



City of Milwaukee

City Hall
200 East Wells Street
Milwaukee, WI 53202

Meeting Agenda STEERING & RULES COMMITTEE

ALD. WILLIE L. HINES, Jr., CHAIR

Ald. Michael J. Murphy, Vice-Chair

Ald. Joe Davis, Sr., Ald. Ashanti Hamilton, Ald. James Witkowiak, Ald. Robert Bauman, Ald. Robert Donovan, and Ald. James Bohl, Jr.

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**Legislative Liaison, Richard Watt, 286-2253,
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Thursday, November 11, 2010

2:00 PM

Room 301-B, City Hall

1. [100769](#) Substitute resolution approving a revised Me2 Request for Proposal for residential financial services and making technical clarifications to Me2 Community Workforce Agreement.
Sponsors: Ald. Hines Jr. and Ald. Murphy

2. [100770](#) Substitute resolution authorizing agreement with Wisconsin Energy Conservation Corporation to implement utilization of Energy Efficiency Conservation Block Grant formula grant funds for subsidy of Me2 residential audit subsidies.
Sponsors: Ald. Hines Jr. and Ald. Murphy

3. [091416](#) Communication relating to the City's Neighborhood Stabilization Program.
Sponsors: THE CHAIR

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Legislation Details (With Text)

File #: 100769 **Version:** 1

Type: Resolution **Status:** In Committee

File created: 10/12/2010 **In control:** STEERING & RULES COMMITTEE

On agenda: **Final action:**

Effective date:

Title: Substitute resolution approving a revised Me2 Request for Proposal for residential financial services and making technical clarifications to Me2 Community Workforce Agreement.

Sponsors: ALD. HINES JR., ALD. MURPHY

Indexes: AGREEMENTS, HOUSING

Attachments: Better Buildings Grant Program- Requests for Proposals, Amendment to Community Workforce Agreement, Draft- Loan Loss Reserve Agreement, FAQ Regarding Energy Efficiency and Conservation Block Grant, Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
10/12/2010	0	COMMON COUNCIL	ASSIGNED TO		
11/8/2010	0	STEERING & RULES COMMITTEE	HEARING NOTICES SENT		
11/10/2010	1	CITY CLERK	DRAFT SUBMITTED		

Number

100769

Version

SUBSTITUTE 1

Reference

100007

Sponsor

ALD. HINES AND MURPHY

Title

Substitute resolution approving a revised Me2 Request for Proposal for residential financial services and making technical clarifications to Me2 Community Workforce Agreement.

Analysis

Common Council Resolution File Number 100007, adopted on July 27, 2010, authorized the Department of Administration - Office of Environmental Sustainability to accept and fund an Energy Efficiency and Conservation Block Grant BetterBuildings grant in the amount of up to \$20,000,000, with a minimum funding of \$12,051,372 to be applied to projects in the City of Milwaukee. The Wisconsin Energy Conservation Corporation (WECC) is administering the program as the Milwaukee Energy Efficiency (ME2) Project. This resolution approves the revised financing RFP for residential properties for the Milwaukee Energy Efficiency program. The RFP is being revised to:

1. Focus strictly on owner-occupied residential properties. A separate RFP for commercial loans will be issued later, as the U.S. Department of Energy (DOE) advised that financial institutions address residential and commercial loans differently.
2. State that the loan loss reserve will be held by the financial institution under contract. A sample loan loss reserve agreement from DOE is attached to this file.
3. Clarify that the loan loss reserve is not a loan guarantee. The loan loss reserve will not cover 100% of a defaulted loan, only 80-90%. This ensures that the financial institution bears some risk on the loans it makes.
4. Change the proposal format to allow a better comparison between responses.
5. Add \$150,000 from a We Energies grant that had been intended for the now-defunct Solar PACE program. This will leverage \$1.5 million in solar loans through the same financial institution that will issue the energy efficiency loans. The City reserves the right to not go forward with the solar element if responses are not favorable.

This resolution also approves the revised Community Workforce Agreement with WECC. The attached CWA stipulates that retrofits on owner-occupied residential work of 1-3 units, contractors will utilize a \$17/hr. wage floor instead of Davis-Bacon wages. Per the attached DOE guidance, Davis-Bacon is not required on residential jobs under the Me2 program. The \$17/hr. wage floor reflects residential market rates and provides a family-supporting wage.

Body

Whereas, On July 27, 2010, the Common Council adopted Resolution File Number 100007, authorizing the Department of Administration - Office of Environmental Sustainability to enter into a cooperation agreement with the Wisconsin Energy Conservation Corporation (WECC) to implement the Me2 program; and

Whereas, While supporting the project's overall objectives as outlined in the grant 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; and

Whereas, The attached Me2 Request for Proposal for financial services has been revised to apply solely to owner-occupied residential properties, with a separate RFP for commercial loans to be considered at a later date; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the Common Council approves the attached revised financing RFP, and directs the Department of Administration - Office of Environmental Sustainability to execute the attached financing RFP; and, be it

Further Resolved, That, consistent with guidance from the federal Office of Management and Budget, the Department of Administration is authorized to enter into the revised Community Workforce Agreement with WECC, a copy of which is attached to this file, ensuring compliance with equal opportunity laws and principles, promoting local hiring, providing practicable opportunities for small businesses and emerging business enterprises, encouraging sound labor practices, and engaging with community-based organizations.

Requestor
Department of Administration
Drafter
LRB123270-2
RTW
11/8/10

BetterBuildings GRANT PROGRAM

**REQUEST FOR PROPOSALS:
APPLICATIONS FOR RESIDENTIAL ENERGY EFFICIENCY
LOAN FACILITIES**

All applications are due by 5 PM CT, December 21st, 2010

**Wisconsin Energy Conservation Corporation
Attn. Sue Hanson
431 Charmany Drive
Madison, WI 53719**

REQUEST FOR PROPOSALS (RFP)
WISCONSIN ENERGY CONSERVATION CORPORATION
Residential Energy Efficiency
Retrofit Financing Program in the City of Milwaukee, Wisconsin
Date: 11/23/2010
RFP Response Due Date: 12/21/2010

1. Request for Proposals

Based on a grant from the U.S. Department of Energy (DOE) to the Wisconsin Energy Conservation Corporation (WECC), the City of Milwaukee (the City) and WECC are seeking a financial institution (FI) partner¹ to participate in its city-wide Residential Energy Efficiency Retrofit Financing Program (the Program). WECC is requesting proposals from FIs to provide the following services:

- Assist in final structuring of the energy efficiency loan program, in collaboration with the City and WECC;
- Originate and provide energy efficiency loans (Loans) to residential energy users (and, possibly in the future, commercial and light industrial energy users);
- Manage a loan loss reserve fund (LRF), or other credit enhancement mechanism (see Section 5), funding for which shall be provided by WECC to enhance the credit structure of the Loan portfolio;
- Provide related Loan administration services, e.g., billing and collections; and
- Provide reports on the Loan portfolio and LRF.

This RFP provides:

- Program background (Section 2);
- Proposed structure and terms of the proposed Loans (Section 3);
- Proposed structure of the LRF (Section 4);
- Prescribed format and content for FI proposals in response to this RFP (Section 5); and
- Description of the RFP process that will lead to selection of FI partner and execution of implementing agreements for the LRF and for operating and marketing the Loan facilities (Section 6).

The proposer is asked to discuss all financial variables in its response to this RFP; and, for instance, where this document sets out an example percentage, ratio, or dollar figure, the proposer is asked to select an appropriate figure in its response. The bulk of these issues are addressed in Section 5.4.3 and discussed in greater detail in Sections 2, 3, and 4. The proposer may also choose to submit multiple options to reconcile trade-offs in its final response to the RFP. Selection of the FI will be a selection for negotiation—that is, the City, WECC, and the FI

¹ WECC reserves the right to select more than one FI if it determines that an additional FI(s) is needed for the best interest of the Program. WECC will also consider proposals from a team of responders—e.g. a lender FI teaming with another to cover the loan administration functions.

will further refine the elements of the proposal to arrive at final agreements.

The RFP process will identify the FI that can offer the lowest rates, longest tenors, broadest access to finance, the greatest marketing and geographical capacity, as well as the FI with sufficient assets to meet the lending demand created by the City marketing and campaign efforts. The lender(s) will be selected for negotiations, at which time the final structure of the loan loss reserve fund and, if applicable, other credit enhancements will be solidified. The terms of the Loans and credit enhancement budgets will be laid out in a Loan Loss Reserve Agreement between WECC and the FI.

The LRF will be expected to have the following impact on loan underwriting guidelines:

- *Reduce interest rate for unsecured loans.* The credit enhancements are expected to allow lower interest rates for unsecured loans than would otherwise be the case without such enhancements.
- *Increase size of unsecured loans.* Unsecured Loan sizes between \$1,200 to \$15,000 are expected, potentially utilizing a fixture filing (UCC-1) on installed equipment that will assure the lender's claim will be settled on a property sale, transfer, or refinancing event. Proposer may also submit an additional section on a secured option, with higher minimum and maximum loan sizes, longer loan tenors, and lower interest rates.
- *Extend tenors.* Loan tenors are expected to be extended. For example, a Loan tenor of 3 to 4 years could be extended to 6 to 10 years, allowing for the monthly Loan payment to closely match the energy savings.
- *Lower minimum credit score.* Credit score requirements could be as low as 600 to 650 or have no minimum, just adjusted rates. Alternative and holistic approaches to credit will be encouraged by FIs including to broaden access to people with limited credit history. The assumption here is that although the potential borrower may have less-than-ideal credit history, the willingness to improve their homes demonstrates willingness to pay and a higher personal investment in the project and the Loan.

NOTE: WECC and the City seek submission of proposals from qualified FIs that may form the basis for negotiation of a professional service contract. *This RFP is not an offer to contract* Specific terms and requirements in this RFP may be waived or modified by WECC as it deems necessary or appropriate. WECC and the City of Milwaukee have no liability for any costs incurred by a prospective provider for the preparation and production of a proposal or for any work performed prior to the issuance of a contract. Minority and women-owned businesses are encouraged to apply.

WECC reserves the right to reject any or all proposals and to solicit additional proposals if determined to be in the best interests of the program.

2. Program Background

WECC, a national leader in the design and implementation of energy efficiency and renewable energy programs, on behalf of the Cities of Milwaukee, Madison, and Racine, Wisconsin, filed an application for and received a grant for \$20 million from the 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 currently called the “BetterBuildings” program.² The City will receive approximately \$12 million of these grant funds for a three year period to conduct its “Me² Energy Efficiency Retrofit Program” (Me²) within the City.³ Approximately \$1,500,000 of this award will be used to create a LRF for Me² residential Loans (additional funding may also be added). At the end of the three-year grant period, the City will evaluate the success of the Me² Program, with the intent that funds be used to establish an on-going and sustainable fund to support the City’s commitment to energy efficiency well into the future.

The goals established for the BetterBuildings grant are to increase energy efficiency, preserve and create jobs, and promote economic recovery. The DOE is encouraging cities to use their BetterBuildings funding not only to support current energy efficiency projects, but also to establish sustainable programs and put in place long-term financing mechanisms that will provide lasting benefits and lead to long-term market transformation. The Me² Program intends to serve these goals by providing low interest rate Loans for the installation and the implementation of energy efficiency measures for existing single-family residences and owner-occupied multi-family residences up to three units. It also hopes to provide access to low-cost capital for borrowers who might not have other available resources.

The LRF structure takes a “portfolio approach” to the credit structure of the energy efficiency Loan program. The FI will be making a large number of relatively small energy efficiency Loans. The LRF will support the whole energy efficiency Loan portfolio and can be sized at a margin higher than the portfolio’s estimated Loan losses.

2.1 Program Principles

The following are core principles developed by DOE for guidance during the program and project planning process:

- Prioritize energy efficiency and conservation first as the cheapest, cleanest, and fastest ways to meet energy demand.
- Maximize benefits over the longest possible terms. Programs should look for ways to link their energy efficiency efforts to long-term priorities (especially community economic development, community stabilization and poverty reduction efforts).
- Invest funds in programs and projects that create and/or retain jobs and stimulate the economy while meeting long-term energy goals.

² Information about WECC is available at www.weccusa.org. Information about the BetterBuildings grant is available at <http://www1.eere.energy.gov/wip/eeecbg.html>

³ Information about the Me² program can be found in Appendix D and at <http://www.city.milwaukee.gov/greenteam/MilwaukeeEnergyEfficiencyMe2.html>.

- Target programs and projects that will provide substantial, sustainable, and measurable energy savings, job creation, and economic stimulus effects.
- Give priority to programs and projects that leverage federal funds with other public and private resources, including coordinated efforts involving other Federal programs targeting community development funded through the Recovery Act such as the Community Development Block Grant program, Community Reinvestment Act, (12 U.S.C. 2901), implemented by Regulations 12 CFR parts 25, 228, 345, and 563e, and job training programs.
- Develop, to the extent possible, programs and strategies that will continue beyond the funding period.
- Ensure oversight, transparency, and accountability for all program activities.
- Enact policies that transform markets, increase investments, and support program goals.
- Develop comprehensive plans that benchmark current performance and set aggressive goals.

With this RFP and the partnership that we anticipate forming with a winning FI, WECC and the City believe they will meet and further these guiding principles. We look forward to working with an FI that will also go the extra mile to embody these principles in an exemplary program.

2.2 Target Markets and Projects

The target audience for the Loans will be moderate income homeowners, 1-3 unit owner-occupied buildings, and the intent is to help them overcome the first cost barrier when implementing cost-saving but sometimes costly energy efficiency measures.

Target buildings will be identified by energy efficiency audits coordinated by WECC and conducted in conjunction with Focus on Energy private market consultants, contractors, and other selected partners. Marketing efforts for the Program will be led by the City, with partnerships being established with community groups, equipment vendors, installers, project developers, and contractors. The Program will generate a flow of energy efficiency projects and market the selected FIs' financial products to customers.

2.3 Energy Efficiency Equipment

Allowable expenditures for Loan funds will include equipment, equipment installation, labor costs for energy-efficient fixtures, and retrofits installed on property owned or leased by the Loan applicant.

Typical residential energy efficiency measures include but are not limited to:

- Air sealing
- Insulation of varying types
- Lighting
- Hot water heater
- New central heating and/or air conditioning systems
- Double-paned windows

A complete definition of “eligible energy efficiency projects” will be developed based on energy savings and other qualitative and economic criteria developed by the City in consultation with Focus on Energy, equipment suppliers, consulting engineers, and utilities. Technical evaluations confirming that projects meet these criteria will be provided to the partner FI as part of Loan origination and appraisal.

Me² will require pre- and post-completion comprehensive energy assessments by independent energy consultants holding Business Performance Institute (BPI) and RESNET certifications to determine the scope of work. The work will be performed by approved contractors and will be completed in a manner consistent with the consultant recommendations. The program will conform to the requirements of Focus on Energy's Home Performance with ENERGY STAR[®] Program so that customers will be able to receive Cash-Back Rewards for measures offered through this program.⁴ Appendix D provides a more detailed description of the Home Performance with ENERGY STAR Program that will provide the core of the Me² implementation framework.

In some cases, homeowners will need to make non-energy efficiency related repairs on their home in order to facilitate installation of the energy efficiency measures. For example, before attic insulation can be installed, it may be necessary to repair a faulty roof. Non-energy efficiency related projects necessary to facilitate energy efficiency measures can be included in the Loans, up to a maximum percentage of 20%, at the discretion of the City.

WECC will make the final determination on project eligibility.

2.4 Target Lending Amounts

The typical sizes of single-family residential energy efficiency projects are expected to be in the range of \$1,200 to \$15,000, with an average Loan size of \$6,600 estimated (after rebates and incentives). Actual projects will vary significantly in cost. Average rebates and incentives are estimated at 20% of the total project cost. A 50% rate of Loan uptake versus self-finance is anticipated.

The Program lending target will be geared to use a loan loss reserve fund of 5%, with the aim of achieving a lending amount of approximately \$30 million over the initial three years of the project.

2.5 Roles of the Program Partners

Main and suggested roles of the several Program partners are described below. Proposer is free to suggest other/additional roles as appropriate.

WECC will provide:

- *Program Coordination.* Lead role to coordinate project implementation among partners and

⁴ For more information on the Focus on Energy Home Performance with ENERGY STAR Program go to www.focusonenergy.com/residential/home-improvement/

parties.

- *Credit Enhancement Funding.* In this initial phase of the Program, up to \$1,500,000 will be used for credit enhancement for energy efficiency Loans underwritten by the partner FI. The credit enhancement will be in the form of a LRF, according to a formula to be negotiated, and/or other credit enhancements, to support energy efficiency financing. Based on a 5% leverage percentage, this LRF is expected to finance approximately \$30,000,000 in energy efficiency Loans.
- *Program Design.* Lead Program design and assist with initial financial structuring.
- *Reporting and Monitoring.* Contract with FI to collect, prepare, and submit Program reports to the DOE and the City per ARRA requirements and other reporting for DOE grant.
- *Project Vetting.* WECC will verify that projects meet energy efficiency and other germane standards before Loans can be approved.
- *Project Engineering & Development.* Coordinate delivery of engineering and project development services to interested customers. Develop and implement residential sector projects, organize audits, and evaluate and work with approved contractors to implement projects.
- *Quality Assurance:* WECC will provide quality assurance on financed projects through a sampling of completed jobs.

The City will provide:

- *Project oversight.* The City will approve the final program structure and contractual arrangement with the FI.
- *Marketing.* Organize and conduct marketing campaign in coordination with WECC for all sectors.
- *Workforce Training.* Develop and implement the workforce training program in coordination with WECC and local training institutions and organizations.

The FI will provide:

- *Loans.* Based on the LRF, interest rates will be lower than existing private unsecured loans and allow the broadest number of homeowners the opportunity to participate in the programs.
- Provide funding for the financing programs that allow unsecured Loan terms up to at least 10 years for residential Loans.
- *Leverage.* Provide sufficient funds to allow Me² to leverage the loan loss reserves to achieve an overall financing capability of approximately \$30,000,000 over the Program grant period.
- *Creative Collaboration in Program Design.* Develop creative options to enhance and improve the Program. Assist WECC and the City in developing specific goals and objectives for the Me² Loan product(s) in accordance with the BetterBuildings grant requirements and guidance.
- *Loan Processing.* Be responsible for the development of forms for use in the Loan application process, Loan disbursement and reporting, and will work with WECC and the City to develop the Loan application and define a matrix for project selection.
- *Reporting.* The FI will track and monitor progress toward program goals, offer assistance to borrowers, and be responsible for communicating the success of the program. The FI will be required to provide on-going monitoring and reporting on success of Loans, collections activity in default situations, and other matters, subject to customer privacy policies. (See

Appendix B for more details).

- *Marketing.* Originate Loans and service the Program in cooperation with other Program partners. Marketing can be done through multiple channels (e.g., mailers to current mortgage holders and personal account holders, FI webpage features, as well as point of purchase signage).
- *Loan collections and administration.* Collect Loan payments and develop agreement to repossess energy efficiency equipment in event of Loan default, subject to Loan agreement terms with customers. Banks must follow their normal collection procedures and must outline these in their response to this RFP.

Utilities will provide:

- *Marketing/Information.* Coordinated with City marketing efforts, some marketing and education to customer base, along with providing customer and utility data to aid the project in identifying and assuring customer savings and to help target Program efforts.

The statewide Wisconsin Focus on Energy Program will provide:

- Cash-Back Reward to customers for eligible equipment and services.
- Training to increase approved contractors and consultants.

2.6 Program Implementing Agreements

The selected FI would undertake two key agreements to implement this Program. First is a Loan Loss Reserve Agreement (LRF Agreement) between the FI and WECC. Expected terms for the LRF Agreement are discussed in Section 4.3, below. The term of the resulting LRF Agreement will run commensurate with the grant term that is the funding source for this project, which ends May 31, 2013. As a result, all Program activities must be complete and reporting information needed to WECC by that date. However, it is the intent of WECC and the City, once this initial three year period is over, to extend this Program beyond the end of the grant period and to build a sustainable energy efficiency retrofit program. Based on success of the pilot program, WECC and the City will give first preference in a subsequent program to the FI selected for this pilot and would not be required to go out for a subsequent FI RFP.

Second, an Energy Efficiency Loan Program Agreement between the FI and WECC will be executed to define the respective roles of the parties in Program marketing and delivery, loan origination, and reporting.

FIs will use their own form Loan agreements with borrowers, which form shall be subject to review by WECC and the City.

2.7 Loan Marketing

A common challenge to implementing energy efficiency measures is lack of financing, so the availability of the Loan can help overcome this barrier and motivate participation. Further, the FI should have a goal to structure projects so that the dollar amounts of the estimated energy cost savings offset the amount of the monthly Loan payments to generate immediate positive cash flow. Thus, the Loan offer is integral to marketing.

Loan marketing will be integrated with the overall marketing of the Program. In addition, the following Loan marketing strategies and alliances are recommended and should be further explored and developed:

- *FI's Existing Customers.* The selected FI will market the Program to its existing portfolio of residential customers. The FI will identify customers, make contact, present the Program and bring them to the project for development services.
- *Mortgage Refinancing.* There is an opportunity to piggyback Energy efficiency investments with mortgage refinancing and incorporate the energy efficiency project investment into the new first mortgage principal, provided the project can be developed within the refinancing time frame.
- *Other Market Aggregators.* The Program and Loan offers can be marketed to entities that reach and manage multiple properties and property owners. These deserve special sales initiative and offer the opportunity for one high-level sale to result in an aggregated set of projects.

3. Energy Efficiency Loans

The goal of the Program is to offer energy efficiency Loans on attractive terms and longer tenors and broaden access to financing for energy efficiency projects in the City. Only owner-occupied, residential Loans will be offered in the first phase of the Program (WECC and the City are developing a commercial and light industrial program, as well). While it is anticipated that unsecured Loans will be the primary form, more than one financial product may be offered for residential customers, including a secured (second or third mortgage lien) Loan product. The following list summarizes typical terms of the Loan products. These details will be finalized with the selected partner FI. Preliminary Loan product term sheets should be included in the RFP response.

- *Eligible borrowers.* Residential homeowners will be eligible to borrow under the Program. Financial institutions should consider setting specific lending criteria that broaden access to credit for energy efficiency projects, based upon the credit enhancement provided by the LRF.
- *Eligible Projects.* WECC will be responsible for applying federal and project standards to determine whether a residential energy efficiency project located in the City and energy efficiency equipment (see table in section 2.3 above) are eligible. Home repairs that enable

energy efficiency investments will also be considered and can equate to 20% of the overall Loan. The Loan proceeds may only be used for qualified energy efficiency improvements with no cash-out option.

- *Loan application.* Standard Loan application materials will be provided by the FI. WECC and other partners will collect information from homeowners in the application process, coordinating with the FI. The Loan application will include an energy efficiency project investment plan and list of recommendations specifying the intended measures to be implemented, their costs, estimated energy and cost savings, and sources of financing..
- *Loan terms.* For residential projects, 7 to 15 year terms are planned, with 8 years being typical.
- *Interest rate.* Our starting assumption is that interest rates will be below the standard market base for the type of loan product, factoring in the extra security offered by the loan loss reserve. Rates will be fixed for each Loan at the time of Loan application approval. FI will be asked to provide a published interest rate index as a benchmark for Loan pricing.
- *Payment schedule.* Monthly payments in arrears are anticipated, with Loans amortized “mortgage style”—that is, level payments of interest and principal, with no prepayment penalty. Option to prepay the outstanding Loans in whole without penalty will be sought. Partial prepayment option is not anticipated.
- *Loan size: minimum and maximum.* The actual parameters for the minimum and maximum Loan size should be proposed by the FI in its application and will be determined in the LRF Agreement among WECC, the City, and the FI partner. A \$1,200 minimum Loan size is anticipated and a maximum of \$15,000. The average project cost is expected to be approximately \$8,000, including an average of \$1,400 of which is expected to be paid through Cash-Back Rewards and other incentives, giving an average Loan amount of \$6,600.
- *Loan underwriting guidelines and security.* To be proposed by FI. No initial cash payment by a customer will be required to receive financing. Borrower contribution, if needed, can be paid by personal contribution or other rebates. A prudent portion of estimated energy cost savings could also be included in this calculation. The FI can also file a UCC-1 on the installed equipment.
- *Participation fee.* The Me² program may also charge 1% of a Loan amount to approved contractors as a participation fee for the ability to use the Loan. This fee will be disclosed to customers. The proposer is asked to consider and propose, and WECC may negotiate with the selected FI to determine, ways to develop other sources of Program income to sustain the fund in the event of defaults and sustain the Program administratively.
- *Loan disbursement and flow of funds during project construction.* To be developed with FI. Simplest method is a single Loan disbursement to contractor(s), authorized by borrower, following completion and acceptance of the project. Methods for construction advances for

larger projects may be investigated. Multiple projects may be grouped for implementation.

Renewable Energy Loans

Secondarily, the City received \$150,000 of grant funds from WE Energies for purposes of loaning funds to the same target borrowers for installation of solar measures. Project costs are between \$5,000 and \$15,000. These measures require longer pay-back periods than energy efficiency measures, approximately 10 to 15 years. Therefore, appropriate length tenors are needed and we are seeking a leverage ratio of at least 10:1. We are seeking bidders to propose lending parameters for such a program in addition to the \$1,500,000 in energy efficiency LLR program.

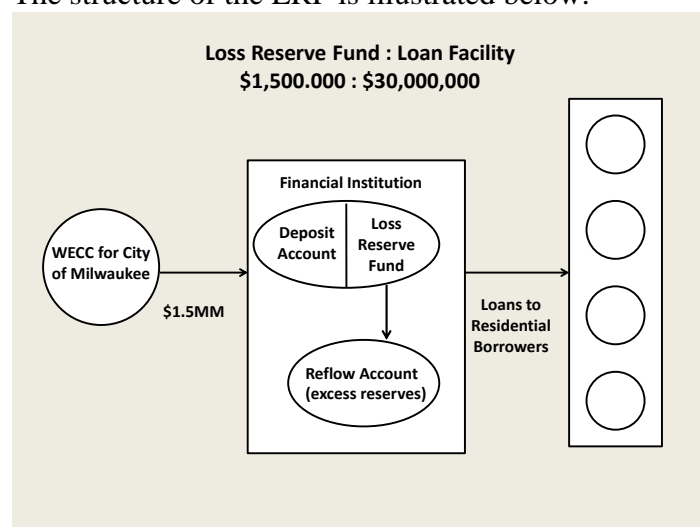
4. Use of DOE Grant Funds

4.1 Loan Loss Reserve Fund

WECC and the City will devote an estimated \$1,500,000 of the BetterBuildings grant funds to support the partner FI to make energy efficiency project Loans in the City. The LRF is intended to enable the FI to offer longer terms, lower interest rates, and broader access to finance. With \$1,500,000 in LRF funds, we anticipate that the FI will be able to lend up to \$30 million, based on leverage ratios of 20:1. This leverage ratio may be higher or lower, depending on the risk assessment by the FI respondent to this RFP. The LRF will support the whole energy efficiency Loan portfolio and is intended to be sized at a margin higher than the portfolio's estimated Loan losses.

Grant monies will be deposited with the partner FI pursuant to an LRF Agreement between the WECC and the FI. The LRF Agreement will create three accounts: an escrow account (Escrow Account), a reserve account (Reserve Account), and an account to house funds that are retired from the Reserve Account after a Loan has been fully paid (Reflow Account), all specifically defined in the LRF Agreement. Monies (\$1,500,000) will first be placed in the Escrow Account at the participant FI. Then, for example, on a quarterly basis (the timing of the transfer is another variable that should be determined by proposer), as the FI makes eligible energy efficiency Loans, the agreed amount of funds for the LRF will be transferred from the Escrow Account to the Reserve Account. Once funds are transferred to the Reserve Account, they are available for the FI to draw on in the defined event of loss. The LRF structure takes a “portfolio approach” to the credit structure of the energy efficiency Loan program. The FI will be making a large number (up to 4,500 in the next few years, if the initial pilot phase proves successful) of relatively small energy efficiency Loans. The goal of the credit enhancement is to create sufficient loss reserves—from LRF funds and the FI’s own loss provisioning—to cover the estimated level of losses. With such reserves in place, in the event of a Loan default the lender will remain whole, at least to recover principal, at loss levels at or below the planned level. Prior experience with loan defaults in the United States with similar programs indicates that loan defaults have not exceeded 1.5% of the total loan amounts financed.

The structure of the LRF is illustrated below:



4.2 Risk-Sharing Formula

The risk-sharing formula will have two main parameters:

The first parameter is the ratio of the LRF funds to the total original principal amount of Loans in the energy efficiency Loan portfolio. Presently, we are thinking this will be 5%, which is the same as a leverage ratio of 20:1.

- *Trade-offs among the leverage ratio, Loan security, and access to finance.* A lower leverage ratio means less lending per a given amount of LRF funds. This implies greater risk protection for the lender, which can result in relatively relaxed underwriting requirements and approval of more Loans. Thus, there is a trade-off between the public goal of high leverage ratio versus the equally, or perhaps even more, important goal of creating broad access to finance. These trade-offs should be evaluated by the proposer and reflected in its final proposal. Proposals could offer up to three options on this point (e.g., one that maximizes interest rate and Loan tenor, one that maximizes access to finance, and one that balances the two).

The second parameter in the risk-sharing formula is the share of losses that the LRF will pay. We anticipate this will be 80%-90% of first losses to be paid from the Reserve Account, which implies that a portion of the loss will be borne by the FI and covered from its normal loss-provisioning. Because all losses after the LRF is exhausted will be borne by the FI, FI incentives for good Loan origination, administration, and recoveries will be maintained. Both of these parameters are to be proposed by the FI and will be defined in the final agreements among WECC, the FI, and the City.

4.3 LRF Agreement

To implement the finance program with the selected FI, a LRF Agreement will be executed by and among the FI and WECC. Key terms of the LRF Agreement include the following:

- *Definition of the Escrow Account.* The “Escrow Account” will house the original DOE grant monies deposited by WECC with the partner FI. Funds in this account, and their transfer into the Reserve Account, will be controlled by an Escrow Agreement executed by and between the FI and WECC.
- *Definition of the Reserve Account.* The “Reserve Account” is available to the FI to cover legitimate principal losses due to default that are otherwise unrecoverable using the FI’s standard default recovery mechanism (see next bullet).
- *Definition of Loss and Event of Loss.* “Loss” will be defined as principal only on the Loan. “Event of Loss” will be tied to the definition of Loan default and acceleration under the FI’s Loan Agreement with its borrower and will occur when the FI gives its acceleration notice to its defaulted borrower, demanding all payments due under the Loan Agreement between FI and borrowers. A certain number of days after this event, e.g., 5 to 10 days, then the FI can disburse funds from the Reserve Account to cover the agreed loss share, without obtaining further approval from WECC or the City. Any Reserve Account monies paid back to the FI to cover Loan losses may be audited by a third party at the request and expense of the City or WECC.
- *Interest on Accounts.* Interest shall accrue to WECC on all accounts. Federal regulations state that all interest accrued must be used for eligible ARRA program purposes.
- *Responsibility for and Distribution of Recoveries.* The FI will be responsible for recovery actions on defaulted Loans. Recovered monies, net of reasonable collections costs, will be distributed back to the Reserve Account in proportion to the FI’s share of losses.
- *Underwriting criteria.* The parties will agree in advance on underwriting guidelines for the Loans. FI will be able to protect Loans through the Reserve Account that meet the underwriting criteria. Underwriting criteria can be adjusted during the course of the Program as a mutually re-negotiated and written amendment to the LRF Agreement. The terms of the Loans will be enumerated, including eligible borrowers, eligible projects, minimum and maximum Loan size, Loan tenors, etc.
- *Reporting and Monitoring.* The FI will provide regular monthly reports on the energy efficiency Loan portfolio according to DOE requirements, including the number and amount of outstanding Loans, payment performance, and collections, on all activities on the Escrow, Reserve, and Reflow Accounts. In each monthly report, the FI will also indicate any inchoate losses or acceleration notices.
- *Availability Period.* The timeframe for adding Loans to the portfolio and shifting funds from the Escrow Account to the Reserve Account will be defined and tied to any DOE grant requirements.
- *Disposition of Loan Loss Reserve Funds at end of Loan Period.* Funds will remain in the Reserve Account, the amount of which, in a fully subscribed portfolio, will be equal to the leverage ratio percentage times the amount of outstanding Loans. When the amount of the

Loans in the Reserve Account drops below that reserve percentage, the amount in excess will be transferred to the Reflow Account for additional eligible uses under the DOE requirements. At this time, it is anticipated that funds transferred to the Reflow Account will be designated to support further energy efficiency lending or otherwise enhance credit for energy efficiency Loans, unless otherwise determined by WECC per the LRF Agreement (see bullet below on Reprogramming Funds in the Escrow Account). Distribution of funds from the Reserve Account to the Reflow Account will occur on the same schedule as funds are transferred under the availability period determined under the above bullet (presumptively monthly or quarterly—FIs should make a recommendation on this point in their response). When the energy efficiency Loan portfolio is fully retired (the conditions for this eventuality will also be spelled out in the LRF Agreement), all re-flow Reserve Account funds will be transferred back to the Reflow Account, and, from there the future use of the funds can be redirected by WECC in accordance with federal DOE requirements. But at this time, the City and WECC anticipate that the monies in this Reflow Account will be used for continued support of energy efficiency energy projects. Please consider whether, upon a lower-than-expected rate of default on the portfolio, the ratios in the LRF could be reduced further at a future evaluation date.

- *Program Fees.* Under the Program, the partner FI may pay a percentage fee of the principal amount of all Loans added to the Loan portfolio. These fees can be added to the Loan, paid by the borrower, and will be used by the City to pay Program development/operations costs or “top-off” the LRF to offset any default payments. These fees represent another source of income that can make the Program sustainable and scale-able—that is, fees not used directly to cover development and operations costs will be added to the principle in the Reflow Account to increase the amount of LRF funds available to cover future energy efficiency lending.
- *Reprogramming Funds in the Escrow Account and the Reflow Account.* Funds in the Escrow Account and the Reflow Account belong to WECC in its role as the prime DOE grantee for this project. As part of the negotiating process between WECC and the FI, reasonable lending targets will be established. WECC will have the option to re-allocate the funds in the Escrow Account, if the targets are not met, to a different credit enhancement. The Agreement will indicate the ability of WECC to re-program uses of these funds, as needed, to adapt to Program operating experience. Funds could be used for other incentives to generate adoption of energy efficiency measures. FIs are asked to give other creative ideas on how to use DOE grant monies in ways that will support financing and Program goals. Please discuss these options, along with figures on the cost of buying down interest rates, if applicable.
- *Accommodating the portfolio “ramp-up” period.* Before the portfolio builds up, a single Loan loss can be a large percentage of the outstanding total Loan principal. Thus, in the beginning, a larger contribution to the Reserve Account corresponding to each Loan may be negotiated to give the FI the necessary level of risk-sharing during the portfolio ramp-up period. The FI is asked to consider this in its response.
- *The LRF mechanism is not a loan guarantee;* it uses the DOE grant funds to mobilize

commercial lending by sharing risk with the partner FI, but it does not eliminate risk for the lender. There is no guarantor in this mechanism. **The liability of the City and WECC is limited to only the DOE grant funding provided.** The FI is at risk for the repayment of all Loan amounts in the energy efficiency Loan portfolio in excess of the loan loss reserves provided. Therefore, prudent lending origination and administration must be maintained. The Reserve Account must and will stay in place until the Loan portfolio is retired, at which point any remaining funds will be designated to support further energy efficiency lending or another use determined by WECC consistent with the terms of the DOE grant.

- *Number of Participating FIs.* We expect to select one financial institution to serve the City's Program. WECC reserves the right to select more than one FI if it determines that an additional FI(s) is needed for the best interest of the Program. WECC will also consider proposals from a team of responders—e.g. a lender FI teaming
- *Alternative Uses of Funds – Interest Rate Buy-Downs.* In addition to the LRF, interest rate buy-downs have the ability to further reduce interest rates, improving the implementation of energy efficiency projects and the uptake of energy efficiency Loans. This strategy may be necessary to improve the value proposition to the borrowers in this economic climate, ensuring that the EECBG grant supported Loan facility is fully subscribed. The City and WECC aim to leverage the grant funds to the greatest extent possible, recognizing that interest rate buy-downs result in one-off spending of ARRA funds. However, if the Program customers do not respond to the terms and rates offered by the selected FI, then a portion of the funds may be used as interest rate buy-downs or other credit enhancements, to ensure that projects are implemented.
- *Flexibility to Reprogram Funds.* WECC and the City maintain the flexibility to re-program all funds in order to further the program goals and to enable more energy efficiency projects. The City and WECC will continuously evaluate the Program's success, gauging the effectiveness of the initial designated uses of funds. WECC will retain the ability to shift funds from one designated use to another (e.g. LRF to interest rate buy-down or vice versa) or from one FI to another, provided the funds have not been tied directly to a Loan that supports an energy efficiency project. The LRF Agreements will include a provision that will allow WECC to retain this control over all funds (the Escrow Account and Reflow Account funds and any interest rate buy-down funds). Until funds are moved from the Escrow Account to the Reserve Account, funds in the Escrow Account can be reprogrammed by WECC, if certain parameters are not met.

5. RFP Process

5.1 RFP Schedule

WECC will manage this process. Key steps and schedule for the RFP process are as follows:

RFP issued by WECC	Tuesday, Nov. 23, 2010
Submission date for written questions regarding the RFP	Friday, Dec. 3, 2010, 5 PM CT

Pre-bid conference among financial institutions, representatives from the City, WECC, the financial advisor, and the various other partners in the Program. This meeting is optional.	Tuesday, Dec. 7, 2010
Notification of intent to bid due to WECC. This notice is mandatory.	Tuesday, Dec. 14, 2010, 5 PM CT
Proposals due	Tuesday, Dec. 21, 2010 5 PM CT
FI(s) selected by the City and WECC for negotiations	On or about Tuesday, Jan. 4, 2011
Target date to complete LRF Agreement and Program Agreement	On or about Tuesday, February 1, 2011
Kick-off date	On or about Tuesday, March 1, 2011

These dates are subject to change by WECC. WECC will notify all FIs that have submitted a notice of intent to propose of any changes.

5.2 Question and Answer Procedures and Addenda

Questions and answers will generally be handled in writing and distributed to the responders. Any written questions shall be submitted to WECC at the address specified for the receipt of proposals or to the following email: sueh@weccusa.org. Faxed questions or inquiries will be accepted. WECC may modify this RFP prior to the date fixed for submission of proposal by issuance of an addendum to all proposers. Addenda will be numbered consecutively, the first being A-1.

5.3 Proposal Submission

Quantities: Four copies

Due Date: Proposals will be due no later than Tuesday, December 21, 2010.

Time: 5:00 PM Central Time (CT)

Please submit applications to Sue Hanson at WECC via email, hard copy mail, or in-person delivery (include 4 copies of the application for all hard-copy submissions).

Mailed proposals shall be addressed and delivered to:

WECC

Attn. Sue Hanson

431 Charmany Drive

Madison, Wisconsin 53719

E-mailed proposals shall be addressed to: sueh@weccusa.org

Note: Dates are preliminary and subject to change.

WECC and the City are not responsible for lost or misdirected proposals.

Verbal communications with WECC are encouraged but shall not be binding on WECC or the City and shall in no way modify this RFP or excuse proposers from the requirements set forth in the RFP. Such modifications shall only be made in writing through RFP addenda as indicated above.

An optional “pre-bid” conference will be held at 12-7-10 in Milwaukee City Hall, Room #603, 200 E. Wells St., Milwaukee, WI. This conference is an opportunity for proposers to learn more about the Program and ask questions. WECC, WECC’s financial advisor, the City and other relevant Program Partners will be in attendance.

5.4 Submittal Requirements

5.4.1 *Instructions and Proposal Outline.* These instructions prescribe the formal and general content for proposals. Each proposal submitted must contain one (1) original and three (3) copies of the following documents:

- a) Letter of Transmittal. The cover letter transmitting the proposal must be executed by an officer or manager of the FI who is authorized to bind the offer presented in the letter and the accompanying proposal.
- b) Cover Page. Name of proposer’s organization, local address, telephone number, email address, name of contact person(s), and date submitted.
- c) Proposal Narrative. Address energy efficiency Loan terms, LRF terms, credit underwriting, Loan marketing and FI staffing according to the Proposal Outline described below. The proposal narrative should outline a solid strategy for development and implementation of the energy efficiency financing programs. Include a detailed statement of the methodology to be utilized to carry out each task.
- d) Term Sheets for Loan Products. See Attachment A for sample template. Please submit separate term sheets for energy efficiency loans and solar loans.

WECC and the City seek to reduce waste in all our activities, and as such responders are encouraged to make submittals as PDF attachments to emails.

5.4.2 *Cover Letter.* The cover letter transmitting the proposal must be executed by a responsible, authorized official of the FI.

5.4.3 *Proposal Narrative Outline.* Proposals must address the following points:

Note: This is a competitive process. Proposers are asked to be creative in their proposals, addressing and suggesting trade-offs, submitting multiple options where reasonable, suggesting

ranges, etc.—all aimed at achieving the fundamental goals of the Program and the DOE: to reduce energy usage through energy efficiency measures, to create green jobs, and to get FIs lending again, by offering the best loan terms (e.g., where possible the monthly loan payment amounts are offset by the energy cost savings) and broader access to loans (as practical, lowering barriers to lending so that more borrowers can utilize this Program).

- a) *Loan Terms*. Please provide a summary description of energy efficiency Loan terms the FI can offer. If appropriate, we are interested to see the FI's ability and willingness to provide two types of loans: secured and unsecured. We are also interested to see the FI's willingness to consider different interest rates for different size loans in each of the sectors. For example, perhaps the FI would consider a lower interest rate for a larger loan. Please provide Loan Term Sheet(s) for this purpose. (See Annex 1 for example Loan Term Sheet).

NOTE: Per Milwaukee Common Council Resolution, the lending rate to the consumer must be within 500 basis points of the current Wall Street Journal Prime Rate.

- b) *LRF Terms*. Please respond to the proposed LRF structure and terms, including FI's proposed LRF risk-sharing formula. Please identify and discuss briefly the FI's position on key points in the LRF Agreement, working off the terms described in Section 4.3, above, including:
- Parameters of the risk-sharing formula
 - Separation and definitions of the Escrow and Reserve Accounts
 - Definition of Loss and Event of Loss
 - Disposition of funds at the end of the Loan period
 - Program fees
 - Portfolio ramp-up period
 - Reprogramming of funds in the Escrow Account and ideas for alternative uses of these funds to promote the Loans
- c) *Approach to Credit and Underwriting Guidelines*. Please provide a summary description of the FI's approach to: 1) credit analysis of borrowers; 2) underwriting guidelines and criteria for the energy efficiency Loan program, distinguished by customer market segment; and 3) credit screening. Please address the Program goal of broadening access to finance and how the LRF can support this goal.
- d) *Loan process*. Discuss proposed details for each step of the Loan process including the Loan application, the application review, Loan closing procedures, project construction and completion, Loan repayment, and tracking and monitoring of Loans. The Me² program has a strong preference for a customer to be able to find out whether their Loan application meets the customer and program eligibility requirements as soon as possible (e.g. within minutes).
- e) *Coordination with WECC and the Me² Program*. Please discuss plans to coordinate with WECC and the City throughout the development, implementation, and

maintenance of the energy efficiency financing products.

The FI will need to obtain necessary information to determine that a borrower is eligible for a Loan, disburse funds only to eligible borrowers upon approval by the Me² program, and collect such payments, including when payments are past due in a manner that protects the interests and sustainability of the LRF. Appropriate credit underwriting procedures shall be developed with WECC and the City and utilized to ensure the credit-worthiness of Loan applicants

- f) *Loan marketing, origination, and administration.* Please provide description of the FI's approach to Loan marketing, working jointly with WECC and the City. Describe the preferred roles of the FI in Loan marketing and origination. Further, please provide: 1) a form Loan Application; 2) a Loan origination procedures checklist; and 3) a draft form Equipment/Energy Efficiency Project Loan Agreement.

The FI will be expected to market the energy efficiency Loan product(s) to City residents in cooperation with other Me² marketing activities and should develop a plan to reach the target audience of moderate income homeowners. The FI will be expected to include the Me² program name, along with their own name and brand in all communications related to the Loan product(s). The relationship between the FI and the City will be expressed as a public-private partnership. FI will be required to add federal funding acknowledgement and disclaimer language as a requirement for any publications, as required by the BetterBuildings grant.

Proposals that provide a fast turnaround time between the filing of a completed application by a customer and a decision as to customer loan eligibility will be scored higher.

NOTE: Some of these Loans may be the result of a sale solicited at a home and therefore are subject to appropriate Wisconsin Statutes.

- g) *Monitoring, Verification, and Reporting.* The FI will be responsible for the development of forms for use in the loan application process, loan disbursement and reporting, and will work with WECC and the City to develop the loan application and define a matrix for project selection. The FI will track and monitor progress toward program goals, offer assistance to borrowers, and be responsible for communicating the success of the program. On-going monitoring and reporting will be a requirement of the program. Along with a narrative discussion of monthly financing program activity, the DOE requires that on a quarterly basis the FI shall assess, verify, and report residential loans. A more detailed list of reporting requirements is listed in Attachment B.
- h) *Qualifications, Experience, Officers, and Staffing.* Please provide acceptable evidence of your institution's organization, experience, qualifications, skills, and capabilities to undertake this Program, including current client base (market share)

that can be targeted for marketing purposes. Please indicate names and contact information of officers who will play the following roles:

- Program Manager, headquarters, lead loan officer responsible for this Program who will provide the lead and primary point of contact for Loan origination;
- Senior FI Officer(s), who will negotiate and execute documents on behalf of the FI, be available if and as needed to discuss policy matters, and provide program leadership;
- Other staff, e.g., legal counsel, risk manager, assistants to the Program Manager within headquarters; and
- Indicate the number of branch officers who will be responsible for local Loan origination.

Please provide brief resumes and statements of qualifications for key staff assigned to this project. Identify the role of each in regard to the energy efficiency product(s) being proposed. Include contact information for the individual who will serve as the Program Manager. Describe the experience of the organization and personnel, especially in regard to the implementation of loan programs, energy related programs, and/or federal or state grant programs. Overall, please describe the level of effort and services the FI will devote and the general management approach the FI will take to make this Program succeed.

Please describe work that will be needed and qualification requirements for subcontractors, if it is anticipated that any will be needed. Persons who are not full time employees of the proposer shall be considered subcontractors.

- i) *Financial Capability.* Please provide your entity's overall capitalization and its long term credit rating by Moody's Standard & Poors and Fitch as well as whether your entity is under a credit watch, review, or negative outlook by any rating agency or regulatory institution. If the FI is not rated by these agencies please include a copy of your most recent annual report and/or audit. State the total amount of Loan funding that the FI would be capable of providing for the energy efficiency Loan Program.
- j) *Technical Assistance and Training Needs.* Please describe the FI's ideas, needs, and priorities for technical assistance and training. These needs can be discussed with the City and WECC for possible technical assistance supported by the US Department of Energy..
- k) *Program goals.* Discuss proposed criteria for screening and ranking Loan applications in order to maintain the financial security of the program and to accomplish the objectives of the BetterBuildings grant for maximizing benefits in terms of jobs created/retained, energy saved, renewable energy generated, and greenhouse gas emissions reduced.
- l) *Monitoring and Verification.* Please outline proposed methods for data collection and monthly reporting of product metrics.

- m) *Additional Statements and Materials.* Please feel free to add additional statements, ideas, and materials that demonstrate the FI's understanding of the Program goals and how the FI could implement the Program.

Please describe any standard contractual or other requirements that would be required of WECC to enter into an agreement with the FI.

- n) *Additional Requirements:*

- i. *Insurance.* The FI will be required to carry errors and omissions insurance covering negligent acts or omissions that will cover the FI's actions under the contract with WECC.
- ii. *Compliance.* The FI shall comply with the requirements of all applicable Federal, State, and local laws, codes, regulations, DOE policy and guidance, and instructions in this RFP, unless relief has been granted by the DOE and the City. The FI shall ensure flow down of the requirements of applicable Federal, State, and local laws, regulations, DOE policy, and guidance and instructions in this RFP to sub-recipients at any tier to the extent necessary to ensure the FI's compliance with the requirements, attached in Appendix E, "Special Terms and Conditions."
- iii. *Site visits.* WECC or the City of Milwaukee authorized representatives shall 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. The FI must provide, and must require Loan applicants to provide, access to facilities with reasonable notice. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

Proposal preparation costs are not reimbursable.

5.4.4 Selection Process and Steps to Complete Agreements

A two-step process will be used to select the successful contractor. WECC will select an applicant(s) to interview based on the quality and experience presented in the proposals. During the interview, the applicant will be evaluated on the quality and experience presented in the proposal and the ability to coordinate and complete the project.

Upon review and evaluation of all proposals, WECC will make a recommendation to the City regarding its choice of FI to best meet the needs of the City. Upon selection of the FI, WECC will initiate negotiations for contract terms and conditions.

Evaluation Criteria. Proposals will be evaluated qualitatively according to the following criteria (a scoring sheet is provided in Attachment C):

- Attractiveness of the proposed Loan terms, including pricing, tenor, security requirements, prepayment options, etc.

- Response to proposed loan loss reserve terms and ability to utilize this to meet the Program objectives and the objectives of the City and the DOE.
- Clarity and suitability of proposed Loan underwriting criteria and ability to meet the Program goal to broaden access to credit.
- Simplicity and ease of administration of underwriting criteria and Loan origination procedures and coordination with Program partners.
- Skills of staff, services, and level of effort the FI will provide to make this Program successful.
- Willingness and ability to coordinate with WECC, the City, and the Me² program.
- Proposed methods for data collection and monthly reporting of program metrics.
- Proposed plan to disburse Loan funds in a timely manner. Detailed description of deliverables and timelines for task completion.
- Proposed plan for marketing Loan product(s).
- Numbers of current bank customers, current numbers of mortgages and home improvement loans, and financial capability of the FI.
- Additional statements, ideas and materials that demonstrate the FI's understanding of the Program goals and how the FI could implement the Program.
- Compliance with solicitation requirements.

NOTE: Selection of the FIs will be a selection for negotiation—that is, WECC, the City, and the FI will further refine the elements of the proposal to arrive at final agreements. If WECC is unable to reach an agreement with the FI originally selected, it will select the next highest-ranking respondent from the original list, without the need to go out for another RFP.

5.4.5 Steps to Complete the LRF Agreement

Following selection of the FI with which to negotiate, WECC will proceed to negotiate the LRF Agreement. A form of this agreement will be provided. Annexes to the LRF Agreement will include: (a) Loan Application Form; (b) Loan Origination Procedures Checklist, and (c) form Loan Agreement, among others. All terms of the term sheets and proposed agreements are subject to negotiation and change.

5.4.6 Steps to Complete the FI/the City Program Agreement

Following selection of the FI with which to negotiate, WECC will also prepare a draft Program Agreement for review and discussion with FI.

6. Terms and Conditions

6.1 General

- a) WECC reserves the right to reject any and all submittals, to waive minor irregularities in any submittal, to issue additional RFP's, and to either substantially modify or terminate the Project at any time prior to final execution of a contract.
- b) Neither WECC nor the City shall be responsible for any costs incurred by the respondent(s) in preparing, submitting, or presenting its response to the RFP or to the interview process.
- c) Nothing contained herein shall require WECC or the City to enter into exclusive

negotiations and WECC reserves the right to amend, alter and revise its own criteria in the selection of a respondent without notice.

- d) WECC reserves the right to request clarification of information submitted and to request additional information from a respondent.
- e) WECC will not accept submittals after the time and date specified on the RFP.
- f) The qualifications of each member of the team are important criteria in the selection process. The selected FI will not be allowed to substitute any members without prior approval by WECC. WECC, at its sole discretion, reserves the right to accept or reject proposed changes to the team. Team members may participate in multiple team submittals.

WECC and the City encourage submittals from firms that demonstrate a commitment to equal employment opportunity. Minority and women owned businesses are encouraged to apply.

6.2 Proprietary Information

- a) The information contained in the proposals will be public information unless a specific request is made to keep specific information confidential. If a proposal contains any information that the Offeror does not wish to have disclosed to the public or used by WECC or the City for any purpose other than evaluation of the offer, each sheet of such information must be clearly marked “proprietary.” This information will be kept confidential, subject to applicable local, state and federal laws. Each page should be clearly identified included each line or paragraph thereof containing the data to be protected and the cover sheet of the proposal should be marked with the following Notice as well as referring to the Notice on each page to which the Notice applies.
- b) Notice of Restriction on Disclosure and Use of Data. The data contained in pages of this proposal 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 Offeror receives an award as a result of or in connection with the submission of this proposal, WECC and the City shall have the right to use or disclose the data here to the extent provided in the award. This restriction does not limit the City’s right to use or disclose data obtained without restriction from any source, including the applicant.
- c) Proposals and supporting materials submitted shall become the property of WECC.

Attachment A –Draft Term Sheet for Energy Efficiency Loans, Residential

Attachment B – Special Terms and Conditions

Attachment C – Proposal Evaluation Scoring Sheet

Attachment D – Information on the Focus on Energy Program

ATTACHMENT A

Draft Term Sheet for Energy Efficiency Loans, Residential

- Borrowers:** Eligible borrowers include owners of single-family residences, or owner-occupied multi-family residences up to three units, in the City of Milwaukee, Wisconsin.
- Lender:** FI, after having entered into LRF and Program Agreements with WECC.
- Use of Proceeds and Eligible Projects:** Loans must fund investment in energy efficiency measures in buildings in the City of Milwaukee that meet certain efficiency criteria (to be defined by WECC and the City), in energy efficiency projects, and/or in building repairs necessary to implement the energy efficiency improvements. Equipment engineering and installation costs will be eligible.
- Sources of Funds:** Borrower will contribute a minimum of ___% [e.g., 0 - 20%] own funds toward total Project Costs. Note: energy efficiency grants and other incentives and rebates can be considered as borrower equity.
- Minimum Loan:** \$____ (FI requested to propose). A \$1,200 minimum Loan size is anticipated.
- Maximum Loan:** \$____ (FI requested to propose). A \$15,000 maximum Loan size is anticipated.
- Loan Tenor:** FI requested to propose Loan tenor. Loan tenors will vary with the type of building (e.g. for residential, 7 to 15 year terms are planned, with 8 years being typical).
- Payment Schedule:** FI requested to propose payment schedule. Payment schedule suggested for consideration: interest only grace period for up to six months (typical three months, estimated) matching the estimated construction/project period, followed by level monthly payments of principal and interest for the balance of the Loan term. Mortgage-style amortization would allow the payments to be level over the Loan term.
- Interest Rate:** FI requested to define range based on Loan size, borrower credit, security, the mitigated risk (loan loss reserve), and other criteria. Rates will be fixed for each Loan at the time of Loan application approval.
- Prepayment Option:** FI requested to propose borrower prepayment options.
- Loan Disbursement:** FI requested to propose disbursement terms. FI can propose disbursing the Loan in one or several installments. A simple method is a single Loan

disbursement. The Loan may be disbursed into the account of FI company(ies) performing the project works after the FI receipt of invoices for completed portion(s) of the project, which invoice shall be transferred and accepted for payment by borrower, after determination of completion by WECC which includes signoffs by the qualified energy consultants and homeowners or the selected FI. Methods for construction advances for larger projects can be proposed. Loan disbursement on each project will be contingent upon approval by WECC or the FI, based upon sufficient verification of energy efficiency project completion and all reporting requirements.

Loan Repayment and Security:

To be proposed by FI. Both secured and unsecured Loan products may be proposed by FI. Sources of security could include the following:

- a) For residential secured Loans, a deed of trust may be required, with anticipated loan-to-value ratios of 80-85% and up to 100%. It is expected that a prudent portion of estimated energy cost-savings will be included in this calculation.
- b) For residential unsecured Loans, first security interest in installed equipment can be obtained, and FI may make a UCC-1 security filing.
- c) LRF funds.

Underwriting Criteria:

FI requested to propose underwriting criteria. Sample criteria for the borrowers are indicated below:

- no negative credit history; current on outstanding debts
- current on utility bills
- debt to income ratio of ____
- ratio of debt to total assets of _____.
- employment history - e.g. two years at current job
- Income verification
- Borrower's own funds contributing minimum ____% [0 - 20%] of project capital costs

Loan Application:

Borrower shall submit the following documents to the FI to apply for the Loan (to be determined by FI, examples follow):

1. Loan application (provided by FI and completed by borrower)
2. Taxes for last two years
3. Other additional documents (to be defined by FI)

Loan Origination Procedures and

Schedule:

FI is requested to define Loan origination procedures and schedule, including FI response time for processing Loan applications, rendering credit decisions once complete information is received, and closing Loans on accepted applications. The FI should define its procedures for accepting loan applications and executing loans, and note whether loan applications can be made online.

ATTACHMENT B

Special Terms and Conditions

Be advised that special terms and conditions will apply to projects funded by ARRA for the City's Me² program relating to:

- Reporting, tracking and segregation of incurred costs;
- Reporting on job creation and preservation;
- Publication of information on the Internet;
- Prohibition on use of funds for gambling establishments, aquariums, zoos, golf courses or swimming pools;
- Ensuring wage rates are comparable to those prevailing on projects of a similar character (Davis-Bacon and related Acts);
- Ensuring that equipment and products purchased, to the greatest extent practicable, be American-made (Buy-American);
- Ensuring compliance with the National Historic Preservation Act (NHPA);
- Protecting whistleblowers and requiring prompt referral of evidence of a false claim to an appropriate inspector general; and
- Certification and Registration.

Along with a narrative discussion of monthly financing program activity, on a quarterly basis the DOE has proposed the following be reported by the FI for residential Loans issued as part of the Me² program (NOTE: these are subject to change):

- Number of Loan applications received
- Administrative cost incurred
- Credit enhancement
- Loan Type
- Building type
- Source
- Anonymous Loan ID (unique)
- Annual Income (\$)
- Credit Score (FICO)
- Property Valuation
- Property Valuation Source
- Origination Date
- Total project price (\$)
- Amount financed (\$)
- Interest Rate (%)
- Compounding Period (number of times per year)
- Period
- Loan Term (months)
- Outstanding Mortgage debt? (\$)

- Outstanding Home equity line? (\$)
- Outstanding other debt? (\$)
- Existing liens on property? (\$)

Along with a narrative discussion of monthly financing program activity, the DOE requires that on a quarterly basis the FI shall assess, verify, and report residential (NOTE: these are subject to change):

- Date payment due
- Date of actual payment
- Payment due (\$)
- Actual payment (\$)
- Date of charge-off
- Charge-off (\$)
- Date of pre-payment
- Number of months prepaid
- Prepayment Penalty Assessed (\$)
- Pre-payment (\$)
- Date of foreclosure
- Foreclosure (\$)
- Lender Loss Experienced (\$)
- Amount of financing (\$)
- Source of financing
- Amount of rebates (\$)
- Source of rebates
- Amount of tax credit (\$)
- Source of tax credits

The DOE considers the above reporting requirements "standard." For pieces of this information that are not usually collected, the data point reporting requirement is open for negotiation.

ATTACHMENT C

Proposal Evaluation Scoring Sheet

City of Milwaukee Energy Efficiency Lending Program				
Financial Institution Request For Proposal: Proposer Evaluation Worksheet				
			Grade	
	Criteria	Point Value	(0-100%)	Score
	FI Qualifications & Experience	10		
1	FI proposer experience and qualifications	5		
2	Skills of staff and proposed level of effort	5		
	Energy Efficiency Loan Terms & Underwriting	40		
3	Interest rate and fee pricing	15		
4	Loan tenors	15		
5	Underwriting guidelines and security requirements	10		
6	Total amount of capital leverage	5		
	Approach to Loan Loss Reserve (LLR)	30		
7	Proposed risk-sharing formula for use of LLR/leverage	10		
8	Response on other LRF Agreement terms	5		
9	Broadening access to finance: ability to achieve	15		
	Approach to the Program & Marketing	20		
10	Loan marketing	5		
11	Number of accounts/members	10		
12	Loan application/approval/origination procedures and accompanying web user interface	5		
	Other	15		
13	Match of FI's proposal with Program goals: Proposed methods for data collection and monthly reporting of program	5		
14	Proposed methods for data collection and monthly reporting of program	5		
15	Program sustainability fee structure	5		
	Total Points	120		
Evaluator Name & Date: _____				
Financial Institution Name: _____				
Contact Name(s): _____				

- Note: A comparable sheet will be used to score proposal for a solar loan option.

ATTACHMENT D

Focus on Energy Program Overview

One of WECC's long-standing programs is Wisconsin's Focus on Energy statewide portfolio of residential, commercial and industrial energy efficiency, and renewable energy programs, which WECC has been the program administrator for since 2001 (the year Focus on Energy was implemented). Focus on Energy was formed via legislation (Act 141, which provides that the investor-owned electric and gas utilities must collectively establish and fund the statewide energy efficiency and renewable energy programs) and is overseen by two primary groups: the Public Service Commission of Wisconsin; and the Statewide Energy Efficiency and Renewable Administration or "SEERA."

Focus on Energy provides energy efficiency and renewable energy information and services, including financial incentives, for eligible residents and businesses. The program's efforts help Wisconsin manage rising energy costs, promote in-state economic development, manage resource constraints, protect the environment, and control the growing demand for electricity and natural gas.

Below is an overview of the key residential Focus on Energy Program related to the WE² project—Home Performance with ENERGY STAR[®]—as well as an overview of Focus on Energy's Business Programs.

Home Performance with ENERGY STAR

Focus on Energy partners with the Environmental Protection Agency (EPA) in developing its protocol for Wisconsin's Home Performance with ENERGY STAR Program, all of which is based on whole house building science principals. In Wisconsin, Home Performance with ENERGY STAR works with a network of independent consultants who help customers increase the energy efficiency, comfort, safety, and durability of their homes. Consultants partnering with the Home Performance with ENERGY STAR Program identify various problems in the home and provide recommendations and guidance for solving those problems. These problems largely focus on energy efficiency, but could also include mold, moisture, etc. A consultant will visit the home and complete a comprehensive evaluation of the following energy efficiency related areas:

- Insulation and building shell
- Air leakage
- Mechanical equipment
- Moisture and ventilation
- Combustion safety and carbon monoxide

Upon completion and verification of the recommended measures by the independent consultant, Focus on Energy provides Cash-Back Rewards to the homeowner for implementing select energy efficient measures through the Program. These measure-specific Cash-Back Rewards are cost effective and have been vetted through Focus on Energy third-party program evaluator. Cash-Back Rewards offset the incremental cost of installation of energy saving measures.

The Home Performance with ENERGY STAR Program is delivered via a statewide network of independent market providers including consultants, qualified contractors, and trade allies who are trained on building science principals and encourage and influence homeowners to make energy efficiency improvements to their existing homes. Additionally, Home Performance with ENERGY STAR staff and market providers conduct a significant amount of education to consumers to help deal with false assumptions about energy savings potentials and various conflicting information about how to effectively retrofit existing homes.

Key components of the Home Performance with ENERGY STAR Program include:

Target Audience and Eligibility. Homeowners or landlords of 1- to 3-unit existing homes. Eligibility is based on the combination of electric and natural gas utility participation.

Marketing and Communications. The Program targets existing homeowners, landlords, trade allies, provides cooperative advertising assistance to market providers, requires market providers refer at least five jobs to the program or lose privileges, and continues to include the building science message, along with citizen and social responsibility.

Trade Ally Coordination. Ongoing are efforts to work with the existing base of trade allies (contractors), as well as recruit select new contractors in areas of particular need and to raise awareness and understanding of the Home Performance with ENERGY STAR Program among this group. This is done through cooperative advertising funds made available to contractors and continuing Focus on Energy's presence at home trade shows, trainings, and associations.

Evaluation, Monitoring, and Verification. The Program continually monitors and verifies both contractor work and consultant field and file work. The minimum requirement is 10% of files and 1% of field jobs.

Current Select Measure-Level Cash-Back Rewards Paid to Homeowners

Measure	Cash-Back Reward Amount
Attic Insulation	\$100
Sidewall Insulation	\$200
½- ¾" Foam Continuous Sidewall Insulation (700 sq. ft. min.)	\$100
1" Foam Continuous Sidewall Insulation (700 sq. ft. min.)	\$150
Interior Foundation Insulation	\$200
Exterior Foundation Insulation	\$150
Floor Insulation	\$75
Sillbox Insulation	\$50
Knee-wall Insulation	\$100
Air Sealing reduction	\$75 - \$175
Exhaust Fan: .51 to 1.5 sone	\$25
Exhaust Fan: .5 sone or less	\$50
Chimney Liner	\$50
Power-Vented Water Heater .80 EF or greater	\$100
Electric to Gas Power Vented Water Heater .64 EF or greater	\$250
Completion Reward: completing top 3 recommended measures plus air sealing, if applicable	\$300
Completion Referral Reward	\$50

For a complete, current list, of Cash-Back Rewards available to homeowners through Home Performance with ENERGY STAR, please go to:

http://www.focusonenergy.com/files/Document_Management_System/Residential_Programs/hpr_ewardseligibility_productlist.pdf

Focus on Energy Business Programs

Focus on Energy works with a variety of businesses, including agricultural, commercial and industrial businesses, as well as schools and government facilities, to identify and implement smart energy solutions that save money, boost productivity and reduce maintenance costs.

Focus on Energy delivers program services via experienced energy advisors that help assess facility energy use, find inefficiencies, and recommend solutions. Focus on Energy Business Programs also offer grants and cash incentives to help offset the costs of energy efficiency and renewable energy installations, as well as a variety of services, including free support and services to help business owners identify and install cost effective energy efficiency and renewable energy projects. These services include:

- Expert assistance and energy assessments to identify energy-saving opportunities at your facility
- Technical expertise to help you select and implement cost-effective projects and practices
- Financial incentives to help cover the costs of energy-saving equipment and upgrades

Key sectors covered by Focus on Energy Business Programs include:

Agricultural. Focus on Energy works with Wisconsin farmers to cut operating costs—whether by updating lighting in the barn or by installing variable-speed drives on vacuum pumps. Business Programs representatives help find energy wasters and recommend solutions that reduce farm-related energy use. New agricultural technologies, such as anaerobic digesters, are also explored.

Commercial. Focus on Energy offers an array of services to help commercial businesses such as hospitals, hotels, restaurants, grocery stores, and more, make smart energy choices. From developing a customized energy action plan to researching new technologies, Program experts can save commercial businesses energy and money. Training and access to education materials that can help identify cost-effective solutions are also offered.

Industrial. Focus on Energy offers specialized best-practice support to improve the energy efficiency at pulp and paper, metal casting, plastics, printing, food/dairy and water/wastewater industrial facilities. Emerging technologies such as condensing heat-recovery systems are supported and partnerships with customers to help them employ sound energy management practices are encouraged.

Schools and Government. Energy efficiency saves money that schools and government facilities can put toward other uses. Focus on Energy promotes cost-effective energy improvements for public and private schools, colleges and universities, government facilities and more. Program experts offer objective advice and years of experience to help organizations identify and implement energy-saving projects, such as lighting, heating and cooling, motors and variable-frequency drives. These measures reduce energy costs and improve occupant comfort.

New construction. Focus on Energy offers information, performance testing, and certification services especially tailored for the new construction of businesses and multi-family housing. Program experts encourage business owners and design professionals to integrate energy efficiency features early in the design process, resulting in high-performance buildings that save money, reduce maintenance and improve occupants' health and productivity.

Financial Incentives. Focus on Energy offers financial incentives to help Wisconsin businesses save on high-efficiency equipment and installations. Incentives are available for many items, from furnaces to motors to lighting, as well as renewable energy systems. Please review this web site link for a complete list of currently available incentives:
http://www.focusonenergy.com/files/Document_Management_System/Business_Programs/businessservices_incentivessummary.pdf

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

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

WITNESSETH

WHEREAS, WECC, on behalf of the Cities of Milwaukee, Madison and Racine, Wisconsin (“Partner Cities”), filed an application for and received a grant from the United States Department of Energy (“DOE”) in Funding Opportunity Announcement Number DE-FOA-0000148 Recovery Act: Energy Efficiency and Conservation Block Grant; Competitive Solicitation: Retrofit Ramp-up and General Innovation Fund Programs in the amount of \$20 million to carryout the Wisconsin Energy Efficiency (“WE2”) Project, a project designed to provide energy efficiency retrofit residential and non-residential projects within the Partner Cities. WE2 is the common name given the project across the Cities of Milwaukee, Madison and Racine. The Milwaukee Energy Efficiency (“Me2”) Program represents the WE2 Project activities as they are carried out in the geographic limits of the City of Milwaukee; and

WHEREAS, the City and WECC have executed a Cooperation Agreement Between The Wisconsin Energy Conservation Corporation And The City of Milwaukee Regarding The Wisconsin Energy Efficiency Project and the Milwaukee Energy Efficiency Project dated July 27, 2010, (“Cooperation Agreement”), of which the CWA is made a part as Exhibit E to the Cooperation Agreement, that sets forth the roles and responsibilities of the Parties in developing, administering and delivering the WE2 Project and Me2 Program; and.

WHEREAS, Pursuant to Section 1606 of the American Recovery and Reinvestment Act of 2009 (“ARRA”), recipients and subrecipients of ARRA funds are subject to the requirements of subchapter IV of Chapter 31 of Title 40, United States Code (“Davis-Bacon Act”); and

WHEREAS, DOE Amended Guidance document “STATE ENERGY PROGRAM NOTICE (10-004A), ENERGY EFFICIENCY CONSERVATION BLOCK GRANT PROGRAM NOTICE (10-005A), AND APPLIANCE REBATE PROGRAM NOTICE (10-001A),” effective date April 7, 2010, interpreting 2 CFR § 176.30, states that because individuals are not ARRA “recipients” or “subrecipients,” Davis-Bacon Act requirements do not apply to individual homeowners who receive rebates through Energy

Efficiency Conservation Block Grant (“EECBG”)-funded programs and individual homeowners who receive loans under EECBG financing programs; and

WHEREAS, the Parties agree that amending the existing CWA as noted below and requiring the inclusion of the amended CWA in the Request for Qualifications by WECC for purposes of qualifying contractors will advance the goal of guiding the implementation of energy retrofit projects in a manner that provides pathways to prosperity for local workers at varying levels of preparation, offers family-supporting wages that lead to a lasting career track, involves stakeholders and community members in developing and enacting policies and processes, and drives accountability and continuously evaluates performance goals towards goals; and

WHEREAS, the CWA, in paragraph “8. Review”, provides that amendments to the CWA, other than those made following the required 6-month review, shall be agreed upon by the Parties in writing and shall be communicated to the Common Council.

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

1. To amend the CWA executed by the Parties effective July 27, 2010, by deleting paragraph “3. Labor Standards, 3.c. Davis-Bacon Wage Rate Requirements” and substituting the following language to create a new “3. Labor Standards, 3.c. Program Wage Rate Requirements”:

c. Program Wage Rate Requirements.

1. Residential Retrofits. On all Me2 program energy retrofits in which individual homeowners receive EECBG-funded rebates or receive EECBG-funded loans (“Residential Retrofits”), Davis-Bacon Act requirements shall not apply. On all such Residential Retrofits, contractors shall pay wages to their employees performing work at a minimum wage rate of \$17 per hour.
2. Commercial Retrofits. On all Me2 program energy retrofits in which an entity other than an individual (company, corporation, limited liability company, etc.) receives EECBG-funded rebates or receives EECBG-funded loans (“Commercial Retrofits”), Davis-Bacon Act requirements shall apply. On all such Commercial Retrofits, contractors shall pay wages to their employees performing work at rates not less than those prevailing on projects of a character similar in the locality as determined by the Davis-Bacon Act..

3. WECC shall be responsible for monitoring contractor compliance with these requirements including the establishment of compliance reporting requirements for the ME2 residential retrofit program in cooperation with the City.

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. LEOHARDT, City Clerk

COUNTERSIGNED

W. MARTIN MORICS, City Comptroller

WISCONSIN ENERGY CONSERVATION CORPORATION

MARY WOOLSEY SCHLAEFER
Executive Director

[Program Name]

Energy Efficiency Loan Program Agreement

City/County of [],

and

[] Bank

[], 2010

ENERGY EFFICIENCY LOAN PROGRAM AGREEMENT

This Energy Efficiency Loan Program Agreement ("Agreement"), dated [], 2010 is undertaken by:

The City of [] (the "City") incorporated under the laws of [] State; and
[] Bank, a subsidiary of [] Corporation, ("Bank") a [] State chartered commercial bank, headquartered in [], [State].

Recitals

- A.** The City joined the [Program name] (the "Program") together with [Partner 1], [Partner 2], [etc.], and others to target comprehensive, deep energy efficiency retrofits for residential structures;
- B.** Energy efficiency retrofits include, but are not limited to, lighting retrofits, insulation, air sealing, heating, ventilation, and air conditioning components and control systems, and appliances;
- C.** The Program accomplishes these energy retrofits by providing a suite of services to participants, including energy audits, access to qualified and pre-screened contractors, information to access utility rebates and tax incentives, project monitoring, and affordable financing;
- D.** The City received a \$X,000,000 grant from the US Department of Energy (the "Grantor"), which is the source of capital for providing loan loss reserve security to facilitate energy efficiency loans from Bank to borrowers;
- E.** Bank, as lender, will provide loan financing directly to individual eligible residential customers ("Loans") for energy efficiency ("EE") measures and wishes to expand its EE finance activity in volume and wishes to obtain the financial support for its EE financing activities available from the City, as provided in this Agreement;
- F.** Bank will also serve as escrow agent ("Bank as Escrow Agent") and will provide fiduciary services to manage the receipt, disbursement, and investment of the City's funds as provided in this Agreement.
- G.** [Local non-profit or community action agency Partner] will be working with residential energy users to prepare energy efficiency projects that meet the requirements of the Program and the Grantors. Preparation of projects will include conducting facility energy audits, developing a customized energy action plan, assisting with available rebates, and lining up contractors and bids. A separate agreement between [Partner] and the Bank will formalize this relationship.

Agreements

In consideration of the foregoing recitals and the mutual covenants set forth below, the parties agree as follows:

Article I

Definitions. The following terms shall have meanings as defined:

“[] Program Partner Agreement” means the agreement among Bank, [Partner 1], and [Partner 2], dated [], 2010, for the purpose of defining the respective roles of the parties in Program marketing, Loan origination, and reporting (the “Program Agreement”).

“Defaulted Loans” shall be those Loans that are ninety (90) days or more past due and have triggered an acceleration of the Loan and written notice to the borrower of such, as evidenced by documents defined in Section 3.04.

"Escrow Account" has the meaning given in Article II.

“Eligible Projects” means residential EE projects that meet the procedural criteria defined in Annex C.

“Loan Agreement” means the agreement between the Bank and the borrower that lays out the terms and conditions of the Loan.

“Loan(s)” shall be loans made by Bank for the purposes of financing Eligible Projects, using a form Loan agreement developed by the Bank and approved by the City, and that meet the Terms, Conditions, and Underwriting Criteria in Annex B and the Project Eligibility Design Criteria in Annex C.

“Loss Amount” shall mean unpaid principal on a Defaulted Loan and shall not include any accrued interest.

“Loss Reserve Percentage” shall equal 10%.

“Loss Share Percentage” shall equal 90% (ninety percent) as applied in Section 3.04.

“Net Recovered Amount” shall have the meaning given in Section 3.04.

“Quarterly Report” means the report made by the Bank at the end date of each quarter (March, June, September and December) listing the new Loans originated during that quarter, Loan repayment, and Loan loss status as defined in Article III, below. A form Quarterly Report is attached as Annex A.

“Reflow Escrow Account” means a separate Escrow Account designated to receive funds from the Reserve Account once the total amount in the Reserve Accounts exceeds 90% of the total new outstanding principal of all Residential Loans. See Section 2.07 *et seq.*

"Reserve Account" shall have the meaning given in Article III.

ARTICLE II

Escrow Accounts

Section 2.01: Escrow Accounts. The Bank as Escrow Agent hereby establishes the Escrow account, account number [] (the "Escrow Account") for the City. The Escrow Account will be a [] Bank checking account and will be funded and administered as provided in this Agreement. The escrow arrangement hereby established does not create a debtor-creditor relationship between the parties, and all monies, funds, or assets of the Escrow Account shall be insured with the Federal Deposit Insurance Corporation (FDIC). The signature cards for the Escrow Account shall be forwarded to the City for completion, and a signature shall be necessary for any withdrawal under Section 2.04(b) below.

Section 2.02: Funding of the Escrow Account.

(a) On or before [], the City shall make deposit into the Escrow Account in the amount of \$X00,000.00, and the Bank as Escrow Agent shall acknowledge to the City receipt of such funds upon deposit.

(b) City may, at its option, make subsequent deposits to the Escrow Account.

Section 2.03: Interest on Escrow Account. Interest shall be earned on and accrue to the Escrow Account at []% rate.

Section 2.04: Disbursements from Escrow Account. Disbursements from the Escrow Account shall be made by Bank as Escrow Agent as follows:

(a) to the Reserve Account, as provided for in Section 3.02, below; and

(b) to the City, as provided for in Sections 2.05 and 2.06, below.

(c) In no event, except as provided in Subsections (a) and (b) immediately above, shall funds to be disbursed or withdrawn from the Escrow Account.

(d) No portion of the proceeds of a Loan may be used for refinancing of debt on the books of the Bank or for any debts incurred prior to the date a Loan is executed.

Section 2.05: Reprogramming Funds in the Escrow Account. Funds in the Escrow Account belong to the City. Targets for lending are as follows:

- (a) December, 2010: \$X,000,000 in residential loans, among approximately Eligible Projects;
- (b) June, 2011: \$X,000,000 in residential loans, among approximately Eligible Projects; and
- (c) December, 2011: \$X,000,000 in residential loans, among approximately Eligible Projects.

If these targets are not met, the City has the option to re-allocate all or part of the funds remaining in the Escrow Account to a different credit enhancement option, such as an interest rate buy-down or to direct cash incentives. In addition, the City has the option to withdraw funds from the Escrow Account. To re-allocate and/or withdraw funds, City must submit in writing a showing that the targets set forth above, in this Section 2.05, have not been met and a request for release of the funds back to the City for the purpose of re-allocation.

Section 2.06: Termination of Escrow Account. The Escrow Account shall terminate on [], 20XX, at which time Bank as Escrow Agent shall notify the City of any remaining balance in the Escrow Account and remit such balance to the City at such bank as the City may instruct at that time. However, the City may extend the termination date by notifying Bank in writing prior to [], 20XX.

Section 2.07: Reflow Escrow Account. The Bank as Escrow Agent hereby establishes a segregated Escrow Account, account number [] (the "Reflow Escrow Account") for the City. The Reflow Escrow Account will be [] Bank Savings Account and will be funded and administered as provided in this Agreement. All monies, funds, or assets of the Reflow Escrow Account shall be insured with the Federal Deposit Insurance Corporation (FDIC). The signature cards for the Reflow Escrow Account shall be forwarded to the City for completion, and a signature shall be necessary for any withdrawal.

Section 2.08: Funding of the Reflow Escrow Account. If and when total funds in the Reserve Account exceed 90% of the total new outstanding principal of all Loans funded by Bank pursuant to this Agreement, then any such excess funds will be remitted to the Reflow Escrow Account for the City. Such transfers will occur quarterly following Bank submittal of the applicable Quarterly Report.

Section 2.09: Interest on Reflow Escrow Account. Interest shall be earned on or accrue to the Reflow Escrow Account per the Bank's current saving account rate. If the amount on deposit in an individual Reflow Escrow Account is greater than \$X00,000, funds in that Reflow Escrow Account will earn interest at the Bank's money market account rate.

Section 2.10: Disbursements from Reflow Escrow Account. Funds in the Reflow Escrow Account are property of the City. Disbursements, re-programming, or withdrawals from the Reflow Escrow Account are at the sole option and discretion of the City. However, it is the current intent of the City that monies deposited in the Reflow Escrow Account will be used to fund a sustainable energy efficiency improvement fund following the principles and terms laid out in this Agreement.

Section 2.11: Reporting. Bank will include the amount of principal and the interest rate for the Reflow Escrow Account in its Quarterly Report and a summary of all other activity with Reflow Escrow Account.

ARTICLE III

Reserve Account for Residential Loans

Section 3.01: Reserve Account for Residential Loans. The Bank as Escrow Agent hereby establishes a special loan loss reserve Account, account number [] (the "Reserve Account") for the City. This Reserve Account will be a [] Bank checking account and will be identified and described in a separate annex to this Agreement (Annex B1). This Reserve Account shall be funded and administered as provided in this Agreement.

Section 3.02: Funding of Reserve Account. The Reserve Account will be funded by monies from the Escrow Account for Eligible Projects (see Annex F for Eligible Project determination). When the Bank funds a Loan, the Bank as Escrow Agent shall transfer funds from the Escrow Account to the Reserve Account in an amount equaling the product of the Loss Reserve Percentage multiplied times the original principal amount of the applicable Loan.

Section 3.03: Interest on Reserve Account. Interest shall be earned on and accrue to the Reserve Account at []% rate.

Section 3.04: Declaration of a Defaulted Loan; Use and Disbursement of Funds from the Reserve Account. All funds in the Reserve Account shall be available to Bank to cover the agreed Loss Share Percentage of Loss Amounts on Defaulted Loans.

(a) A Loan will be deemed a Defaulted Loan if Loan payments are ninety (90) days or more past due and Bank has triggered an acceleration of the Loan as evidenced by one of the following documents:

- (i) A copy of the expired demand letter sent to the Loan borrower, a sample of which is attached as Annex L; or
- (ii) A copy of the borrower's Bankruptcy filing.¹

¹ In bankruptcy actions, the Bank is stayed from following normal collection procedures, so normally no

(b) Five days after a Loan is deemed a Defaulted Loan, Bank as Escrow Agent will disburse funds from the Reserve Account to Bank for the applicable amount, which shall equal the Loss Share Percentage multiplied times the Loss Amount for the applicable Loan.

(c) The Reserve Account is **not** a loan guarantee. When and if the Reserve Account has zero balance (no funds remaining), City shall not be obligated to pay Bank for further losses on Defaulted Loans and all further losses on Defaulted Loans shall be fully to Bank's own account. The liability of City for Loss Amounts on Defaulted Loans is strictly limited to the balances in the Reserve Account, and no additional liability shall be incurred as a result of this Agreement.

(d) Recoveries on Defaulted Loans. In the event of recoveries on Defaulted Loans, the Bank will deposit back to the Reserve Account the Net Recovered Amount multiplied times the Loss Share Percentage. The Net Recovered Amount shall equal the gross amount of the recoveries less reasonable collections costs. The Bank shall retain documentation in its files evidencing any such reasonable collections costs, and upon request, present to the City.

Section 3.05: Access to Account information. Bank shall provide electronic email notification to the City upon any occurrence of balance change or other change of status to either an Escrow Account or a Reserve Account. In addition, Bank will provide the City password-protected, electronic, on-line access to review Escrow Account, Reserve Account and Reflow Escrow Account. However, disbursement of funds can only occur from an Escrow Account in accordance with Section 2.04 and from a Reserve Account in accordance with Section 3.04.

Section 3.06: Termination of Reserve Account. The Reserve Account shall terminate on the date when the Bank notifies the Bank as Escrow Agent that the last Loan under this Agreement has been fully paid. At such time, the Bank as Escrow Agent shall notify the City of any remaining balance (including interest) and remit such balance to the City at such bank as the City may instruct at that time.

ARTICLE IV

Reporting

Section 4.01: Quarterly Reporting.

(a) Bank will provide the three City the Quarterly Reports within two weeks of end date of each quarter (quarter end dates are 3/31, 6/30, 9/30, and 12/31), listing the Loan activity in that Quarter. The Quarterly Report shall, at a minimum, list all new EE Loans financed by Bank for the preceding quarter, assign each Loan a unique identification number, and indicate the original principal amount of each Loan. The

demand letter is sent.

Quarterly Report will indicate the payment performance on all outstanding Loans, collections if any, and on all other activities on the Escrow Account and Reserve Account. The Quarterly Report will also indicate any inchoate losses or acceleration notices. The Quarterly Report will include a section noting which Loans have been paid in full and any funds in the Reserve Account corresponding to those paid Loans that will be transferred to the Reflow Escrow Account. A form Quarterly Report is attached as Annex A.

(b) Within ten (10) business days of receipt by City of each Quarterly Report, if the City does not communicate its disapproval of the Quarterly Report, in whole or in part, the Quarterly Report is considered final.

(c) In the event Grantor requires the City to submit additional information or revised Quarterly Reports, Bank agrees to provide such data within 14 days of the City's written request.

(d) Each Quarterly Report will be appended to this Agreement.

Section 4.02: Resolution of Quarterly Reports. If the City disapproves in writing of a Quarterly Report within the ten-day period following its receipt of a Quarterly Report, then:

(a) the City shall immediately state to Bank its reasonable cause for such disapproval and request from Bank such additional information as needed to resolve the matter in question;

(b) Bank shall provide additional information as requested by the City to support and document its Quarterly Report; and

(c) Bank and City shall immediately use their best efforts to complete the mutually acceptable corrected Quarterly Report.

Section 4.03: Use of Quarterly Reports. City may use aggregated information, not specific individual loan information, contained in the Quarterly Reports to report on any aspect of the Energy Efficiency Loan Program.

ARTICLE V

Assignment & Assurances

Section 5.01: Negative Pledge. Neither the Bank, nor the Bank as Escrow Agent, shall grant, assign, or otherwise create, or permit to exist, any assignment, lien, encumbrance, security interest, pledge, charge, privilege, or priority of any kind in or to the Escrow Account or the Reserve Account or any of the funds at any time or from time-to-time Escrowed therein in favor of any person or entity other than City.

Section 5.02: Assignment by Bank. Notwithstanding the foregoing in Section 5.01,

Bank may assign its rights under this Agreement with the prior written approval of the City. Bank assignment for the purposes of refinancing its EE Loan portfolio is contemplated, and the City will support and cooperate with this effort. In the event of such assignment, the City will direct Bank as Escrow Agent to effect and document such assignment and Bank as Escrow Agent will do so as directed by the City.

Section 5.03: Escrow Agent Notice. Neither the Bank nor the Bank as Escrow Agent has actual knowledge of any other assignment, lien, encumbrance, pledge, security interest, charge, privilege, or other priority of any kind related to the Escrow Account or the Reserve Account other than that created pursuant to this Agreement, and the Bank as Escrow Agent shall give the City prompt notice of any such interest other than that created pursuant to this Agreement of which a responsible officer of the Bank, or the Bank serving as Escrow Agent, obtains actual knowledge after the date hereof.

ARTICLE VI

Administration of Account

Section 6.01: Account Administration. The Bank shall administer the Escrow Account, the Reserve Account, and the Reflow Escrow Account and follow such procedures as it would in administering other accounts in its standard practices.

Section 6.02: Monthly Statements. The Bank shall provide to the City on a monthly basis, and from time-to-time upon request, a statement with respect to the Escrow Account, the Reserve Account, and the Reflow Escrow Account of (i) the balance of funds as of the beginning and the end of, and (ii) all deposits and all withdrawals made during, the month or period covered by such statement. Except in the case of manifest error, each such statement shall be deemed correct and final upon receipt by the City unless the Bank or the Bank as Escrow Agent is notified in writing to the contrary within thirty (30) days after the date of such statement. The City and the Bank shall make a good faith effort to resolve any disputes involving balances, the transfer of funds, or the monthly reports. In the event of a failure to resolve a dispute on their own, the parties will follow procedures in Section 9.02.

ARTICLE VII

Representations, Warranties, and Covenants

Section 7.01: Representations of the Bank and the Bank as Escrow Agent. The Bank, and the Bank as Escrow Agent, individually and jointly represent and warrant to the City as follows:

(a) Each has the requisite corporate power to own its assets, to conduct its business as presently conducted, and to enter into, and perform its obligations under, this Agreement.

(b) Neither the making of this Agreement nor the compliance with its terms will conflict with or result in a breach of any of the terms, conditions, or provisions of, or constitute a default or require any consent under, any indenture, lien, mortgage, pledge, charge, conditional assignment, hypothecation, security interest, title retention, preferential right, trust arrangement, privilege, or priority of any kind, agreement, or other instrument or arrangement to which either the Bank as Escrow Agent or the Bank is a party or by which it is bound, or violate any of the terms or provisions of either the Bank as Escrow Agent or the Bank's charter or any judgment, decree, or order or any statute, rule, or regulation applicable to either Bank or Bank as Escrow Agent.

(c) This Agreement has been duly authorized and executed by each of the Bank as Escrow Agent and the Bank and constitutes the valid and legally binding obligation of each, enforceable against each in accordance with its terms.

(d) There is not any consent, authorization, or approval of, or any registration or filing with, any government or governmental, administrative, fiscal, judicial, or government-owned body, department, commission, tribunal, agency, entity, or authority required under any law, regulation, order, decree, or judgment applicable to each of the Bank as Escrow Agent and the Bank in connection with the making and performance of this Agreement.

(e) The Escrow Account and all funds from time-to-time deposited therein are and shall be lawfully owned by the City, free and clear of any assignment, pledge, lien, charge, encumbrance, or security interest, other than those granted by the City in this Agreement for the purposes of transferring funds under Section 2.04.

(f) The Reserve Account and all funds from time-to-time deposited therein are and shall be lawfully owned by the City, free and clear of any assignment, pledge, lien, charge, encumbrance, or security interest, other than those granted in this Agreement.

Section 7.02: Indemnification. Bank, and the Bank as Escrow Agent, shall indemnify, hold and save harmless, and defend, at their own expense, the City, its officials, agents, and employees from and against all suits, claims, demands, and liability of any nature or kind, including its costs and expenses, arising out of acts or omissions of Bank's, and the Bank as Escrow Agent's, employees, officers, agents, or sub-contractors, in the execution and implementation of this Agreement.

The City shall indemnify, hold and save harmless, and defend, at its own expense, the Bank and the Bank as Escrow Agent, its officials, agents, and employees from and against all suits, claims, demands, and liability of any nature or kind, including its costs and expenses, arising out of acts or omissions of City's employees, officers, agents, or sub-contractors, in the execution and implementation of this Agreement and against all claims of non-compliance with the Davis Bacon Act, the Prevailing Wage Act, the National Environmental Policy Act and Section 106 of the National Historic Preservation Act.

The obligations under this Article do not lapse upon termination of this Agreement.

Section 7.03: Covenants of the City and Bank. City and the Bank shall each submit to the Bank as Escrow Agent a certification under oath by its corporate secretary or other equivalent officer attesting to the authority of the officer duly designated by each to issue instructions for purposes of this Agreement and setting forth their full names, their respective positions and specimen signatures. All orders, instructions, requests, or certifications of such duly designated officers shall be in writing, and the Bank as Escrow Agent may rely upon, and shall be fully protected and discharged from any responsibility or accountability in acting in accordance with such orders, instructions, requests, or certifications that the City and Bank hereby warrant to be valid, binding, and duly authorized by its respective governing body.

Pursuant to Section [] of the Charter of the City of [], the Mayor is authorized to execute this Agreement, which shall be approved as to form and legality by the City Attorney and attested to by the Finance Director.

Section 7.04: Notification of Material Changes. Each party shall notify the other party of any material changes in the mode of operation, change of premises, significant negative change in financial position, as well as any litigation or proceedings before any court or administrative agency that may adversely affect its ability to fulfill its contractual obligations under this Agreement.

ARTICLE VIII

The Escrow Agent

Section 8.01: General.

(a) The Bank as Escrow Agent shall not deal with the Escrow Account, the Reserve Account, the Interest Rate Buydown Account and the funds in each respective account, except in accordance with (i) this Agreement, (ii) written instructions given in conformity with this Agreement, or (iii) instructions agreed to in writing by the City. It is understood that this Agreement expressly sets forth all of the duties and obligations of the Bank as Escrow Agent with respect to the Escrow Account, the Reserve Account, and the Interest Rate Buydown Account, and the funds in each respective account. In the event that any of the terms and provisions of any other agreement between or among any of the parties conflict or are inconsistent with any of the terms and provisions hereof for purposes of determining the duties and obligations of the Bank as Escrow Agent under this Agreement, the terms and provisions of this Agreement shall govern and control in all respects.

(b) The Bank as Escrow Agent shall not have any liability with respect to any action taken by it arising out of or in connection with this Agreement except for its own negligence, fraud, or willful misconduct.

(c) This Agreement is for the exclusive benefit of the parties and their respective successors and permitted assigns and shall not be deemed to give, either express or implied, any legal or equitable right, remedy, or claim to any other entity or person whatsoever.

(d) If at any time the Bank as Escrow Agent is served with any judicial or administrative order, judgment, decree, writ, or other form of judicial or administrative process that in any way affects an Escrow Account, a Reserve Account, the Interest Rate Buydown Account, or any of the funds in those Accounts (including but not limited to order of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of any of the funds), the Bank as Escrow Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate. If the Bank as Escrow Agent complies with any such judicial or administrative order, judgment, decree, writ, or other form of judicial or administrative process, the Bank as Escrow Agent (except in the case of the Bank as Escrow Agent's gross negligence, fraud, or willful misconduct) shall not be liable to any of the parties or to any other person or entity even though such order, judgment, decree, writ, or process may be subsequently modified or vacated or otherwise determined to have been without legal force or affect.

(e) In no event (except in the case of the Bank as Escrow Agent's negligence, fraud, or willful misconduct) shall the Bank as Escrow Agent be liable (i) for any consequential, punitive, or special damages, (ii) for the acts or omissions of its nominees, correspondents, designees, subagents, or sub-custodians, or (iii) for an amount in excess of the value of the funds.

(f) The Bank as Escrow Agent shall not be responsible in any respect for the form, execution, validity, value, or genuineness of documents or securities escrowed hereunder, or for any description therein, or for the identity, authority, or rights of persons executing or delivering or purporting to execute or deliver any such document, security, or endorsement.

(g) The Bank as Escrow Agent is authorized to comply with and rely upon any notices, instructions, or other communications believed by it to have been sent or given by a person or persons authorized by any other party.

Section 8.02: Escrow Agent Fees.

(a) Any fees for or associated with the Bank's services as Escrow Agent provided hereunder shall be included as part of and paid from the \$100 origination fee the Bank charges each borrower for each approved loan.

Section 8.03: Replacement and Resignation. The Bank as Escrow Agent or any successor escrow agent hereunder may be replaced by the City at any time, or may resign upon giving at least sixty (60) days' prior written notice of resignation to the Bank and

the City, and such resignation shall be effective from the date specified in such notice. If the office of the Bank as Escrow Agent shall be vacant for any reason, the City may, upon consultation with the Bank, appoint an escrow agent as successor escrow agent, in writing and delivered to the successor escrow agent, the retiring Bank as Escrow Agent, and the Bank, together with a copy of this Agreement. Upon written acceptance, the successor escrow agent shall succeed to all the rights and obligations of the retiring Bank as Escrow Agent as if this Agreement were originally executed by such successor escrow agent, and the retiring Bank as Escrow Agent shall duly transfer and deliver to such successor escrow agent the funds in the form held by it hereunder at such time.

ARTICLE IX

Miscellaneous

Section 9.01: Termination of Agreement.

(a) This Agreement shall terminate upon the payment in full of all Loans and when all funds, per Section 3.02 and approved by Bank as Escrow Agent, have been moved from the Reserve Account to the Reflow Escrow Account.

(b) In addition to the termination provisions provided in subsection (a) above, this Agreement shall terminate upon written agreement of all of the parties, regardless of cause.

(c) If the parties are in breach of any provision of this Agreement, the parties shall follow the procedures under Section 9.02. The initiation of arbitral proceedings in accordance with the herein prescribed procedure for Arbitration shall not be deemed a termination of this Agreement.

(d) Should Bank be adjudged bankrupt, or be liquidated, or become insolvent, or should Bank make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency, the City may, without prejudice to any other right or remedy it may have, terminate this Agreement forthwith. Bank shall immediately inform the City of the occurrence of any of the above events.

Section 9.02: Settlement of Disputes and Arbitration.

(a) Any dispute or controversy arising out of, in connection with, or relating to this Agreement that the parties are unable to resolve after making a good faith effort to do so on their own, shall be submitted to mediation conducted by a mutually acceptable mediator. If the parties are unable to agree on a mediator, or to otherwise resolve the dispute or controversy through mediation, then the parties shall submit the dispute or controversy to arbitration conducted by the American Arbitration Association, in [City], [State], pursuant to its then existing rules and regulations. Any decision so rendered in arbitration shall be binding and final on all parties.

(b) During the dispute or arbitration, the performance of the obligations of the parties shall not be stopped or put on hold, except for such work as may be the subject matter of the dispute or arbitration or as is directly affected thereby.

Section 9.03: Use of City Name, Observance Other Laws

(a) Bank shall not use the name, emblem or official seal of the City without its express written permission.

(b) Bank shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Agreement. Bank shall submit any and all information the City requires to demonstrate compliance with such laws, ordinances, and codes within two weeks of City's request for such information.

(c) Nothing in this Agreement shall constitute a partnership among the parties nor constitute one party the agent of the other party or vice versa. Except as set out in this Agreement, no party shall have express or implied authority to bind or represent any other party for any purpose whatsoever unless expressly agreed in writing by the party concerned.

Section 9.04: Taxes. Bank shall not be exempted from the payment of taxes, if any, that they shall incur in the process of undertaking their respective obligations under this Agreement, such as, but not limited to, taxes due to the government on the gross income.

Section 9.05: Notices. All notices, instructions, and other communications shall be in writing and shall be delivered by registered mail or by confirmed email or fax to the parties at the following addresses:

For Bank:

Phone: _____

Fax: _____

Email: _____

For Bank as Escrow Agent:

Phone: _____

Fax: _____

Email: _____

For City:

Phone: _____
Fax: _____
Email: _____

All such notices and communications shall be deemed to have been delivered on the date of delivery, if delivered by certified mail, or on the date confirmation was sent if delivered by confirmed email or confirmed fax.

Section 9.06: Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties and the respective successors and assigns, but shall not be assignable by the Bank or the Bank as Escrow Agent without the prior written consent of the City. Any purported assignment in violation of this Section shall be void.

Section 9.07: Entire Agreement; Waiver and Modification. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any and all prior agreements and undertakings, written or oral, with respect to the subject matter. Any waiver, amendment, or modification of the provisions shall not be effective unless in writing and signed by all the parties. Any waiver or consent shall be effective only in the specific instance and for the specific purpose for which given and shall not be construed to affect any other or future waiver or consent.

Section 9.08: Headings. Headings in this Agreement are for convenience or reference only and shall not be used in the interpretation or construction of this Agreement.

Section 9.09: Severability. If any one or more of the provisions of this Agreement shall be found to be invalid, illegal, or unenforceable in any respect or to any extent, such finding shall not affect the validity, legality, or enforceability of such provisions in any other jurisdiction, and the validity, legality, and enforceability of the remaining provisions of this Agreement shall not in any way be affected, impaired, or restricted.

Section 9.10: Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be a single agreement.

Section 9.11: No Waiver; Remedies. No failure on the part of the City, the Bank, or the Bank as Escrow Agent to exercise, and no delay in exercising, and no course of dealing with respect to, any right, power, or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power, or remedy under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power, or remedy. The remedies provided herein are cumulative and not

exclusive of any remedies provided by law.

Section 9.12: Governing Laws. This agreement shall be governed by and construed in accordance with the laws of the State of []. In any legal action arising from this agreement, the substantially prevailing party shall be entitled to reasonable attorney's fees, including costs allocated for in-house counsel, other costs, and necessary disbursements incurred in connection with the action or proceeding as determined by a court.

Section 9.13: Nondiscrimination in client services. Bank shall not, on the grounds of race, color, sex, religion, national origin, creed, marital status, age, or disability, unlawfully:

(a) Deny a qualified individual any facilities, financial aid, services, or other benefits provided under this Agreement;

(b) Provide any service(s) or other benefits to a qualified individual that are different, or are provided in a different manner, from those provided to others under this Agreement or confer separate treatment in any manner related to the receipt of any service(s) or other benefits provided under this Agreement;

(c) Deny any qualified individual an opportunity to participate in any program provided by this Agreement through the provision of service(s) or otherwise, or any individual an opportunity to do so that is different from that afforded others under this Agreement.

Section 9.14: These funds will not be used to:

(a) Discriminate against any employee or applicant for employment on the basis of religion;

(b) Discriminate against any person applying for services on the basis of religion or limit such services or give preference to persons on the basis of religion; or

(c) Provide religious instruction or counseling, conduct religious worship or services, or exert other religious influence in the provision of services.

Section 9.15: In the event that funding is withdrawn, reduced, or limited in any way after the effective date of this Agreement due to City budgetary decisions or Grantor reduction or elimination in grant revenues, and prior to its normal completion, the City may summarily terminate the Agreement as to any funds withdrawn, reduced, or limited from the Escrow Account or the Reflow Escrow Account, notwithstanding any other termination provisions of this Agreement. Termination under this Section shall be effective upon receipt or written notice thereof.

IN WITNESS WHEREOF, the parties to this Agreement have caused this Agreement to be duly executed as of the date first written above.

_____ **(Bank)** _____ **(Bank as Escrow Agent)**

By: _____
Title: _____

By: _____
Title: _____

_____ **(City)**

By: _____
Title: Mayor

Attest:

Finance Director

Department Head

Approved as to Form:

Office of the City Attorney

Signed in the Presence of:

List of Annexes

- A. Sample form for Quarterly Report
- B. Terms, Conditions, and Underwriting Criteria - Loans
- C. Project Eligibility Design Criteria – Loans
- D. Project Eligibility Determination Procedure
- E. Sample form Residential Project Eligibility Letter
- F. Sample form Residential Project Quality Assurance Certificate
- G. Sample form Bank Default Demand Letter

List of Schedules

1. [] Bank's Loan Underwriting Criteria [Bank to include updated Word or scanned copies of its underwriting criteria]
2. Quarterly Reports

[NOTE: All Annexes are intended as examples and sample documents and must be adapted to a Program's specific configuration and vetted with appropriate legal counsel.]

Annex A

Page 1 of 2

Energy Efficiency Loan Program Agreement

ANNEX A

QUARTERLY REPORT to the City and Bank as Escrow Agent

Pursuant to Energy Efficiency Loan Program Agreement dated [], 20XX

Reporting

Period: [], 2010 to [], 2010

New Loans Added to Segment during Period

	Loan #	Borrower	Location	Project Description	Net Sales Price	Customer Downpayment	Loan Principal	Closing date	Maturity date
1									
2									
3									
4									
Example etc.	00123	Stellar, Jane	[]	Roof insulation + roof	\$20,000	\$4,000	\$16,000	Nov 15, 2010	Nov 15, 2015
Total							\$16,000		

Funds to be Transferred from Escrow Account to Reserve Account for these new Loans as per Agreement Section 3.02

	10.00%	\$1,600
Funds Transferred from Escrow Account to Reserve Account, per all prior Quarterly Reports		\$200,000
Funds Transferred from Escrow Account to Reserve Account, with this Quarterly Report		\$1,600
Total Funds transferred from Escrow Account to Reserve Account, as of this Quarterly Report		\$201,600

Defaulted Loans During Period

	Loan #	Borrower	Location	Outstanding Loan Principal	Accrued Interest*	Loss Amount
1						
2						
3						
4						
Example etc.	00012	Schmoe, Joe		\$12,000	\$240	\$12,000
Total						\$12,000

*not greater than two months accrued interest

Annex A
Page 2 of 2

Funds to be Disbursed to Bank from Reserve Account for total Net Loss Amount per this Quarterly Report, as per Agreement Section 3.04_____

90.00% \$10,800

Funds Disbursed to FI from Reserve Account, per all prior Quarterly Reports	\$0
Funds to be Disbursed to FI from Reserve Account, with this Quarterly Report	\$10,800
Total Funds Disbursed to FI from Reserve Account, as of this Quarterly Report	\$10,800

Portfolio Data

1	Total Loans in Segment, prior Quarterly Report	
2	Total # New Loans Added, this Quarterly Report	
3	Total # Loans as of this Quarterly Report	
4	Total Original Loan Principal, all Loans in Segment, with prior Quarterly Report	
5	Total Original Principal, all New Loans, this Quarterly Report	
6	Total Original Principal, all Loans in Segment, this Quarterly Report	
7	Total Outstanding Principal, all Loans in Segment, as of Mar 31, 2010	
8	# Loans current	
9	# Loans past due 30 days	
10	# Loans past due 60 days	
11	Total Outstanding Principal, all Loans in Segment past due 60 days	
12	Total outstanding principal of Loans in default	

Fully Matured Loans

1 Total # Loans that were paid in full during Quarterly Report period

2 Total \$ amount moved from Reserve Account to Reflow Escrow Account during Quarterly Report period

Prepared By: _____

Approved By: _____
Manager
[] Bank

Annex B
– Example Terms, Conditions, and Underwriting Criteria –
Residential Loans

Borrowers: Eligible borrowers include individuals residing in [City].

Lender: [] Bank

Use of Proceeds & Eligible Projects: Pursuant to the Program Agreement among [Partner], [City], and [] Bank, and this Energy Efficiency Loan Program Agreement, loans must fund energy efficiency measures approved by [Partner or City or its designee].

Multi-family residences qualify for Eligible Loans if and only if they are owner-occupied and comply with Grantor's requirements.

Sources of Funds: Borrowers are encouraged to contribute 20% of their own funds toward total project costs. Energy efficiency grants and utility rebates can be considered as borrower equity.

Minimum Loan: \$3000

Maximum Loan: \$20,000

Loan Term:

\$3,000 to \$4,999	5 year term
\$5,000 to \$9,999	5 to 10 year term
\$10,000 to \$20,000	10 to 15 year term

Payment Schedule: Payments will be fully amortized, fixed monthly amounts, beginning with the initial payment.

The Bank will not be offering initial interest only payments during the construction period for two reasons:

- 1) Significant monthly energy savings are seasonal, and may not immediately be generated.
- 2) Especially for lower income borrowers, the Bank believes that having one clear payment amount from the start will help the borrower to budget for the new payment amount.

Interest Rate: [] Bank will be applying the following interest rates to these loans and they will be underwritten as unsecured credits.

<u>Loan Amount</u>	<u>800 & Up</u>	<u>Credit Score Range</u>	
		<u>725-799</u>	<u><725</u>
\$10,000 & Up	4.25%	4.75%	6.5%
<\$10,000	5.5%	5.25%	7.25%

Loans include \$100 origination fee, plus 1% fee to [City to be used for “topping off” the Escrow Account in the event of loss]. The borrower may finance these fees as an addition to the principal amount of the Loan.

The Bank offers a 0.25% discount for automatic payment from a [] Bank checking account.

Rates are subject to change. Any changes in rates will be communicated to City. Rates will be fixed for each loan at the time of loan application approval.

Prepayment Option: Interest on [] Bank’s loans is calculated using the simple interest approach, and these loans will not include any penalties for pre-payment.

Loan Disbursement: Loans will be disbursed via Cashier’s Check made payable to the contractor (when one exists). Each Loan disbursement on each project will be contingent upon prior written approval by borrower and [Partner, City, or City’s designee], based upon sufficient verification of EE project completion and all reporting requirements

Loans under \$10,000 will be disbursed in a single payment. Loans over \$10,000 may be disbursed in two separate disbursements when agreed upon prior to loan documentation.

Borrowers will typically have turnkey contracts for construction of the projects with qualified contractors. A “Schedule of Values” may be included in the construction contracts and Loan agreement defining: construction milestones, construction costs to achieve each milestone, and independent inspection confirming achievement of milestones. Construction finance plan and Schedule of Values must be acceptable to all parties.

Loan Security: All loans will be secured by a UCC-1 filing, and otherwise these loans will be treated as unsecured loans from an underwriting perspective.

Loans will also be indirectly secured by the pledge of loan loss reserve funds.

Loan Repayment: Repayment will be expected to come from the borrower’s monthly income. Borrowers will be fully obligated to repay the credit via the promissory note and any associated filing to perfect the Bank’s interests.

Should the borrower default on repayment, the Loss Reserve Account will be drawn upon to cover a portion of the loss.

Underwriting Criteria: See Schedule 1, [] Bank's Loan Criteria.

Loan Origination Procedures & Schedule:

- Loan applications must be submitted to one of [] Bank's branches located in [] County.
- Applications may be submitted in person, by fax, by email, or by mail. The application must note the street address of the subject property.
- Accompanying the application will be the following:
 - Statement of intended work from the [Partner], listing the work to be performed, the estimated cost, and the needed loan amount.
 - Income documentation: current pay stub or for self-employed applicants a full, signed copy of their last federal income tax return.
- [] Bank will underwrite the complete loan application and associated documentation, and will respond back to the applicant within 1 to 2 business days. At the same time that the applicant is notified, the City and [Partner] will also be notified of the credit decision. For declined applications, the reasons for decline will be disclosed only to the applicant.
- Loan documents will normally be available the following business day. Loan closing will occur in a [] Bank branch. Closing is subject to 3-day right of rescission. Funding projected for fourth business day.

Annex C

– Example Project Eligibility Design Criteria – Residential Loans

Borrowers: Eligible borrowers include individuals residing in [City].

Energy Efficiency: The project design includes measures designed to meet energy efficiency standards based on the [] State Weatherization Assistance Program and [Local Utility] standards. The project design does not dedicate more than 20% of the project's total budget toward any non-energy efficiency design measures that are necessary to install energy efficiency measures. Special consideration will be given to projects that budget more than 20% in non-energy efficient measures that, if completed would allow for energy efficiency upgrades. Approval from the [Partner or City's designee] residential manager is required for this exemption.

Acceptable Measures: Acceptable energy efficiency design measures are any measures identified by [Partner or City's designee] or its contractors during a qualifying home energy assessment and presented to the borrower during a home energy advisor consultation session. These measures include but are not limited to insulation, air sealing, duct sealing, furnace replacement, hot water tank replacement, window replacements, and solar photovoltaic energy systems.

Acceptable Projects: Acceptable projects must be completed by contractors qualified and trained by the [Partner or City's designee], must meet all program reporting requirements including paying [] State prevailing wage and Davis Bacon Act requirements and must submit to quality assurance inspection prior to job completion. [City] and [Bank] shall ensure that all borrowers, energy contractors, and any subcontractors hired as a result of this Agreement are in compliance with all federal and state laws, including compliance with all requirements of the American Recovery & Reinvestment Act. [City] and [Bank] shall ensure that the project complies with the National Environmental Policy Act and Section 106 of the National Historic Preservation Act.

Annex D
– Example Project Eligibility Determination Procedure –

1. All prospective residential projects must be evaluated by the Bank and [Partner or City's designee] ("[Partner]"). If the lead on a prospective project first originates with the Bank, the Bank will coordinate with [Partner or City's designee] to evaluate the project for eligibility. If the lead on a prospective project first originates with [Partner or City's designee], [Partner or City's designee] will coordinate with the Bank to evaluate the project for eligibility.
2. A prospective project will receive approval as an "Eligible Project" if it meets the following criteria:
 - a. The prospective project meets Bank's underwriting criteria, as set forth in Annex B, and the Bank has issued a Loan, with disbursement of funds conditioned only upon the Bank receiving a Residential Project Quality Assurance Certificate (Annex F) at the completion of project; and
 - b. The prospective project meets energy efficiency design criteria and other funder requirements, as set forth in Annex C and has received a Project Eligibility Letter (see Annex E).
3. As an Eligible Project, the project can proceed with construction funding provided by the building owner or the contractor.
4. Upon completion of construction, the contractor will apply to [Partner or City's designee] for assurance that the project has met all energy efficiency design criteria and other funder requirements, as set forth in Annex C. If [Partner or City's designee] determines that additional work is needed to meet the energy efficiency design criteria, [Partner or City's designee] will notify contractor in writing with a corrective order. When all energy efficiency design criteria have been met, [Partner or City's designee] will issue a certificate designating such ("Quality Assurance Certificate") and deliver a copy of the Quality Assurance Certificate for that project to the Bank (see Annex F).
5. When the Bank receives the Quality Assurance Certificate, it shall disburse Loan funds to contractor.

Annex E
– Sample Form Residential Project Eligibility Letter –

[Date]

To: Les S. Moore
North Bay Retail Division Manager
[] Bank
123 Main St
Wilmington, DE 19890

From: John B. Goode
Energy and Policy Manager
Sustainability For All
456 Main St
Wilmington, DE 19890

Dear Mr. Moore,

Please accept this letter as evidence that the project outlined below is an eligible residential project that meets our energy efficiency requirements and other program requirements under agreement #XYZ. This project qualifies for protection under the loan loss reserve program. Please review Ms. Jane Stellar's application for a loan to complete the project and, with her approval, let me know if she has met your underwriting criteria and is approved for a loan. If approved, we will assign her project to a contractor. This project is considered eligible for three months from today's date.

All energy contractors, and any subcontractors hired as a result of this Agreement, have agreed to meet all program reporting requirements including paying [] State prevailing wage and Davis Bacon Act requirements and will submit to quality assurance inspection prior to job completion. This project and all energy contractors, and any subcontractors hired as a result of this Agreement, shall be in compliance with all federal and state laws, including compliance with all requirements of the American Recovery & Reinvestment Act. This project complies with the National Environmental Policy Act and Section 106 of the National Historic Preservation Act.

Project Details

Borrower: Ms. Jane Stellar

Project Address: 123 Second Street, Wilmington, DE 19890

Scope of Work: Tier 3 weatherization, a detailed scope of work is available upon request

Estimated Project Cost: \$8,000

Loan Amount Requested: \$9,200 (includes 15% change order

contingency)

Please let me know if there are any additional questions.

Sincerely,

John B. Goode

DRAFT

Annex F
– Sample Form Residential Project Quality Assurance Certificate –

[Date]

To: Les S. Moore
North Bay Retail Division Manager
[] Bank
123 Main St
Wilmington, DE 19890

From: John B. Goode
Energy and Policy Manager
Sustainability For All
456 Main St
Wilmington, DE 19890

Dear Mr. Moore,

Please accept this letter as evidence that the energy efficiency project authorized for loan #123 has completed all necessary program requirements. Sustainability For All has reviewed the work and the reporting documentation. Please proceed to disburse funds as per agreement #XYZ.

This letter also certifies that the homeowner for this energy efficiency project, Jane Stellar, agrees that the contracted work under this project has been satisfactorily completed and authorizes [] Bank to disburse funds from their loan #123, and issue a check for \$X,000.00 to Best Work Construction Firm.

Please let me know if there are any additional questions.

Sincerely,

John B. Goode

Home Owner Authorization:

I, Jane Stellar, certify that the work under this project has been satisfactorily completed and authorize [] Bank to disburse the funds from my loan #123 and issue a check for \$X,000.00 to Best Work Construction Firm.

Jane Stellar, Home Owner

Annex G
– Sample form Bank Default Demand Letter –

March 3, 2010

Joe Schmoe
789 First St
Wilmington, DE 19890

RE: Loan #XXXXXXXX

Dear Mr. Schmoe:

Because of your severe delinquency you are in default on this loan under a Promissory Note and Security Agreement you executed on November 1, 2010. At this time your loan is past due for the payments scheduled for January 1, 2011, February 1, 2011, and March 1, 2011 totaling \$301.37. This includes late charges, and amounts only partially paid.

You have until March 13, 2011 to cure this default.

You may cure your default by paying us \$301.37 in cash or by certified check. This amount includes the full amount past due and owing. You must pay this amount to us at our office located at [branch location] no later than 5:00 pm on March 13, 2011.

If you do not cure the default and reinstate the loan as provided above, then we may exercise our rights under the law by accelerating the sums due and owing under our Promissory Note and UCC-1 filing. Such actions may include foreclosing upon the collateral securing this loan and selling it.

Please contact our office as soon as possible. If you cannot make the payment now, contact me at **1-800-123-4567**, so that arrangements can be made to bring your account current. My office hours are Monday through Friday, 8:00am to 5:00pm (EST). Another alternative is you can contact me by email at HMcHugh@Bank.com.

Sincerely,

Honor McHugh
Consumer Collection Counselor

Schedule 1

– [] **Bank's Loan Underwriting Criteria** –

[To be supplied by the Bank]

DRAFT

Schedule 2
– Quarterly Reports –

[It is intended that each Quarterly Report be annexed to and become part of this Agreement]

DRAFT

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Q: I have heard that financing (through an EECBG-supported revolving loan fund) to residential property-owners in order to install renewable energy systems and energy efficiency equipment does not require compliance with Davis-Bacon Act (DBA) because it would create an undue hardship for the participating resident. However, renewable energy and energy efficiency at commercial properties (funded through an EECBG-supported revolving loan fund) does require compliance with Davis-Bacon Act. Can you please verify these statements?

A: These statements are correct, but not because DBA would create an undue hardship for individual residents. The Office of Management and Budget (OMB) regulations regarding implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act) Section 1606 (Davis-Bacon wage requirements) make clear that the requirements of the Recovery Act - particularly the requirements applicable to recipients and subrecipients of Recovery Act funds - do not apply to individuals. Therefore, programs that are provided to individuals are not subject to the DBA, providing the individual contracts for the improvements. The OMB regulations do not exempt business and other commercial entities from the DBA requirements and as such, those entities are subject to the DBA.

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No additional resources are currently available.

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Energy Efficiency and Conservation Block Grant Frequently Asked Questions

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Q: Is DBA applicable to residential? Does it matter if local government is issuing vouchers or paying directly to customers?

A: The DBA may be applicable to residential, but it depends on whether an individual or a company is receiving the Recovery Act funding for the energy improvements or whether a company is receiving the Recovery Act funding. The OMB regulations regarding implementation of the American Recovery and Reinvestment Act of 2009 (Recovery Act) Section 1606 (Davis-Bacon wage rate requirements) make clear that the requirements discussed therein – particularly the requirements applicable to recipients and subrecipients of Recovery Act funds – do not apply to individuals. Therefore, given that individuals are not recipients or subrecipients of Recovery Act funds to whom Section 1606 requirements would apply, the individual owner of a small residential building, a house or houses that the individual rents to others would not be subject to the DBA requirements for energy. However, the DBA requirements are applicable to a company (i.e., LLC, S corp, C corp) receiving Recovery Act funding for energy improvements. A company is not an individual under the OMB regulations implementing Section 1606 of the Recovery Act. The OMB regulations make clear that the requirements discussed therein exempt only individuals from the requirements applicable to recipients and subrecipients of Recovery Act funds. In either case, if the local government issues a voucher to the individual or provides a check to the individual to pay a contractor, the individual is the beneficiary of the program and the DBA will not be applicable to this program. The individual must contract directly with the contractor, but payment by voucher (to prevent fraud) or check to the individual does not change the fact that the Individual is not subject to the DBA requirements.

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- No additional resources are currently available.

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Energy Efficiency and Conservation Block Grant Frequently Asked Questions

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Q: A State or Local government agency provides SEP or EECBG ARRA-funding to a utility to run a Home Performance with ENERGY STAR (HPwES) program which trains, certifies, and markets for contractors doing home energy retrofits. The program also conducts quality assurance on the work performed by the contractors. The utility provides cash incentives to the customers to participate in the program. The customers use those incentives to pay the contractors for the work. The utility does not conduct any of the home energy retrofits. The utility only provides a program for which contractors may sign up to participate in the training, certification, and quality assurance program. Contractors sign a participation agreement with the utility indicating they will participate in the program; however, contractors do not contract with the utility. The contractors must contract with the homeowners receiving the incentive from the utility. The question is, "Do the utilities and/or contractors have to comply with DBA?"

A: DBA requirements do not apply to the utility or to the contractors under this program, because the individual homeowners are the direct beneficiaries of the program and the homeowners hire the contractors.

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- No additional resources are currently available.

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Energy Efficiency and Conservation Block Grant Frequently Asked Questions

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Q: We understand that DBA requirements do not apply to SEP and EECBG Financing Programs that benefit individual homeowners. To avoid the potential risks involved in distributing funds directly to homeowners, and then allowing the homeowner to make payment to contractors, we are considering allowing partner lenders/utilities to process joint checks to homeowners and contractors which would require that the homeowner sign the check over to the contractor after the work is completed. (The homeowner could not cash the joint check.) The homeowner would be required to obtain bids and enter into a contract with the contractor to perform the work. In this instance would DBA requirements still not apply?

A: The DBA would not be applicable to this program because the individual homeowner is contracting with the contractor and is benefiting directly from the Financing Program.

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- No additional resources are currently available.

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☐ Yes ☐ No

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FILE NUMBER: 100769
Steering & Rules Committee

[illegible]



Legislation Details (With Text)

File #: 100770 **Version:** 1

Type: Resolution **Status:** In Committee

File created: 10/12/2010 **In control:** STEERING & RULES COMMITTEE

On agenda: **Final action:**

Effective date:

Title: Substitute resolution authorizing agreement with Wisconsin Energy Conservation Corporation to implement utilization of Energy Efficiency Conservation Block Grant formula grant funds for subsidy of Me2 residential audit subsidies.

Sponsors: ALD. HINES JR., ALD. MURPHY

Indexes: AGREEMENTS, WISCONSIN ELECTRIC POWER COMPANY

Attachments: Agreement, Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
10/12/2010	0	COMMON COUNCIL	ASSIGNED TO		
11/8/2010	0	STEERING & RULES COMMITTEE	HEARING NOTICES SENT		
11/10/2010	1	CITY CLERK	DRAFT SUBMITTED		

Number

100770

Version

SUBSTITUTE 1

Reference

100455, 091147

Sponsor

HINES AND MURPHY

Title

Substitute resolution authorizing agreement with Wisconsin Energy Conservation Corporation to implement utilization of Energy Efficiency Conservation Block Grant formula grant funds for subsidy of Me2 residential audit subsidies.

Analysis

This resolution authorizes the Department of Administration to enter into an agreement with the Wisconsin Energy Conservation Corporation (WECC) to implement utilization of Energy Efficiency Conservation Block Grant (EECBG) formula grant funds for subsidy of ME2 residential audit subsidies. This agreement utilizes \$1.2 million of the City's \$5.8 million EECBG formula grant to subsidize the cost of approximately 3,000 home energy audits. The audit work will be completed by qualified private-sector energy consultants. This agreement represents a sole-source contract with WECC to administer the subsidy.

Body

Whereas, On January 20, 2010, the Common Council adopted Resolution File Number 091147, accepting and funding the Energy Efficiency Conservation Block Grant (EECBG) in the amount of \$5,839,100; and

Whereas, On September 21, 2010, the Common Council adopted Resolution File Number 100455, authorizing the Department of Administration - Office of Environmental Sustainability to revise the activities of the EECBG from the U.S. Department of Energy in the amount of \$5,839,100; and

Whereas, The Department of Administration - Office of Environmental Sustainability has proposed entering into an agreement with the Wisconsin Energy Conservation Corporation (WECC) to implement utilization of Energy Efficiency Conservation Block Grant formula grant funds for subsidy of Me2 residential audit subsidies, utilizing \$1.2 million of the \$5.8 million EECBG formula grant to subsidize the cost of approximately 3,000 home energy audits; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that the Department of Administration - Office of Environmental Sustainability is authorized to enter into the attached agreement with Wisconsin Energy Conservation Corporation to implement utilization of Energy Efficiency Conservation Block Grant formula grant funds for subsidy of Me2 residential audit subsidies.

Requestor

Department of Administration

Drafter

LRB123271-2

RTW

11/8/10

**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 _____, (“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. _____ on _____, 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:

If to City:	If to WECC:
City of Milwaukee Office of Environmental Sustainability 200 East Wells St., Room 603 Milwaukee, WI 53202 Attn: Director	Wisconsin Energy Conservation Corporation 431 Charmany Drive Madison, WI 53719 Attn: Sue Hanson

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

RHONDA KELSEY, Purchasing Director

WISCONSIN ENERGY CONSERVATION CORPORATION

Mary Woolsey Schlaefer
Executive Director

Approved as to form, execution, and
content this ____ day of _____, 2010.

Assistant City Attorney

1052-2010-2672:162868v2

EXHIBIT A

EECBG – ARRA Contractual Flowdown Requirements

EXHIBIT B

CERTIFICATION REGARDING SUSPENSION AND DEBARMENT

The undersigned, being duly authorized to act on behalf of _____ (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.

Signature/Authorized Official

Date

Title

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

1. Statement of Project Objectives

2. Federal Assistance Reporting Checklist and Instructions

3. Budget Pages (SF 424A)

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, subcontract, 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.

FILE NUMBER: 100770
Steering & Rules Committee

[illegible]



Legislation Details (With Text)

File #: 091416 **Version:** 0

Type: Communication-Report **Status:** In Committee

File created: 2/9/2010 **In control:** STEERING & RULES COMMITTEE

On agenda: **Final action:**

Effective date:

Title: Communication relating to the City's Neighborhood Stabilization Program.

Sponsors: THE CHAIR

Indexes: NEIGHBORHOOD DEVELOPMENT, REPORTS AND STUDIES

Attachments: In Rem PowerPoint Presentation, Hearing Notice List

Date	Ver.	Action By	Action	Result	Tally
2/9/2010	0	COMMON COUNCIL	ASSIGNED TO		
2/15/2010	0	STEERING & RULES COMMITTEE	HEARING NOTICES SENT		
2/15/2010	0	STEERING & RULES COMMITTEE	HEARING NOTICES SENT		
2/18/2010	0	STEERING & RULES COMMITTEE	HELD TO CALL OF THE CHAIR	Pass	7:0
11/8/2010	0	STEERING & RULES COMMITTEE	HEARING NOTICES SENT		

Number

091416

Version

ORIGINAL

Reference

Sponsor

THE CHAIR

Title

Communication relating to the City's Neighborhood Stabilization Program.

Requestor

Drafter

CC-CC

tjm

2/12/10

Milwaukee's property inventory: Responding to a growing challenge

Presented to Steering and Rules Committee
November 11, 2010

Unpaid property taxes



Unsuccessful collection efforts



Foreclosure judgment



City takes title



90-day redemption period

In rem triage

Market

Mothball

Demolish



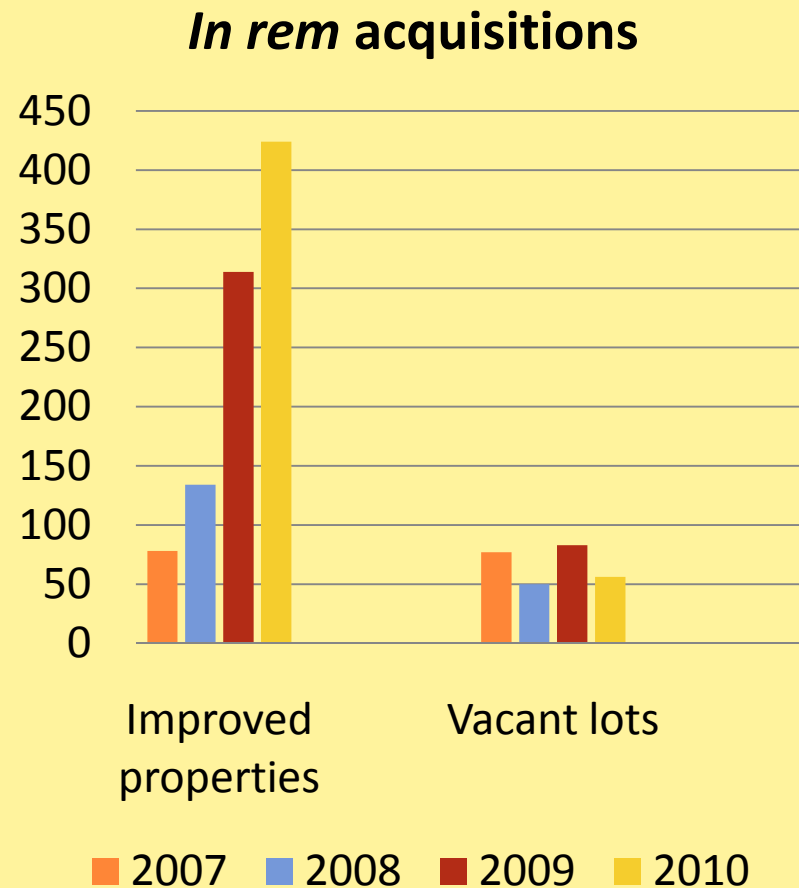
DCD

DCD

DNS

The problem: Inventory growth

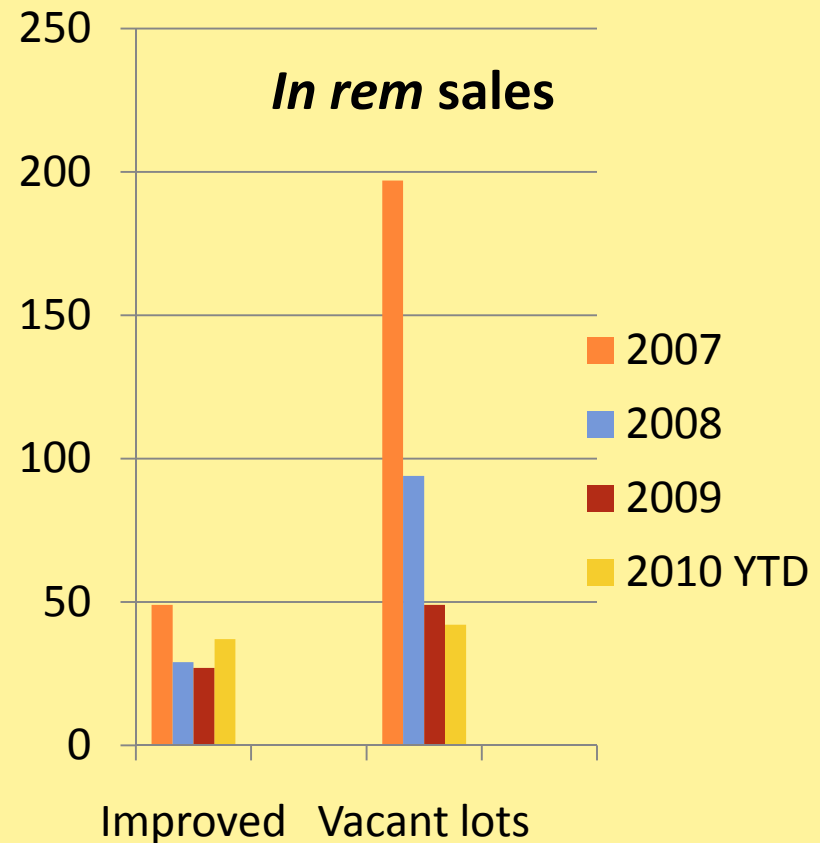
- Increased tax foreclosure = spike in City property inventory (*in rem* properties)
- Low rate of redemption by owners
- More properties to:
 - Manage
 - Market
 - Demolish





The problem: Depressed market

- Slow in rem sales
 - Wide choices available to prospective buyers
 - Less attractive product
 - Credit not available
- Longer period of City ownership
 - Increased maintenance and management responsibilities
 - Higher costs



Goals and strategy

- Create in rem team;
appoint coordinator
- Maintain high standards
of property
management and
preservation
- Reduce inventory
 - Invigorate marketing
activity
 - Demolition
- Collaborate with NSP



Tactics: Manage/preserve

- Vacant properties
 - Reduce negative impact of vacant properties on neighborhood
 - Boarding, grass and snow, prompt response to neighbor complaints
- Occupied properties
 - Responsible landlord
 - Repairs, prompt response to tenant calls



Action plan

- Increase administrative support
- Third-party vendor for after-hours calls
- Enlist help of neighborhood groups as “eyes and ears”
- Property management software



Tactics: Invigorate marketing

- Enlarge the sales force for City-owned homes
- Make the product more competitive
- Broaden the buyer pool



Action plan

- Bigger sales force
 - Neighbors, brokers, home-buyer counselors
 - Finder's fees
- More competitive product
 - Package houses with rehab grants and loans
 - Pricing strategy





Cost of repairs:
\$81,500

Assessed value:
\$80,000

Chimney	n/a	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	\$	1,500.00
Shingles: repair	n/a	<input type="checkbox"/>	Yes	<input type="checkbox"/>	\$	
Shingles: Roof over existing	n/a	<input type="checkbox"/>	Yes	<input type="checkbox"/>	\$	
Shingles: Tear off & re-roof	n/a	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	\$	14,500.00
Gutters/downspouts	n/a	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	\$	2,500.00
Flashing	n/a	<input type="checkbox"/>	Yes	<input type="checkbox"/>	\$	
Eaves	n/a	<input type="checkbox"/>	Yes	<input type="checkbox"/>	\$	
Siding	n/a	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/> Repair	\$	1,500.00
Storm Doors	n/a	<input type="checkbox"/>	Yes	<input type="checkbox"/>	\$	
Prime ("main") Doors	n/a	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	\$	1,800.00
Storm Windows	n/a	<input type="checkbox"/>	Yes	<input type="checkbox"/>	\$	

Tactics: Enlarge buyer pool

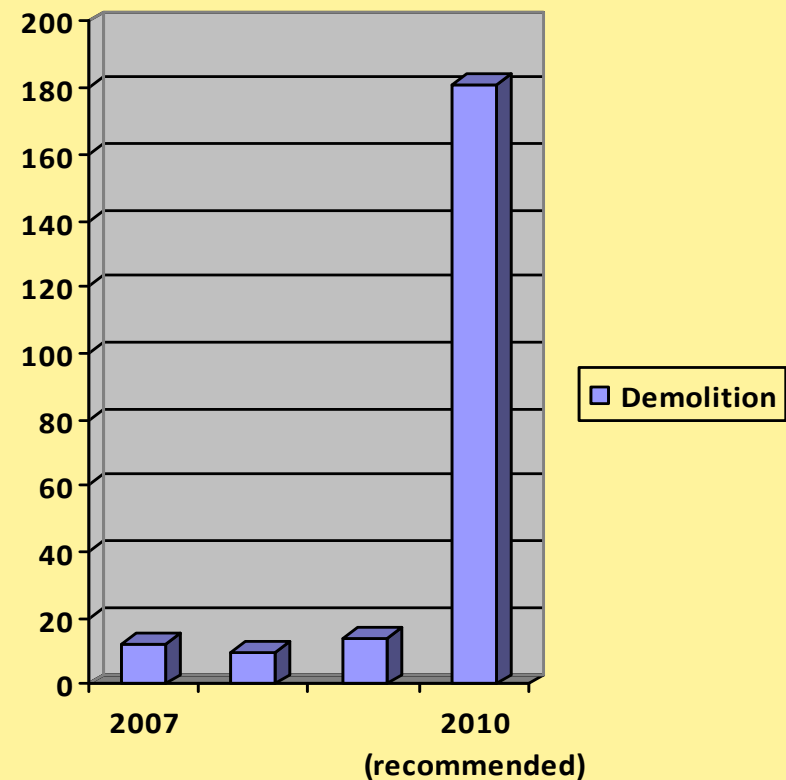
- Developers
 - Multiple property sale for redevelopment
- Investor-owners
 - Neighborhood investors
 - Responsible landlords



Tactics: Reduce inventory

- Increased demolition
 - Funds available from NSP, CDBG, City budgets
 - Prioritize demolition of City-owned property
- New uses for vacant lots
 - Short-term uses
 - Long-term uses

In rem demolitions



Tactics: Leverage NSP resources

- NSP funds
 - Package City properties with NSP grants
 - Fund demolition
- NSP home ownership promotion activities
 - Outreach staff
 - Homeownership fair
 - Targeted workshops
 - Take Root Milwaukee







Department of City Development

City Plan Commission
Neighborhood Improvement
Development Corporation
Redevelopment Authority

Rocky Marcoux
Commissioner

Martha L. Brown
Deputy Commissioner

November 10, 2010

Mayor Tom Barrett
City Hall, Room 200

Members of the Common Council
City Hall, Room 205

Dear Mayor Barrett and Members of the Council:

As you are no doubt aware, the last two years have seen a significant increase in the number of property tax foreclosure judgments in the City of Milwaukee. As a result, the number of properties managed, preserved and demolished by City departments has grown dramatically since 2009. I am writing to update you on actions undertaken by the Department of City Development to handle the expanded scope and scale of its responsibilities with respect to tax-foreclosed properties.

The tax foreclosure process

When a property owner fails to pay property taxes, the Office of the City Treasurer initiates collection proceedings. If collection efforts do not result in payment of delinquent taxes, the City Treasurer eventually refers the property to the City Attorney's office, which files a foreclosure action against the owner. If a foreclosure judgment is entered in Circuit Court, the City takes title to the property. The property owner has one last opportunity to take back the property: a 90-day redemption period. If the taxes aren't paid during that period, the property remains in the City's hands. We call those "*in rem*" properties.

When the City takes title to a taxed-foreclosed house, DCD inspects it, and recommends whether it should be sold to a private party, mothballed for future sale, or demolished. The local alderperson receives a written recommendation for the disposition of each *in rem* property. After aldermanic sign-off, houses recommended for demolition are turned over to the Dept. of Neighborhood Services, which arranges for the demolition work.

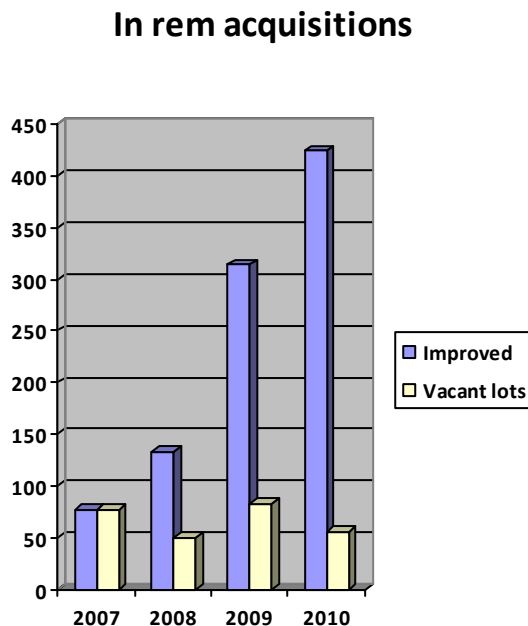
DCD manages and markets properties that are to be sold or mothballed. About half of the properties in the inventory have tenants living in them at the time of the foreclosure. We enter into leases with those tenants, and collect rent. Occasionally, tenants will buy the property from the City and continue to live there.

The current situation

In this period of extremely high rates of home mortgage foreclosure, it is no surprise that tax foreclosure also has skyrocketed. While two-thirds of local foreclosures result from failure to make mortgage payments, about one-third of local foreclosures have occurred because property owners have failed to pay their property taxes for several years. The number of houses taken through tax foreclosure this year is more than 500 percent higher than just three years ago.

After a tax-foreclosure judgment, owners have a 90-day period to pay their back taxes and have their properties returned. As the number of tax-foreclosure cases has risen, the proportion of owners who redeem their properties has fallen. One-third of *in rem*s were redeemed in 2008 – only 10 percent were redeemed this year.

The graph illustrates the trend of tax foreclosure judgments since 2007. At present, the City has more than 500 residential properties in its inventory. Of this total, 30 properties were acquired prior to 2009.



The growth in the *in rem* inventory comes at a time when the real estate market is seriously depressed. Sales of *in rem* properties have not kept up with the inventory.

There are several factors that account for this. There is a large number of one- and two-family homes available for sale, including about 1500 foreclosed properties owned by lenders. Prices are down across the real estate market, and bank-owned foreclosures are selling for about 50 percent of assessed value.

The wide array of affordable housing on the market provides intense competition for the *in rem* product, which generally compares unfavorably in terms of age and condition to privately-owned properties.

The tight credit crippling the entire housing market also impacts *in rem* properties. Most need significant repairs, yet there are few loan products available to finance both purchase and renovation costs.

These market dynamics mean that the City will likely own the current large inventory of properties for substantially longer periods than in past years. City government will bear increased responsibilities and higher costs as a result.

Meeting the challenge

DCD has been responsible for managing and marketing the City's *in rem* properties for many years. But the scope and scale of these responsibilities have risen dramatically since mid-2009. We will take a number of steps in light of this challenge.

I have created an *in rem* property team, whose sole responsibility is to handle the large *in rem* inventory. I have appointed Clifton Crump to lead this effort. He is assisted by several members of the real estate staff who have been involved in property management and marketing for many years. Clifton also will draw on the expertise of DCD housing rehabilitation and marketing staff members.

I have charged the team to meet three key goals:

- Maintain the highest standards of property management, preservation and maintenance.
- Reduce the *in rem* inventory, through vigorous and creative efforts to market property, and through demolition of property that is not feasible for re-sale.
- Collaborate with the Neighborhood Stabilization Program, to ensure that NSP foreclosure mitigation resources are applied to *in rem* properties.

Property management, preservation and maintenance

About half the City-owned houses are vacant at the time tax-foreclosure occurs, and the other half are occupied. Our goal for unoccupied properties that have market potential is to preserve them so they are good candidates for sale to private buyers. Our goal for all unoccupied properties is to ensure they do not negatively impact their neighborhoods; in some cases, this will require demolition.

We immediately secure vacant properties through boarding, and we also are responsible for cutting grass and snow removal at these properties. (The Forestry division of the Department of Public Works handles maintenance of City-owned vacant lots.)

While we are committed to promptly responding to neighbor complaints about boarded properties, I have directed our *in rem* team to devise more pro-active strategies for monitoring vacant properties. We work with the Department of Neighborhood Services on this.

Occupied properties present special challenges. For occupied homes whose condition makes them a good candidate for sale, our goal is to serve as a responsible landlord while preserving the properties for re-sale and return to the tax rolls. We have leases with the tenants in these properties, and collect rent from them. We use City funds to make repairs required to protect the health and safety of tenants.

On occasion, we find people living in a home where conditions threaten the safety of the occupants. In such cases, the tenants must leave, and the property is recommended for demolition.

The *in rem* team will make several changes to ensure we meet our property preservation and management goals.

- We are increasing administrative support for our property manager.
- We will seek a third-party vendor to respond to after-hours calls from tenants and neighbors.
- We will enlist the help of neighborhood organizations to assist in monitoring the condition of vacant *in rem* properties in their areas.
- We expect to purchase property management software, which will be particularly valuable for the management of occupied units.

Reducing the *in rem* inventory

Inventory reduction is a central goal of our efforts. I have directed our team to invigorate marketing efforts, to get more homes out of our inventory and back onto the tax rolls. We expect to use three tactics to sell more properties:

- Enlarging the sales force for City-owned properties.
- Making the product more competitive.
- Broadening the pool of buyers who can purchase *in rem* properties.

For some years, a single real estate staff member has been able to sell our *in rem* residential properties. DCD operates a robust web site that lists properties for sale, provides cost estimates for needed repairs, and shares information about housing grant and loan programs, including NSP. However, in the face of expanding inventory, we must expand the sales force beyond the walls of DCD.

I have charged our *in rem* team to devise strategies to involve neighbors, real estate brokers, home buyer counseling agencies, and others to help us market *in rem* properties. The team has already suggested some exciting ideas, like finder's fees, a broker and counselor education program, and "Walk to Worship," which would target marketing efforts to churches near *in rem* properties.

We also can take some measures to make our product more competitive. Our Neighborhood Stabilization Program staff is identifying *in rem* properties that can be sold as a package that includes rehabilitation grants and bank financing. The Homeownership Consortium is sponsoring a large home ownership fair in early December, and it's our goal to highlight these "packaged" properties at the fair, along with other City *in rem*s.

I've also asked the *in rem* team to look at pricing practices, to determine whether changes are warranted. In general, prices are set to cover the costs of maintenance, staff time and out-of-pocket sales expenses. Any net proceeds are returned to the Tax Deficit Fund. The average sale price for *in rem* properties sold in 2010 is under \$20,000, which equals, on average, 22 percent of the assessed value of the properties. Though prices are very modest, we need to determine if further price reductions would increase sales.

I would caution, however, that financial realities make the sale of many of *in rem* properties challenging, even when prices are at rock-bottom. DCD contracts with private home inspectors to identify health and safety issues that must be addressed when property is sold to a new owner. The inspector's report is vetted by the Dept. of Neighborhood Services, and then provided to prospective buyers. Nearly every *in rem* property requires some level of renovation, and it is not uncommon for the cost of required

repairs to equal 50 percent or more of the assessed value of the property. Such situations make it difficult for buyers to obtain mortgage financing.

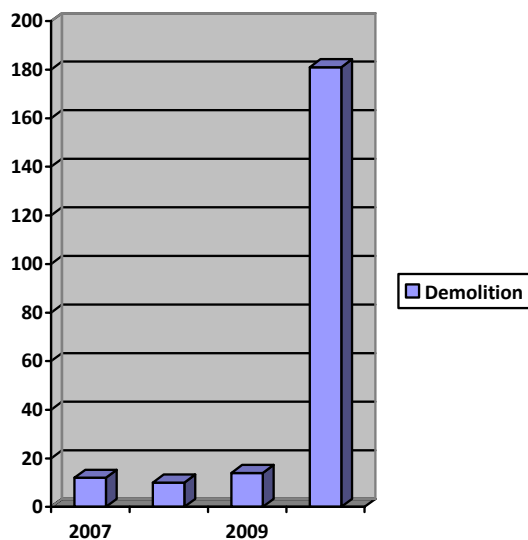
At present, we sell only to home owner-occupants, or to non-profit organizations that will renovate properties and sell them for home ownership. This policy is part of the department's strategy to encourage the growth of home owner-occupancy. However, it clearly limits the buyer pool for *in rem* properties.

In the coming months, we would like to work with the Common Council to determine if it's appropriate to broaden the buyer pool for city properties. We have talked with several developers about the possibility of buying groups of *in rem* properties and nearby vacant lots for larger-scale redevelopment. We think there is potential to encourage investor-owners to purchase properties in the neighborhoods in which they already live. We also believe we must evaluate the costs and benefits of selling *in rem*s to responsible landlords. We anticipate returning to the Council with a recommendation on these items by the end of the year.

Stepped up demolition activity also will be necessary. Funds for this work are currently available from several sources, including the federal Neighborhood Stabilization Program, Community Development Block Grant, and the City budget.

When the local alderperson signs off on a recommendation that an *in rem* property should be demolished, the Department of Neighborhood Services handles the contracting and oversight of demolition work. Right now, our staff has recommended demolition of 180 *in rem* properties. As the graph illustrates, this represents a very substantial increase over demolition activity in the past several years.

***In rem* demolitions**



Demolition creates vacant lots. Traditional re-use strategies include selling the property for in-fill residential construction, holding the property for a larger future development, selling the lot to adjacent owners for green space, and using the property for community gardens. We have begun to explore some alternative uses for vacant property, such as pop-up art exhibits, neighborhood exercise stations, and batting cages. As long as vacant lots remain in city ownership, they are maintained by the Forestry division of the Department of Public Works.

Leveraging NSP resources

The final element of our strategy to reduce the *in rem* inventory is to leverage the significant resources made available by the federal Neighborhood Stabilization Program. NSP has brought two types of resources: money, and outreach activities. I have directed the *in rem* team to leverage NSP capacity in both areas.

We plan to package NSP grant funds with *in rem* properties, so buyers have some of the cash they need to make needed repairs and renovations. The Department of Neighborhood Services also will rely heavily on NSP funds to demolish those properties in very poor condition.

NSP also has developed impressive capacity for community outreach and home ownership promotion, and I have charged the *in rem* team to take advantage of that capacity. We will enlist the NSP outreach staff to help promote purchase of *in rem* properties, and make sure City properties are well represented at home ownership fairs and home buyer workshops. We also will use Take Root Milwaukee, the promotional arm of the Milwaukee Homeownership Consortium, to spread the word about *in rem* purchase opportunities.

The City's *in rem* inventory includes a wide range of properties, occupied and vacant, marketable and blighting. The inventory is scattered across Milwaukee in a broad collection of neighborhoods. While the rapid growth of City-owned property presents enormous challenges for DCD and other City departments, we are confident that our *in rem* team is positioned to meet these challenges.

Sincerely,

A handwritten signature in blue ink, appearing to read "Rocky Marcoux".

Rocky Marcoux
Commissioner

C: Commissioner Art Dahlberg, DNS
Commissioner Jeff Mantes, DPW

FILE NUMBER: 091416
Steering & Rules Committee

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