

## AGREEMENT

This Agreement is made and effective as of the \_\_\_\_\_ day of \_\_\_\_\_ 2006, by and between the City of Madison (the "City") and Madison Gas and Electric Company ("MGE"), jointly referred to herein as "the Parties" or singularly as "a Party," as appropriate.

### RECITALS AND PURPOSE

Whereas, the Parties have strong commitments to promote and pursue energy efficiency, conservation, sustainable design, and renewable energy; and

Whereas, the Parties have a tradition of partnership, collaboration, and joint initiatives with each other; and

Whereas, in 2005, the Parties announced a new joint initiative to potentially invest \$1.8 million on "green energy" projects over eight years called the "Energy Partnership for a Green Capital City;" and

Whereas, this Agreement sets forth the conditions which must be met in order for the monies to be received and establishes the framework and processes which are to be followed by the Parties in implementing this energy partnership;

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MGE and the City agree as follows:

#### **I. Support for "Energy Partnership for a Green Capital City"**

As a means of supporting Madison's Energy Partnership for a Green Capital City, the Parties agree as follows:

- A. MGE<sup>1</sup> agrees to provide \$225,000 a year, commencing in 2005 and continuing through 2012 (for a total potential investment of 1.8 million dollars) to be used for Eligible Activities pursuant to this Agreement, provided all the terms and conditions set forth herein are satisfied on an annual basis.
- B. The City agrees that monies received under this Agreement shall be used only for Eligible Activities in accordance with an Approved Plan as provided below and subject to the terms and conditions set forth herein.

#### **II. Distribution of Monies**

- A. Each calendar year during the term of this Agreement, MGE shall provide the monies called for under paragraph I.A. above in the following manner,

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<sup>1</sup> Funding hereunder may be provided by MGE and/or MGE Foundation, as appropriate.

provided the terms and conditions set forth in paragraphs III, IV, and V below are met.

1. \$75,000 shall be given by MGE to the City of Madison as a grant for the City to devote to Eligible Activities.
  2. \$150,000 shall be given by MGE for MGE to devote to Eligible Activities.
- B. At its sole discretion, MGE may provide larger amounts in any year, which would then be credited against and reduce future year payment requirements under this Agreement.
- C. The Parties may make investments directly on their own Eligible Activities or they may indirectly invest in Eligible Activities of others.
- D. The value of in-kind contributions may be credited toward the investment amounts specified under this Agreement to the extent their value is agreed upon by the Parties.

### **III. Eligible Activities Defined**

In order for an activity, improvement, project, etc. (collectively referred to as “Activity”), to be an Eligible Activity under this Agreement, MGE must determine that all of the following requirements are satisfied:

- A. **Goals.** The proposed Activity must promote at least one of the following goals and directly benefit MGE customers and City residents:
1. increased energy efficiency and conservation
  2. increased renewable energy use
  3. improved air quality
- B. **Geographic Limits.** The proposed Activity must be primarily located in, or focused on, the geographic area of the City of Madison.

### **IV. Spending in Accordance with Approved Plan**

- A. In order to best promote the goals set forth in Section III above, MGE and the City of Madison Mayor’s office shall cooperatively develop and jointly agree upon a written plan (“Approved Plan”) for the use of the funds provided under this Agreement. In the event there is disagreement regarding the appropriateness of including an Activity in an Approved Plan, MGE’s position shall prevail.

- B. The Approved Plan should generally cover a two-year period, although the Parties may use a different plan period from time to time if mutually agreed.
- C. The Approved Plan will be publicized by the Parties in a mutually agreed upon manner at least annually unless otherwise agreed by the Parties.
- D. The Parties understand and agree that monies covered under this Agreement may only be spent in accordance with the Approved Plan.

**V. Annual Reporting Required**

- A. An annual report shall be prepared by each of the Parties confirming how their respective share of the monies covered under this Agreement were used during the prior year, detailing how the monies spent conformed to the Approved Plan and, where possible, describing specific results/benefits obtained. Each Party shall provide a copy of the annual report to the other Party by no later than March 1 after a year in which monies were invested under this Agreement.
- B. The Parties will jointly plan and hold public events no less frequently than once a year, unless otherwise agreed by the Parties, to announce the plans for future activities under this Agreement and to report on previous activities.

**VI. Conditions Precedent to Annual Payment**

- A. The Parties acknowledge and agree that all obligations and payments required under this Agreement for 2005 have already been fully satisfied.
- B. During the remainder of the term of this Agreement (years 2006 through 2012), MGE shall annually pay the funds to the City as required in Section II above by no later than April 1 (or such other date as agreed by the Parties) provided that MGE determines that all the following conditions have been met:
  - 1. an Approved Plan, agreed upon by the Mayor's office and MGE, is in place for the current year; and
  - 2. the City has satisfied the requirements of Sections IV and V above for the prior year; and
  - 3. the City has used any monies received under this Agreement only for Eligible Activities and only in accordance with the Approved Plan; and
  - 4. the City has not otherwise breached this Agreement.

## VI. Miscellaneous

- A. **Binding Effect.** The terms and conditions of this Agreement shall be binding upon and benefit the Parties hereto and their respective successors and assigns.
- B. **Modifications.** This Agreement may be modified or amended only by written instrument signed by the Parties.
- C. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original.
- D. **Representations as to Authority.** Each Party to this Agreement represents and warrants as follows:
  - 1. It is duly organized, validly existing, and in good standing under the laws of the state of its incorporation and has the power and authority to consummate the transactions contemplated by this Agreement.
  - 2. All proceedings necessary for it to consummate the transactions contemplated by this Agreement have been duly taken in accordance with law.
  - 3. The persons executing this Agreement on behalf of it have been duly authorized to execute this Agreement.
- E. **Fax Signatures.** The Parties agree that fax signatures shall be binding on the Parties hereto.
- F. **No Third-Party Beneficiary Rights Created.** No interest on behalf of any third-party beneficiary is created by this Agreement.
- G. **Non-Discrimination.** In the performance of the services under this Agreement, MGE agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, disability, national origin or ancestry, income level or source of income, arrest record or conviction record, less-than-honorable discharge, physical appearance, sexual orientation, political beliefs, or student status. MGE further agrees not to discriminate against any contractor, subcontractor, or person who offers to contract or subcontract for services under this Agreement because of race, religion, color, age, disability, sex, or national origin.
- H. **Notices.** All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or upon facsimile transmission to the fax numbers set forth herein, or one business day after deposit with a nationally

recognized overnight commercial courier service, air bill prepaid, or forty-eight (48) hours after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows:

To MGE: Madison Gas and Electric Company  
Attn: General Counsel  
P.O. Box 1231  
Madison, WI 53701-1231  
Fax No.: (608) 252-7098

To the City: City of Madison  
Attn: City Attorney  
210 Martin Luther King, Jr. Blvd.  
City-County Building  
Madison, WI 53703  
Fax No.: (608) 267-8715

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first above written.

**MADISON GAS AND ELECTRIC COMPANY**

By: \_\_\_\_\_  
Gary J. Wolter, President, Chairman & CEO

By: \_\_\_\_\_  
Terry A. Hanson, Vice Pres., CFO & Secretary

**CITY**

CITY OF MADISON, a Dane County, Wisconsin,  
municipal corporation

By: \_\_\_\_\_  
David J. Cieslewicz, Mayor

\_\_\_\_\_  
Ray Fisher, City Clerk

Countersigned:

\_\_\_\_\_  
Dean Brassler, City Comptroller

Approved as to Form:

\_\_\_\_\_  
Michael P. May, City Attorney