

**ENERGY UPGRADE CALIFORNIA IN LOS ANGELES COUNTY  
LOAN LOSS RESERVE FUND AGREEMENT**

This Loan Loss Reserve Fund Agreement ("Agreement"), dated July 1, 2011 is undertaken by \_\_\_\_\_, incorporated under the laws of the State of \_\_\_\_\_ and \_\_\_\_\_, a \_\_\_\_\_ chartered financial institution (referred to in this document as "FI"), headquartered in \_\_\_\_\_ County, \_\_\_\_\_.

**RECITALS**

- A.** \_\_\_\_\_ is an independent contractor to the County of \_\_\_\_\_ (the "County") with the duty of developing \_\_\_\_\_ (the "Program");
- B.** The purpose of the Program is to stimulate energy efficiency ("EE") and renewable energy ("RE") upgrades in County residences by employing two strategies: (1) educate consumers on clean energy projects and financing options through a web portal; and (2) promote increased clean energy lending by establishing a Loan Loss Reserve Fund ("LLRF") for selected FI use;
- C.** The LLRF is not a loan product, but a credit enhancement that may be leveraged by the FI's existing loan services. As such, it does not impact the Lender-Borrower Relationship shared between the FI and consumer; and
- D.** FI will serve as escrow agent for an LLRF allocation as set out in this Agreement and will provide fiduciary services to receive and manage the LLRF allocation.

**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:

"\_\_\_\_\_" refers to \_\_\_\_\_ or a succeeding entity as defined through contract with the County of \_\_\_\_\_ to serve as Contractor's Project Manager with duties that include developing the Program. Should no such contract exist, all such related authority shall revert to the County of \_\_\_\_\_.

"Conditional Loan" refers to pre-approval of a Loan at a not-to-exceed amount by the FI contingent on the consumer receiving rebate reservation, as evidenced by a Rebate

Confirmation Letter issued by the utility.

“County” refers to the County of \_\_\_\_\_, \_\_\_\_\_ and its officers.

“Defaulted Loans” shall be those Qualifying Loans that are ninety (90) days or more past due and have triggered an acceleration of the Qualifying Loan and written notice to the borrower.

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

“Eligible Projects” means residential EE and RE projects eligible for the utility rebate program and the solar rebates as evidenced by a Rebate Confirmation Letter, and consequently qualify for the LLRF coverage. It is anticipated that eligible projects will be expanded by the Program. Any modification to the eligible projects will be managed as an amendment to the Term Sheet for Qualifying Loans in Annex A.

“Grantor” refers to the public agency, non-profit or foundation that has granted funds to the County for use as the LLRF credit enhancement. The initial Grantor shall be the U.S. Department of Energy, although others may be added through amendment of this Agreement.

“Lender-Borrower Relationship” refers to the loan application, review and execution process by which FI determines to extend financing to a consumer. This relationship shall be strictly between FI and consumer, and shall raise no duty or liability with the County, its appointed officers, employees or its agents.

“LLRF Administrator” shall be \_\_\_ or its designee overseeing the execution of this Agreement, including supervision of the FI as described herein. Initially, \_\_\_ designates \_\_\_\_\_, incorporated under the Laws of the State of \_\_\_\_\_, to serve as LLRF Administrator.

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

“Loan Loss Reserve” refers to the County-sponsored framework of the Escrow Account and Reserve Account that provides credit enhancement to Qualifying Loans.

“Loss Reserve Account Ceiling” shall mean the topmost funds that shall be maintained in the Reserve Account defined in Sec. 3.03.

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

“Loss Reserve Percentage” shall equal 10%.

“Loss Share Percentage” shall equal 90%.

“Net Recovered Amount” shall have the meaning given in Section 4.02(b).

“Qualifying Loan(s)” shall be loans made by FI that, through conformance with the Term Sheet for Qualifying Loans in Annex A, shall be eligible to leverage the LLRF.

“Rebate Confirmation Letter” is a formal notice from a rebate program that a contractor’s/property owner’s reservation for a project rebate has been accepted and that the property owner may begin installation.

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

## **ARTICLE II Escrow Account**

Section 2.01. Escrow Accounts. The FI will establish the interest-bearing Escrow Account that shall be identified by a unique account number (the "Escrow Account"). The escrow arrangement does not create a debtor-creditor relationship between the parties, and all assets of the Escrow Account shall be insured with the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) as applicable.

Section 2.02. Funding of the Escrow Account; Funds Ownership. The LLRF Administrator shall facilitate the deposit of the County funds into the Escrow Account.

- (a) The County is the sole owner of the Escrow Account and its assets, and may manage and withdraw funds consistent with all ownership privileges.
- (b) The County may at its discretion provide the LLRF Administrator the authority to withdraw or disburse Escrow Account funds to support the Program. Grant of this authority must be made in writing and be consistent with FI’s policies and procedures.

Section 2.03. Disbursements from Escrow Account to Reserve Account. Disbursements from the Escrow Account shall be made by FI to the Reserve Account as provided for in Section 3.02.

Section 2.04. Lending Targets; Reprogramming Funds in the Escrow Account. FI lending targets represent the projected velocity of Escrow Account usage to cover Qualifying Loans made by FI.

- (a) The parties agree upon the following lending targets which represent quarterly, not cumulative, goals for the Program’s first year:
  - By October 2011: \$100,000.00 issued in Qualifying Loans;

- By January 2012: \$100,000.00 issued in Qualifying Loans;
  - By April 2012: \$200,000.00 issued in Qualifying Loans;
  - By July 2012: \$200,000.00 issued in Qualifying Loans.
- (b) Lending targets for future Program performance will be set between the parties on an annual basis or as needed.
- (c) There shall be no penalty ascribed to FI for not reaching lending targets. However, if a lending target is not met, the County or its agent has the option of withdrawing all or part of the funds remaining in the Escrow Account and dedicating them to another authorized purpose, including depositing the withdrawn funding with another FI for further lending activities.

### **ARTICLE III Reserve Account**

Section 3.01. Reserve Account for Qualifying Loans. The FI will establish an interest-bearing Loan Loss Reserve Fund Account that shall be identified by a unique account number (the "Reserve Account"). All assets of the Reserve Account shall be insured with the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) as applicable.

Section 3.02. Funding of Reserve Account; Funds Ownership. The Reserve Account will be funded from the Escrow Account for Eligible Projects.

- (a) Upon funding a Qualified Loan, FI shall automatically move an amount equal to the Loss Reserve Percentage (10%) of the Qualifying Loan's principal from the Escrow Account and into the Reserve Account.
- (b) The County is the sole owner of the Reserve Account and its assets, subject to obligations set forth in this Agreement.
- (c) The County may at its discretion provide the LLRF Administrator the authority to withdraw or disburse Reserve Account funds to FI in the event of a Default Loan. Grant of this authority must be made in writing and be consistent with FI's policies and procedures.

Section 3.03. Loss Reserve Account Ceiling; Recycling of Funds into the Escrow Account. Funds in the Reserve Account shall never exceed 125% of the Loss Reserve Percentage (10%) of the outstanding Qualifying Loan portfolio. For example, if there are \$100,000 in outstanding loans. The Loss Reserve Percentage amount is \$10,000, and the Loss Reserve Account Ceiling is \$12,500. When the Loss Reserve Account Ceiling is reached, surplus Reserve Account Funds are recycled to the Escrow Account to support continued lending.

**ARTICLE IV**  
**Defaulted Loan Claim Process**

Section 4.01. Declaration of a Defaulted Loan; Claim Against Loss. All funds in the Reserve Account shall be available to FI to cover the agreed Loss Share Percentage (90%) of Loss Amounts per Defaulted Loan.

(a) A Qualifying Loan will be deemed a Defaulted Loan if loan payments are ninety (90) days or more past due and FI 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; or
- (ii) A copy of the borrower's bankruptcy filing.

(b) Once FI has determined Loan default, FI shall submit an Invoice for Claim Against Loss to the LLRF Administrator with substantiating documentation. Within five days, the LLRF Administrator will review the Invoice for Claim Against Loss to ensure the Loan was made in accordance with this Agreement and Annex A, Term Sheet for Qualifying Loans, then authorize FI to disburse funds from the Reserve Account to FI's own account.

(c) The Reserve Account is **not** a loan guarantee. When and if the Reserve Account has zero balance (no funds remaining), neither the LLRF Administrator nor the County shall be obligated to pay FI for further losses on Defaulted Loans and all further losses on Defaulted Loans shall be solely to FI's own account.

(d) While continued lending activity and recoveries will result in a refunding of the Reserve Account, FI may not utilize new funding to a previously depleted Reserve Account to backfill losses on prior Defaulted Loans. The new funding shall only serve active accounts.

Section 4.02. Collection & Recoveries. The FI shall have the responsibility of sending Defaulted Loans into its collections process and attempting recovery.

(a) Collection process expenses shall be recovered as provided in Section 4.02(b) below. The FI shall retain documentation in its files evidencing any such reasonable collections costs, and upon request, present to the LLRF Administrator for approval.

(b) In the event of recoveries on Defaulted Loans, the FI will deposit back to the Reserve Account the Net Recovered Amount multiplied by the Loss Share Percentage. The Net Recovered Amount shall equal the gross amount of the recovery less reasonable collections costs.

(c) An exception to this is recoveries on Defaulted Loans that were only partially covered by the Reserve Account, as contemplated in Section 4.01(c) where the Reserve Account is exhausted. Under such circumstances, the FI will deposit back to the Reserve

Account the proportion of the Net Recovered Amount equal to the proportion of the Defaulted Loan paid out by the Reserve Account, if any.

## **ARTICLE V Reporting**

Section 5.01. Monthly Reporting. FI recognizes that Program use of public funds necessitates regular reporting.

(a) FI will provide the LLRF Administrator Monthly Reports by the 5<sup>th</sup> of each month or the next business day thereafter, listing the Loan activity in that month. The Monthly Report shall, at a minimum, list all new Loans financed by FI for the preceding quarter and indicate the original principal amount, interest rate and term of each Loan. The Monthly 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 Monthly Report will also indicate any inchoate losses or acceleration notices. The Monthly Report will include a section noting which Loans have been paid in full.

(b) Within ten (10) business days of receipt by the LLRF Administrator of each Monthly Report, if the LLRF Administrator does not communicate its disapproval of the Monthly Report, in whole or in part, the Monthly Report is considered final. Disapproval shall be communicated in writing or e-mail.

(c) In the event Grantor or County requires the LLRF Administrator to submit additional information or revised Monthly Reports, FI agrees to provide such data within 14 days of the LLRF Administrator's written request.

Section 5.02. Nature of Monthly Report Acceptance. Monthly Reports facilitate program record keeping, grant management, and program administration. The LLRF Administrator's or the County's acceptance of a Monthly Report *does not* constitute acceptance of a Loan's or Loan portfolio's eligibility to draw down on the Loan Loss Reserve Fund. Section 4.01(b) of this Agreement governs the manner in which Loan Loss Reserve Fund draw downs will be approved.

Section 5.03. Confidential Nature of Monthly Reports. Both parties agree that information in the reports that can be used to identify specific borrowers is confidential and may only be used by authorized staff. Aggregated information and credit enhancement performance data is property of the County and may only be disclosed to third parties upon prior County approval.

## **ARTICLE VI Assignment & Assurances**

Section 6.01. Assignment by FI. FI may assign its rights under this Agreement with the prior written approval from both the LLRF Administrator and the County. FI

assignment for the purposes of refinancing its Loan portfolio is contemplated, and the LLRF Administrator and the County will support this effort.

## **ARTICLE VII Representations, Warranties, and Covenants**

Section 7.01. Representations of the FI. The FI represents and warrants to \_\_\_ as follows:

(a) It 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 the FI is a party or by which it is bound, or violate any of the terms or provisions of the FI's charter or any judgment, decree, or order or any statute, rule, or regulation applicable to either FI.

(c) This Agreement has been duly authorized and executed by the FI and constitutes a valid and legally binding obligation, enforceable 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 FI in connection with the making and performance of this Agreement.

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

Section 7.02. Indemnification. FI shall indemnify, hold and save harmless, and defend, at its own expense, the County, its elected and appointed officials, officers, representatives, employees, and agents including \_\_\_, from and against any and all liability, suits, claims, demands, damages, causes of action, fees (including reasonable attorney's fees and costs and expert witness fees), and expenses of any nature or kind, that arise out of, pertain to, or relate to the acts or omissions of FI, its employees, officers, agents, or sub-contractors, in the execution and implementation of this Agreement as well as the Lender-Borrower Relationship that the FI will establish with consumers in the lending process.

\_\_\_\_\_ shall indemnify, hold and save harmless, and defend, at its own expense, the County, and their elected and appointed officials, officers, representatives, employees, and agents and FI, its officials, agents, and employees from and against any and all liability, suits, claims, demands, damages, causes of action, fees (including reasonable attorney's fees and costs and expert witness fees), and expenses of any nature or kind, that arise out of, pertain to, or relate to the acts or omissions of \_\_\_\_\_s employees, officers, agents, or sub-contractors, in the execution and implementation of this Agreement.

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

Section 7.03. 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. Notice of material changes shall be in writing and sent in compliance with Section 9.06.

## **ARTICLE VIII The Escrow Agent**

### Section 8.01. General.

(a) The FI shall act as the Escrow Agent for the accounts established through this Agreement, and shall deal with the accounts solely in accordance with (i) this Agreement, (ii) written instructions given in conformity with this Agreement, or (iii) instructions agreed to in writing by the LLRF Administrator. It is understood that this Agreement expressly sets forth all of the duties and obligations of the FI with respect to the Escrow Account and the Reserve 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 FI under this Agreement, the terms and provisions of this Agreement shall govern and control in all respects.

(b) 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. Both parties do acknowledge the County as the legal owner of the Escrow Account and Reserve Account and their assets, and that this Agreement does not infringe on any of the County's ownership rights

(d) In no event (except in the case of the FI's negligence, fraud, or willful misconduct) shall the FI 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.

### Section 8.02. Account Maintenance Fees. FI waives any fees associated with



maintenance of the Escrow Account and Reserve Account.

## **ARTICLE IX Miscellaneous**

Section 9.01. Term of Agreement. This Agreement shall end on September 15, 2012 with 60 days written notice of either party. If no notice is given 60 days prior, this Agreement shall renew for another one-year term and, in the same manner, shall continue to renew in one-year terms, but performance shall under no circumstances extend past July 1, 2017.

Section 9.02. Termination of Agreement. Termination of this Agreement shall not affect the LLRF credit enhancement coverage of loans made prior to termination. Reserve Account Funds shall remain in account in accordance with Section 3.03 until the Qualifying Loan portfolio equals zero dollars.

- (a) This Agreement shall terminate upon written agreement of all of the parties, regardless of cause.
- (b) If the parties are in breach of any provision of this Agreement, the parties shall follow the procedures under Section 9.03. The initiation of arbitral proceedings in accordance with the herein prescribed procedure for Arbitration shall not be deemed a termination of this Agreement.
- (c) Should FI be adjudged bankrupt, or be liquidated, or become insolvent, or should FI make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency, \_\_\_\_ may, without prejudice to any other right or remedy it may have, terminate this Agreement forthwith. FI shall immediately inform \_\_\_\_ of the occurrence of any of the above events.

### Section 9.03. 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 the County to the following department: \_\_\_\_ County Office of Sustainability which shall attempt to mediate or resolve this dispute within 30 days of submission of the dispute.

(b) If mediation by the County fails, both parties shall submit 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 \_\_\_\_\_ County, \_\_\_\_\_, pursuant to its then existing rules and regulations. Any decision so rendered in arbitration shall be binding and final on all parties.

(c) 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 9.04. Use of County Name, Observance Other Laws

(a) FI shall not use the name, emblem or official seal of the County or the Program without its express written permission from the County as facilitated by the LLRF Administrator.

(b) FI shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Agreement. FI shall submit any and all information the LLRF Administrator requires to demonstrate compliance with such laws, ordinances, and codes within fourteen (14) days of the LLRF Administrator'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 9.05. Taxes. FI shall not be exempted from the payment of taxes, if any, that it 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 9.06. 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 FI: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

For \_\_\_\_: \_\_\_\_\_ Principal  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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 9.07. 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 FI without the prior written consent of the LLRF Administrator. Any purported assignment in violation of this Section shall be void.

Section 9.08. 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 9.09. 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. No Waiver; Remedies. No failure on the part of \_\_\_ or the FI 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 9.11. Governing Laws. This agreement shall be governed by and construed in accordance with the laws of the State of California.

Section 9.12. Nondiscrimination. These funds will not be used to discriminate against or give preference to any person or entity on the basis of race, color, sex, religion, national origin, creed, marital status, age, or disability.

**IN WITNESS WHEREOF**, the parties to this Agreement have caused this Agreement to be duly executed.

Financial Institution

By:

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Signature:

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Title:

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Hereunto duly authorized

Loan Loss Reserve Administrator

By:

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Signature:

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Title:

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Hereunto duly authorized

Incorporated by Reference:  
Annex A – Term Sheet for Qualifying Loans