

**COOPERATION AGREEMENT BETWEEN  
THE CITY OF MILWAUKEE  
AND  
THE CITY OF MADISON  
REGARDING THE WISCONSIN ENERGY EFFICIENCY PROJECT, THE  
MILWAUKEE ENERGY EFFICIENCY PROGRAM, AND THE MADISON ENERGY  
EFFICIENCY LOAN PROGRAM  
DURING THE POST-GRANT PERIOD**

**THIS Cooperation Agreement** (hereinafter, “Agreement”), with an effective date of November 2, 2014 (“Effective Date”) is made by and between the City of Milwaukee, a Wisconsin municipal corporation (“Milwaukee”) and the City of Madison, a Wisconsin municipal corporation (Madison), 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. 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 Agreement applies to the post-grant period, beginning November 2, 2014. According to the terms of this Agreement, Milwaukee shall act as the Administrator and Madison will operate as a Subrecipient to Milwaukee. This Agreement sets forth the roles, responsibilities, and rights of Milwaukee and Madison, but does not change any of the duties and obligations or other terms of the WECC-Milwaukee Agreement 2010, except as expressly stated in the Memorandum of Understanding executed concomitantly herewith between WECC and Milwaukee (“WECC-Milwaukee MOU 2014”), nor 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 Loan Program Financing Memorandum of Understanding executed concomitantly herewith between Summit Credit Union and Milwaukee (“Milwaukee-Summit MOU 2014”).

## **2. Project Governance**

Milwaukee designates its 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 3.1(1)-(3) of this Agreement, any direction to be exercised on the part of Milwaukee or any approvals to be granted under this Agreement shall be given by DOA or its designee. The Me2 program shall be construed as independent from the WE2 programs in Madison. The Cities may design and administer their respective programs and all their various elements without the consent of the any other Partner City, provided those activities are administered in accordance with “EECBG Financing Programs - Grantee Letter 2014-07-15b,” attached hereto as Exhibit A.

## **3. City of Milwaukee’s Responsibilities**

Milwaukee is subject to and shall comply with the “EECBG Financing Programs – Grantee Letter 2014-07-15b,” attached hereto as Exhibit A, and shall use remaining funds to support eligible financing programs as outlined in Exhibit B. Milwaukee shall also:

- a. Act as the primary point of contact with DOE and Madison.
- b. File required reports to DOE for financing programs operated by Milwaukee and Madison. For each required report, Milwaukee will file a single report to the DOE that combines Milwaukee’s data with Madison’s data.
- c. Enter into an agreement with WECC through which Milwaukee acts as the Administrator and the Madison acts as a Subrecipient of funds according to the allocations outlined in Exhibit B.
- d. Enter into an agreement with Summit Credit Union or other financial partner(s) to continue the Me2 financing program consistent with DOE guidance. Milwaukee 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.

#### **4. City of Madison's Responsibilities**

Madison 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. Madison shall also:

- a. File required annual reports to Milwaukee for financing programs operated by the Madison by October 15<sup>th</sup> of each year, as well as whatever additional reporting requirements are outlined in Exhibit B.
- b. Perform any other management and oversight responsibilities associated with the Energy Efficiency Loan Program not expressly outlined herein.
- c. Comply with any new directives of DOE related to program. Failure to comply after being provided an opportunity to cure may result in remaining funds being transferred to the Milwaukee or US Department of Energy.
- d. Madison will pay Milwaukee an annual reporting fee of \$4,500, payable by December 1<sup>st</sup> of each year, commencing in 2015. Such reporting fee may be paid from program funds.

**5. Term of Agreement.** The term of this Agreement shall begin on November 2, 2014 and be in force as long as both Parties operate financing programs backed by Department of Energy funds, or so long as the Department of Energy requires reporting of such 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.** Either Party 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, both Parties agree and acknowledge that neither Party shall be responsible for legal or equitable damages alleged by the other Party 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), 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 Milwaukee.** The WE2 project funds budgeted for the ME2 program **XXXXXXXX** set forth in Exhibit B, shall be a minimum amount. The allocation of grant funds among the Partner Cities is set forth in the Exhibit B to this Agreement. If Madison ends its participation in the WE2, any remaining project funds shall, with the approval of DOE, be apportioned to Milwaukee.

**7. Records.** Both Parties 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 either City all of the other City's records with respect to all matters covered by this Agreement and each City will permit the other City to audit, copy, 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.

**8. Representations/Warranty.** Each City represents and warrants 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.

**9. Liability.** Each Party shall be responsible for the acts, errors, or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims and liabilities that are attributable to such acts, errors, or omissions including providing its own defense, arising out of this Agreement. In situations involving joint liability, each Party shall only be responsible for such losses, claims and liabilities that are attributable to its own acts, errors or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. Sec. 893.80 or any other protections available to the Parties by law. This Section 9 shall survive the termination or expiration of this Agreement.

**10. 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.

**11. Discrimination.** Neither City shall discriminate against any qualified employee or qualified applicant for employment with either City 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.

**12. Confidentiality, Public Records Law.** Neither City 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 or a third-party related to the Me2 and/or Energy Efficiency Loan Program as confidential, proprietary, competitively sensitive, and or trade secret information.

Notwithstanding the foregoing, both Cities acknowledge that each 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 either City receives a public records request for records relating to this Agreement, the other City shall cooperate by producing records related to this Agreement. Any designation of information by either City as confidential or non-public will be considered in conjunction with any response to a public records request. Decisions to withhold public disclosure of records subject to this law must be supported by a statement of the public-policy basis for denial. Both Cities agree to cooperate with any reasonable request for assistance by the other City to support nondisclosure decisions by, including but not limited to, defining what information is Confidential Information and why.

Either City shall provide prior notice to the other City if it determines that information that the other City considers confidential or non-public must be released, with a right for the other City to argue that the information is confidential or otherwise non-public. In all cases, each 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.

**13. 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 13 and its requirement shall survive the term or any extension terms of this Agreement.

**14. Communications and Notices.** Any notice given pursuant to this Agreement shall be in writing and shall be effective when delivered personally or, if deposited in the United States mail, postage prepaid, certified or registered, return receipt requested, 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 Madison:
City of Milwaukee Department of Administration 200 East Wells St., Room 603 Milwaukee, WI 53202 Attn: Erick Shambarger	City of Madison Community Development Division Madison Municipal Building, Room 280 215 Martin Luther King, Jr. Blvd. P.O. Box 2627 Madison, WI 53701-2627 Attn: Susan Morrison

**15. 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.

**16. 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.

**17. Entire Agreement.** 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.

**18. Public and Community Relations.** Both Cities shall use best efforts to maintain good public images for both Cities and shall be responsive to concerns raised by community members. Neither City may disclose information of a sensitive nature to any third parties without the other City's prior written consent.

**19. 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.

**20. 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.

**21. 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.

**22. Amendment.** The Parties 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

Date \_\_\_\_\_

\_\_\_\_\_  
JIM OWCZARSKI, City Clerk

Date \_\_\_\_\_

**COUNTERSIGNED:**

\_\_\_\_\_  
MARTIN MATSON, City Comptroller

Date\_\_\_\_\_

**CITY OF MADISON**

\_\_\_\_\_  
PAUL SOGLIN, Mayor

Date\_\_\_\_\_

\_\_\_\_\_  
MARIBETH WITZEL-BEHL, City Clerk

Date\_\_\_\_\_

**COUNTERSIGNED:**

\_\_\_\_\_  
DAVID SCHMIEDICKE, Finance Director

Date\_\_\_\_\_

**EXHIBIT A: EECBG Financing Programs Grantee Letter July 15, 2014**

[Pdf from DOE]



**EXHIBIT B: Allocation of Financing Funds**

[To be provided by WECC – forthcoming.]