

[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 effect.

(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