. If feasible, you should time each request so that you receive payment on the same day that you disperse funds for direct project costs and the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.

c. Adjusting payment requests for available cash. You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income,

rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.

- d. Payments. All payments are made by electronic funds transfer to the bank account identified on the ASAP Bank Information Form that you filed with the U.S. Department of Treasury.

5. CEILING ON ADMINISTRATIVE COSTS

- a. Local government and Indian Tribe Recipients may not use more than 10 percent of amounts provided under this program, or \$75,000, whichever is greater (EISA Sec 545 (b)(3)(A)), for administrative expenses, excluding the costs of meeting the reporting requirements under Title V, Subtitle E of EISA. These costs should be captured and summarized for each activity under the Projected Costs Within Budget: Administration.
- b. Recipients are expected to manage their administrative costs. DOE will not amend an award solely to provide additional funds for changes in administrative costs. The Recipient shall not be reimbursed on this project for any final administrative costs that are in excess of the designated 10 percent administrative cost ceiling. In addition, the Recipient shall neither count costs in excess of the administrative cost ceiling as cost share, nor allocate such costs to other federally sponsored project, unless approved by the Contracting Officer.

6. LIMITATIONS ON USE OF FUNDS

- a. By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, for gambling establishments, aquariums, zoos, golf courses or swimming pools.
- b. Local government and Indian tribe Recipients may not use more than 20 percent of the amounts provided or \$250,000, whichever is greater (EISA Sec 545 (b)(3)(B)), for the establishment of revolving loan funds.
- c. Local government and Indian tribe Recipients may not use more than 20 percent of the amounts provided or \$250,000, whichever is greater (EISA Sec 545 (b)(3)(C)), for subgrants to nongovernmental organizations for the purpose of assisting in the implementation of the energy efficiency and conservation strategy of the eligible unit of local government or Indian tribe.

7. REIMBURSABLE FRINGE BENEFITS COSTS

- a. The Recipient is expected to manage their final negotiated project budgets, including their fringe benefit costs. DOE will not amend an award solely to provide additional funds for changes in the fringe benefit costs or for changes in rates used for calculating these costs. DOE recognizes that the inability to obtain full reimbursement for fringe

benefit costs means the Recipient must absorb the underrecovery. Such underrecovery may be allocated as part of the Recipient's cost share.

- b. If actual allowable fringe benefit costs are less than those budgeted and funded under the award, the Recipient may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, the Recipient must refund the difference.

8. INDIRECT COSTS ARE NOT REIMBURSABLE

The budget for this award does not include indirect costs. Therefore, these expenses shall not be charged to nor reimbursement requested for this project nor shall the indirect costs from this project be allocated to any other federally sponsored project. In addition, indirect costs shall not be counted as cost share unless approved by the Contracting Officer. This restriction does not apply to the subawardees' indirect or fringe benefit costs.

9. USE OF PROGRAM INCOME

If you earn program income during the project period as a result of this award, you may add the program income to the funds committed to the award and used to further eligible project objectives.

10. STATEMENT OF FEDERAL STEWARDSHIP

DOE will exercise normal Federal stewardship in overseeing the project activities performed under this award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the award objectives have been accomplished.

11. SITE VISITS

DOE's authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

12. REPORTING REQUIREMENTS

- a. **Requirements.** The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.
- b. Additional Recovery Act Reporting Requirements are found in the Provision below labeled: "REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT."

13. PUBLICATIONS

- a. You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- b. An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)]."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

14. FEDERAL, STATE, AND MUNICIPAL REQUIREMENTS

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

15. LOBBYING RESTRICTIONS

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

16. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) REQUIREMENTS

You are restricted from taking any action using Federal funds, which would have an adverse effect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. If you move forward with activities that are not authorized for Federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving Federal funding and such costs may not be recognized as allowable cost share. DOE has made a conditional NEPA determination for this award, and funding for certain activities or tasks under this award is contingent upon the final NEPA determination:

City of Milwaukee Facilities Energy Efficiency Retrofit Project - Activity 1:

Prohibited actions include: Demolition, construction, removal, installation or disposal activities, until such time that Recipient complies with the Waste Stream and Historic Preservation clauses.

This restriction does not preclude Recipient from: (1) purchasing any necessary equipment or related materials; (2) conducting assessments, studies and other related administrative work; or (3) hiring staff. Use 3 if applicable.

Recipient shall ensure the safety and structural integrity of any repair, replacement, construction and/or alteration performed under this project.

City Building Energy Audits - Activity 2:

DOE has made a final NEPA Determination for this activity, which is categorically excluded from further NEPA review.

City of Milwaukee - LED street light demonstration project - Activity 3:

Prohibited actions include: Demolition, construction, removal, installation or disposal activities, until such time that Recipient complies with the Waste Stream clause.

This restriction does not preclude Recipient from: (1) purchasing any necessary equipment or related materials; or (2) conducting assessments, studies and other related administrative work.

Recipient shall ensure the safety and structural integrity of any repair, replacement, construction and/or alteration performed under this project.

Milwaukee Energy Efficiency Residential Program (Me2) - Activity 4:

Prohibited actions include: For Renewable Energy Generation Facilities or projects: Recipient is restricted from distributing Federal funds pending: (1) further submission by Recipient specifically identifying all activities authorized under this Program; and (2) a final NEPA determination from DOE regarding those activities.

This restriction does not preclude Recipient from: conducting assessments, studies, and audits; developing strategies; and engaging in other administrative work related to the establishment of renewable energy generation facilities or projects.

Energy Efficiency activities: Demolition, construction, removal, installation or disposal activities are prohibited, until such time that Recipient complies with the Waste Stream and Historic Preservation clauses.

This restriction does not preclude Recipient from: (1) purchasing any necessary equipment or related materials; (2) conducting assessments, studies and other related administrative work; or (3) hiring staff.

Recipient shall ensure the safety and structural integrity of any repair, replacement, construction and/or alteration performed under this project.

Milwaukee Energy Efficiency Program - Business Retrofit Loans - Activity 5:

Prohibited actions include: Recipient is restricted from distributing Federal funds pending: (1) further submission by Recipient specifically identifying all activities authorized under this Program; and (2) a final NEPA determination from DOE regarding those activities.

This restriction does not preclude Recipient from: conducting assessments, studies, outreach, and audits; developing strategies; providing technical advice; and engaging in other administrative work related to the establishment of this Program.

Milwaukee Energy Efficiency Program - Business Energy Retrofit Incentive Program- Activity 6:

Prohibited actions include: Recipient is restricted from distributing Federal funds pending: (1) further submission by Recipient specifically identifying all activities authorized under this Program; and (2) a final NEPA determination from DOE regarding those activities.

This restriction does not preclude Recipient from: hiring an M&V vendor; conducting assessments, studies, outreach, and audits; developing strategies; and engaging in other administrative work related to the establishment of this Program.

City Fleet Retrofit Program - Activity 7:

DOE has made a final NEPA Determination for this activity, which is categorically excluded from further NEPA review.

17. HISTORIC PRESERVATION

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

18. WASTE STREAM

Prior to the expenditure of Federal funds to dispose of sanitary or hazardous waste, the Recipient is required to provide documentation to the Project Officer demonstrating that it has prepared a disposal plan for sanitary or hazardous waste generated by the proposed activities. Sanitary or hazardous waste includes, but is not limited to, old light bulbs, lead ballasts, piping, roofing material, discarded equipment, debris, asbestos, etc.

The DOE Contracting Officer shall consider compliance with this clause complete only after the Recipient has submitted adequate documentation to DOE for its review, and DOE has provided written approval to the Recipient of its proposed plan to dispose of its sanitary or hazardous waste.

19. DECONTAMINATION AND/OR DECOMMISSIONING (D&D) COSTS

Notwithstanding any other provisions of this Agreement, the Government shall not be responsible for or have any obligation to the Recipient for (i) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (ii) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Agreement, whether said work was performed prior to or subsequent to the effective date of the Agreement.

20. SUBCONTRACT/SUBGRANT APPROVALS

- a. In the original application, the subcontractor(s)/subgrantee(s) were not proposed by the recipient. In order to receive reimbursement for the costs associated with subcontractors/activities listed in the approved Statement of Project Objectives (SOPO), each subcontract/subgrant must be approved by the DOE Contracting Officer.
- b. Upon the recipient's selection of the subcontractor(s)/subgrantee(s), and within 180 days of the award date in Block 27 of the Assistance Agreement, the recipient shall provide the following information for each, regardless of dollar amount:
 - Name
 - DUNS Number
 - Award Amount
 - Statement of work including applicable activities
 - EF-1 for all proposed activities
- c. In addition to the information in paragraph b. above, for each subcontract/subgrant that has an estimated cost greater than 25% of the Total Allocation or \$1,000,000, whichever is less, the recipient must submit a Statement of Objectives, SF424A Budget Information – Nonconstruction Programs, and Budget Justification. The DOE Contracting Officer may require additional information concerning these subcontract(s)/subgrant(s) prior to providing written approval.
- d. No funds shall be expended on the subcontracts supporting the activities listed in the approved SOPO until DOE approval is provided. DOE does not guarantee or assume any obligation to reimburse costs incurred by the Recipient or subcontractor for these activities, until approval is provided in writing by the Contracting Officer.
- e. Upon written approval by the Contracting Officer, the Recipient may then receive payment for the activities listed in the approved SOPO for allowable costs incurred in accordance with the payment provisions contained in the Special Terms and Conditions of this agreement.

21. ADVANCE UNDERSTANDING CONCERNING PUBLICLY FINANCED ENERGY IMPROVEMENT PROGRAMS

The parties recognize that the Recipient may use funds under this award for Property-Assessed Clean Energy (PACE) loans, Sustainable Energy Municipal Financing, Clean Energy Assessment Districts, Energy Loan Tax Assessment Programs (ELTAPS), or any other form or derivation of Special Taxing District whereby taxing entities collect payments through increased tax assessments for energy efficiency and renewable energy building improvements made by their constituents. The Department of Energy intends to publish "Best Practices" or other guidelines pertaining to the use of funds made available to the Recipient under this award pertaining to the programs identified herein. By accepting this award, the Recipient agrees to incorporate, to the maximum extent practicable, those Best Practices and other guidelines into any such program(s) within a reasonable time after notification by DOE that the Best Practices or guidelines have been made available. The Recipient also agrees, by its acceptance of this award, to require its sub-recipients to incorporate to the maximum extent practicable the best practices and other guideline into any such program used by the sub-recipient.

22. SPECIAL PROVISIONS RELATING TO WORK FUNDED UNDER AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (May 2009)

Preamble

The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, (Recovery Act) was enacted to preserve and create jobs and promote economic recovery, assist those most impacted by the recession, provide investments needed to increase economic efficiency by spurring technological advances in science and health, invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefits, stabilize State and local government budgets, in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases. Recipients shall use grant funds in a manner that maximizes job creation and economic benefit.

The Recipient shall comply with all terms and conditions in the Recovery Act relating generally to governance, accountability, transparency, data collection and resources as specified in Act itself and as discussed below.

Recipients should begin planning activities for their first tier subrecipients, including obtaining a DUNS number (or updating the existing DUNS record), and registering with the Central Contractor Registration (CCR).

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery Act funds and to ensure those records comply with the requirements of the Act.

The Government has not fully developed the implementing instructions of the Recovery Act, particularly concerning specific procedural requirements for the new reporting requirements. The Recipient will be provided these details as they become available. The Recipient must comply with all requirements of the Act. If the recipient believes there is any inconsistency between ARRA requirements and current award terms and conditions, the issues will be referred to the Contracting Officer for reconciliation.

Definitions

For purposes of this clause, Covered Funds means funds expended or obligated from appropriations under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5. Covered Funds will have special accounting codes and will be identified as Recovery Act funds in the grant, cooperative agreement or TIA and/or modification using Recovery Act funds. Covered Funds must be reimbursed by September 30, 2015.

Non-Federal employer means any employer with respect to covered funds -- the contractor, subcontractor, grantee, or recipient, as the case may be, if the contractor, subcontractor, grantee, or recipient is an employer; and any professional membership organization, certification of other professional body, any agent or licensee of the Federal government, or any person acting directly or indirectly in the interest of an employer receiving covered funds; or with respect to covered funds received by a State or local government, the State or local government receiving the funds and any contractor or subcontractor receiving the funds and any contractor or subcontractor of the State or local government; and does not mean any department, agency, or other entity of the federal government.

Recipient means any entity that receives Recovery Act funds directly from the Federal government (including Recovery Act funds received through grant, loan, or contract) other than an individual and includes a State that receives Recovery Act Funds.

Special Provisions

A. Flow Down Requirement

Recipients must include these special terms and conditions in any subaward.

B. Segregation of Costs

Recipients must segregate the obligations and expenditures related to funding under the Recovery Act. Financial and accounting systems should be revised as necessary to segregate, track and maintain these funds apart and separate from other revenue streams. No part of the funds from the Recovery Act shall be commingled with any other funds or used for a purpose other than that of making payments for costs allowable for Recovery Act projects.

C. Prohibition on Use of Funds

None of the funds provided under this agreement derived from the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may be used by any State or local government, or any private entity, for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

D. Access to Records

With respect to each financial assistance agreement awarded utilizing at least some of the funds appropriated or otherwise made available by the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1988 (5 U.S.C. App.) or of the Comptroller General is authorized --

- (1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract that pertain to, and involve transactions that relate to, the subcontract, subgrant, grant, or subgrant; and
- (2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

E. Publication

An application may contain technical data and other data, including trade secrets and/or privileged or confidential information, which the applicant does not want disclosed to the public or used by the Government for any purpose other than the application. To protect such data, the applicant should specifically identify each page including each line or paragraph thereof containing the data to be protected and mark the cover sheet of the application with the following Notice as well as referring to the Notice on each page to which the Notice applies:

Notice of Restriction on Disclosure and Use of Data

The data contained in pages ---- of this application have been submitted in confidence and contain trade secrets or proprietary information, and such data shall be used or disclosed only for evaluation purposes, provided that if this applicant receives an award as a result of or in connection with the submission of this application, DOE shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the Government's right to use or disclose data obtained without restriction from any source, including the applicant.

Information about this agreement will be published on the Internet and linked to the website www.recovery.gov, maintained by the Accountability and Transparency Board. The Board may exclude posting contractual or other information on the website on a case-by-case basis when necessary to protect national security or to protect information that is not subject to disclosure under sections 552 and 552a of title 5, United States Code.

F. Protecting State and Local Government and Contractor Whistleblowers.

The requirements of Section 1553 of the Act are summarized below. They include, but are

not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American

Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

G. Reserved

H. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

I. Information in Support of Recovery Act Reporting

Recipient may be required to submit backup documentation for expenditures of funds under the Recovery Act including such items as timecards and invoices. Recipient shall provide copies of backup documentation at the request of the Contracting Officer or designee.

J. Availability of Funds

Funds obligated to this award are available for reimbursement of costs until 36 months after the award date.

K. Additional Funding Distribution and Assurance of Appropriate Use of Funds

Certification by Governor – For funds provided to any State or agency thereof by the American Reinvestment and Recovery Act of 2009, Pub. L. 111-5, the Governor of the State shall certify that: 1) the state will request and use funds provided by the Act; and 2) the funds will be used to create jobs and promote economic growth.

Acceptance by State Legislature -- If funds provided to any State in any division of the Act are not accepted for use by the Governor, then acceptance by the State legislature, by means of the adoption of a concurrent resolution, shall be sufficient to provide funding to such State.

Distribution -- After adoption of a State legislature's concurrent resolution, funding to the State will be for distribution to local governments, councils of government, public entities, and public-private entities within the State either by formula or at the State's discretion.

L. Certifications

With respect to funds made available to State or local governments for infrastructure investments under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, the Governor, mayor, or other chief executive, as appropriate, certified by acceptance of this award that the infrastructure investment has received the full review and vetting required by

law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Recipient shall provide an additional certification that includes a description of the investment, the estimated total cost, and the amount of covered funds to be used for posting on the Internet. A State or local agency may not receive infrastructure investment funding from funds made available by the Act unless this certification is made and posted.

23. REPORTING AND REGISTRATION REQUIREMENTS UNDER SECTION 1512 OF THE RECOVERY ACT

(a) This award requires the recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 (Recovery Act) and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier subrecipients must maintain current registrations in the Central Contractor Registration (<http://www.ccr.gov>) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (<http://www.dnb.com>) is one of the requirements for registration in the Central Contractor Registration.

(d) The recipient shall report the information described in section 1512(c) of the Recovery Act using the reporting instructions and data elements that will be provided online at <http://www.FederalReporting.gov> and ensure that any information that is pre-filled is corrected or updated as needed.

24. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS – SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

*Special Note: Definitization of the Provisions entitled, “REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009” and “REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009” will be done upon definition and review of final activities.

25. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition—

(1) *Manufactured good* means a good brought to the construction site for incorporation into the building or work that has been—

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) *Public building and public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111-5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

To Be Determined

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of Section 1605 of the Recovery Act . (1)(i)*
Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award

amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

*Include all delivery costs to the construction site.

26. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) *Definitions.* As used in this award term and condition—

Designated country — (1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country: Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom.

Designated country iron, steel, and/or manufactured goods — (1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

Domestic iron, steel, and/or manufactured good — (1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

Foreign iron, steel, and/or manufactured good means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

Public building and *public work* means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Iron, steel, and manufactured goods.* (1) The award term and condition described in this section implements—

(i) Section 1605(a) of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this section.

(3) The requirement in paragraph (b)(2) of this section does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

To Be Determined

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this section if the Federal Government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality;
or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) *Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.* (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(4) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this section.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is

nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) *Data.* To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

*Include all delivery costs to the construction site.

27. WAGE RATE REQUIREMENTS UNDER SECTION 1606 OF THE RECOVERY ACT

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code.

Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

28. RECOVERY ACT TRANSACTIONS LISTED IN SCHEDULE OF EXPENDITURES OF FEDERAL AWARDS AND RECIPIENT RESPONSIBILITIES FOR INFORMING SUBRECIPIENTS

(a) To maximize the transparency and accountability of funds authorized under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) (Recovery Act) as required by Congress and in accordance with 2 CFR 215.21 "Uniform Administrative Requirements for Grants and Agreements" and OMB Circular A-102 Common Rules provisions, recipients agree to maintain records that identify adequately the source and application of Recovery Act funds. OMB Circular A-102 is available at <http://www.whitehouse.gov/omb/circulars/a102/a102.html>.

(b) For recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. OMB Circular A-133 is available at <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. This shall be accomplished by identifying expenditures for Federal awards made under the Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and

inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each subrecipient, and document at the time of subaward and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a recipient awards Recovery Act funds for an existing program, the information furnished to subrecipients shall distinguish the subawards of incremental Recovery Act funds from regular subawards under the existing program.

(d) Recipients agree to require their subrecipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the recipient SEFA described above. This information is needed to allow the recipient to properly monitor subrecipient expenditure of ARRA funds as well as oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

29. DAVIS-BACON ACT REQUIREMENTS

Note: Where necessary to make the context of these articles applicable to this award, the term "Contractor" shall mean "Recipient" and the term "Subcontractor" shall mean "Subrecipient or Subcontractor" per the following definitions.

Recipient means the organization, individual, or other entity that receives an award from DOE and is financially accountable for the use of any DOE funds or property provided for the performance of the project, and is legally responsible for carrying out the terms and conditions of the award.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations).

Davis-Bacon Act

(a) Definition.--"Site of the work"--

(1) Means--

(i) The primary site of the work. The physical place or places where the construction called for in the award will remain when work on it is completed; and

(ii) The secondary site of the work, if any. Any other site where a significant portion of the building or work is constructed, provided that such site is--

(A) Located in the United States; and

(B) Established specifically for the performance of the award or project;

(2) Except as provided in paragraph (3) of this definition, includes any fabrication plants, mobile factories, batch plants, borrow pits, job headquarters, tool yards, etc., provided--

(i) They are dedicated exclusively, or nearly so, to performance of the award or project; and

(ii) They are adjacent or virtually adjacent to the "primary site of the work" as defined in paragraph (a)(1)(i), or the "secondary site of the work" as defined in paragraph (a)(1)(ii) of this definition;

(3) Does not include permanent home offices, branch plant establishments, fabrication plants, or tool yards of a Contractor or subcontractor whose locations and continuance in operation are determined wholly without regard to a particular Federal award or project. In addition, fabrication plants, batch plants, borrow pits, job headquarters, yards, etc., of a commercial or material supplier which are established by a supplier of materials for the project before opening of bids and not on the Project site, are not included in the "site of the work." Such permanent, previously established facilities are not a part of the "site of the work" even if the operations for a period of time may be dedicated exclusively or nearly so, to the performance of a award.

(b) (1) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, or as may be incorporated for a secondary site of the work, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Any wage determination incorporated for a secondary site of the work shall be effective from the first day on which work under the award was performed at that site and shall be incorporated without any adjustment in award price or estimated cost. Laborers employed by the construction Contractor or construction subcontractor that are transporting portions of the building or work between the secondary site of the work and the primary site of the work shall be paid in accordance with the wage determination applicable to the primary site of the work.

(2) Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (e) of this article; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such period.

(3) Such laborers and mechanics shall be paid not less than the appropriate wage rate and fringe benefits in the wage determination for the classification of work actually performed, without regard to skill, except as provided in the article entitled Apprentices and Trainees.

Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein; provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

(4) The wage determination (including any additional classifications and wage rates conformed under paragraph (c) of this article) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(c) (1) The Contracting Officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the award shall be classified in conformance with the wage determination. The Contracting Officer shall approve an additional classification and wage rate and fringe benefits therefore only when all the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination.

(ii) The classification is utilized in the area by the construction industry.

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives and the Contracting Officer agree on the classification and wage rate (including the amount designated for fringe benefits, where appropriate), a report of the action taken shall be sent by the Contracting Officer to the Administrator of the:

Wage and Hour Division
Employment Standards Administration
U.S. Department of Labor
Washington, DC 20210

The Administrator or an authorized representative will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(3) In the event the Contractor, the laborers or mechanics to be employed in the classification, or their representatives, and the Contracting Officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting Officer shall refer the questions, including the views of all interested parties and the recommendation of the Contracting Officer, to the Administrator of the Wage and Hour Division for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the

Contracting Officer or will notify the Contracting Officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits, where appropriate) determined pursuant to subparagraphs (c)(2) and (c)(3) of this article shall be paid to all workers performing work in the classification under this award from the first day on which work is performed in the classification.

(d) Whenever the minimum wage rate prescribed in the award for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(e) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program; provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

Rates of Wages - Prior Approval for Proceeding with Davis-Bacon Construction Activities

If the Recipient determines at any time that any construction, alteration, or repair activity as defined by 29 CFR 5.2(j) (<http://cfr.vlex.com/vid/5-2-definitions-19681309>) will be performed during the course of the project, the Recipient shall request approval from the Contracting Officer prior to commencing such work. If the Contracting Officer concurs with the Recipient's determination, the Recipient must receive Contracting Officer approval to proceed with such activity, and must comply with all applicable Davis-Bacon requirements, prior to commencing such work. A modification to the award which incorporates the appropriate Davis-Bacon wage rate determination(s) will constitute the Contracting Officer's approval to proceed. If the Contracting Officer does not concur with the Recipient's determination, the Contracting Officer will so notify the Recipient in writing.

CERTIFICATION REGARDING SUSPENSION AND DEBARMENT

The undersigned, being duly authorized to act on behalf of WECC (the "CONTRACTOR"), hereby certifies that neither the CONTRACTOR nor any of its principals are debarred, suspended, or proposed for debarment for federal financial assistance (e.g., General Services Administration's List of Parties Excluded from Federal Procurement and Non-Procurement Programs).

The CONTRACTOR further certifies that all potential sub-recipients, contractors, and any and all of their principals are not debarred, suspended or proposed for debarment, and that the CONTRACTOR will not enter into any transactions with any sub-recipients, contractors, or any of their principals who are debarred, suspended or proposed for debarment.

Mary Rodsey Schlager
Signature/Authorized Official
Executive Director
Title

1/15/11
Date

