

**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