

# CITY OF SAN ANTONIO

*Office of Environmental Policy*



## REQUEST FOR PROPOSAL ("RFP")

for

Financial Institutions to Participate in a Loan Loss Reserve Program  
(RFP 11-028)

**Release Date:** December 30, 2010

**Proposals Due:** February 4, 2011

**This solicitation has been identified as High-Profile.**

**Notice Regarding Prohibition on Campaign or Officeholder Contributions for Individuals and Entities Seeking High-Profile Contracts.** Under Section 2-309 of the Municipal Campaign Finance Code, the following are prohibited from making a campaign or officeholder contribution to any member of City Council, candidate for City Council or political action committee that contributes to City Council elections from the 10<sup>th</sup> business day after a contract solicitation has been released until 30 calendar days after the contract has been awarded ("black out" period):

- 1 legal signatory of a high-profile contract;
- 2 any individual seeking a high-profile contract;
- 3 any owner or officer of an entity seeking a high-profile contract;
- 4 the spouse of any of these individuals;
- 5 any attorney, lobbyist or consultant retained to assist in seeking contract.

**A high-profile contract cannot be awarded to the individual or entity if a prohibited contribution has been made by any of these individuals during the "black out" period.**

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## **I. BACKGROUND**

The Better Buildings program is a market-based system, funded by the American Recovery and Reinvestment Act (ARRA) through the United States Department of Energy (DOE), of which the City of San Antonio has received grant funds of \$10 million. Approximately \$4 million of this award will be used for providing low interest rate loans for the installation and the implementation of energy efficiency and renewable energy (e.g., geothermal, solar) measures for existing owner-occupied single-family residences. It will also provide access to low-cost capital for borrowers who might not have other available resources. Of the \$4 million award, \$3.5 million will be used to establish a Loan Loss Reserve Fund (LRF) for residential loans with the remaining \$500,000 to be used toward other credit enhancements, including interest rate buy downs and/or direct cash incentives (rebates) to support energy efficiency and renewable energy (e.g., geothermal, solar) financing.

At the end of June 2013, the City will evaluate the success of the program, with the intent that funds be used to establish an on-going and sustainable fund to support the City of San Antonio's commitment to energy efficiency and renewable energy (e.g., geothermal, solar) well into the future.

The goals established for the Better Buildings program are to increase energy efficiency and renewable energy (e.g., geothermal, solar) preserve and create jobs, and promote economic recovery in the City Public Service Energy (CPS Energy) area. The DOE is encouraging cities to use their Better Buildings funding not only to support current energy efficiency and renewable energy (e.g., geothermal, solar) 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.

An essential part of the financing is to allow borrowers to overcome the first cost barrier and pay for energy efficiency and renewable energy (e.g., geothermal, solar) improvements over time, matching energy cost savings with loan payments. To this end, the City seeks to identify and gather information from Financial Institutions, which may comprise of local, regional, and national commercial banks, and credit unions and other financial firms interested in offering residential energy efficiency and renewable energy (e.g., geothermal, solar) loan products as part of the Better Buildings program.

For participating Financial Institutions, the program can help develop residential energy efficiency and renewable energy (e.g., geothermal, solar) lending as a profitable line of business and can offer:

- A substantial, well-qualified flow of loan demand
- Lower transaction and origination costs by having the program market the selected loan products to the customers and perform certain agreed loan origination steps
- Credit enhancement, in the form of a Loan Loss Reserve Fund (LRF) that can cover an agreed share of loan losses on the portfolio of loans

- Positive public relations benefits from serving the City's public goals, including energy efficiency and renewable energy (e.g., geothermal, solar) and job creation; these may include Community Reinvestment Act compliance benefits and the ability to acquire new customers and cross-sell other financial services

### **Loan Loss Reserve Fund (LRF) Concept**

The LRF mechanism is being deployed by many local governments around the country to support the development of residential energy efficiency and renewable energy (e.g., geothermal, solar) lending programs. Use of ARRA funds for Loss Reserve Funds is encouraged and supported by the DOE.

ARRA funds used as a LRF create a form of public/private partnership. The public funds mobilize, leverage and support the partner Financial Institution(s) to offer a residential energy efficiency and renewable energy (e.g., geothermal, solar) loan product that is adapted for the program. The LRF mechanism supports the participating Financial Institution(s) to pioneer new financial products, broaden access to finance by modifying loan underwriting criteria, increasing the size of unsecured energy efficiency and renewable energy (e.g., geothermal, solar) loans, extend loan terms (e.g., up to 10+ years if the loan is secured), and also lower interest rates given the extra risk protection which the LRF provides.

The LRF structure takes a "portfolio approach" to the credit structure of the energy efficiency and renewable energy (e.g., geothermal, solar) loan program. The partnering Financial Institution(s) will be making a large number (hundreds plus) of relatively small loans (\$3,000 to \$40,000) with an average loan amount of \$7,800 energy efficiency and renewable energy (e.g., geothermal, solar) loans. Depending on the Financial Institution(s) selected, the loan amount minimum may fall below the \$3,000 amount. The LRF will support the whole energy efficiency and renewable energy (e.g., geothermal, solar) loan portfolio and can be sized at a margin higher than the portfolio's estimated loan losses. The LRF is typically sized in the range of 5%-10% of the total original principal of all loans in the energy efficiency and renewable energy (e.g., geothermal, solar) loan portfolio. Thus, \$3.5 million in ARRA funds can support \$35 million in lending based on 10% of the total original principal of all loans in the energy efficiency and renewable energy (e.g., geothermal, solar) loan portfolio.

Typical measures covered by the loans include air duct sealing, appliance replacement, insulation, lighting, solar water heaters, water heater pipe insulation, new central heating and cooling systems. A copy of the typical measures eligible for this type of financing will be provided to all customers as well as to the Financial Institution(s) by CPS Energy. Average utility rebates and incentives are estimated at 30% of the total project costs.

The LRF funds are typically deposited with the Financial Institution(s) and are made available to cover a portion of the Financial Institution's losses on the energy efficiency and renewable energy (e.g., geothermal, solar) loan portfolio according to an agreed risk sharing formula. The LRF risk-sharing formula typically has two main parameters. The first parameter is the definition of "first losses," which refers to a percentage of the total original principal amount of loans in the energy efficiency and renewable energy (e.g., geothermal, solar) loan portfolio. Typically, this percentage is in the 5%-10% range. The second parameter is the share of the first

losses that the LRF will pay. The share of the first losses is typically in the range of 80%-90%, which implies that a portion of the first losses will be borne by the Financial Institution(s) and covered from their normal loss provisioning. The LRF mechanism is not a guarantee; the liability of the City of San Antonio is strictly limited to the ARRA funds provided. Because all losses after the LRF is exhausted will be borne by the Financial Institution(s), Financial Institution incentives for good loan origination, administration and recoveries will be maintained.

## **The Program**

The City of San Antonio, in conjunction with its partners, targets the development, financing, and implementation of energy efficiency and renewable energy (e.g., geothermal, solar) projects in the residential sector. An essential part of the program is to arrange financing solutions for participants, allowing them to overcome the first-cost barrier and pay for energy efficiency and renewable energy (e.g., geothermal, solar) improvements over time, matching energy cost savings with loan payments. The City of San Antonio will evaluate and interview Financial Institution(s) as potential partners, and prepare the LRF implementing agreements. CPS Energy will be working with residential energy users to prepare energy efficiency and renewable energy (e.g., geothermal, solar) projects that meet the requirements of the Program and the Department of Energy requirements. Preparation of projects will include conducting facility energy audits, assisting with available rebates, and providing licensed and bonded contractor information through a listing provided by the Better Business Bureau (BBB) of approved/qualified contractors. A no cost agreement will be established between the BBB and the City of San Antonio. Some of the key factors of the program are outlined below:

- Anticipated upgrade of 4,500 homes during the grant program
  
- Any owner occupied (single family) homeowner can participate as long as they qualify for the loan
  
- Partnering organizations will be helping to drive demand for the program

Based on ARRA grant funds, the City of San Antonio (the “City”) is seeking Financial Institution(s) to participate in its city-wide energy efficiency and renewable energy (e.g., geothermal, solar) initiative (“Program”). We are requesting proposals from Financial Institutions to provide the following services:

- Assist in final structuring of the energy efficiency and renewable energy (e.g., geothermal, solar) loan program, in collaboration with the City of San Antonio
  
- Originate and provide energy efficiency and renewable energy (e.g., geothermal, solar) loans to residential energy users
  
- Manage a loan loss reserve fund (LRF), or other credit enhancement mechanisms which shall be provided by the City of San Antonio to enhance the credit structure of the Loan portfolio
  
- Provide related loan administration services (e.g., billing and collections)
  
- Provide reports on the loan portfolio and LRF

## **Roles of the Program Partners**

### **The City of San Antonio will provide:**

- *Program Coordination* - The City of San Antonio will establish project coordination among all partners and parties. The City of San Antonio will also work with partners before and after implementation of the program to ensure that the program is meeting its objectives.
- *Credit Enhancement Funding* - Up to \$4 million will be used for credit enhancement for energy efficiency and renewable energy (e.g., geothermal, solar) loans from the partner Financial Institution. The credit enhancement will be in the form of a 'loan loss reserve,' according to a formula to be negotiated, and/or other credit enhancements, including interest rate buy downs, to support energy efficiency and renewable energy (e.g., geothermal, solar) financing.
- *Marketing* - The City of San Antonio will focus on promoting energy efficiency and renewable energy (e.g., geothermal, solar) awareness via non-profit and for profit organizations such as homeowner associations, the Boy Scouts of America and churches within the San Antonio community.

### **The Energy Service Provider (CPS Energy) will provide:**

- *Oversight* - CPS Energy will make final determination on project eligibility and other standards before loans can be approved during the loan process. They will organize energy efficiency and renewable energy (e.g., geothermal, solar) audits and evaluate and work with qualifying energy efficiency and renewable energy (e.g., geothermal, solar) contractors to implement projects. CPS Energy will develop program reports and the schedule for reporting program metrics and impacts such as energy savings, costs, number of projects, etc.
- *Program Design* - CPS Energy will provide program design and implementation services for the Better Buildings Program in cooperation with the City of San Antonio's federal grant administration team.
- *Marketing and Outreach* - CPS Energy will provide advertising (e.g., print ads, newsletter, etc.), promotional materials, promotional activities, partnership outreach, social media and workshops. CPS Energy will also work in coordination with the City of San Antonio and the chosen contractor(s) to advertise and promote the Better Buildings Program. They will participate in events designed to increase program participation (including monthly and/or neighborhood targeted events). CPS Energy will participate in the design and implementation of marketing strategies and materials for the program. Program promotional materials will be displayed at CPS Energy Customer Service centers. Grant funds will be available for promotion and marketing of the program.
- *Initial Point of Contact for Customers* - CPS Energy will have a "concierge" as the primary marketing vehicle and initial point of contact for customers interested in participating in this initiative. The concierge will provide customers with energy-savings measures in addition to providing them with a list of licensed and bonded contractors who perform energy efficiency and/or renewable energy (e.g., geothermal, solar) projects. BPI and RESNET certification are requirements of our home auditors/assessors. Residents that receive an assessment/audit will

have the required certification. Contractors whether HVAC, insulation, solar will have separate classes of certification. The list of contractors will be provided from the BBB. The “Concierge” will assist the participants and contractors to arrange energy audits, select and facilitate the most beneficial energy improvements, and provide information on financing options. The “Concierge” will be responsible for making the process as seamless as possible for the customer up to and including providing guidance on best efficiency opportunities, assistance in filling out necessary paperwork and keeping the customer informed of progress. The “Concierge” will determine if customers are eligible and if customers qualify, they will explain the program and the benefits of participation. They will also coordinate any necessary post project activities including inspections.

**The Contractors will provide:**

**Contractor network will be established via the Better Business Bureau (BBB)**

- *Contractor Selection Process* - Through the BBB Web site, homeowners are able to search for contractors within their residential vicinity to ensure that the contractors implementing the energy efficiency and renewable energy (e.g., geothermal, solar) measures are bonded, licensed and qualified to perform the work.
- *Coordination* - The contractor identifies energy efficiency and/or renewable energy (e.g., geothermal, solar) needs addressed in the audit provided by CPS Energy and implements selected measures and performs work implementation. The contractor performing the work is a separate contractor from the individual who performs the audit on the house.
- *Assists in the Loan Process* - The contractor will provide a Certificate of Completion to the lender once the work has been inspected and both parties (the customer and the contractor) are in agreement with the requirements met for the project implemented. For further information on the Certificate of Completion, a sample document has been provided in Exhibit F.

**The Homeowner will provide:**

- *Initial Entry* - The homeowner will contact CPS Energy in reference to performing an energy efficiency and/or renewable energy (e.g., geothermal, solar) audit. In some cases, residential homeowners will need to make non-energy efficiency and/or renewable energy (e.g., geothermal, solar) repairs on their homes in order to facilitate installation of the energy efficiency and/or renewable energy (e.g., geothermal, solar) measures. After obtaining a list of contractors directly accessed on the BBB Web site or via the “Concierge” at CPS Energy, the homeowner evaluates what contractor they will choose to work with on their energy efficiency and/or renewable energy (e.g., geothermal, solar) selected measures. Once homeowners have selected the energy-savings home improvement(s) they wish to have installed in their home, they will be given the option of applying for energy efficiency and/or renewable energy (e.g., geothermal, solar) loan financing via the authorized lenders. The list of authorized lenders will enable the homeowners to become familiar with the different types of loan products available and the pricing for these loan products. Some factors that will determine the homeowner’s evaluation of the list of authorized lenders may include the following:

- (a) lenders with which the homeowner already has a financial relationship

(b) lenders from which the borrower may be eligible to get a loan product based on eligibility factors disclosed on each loan product.

Once the homeowner selects an authorized lender and initiates a pre-approval application, they will obtain pre-approval on their loan and are informed by the Bank of how much they can afford. This amount determines which energy efficiency and/or renewable energy (e.g., geothermal, solar) measures the homeowner will select to finance. Once they have determined what energy efficiency and/or renewable energy (e.g., geothermal, solar) measures will be implemented, the homeowner executes a contract with the contractor to perform implementation of selected measures.

- *Financing* - The homeowner provides the Bank with the necessary documentation to complete their underwriting process and once a loan is established the homeowner will initiate repayment of the loan.

- *Communication* - The homeowner will provide the contractor with the name and address of the lender to which they must send the signed Certificate of Completion in order for the contractor to receive payment.

**The Financial Institution(s) will provide:**

- *Provide capital for Energy efficiency and renewable energy (e.g., geothermal, solar) loans* - Offer loans according to the agreed range of terms and subject to the Financial Institutions' loan approval standards and criteria.

- *Marketing* - The Financial Institution(s) will promote their loan product via a marketing campaign, advertising, Web site, and any other marketing initiatives that the selected Financial Institution(s) may designate to increase loan demand for this type of product.

- *Customer credit pre-screening services* - The Financial Institution(s) will establish development efforts with creditworthy customers to achieve high levels of access to loan customers.

- *Loan collections and administration* - The Financial Institution(s) will collect loan payments and develop an agreement with the City of San Antonio to repossess energy efficiency and/or renewable energy (e.g., geothermal, solar) equipment in event of Loan default. The repossession of equipment will be solely applicable if the loan is collateralized and will be subject to the loan agreement terms established with the homeowners. The Financial Institution(s) must follow their normal collection procedures and disclose that information to the City of San Antonio prior to entering into an agreement. The collection process will be derived from the Credit Policy of the selected Financial Institution(s).

- *Reporting* - The Financial Institution(s) will provide information and coordination on the success of their loan product through monthly reports indicating loan closings and collections activity in potential default and actual default situations.

### **The Alamo Colleges will provide:**

- *Provide Training Support* - The Alamo Colleges will conduct “train the trainer” workshops for the primary point of contact for non-profits designated to perform outreach activities for the Better Buildings program.
- *Provide On-Call Support* - The Alamo Colleges will provide on-call support to the City of San Antonio by responding to questions by the general partner organization’s points of contact. Also, the Alamo Colleges will support the City of San Antonio with outreach activities that may include press events, speaking engagements, and outreach activities.

### **Target Markets & Projects: Owner-Occupied Single Family Residences**

Residences will be identified through energy efficiency and/or renewable energy (e.g., geothermal, solar) audits coordinated by CPS Energy. The Better Buildings Program will generate a flow of energy efficiency and/or renewable energy (e.g., geothermal, solar) projects and market the selected Financial Institutions’ financial products to homeowners. The typical sizes of owner-occupied single-family residential energy efficiency and renewable energy (e.g., geothermal, solar) projects are expected to be in the range of \$3,000-40,000 with an average loan size of around \$7,800.

The City will devote up to \$4,000,000 from its grant, received from the ARRA funding to provide loan loss reserves and/or other credit enhancements, including interest rate buy downs, to support energy efficiency and renewable energy (e.g., geothermal, solar) financing. After a year, the City of San Antonio will evaluate if grant funds allocated through credit enhancements have served to encourage homeowners to finance energy efficiency and renewable energy (e.g., geothermal, solar) projects to ensure that the program meets its requirements. The use of interest rate buy downs is also an acceptable use of ARRA funds and will be determined on a case-by-case basis. Interest rate buy downs may be used to help stimulate target markets by income and increase the uptake of energy efficiency and renewable energy (e.g., geothermal, solar) services offered by the City. The CPS Energy service area will target income brackets of \$45,000 to \$140,000. However, this income sector may vary depending on the particular markets served by the selected Financial Institution(s).

**Program Implementing Agreements:** The selected Financial Institution(s) would undertake an Energy efficiency and renewable energy (e.g., geothermal, solar) Loan Program Agreement between the Financial Institution and the City of San Antonio. The Agreement will be executed to define the respective roles of the parties in program marketing and delivery, loan origination, and reporting. Financial Institution(s) will use their own Loan Agreement forms with borrowers. The loan forms shall be subject to review and approval by the City of San Antonio.

**Loan Marketing:** A common challenge to implementing energy efficiency and renewable energy (e.g., geothermal, solar) measures is the lack of financing; therefore, the availability of obtaining a loan can overcome this barrier and motivate participation. Also, the Financial Institution(s) should have a goal to structure projects so that the dollar amounts of the estimated energy cost savings offsets the amount of the monthly loan payments to generate positive cash flow. The loan savings is not a guarantee and may vary depending on the loan product being financed and the terms of the loan.

Loan marketing will be integrated with the overall program marketing:

- *Financial Institution's Existing Customers:* The selected Financial Institution(s) will market the program to their existing portfolio of residential customers and will identify customers, make contact, and present the program. These customers will be pre-qualified for loan eligibility.
- *Mortgage Refinancing:* Incorporating the energy efficiency and renewable energy (e.g., geothermal, solar) project investments by refinancing the first mortgage principal of a Borrower will be another opportunity for the access of energy efficiency and renewable energy (e.g., geothermal, solar) loans to be provided to the public.

## II. SCOPE OF SERVICES

### A. Energy Efficiency and Renewable Energy (e.g., geothermal, solar) Loans

The goal of the Program is to offer Energy efficiency and renewable energy (e.g., geothermal, solar) loans on attractive terms with the intent of broadening access to financing energy efficiency and renewable energy (e.g., geothermal, solar) projects in the City of San Antonio. However, it should be noted that this program does not encourage the Financial Institution(s) to lower their credit standards to encourage loan production. Only owner-occupied single family, residential loans will be offered through this program, since the program would like to stimulate public awareness of the importance of energy efficiency and renewable energy (e.g., geothermal, solar) projects. While it is anticipated that unsecured Loans will be the primary form of energy efficiency and renewable energy (e.g., geothermal, solar) loan products, a secured loan (second lien) is also a viable option for the Financial Institution(s) to provide. The following list summarizes typical terms of the potential loan products. The below information will vary depending on the particular sector that the Financial Institution(s) will be targeting; however, it will provide a guideline of the loan process.

- *Eligible Borrowers:* Owner-Occupied Single Family primary residences are eligible to borrow under the program. The Financial Institution(s) should consider setting specific lending criteria that will broaden the access to credit for energy efficiency and renewable energy (e.g., geothermal, solar), based upon the credit enhancement provided by the LRF. However, lowering credit standards is highly discouraged.
- *Eligible Projects:* All types of eligible residential energy efficiency and renewable energy (e.g., geothermal, solar) projects and equipment will be financed. A complete listing of eligible projects can be provided by CPS Energy. The City will be responsible for applying state and utility standards to determine whether a project is eligible. Eligibility will be determined both by CPS Energy and the City of San Antonio. For structures 45 years of age or older, or within Historic Districts and/or are designated Historic Landmarks, additional federal requirements of Section 106 of the National Historic Preservation Act may apply. Such application to be determined pursuant to the Programmatic Agreement between the City of San Antonio Office of Environmental Policy and State Historic Preservation Office. City and CPS Energy will facilitate compliance between the Financial Institution and the City and State to attain programmatic compliance with these provisions.

## **Loan application Process:**

**Step I:** The homeowner will work with a licensed contractor to identify qualifying energy efficiency and renewable energy (e.g., geothermal, solar) improvements. A list of authorized contractors will be available through the CPS Energy “concierge” or the BBB Web site. The contractor can walk the homeowner through this process at the customer’s request. The “concierge” and/or contractor will be informed of this program and will inform the customer of the authorized lenders that provide financing for these loan products.

**Step II:** The homeowner submits a loan application directly to one of the authorized lenders. The application can be completed at the Bank branch, via telephone or the lender’s Web site. Standard loan application materials will be provided by the Financial Institution(s). The Loan application could include the following: an energy efficiency and/or renewable energy (e.g., geothermal, solar) project investment plan and feasibility study specifying the intended measures to be implemented, their costs, estimated energy and cost savings, sources of financing, and a contractor plan for implementing the work. However, the loan application will vary depending on the selected Financial Institution(s). Once a loan application is completed, homeowners are informed whether or not they are pre-approved for financing. The pre-approval enables customers to determine the maximum amount they can afford to undertake in relation to energy efficiency and/or renewable energy (e.g., geothermal, solar) improvements.

**Step III:** The contractor works with the approved homeowner to finalize the work plan based on the homeowner’s needs and approved loan amount. A contract is executed between the contractor and the homeowner.

**Step IV:** The contractor installs the equipment according to the work plan and the contract with the homeowner. If an energy audit was performed, standard audit procedures would also be conducted to ensure that the improvements were installed properly.

**Step V:** After installation and, as applicable, the contractor obtains the homeowner’s signature on a certificate of completion form and submits the signed certificate of completion form to the lender. If the certificate of completion form is not signed, the loan process will not be able to move forward and the loan closing will be delayed. Upon fulfilling all the necessary items to close on the loan, the contractor is paid after the loan is funded (refer to the Loan Closing and Servicing section for further information).

**Step VI:** The customer repays the loan via direct billing by the lender.

A draft term sheet will include the following:

- *Loan terms:* For Residential loans, terms will comprise of 3 years to 10 year; however, 5 years to 7 years are typical. On loans secured by collateral, the terms can range from 10 years to 15 years. Lenders who participate in this program will further establish the terms for their particular product.
- *Interest rate:* It is assumed that interest rates may fall below market rates factoring in the extra security of the loan loss reserve and the interest rate buy down, but the market rate will be used as a base for this type of loan product. Rates will be fixed for each loan at the time of loan

application approval. The Financial Institution(s) will be asked to provide a published interest rate index as a benchmark for loan pricing. However, the Financial Institution(s) may include a proposal to take advantage of a portion of the funds allocated by the City of San Antonio for the use of interest rate buy downs or direct cash incentives (rebates). The City of San Antonio will determine how to use the funds, but will take into consideration the programs that will take benefit from structuring their loan products using the funds allocated in the credit enhancements provided in this program to increase participation in the lending program.

- *Payment schedule:* Monthly payments of interest and principal are anticipated; however, the project size will determine if draws will be performed on specific projects. The Financial Institution(s) will determine if their particular loan product will need to implement a draw schedule. Similar to a construction loan, if a project takes longer to install, a Financial Institution may determine to fund the project in phases, which is often the case in larger projects. The larger projects will result in the loan being established on a draw schedule at initiation. During the installation period the homeowner will pay interest only payments until project completion. Upon project completion, the loan will be fully amortized and the homeowner will begin paying monthly principal and interest payments.

- *Loan size (minimum & maximum):* Over the next two years, the City of San Antonio anticipates completing a total of 5,195 projects of which 4,500 will be residential and the remaining 695 will be commercial. No monies will be used toward the commercial side of the program via credit enhancements such as in the case of the residential program; however, a list of Lenders will be compiled to provide to prospective commercial customers interested in performing commercial retrofits. The commercial customer will select a Lender on the list and will work directly with the Lender. The Lender will underwrite the loan as they would any other commercial loan. The lending amounts are geared to a loan loss reserve fund of 10%, resulting in a potential target lending of approximately \$35,000,000. Milestones for lending will be agreed upon and set forth in the Energy Efficiency and Renewable Energy (e.g., geothermal, solar) Agreement.

The actual parameters for the minimum and maximum loan size will be determined in the Energy Efficiency and Renewable Energy (e.g., geothermal, solar) Agreement between the City and the Financial Institution(s); however, a \$3,000 minimum loan size is anticipated.

- *Loan underwriting guidelines and security:* This section will be proposed by the Financial Institution(s). Both secured and unsecured loan products may be offered. For residential secured loans, second liens are to be expected unless the homeowner has paid their mortgage loan in full and the security would be a first lien. The anticipated loan-to-value ratios on these types of loans will be up to 80% although this ratio may vary depending on the Financial Institution(s) selected. The Financial Institution(s) may also choose to file a UCC-1 on the installed equipment aside from taking the homeowner's home as collateral.

- *Loan disbursement & flow of funds during project construction:* The Financial Institution(s) will pay the contractor and payment should not occur until the work is completed. Verification of work completion will be provided through a certificate of completion form that will be signed by the contractor and the borrower and through an inspection performed by CPS Energy. This certificate will contain information about the improvements that were made in the home and certify that the borrower is satisfied with the completed work. The loan process will not continue

if the lender does not receive the certificate of completion form signed by both parties. The contractor will submit the signed form to the appropriate lender, which will trigger that payment be made to the contractor. The payment process will be determined by the Lender. The Lender will pay the contractor via an invoice that discloses material and labor costs for installation. The simplest method that may be used by the Financial Institution(s) is a single loan disbursement to the contractor, authorized by the Borrower, following completion and acceptance of the project. Methods for construction advances for larger projects will be further determined by the Financial Institution(s) credit policy standards. The Lender will service the loan.

- *Prepayment option:* The option to prepay the outstanding loans in whole without penalty will be acceptable.
- *Loan Closing and Servicing:* Once loan origination is complete, the Lender will close the loan with the customer. Loan closing locations can vary from branch offices or via electronic means. If a customer is unable to go to the Branch for loan closings, electronic means may be utilized; however, the selected Financial Institution(s) may implement a contingency that original signatures on loan documents be provided subsequently thereafter to ensure loan files meet standard compliance regulations.
- *Contractor Reserves:* Authorized lenders may not offer contractor reserves or other incentives to encourage authorized contractors to promote one authorized financial institution over another.

**Underwriting Criteria and Loan Product Summary:**

<b>Loan Product</b>	
Loan Amounts	\$20,000 to \$40,000- Geothermal/Solar loans \$3,000 to \$19,000- Energy Efficiency loans Selected FI may choose to make loans below \$3,000
Loan terms	Unsecured- 5 to 7 years and Secured- 10+ years
Loan Rates	Negotiable (will vary depending on Financial Institution selected)
Loan Type	Unsecured Loan Secured Loan (e.g., Home Improvement loan, etc.)
Eligible Measures	Energy audit meeting all compliance measures performed by City Public Service Energy (Refer to Eligible Measure worksheet)
Eligible Borrowers	Residential homeowners (owner occupied), 1-4 single family residences
<b>Underwriting Standards</b>	
Underwriting procedure	Lenders will make all final underwriting decisions. Loans may be approved, declined, or subject to further review in compliance with Federal Banking regulations.
Minimum FICO	680 FICO or better (if there are multiple borrowers, the lower score, regardless of income, must be used for qualification).
Foreclosure, repossession	A minimum of 7 years from filing with re-established credit since foreclosure. Accounts with repossession are ineligible.
Unpaid collection accounts, judgments, tax liens	Applicant(s) with any of the following derogatory credit is ineligible: (1) Unpaid collection accounts with any creditor, judgments, and tax liens.
Income verification required	Income verification (i.e. W-2 paystubs, tax returns, award/benefit letter for SSI or pension showing income amount, payment frequency, and start and end dates, a copy of a bank statement showing direct deposit of retirement income).
Total Monthly Obligations	On revolving accounts that indicate no funded balance, use 3% of outstanding credit balance to obtain the payment. Real estate taxes and homeowners insurance must be included in the underwriting analysis if not included in the mortgage payment.
Debt to Income	40% debt-to-income or less. The debt-to-income ratio will be determined by the selected FI and will vary depending on the lender's internal credit policy. It is recommended that the ratio not exceed 45%.

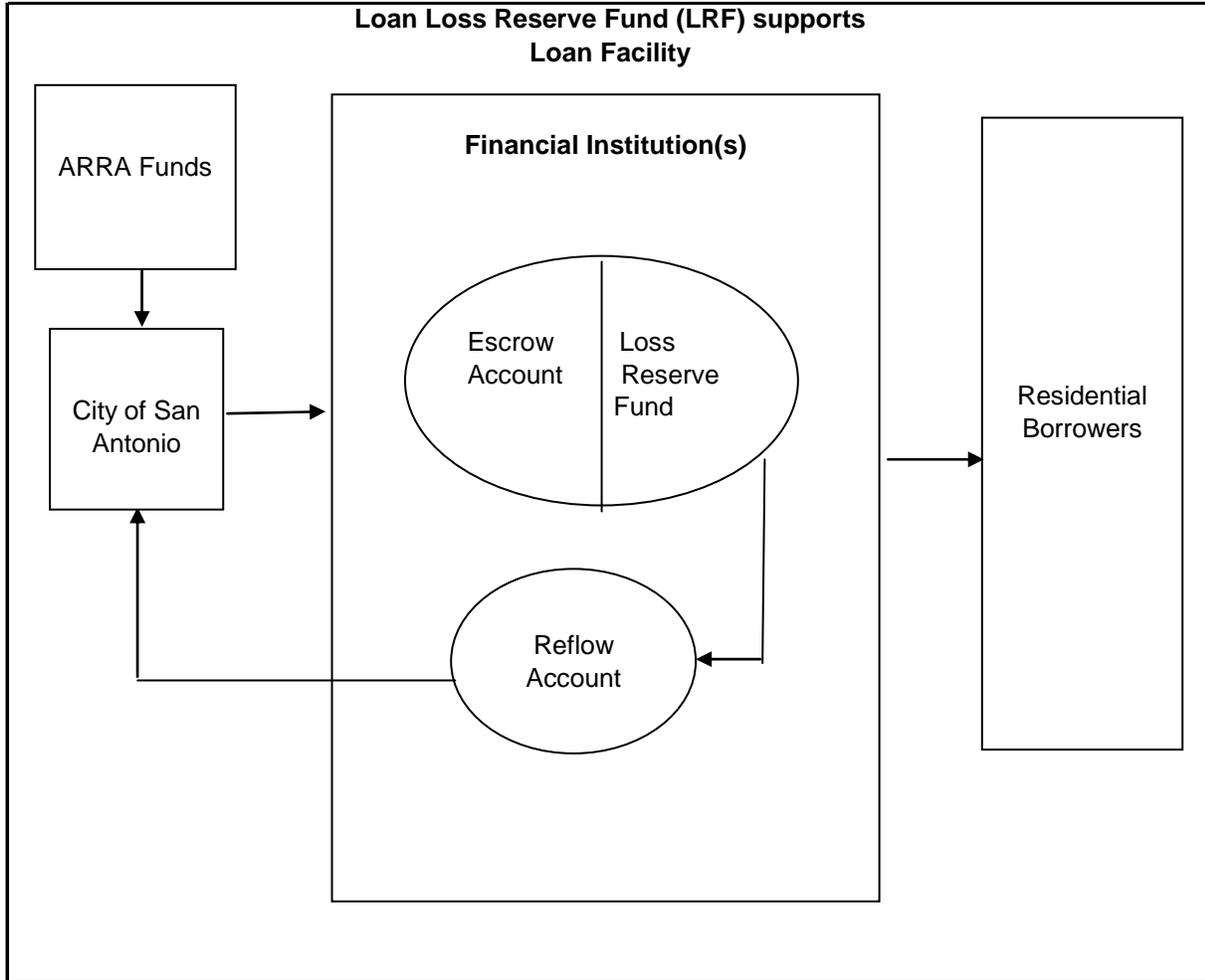
**B. Use of Credit Enhancement Grant Funds**

Loan Loss Reserve Fund (LRF): The City will devote an estimated \$4 million in funds from the grant the City of San Antonio received from the ARRA for credit enhancements to support the partner Financial Institution(s) to make energy efficiency and renewable energy (e.g., geothermal, solar) project loans in the CPS service area. The LRF is intended to enable the Financial Institution to offer lower interest rates and broader access to finance. With \$3.5 million in LRF funds, we anticipate that the Financial Institution(s) will be able to lend \$35 million based on a leverage ratio of 10:1. The LRF will support the whole energy efficiency and renewable energy (e.g., geothermal, solar) loan portfolio and is intended to be sized at a margin probably higher than the portfolio's estimated loan losses.

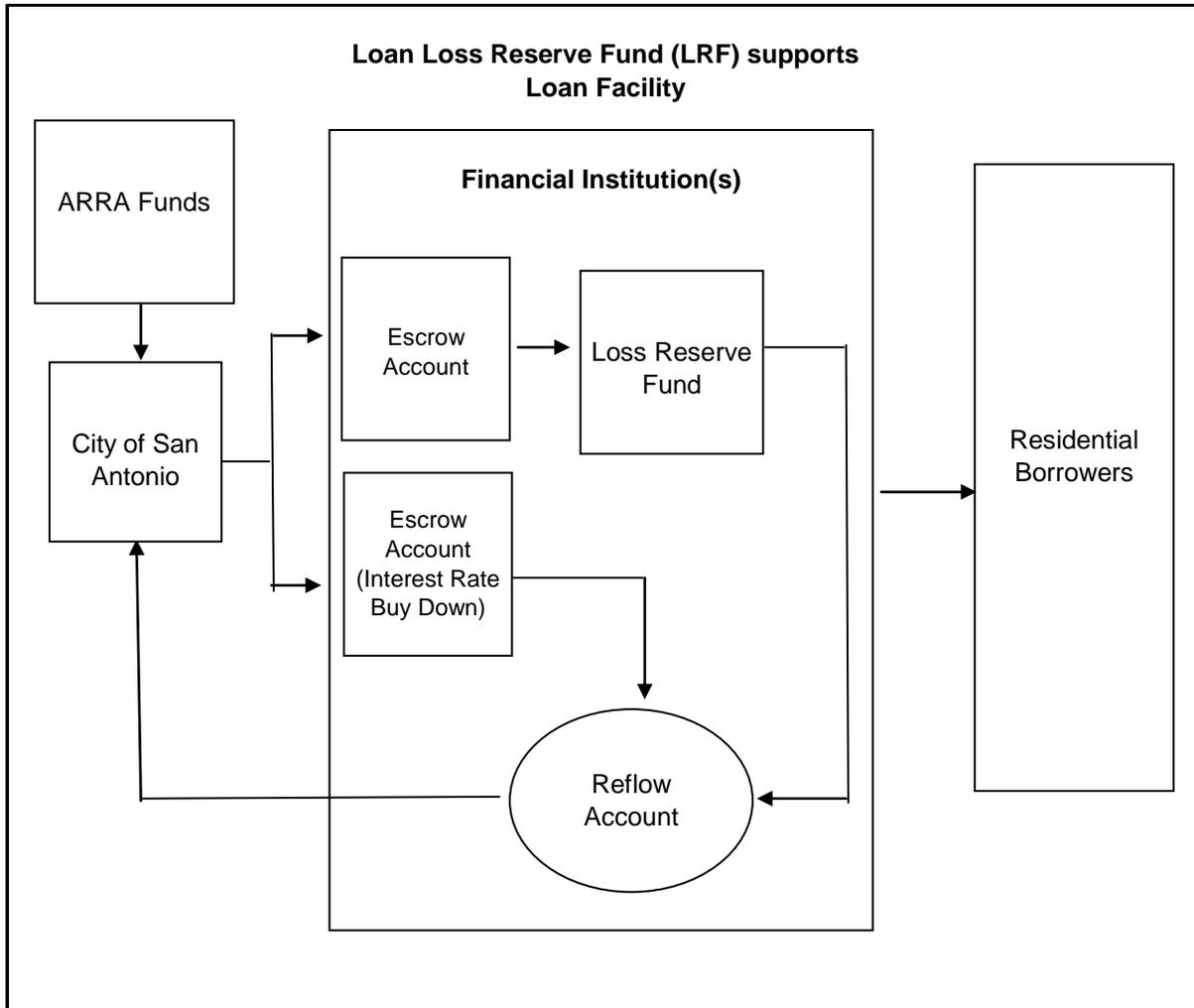
The ARRA grant monies will be deposited with the partner Financial Institution(s) pursuant to an Energy Efficiency and Renewable Energy Loan Program Agreement between the City of San Antonio and the Financial Institution(s). The agreement will create three accounts: an escrow account (“Escrow Account”), a reserve account (“Reserve Account”), and an account to house funds that are retired from the Reserve Account after loans have been fully paid (“Reflow Account”), all specifically defined in the Energy Efficiency and Renewable Energy (e.g., geothermal, solar) Loan Program Agreement. A fourth account may be established and is

dependent on the City of San Antonio providing additional funds toward interest rate buy downs or direct cash incentives/rebates. Monies of \$4 million from the ARRA grant funds) will first be placed in an Escrow Account at the participant Financial Institution(s) or as designated by the City of San Antonio. The time period of the transfers will be disclosed in the agreement between the Financial Institution(s) and the City of San Antonio. For example, on a weekly or monthly basis (the timing of the transfer will be another variable that will be further determined based on the City of San Antonio standards), as the Financial Institution(s) make eligible energy efficiency and/or renewable energy (e.g., geothermal, solar) loans, the agreed amount of funds for the loss reserve will be transferred from the Escrow Account to the Reserve Account. Once funds are transferred to the Reserve Account, they are available for the Financial Institution(s) to draw on in the defined event of loss. The LRF structure takes a “portfolio approach” to the credit structure of the energy efficiency and renewable energy (e.g., geothermal, solar) loan program. The Financial Institution(s) will be making a large number (up to 4,500 in the next few years) of energy efficiency and renewable energy (e.g., geothermal, solar) loans. The goal of the credit enhancement is to create sufficient loss reserves from LRF funds and the Financial Institution’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.

The structure of the LRF is illustrated below:



The structure of the LRF is illustrated below to include interest rate buy downs:



### Energy Efficiency and Renewable Energy Agreement Typical Terms

To implement the finance program with the selected Financial Institution(s), an agreement will be executed by and between the Financial Institution(s) and the City of San Antonio (depending on the proposal and the final terms of the Agreement, the program may also include a portion of funds used for interest rate buy downs). The escrow accounts will be established as a non-interest bearing account. The diagram above indicates the interest rate buy downs in a separate account for reporting and tracking purposes.

Key terms of the Agreement typically include the following:

- *Definition of the Escrow and Reserve Account:* The ARRA funds would be deposited with the partner Financial Institution(s) pursuant to an “Energy Efficiency and Renewable Energy Agreement” between the City of San Antonio and the Financial Institution(s). The agreement will create three accounts: an escrow account, a Loss Reserve Fund account, and a Reflow Account, which will be specifically defined in the agreement. A fourth account to include grant funds for interest rate buy downs is optional. Monies will first be placed in the escrow account.

At that time, the funds will be considered “obligated” for federal grant management purposes. Then, on a monthly or quarterly basis, as the Financial Institution(s) will make eligible energy efficiency and renewable energy (e.g., geothermal, solar) loans, the agreed amount of funds for the LRF will be transferred from the escrow account to the reserve account. The time period for the transfer will be designated in the agreement between the City of San Antonio and the Financial Institution(s). Additionally, the Financial Institution(s) shall provide notification to the City upon any occurrence of a balance change or other change of status to an Escrow Account, a Reserve Account or a Reflow Account. The form of notification will be determined in the agreement negotiated between the Financial Institution(s) and the City of San Antonio. The “Reserve Account” is available to the Financial Institution(s) to cover legitimate principle losses due to default that are otherwise unrecoverable using the Financial Institution’s standard default recovery mechanism. Once funds are transferred to the reserve account, they are considered “expended” for federal grant purposes and are available for the Financial Institution(s) to draw on to pay the agreed share of future loan losses.

- *Definition of Loss & Event of Loss:* “Loss” will be defined as principal and accrued interest on the Loan. “Event of Loss” will be tied to the definition of loan default and acceleration under the Financial Institution’s Loan Agreement with its borrower and will occur when the Financial Institution(s) gives its acceleration notice to its defaulted borrower demanding all payments due under the Loan Agreement between the Financial Institution(s) and the borrowers. A certain number of days after this event (e.g., 30 days), then the Financial Institution can disburse funds from the Loss Reserve Fund Account to cover the agreed loss share, unless the default is cured by the borrower. Additionally, the Financial Institution(s) shall provide notification to the City upon any occurrence of balance change or other change of status to an Escrow Account, a Loss Reserve Fund Account or a Reflow Account. The form of notification will be determined in the agreement negotiated between the Financial Institution(s) and the City of San Antonio. Any Reserve Account monies paid back to the Financial Institution(s) to cover loan losses may be audited by a third party at the request and expense of the City of San Antonio.

- *Interest on Accounts:* Escrow accounts will be established as a non-interest bearing account unless otherwise designated by stipulations from the Department of Energy. The “loan loss reserve fund” account can be established as an interest bearing account. Federal regulations state that all interest accrued must be used for eligible program purposes. The reflow account shall be established as an interest bearing account with all interest accrued to be used for eligible program purposes.

- *Responsibility for and Distribution of Recoveries:* The Financial Institution(s) will be responsible for recovery actions on defaulted loans. Recovered monies, net of reasonable collections costs, will be distributed back to the Loss Reserve Fund Account in proportion to the Financial Institution(s) share of losses.

- *Underwriting criteria:* The parties will agree in advance on underwriting guidelines for the loans. The Financial Institution(s) shall have the right to include loans under the LRF coverage 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 Energy Efficiency and Renewable Energy (e.g., geothermal, solar) Loan Program Agreement. The terms of the loans will be enumerated, including eligible borrowers, eligible projects, minimum and maximum loan size, loan terms, etc.

•*Reporting & Monitoring:* The Financial Institution(s) will provide regular monthly reports on the energy efficiency and renewable energy (e.g., geothermal, solar) loan portfolio, including the number and amount of outstanding loans, payment performance, and on all activities on the LRF reserve, escrow account and reflow account. In each monthly report, the Financial Institution(s) will also indicate any losses or acceleration notices. The report will list all new energy efficiency and renewable energy (e.g., geothermal, solar) loans financed by the Financial Institution(s), assign each loan an identification number, and indicate the original principal amount of each loan. The report will also include all loans that 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. The Financial Institution(s) will also provide to the City of San Antonio 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 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. Reporting of a fourth account may also be needed if monies for interest rate buy downs are provided to Financial Institution(s). Additional reporting information may be included in the agreement between the Financial Institution(s) and the City of San Antonio.

•*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 the ARRA grant requirements.

•*Disposition of Loan Loss Reserve Funds at end of Loan Period and as Loans are Paid in Full:* 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 automatically to the Reflow Account for additional eligible uses under the DOE requirements. The percentage returned to the Reflow Account, the time period (e.g., monthly, quarterly, etc.) will be designated in the Energy Efficiency and Renewable Energy (e.g., geothermal, solar) Agreement between the Financial Institution(s) and the City of San Antonio. It is assumed that all transfers will be made by the Financial Institution(s), but this will be subject to the LRF Agreement negotiations between the Financial Institution(s) and the City of San Antonio.

•*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 LRF reserve account may be negotiated to give the Financial Institution(s) the necessary level of risk sharing during the portfolio ramp up period. This approach can also accelerate transfer of funds to the Reserve Account and thereby meet the definition of expenditure of grant funds for federal grant management purposes. The Agreement will designate the time period when all funds in the Escrow and Loss Reserve Fund Accounts will revert to the Loss Reserve Percentage as designated by the City of San Antonio.

It is anticipated that funds will be transferred to the Reflow Account to further support energy efficiency and renewable energy (e.g., geothermal, solar) lending or otherwise enhance credit for energy efficiency and renewable energy (e.g., geothermal, solar) loans, unless otherwise determined by the City of San Antonio per the Agreement. 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 as determined (monthly or quarterly) by the Financial Institution(s). When the energy efficiency and renewable energy (e.g., geothermal, solar) loan portfolio is fully retired (the conditions for this eventuality will also be spelled out in the LRF Agreement), all reflow Reserve Account funds will be transferred back to the Reflow Account, and, from there the future use of the funds can be redirected by the City of San Antonio in accordance with ARRA and federal DOE requirements. But at this time, the City of San Antonio anticipates that the monies in this Reflow Account will be on-lent for the purposes of energy efficiency and renewable energy (e.g., geothermal, solar) projects or the City of San Antonio may decide to remove funds from a loan program that is not meeting program requirements.

•*Program Fees*: Under this Program, the partner Financial Institution(s) will not pay any fees to the City of San Antonio to encourage participation from the Financial Institution(s). However, this may be re-evaluated based on negotiations with the Financial Institution(s).

•*Reprogramming Funds in the Escrow Account and the Reflow Account*: Funds in the Escrow Account and the Reflow Account belong to the City of San Antonio. As part of the negotiating process between the City of San Antonio and the Financial Institution(s), reasonable lending targets will be established. The City of San Antonio will have the option to re-allocate the funds in the Escrow Account, if the targets are not met, to a different credit enhancement or to reprogram funds to a different Financial Institution if more than one respondent is selected and one is providing more loans than another. The Agreement will indicate the ability of the City of San Antonio to reprogram uses of these funds, as needed, to adapt to Program operating experience. Funds could be used for interest rate buy downs and other incentives to increase marketability and uptake of Loans. This option is determined by the City of San Antonio's evaluation of the Financial Institution(s) proposals and their determination of what loan programs presented by the Financial Institution(s) meet the program goals and enable more energy efficiency and renewable energy (e.g., geothermal, solar).

The LRF mechanism is not a loan guarantee: it uses the ARRA grant funds to mobilize residential lending by sharing risk with the partner Financial Institution(s), but it does not eliminate risk for the lender. There is no guarantor in this mechanism. The liability of the City is limited to the ARRA grant funding provided only. The Financial Institution(s) is at risk for the repayment of all loan amounts in the energy efficiency and renewable energy (e.g., geothermal, solar) 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 and renewable energy (e.g., geothermal, solar) lending or another use determined by the City of San Antonio.

•*Number of Participating Financial Institutions*: We expect to obtain more than one Financial Institution interested in participating in the Better Buildings Program, and will consider more than one Financial Institution if it adds value to the purpose of the City of San Antonio's program.

•*Alternative Uses of Funds – Interest Rate Buy Downs*: It is intended that the ARRA grant monies will be used as loan loss reserves, but, based on program and residential market experience, grant funds may be used for interest rate buy downs. The option of using interest rate buy downs will be negotiated in the agreement between the Financial Institution(s) and the

City of San Antonio. In addition to the LRF, interest rate buy downs have the ability to further reduce interest rates, improving the implementation of energy efficiency and/or renewable energy (e.g., geothermal, solar) projects and the uptake of energy efficiency and/or renewable energy (e.g., geothermal, solar) loans. This strategy may be necessary to improve the value proposition to the borrowers in this economic climate, ensuring that the ARRA grant supported loan facility is fully subscribed. The market response must be tested, and the amount of the rate buy down can be adjusted based on market experience. This factor will be determined by the City of San Antonio's ability to reprogram uses of funds for interest rate buy downs. The cost of interest rate buy downs are a function of the loan term and also will be priced to reflect assumptions on early loan prepayment. Interest rate buy downs, if any, will be addressed in the agreement between the City of San Antonio and the partner Financial Institution(s). The agreed budget for interest rate buy downs will be deposited with the Financial Institutions. These funds would be drawn down by the Financial Institution(s) as the loans are made to reduce the rate. The present value of the interest rate buy downs are paid to the Financial Institution(s) as the loans are originated. If funds are used as interest rate buy downs, a separate Escrow Account, which will be a non-interest bearing account will be opened for these funds for reporting and tracking purposes. This practice will be maintained for each credit enhancement mechanism.

The City of San Antonio aims to leverage the grant funds to the greatest extent possible, recognizing that interest rate buy downs result in a method of spending ARRA funds. However, if a loan within the loan portfolio is paid early, a percentage of funds from the buy down will return to the City of San Antonio from the Financial Institution(s). However, if the customers of the City of San Antonio do not respond to the terms and rates offered by the selected Financial Institution(s), then a portion of the funds will be used as interest rate buy downs or other credit enhancements, to ensure that projects are implemented.

- *Flexibility to Reprogram Funds:* The City of San Antonio maintains the flexibility to reprogram all funds in order to further the program goals and to enable more energy efficiency and renewable energy (e.g., geothermal, solar) projects. The City of San Antonio will continuously evaluate the Program's success in each community and region, gauging the effectiveness of the initial designated uses of funds. The City of San Antonio 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 Financial Institution to another, provided the funds have not been tied directly to a loan that supports an energy efficiency and renewable energy (e.g., geothermal, solar) project.

The Agreement will include a provision that will allow the City of San Antonio to retain control over all funds (the Escrow Account and Reflow Account funds and 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 the City of San Antonio or funds will be returned to the government. The agreement will also include a similar provision for interest rate buy down funds.

### **III. OWNERSHIP AND LICENSES**

In accordance with Texas law, Respondent acknowledges and agrees that all local government records created or received in the transaction of official business or the creation or maintenance of which were paid for with public funds are declared to be public property and subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441 of the Texas Government Code. Thus, no such local government records produced by or on the behalf of Respondent pursuant to this Contract shall be the subject of any copyright or proprietary claim by Respondent.

The term “local government record” as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic and regardless of whether public access to it is open or restricted under the laws of the state, created or received by local government or any of its officials or employees pursuant to law including an ordinance, or in the transaction of official business.

Respondent acknowledges and agrees that all local government records, as described in herein, produced in the course of the work required by any contract awarded pursuant to this RFP, will belong to and be the property of City. Respondent, if awarded this contract, will be required to turn over to City, all such records as required by said contract. Respondent, if awarded this contract, shall not, under any circumstances, release any records created during the course of performance of the contract to any entity without City’s written permission, unless required to do so by a Court of competent jurisdiction.

In accordance herewith, Respondent, if selected, agrees to comply with all applicable federal, state and local laws, rules and regulations governing documents and ownership, access and retention thereof.

### **IV. INTELLECTUAL PROPERTY**

If selected, Respondent agrees to abide by the following regarding intellectual property rights:

Respondent shall pay all royalties and licensing fees. Respondent shall hold the City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, patents, materials and methods used in the project. It shall defend all suits for infringement of any Intellectual Property rights. Further, if Respondent has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to the City.

Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Respondent will immediately:

1. Either:

- a) obtain, at Respondent 's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be, or,
  - b) alter the programs, hardware, or both the programs and hardware so that the alleged infringement is eliminated, and
  - c) reimburse the City for any expenses incurred by the City to implement emergency backup measures if the City is prevented from using the programs, hardware, or both the programs and hardware while the dispute is pending.
2. Respondent further agrees to:
- a) assume the defense of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this Agreement,
  - b) assume the expense of such defense, including costs of investigations, reasonable attorneys' fees, expert witness fees, damages, and any other litigation-related expenses, and
  - c) indemnify the City against any monetary damages and/or costs awarded in such suit;

Provided that:

1. Respondent is given sole and exclusive control of all negotiations relative to the settlement thereof, but that Respondent agrees to consult with the City Attorney of the City during such defense or negotiations and make good faith effort to avoid any position adverse to the interest of the City,
2. the Software or the equipment is used by the City in the form, state, or condition as delivered by Respondent or as modified without the permission of Respondent, so long as such modification is not the source of the infringement claim,
3. the liability claimed shall not have arisen out of the City's negligent act or omission, and the City promptly provide Respondent with written notice within 15 days following the formal assertion of any claim with respect to which the City asserts that Respondent assumes responsibility under this section.

## **V. TERM OF CONTRACT**

A contract awarded in response to this RFP will be for a two (2) period. The City shall have the option to renew for an additional one (1) year period upon City Council approval. Accounts will be maintained at a Financial Institution until all loans are completed and may exceed the term of the grant period.

## **VI. PRE-SUBMITTAL CONFERENCE**

A Pre-Submittal Conference will be held at City of San Antonio, Purchasing & General Services Department, Riverview Towers, 111 Soledad, 11th Floor Large Conference Room, San Antonio, Texas 78205, at 2:00 p.m., Local Time, on Wednesday, January 12, 2011. Respondents are

encouraged to prepare and submit their questions in writing two (2) calendar days in advance of the Pre-Submittal Conference in order to expedite the proceedings. City's responses to questions received by this due date may be distributed at the Pre-Submittal Conference and posted on the City's website at <http://epay.sanantonio.gov/RFPListings/>. Attendance at the Pre-Submittal Conference is optional, but highly recommended. Respondents that are not able to attend in person may participate by Conference Call. Respondents may call the toll free number listed below and enter access code to participate the day of the conference.

Toll Free Dial In Number: (877) 226-9790 Access Code: 6803495

Respondents participating by Conference Call may download a copy of the pre-submittal conference agenda, the day of the conference, from the City's website;

<https://webapps1.sanantonio.gov/RFPListings/>

Auxiliary aids and services are available upon request. Interpreters for the Deaf must be requested at least 48 hours prior to the meeting. For assistance, call (210) 207-7245 Voice/TTY.

Any oral responses provided by City staff at the Pre-Submittal Conference shall be preliminary. A written summary of the Pre-Submittal Conference shall contain official responses, if any. Any oral response given at the Pre-Submittal Conference that is not confirmed in the written summary of the Pre-Submittal Conference or by a subsequent addendum shall not be official or binding on the City. Only written responses shall be official and all other forms of communication with any officer, employee or agent of the City shall not be binding on the City. Respondents are encouraged to resubmit their questions in writing, to the City Staff person identified in Section XII – Restrictions on Communication, after the conclusion of the Pre-Submittal Conference.

## VII. PROPOSAL REQUIREMENTS

Respondent's Proposal shall include the following items in the following sequence, tabbed and noted with the appropriate heading as indicated below. If Respondent is proposing as a team or joint venture, provide the same information for each member of the team or joint venture.

### TABLE OF CONTENTS

TAB A - EXECUTIVE SUMMARY: The summary shall include a statement of the work to be accomplished, how Respondent proposes to accomplish and perform each specific service and unique problems perceived by Respondent and their solutions.

TAB B – GENERAL INFORMATION & REFERENCES FORM: Use the Form found in this RFP as Attachment A, Part One

TAB C – EXPERIENCE, BACKGROUND & QUALIFICATIONS: Use the Form found in this RFP as Attachment A, Part Two

TAB D – PROPOSED PLAN - Use the Form found in this RFP as Attachment A, Part Three

**NOTE:** The remaining document requirements listed for TABs E– L are to be placed within Respondent's ORIGINAL proposal only. Additional copies are not required.

TAB E – PRICING SCHEDULE - Use the Pricing Schedule that is found in this RFP as Attachment B.

TAB F – DISCRETIONARY CONTRACTS DISCLOSURE FORM: Use the Form in RFP Attachment C which is posted separately or Respondent may download a copy at: <https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>.

Instructions for completing the Discretionary Contracts Disclosure form:

1. Download form and complete all fields. All fields must be completed prior to submitting the form.
2. Click on the “Print” button and place the copy in your proposal as indicated in the Proposal Checklist.

TAB G– LITIGATION DISCLOSURE FORM: Complete and submit the Litigation Disclosure Form, found in this RFP as Attachment D. If Respondent is proposing as a team or joint venture, then all persons or entities who will be parties to the contract (if awarded) shall complete and return this form.

TAB H– SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) PROGRAM FORM: Complete, sign and submit the SBEDA form, found in this RFP as Attachment E.

Place **original and one (1) copy** as Tab H within Respondent’s ORIGINAL proposal. Additional copies are not required.

TAB I– PROOF OF INSURABILITY: Submit a letter from insurance provider stating provider’s commitment to insure the Respondent for the types of coverages and at the levels specified in this RFP if awarded a contract in response to this RFP. Respondent shall also submit a copy of their current insurance certificate.

TAB J – FINANCIAL INFORMATION: Submit a copy of Respondent’s three most recent annual financial statements, prepared in accordance with Generally Accepted Accounting principles, audited by an independent Certified Public Accountant.”

Place **two (2) sets** of financial documents as Tab J within Respondent’s ORIGINAL proposal. Additional copies are not required.

TAB K – SIGNATURE PAGE: Respondent must complete, sign and submit the Signature Page found in this RFP as Attachment F. The Signature Page must be signed by a person, or persons, authorized to bind the entity, or entities, submitting the proposal. Proposals signed by a person other than an officer of a corporate respondent or partner of partnership respondent shall be accompanied by evidence of authority.

TAB L– PROPOSAL CHECKLIST: Complete and submit the Proposal Checklist found in this RFP as Attachment G.

Respondent is expected to examine this RFP carefully, understand the terms and conditions for providing the services listed herein and respond completely. FAILURE TO COMPLETE AND PROVIDE ANY OF THESE PROPOSAL REQUIREMENTS MAY RESULT IN THE RESPONDENT'S PROPOSAL BEING DEEMED NON-RESPONSIVE AND THEREFORE DISQUALIFIED FROM CONSIDERATION.

### VIII. AMENDMENTS TO RFP

Amendments to the RFP, including written responses to questions received in compliance with Section X, Restrictions on Communication, may be posted as addendums on the City's website at <http://epay.sanantonio.gov/RFPListings/>. It is Respondent's responsibility to review this site and ascertain whether any amendments have been made prior to submission of a proposal. A Respondent who does not have access to the Internet, must notify City in accordance with Section X, Restrictions on Communication, that Respondent wishes to receive copies of addendums by mail or fax.

No oral statement of any person shall modify or otherwise change or affect the terms, conditions or specifications stated in the RFP, and changes to the RFP – if any – shall be made in writing only.

### IX. SUBMISSION OF PROPOSALS

- A. Respondent shall submit: One (1) original, signed in ink, ten (10) copies of the proposal, and one (1) compact disk (CD) containing an Adobe PDF version of the entire proposal in a sealed package clearly marked with the project name, **“Financial Institutions to Participate in a Loan Loss Reserve Program”** on the front of the package.

All proposals must be received in the City Clerk's Office no later than **2:00 p.m., Central Time, on February 4, 2011** at the address below. Proposals submitted prior to the above time and date may be modified provided such modifications are sealed and received by the City Clerk's Office prior to the time and date set for submission of proposals. Any proposal or modification received after this time shall not be considered, and will be returned, unopened to the Respondent. Respondents should note that delivery to the P.O. Box address in a timely manner does not guarantee its receipt in the City Clerk's Office by the deadline for submission. Therefore, Respondents should strive for early submission to avoid the possibility of rejection for late arrival.

Mailing Address:

City Clerk's Office  
Attn: Office of Environmental Policy  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Physical Address:

City Clerk's Office  
Attn: Office of Environmental Policy  
100 Military Plaza  
2<sup>nd</sup> Floor, City Hall  
San Antonio, Texas 78205

Proposals sent by facsimile or email will not be accepted.

B. Proposal Format: Each proposal shall be typewritten, single spaced and submitted on 8 ½" x 11" white paper with original placed inside a three ring binder and each copy to be securely bound in a more economical fashion (i.e. – heat bond, spiral bond, etc. The use of recycled paper and materials is encouraged. Unnecessarily elaborate brochures, artwork, bindings, visual aides, expensive paper or other materials beyond that sufficient to present a complete and effective submission are not required. Font size shall be no less than 12-point type. All pages shall be numbered and printed two-sided. Margins shall be no less than 1" around the perimeter of each page. Electronic files, websites, or URLs shall not be submitted in lieu of the printed proposal. Each proposal must include the sections and attachments in the sequence listed in the RFP Section VII, Proposal Requirements, and each section and attachment must be indexed and divided by tabs and indexed in a Table of Contents page. Failure to meet the above conditions may result in disqualification of the proposal or may negatively affect scoring.

C. Respondents who submit proposals to this RFP shall correctly state the true and correct name of the individual, proprietorship, corporation, and /or partnership (clearly identifying the responsible general partner and all other partners who would be associated with the contract, if any). No nicknames, abbreviations (unless part of the legal title), shortened or short-hand, or local "handles" will be accepted in lieu of the full, true and correct legal name of the entity. These names shall comport exactly with the corporate and franchise records of the Texas Secretary of State and Texas Comptroller of Public Accounts. Individuals and proprietorships, if operating under other than an individual name, shall match with exact Assumed Name filings. Corporate Respondents and limited liability company Respondents shall include the 11-digit Comptroller's Taxpayer Number on the General Information form found in this RFP as Attachment A.

If an entity is found to have incorrectly or incompletely stated its name or failed to fully reveal its identity on the General Information form, the Director of the Office of Environmental Policy shall have the discretion, at any point in the contracting process, to suspend consideration of the proposal.

D. All provisions in Respondent's proposal, including any estimated or projected costs, shall remain valid for one-hundred and eighty (180) days following the deadline date for submissions or, if a proposal is accepted, throughout the entire term of the contract.

E. All proposals become the property of the City upon receipt and will not be returned. Any information deemed to be confidential by Respondent should be clearly noted on the page(s) where confidential information is contained; however, the City cannot guarantee that it will not be compelled to disclose all or part of any public record under the Texas Public Information Act, since information deemed to be confidential by Respondent may not be considered confidential under Texas law, or pursuant to a Court order.

F. Any cost or expense incurred by the Respondent that is associated with the preparation of the Proposal, the Pre-proposal conference, if any, or during any phase of the selection process, shall be borne solely by Respondent.

## X. RESTRICTIONS ON COMMUNICATION

- A. Respondents are prohibited from communicating with: 1) elected City officials and their staff regarding the RFP or Proposals from the time the RFP has been released until the contract is posted as a City Council agenda item; and 2) City employees from the time the RFP has been released until the contract is awarded. These restrictions extend to “thank you” letters, phone calls, emails and any contact that results in the direct or indirect discussion of the RFP and/or Proposal submitted by Respondent. Violation of this provision by Respondent and/or its agent may lead to disqualification of Respondent’s proposal from consideration.

Exceptions to the Restrictions on Communication with City employees include:

1. Respondents may ask verbal questions concerning this RFP at the Pre-Proposal Conference.
2. Respondents may submit written questions concerning this RFP to the Staff Contact Person listed below until **January 19, 2011, 4:30 p.m., Central Time**. Questions received after the stated deadline will not be answered. It is suggested that all questions be sent by email or by fax to:

Laura Sambrano, Contract Coordinator  
City of San Antonio, Purchasing & General Services  
laura.sambrano@sanantonio.gov or to fax # (210) 207-7814

3. Respondents and/or their agents are encouraged to contact the Small Business Office of the International and Economic Development Department for assistance or clarification with issues specifically related to the City’s Small Business Economic Development Advocacy (SBEDA) Program policy and/or completion of the SBEDA form. The point of contact is Grace Luna and may be reached by telephone at (210) 207-3900 or by e-mail at [Grace.Luna@sanantonio.gov](mailto:Grace.Luna@sanantonio.gov). Contacts to the Small Business Office regarding this RFP after the proposal due date is not permitted.
  4. Respondents may provide responses to questions asked of them by the Staff Contact Person after responses are received and opened. During interviews, if any, verbal questions and explanations will be permitted. If interviews are conducted, Respondents shall not bring lobbyists. The City reserves the right to exclude any persons from interviews as it deems in its best interests.
  5. Upon completion of the evaluation process, Respondents shall receive a notification letter indicating the recommended firm and anticipated City Council agenda date. Respondents desiring a review of the solicitation process may submit a written request no later than seven (7) calendar days from the date letter was sent. The letter will indicate the name and address for submission of requests for review.
- B. City reserves the right to contact any Respondent to negotiate if such is deemed desirable by City. Such negotiations, initiated by City staff persons, shall not be considered a violation by Respondent of this section.

## XI. EVALUATION CRITERIA

The City will conduct a comprehensive, fair and impartial evaluation of all Proposals received in response to this RFP. The City may appoint a selection committee to perform the evaluation. Each Proposal will be analyzed to determine overall responsiveness and qualifications under the RFP. Criteria to be evaluated may include the items listed below. The selection committee may select all, some or none of the Respondents for interviews. If the City elects to conduct interviews, Respondents may be interviewed and re-scored based upon the same criteria. The City may also request additional information from Respondents at any time prior to final approval of a selected Respondent. The City reserves the right to select one, or more, or none of the Respondents to provide services. Final approval of a selected Respondent is subject to the action of the City of San Antonio City Council.

Evaluation criteria:

- A. Experience, Background, Qualifications (30 points)
- B. Proposed Plan (30 points)
- C. Price (20 points)
- D. Small Business Economic Development Advocacy Program (SBEDA) (20 points):

- 1. A maximum of ten percentage (10%) points for Local Business Enterprises (LBEs).

Prime contractors who have a local branch office will receive six percent (6%) of the selection points.

Non-local prime contractors can receive points for subcontracting with local businesses proportional to the amount of work performed by those local subcontractors. (For example, if a non-local prime contractor subcontracts with a local subcontractor for 50% of the work, they are eligible for up to five points).

- 2. A maximum of five percentage (5%) points for companies designated as Historically Underutilized Enterprises (HUEs).

Prime contractors who subcontract with HUEs can receive points proportional to amount of work performed by those HUEs. (For example, if a prime contractor subcontracts with a small, minority and/or a small, woman business enterprise for 50% of the work, they are eligible for up to 2.5 points).

S/MBEs and/or S/WBEs must be certified by the South Central Texas Regional Certification Agency, the City's certifying agency, or approved by the Director of International and Economic Development or designee to be considered HUEs.

- 3. A maximum of five percentage (5%) points for Prime Contractor compliance with the SBEDA Program policy:
  - a. One percent (1%) for submission/approval of the SBEDA form.

- b. One percent (1%) for meeting/exceeding the MBE goal.
- c. One percent (1%) for meeting/exceeding the WBE goal.
- d. One percent (1%) for meeting/exceeding the AABE goal.
- e. One percent (1%) for meeting/exceeding the SBE goal.

## **XII. AWARD OF CONTRACT AND RESERVATION OF RIGHTS**

- A. City reserves the right to award one, more than one or no contract(s) in response to this RFP.
- B. The Contract, if awarded, will be awarded to the Respondent(s) whose Proposal(s) is deemed most advantageous to City, as determined by the selection committee, upon approval of the City Council.
- C. City may accept any Proposal in whole or in part. If subsequent negotiations are conducted, they shall not constitute a rejection or alternate RFP on the part of City. However, final selection of a Respondent is subject to City Council approval.
- D. City reserves the right to accept one or more proposals or reject any or all proposals received in response to this RFP, and to waive informalities and irregularities in the proposals received. City also reserves the right to terminate this RFP, and reissue a subsequent solicitation, and/or remedy technical errors in the RFP process.
- E. City will require the selected Respondent(s) to execute a contract in substantially the form as attached with the City, prior to City Council award. No work shall commence until City signs the contract document(s) and Respondent provides the necessary evidence of insurance as required in this RFP and the Contract. Contract documents are not binding on City until approved by the City Attorney. In the event the parties cannot negotiate and execute a contract within the time specified, City reserves the right to terminate negotiations with the selected Respondent and commence negotiations with another Respondent.
- F. This RFP does not commit City to enter into a Contract, award any services related to this RFP, nor does it obligate City to pay any costs incurred in preparation or submission of a proposal or in anticipation of a contract.
- G. If selected, Respondent will be required to comply with the Insurance and Indemnification Requirements established herein.
- H. Conflicts of Interest. Respondent acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in the Ethics Code, from having a financial interest in any contract with City or any City agency such as City-owned utilities. An officer or employee has a “prohibited financial interest” in a contract with City or in the sale to City of land materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: the City officer or employee; his parent, child or spouse; a business entity in which he or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; or a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

Respondent is required to warrant and certify that it, its officers, employees and agents are neither officials nor employees of the City, as defined in Section 2-42 of the City’s Ethics Code. (Discretionary Contracts Disclosure – form may be found online at <https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>.)

- I. Independent Contractor. Respondent agrees and understands that, if selected, it and all persons designated by it to provide services in connection with a contract, are and shall be deemed to be an independent contractors, responsible for their respective acts or omissions, and that City shall in no way be responsible for Respondent’s actions, and that none of the parties hereto will have authority to bind the others or to hold out to third parties, that it has such authority.
  
- J. Effective January 1, 2006, Chapter 176 of the Texas Local Government Code requires that persons, or their agents, who seek to contract for the sale or purchase of property, goods, or services with the City, shall file a completed conflict of interest questionnaire with the City Clerk not later than the 7th business day after the date the person: (1) begins contract discussions or negotiations with the City; or (2) submits to the City an application, response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with the City. The conflict of interest questionnaire form is available from the Texas Ethics Commission at <http://www.ethics.state.tx.us/forms/CIQ.pdf>. Completed conflict of interest questionnaires may be mailed or delivered by hand to the Office of the City Clerk. If mailing a completed conflict of interest questionnaire, mail to: Office of the City Clerk, P.O. Box 839966, San Antonio, TX 78283-3966. If delivering a completed conflict of interest questionnaire, deliver to: Office of the City Clerk, City Hall, 2nd floor, 100 Military Plaza, San Antonio, TX 78205. Respondent should consult its own legal advisor for answers to questions regarding the statute or form.

### XIII. SCHEDULE OF EVENTS

Following is a list of projected dates/times with respect to this RFP:

RFP Release Date	December 30, 2010
Pre-Submittal Conference	January 12, 2011, 2:00 p.m.
Final Questions Accepted	January 19, 2011, 4:30 p.m.
Proposals Due	February 4, 2011, 2:00 p.m.

## **RFP ATTACHMENTS**

**THE DOCUMENTS THAT FOLLOW ARE FORMS THAT MUST BE COMPLETED BY RESPONDENT AND INCLUDED WITH RESPONDENT'S PROPOSAL. ATTACH THESE DOCUMENTS TO YOUR PROPOSAL IN THE ORDER INDICATED IN RFP SECTION VII, WHICH IS ENTITLED "PROPOSAL REQUIREMENTS"**

**RFP ATTACHMENT A, PART ONE**

**GENERAL INFORMATION**

**To be submitted with Respondent’s Proposal as TAB B**

**1. Respondent Information:** Provide the following information regarding the Respondent.

(NOTE: Co-Respondents are two or more entities proposing as a team or joint venture with each signing the contract, if awarded. Sub-contractors are not Co-Respondents and should not be identified here. If this proposal includes Co-Respondents, provide the required information in this Item #1 for each Co-Respondent by copying and inserting an additional block(s) before Item #2.)

Respondent Name: \_\_\_\_\_

(NOTE: Give exact legal name as it will appear on the contract, if awarded.)

Principal Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Website address: \_\_\_\_\_

Year established: \_\_\_\_\_

Provide the number of years in business under present name: \_\_\_\_\_

Social Security Number or Federal Employer Identification Number: \_\_\_\_\_

Texas Comptroller’s Taxpayer Number, if applicable: \_\_\_\_\_

(NOTE: This 11-digit number is sometimes referred to as the Comptroller’s TIN or TID.)

DUNS NUMBER: \_\_\_\_\_

Business Structure: Check the box that indicates the business structure of the Respondent.

Individual or Sole Proprietorship If checked, list Assumed Name, if any: \_\_\_\_\_

Partnership

Corporation If checked, check one:  For-Profit  Nonprofit  
Also, check one:  Domestic  Foreign

Other If checked, list business structure: \_\_\_\_\_

<sup>1</sup>Printed Name of Contract Signatory: \_\_\_\_\_

Job Title: \_\_\_\_\_

(NOTE: This RFP solicits proposals to provide services under a contract which has been identified as “High Profile”. Therefore, Respondent must provide the name of person that will sign the contract for the Respondent, if awarded.)

Provide any other names under which Respondent has operated within the last 10 years and length of time under for each: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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Provide address of office from which this project would be managed: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Annual Revenue: \$ \_\_\_\_\_

Total Number of Employees: \_\_\_\_

Total Number of Current Clients/Customers: \_\_\_\_

Briefly describe other lines of business that the company is directly or indirectly affiliated with: \_\_\_\_\_

\_\_\_\_\_

List Related Companies: \_\_\_\_\_

\_\_\_\_\_

2. **Contact Information:** List the one person who the City may contact concerning your proposal or setting dates for meetings.

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Fax No: \_\_\_\_\_

Email: \_\_\_\_\_

3. Does Respondent anticipate any mergers, transfer of organization ownership, management reorganization, or departure of key personnel within the next twelve (12) months?

Yes  No

4. Is Respondent authorized and/or licensed to do business in Texas?

Yes  No  If "Yes", list authorizations/licenses.

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5. Where is the Respondent's corporate headquarters located? \_\_\_\_\_

6. **Local/County Operation:** Does the Respondent have an office located in San Antonio, Texas?

Yes  No  If "Yes", respond to a and b below:

a. How long has the Respondent conducted business from its San Antonio office?

Years \_\_\_\_\_ Months \_\_\_\_\_

b. State the number of full-time employees at the San Antonio office. \_\_\_\_\_

If "No", indicate if Respondent has an office located within Bexar County, Texas:

Yes  No  If "Yes", respond to c and d below:

c. How long has the Respondent conducted business from its Bexar County office?

Years \_\_\_\_\_ Months \_\_\_\_\_

d. State the number of full-time employees at the Bexar County office. \_\_\_\_\_

7. **Debarment/Suspension Information:** Has the Respondent or any of its principals been debarred or suspended from contracting with any public entity?

Yes  No  If "Yes", identify the public entity and the name and current phone number of a representative of the public entity familiar with the debarment or suspension, and state the reason for or circumstances surrounding the debarment or suspension, including but not limited to the period of time for such debarment or suspension.

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8. **Surety Information:** Has the Respondent ever had a bond or surety canceled or forfeited?

Yes  No  If "Yes", state the name of the bonding company, date, amount of bond and reason for such cancellation or forfeiture.

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9. **Bankruptcy Information:** Has the Respondent ever been declared bankrupt or filed for protection from creditors under state or federal proceedings?

Yes  No  If "Yes", state the date, court, jurisdiction, cause number, amount of liabilities and amount of assets.

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10. **Disciplinary Action:** Has the Respondent ever received any disciplinary action, or any pending disciplinary action, from any regulatory bodies or professional organizations? If "Yes", state the name of the regulatory body or professional organization, date and reason for disciplinary or impending disciplinary action.

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11. **Previous Contracts:**

a. Has the Respondent ever failed to complete any contract awarded?

Yes  No  If "Yes", state the name of the organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

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b. Has any officer or partner proposed for this assignment ever been an officer or partner of some other organization that failed to complete a contract?

Yes  No  If "Yes", state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

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c. Has any officer or partner proposed for this assignment ever failed to complete a contract handled in his or her own name?

Yes  No  If "Yes", state the name of the individual, organization contracted with, services contracted, date, contract amount and reason for failing to complete the contract.

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**REFERENCES**

Provide three (3) references, that Respondent has provided services to within the past three (3) years. The contact person named should be familiar with the day-to-day management of the contract and **be willing to respond to questions** regarding the type, level, and quality of service provided.

**Reference No. 1:**

Firm/Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Email: \_\_\_\_\_

<sup>2</sup>Date and Type of Service(s) Provided: \_\_\_\_\_

\_\_\_\_\_

**Reference No. 2:**

Firm/Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Email: \_\_\_\_\_

Date and Type of Service(s) Provided: \_\_\_\_\_

\_\_\_\_\_

**Reference No. 3:**

Firm/Company Name: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone No. \_\_\_\_\_ Email: \_\_\_\_\_

Date and Type of Service(s) Provided: \_\_\_\_\_

\_\_\_\_\_

## **RFP ATTACHMENT A, PART TWO**

### **EXPERIENCE, BACKGROUND, QUALIFICATIONS**

#### **To be submitted with Respondent's Proposal as TAB C**

Prepare and submit narrative responses to address the following items. If Respondent is proposing as a team, provide the same information for each member of the team.

1. Describe Respondent's experience relevant to the Scope of Services requested by this RFP. List and describe relevant projects of similar size and scope performed over the past four years. Identify associated results or impacts of the project/work performed.
2. Describe Respondent's specific experience with public entities, clients and/or especially large municipalities. If Respondent has provided services for the City in the past, identify the name of the project and the department for which Respondent provided those services.
3. List other resources, including total number of employees, number and location of bank branches, credit union branches, and/or offices, types of technological equipment that your organization will have available to support this project. If your organization has limited locations, you may describe methods your organization uses to provide convenience to your customers (e.g., shared branching).
4. Identify the number and professional qualifications (to include licenses, certifications, associations) of staff to be assigned to this project and relevant experience on projects of similar size and scope.
5. State the primary work assignment and the percentage of time, which key personnel will devote to the project if awarded the contract.
6. Describe Respondent's track record for facilitating and/or assisting implementation marketing programs, promoting other existing and future energy efficiency and renewable energy (e.g., geothermal, solar) and conservation programs, and building coalitions within communities to help market the program and educate their constituents.
7. Additional Information. Identify any additional skills, experiences, qualifications, and/or other relevant information about the Respondent's qualifications.

## **RFP ATTACHMENT A, PART THREE**

### **PROPOSED PLAN**

#### **To be submitted with Respondent's Proposal as TAB D**

Prepare and submit the following items.

1. Describe how your organization will add value to the Better Buildings program. In this section, you may address the history of your organization, milestones accomplished, and how energy efficiency and renewable energy (e.g., geothermal, solar) loans will be a complement to your existing array of products and services.
2. Describe the proposed plan to provide energy efficiency and renewable energy (e.g., geothermal, solar) loans, including the type(s) of loan product(s) being offered for this program, underwriting criteria, the loan process, loan closing and servicing (Refer to Sample Terms, Conditions and Underwriting Criteria for reference in the Exhibit D).
3. Describe a plan to ensure maintenance of the energy efficiency and renewable energy (e.g., geothermal, solar) loan portfolio throughout the term of the contract. Identify proposed tasks and schedule, which will include how monthly loan reporting will be performed and how monitoring of the Reserve account will be established.
4. Describe a plan of how your organization will conduct community outreach, advertising and marketing to enhance participation in this program. In this section, you may address the utilization of specific media. Identify minimum annual expenditures to be dedicated to marketing efforts.
5. Describe technical capacity to conduct operations for this program. In this section, you may address the utilization of web sites to further promote the product, the process of on-line applications via your organization, the ability of your organization's systems to generate monthly loan reports to provide to the City of San Antonio, etc.
6. Describe your organization's financial condition. In this section, you may address the following:
  - (a) Is your organization well capitalized?
  - (b) Describe if your organization is local, regional, national or global and how your asset size will serve beneficial to the community participating in this program?
  - (c) Does your organization focus on customer service or is it more focused on transactional types of relationships such as online banking?
7. Additional Information. Provide any additional plans and/or relevant information about Respondent's approach to providing the required services.

**RFP ATTACHMENT B**

**PRICE SCHEDULE**

**To be submitted with Respondent's Proposal as TAB E**

## PRICING SCHEDULE

1. Provide a price for the annual fee charged by your institution to establish an escrow account for the City, if applicable.

a) Annual Escrow Account Fee: \$\_\_\_\_\_

2. Provide a price for the one-time charge to your loan customers (e.g., origination fees, underwriting fees, etc.), if applicable for the City.

Other Fees, if applicable to your proposed plan, please provide below:

a) Loan Origination Fee: \$\_\_\_\_\_per customer loan

b) Underwriting Fee: \$\_\_\_\_\_per customer loan

c) Processing Fee: \$\_\_\_\_\_per customer loan

**RFP ATTACHMENT C**

**DISCRETIONARY CONTRACTS DISCLOSURE FORM**

**To be submitted with Respondent's Proposal as TAB F**

Discretionary Contracts Disclosure Form may be downloaded at <https://www.sanantonio.gov/eforms/atty/DiscretionaryContractsDisclosure.pdf>.

Instructions for completing the Discretionary Contracts Disclosure form are listed below:

1. Download form and complete all fields. Note: All fields must be completed prior to submitting the form.
2. Click on the "Print" button and place the copy in proposal response as indicated in the Proposal Checklist.

**RFP ATTACHMENT D**

**LITIGATION DISCLOSURE FORM**

**To be submitted with Respondent's Proposal as TAB G**

## LITIGATION DISCLOSURE

**Respond to each of the questions below by checking the appropriate box. Failure to fully and truthfully disclose the information required by this Litigation Disclosure form may result in the disqualification of your proposal from consideration or termination of the contract, once awarded.**

1. Have you or any member of your Firm or Team to be assigned to this engagement ever been indicted or convicted of a felony or misdemeanor greater than a Class C in the last five (5) years?

Yes  No

2. Have you or any member of your Firm or Team to be assigned to this engagement been terminated (for cause or otherwise) from any work being performed for the City of San Antonio or any other Federal, State or Local Government, or Private Entity?

Yes  No

3. Have you or any member of your Firm or Team to be assigned to this engagement been involved in any claim or litigation with the City of San Antonio or any other Federal, State or Local Government, or Private Entity during the last ten (10) years?

Yes  No

**If you have answered “Yes” to any of the above questions, please indicate the name(s) of the person(s), the nature, and the status and/or outcome of the information, indictment, conviction, termination, claim or litigation, as applicable. Any such information should be provided on a separate page, attached to this form and submitted with your proposal.**

**RFP ATTACHMENT E**

**GOOD FAITH EFFORT PLAN FORM**

**SBEDA FORM**

**To be submitted with Respondent's Proposal as TAB H**

**GOOD FAITH EFFORT PLAN**

(Page 1 of 4)

**NAME OF PROJECT:** Financial Institutions to Participate in a Loan Loss Reserve Program

**BIDDER/PROPOSER INFORMATION:**

Name of Bidder/Proposer: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

Is your firm certified? \_\_\_\_ Yes \_\_\_\_ No (If yes, please submit Certification Certificate.)

1. List all subcontractors/suppliers that will be used for this contract. (Indicate all MBEs-WBEs-AABEs-SBEs. Use additional sheets as needed.)

NAME AND ADDRESS OF SUBCONTRACTOR'S/SUPPLIER'S COMPANY	CONTRACT AMOUNT	% LEVEL OF PARTICIPATION	MBE-WBE-AABE- SBE CERTIFICATION NUMBER

Only companies certified as an MBE, WBE, AABE or SBE by the City of San Antonio or its certifying organization can be applied toward the contracting goals. All MBE-WBE-AABE-SBE subcontractors or suppliers must submit a copy of their certification certificate through the Prime Contractor. Proof of certification must be attached to this form. If a business is not certified, please call the Small Business Office at (210) 207-3900 for information and details on how subcontractors and suppliers may obtain certification.

**GOOD FAITH EFFORT PLAN**

*(Page 2 of 4)*

It is understood and agreed that, if awarded a contract by the City of San Antonio, the Contractor will not make additions, deletions, or substitutions to this certified list without consent of the Director of International and Economic Development and Director of the appropriate contracting department (through the proposal of the Request for Approval of Change to Original Affirmed Good Faith Effort Plan).

**NOTE: If MBE-WBE-AABE-SBE contracting goals were met, skip to #9.**

2. If MBE-WBE-AABE-SBE contracting goals were not achieved in a percentage that equals or exceeds the City's goals, please give explanation.

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3. List all MBE-WBE-AABE-SBE Listings or Directories utilized to solicit participation.

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4. List all contractor associations and other associations solicited for MBE-WBE-AABE-SBE referrals.

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5. Discuss all efforts aimed at utilizing MBE-WBE-AABE-SBEs.

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6. Indicate advertisement mediums used for soliciting bids from MBE-WBE-AABE-SBEs.

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**GOOD FAITH EFFORT PLAN**

*(Page 3 of 4)*

7. List all MBE-WBE-AABE-SBE bids received but rejected. (Use additional sheets as needed.)

COMPANY NAME	MBE-WBE-AABE-SBE CERTIFICATION NUMBER	REASON FOR REJECTION

8. Please attach a copy of your company's MBE-WBE-AABE-SBE policy.

9. Name and phone number of person appointed to coordinate and administer the Good Faith Efforts of your company on this project.

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10. This Good Faith Effort Plan is subject to the Economic Development Department's approval.

**GOOD FAITH EFFORT PLAN**

*(Page 4 of 4)*

**GOOD FAITH EFFORT PLAN AFFIRMATION**

I HEREBY AFFIRM THAT THE INFORMATION PROVIDED IN THIS GOOD FAITH EFFORT PLAN IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I FURTHER UNDERSTAND AND AGREE THAT, IF AWARDED THE CONTRACT, THIS DOCUMENT SHALL BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT.

\_\_\_\_\_  
SIGNATURE OF AUTHORIZED OFFICIAL

\_\_\_\_\_  
TITLE OF OFFICIAL

\_\_\_\_\_  
DATE PHONE

\*\*\*\*\*  
\*\*\*\*\*

**FOR CITY USE**

Plan Reviewed By: \_\_\_\_\_

Recommendation:            Approval \_\_\_\_\_            Denial \_\_\_\_\_

Action Taken:                Approved \_\_\_\_\_            Denied \_\_\_\_\_

\_\_\_\_\_  
Director of International and Economic  
Development

**RFP ATTACHMENT F**

**SIGNATURE PAGE**

**To be submitted with Respondent's Proposal as TAB K**

**SIGNATURE PAGE**

The undersigned certifies that (s)he is authorized to submit this proposal on behalf of the entity named below:

\_\_\_\_\_  
Respondent Entity Name

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

(NOTE: If proposal is submitted by Co-Respondents, an authorized signature from a representative of each Co-Respondent is required. Add additional signature blocks as required.)

\_\_\_\_\_  
Co-Respondent Entity Name

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

By signature(s) above, Respondent(s) agrees to the following:

1. If awarded a contract in response to this RFP, Respondent will be able and willing to execute a contract in the form shown in the RFP, as attached and set out in RFP Exhibit E, with the understanding that the scope and compensation provisions will be negotiated and included in the final document.
2. If Respondent is a corporation, Respondent will be required to provide a certified copy of the resolution evidencing authority to enter into the contract, if other than an officer will be signing the contract.
3. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with the insurance and indemnification requirements set out in RFP Exhibits B & C.
4. If awarded a contract in response to this RFP, Respondent will be able and willing to comply with all representations made by Respondent in Respondent’s proposal and during Proposal process.
5. Respondent has fully and truthfully submitted a Litigation Disclosure form with the understanding that failure to disclose the required information may result in disqualification of proposal from consideration.
6. Respondent agrees to fully and truthfully submit a Respondent Questionnaire and understands that failure to fully disclose requested information may result in disqualification of proposal from consideration or termination of contract, once awarded.
7. To comply with the City's Ethics Code, particularly Section 2-61 that prohibits a person or entity seeking a City contract - or any other person acting on behalf of such a person or entity - from contacting City officials or their staff prior to the time such contract is posted as a City Council agenda item.

**Acknowledgement of Prohibition regarding Campaign and Officeholder Contributions**

I acknowledge that this contract has been designated a “high-profile” contract. I have read and understand the provisions regarding high profile contracts that appear on the cover page of this RFP.

**RFP ATTACHMENT G**

**PROPOSAL CHECKLIST**

**To be submitted with Respondent's Proposal as TAB L**

## PROPOSAL CHECKLIST

Use this checklist to ensure that all required documents have been included in the proposal and that they are properly tabbed and appear in the correct order.

Tab in Respondent's Proposal	Document	Initial to Indicate Document is Attached to Proposal
	Table of Contents	
<i>A</i>	Executive Summary	
<i>B</i>	General Information and References <ul style="list-style-type: none"> <li>• RFP Attachment A, Part One</li> </ul>	
<i>C</i>	Experience, Background & Qualifications <ul style="list-style-type: none"> <li>• RFP Attachment A, Part Two</li> </ul>	
<i>D</i>	Proposed Plan <ul style="list-style-type: none"> <li>• RFP Attachment A, Part Three</li> </ul>	
<p><b>NOTE:</b> Remaining items listed in Tabs E – L are required in the ORIGINAL proposal only. Additional copies are not required, unless otherwise instructed.</p>		
<i>E</i>	Pricing Schedule <ul style="list-style-type: none"> <li>• RFP Attachment B</li> </ul>	
<i>F</i>	Discretionary Contracts Disclosure form <ul style="list-style-type: none"> <li>• RFP Attachment C</li> </ul>	
<i>G</i>	Litigation Disclosure <ul style="list-style-type: none"> <li>• RFP Attachment D</li> </ul>	
<i>H</i>	* SBEDA Form <ul style="list-style-type: none"> <li>• RFP Attachment E; and</li> <li>• Associated Certificates, if applicable</li> </ul> <p style="text-align: center;"><i>Provide original and one (1) additional copy</i></p>	
<i>I</i>	Proof of Insurability (See RFP Exhibit B) <ul style="list-style-type: none"> <li>• Insurance Provider's Letter</li> <li>• Copy of Current Certificate of Insurance</li> </ul>	
<i>J</i>	Financial Information <i>Provide two (2) sets in the original copy.</i>	
<i>K</i>	* Signature Page RFP Attachment F	
<i>L</i>	Proposal Checklist <ul style="list-style-type: none"> <li>• RFP Attachment G</li> </ul>	
	<ul style="list-style-type: none"> <li>• One (1) Original, ten (10) Copies, and <b>one (1) CD</b> of entire proposal in PDF format.</li> </ul>	

**\*Documents marked with an asterisk on this checklist require a signature. Be sure they are signed prior to submittal of proposal.**

**RFP EXHIBIT A**

**SMALL BUSINESS ECONOMIC DEVELOPMENT  
ADVOCACY (SBEDA) PROGRAM**

## SMALL BUSINESS PROGRAM

### 1. **Small Business Participation**

Pursuant to Ordinance No. 2007-04-12-0396, it is the policy of the City of San Antonio to involve Small, Minority, Women and African-American Business Enterprises (S/M/W/AABE) to the greatest extent feasible in the City's discretionary contracts. The intent and purpose of the policy is to ensure that S/M/W/AABE firms have the opportunity to compete for City contracts without discrimination on the basis of race, color, religion, national origin, age, sex or handicap. To accomplish the objectives of the Small Business policy, the City has established specific goals for local S/M/W/AABE participation in this contract.

### 2. **DEFINITIONS** related to the Small Business Program Provisions:

- a. **Small Business Program:** the Small Business Economic Development Advocacy ("SBEDA") Program governed by this ordinance and managed by the SMALL BUSINESS Program Office.
- b. **Small Business Enterprises (SBE):** a corporation, partnership, sole proprietorship or other legal entity, for the purpose of making a profit, which is independently owned and operated and which meets the U.S. Small Business Administration (SBA) size standard for a small business. All firms meeting these thresholds will be considered an SBE.
- c. **Local Business Enterprise (LBE):** a corporation, partnership, sole proprietorship, or other legal entity which is headquartered within Bexar County for at least one year. For a branch office of a non-headquartered business to qualify as an LBE, the branch office must be located in Bexar County for at least one-year and employ a minimum of ten (10) residents of Bexar County for use at the local branch office.
- d. **Minority Business Enterprise (MBE):** a sole proprietorship, partnership, or corporation owned, operated, and controlled by a minority group member(s) who has at least 51% ownership. Minority group member(s) include African-Americans; Hispanic Americans; Asian-Pacific Americans; Asian-Indian Americans; American Indians; and Disabled Individuals. The minority group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an MBE, the enterprise shall be headquartered in Bexar County or the San Antonio Metropolitan Statistical Area (the SAMSA) for any length of time, or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the MBE's category of contracting for at least one year.
- e. **Woman Business Enterprise (WBE):** a sole proprietorship, partnership, or corporation owned, operated and controlled by women who have at least 51% ownership. The woman or women must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as a WBE, the enterprise shall be headquartered in Bexar County or the SAMSA for any length of time or shall be doing

business in a locality or localities from which the City regularly solicits or receives bids on or proposals for, City contracts within the WBE’s category of contracting for at least one year.

- f. **African-American Business Enterprise (AABE)**: a sole proprietorship, partnership, or corporation owned, operated and controlled by an African-American group member(s) who has at least 51% ownership. The African American Group member(s) must have operational and managerial control, interest in capital, expertise and earnings commensurate with the percentage of ownership and be legal residents or citizens of the United States or its territories. To qualify as an AABE, the enterprise shall be headquartered in Bexar County or the SAMSA for any length of time or shall be doing business in a locality or localities from which the City regularly solicits, or receives bids on or proposals for, City contracts within the AABE’s category of contracting for at least on year.

3. **Goals for Small Business Participation**

The goals for the utilization and participation of SBE-MBE-WBE-AABE businesses on this contract are as follows:

<b>MBE</b>	<b>31%</b>
<b>WBE</b>	<b>10%</b>
<b>AABE</b>	<b>2.2%</b>
<b>SBE</b>	<b>50%</b>

Please note that a small business could be classified in multiple categories and thus their utilization could in theory be counted in each category of goals. For example, **Prime Contractor X** submits a proposal, which specifies that they intend to subcontract with Subcontractor A for 10% of the contract. Subcontractor A is certified by the City as an SBE and MBE (a male-owned Hispanic Business owner can be certified as an SBE and MBE). **Prime Contractor X** also intends to subcontract with Subcontractor B for 13% of the contract. Subcontractor B is certified by the City as SBE, MBE and a WBE (a female-owned Hispanic Business owner can be certified as SBE, MBE and WBE). In addition, **Prime Contractor X** also intends to subcontract 10% of the contract to Subcontractor C—a City certified SBE, MBE and AABE (a male-owned African-American business owner can be certified as both a MBE and as an AABE Business). **Prime Contractor X** is also classified as a local SBE. **Prime Contractor X’s** compliance with the Small Business goals under this scenario would be as follows:

	City’s Small Business Goals	Prime Contractor X’s Compliance
MBE	31%	33%
WBE	10%	13%
AABE	2.2%	10%

SBE	50%	100%
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Under this scenario, the contractor would be in full compliance with the Small Business policy.

Another example regarding compliance with the policy is as follows: **Prime Contractor Y** submits a proposal, which specifies that they intend to partner through a joint-venture agreement with Company D. Company D is certified by the City as both an SBE and MBE (a male-owned Hispanic Business—certified as an SBE and MBE). As part of their joint-venture agreement, Company D will perform on 32.5% of the contract. **Prime Contractor Y** also intends to subcontract 13% of the contract with Subcontractor F. Subcontractor F is a City certified SBE/MBE/WBE and AABE business. **Prime Contractor Y** is also classified as a local SBE. **Prime Contractor Y** compliance with the Small Business goals would be as follows:

	City’s Small Business Goals	Prime Contractor Y’s Compliance
MBE	31%	45.5%
WBE	10%	13%
AABE	2.2%	13%
SBE	50%	100%

Under this scenario, the contractor would be in full compliance with the Small Business policy.

**4. Good Faith Effort Required**

Proposals shall include a Good Faith Effort Plan (GFEP—ATTACHED). The GFEP shall include specific documentation to utilize local, small, MBE-WBE-AABE businesses in a percentage, which equals or exceeds the above goals. **Any proposal that does not include this SBEDA form shall be declared non-responsive, and excluded from consideration.**

**5. SBE-MBE-WBE-AABE Certification Required**

Only companies certified as SBE, MBE, WBE, or AABE through the South Central Texas Regional Certification Agency (SCTRCA), or as approved by the City of San Antonio Director of International and Economic Development, can be applied towards the contracting goals. Proof of certification must be submitted.

**6. Small Business Program Information**

Interested Respondents are encouraged to contact the Small Business Office for information regarding the City’s Small Business Program in accordance with the City’s Communication Policy outlined in the solicitation document. Please call (210) 207-3900 or FAX: (210) 207-8151.

**RFP EXHIBIT B**

**INSURANCE REQUIREMENTS**

**INSURANCE**

- A) Prior to the commencement of any work under this Agreement, Respondent shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City’s **Office of Environmental Policy**, which shall be clearly labeled “Financial Institutions to Participate in a Loan Loss Reserve Program” in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent’s signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer’s authorized representative to the City. The City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City’s Office of Environmental Policy. No officer or employee, other than the City’s Risk Manager, shall have authority to waive this requirement.
- B) The City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City’s Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereupon City may incur increased risk.
- C) A Respondent’s financial integrity is of interest to the City; therefore, subject to Respondent’s right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Respondent’s sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best’s rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$500,000/\$500,000/\$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises operations *b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For <u>B</u> odily <u>I</u> njury and <u>P</u> roperty <u>D</u> amage of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage  \$100,000
4. Fidelity or Commercial Crime Insurance	\$1,000,000 with City listed as Loss Payee

D) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page and all endorsements thereto, and may require the deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Respondent shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

City of San Antonio  
Attn: Office of Environmental Policy  
P.O. Box 839966  
San Antonio, Texas 78283-3966

E) Respondent agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;
- Workers' compensation, employers' liability, general liability and auto liability policies will provide a waiver of subrogation in favor of the City.
- Provide advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

F) Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Respondent shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Respondent's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

G) In addition to any other remedies the City may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Respondent to stop work hereunder, and/or withhold any payment(s) which become due to Respondent hereunder until Respondent demonstrates compliance with the requirements hereof.

- H) Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subcontractors' performance of the work covered under this Agreement.
- I) It is agreed that Respondent's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.
- J) It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- K) Respondent and any Subcontractors are responsible for all damage to their own equipment and/or property.

**RFP EXHIBIT C**

**INDEMNIFICATION REQUIREMENTS**

If selected to provide the services described in this RFP, Respondent shall be required to comply with the indemnification requirements set forth below:

### **INDEMNIFICATION**

**RESPONDENT covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RESPONDENT'S activities under this Agreement, including any acts or omissions of RESPONDENT, any agent, officer, director, representative, employee, consultant or subcontractor of RESPONDENT, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, it s officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT RESPONDENT AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. RESPONDENT shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT known to RESPONDENT related to or arising out of RESPONDENT's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at RESPONDENT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving RESPONDENT of any of its obligations under this paragraph.

Defense Counsel - CITY shall have the right to select or to approve defense counsel to be retained by RESPONDENT in fulfilling its obligation hereunder to defend and indemnify CITY, unless such right is expressly waived by CITY in writing. RESPONDENT shall retain CITY approved defense counsel within seven (7) business days of CITY'S written notice that CITY is invoking its right to indemnification under this Contract. If RESPONDENT fails to retain Counsel within such time period, CITY shall have the right to retain defense counsel on its own behalf, and RESPONDENT shall be liable for all costs incurred by CITY. CITY shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of RESPONDENT, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for RESPONDENT or any subcontractor under worker's compensation or other employee benefit acts.

**RFP EXHIBIT D**

**SAMPLE TERMS, CONDITIONS, & UNDERWRITING CRITERIA-  
RESIDENTIAL LOANS**



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.

**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, by an on-line method, 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 24 hours. 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.

**RFP EXHIBIT E**

**SAMPLE ENERGY EFFICIENCY AND RENEWABLE ENERGY  
LOAN PROGRAM AGREEMENT**

**[Better Buildings Program]**

**Sample Energy Efficiency and Renewable Energy  
Loan Program Agreement**

**City of [     ],**

**and**

**[     ] Bank**

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[     ], 2010

**ENERGY EFFICIENCY AND RENEWABLE ENERGY LOAN PROGRAM**  
**AGREEMENT**

This Energy efficiency and renewable (e.g., geothermal, solar) and Renewables 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 and renewable (e.g., geothermal, solar) retrofits for residential structures;
- B.** Energy efficiency and renewable (e.g., geothermal, solar) 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 and renewable (e.g., geothermal, solar) loans from Bank to borrowers;
- E.** Bank, as lender, will provide loan financing directly to individual eligible residential customers ("Loans") for energy efficiency and renewable (e.g., geothermal, solar) ("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 and renewable (e.g., geothermal, solar) 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, [ ] (the "Escrow Account") for the City. The Escrow Account will be a [ ] Bank 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: Non-Interest bearing Escrow Account. Interest shall not be earned on and accrued 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 and maintain their character as grant funds subject to requirements of ARRA. 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 and renewable (e.g., geothermal, solar) 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 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.<sup>1</sup>

(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

### Escrow Accounts for Interest Rate Buy-Down Accounts

Section 2.01: Escrow Accounts. The Bank as Escrow Agent hereby establishes the Escrow account, [ ] (the "Escrow Account") for the City. The Escrow Account will be a [ ] Bank 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: Non-Interest bearing Escrow Account. Interest shall not 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:

(d) December, 2010: \$X,000,000 in residential loans, among approximately Eligible Projects;

(e) June, 2011: \$X,000,000 in residential loans, among approximately Eligible Projects; and

December, 2011: \$X,000,000 in residential loans, among approximately

Section 2.10: Disbursements from Reflow Escrow Account. Funds in the Reflow Escrow Account are property of the City and maintain their character as grant funds subject to requirements of ARRA. 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 and renewable (e.g., geothermal, solar) 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 V**

### **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 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 thirty (30) 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 and renewable (e.g., geothermal, solar) Loan Program.

## **ARTICLE VI**

### **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 VII**

### **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 VIII**

### **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 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 IX**

### **The Escrow Agent**

#### Section 8.01: General.

1. (a) The Bank as Escrow Agent shall not deal with the Escrow Account, the Reserve Account, the Interest Rate Buydown Account, and the Reflow 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 X**  
**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. The City does not waive immunity and reserves all defenses, etc., and the right to go to court if needed. (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 is performable in Bexar County, Texas and shall be governed by and construed in accordance with the laws of the State of Texas. 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:**

---

**RFP EXHIBIT F**

**SAMPLE CERTIFICATE OF COMPLETION**

# Certificate of Completion

**DO NOT SIGN THIS FORM UNTIL WORK IS COMPLETED**

Customer Name and Address	Contractor Name and Contractor Number
---------------------------	---------------------------------------

## Customer Certification

**Notice to Customer: You must sign and give this certificate to the contractor when the work is final and completed to your satisfaction as a condition of payment to the contractor.**

### Completion of Work:

I certify that:

- Each and every one of the property improvements listed on the CPS Energy Specification Sheet has been completed in accordance with the contract and the cost estimate; and
- I have reviewed each of the improvements and the work is to my satisfaction.

I understand that the selection of the lender and the contractor and the acceptance of the materials used and the work performed is my responsibility, and that the City of San Antonio and its directors, officers, and agents and the lender do not guarantee the performance, quality, or workmanship of the property improvements. I understand that my loan will be directly with the lender I have selected, and not with the City of San Antonio. **I authorize the lender to disburse the loan proceeds to the contractor.**

### Release of Information:

The City of San Antonio, including its officers, directors, employees, affiliates, agents, or designees, has received and will receive information about you related to the work and use that information to serve customers more efficiently and effectively. The City of San Antonio will use this information for program management and evaluation and treat the information as confidential unless otherwise required by law. Notwithstanding anything to the contrary:

- I authorize my contractor and lender to share information with the City of San Antonio, including contract information, data on work performed and equipment installed, information regarding my loan, and other information relating to or arising from participation in the City of San Antonio's Better Building Program.
- I also authorize my utilities listed on the CPS Energy Specification Sheet to disclose to the City of San Antonio my utility usage information for the period covering *two years prior to* and *two years after* the date of my signed City of San Antonio Certificate of Completion.
- I understand that the City of San Antonio or its designee may contact me to evaluate the program, including asking me to complete a customer satisfaction survey and/or conducting an on-site inspection at my home to assess the installation of the property improvements financed under the City of San Antonio's Better Buildings loan program. The satisfaction survey is voluntary.
- The City of San Antonio will not release any personal identifying information for marketing or other purposes without my express written consent and will not sell my information to third



<p>Lender Name &amp; Address</p>          <p>For quicker processing, may also fax copy to lender at:</p>	<p>City of San Antonio Office of Environmental Policy 111 Soledad, Suite 725 San Antonio, Texas 78205 Mailing Address: P.O. Box 839966 San Antonio, Texas 78283-3966</p>
<p>Note: Obtain lender information from customer (provided when loan approved)</p>	