

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE WISCONSIN ENERGY CONSERVATION CORPORATION
AND
THE CITY OF MILWAUKEE
REGARDING THE WISCONSIN ENERGY EFFICIENCY PROJECT AND THE
MILWAUKEE ENERGY EFFICIENCY PROGRAM
DURING THE POST-GRANT PERIOD**

THIS Memorandum of Understanding (hereinafter, “Memorandum”), with an effective date of November 2, 2014 (“Effective Date”) is made by and between Wisconsin Energy Conservation Corporation, a non-profit corporation with its principal business address at 431 Charmany Dr., Madison, Wisconsin 53719 (“WECC”), and the City of Milwaukee, a Wisconsin municipal corporation (“City”), hereafter collectively referred to as the “Parties” and individually as a “Party.”

1. Background. The Wisconsin Energy Conservation Corporation (“WECC”) on behalf of the Partner Cities of Milwaukee, Madison, and Racine, Wisconsin, (“Partner Cities”) filed an Application for and received a grant award 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. A “Statement of Project Objectives,” describes the general project objectives for the Wisconsin Energy Efficiency (“WE2”) Project, the common name given to the project across the Cities of Milwaukee, Madison and Racine, as attached as Exhibit A to the Cooperation Agreement between WECC and the City of Milwaukee, dated July 27, 2010, including all amendments thereto (“WECC-Milwaukee Agreement 2010”). 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. The Energy Efficiency Loan Program (formerly known as “Green Madison”) is the WE2 Project activities as they are carried out in the geographic limits of the City of Madison. WECC and Milwaukee jointly operated the Me2 program under a Cooperation Agreement with a term of July 27, 2010 to November 1, 2014. WECC and Madison jointly operated the Green Madison program under a Cooperation Agreement with a term of November 1, 2010 to November 1, 2014. During these respective time periods, WECC was the Prime Recipient of the Department of Energy grant and the Cities operated as Subrecipients.

After the grant period of performance ends on November 1, 2014, the Department of Energy still intends a portion of the original grant funds to be used to fund “evergreen” financing programs, such as Revolving Loan Funds (“RLFs”), Loan Loss Reserves (“LLRs”) and Interest Rate Buydowns (“IRBs”). WECC, at the direction of the City of Milwaukee, established a Loan Loss Reserve with Summit Credit Union to support affordable loans for energy efficiency projects. The Cities of Milwaukee and Madison intend to continue providing affordable loans or other eligible financing into the future, which necessitates annual reporting to the US Department of Energy, after the expiration of the original grant period.

Therefore, this Memorandum applies to the post-grant period, beginning November 2, 2014. Under this Memorandum, the City and WECC agree that the WECC-Milwaukee Agreement

2010 is terminated for the post-grant period, except as stated in Section 2 of this Agreement, to the extent that the WECC-Milwaukee Agreement 2010 must necessarily remain in effect to further specify or enable those duties and responsibilities retained by WECC in Section 2, and as to provisions in the WECC-Milwaukee Agreement that necessarily or expressly survive termination thereof.

During the post-grant period, the City of Milwaukee will act as the Administrator, Summit Credit Union will act as Milwaukee's financing partner, according to the terms of Loan Program Financing Memorandum of Understanding executed concomitantly herewith between Summit Credit Union and Milwaukee ("Milwaukee-Summit MOU 2014"), and the City of Madison will operate as a Subrecipient to the City of Milwaukee, according to the terms of the Cooperation Agreement executed concomitantly herewith between Milwaukee and Madison ("Milwaukee-Madison Agreement 2014").

This Memorandum sets forth the roles, responsibilities, and rights of Milwaukee and WECC, but does not change any of the duties and obligations or other terms of the Energy Efficiency Loan Program Agreement executed between WECC and Summit Credit Union on or around March 16, 2011, including all amendments thereto ("WECC-Summit Agreement 2011"), except as expressly stated in the Milwaukee-Summit Memorandum 2014.

2. WECC's Continuing Responsibilities. WECC, as the Recipient of the original DOE grant award, will be responsible for the following obligations during the post-grant period:

- a. Close-out the original grant with DOE as described in Exhibit A.
- b. Complete the final grant reports to DOE as described in Exhibit A.
- c. Provide copies of the final reports to the City of Milwaukee.
- d. Transfer remaining DOE funds for financing programs retained at Summit Credit Union in WECC accounts to new accounts in the name of the City of Milwaukee. These include Me2 Escrow accounts, Loan Loss Reserve Accounts, and Reflow Accounts.
- e. WECC shall assist with information requests from DoE, any third-party DoE agent, or any other federal agency related to projects completed during the grant period that WECC helped administer.

Moreover, to the extent that WECC retains continuing duties and obligations under the WECC-Milwaukee Agreement 2010 under this Section 2, WECC also agrees to continue to satisfy Sections 6.1, Sections 7-15, Section 16 (except that Brian Driscoll shall be the contact per Section 8 of this Agreement), Sections 17-18, and Sections 20-23 of the WECC-Milwaukee Agreement 2010.

For avoidance of doubt, WECC shall not be responsible for any damages or costs that are the direct result of the City's or its employee's or its agent's fraud, willful misconduct, negligence, or material breach of this Agreement.

3. City's Responsibilities. The City is subject to and shall comply with the "EECBG Financing Programs – Grantee Letter 2014-07-15b," attached hereto as Exhibit B, and shall use

remaining funds to support eligible financing programs as outlined in Exhibit C. The City shall also:

- a. Act as the primary point of contact with DOE and the City of Madison.
- b. File required reports to DOE for financing programs operated by the City of Milwaukee and the City of Madison. For each required report, the City will file a single report to the DOE that combines the City of Milwaukee's data with the City of Madison's data.
- c. Enter into an agreement with the City of Madison through which the City acts as the Administrator and the City of Madison acts as a Subrecipient of funds according to the allocations outlined in Exhibit C. The City of Madison is also subject to and shall comply with the "EECBG Financing Programs – Grantee Letter 2014-07-15b," attached hereto as Exhibit B, except that the City of Milwaukee shall complete the required reporting on the City of Madison's behalf.
- d. Enter into an agreement with Summit Credit Union or other financial partner(s) to continue the Me2 financing program consistent with DOE guidance. The City reserves the right to modify or redesign its financing programs under DOE guidance.
- e. Any other management and oversight responsibilities associated with the Me2 financing program not expressly outlined herein.

For avoidance of doubt, the City shall not be responsible for any damages or costs that are the direct result of WECC's or its employee's or its agent's fraud, willful misconduct, negligence, or material breach of this Agreement or the WECC-Milwaukee Agreement 2010 as still in effect.

4. Term of Memorandum. The term of this Memorandum shall begin November 2, 2014 and continue as long as the City of Milwaukee and City of Madison operate financing programs backed by Department of Energy funds under Milwaukee-Madison Agreement 2014 and/or Milwaukee-Summit Memorandum 2014, or so long as the Department of Energy or any other federal entity requires reporting of such funds, or is otherwise amended or terminated earlier in accordance with the provisions of this Agreement.

5. Termination. The City or WECC may terminate this Memorandum for a material breach of the Agreement by the other Party by giving at least 60 days notice in writing to the other party specifying the effective date thereof. In the event of such termination, the City and WECC agree and acknowledge that the City shall in no way be responsible for legal or equitable damages alleged by WECC as a consequence of termination under this section.

6. Amendment. The City and WECC may amend this Memorandum in writing.

7. Governing Law and Venue. This Memorandum and the rights and duties of the Parties hereunder shall be governed by and construed, enforced, and performed in accordance with the laws of the state of Wisconsin without regard to principles of conflicts of law. The sole and exclusive venue for any disputes, claims or causes of action, legal or equitable, shall be the state courts of Wisconsin. This Section 8 and its requirement shall survive the term or any extension terms of this Agreement.

8. Communications and Notices. Any notice given pursuant to this Memorandum 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:

If to City:	If to WECC:
City of Milwaukee Department of Administration 200 East Wells St., Room 603 Milwaukee, WI 53202 Attn: Erick Shambarger	Wisconsin Energy Conservation Corporation Attn: Brian Driscoll 431 Charmany Drive Madison, WI 53719

9. Headings. The headings in this Memorandum are included only as reference and shall not limit or alter the meaning of any of the terms and conditions herein.

10. Severability. The provisions of this Memorandum are severable, and the invalidity or unenforceability of any one or more provision(s) shall not affect or limit the validity of the remaining provisions. Should any particular provision be held to be unreasonable or unenforceable for any reason, then such provision shall be given effect and enforced to whatever extent would be reasonable and enforceable under the applicable law.

11. Entire Agreement. This Memorandum (and the WECC-Milwaukee Agreement 2010 to the extent it is expressly incorporated herein) constitutes the entire agreement between the Parties pertaining to the services to be provided hereunder, and there are no other understandings, agreements, or representations between them pertaining to services to be provided hereunder.

12. Waiver. Failure or delay on the part of either party to exercise any right, power, privilege or remedy hereunder shall not constitute a waiver thereof. A waiver of any default shall not operate as a waiver of any other default or of the same type of default on a future occasion.

13. No Third-Party Beneficiaries. No provision of the Memorandum or Exhibits is intended or shall be construed to be for the benefit of any third party.

14. Assignment. This Memorandum shall inure to the benefit of and be binding upon the Parties' respective successors and assigns, and neither Party shall assign this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

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

JIM OWCZARSKI, City Clerk

COUNTERSIGNED:

MARTIN MATSON, City Comptroller

**WISCONSIN ENERGY
CONSERVATION CORPORATION**

Mary Woolsey Schlaefter, President & CEO

1052-2014-1902/206454v1

EXHIBIT A: DOE Grant Close-Out Instructions

Project closeout is the process by which DOE determines that all applicable administrative actions and required work under the award have been completed. The process includes verifying that the following have been accomplished at the expiration of the acquisition or assistance instrument:

- All terms and conditions have been fulfilled.
- All property issues have been resolved.
- All patent and data issues have been resolved.
- All necessary reports have been submitted to the government.
- All required financial data and other related information have been submitted and resolved.

When all conditions have been met and the final cost has been determined, final payment can be made to the grant recipient and the project may be closed out. Closeout of awards should occur within a reasonable period of time after the completion date of the award or date of termination. In the event a final audit has not been performed prior to the closeout of the grant, DOC reserves the right to recover funds after fully considering the recommendations on disallowed costs resulting from the final audit.

The grant recipient is required to submit the project closeout documentation to both the account manager and project officer. The grant recipient should provide closeout documentation following project completion or expiration of the grant award period, whichever comes first. This section summarizes the documentation that should be submitted to close the project and award.

Within 90 days after the expiration or termination of a Better Buildings grant award, the grant recipient must submit all financial, performance, and other reports required as a condition of the award. These documents may include, but are not limited to:

- **Final Federal Financial Status Report (FFR SF-269).**
 - The final FFR should not have non-liquidated obligations and must indicate the exact balance of unobligated funds.
 - All Better Building funds not expended by the end of the award period must be remitted by the grant recipient to DOE. The funds will then be deobligated and returned to the U.S. Department of Treasury.
- **Final Program Progress Report (PPR)** summarizes the project accomplishments. This report should be based on the data submitted during the life of the award.
- **Final Federal Cash Transactions Report (SF-272).**
- **Property Certification Form (SF-428).**

Other project closeout documentation that may be applicable includes:

- **Financial Assistance Property Closeout Certification**, which includes listing property furnished by DOE or acquired under the award. If the grant recipient has residual federally owned property in its possession, then the grant recipient is required to provide an inventory, see http://www.netl.doe.gov/business/forms.html#PROPERTY_FA.

DOE will determine if other financial reports, such as the annual indirect cost submission and the audit required by OMB Circular, A-133, have been submitted by the grant recipient. For large dollar or complex awards, DOE may wish to have an incurred cost audit performed to verify funds were spent appropriately.

Grant recipients, and any sub-grantees, must retain records related to the grant for at least three years after the project's completion. During this period, the Secretary of Energy, the Inspector General of Energy, and the Comptroller General have the authority to access documents and records related to the Better Buildings Program. Additional guidance on project closeout documentation will be provided to grant recipients in the future. Details on closeout requirements can also be found at DOE 10 CFR 600, or by contacting your account manager.

EXHIBIT B: EECBG Financing Programs Grantee Letter July 15, 2014

[pdf from DoE]

EXHIBIT C: Allocation of Financing Funds

[Will be dropped in as soon as finalized.]

EXHIBIT D – STATEMENT OF PROJECT OBJECTIVES