

COOPERATION AGREEMENT BETWEEN THE WISCONSIN ENERGY CONSERVATION CORPORATION AND THE CITY OF MILWAUKEE REGARDING THE WISCONSIN ENERGY EFFICIENCY PROJECT AND THE MILWAUKEE ENERGY EFFICIENCY PROGRAM

THIS Cooperation Agreement (hereinafter, "Agreement"), with an effective date of July 27, 2010 ("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."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. Project Overview

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. The "Statement of Project Objectives", attached to the Grant Agreement between DOE and WECC as Attachment 2 and attached to this Agreement as Exhibit 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. 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. Minimum funding of \$12,051,372 for the ME2 program is set forth in Exhibit F, of which \$1,433,400 is allocated to the City for its administrative and program services. While supporting the project's overall objectives as outlined in the Statement of Project Objectives, the City reserves the right to revise the ME2 program strategies and tasks within DOE parameters, particularly as it relates to financing and workforce development. This Agreement acknowledges that the project objectives must be achieved within a rapidly evolving policy environment at the federal government level.

This Agreement sets forth the roles, responsibilities, and allocation of resources between WECC and the City both as to general project oversight and the allocation and use of grant award funds for the ME2 program, consistent with the objectives, terms, and conditions of the DOE grant award. This Agreement does not create any liability or penalty for WECC or the City if customer demand does not meet projections set forth in the Statement of Project Objectives, including the estimated number of homes and businesses to be served by the programs. If any part of the Statement of Project Objectives conflicts with the terms of this Agreement, this Agreement shall govern.

2. Project Governance

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. Except as otherwise specifically provided in Sections 3.I.(1)-(3) of this Agreement, any direction to be exercised on the part of the City or any approvals to be granted under this Agreement shall be given by the DOA or its designee. The DOA or its designee may consult with the City's Economic Stimulus Task Force on ME2 program design. The ME2 program shall be construed as independent from the WE2 programs in the cities of Racine and Madison and its design and implementation is subject to the approval of the City in consultation with WECC and the DOE. The Parties may design and administer the ME2 program and all its various elements without the consent of the two other Partner Cities.

The City may endeavor to cooperate with the other Partner Cities to design common elements for the WE2 project when the City deems such cooperation to be in the best interests of the ME2 program. The City may cooperate in joint actions with the other Partner Cities in the WE2 project, such as the issuance of common requests for proposals for services across the three cities. However, the City reserves the right to act independently according to the program budget designated for ME2 in Exhibit F. The City shall have final approval, subject to potential DOE approval where required by the terms of the Grant Agreement, of ME2 program budget revisions; marketing strategy; workforce development strategy; fiscal leveraging strategy including loan capitalization plan, loan servicing strategy, and loan loss reserve legal set-up contracts; contractor development strategy; and revisions to the Statement of Project Objectives.

3. WECC Roles & Responsibilities

WECC, as the Recipient of the DOE grant award, will be the Project Administrator of the DOE grant award and will use a portion of the direct grant award for the following roles and responsibilities:

- a. Overall WE2 project administration and disbursement of grant funds and interaction with DOE. The City may interact with DOE on any issue related to the grant.
- b. Program design, implementation, and day-to-day management and administrative functions of the ME2 program in coordination with the City and subject to the approval of the City as set forth in this Agreement.
- c. All required grant administration, tracking, and reporting tasks.
- d. Provision of the IT and management infrastructure to allow accurate project/program reporting and performance tracking.
- e. Provision of the financial management infrastructure to manage, control, and disburse all grant funds according to project requirements for project and ME2 program activities.
- f. Ensure that the program designs will allow both residential and non-residential program participants the opportunity to be eligible to receive Focus on Energy rewards/incentives if the customer wishes to do so.
- g. Ensure there is coordination between Focus on Energy and the financing program(s) offered via this grant award.
- h. Establish at least monthly meetings and other communications with the Partner Cities and with the City.
- i. Pursuant to the budget breakdown set forth in Exhibit F and subject to the City's approval where set forth in this Agreement, contract with vendors to provide services to implement the ME2 program including but not limited to: (1) loan origination and servicing; (2) fiscal agency for the loan loss reserve fund; (3) purchase of equipment to assist in the delivery of the program; and (4) marketing and advertising.
- j. Hire Energy Advocates, according to the Energy Advocate staff dollars set forth in Exhibit F, to perform ME2 program activities including but not limited to providing in-home energy efficiency education, assisting homeowners throughout the audit/retrofit process, and assisting local community organization recruitment and training.
- k. WECC shall issue a Request for Qualifications ("RFQ"), subject to City review and approval, to qualify contractors to perform retrofit work under the ME2 program. The RFQ shall contain the requirements for contractor participation in the ME2 program including the provisions set forth in the Community Workforce Agreement ("CWA") attached as Exhibit E. Contractors shall satisfy all requirements including the CWA requirements to become and remain a qualified contractor eligible to participate in the ME2 program. WECC shall disqualify contractors who fail to meet the requirements of the CWA.

- i. WECC, working with the City, shall by August 31, 2010, submit specific residential and non-residential program designs relating to program financing and program marketing and advertising for review and approval by the City of Milwaukee Common Council. WECC and the City agree to use the grant award funds to develop, administer and deliver energy efficiency retrofit residential and non-residential programs acceptable to the City and DOE which may include the Property Assessed Clean Energy (PACE) financing model, on-bill utility financing or other financing mechanisms to achieve the objectives set forth in the Statement of Project Objectives. Exhibit B to this Agreement sets forth the minimum attributes that shall be included in the program design financing mechanisms implemented under this Agreement. The specific program designs shall include at least the following:
 - (1) A financing mechanism(s) including the recommended sources of funds for the residential and non-residential ME2 programs.
 - (2) The process for selecting the fiscal agent for the ME2 program loan loss reserve(s) and the rules for the use of the loan loss reserve(s) including DOE requirements and guidance. If the process is to use a Request for Proposals (RFP) to secure a fiscal agent, a RFP to secure a fiscal agent shall be included.
 - (3) The process for selecting a provider for loan origination and servicing functions for the ME2 program including the proposed loan underwriting criteria and pricing. If the process is to use a Request for Proposal to secure a loan originator and servicing agent, a RFP including the terms and conditions for selection of a vendor shall be included.
 - (4) A process to develop a marketing and advertising strategy and implementation plan including the potential retention of a marketing/advertising firm to assist with such efforts and/or to provide marketing and advertising implementation for the ME2 program. If the process is to use a Request(s) for Proposals to secure marketing and advertising services, a RFP(s) including the terms and conditions for selection of a vendor(s) shall be provided to the City according to the timeframe set forth in sub. m. The process for City approval of the RFP(s) shall be as set forth in sub. m.
 - (5) A revised ME2 program budget, developed with the DOA or its designee, and approved by DOE if such DOE approval is required under the terms of the grant agreement.
 - (6) Subsequent changes in the program elements described in subs. (1)-(4) above (including the RFPs) shall be approved by the City of Milwaukee Common Council.
- m. WECC shall not issue a RFQ or RFP without the prior review and approval of the City. WECC may select a vendor pursuant to the terms of a RFP but shall not execute a contract with the vendor until the contract terms are reviewed and approved by the City. If RFPs or RFQs other than those in sub. l(2) and (3). above are to be used in the ME2 program, WECC shall provide the City with a copy of the proposed RFP or RFQ at least 30 days prior to issuance. The City shall provide WECC with any revisions within 21 days of receipt.
- n. By August 31, 2010, WECC shall submit to the City for its approval a detailed quality assurance plan setting forth the manner in which WECC will ensure the quality of the energy efficiency retrofits performed under the ME2 program, including the frequency of post-retrofit on-site assurance assessments.
- o. In coordination with the City, ensure that all applicable regulatory requirements to implement the ME2 program are met. Subject to the City obligation in Section 4.j. of this Agreement, WECC is solely responsible for compliance with the DOE reporting requirements for this grant.

- p. WECC shall open a field office within the geographic boundaries of the city of Milwaukee by no later than April 1, 2011.
- q. WECC, for purposes of implementing the ME2 program, shall assist local training providers identified by the City pursuant to the CWA to become accredited to provide training to Milwaukee residents to meet Focus on Energy Consultant or Contractor qualification criteria and shall conduct at least 50% of its training hours (including training energy auditors/consultants and energy advocates) within the geographic boundaries of the city of Milwaukee.
- r. Develop and implement an approach acceptable to the City to achieve the sustainability of the ME2 program after the grant period has terminated, including allocation of ME2 program income in the manner set forth in Section 4.g. of this Agreement. WECC shall develop, for City approval, a concept for aggregating the estimated reduction of greenhouse gas emissions from the ME2 program for sale on an emerging carbon credit market.

4. City Roles & Responsibilities

The City, as a sub-recipient of the DOE grant award, is subject to and shall comply with the “Special Terms & Conditions” attached to the DOE grant award for sub-recipients (attached as Exhibit C) and shall use its sub-recipient award funds and its portion of the other “contractual” funds for the following roles and responsibilities under this Agreement:

- a. Provide assistance to WECC with the development of ME2 program elements acceptable to the City, and after approval of a program element by the City, provide oversight and assistance for the administration and delivery of such program elements in coordination with WECC and provide the City program functions set forth in PMC123.1 Contractual worksheet, attached as Exhibit D to this Agreement.
- b. Approve procurement documents specified in Section 3, including Requests for Proposals, Request for Qualifications, and other bid documents before they are issued to the public.
- c. Approve vendor selections specified in Section 3, including but not limited to marketing firms, law firms, loan loss reserve fiscal agents, and banks or other loan capitalization offers.
- d. Review and approve changes to the WE2 and ME2 budgets.
- e. Review and approve the fiscal agency and rules governing the loan loss reserve fund as specified in Section 3.
- f. Review and approve WECC’s quality assurance plan.
- g. The City shall retain all program income generated from the ME2 program for use in future ME2 program efforts, including but not limited to loan servicing fees, interest on loan-loss reserves and income from the sale or use of carbon credits. The City may agree to allow WECC to retain a portion of ME2 program income for the sustainability of the ME2 program.
- h. The City shall not be required to use its own taxpayer funds in addition to grant award funds to meet its obligations under this Agreement.
- i. The City shall provide \$1.2 million of its EECBG Block Grant to fund the ME2 program. The specific use of the \$1.2 million in funding to support ME2 is at the sole discretion of the City.
- j. Assist WECC by tracking and providing available information from functions performed by the City necessary for WECC to meet its DOE project reporting requirements.
- k. As it deems necessary or appropriate, the City’s Office of Environmental Sustainability will provide outreach and advocacy to businesses and the public on sustainable practices and related funding opportunities, including the availability of the ME2 program. The Office of Environmental Sustainability will also work to identify additional

sources of funds to leverage towards the ME2 program and these other related sustainability efforts.

- I. As it deems necessary or appropriate, the City will utilize in-house marketing staff to market and advertise the ME2 program to local businesses and the general public.

5. Term of Agreement

The initial Term of this Agreement shall begin as of the Effective Date of this Agreement and end June 30, 2013, which is in alignment with the termination of the DOE grant award funds, or is otherwise amended or terminated earlier in accordance with the provisions of this Agreement.

5.1 Commencement. This Agreement and the terms herein shall become binding as of the Effective Date of this Agreement. This Agreement supersedes all other contracts, discussions, agreements, negotiations, oral statements, or representations between the Parties.

5.2 Termination. The City or WECC may terminate this Agreement 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.

5.3 Provisions Not Affected by Termination. Any termination shall not affect the provisions of this Agreement relating to records retention and access (Sections 6.1 and 4.j), indemnity, warranties made herein by the Parties, warranties implied by law, or remedies for breach of the Agreement, either by contract or by common law.

6. Allocation of WE2 Project Funds to the ME2 Project/Disbursement of Funds to the City. The WE2 project funds budgeted for the ME2 program (\$12,051,372), set forth in Exhibit F, shall be a minimum amount. The allocation of grant funds between WECC and the City and among the Partner Cities is set forth in the Exhibit D PMC 123.1 and Exhibit F to this Agreement. If a Partner City does not participate in the WE2 project or terminates its participation prior to its budgeted project funds being committed or expended, the remaining project funds shall with the approval of DOE be apportioned among the remaining Partner Cities. The City shall receive \$1,433,000 in grant funds to provide administrative, program and other services including personnel, fringes and other direct costs for the WE2 Project and ME2 program. No grant award funds, directly or indirectly, may be used or expended for gambling establishments, aquariums, zoos, golf courses or swimming pools.

Grant funds obligated by DOE for the WE2 Project are only available for reimbursement of costs incurred within 36 months of the grant award date of June 3, 2010. The City may request an advance payment of its expected costs to provide administration, program and other services under this Agreement on a quarterly basis. The City shall provide WECC a request for an advance including the amount of funds requested and a general description of the expected services/costs to be paid by such advance at least 14 business days prior to the commencement of a new quarter. WECC will provide the advance prior to the commencement of the new quarter. The City, by the fifth (5th) day of the month following the end of a quarterly period, shall provide WECC a Statement of Work that shall identify and separately enumerate its administrative costs, subcontractor costs and program costs on each Statement that the advanced funds were used for.

For eligible costs that have not been requested and paid by an advance to the City, the City shall submit detailed invoices for reimbursement to WECC by the fifth (5th) day of each month

on the expenditure of grant funds. The City invoices shall identify and separately enumerate its administrative costs, subcontractor costs and program costs on each invoice. Payment is due within thirty (30) days after the receipt of the invoice by WECC. City acknowledges, however, that any costs reimbursement payments made by WECC shall not preclude WECC from thereafter disputing any item invoiced or paid through advance. All charges and receipts for reimbursable costs or paid through an advance are subject to audit verification. WECC shall recover from the City any advance or expended funds that are not eligible for reimbursement including the failure to meet audit verification requirements and shall include such funds in the future funds available for the ME2 program.

ME2 program funds may be reallocated between tasks by the City pursuant to the reallocation provisions set forth in Exhibit C to this Agreement.

6.1 Records. Both the City and WECC shall keep accurate accounts and records pertaining to all fees, costs, and expenses for which it is reimbursed hereunder in accordance with Generally Accepted Accounting Principles and Practices. All records related to this Agreement shall be maintained for a period of seven (7) years after termination of the Agreement. At any time during normal business hours, there shall be made available for examination by the City or WECC all of WECC's or the City's records with respect to all matters covered by this Agreement and WECC or the City will permit the City or WECC to audit, examine, and make excerpts or transcripts from the records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, documents related to all matters covered by this Agreement.

6.2 Disbursement Disputes. Upon submission of an invoice by the City, WECC shall have ten (10) business days after delivery of the invoice to provide City with a written objection ("Objection") if WECC believes that the Services for that invoice has not been performed in accordance with this Agreement or an applicable schedule. Any Objection must include a detailed identification of each element within the Services that has not been performed in accordance with the specification. Upon receipt of an Objection, the City shall investigate and respond to the objection within ten (10) business days. The City and WECC commit to make every effort to resolve such objections within ten (10) days thereafter.

7. Representations/Warranty

WECC and the City represent and warrant that their roles and responsibilities set forth in this Agreement shall be performed with the degree of skill and care that is required by current, sound professional and industry procedures and practices, and in conformance with generally accepted professional and industry standards prevailing at the time the work is performed. The City and WECC reserve the right to review each other's work so as to ensure that the services are performed in a manner consistent with program guidelines and appropriate for the purposes of this Agreement.

8. Independent Contractor

At all times during the term of this Agreement, WECC shall be and remain an independent contractor. WECC shall perform its services under this Agreement according to its own means and methods, and the performance shall remain in the exclusive charge and control of WECC. It is expressly understood that the City does not directly hire any of WECC's personnel or assume any liability therefore. Nothing herein shall be construed as creating a relationship of employer and employee between the City and WECC, or between the City and WECC's employees or agents. WECC's employees shall be and remain employees of WECC, and WECC shall be responsible for payment of benefits and the entire compensation of each of WECC's employees

(or its beneficiaries), including employment taxes, unemployment compensation, and any similar taxes associated with employment. WECC agrees and represents that, as employer of such persons, it shall comply with all applicable laws and regulations. This Agreement is not exclusive. Except as set forth in the Agreement or a schedule, WECC has no power or authority to act for, represent, or bind the City in any manner.

At all times during the term of this Agreement, the City shall be and remain an independent contractor. City shall perform its services under this Agreement according to its own means and methods, and performance shall remain in the exclusive charge and control of the City. It is expressly understood that WECC does not directly hire any of City's personnel or assume any liability therefore. Nothing herein shall be construed as creating a relationship of employer and employee between WECC and City, or between WECC and City's employees or agents. The City's employees shall be and remain employees of the City, and the City shall be responsible for payment of benefits and the entire compensation of each of City's employees (or its beneficiaries), including employment taxes, unemployment compensation, and any similar taxes associated with employment. City agrees and represents that, as employer of such persons it shall comply with all applicable laws and regulations. This Agreement is not exclusive. Except as set forth in the Agreement or a schedule, City has no power or authority to act for, represent, or bind WECC in any manner.

9. Insurance

During the term of this Agreement, WECC shall maintain insurance in the minimum amounts as outlined below:

General Liability—not less than \$1,000,000 per occurrence and in the aggregate for bodily injury, property damage; including personal injury/advertising injury and products/completed operations.

Employer's Liability—not less than \$1,000,000 each accident for bodily injury by accident, and \$1,000,000 each employee and policy limit for bodily injury by disease.

Automobile Liability—(owned, non-owned or hired) in a combined single limit not less than \$1,000,000 per accident for bodily injury and property damage liability.

Worker's Compensation—in accordance with the statutory requirements of the state of Wisconsin.

10. 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, including but not limited to contractors (and their subcontractors) qualified by WECC pursuant to this Agreement or the CWA. WECC shall require contractors and subcontractors qualified by WECC for work on the ME2 program pursuant to this Agreement or the CWA to indemnify and hold the City harmless, under these same terms, for the contractors' work on the ME2 program. This indemnification includes, but is not limited to, the following:

- a. Personal injury suffered by a third party, or any employee of City, WECC and any subcontractor of WECC.

- b. Property damage incurred by any third party or by City, WECC and any subcontractor of WECC.
- c. Any negligent, intentional or wrongful acts or omission of WECC, and any subcontractor of WECC.
- d. A breach of this Agreement by WECC.
- e. A failure of WECC to comply with any applicable laws, including but not limited to environment protection laws.
- f. Any failure of WECC to pay federal, state and local taxes, including but not limited to employee withholding, or any failure to provide workers' compensation coverage to WECC's employees.

11. Subcontractor

WECC may subcontract any portion of its Services, provided that WECC shall remain fully responsible for all Services performed by subcontractor. WECC shall maintain accurate accounts and records pertaining to all fees, costs, and expenses, and shall directly reimburse subcontractor for services rendered, in accordance to such agreement between WECC and subcontractor. The City may subcontract any portion of its Services provided that the City shall remain fully responsible for all services performed by the subcontractor. Any subcontractor under this agreement shall be subject to the "Special Terms & Conditions" set forth in the WECC-DOE agreement included as Exhibit C to this Agreement.

12. Force Majeure

Either party's performance of any part of the Agreement shall be excused to the extent that it is hindered, delayed or otherwise made impractical by reason of flood, riot, fire, explosion, war, acts or omissions of the other party or any other cause, whether similar or dissimilar to those listed, beyond the party's reasonable control. If any such event occurs, the non-performing party shall make reasonable efforts to notify the other party of the nature of such condition and the extent of the delay and shall make reasonable, good faith efforts to resume performance as soon as possible.

13. Discrimination

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.

14. Confidentiality, Public Records Law

Neither Party shall disclose Confidential Information communicated to it with respect to services to be performed under this Agreement to a third party (other than the Party's employees, lenders, counsel, accountants or advisors who have a need to know such information) except in order to comply with any applicable law, regulation, in connection with any court or regulatory proceeding, or after obtaining written permission from the other Party to disclose such information; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. For purposes of this Agreement, Confidential Information shall mean all information designated by a Party as confidential, proprietary, competitively sensitive, and or trade secret information.

Notwithstanding the foregoing, WECC acknowledges that the City is bound by the Wisconsin Public Records Law, Wis. Stat. §§ 19.31-39 (“Public Records Law”). Under the Public Records Law, any “records” of the City and WECC within the meaning of Wis. Stat. § 19.32(2) (as they relate to this Agreement) are subject to public disclosure, unless there is a statutory, common law, or public policy reason for nondisclosure, (e.g., trade secrets exception). In the event that the City receives a public records request for records relating to the Agreement, WECC shall cooperate by producing records produced or collected as a result of this Agreement; any information designated by WECC as confidential or non-public information will be considered in conjunction with the City’s response to the public records request. Decisions on behalf of the City to withhold public disclosure of records subject to this law must be supported by a statement of the public-policy basis for denial. WECC agrees to cooperate with any reasonable request for assistance by the City to support nondisclosure decisions by, including but not limited to, defining what information is Confidential Information and why.

The City shall provide prior notice to WECC if the City determines that information that WECC considers confidential or non-public must be released, with a right for WECC to defend that the information is confidential or otherwise non-public. In all cases the City retains the final authority on disclosure decisions in compliance with the law. Compliance with the law shall not constitute a violation of this Agreement.

15. Governing Law and Venue

This Agreement 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 15 and its requirement shall survive the term or any extension terms of this Agreement.

16. Communications and 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:

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: Sue Hanson 431 Charmany Drive Madison, WI 53719

17. Headings

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

18. Severability

The provisions of this Agreement 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.

19. Entire Agreement

With the exception of the Community Workforce Agreement attached as Exhibit E, this Agreement is 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.

20. Public And Community Relations

WECC shall use its best efforts to maintain a good public image for City and shall be responsive to concerns raised by community members. WECC shall not disclose information of a sensitive nature to any third parties without City's prior written consent. With the sole exception of publication of such information within WECC's corporate entity and subject to the Confidentiality provisions of this Agreement, WECC shall not refer to City or any company affiliated with City in any advertising or other publication in connection with goods or services rendered by WECC, without the prior written approval of City.

21. 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.

22. No Third-Party Beneficiaries

No provision of the Agreement or schedules is intended or shall be construed to be for the benefit of any third party.

23. Assignment

This Agreement 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.

24. Amendment

The City and WECC may agree to amend this Agreement by writing.

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

CITY OF MILWAUKEE

TOM BARRETT, Mayor

RONALD D. LEONHARDT, City Clerk

COUNTERSIGNED:

W. MARTIN MORICS, City Comptroller

WISCONSIN ENERGY CONSERVATION CORPORATION

Mary Woolsey Schlaefel
Executive Director

EXHIBIT A
Statement of Project Objectives, Attachment #2, from the WECC & US DOE Grant Award Agreement

EXHIBIT B
Required Attributes of Implemented Financing Programs

A. This Exhibit incorporates DOE guidance (EECBG PROGRAM NOTICE 09-002) for the use of loan loss reserves. Per DOE, Energy Efficiency and Conservation Block Grant Program funds can be used for a loan loss reserve to support loans made with private and public funds and to support a sale of loans made by a grantee or third-party lenders into a secondary market, subject to the following conditions. In order to ensure that a use of EECBG funds to leverage additional public and private sector funds furthers the stated purposes of the EECBG Program, the activities supported by the leveraged funds are limited to those activities specifically listed as eligible activities in the EECBG statute.

B. A grantee must ensure that the following conditions are met:

1. Both WECC and the City of Milwaukee shall have the right to review and monitor loans provided by third party lenders to ensure that loans are being made to support eligible activities listed in 42 USC 17154(3)-(13);
2. Neither WECC nor the City of Milwaukee, in establishing a loan loss reserve, shall have any legal or financial obligation beyond the funds committed to the reserve and neither is subject to further recourse in the event losses exceed the amount of the reserve;
3. Any EECBG funds used to establish a loan loss reserve not used in connection with loan losses and paid to third party lenders or secondary market investors must be used by or at the direction of the grantee and for an eligible use under the EECBG Program, including capitalization of a revolving loan fund; and
4. Under no circumstances shall EECBG funds be released to a third party lender or secondary market investor for any purpose not pertaining to loan losses.

C. The financing programs to be implemented under this Agreement shall, at a minimum, have the following attributes:

1. Per the loan loss reserve amounts set aside for the ME2 program set forth in Exhibit D, establish Initial loan loss reserves of 5% for a residential financing program and 8% for a non-residential financing program with the use of grant funds, unless a different percentage is approved by the DOE grant contract officer.
2. If a PACE financing program is implemented, insure that the “Best Practices” underwriting criteria and/or other guidelines shall at a minimum comply with the loan underwriting requirements and/or other guideline requirements of section 22 of the “Special Terms & Conditions” set forth in Exhibit C.

EXHIBIT C
WECC & DOE Grant Agreement “Special Terms & Conditions”

EXHIBIT D
“Subrecipient and Contractual” sections of PMC 123.1 (revised 6/14/10)

EXHIBIT E
**Community Workforce Agreement between the City of Milwaukee and the Wisconsin
Energy Conservation Corporation**

EXHIBIT F
Budget Breakdown of WE2 Project According to City Programs, including ME2 Program