

**Solar Loan Program Agreement**

**City of Milwaukee**

**and**

**Summit Credit Union**

**Date:** \_\_\_\_\_

## **SOLAR LOAN PROGRAM AGREEMENT**

This Solar Loan Program Agreement ("Agreement"), is made this day \_\_\_ April, 2011, by and between the City of Milwaukee, at 200 East Wells St, Milwaukee, Wisconsin ("City") and Summit Credit Union, a credit union authorized to make residential loans in the State of Wisconsin having its principal place of business at 4800 American Parkway Madison, Wisconsin 53718 ("Summit"); [individually a "Party" and collectively the "Parties"].

### **Recitals**

- A.** City has received donated funds to its *Milwaukee Shines* solar program to be used, in part, to develop and deliver a solar loan program (the "Program") with the cooperation of the City of Milwaukee, Wisconsin, to target solar installations on residential structures;
- B.** Solar installations include, but are not limited to, solar electric (up to 6 kW) and solar hot water systems (1-8 panels);
- C.** The Program provides support to encourage solar installations by providing affordable financing;
- D.** City received a \$100,000 donation from We Energies (the "Grantor") in support of the Program, which is the source of capital for providing loan loss reserve security to facilitate solar loans from Summit to residential borrowers within the City of Milwaukee under this Agreement;
- E.** Summit, as lender ("Summit as lender"), will provide loan financing directly to individual eligible residential customers ("Loans") for solar installations and wishes to expand its solar finance activity in volume and to obtain the financial support for its solar financing activities available from City, as provided in this Agreement;
- F.** Summit will also serve as escrow agent ("Summit as Escrow Agent") and will provide fiduciary services to manage the receipt, disbursement, and investment of the City funds as provided in this Agreement;
- G.** City, in cooperation with other program associates, will be working with residential owners to prepare solar projects that meet the requirements of the Program. Preparation of projects will include providing a list of available rebates and a list of qualified installers from whom customers may select to perform the approved work.
- H.** City and Summit wish to establish terms, conditions, and procedures for the origination and servicing of Loans by Summit for the Program with the support of grant funding to provide a loan loss reserve for such Loans and to provide for the Parties' mutual cooperation in marketing the Program and the availability of Loans.

## **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:

“Approved Installer” means a solar electric or solar hot water installer that is listed on the Focus on Energy “Find it With Focus” approved Residential Delivery Ally list, located at [www.finditwithfocus.com](http://www.finditwithfocus.com). If this list managed by Focus on Energy changes or is eliminated at any time during this agreement, City reserves the right to change the definition of “Approved Installer”

“Defaulted Loans” shall be those Loans for which Summit has pursued its normal and usual collection procedures and practices of past due loan payments and for which Summit’s normal and usual collection procedures and practices have triggered an acceleration of the Loan and written notice to the borrower of such, as evidenced by documents defined in Section 4.04.

“Eligible Borrower” means an Eligible Customer that meets Summit’s the loan terms, conditions and underwriting criteria, as set forth in Annex B for an Eligible Project and has no outstanding delinquent property taxes due to the City of Milwaukee.

“Eligible Customer” has the meaning set forth in Annex B.

“Eligible Install(s)” has the meaning set forth in Annex C.

“Eligible Projects” means residential solar projects that meet the procedural and other criteria defined in Annex C and Annex D.

“Escrow Account” has the meaning given in Article III.

“Indemnitee” means the party being indemnified, including such party’s directors, officers, employees, agents, consultants, contractors, and subcontractors.

“Indemnitor” means the Party providing indemnification under this Agreement.

“Intellectual Property Rights” means all trade secrets, patents and patent applications, trade marks (whether registered or unregistered and including any goodwill acquired in such trade marks), service marks, trade names, business names, internet domain names, e-mail address names, copyrights, moral rights, database rights, design rights, rights in know-how, rights in confidential information, rights in inventions (whether registered or unregistered, and any application for the foregoing), and all other equivalent or similar rights which may subsist anywhere in the world.

“Loan Agreement” means the agreement between Summit and the Eligible Borrower that sets forth the terms and conditions of the Loan.

“Loan(s)” shall be loans made by Summit that comply with all applicable laws, ordinances, rules and regulations for the purposes of financing Eligible Projects, using a Loan Agreement developed by Summit 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 or costs of collection.

“Loss Reserve Percentage” shall equal five percent (5%) of the principal amount of a Loan, as applied in Section 4.02.

“Loss Share Percentage” shall equal the values as applied in Section 4.04(d).

“Net Recovered Amount” shall have the meaning given in Section 4.04.

“Personal Data” means any personally identifiable data about individuals and credit union members, including sensitive personal data that is used, received, or accessed by a Party under this Agreement and that relate to, or are provided by, a Party’s director, officer, consultant, employee, agent, client, claimant, prospect, applicant, or member.

“Program” means the Milwaukee Shines Solar Loan Program in the City of Milwaukee.

“Program income” means the program sustainability fee earned or collected under Section 2.06 and the interest that accrues on the Reserve Account and Reflow Escrow Account and any net interest that accrues on the Escrow Account under the terms of this Agreement. Program income funds are the property of the sub-grantee City of Milwaukee.

“Quarterly Report” means the report made by Summit 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 IV, below. An example form Quarterly Report is attached as Annex A.

“Reflow Escrow Account” means a separate Escrow Account designated to receive funds quarterly from the Reserve Account once the total amount in the Reserve Accounts exceeds five percent (5.00%) of the total new outstanding principal of all Residential Loans (See Section 3.07 *et seq.*) and the Program Sustainability fee paid by Summit to City.

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

## **ARTICLE II Program Loans**

### **Section 2.01: Program Loans.**

- (a) Summit as lender will originate and service Loans to Eligible Borrowers approved to finance an Eligible Project based on the Program financing terms conditions, rates and underwriting criteria set forth in Annex B to this Agreement and that meets the Project Eligibility Criteria set forth in Annex C to this Agreement. Target Loan volumes for the Program are set forth in

Section 3.05 of this Agreement. Summit shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the terms of this Agreement, including those applicable to the origination and serving, including collection, of Loans under this Agreement and demonstrate compliance with such laws, ordinances, and codes within thirty (30) calendar days of City's request for such information.

- (b) City will provide a loan loss reserve for Loans made by Summit in the amount and on the terms and conditions set forth in this Agreement. Summit's obligation to originate Loans under this Agreement shall terminate when there are no additional loan loss reserve funds available in either the Escrow Account or the Reflow Escrow Account to provide the Loss Reserve Percentage on a new Loan.
- (c) City shall have the right to review and monitor Loans made by Summit under this Agreement to ensure that the Loans are made only to fund "Eligible Measures" under this Agreement.

Section 2.02: Program Management. Each of the Parties to this Agreement will designate a point person to manage the coordination of the Program and Summit's roles under this Agreement. See Section 10.09 for contact information.

- (a) Point person for City of Milwaukee is Amy Heart, Milwaukee Solar Program Manager
- (b) Point person for Summit is Wendy Rohrer, VP Consumer Lending
- (c) Summit shall ensure that a contact at each of its branches in the City of Milwaukee, Wisconsin is familiar with the Program and conversant with the terms of this Agreement. A list of branch managers for Summit's Milwaukee branch offices shall be provided to City at the beginning of this Agreement and updated if there is a change in branch managers during this Agreement.
- (d) Summit shall issue policy and operating guidelines supporting the Program and distribute to its branch offices. City shall have an opportunity to review and comment on such policy and operating guidelines.

Section 2.03: Training. Summit will train its personnel on the Program.

- (a) Summit will create training materials covering its role in the Program. Summit personnel will use these materials to provide training on the procedures to Summit's own branch personnel located throughout the City of Milwaukee.
- (b) City will develop training materials for Summit to familiarize its personnel with the program design, delivery and administration of the Program.
- (c) These program materials will include information on the Program Eligibility Criteria in Annex C and the Program Eligibility Determination Procedure in Annex D.
- (d) City will develop training materials and train its own Program personnel and partners on its program design and delivery including marketing, outreach, and administration. This training will include ensuring familiarity with all Loan materials and Summit's credit determination procedure.
- (e) City and Summit will assist each other, as needed, in the development of training materials and ensure that all relevant Program personnel of both Parties are well-trained on the Program.

Section 2.04: City Role in Loan Marketing. Summit and City will collaboratively develop Loan marketing materials. City shall develop and ensure effective distribution of marketing materials. The roles and responsibilities include the following:

- (a) City agrees to use its Program personnel and Program associates to notify homeowners in the City of Milwaukee of the availability of Loans from Summit through the Program. City will

work to develop a marketing campaign to promote the Program, including the financing available from Summit.

- (b) City will work to prepare marketing materials for distribution to potential Eligible Customers.
- (c) City will help educate customers on Summit's Loan terms and conditions using information approved by Summit including how to access the Summit website to make an online loan application. An applicant shall be responsible for completing a loan application.
- (d) City shall obtain Summit's prior and specific approval for all use of Summit's name, emblem of logo in marketing materials, media ads, and/or other public outreach.
- (e) Records of its marketing efforts shall be kept by City and available for review by Summit upon request.
- (f) City, with assistance from Summit, shall be responsible for ensuring that all marketing materials are compliant with applicable federal and state laws, including those that apply to the credit union.

Section 2.05: Summit Role in Loan Marketing. Summit will identify its existing members and prospective members in the target residential market sectors throughout the City of Milwaukee. Marketing efforts for Milwaukee Shines Solar Loan Program will be combined with the marketing efforts committed to in Summit Credit Union agreement with Me2, Milwaukee Energy Efficiency loan program.

- (a) Records of its marketing efforts shall be kept by Summit and will be available for review by City upon request.
- (b) Costs of the development, design, production and distribution of Summit marketing materials shall be borne by Summit.
- (c) Summit shall not use the name, emblem or official seal of City of Milwaukee without express written permission of the City.

Section 2.06: Fees. Summit shall pay City a program fee of 0.25% of the principal amount collected from each Loan pursuant to this Agreement to help sustain the Program after the initial grant period. This fee will be calculated based on the average balance outstanding in the program for the quarter multiplied by 0.0025 divided by four (4). Summit will pay this fee through a separate transfer to the Reflow Escrow Account on a quarterly basis. The fees under this section are "Program income."

### **ARTICLE III Escrow Accounts**

Section 3.01: Escrow Accounts. Summit as Escrow Agent hereby establishes an escrow account, account number [ ] (the "Escrow Account") for City. The Escrow Account will be a Summit Money Market Plus 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 National Credit Union Administration (NCUA) to the extent permitted by law. The signature cards for the Escrow Account shall be forwarded to City for completion, and a signature shall be necessary for any withdrawal under Section 3.04(b) below.

Section 3.02: Funding of the Escrow Account.

- (a) Upon the signing by the Parties of this Agreement, City shall make a deposit into the Escrow Account in the amount of \$100,000.00, and Summit as Escrow Agent shall acknowledge to City receipt of such funds upon deposit.
- (b) City may, at its option, make subsequent deposits to the Escrow Account.

Section 3.03: Interest on Escrow Account. Interest shall be earned on and accrue to the Escrow Account at the interest rate applicable to Summit's Money Market Plus Account. If the top tier rate falls below 0.75%, Summit will notify City to discuss investment options. Any interest earned on the Escrow Account may be used by City to pay any liability by the Program to the US Treasury due to an advance of grant funds pursuant to 10 CFR s. 600.225. Any net interest shall be treated as Program income and transferred on a quarterly basis into the Reflow Escrow Account.

Section 3.04: Disbursements from Escrow Account. Disbursements from the Escrow Account shall be made by Summit as Escrow Agent as follows:

- (a) to the Reserve Account, as provided for in Section 4.02, below; and
- (b) to City, as provided for in Sections 3.05 and 3.06, 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 Summit's books or for any debts incurred prior to the date a Loan is executed.

Section 3.05: Reprogramming Funds in the Escrow Account. Funds in the Escrow Account belong to City. Targets for lending are based on a 20:1 leverage so that, for a \$100,000 loan loss reserve with a Loan Loss Percentage of five percent (5%), Summit commits to fund up to \$2,000,000 of Eligible Loans under this Agreement. A target timeline and minimum loan target for funding Eligible Loans is as follows:

- (a) September 30, 2011: \$100,000 in Eligible Loans has been issued.
- (b) December 31, 2011: \$100,000 in Eligible Loans has been issued, with a cumulative loan total of \$200,000.
- (c) March 31, 2012: \$250,000 in Eligible Loans has been issued, with a cumulative loan total of \$450,000.
- (d) June 30, 2012: \$250,000 in Eligible Loans has been issued, with a cumulative loan total of \$700,000.
- (e) September 30, 2012: \$250,000 in Eligible Loans has been issued, with a cumulative loan total of \$950,000,000.
- (f) December, 31, 2012: \$250,000 in Eligible Loans has been issued, with a cumulative loan total of \$1,200,000.
- (g) March 31, 2013: \$400,000 in Eligible Loans has been issued, with a cumulative loan total of \$1,600,000.
- (h) May 31, 2013: \$400,000 in Eligible Loans has been issued, with a cumulative loan total of \$2,000,000.

If these targets are not met, City has the option, in its sole discretion, to re-allocate all or part of the funds remaining in the Escrow Account or held as loan loss reserves in the Reflow Escrow Account pursuant to Section 4.02 to a different credit enhancement option, such as but not limited to an interest rate buy-down or to direct cash incentives. In addition, City has the option, in its sole

discretion, to withdraw funds from the Escrow Account and/or Reflow Escrow Account to re-allocate to other eligible Program uses. To re-allocate and/or withdraw funds, City must submit in writing a showing that the targets set forth above, in this Section 3.05, have not been met and a request for release of the funds back to City for the purpose of re-allocation.

Section 3.06: Termination of Escrow Account. The Escrow Account shall terminate at 11:59 p.m. on May 31, 2013, or earlier pursuant to Section 10.01 or Section 10.21, or by mutual agreement of the Parties, at which time Summit as Escrow Agent shall notify City of any remaining balance in the Escrow Account and remit such balance to City at such financial institution as City may instruct at that time. However, City may extend the termination date by notifying Summit in writing prior to May 1, 2013.

Section 3.07: Reflow Escrow Account. Summit as Escrow Agent hereby establishes a segregated Escrow Account, account number [ ] (the "Reflow Escrow Account") for City. The Reflow Escrow Account will be a Summit Money Market Plus 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 NCUA to the extent permitted by law. The signature cards for the Reflow Escrow Account shall be forwarded to City for completion, and a signature shall be necessary for any withdrawal.

Section 3.08: Funding of the Reflow Escrow Account. If and when total funds in the Reserve Account exceed five percent (5.00%) of the total outstanding principal of all Loans funded by Summit pursuant to this Agreement, Summit as the Escrow Agent shall remit such "excess" funds to the Reflow Escrow Account for City, except that at least \$10,000 above the five percent (5.00%) of total outstanding principal of all Loans funded by Summit shall be maintained in the account until its final termination. Such transfers shall occur quarterly following Summit's submittal of the applicable Quarterly Report.

Section 3.09: Interest on Reflow Escrow Account. Interest shall be earned on or accrue to the Reflow Escrow Account at the interest rate applicable Summit's Money Market Plus account. If the top tier rate falls below 0.75%, Summit will notify City to discuss investment. Interest earned on the Reflow Escrow Account shall be considered Program income.

Section 3.10: Disbursements from Reflow Escrow Account. Funds in the Reflow Escrow Account are property of City. Disbursements, re-programming, or withdrawals from the Reflow Escrow Account are at the sole option and discretion of City, except as to Program income and as otherwise noted in Section 4.02

Once funds are depleted, as defined as Escrow Account balances being less than the originated loans for the current month, funds may be disbursed from the Reflow Account equal to five percent (5.00%) of the new loans originated to the Reserve Account.

Section 3.11: Termination of the Reflow Escrow Account. The Reflow Escrow Account shall terminate at the same time as the Reserve Account in Section 4.06. At such time, Summit shall notify City of any remaining balance (including Program income) and remit all Program income to the City



of Milwaukee to the account identified in Section 4.02(c) and any balance to City at such financial institution as City may instruct at that time.

Section 3.12: Reporting. Summit will include the amount of principal, the interest rate for the Reflow Escrow Account, and the amount of Program income in its Quarterly Report and a summary of all other activity with Reflow Escrow Account.

#### **ARTICLE IV Reserve Account for Residential Loans**

Section 4.01: Reserve Account for Residential Loans. Summit as Escrow Agent hereby establishes a special loan loss reserve account, account number [ ] (the "Reserve Account") for City. This Reserve Account will be a Summit Money Market Plus account, the terms and conditions of which will be identified and described in a separate document from Summit to City. This Reserve Account shall be funded and administered as provided in this Agreement.

Section 4.02: Funding of Reserve Account. The Reserve Account will be funded by monies from the Escrow Account for eligible Loans (see Annex D for Eligible Project determination).

- (a) Ramp-up Period: For the first three (3) Eligible Loans, Escrow Account funds corresponding to an individual Loan shall be transferred from the Escrow Account to the Reserve Account in an amount equaling ninety percent (90%) of the Loan amount. Thereafter, the Reserve Account shall be funded at a rate of five percent (5%). A minimum of \$10,000 shall remain in the Reserve Account to cover any early Loss Amounts ["Minimum Reserve"] with such amount retained from the initial transfer of funds from the Escrow Account to the Reserve Account.
- (b) Funds transferred to the Reflow Escrow Account, except for Program income, shall be used as a loan loss reserve for at least one additional Loan, conditioned upon achieving the lending targets in Section 3.05. Funds in the Reflow Escrow Account used as a loan loss reserve corresponding to an individual Loan shall be transferred by Summit as Escrow Agent from the Reflow Escrow Account to the Reserve Account in the amount equaling the Loss Reserve Percentage of the principal amount of the Loan, as defined in Article I.
- (c) Summit as Escrow Agent shall transfer that portion of the Reflow Escrow Account that constitutes Program income to the City on a quarterly basis by transfer to an account identified by the City.

Section 4.03: Interest on Reserve Account. Interest shall be earned on and accrue to the Reserve Account at the interest rate applicable to Summit's Money Market Plus Account. If the top tier rate falls below 0.75% Summit will notify City to discuss investment options. Interest earned on the Reserve Account shall be considered Program income.

Section 4.04: Declaration of a Defaulted Loan; Use and Disbursement of Funds from the Reserve Account. All funds in the Reserve Account shall be available to Summit to cover the agreed Loss Share Percentage of Loss Amounts on Defaulted Loans. Any losses in excess of the Reserve Account will be paid for by Summit with no loss sharing.

- (a) A Loan will be deemed a Defaulted Loan if Loan payments are past due after Summit pursues its normal and usual collection procedures and processes which have triggered an acceleration of the Loan as evidenced by one of the following documents:

- i. A copy of the Notice to Cure required by the Wisconsin Consumer Act, Wis. Stats s.425.104 *et seq.* sent to the Loan borrower, a sample of which is attached as Annex F; or
  - ii. A copy of the borrower’s Bankruptcy filing.
- (b) Five (5) days after a Loan is deemed a Defaulted Loan, Summit as Escrow Agent will disburse funds from the Reserve Account to Summit, as lender, for the applicable amount, which shall equal the Loss Share Percentage multiplied by the amount of the loss 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), the City shall not be obligated to pay Summit for further losses on Defaulted Loans and all further losses on Defaulted Loans shall be fully to Summit’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 and Summit hereby releases and holds the City harmless from any such additional liability resulting from losses sustained from Defaulted Loans
- (d) The Risk Sharing Formula establishing the Loan Loss Percentage is defined as the percentage of the loss funded by the Reserve Account and the percentage of loss funded by Summit. The percentages will be driven by the FICO score of the borrower at the time of the loan origination. The Loan Loss Percentages are listed in the following table.

FICO Score Range	Loss by Reserve	Loss by Summit
690 and higher	70%	30%
650-689	80%	20%
610-649	90%	10%
Below 610	95%	5%

Applicants without a FICO score will be placed in the Risk Sharing Formula at the 650-689 level (if there are multiple borrowers, the highest FICO score will be used).

- (e) Recoveries on Defaulted Loans. Summit shall apply its normal and usual collection procedures and processes to the recovery of Defaulted Loans. In the event of recoveries on Defaulted Loans, Summit 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 recoveries less reasonable collections costs. Summit shall retain documentation in its files evidencing any such reasonable collections costs, and upon request, present such documentation to CITY.

Section 4.05: Access to Account information: Summit shall provide, upon request by City, access to information on the balances and transaction upon any occurrence of balance change or other change of status to either an Escrow Account or a Reserve Account. In addition, Summit will provide City, upon request, access to information to review the Escrow Account, Reserve Account and Reflow Escrow Account in addition to regular monthly reporting on the balances and transactions in these accounts under section 7.02. However, disbursement of funds shall only occur from an Escrow Account in accordance with Section 3.04, Reflow Escrow Account in accordance with Section 3.10 and from a Reserve Account in accordance with Section 4.04.

Section 4.06: Termination of Reserve Account: The Reserve Account shall terminate on the date when Summit notifies Summit as Escrow Agent that the last Loan under this Agreement has been fully paid. At such time—before May 31, 2013—Summit as Escrow Agent shall notify City of any remaining balance (including interest) and remit such balance to City at such financial institution as City may instruct at that time. If it is after May 31, 2013, Summit as Escrow Agent shall notify the City of Milwaukee of any remaining balance (including interest) and remit such balance to the City to the account identified in Section 4.02(c).

## **ARTICLE V Reporting**

### **Section 5.01: Quarterly Reporting.**

- (a) Summit will provide City the data and a Quarterly Report summarizing the data and loan activity in that quarter within ten (10) business days of end date of each calendar quarter (quarter end dates are 3/31, 6/30, 9/30, and 12/31). Within 15 business days of contract signing, City and Summit will finalize the data points and transfer protocol (e.g Excel, CSV file, etc.) of that data that need to be sent to City, and the information to be included in the aggregated Quarterly Report. The Quarterly Report shall, at a minimum, aggregate the number of new solar Loans financed by Summit for the preceding quarter. The data sent to City will indicate the payment performance on all outstanding Loans, collections if any, and on all other activities on the Escrow Account and Reserve Account, any inchoate losses or acceleration notices, 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. Data to be sent to City and aggregated information to be included in the Quarterly Report is attached as Annex A. The Quarterly Report shall separately identify the amount of Program income in the Reflow Escrow Account.
- (b) Within ten (10) business days of receipt by City of each data transfer and/or aggregated Quarterly Report, if City does not communicate its disapproval of the data transfer and/or the Quarterly Report, in whole or in part, the data and/or Quarterly Report is considered final.
- (c) In the event Grantor requires City to submit additional information or revised data and/or Quarterly Reports, Summit agrees to provide such data within ten (10) business days of City's written request.
- (d) Each Quarterly Report, in the agreed upon format, shall be considered as appended to this Agreement as Schedule 1.

Section 5.02: Resolution of Data Transfers and Quarterly Reports. If City disapproves in writing of a data transfer or a Quarterly Report within the ten (10)-day period following its receipt of the data transfer and Quarterly Report, then:

- (a) City shall immediately state to Summit its reasonable cause for such disapproval and request from Summit such additional information as needed to resolve the matter in question;
- (b) Summit shall provide additional information as requested by City to support and document its data transfer and/or Quarterly Report; and
- (c) Summit and City shall immediately use their best efforts to complete the mutually acceptable corrected data transfer and/or Quarterly Report.

Section 5.03: Use of Data and Quarterly Reports. City may use aggregated information, not specific individual loan information or Personal Data, contained in the data transfer and/or Quarterly Reports

to report publicly or otherwise on any aspect of the Program. City may also request Summit to create more detailed reports such as identifying aggregate Loans by borrower income and other relevant information to help promote and evaluate the Program. No specific Personal Data information shall be included in such reports.

## **ARTICLE VI Assignment and Assurances**

Section 6.01: Negative Pledge. Neither Summit as lender, nor Summit 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 6.02: Assignment by Summit. Notwithstanding the foregoing in Section 6.01, Summit may assign its rights under this Agreement with the prior written approval of City. Summit's assignment for the purposes of refinancing its solar Loan portfolio is contemplated, and CITY will support and cooperate with this effort. In the event of such assignment, City will direct Summit as Escrow Agent to effect and document such assignment and Summit as Escrow Agent will do so as directed by City.

Section 6.03: Escrow Agent Notice. Neither Summit as lender nor Summit 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 Summit as Escrow Agent shall give City prompt notice of any such interest other than that created pursuant to this Agreement of which a responsible officer of Summit, or Summit serving as Escrow Agent, obtains actual knowledge after the date hereof.

## **ARTICLE VII Administration of Account**

Section 7.01: Account Administration. Summit shall administer the Escrow Account, the Reserve Account, and the Reflow Escrow Account and follow such procedures as it would in administering other accounts according to its standard practices.

Section 7.02: Monthly Statements. Summit shall provide to City on a monthly basis, and from time-to-time upon request as set forth in section 4.05, 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 City unless Summit as lender or Summit as Escrow Agent is notified in writing to the contrary within thirty (30) days after the date of such statement. City and Summit 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 10.05.

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

Section 8.01: Representations of Summit as lender and Summit as Escrow Agent. Summit as lender, and Summit as Escrow Agent, individually and jointly represent and warrant to 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 Summit as Escrow Agent or Summit as lender is a party or by which it is bound, or violate any of the terms or provisions of either Summit as Escrow Agent or Summit's charter or any judgment, decree, or order or any statute, rule, or regulation applicable to either Summit as lender or Summit as Escrow Agent.
- (c) This Agreement has been duly authorized and executed by each of Summit as Escrow Agent and Summit as lender 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 Summit as Escrow Agent and Summit as lender 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 City, free and clear of any assignment, pledge, lien, charge, encumbrance, or security interest, other than those granted by City in this Agreement for the purposes of transferring funds under Section 3.04.
- (f) The Reserve Account and all funds from time-to-time deposited therein are and shall be lawfully owned by City, free and clear of any assignment, pledge, lien, charge, encumbrance, or security interest, other than those granted in this Agreement.

Section 8.02: Summit's Indemnification Obligations. Summit as Lender, and Summit as Escrow Agent shall defend, hold harmless and indemnify the City of Milwaukee and their officials, agents, and employees, from and against any and all third-party claims for Damages arising out of, or relating to:

- (a) Any breach of any obligation for which Summit is responsible as an employer or contractor of its directors, officers, employees, agents, consultants, contractors and subcontractors;
- (b) Any breach by Summit (or its employees) of the obligations assumed under, or its representations, warranties or covenants set forth in, this Agreement;
- (c) Any gross negligence, or willful or intentional misconduct of Summit or its employees;
- (d) Summit's failure to pay and discharge any taxes (including interest and penalties) for which Summit is responsible pursuant to the provisions of this Agreement;
- (e) The obligations under this Article do not lapse upon termination of this Agreement. .

Section 8.03: City's Indemnification Obligations. City shall defend, hold harmless, and indemnify Summit and its officials, agents, and employees, from and against any and all third-party claims for Damages arising out of, or relating to:

- (a) Any breach of any obligation for which City is responsible as an employer or contractor of its

- directors, officers, employees, agents, consultants, contractors and subcontractors;
- (b) any breach by City (or its employees) of the obligations assumed under, or its representations, warranties or covenants set forth in, this Agreement;
- (c) any gross negligence, or willful or intentional misconduct of City or its employees;
- (d) City's failure to pay and discharge any taxes (including interest and penalties) for which City is responsible pursuant to the provisions of this Agreement;
- (e) City's failure to keep confidential any Personal Data of Summit members pursuant to Section 10.02 of this Agreement;
- (f) The obligations under this Article do not lapse upon termination of this Agreement.

Section 8.04: Indemnification Procedures. If an Indemnitee seeks indemnification under this Agreement, the Indemnitee shall give prompt notice to the Indemnitor concerning the existence of the indemnifiable event. The Indemnitor shall have the right, at its sole expense, to be represented by counsel of its choice, which must be reasonably satisfactory to the Indemnitee, and to defend against, negotiate, settle or otherwise deal with any claim for indemnification which relates to any Damages indemnified against hereunder; provided, however, that the Indemnitor shall have acknowledged in writing to the Indemnitee of the Indemnitor's unqualified obligation to indemnify the Indemnitee for any Damages for which the Indemnitee is entitled to indemnification under Section 8 of this Agreement. If the Indemnitor elects to defend against, negotiate, settle or otherwise deal with any claim for indemnification which relates to any damages indemnified against hereunder, it shall within ten (10) calendar days (or sooner, if the nature of the indemnification claim so requires) notify the Indemnitee of its intent to do so. If the Indemnitor (a) elects not to defend against, negotiate, settle or otherwise deal with any indemnification claim which relates to any damages indemnified against hereunder, (b) fails to notify the Indemnitee of its election as herein provided, or (c) contests its obligation to indemnify the Indemnitee for such damages under this Agreement, then the Indemnitee may defend against, negotiate, settle or otherwise deal with such indemnification claim. If the Indemnitee defends any indemnification claim, then the Indemnitor shall reimburse the Indemnitee for the expenses of defending such indemnification claim upon submission of periodic bills. An Indemnitee's failure to give prompt notice shall not constitute a waiver of the Indemnitee's right to indemnification and shall affect the Indemnitor's indemnification obligations only to the extent that the Indemnitor's rights are materially prejudiced by such failure or delay. Notwithstanding anything to the contrary set forth herein, (i) an Indemnitee may participate, at its own expense, in any defense and settlement directly or through counsel of its choice, and (ii) the Indemnitor will not enter into any settlement agreement on terms that would diminish the rights provided to the Indemnitee or increase the obligations assumed by the Indemnitee under this Agreement, without the prior written consent of the Indemnitee. If the Indemnitor elects not to defend any claim as is required under this Agreement, the Indemnitee will have the right to defend or settle the claim as it may deem appropriate, at the cost and expense of Indemnitor, and Indemnitor will promptly reimburse the Indemnitee for all costs, expenses, settlement amounts and other Damages.

Section 8.05: Insurance Requirement. Summit agrees to keep in force during the entire period of this Agreement, insurance in the form and in the amount sufficient, in the opinion of City, to protect City against loss in connection with claims alleging injury or damages arising out of Summit's performance under this Agreement. At a minimum, this insurance shall include:

- Workers' Compensation Insurance for Summit's employees to the extent of statutory limits.

- Commercial General Liability Insurance as applicable to Summit's obligations under this Agreement with minimum limits of:
  - Personal Injury: \$1 million per occurrence
  - Bodily Injury and Property Damage: \$1 million per occurrence
- Automobile Liability Insurance which applies to any automobile Summit owned, hired or rented, used in the work performed under this Agreement with minimum limits of \$100,000/\$300,000 for bodily injury and \$300,000 for property damage.
- Professional Liability Insurance with limits of not less than \$1,000,000 for any single occurrence and \$1,000,000 in the aggregate.

Prior to the commencement of Summit's performance hereunder, Summit shall cause its insurance representative to furnish City full and complete original certificates of insurance, specifying City as the Certificate Holder, from its carrier showing the amounts and kinds of insurance coverage carried, and that the coverage will not be cancelled without thirty (30) days advance written notice to City. The certificate of insurance shall be attached as Annex H to this Agreement.

Summit agrees to notify City, in writing, in the event of cancellation or changes in its insurance coverage. Such written notification shall be given no later than five (5) business days from the effective date of cancellation or change.

Section 8.06: Covenants of City and Summit. City and Summit shall each submit to Summit 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 Summit 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 City and Summit hereby warrant to be valid, binding, and duly authorized by its respective governing body.

Section 8.07: 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 9.01: General.

- (a) Summit as Escrow Agent shall not deal with the Escrow Account, the Reserve Account, and the Reflow Escrow 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 City. It is understood that this Agreement expressly sets forth all of the duties and obligations of Summit as Escrow Agent with respect to the Escrow Account, 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 Summit as Escrow Agent under this Agreement, the terms and provisions of this Agreement shall govern and control in all respects.

- (b) Summit 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, Summit 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, 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), Summit as Escrow Agent is authorized to comply therewith in any manner as it or its legal counsel of its own choosing deems appropriate. If Summit as Escrow Agent complies with any such judicial or administrative order, judgment, decree, writ, or other form of judicial or administrative process, Summit as Escrow Agent (except in the case of Summit 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 Summit as Escrow Agent's negligence, fraud, or willful misconduct) shall Summit 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) Summit 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) Summit as Escrow Agent is authorized to comply with and rely upon any notices, instructions, or other communications reasonably believed by it to have been sent or given by a person or persons authorized by any other party.

Section 9.02: Escrow Agent Fees.

- (a) Any fees for or associated with Summit's services as Escrow Agent provided hereunder shall be borne by Summit.

Section 9.03: Replacement and Resignation. Summit as Escrow Agent or any successor escrow agent hereunder may be replaced by City at any time, or may resign upon giving at least sixty (60) days prior written notice of resignation to Summit and City, and such resignation shall be effective from the date specified in such notice. If the office of Summit as Escrow Agent shall be vacant for any reason, City may, upon consultation with Summit, appoint an escrow agent as successor escrow agent, in writing and delivered to the successor escrow agent, the retiring Summit as Escrow Agent, and Summit as lender, 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 Summit as Escrow Agent as if this Agreement were originally executed by such successor escrow agent, and the



retiring Summit 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 10.01: Termination of Agreement.

- (a) This Agreement shall terminate upon the payment in full of all Loans and when all funds, per Section 4.02 and approved by Summit 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 10.05. 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 Summit be adjudged bankrupt, or be liquidated, or become insolvent, or should Summit make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency, City may, without prejudice to any other right or remedy it may have, terminate this Agreement forthwith. Summit shall immediately inform City of the occurrence of any of the above events.
- (e) If the loan targets and timeline outlined in Section 3.05 are not met, City has the option, in its sole discretion, to re-allocate all or part of the funds remaining in the Escrow Account or held as loan loss reserves in the Reflow Escrow Account pursuant to Section 4.02 to a different credit enhancement option, such as but not limited to an interest rate buy-down or to direct cash incentives. In addition, City has the option, in its sole discretion, to withdraw funds from the Escrow Account and/or Reflow Escrow Account to re-allocate to other eligible Program uses. To re-allocate and/or withdraw funds, City must submit in writing a showing that the targets set forth in this Section 3.05, have not been met and a request for release of the funds back to City for the purpose of re-allocation.

### Section 10.02: Protection of Personal Data.

- (a) City shall exercise due care to render all services hereunder within the scope of its authority and pursuant to the criteria, conditions and limitations established by Summit with respect to all credit and credit related products and services offered by Summit, including, without limitation, the taking and processing of applications, the implementation of underwriting criteria, and the description of terms and conditions applicable to the Loans.
- (b) City agrees to comply with the Gramm-Leach-Bliley Act of 1999 and federal and state law, requiring the confidentiality of non-public Personal Data about members of financial institutions. City agrees that any and all non-public Personal Data about members of Summit, provided to it by Summit or member, is proprietary to Summit and will remain the exclusive property of Summit; and shall only be used for the specific purpose for which it was provided; and will implement appropriate security measures and policies to ensure the confidentiality and protection of any and all non-public Personal Data.
- (c) City further agrees that neither it, nor its employees or agents, will disclose or use any such non-public Personal Data about Summit's members, except to the extent as necessary to

perform, effect, administer or enforce any transactions or services as requested in writing by an appropriate representative of member.

- (d) In the event of any unauthorized or improper use or disclosure of non-public Personal Data, City shall promptly notify Summit of such disclosure and shall cooperate with Summit to prevent such unauthorized or improper use or disclosure.
- (e) City shall not use information relating to any member of Summit or any member's application for credit other than for the purpose of fulfilling its obligations under this Agreement. City acknowledges that this confidentiality provision will survive the termination of the Agreement.

Section 10.03: Confidentiality and Trade Secrets. Except as otherwise provided in this Agreement, Summit may not publish, release, disclose or disseminate to anyone other than Summit employees, or entities authorized by City, the result of any work performed or any information obtained from the Program performed under this Agreement.

Materials which are reviewed by Summit in the course of this Agreement can contain trade secrets which are the property of City or which have been purchased or leased by City. Summit may not reveal any trade secret to any person and may not use the material itself for any purpose. However, each Party will continue to be free to use its general knowledge, skills and experience, and to use and disclose any generalized ideas, concepts, know-how, and techniques that are acquired or used during the course of this Agreement, so long as they acquire and apply such information without the use or disclosure or any confidential or proprietary information belonging to the other Party.

Section 10.04: Ownership of Materials Produced. All materials, reports, studies, plans, specifications, data and other information developed, written, prepared, or contributed by Summit pursuant to this Agreement, except for member account data, shall be delivered to and become the property of City and Summit hereby assigns to City all of its right, title, and interest in such materials, reports, studies, plans, specifications, data and information. Summit may retain copies of such items, in any format, solely for its use as legal and historical reference. This Section 10.04 shall not apply to any such materials, reports, studies, plans, specifications, data and other information that contains Personal Data of Summit members, which shall remain the property of Summit and is subject to the confidentiality protections under Section 10.02 of this Agreement.

Section 10.05: Ownership of Information. Notwithstanding anything to the contrary contained herein, all work product resulting from this Agreement produced by City is and shall be the sole and exclusive property of City, and all Intellectual Property Rights in and to such work product shall vest exclusively in City to the fullest extent permitted under Law. Subject to the other terms and conditions of this Agreement, Summit hereby grants to City a non-exclusive, worldwide, royalty-free license to use, execute, reproduce, display, perform, distribute, copy, maintain, modify, enhance and create derivative works of Summit's Intellectual Property Rights solely for the purpose of providing Loans to Eligible Borrowers pursuant to this Agreement. This Agreement does not grant or otherwise give either Party ownership in, or other proprietary rights or license to use, the other Party's Intellectual Property Rights except as expressly provided for herein. Summit shall be entitled to retain copies in any format of such accounting and administrative records as are necessary to provide documentation to support its tax returns and the fulfillment of its obligations hereunder.

Section 10.06: 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 Milwaukee, Wisconsin, pursuant to its then existing rules and regulations. Any decision so rendered in arbitration shall be binding and final on all parties.
- (b) During the dispute or arbitration, the performance of the obligations of the Parties shall not be stopped or put on hold, except for such work as may be the subject matter of the dispute or arbitration or as is directly affected thereby.

Section 10.07: Use of City of Milwaukee Name, Observance Other Laws.

- (a) Summit shall not use the name, emblem or logo of City without City's prior express written permission of City.
- (b) Summit shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Agreement. Summit 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 10.08: Taxes. Summit as a credit union is currently exempt from income taxes. However, Summit shall not be exempted from the payment of taxes, if any, that it incurs in the process of undertaking its obligations under this Agreement, including, but not limited to, taxes due to the government on the gross income.

Section 10.09: 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 Summit:  
Wendy Rohrer, VP Consumer Lending  
Summit Credit Union  
2424 Rimrock Rd  
Madison, WI 53713  
608-243-5000 x 1226  
Wendy.Rohrer@summitcreditunion.com

For City:  
Amy Heart, Solar Program Manager  
City of Milwaukee  
200 East Wells St, Room 603

Milwaukee, WI 53202  
414-286-5593  
aheart@milwaukee.gov

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 10.10: Successors and Assigns. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns, but shall not be assignable by Summit as lender or Summit as Escrow Agent without the prior written consent of City. City's consent shall be freely given for Summit's assignment of interests under this Agreement for the purposes of refinancing its solar Loan portfolio pursuant to Section 6.02 of this Agreement. Any purported assignment in violation of this Section shall be void.

Section 10.11: 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 10.12: No Third Party Beneficiaries. No third party shall be deemed to be an intended or unintended third party beneficiary of this Agreement.

Section 10.13: 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 10.14: 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 10.15: 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 10.16: No Waiver; Remedies. No failure on the part of the City, Summit as lender, or Summit 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 10.17: Governing Laws. This agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. 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 10.18: Nondiscrimination in client services. Summit 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; or
- (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 10.19: Non-Discrimination.

- (a) These funds will not be used to discriminate against any employee or applicant for employment on the basis of religion; 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 provide religious instruction or counseling, conduct religious worship or services, or exert other religious influence in the provision of services.
- (b) In all hiring or employment made possible by or resulting from this Agreement there (1) will not be any discrimination against any qualified employee or qualified applicant for employment because of sex, race, religion, color, national origin or ancestry, age, disability, lawful source of income, marital status, sexual orientation, gender identity or expression, past or present membership in the military service, familial status, or based upon affiliation with, or perceived affiliation with any of these protected categories (Section 109-45 Milwaukee Code of Ordinances). This requirement shall apply to but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (c) Summit shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

Section 10.20: Conflicts of Interest.

- (a) No officer, employee or agent of the City who exercises any functions or responsibilities in connection with the carrying out of any services or requirements to which this Agreement pertains, shall have any personal interest, direct or indirect, in this Agreement. No member of the governing body of the locality and no other public official of such locality who exercises any functions or responsibilities in the review or approval of the carrying out of this Agreement shall have any personal interest, direct or indirect, in this Agreement.

(b) Summit covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Summit further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. An interest on the part of the Consultant or its employee must be disclosed to the City.

Section 10.21: Public Records Law. Records shall be maintained in accordance with requirements prescribed by the CITY with respect to all matters covered by this Contract. Both parties understand that the CITY is bound by Wisconsin Public Records Law, and as such, all of the terms of this Contract are subject to and conditioned on the provisions of Wis. Stat. Section 19.21, *et seq.* Summit acknowledges that it is obligated to assist the CITY in retaining and producing records that are subject to Wisconsin Public Records Law, and that the failure to do so shall constitute a material breach of this Contract, and that Summit must defend and hold the City harmless from liability under that law. Except as otherwise authorized, these records shall be maintained for a period of seven (7) years after receipt of the final payment under this Contract.

**IN WITNESS WHEREOF**, the parties to this Agreement have caused this Agreement to be duly executed as of the date first written above.

\_\_\_\_\_(Summit as lender)  
By: \_\_\_\_\_

\_\_\_\_\_(Summit as Escrow Agent)  
By: \_\_\_\_\_

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

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

\_\_\_\_\_(City)  
By: \_\_\_\_\_

Title: Director, Office of Environmental Sustainability

**List of Annexes**

- A. Residential Loan Data and Quarterly Report Example
- B. Financing Terms, Conditions, and Underwriting Criteria - Loans
- C. Project Eligibility Design Criteria – Loans
- D. Project Eligibility Determination Procedure
- E. Installment Completion Document
- F. Sample form of Notice to Cure Default
- G. Certificate of Liability Insurance

Schedule 1: Each Quarterly Report shall be annexed to and become a part of this Agreement

**Annex A**  
**Residential Loan Data and Sample Quarterly Report**

**Residential Loan Data**

The data points outlined below should be supplied to City on a quarterly basis, per the contract language in Section 5.01. This data should be emailed to Amy Heart (aheart@milwaukee.gov) in an electronic file format. The specific file format is to be agreed upon by City and Summit within 10 business days of signing this contract.

<b>UNIQUE DATA IDENTIFIER</b>	This number will be provided to Summit from CITY.
<b>LOAN APPLICATION ACCEPTANCE</b>	This section is for collecting information related to the rejection of a loan application.
Loan application rejected? (1 if yes)	Indicate if the building owner applied for a loan, but was rejected.
Was loan rejected because of credit worthiness or incomplete application?	Indicate if the loan was rejected based on credit worthiness or an incomplete application.
If loan was rejected based on credit worthiness, select the reason that is most applicable to the loan applicant.	Select the reason most applicable to the loan applicant: Delinquent past or present credit obligations, Bankruptcy past or present, Excessive obligations in relation to income, Insufficient credit file, Credit score below minimum requirement, No FICO score
<b>RESIDENTIAL LOAN TERMS</b>	This section is for collecting information related to the residential loan terms.
Which loan product was used to finance the retrofit? (As listed in the LOAN PRODUCT INFO Tab)	List the loan product offering that the applicant used to finance the retrofit.
Loan Approved Date (mm/dd/yyyy)	If the loan was approved, please enter the date when the loan was funded.
Compounding Period (# of times per year)	Compounding period indicates the number of times a year that the interest rate is applied to the cost of the loan.
Loan Term (# of Months)	The loan term is the period of time agreed upon by the lender and the borrower to repay the loan.
Fixed Interest Rate (%)	The amount of interest charged on a monthly loan payment, expressed as a percentage.
Initial Interest Rate if Variable (%)	The initial interest rate is the rate stated in the adjustable rate mortgage (ARM) note that will be in effect from the date of the first monthly payment for the ARM. The index to which the floating interest rate is attached should be noted in the LOAN PRODUCT INFO tab.
<b>RESIDENTIAL UNDERWRITING CRITERIA</b>	This section is for collecting information related to residential underwriting criteria.
Annual Income (\$)	The annual income of the lendee is part of the process of analyzing a loan application to determine the amount of risk involved in making the loan.



Middle Credit Score (FICO)	FICO is an abbreviation for Fair Isaac Corporation and refers to a person's credit score based on credit history. Lenders and credit card companies use the number to decide if the person is likely to pay his or her bills. A credit score is evaluated using information from the three major credit bureaus and is usually between 300 and 850. When evaluating a borrower's eligibility for a loan, financial institutions typically pull the borrower's credit history which contains all three scores. Since the scores may vary slightly, here we ask for the second highest credit score (median), in order to standardize reporting.
Debt-to-Income Ratio (Front End)	Debt-to-income ratio is a comparison or ratio of gross income to housing and non-housing expenses. With the FHA, the mortgage payment combined with non-housing debts should not exceed 41% of income. The front-end debt-to-income ratio is calculated with housing debts.
Debt-to-Income Ratio (Back End)	Debt-to-income ratio is a comparison or ratio of gross income to housing and non-housing expenses. For example, with the FHA, the monthly mortgage payment should be no more than 29% of monthly gross income (before taxes). The back-end debt-to-income ratio is calculated with non-housing debts.
Property Valuation (\$ or n/a)	Property valuation is an estimation of the current market value of a property.
Outstanding Mortgage Debt (\$)	Please enter any debt the homeowner may already have prior to applying for the loan. This may be a car loan or credit card debt that is not yet paid.
Outstanding Home Equity Line (\$)	Home equity line of credit is a mortgage loan, usually a second mortgage, allowing a borrower to obtain cash against the equity of a home, up to a predetermined amount.
Outstanding Other Debt (\$)	Please enter any debt the homeowner may already have prior to applying for the loan. For example, these may include debts on a car loan or credit card. Definitions will depend on the financial institution.
Existing Liens on Property (\$)	A lien is a legal claim against property that must be satisfied when the property is sold.
Loan-to-Value Ratio	Loan-to-value ratio is a percentage calculated by dividing the amount borrowed by the price or appraised value of the home to be purchased; the higher the LTV, the less cash a borrower is required to pay as down payment.
Previous bankruptcy or foreclosure in past 7 years? (1 if yes)	Please indicate if the applicant has previously filed for bankruptcy or had a property foreclosed in the last 7 years.
<b>Other (write here to specify)</b>	If there are other important residential underwriting criteria that are not already captured by this section, please describe them here.

## Default Loan Data

<b>UNIQUE DATA IDENTIFIER</b>	This number will be provided to Summit from City.
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<b>PAYMENT HISTORY</b>	Provide the payment history for retrofit projects that have received a financial loan that went into default during anytime in the quarter. You do not need to report loans that have been current each month (i.e. if a borrower defaulted in Q1, quickly repaid the loan, and was current all of Q2, you only need to report the loan for Q1).
Month	Month
Payment Status	<p><b>Payment History Key</b></p> <p> <i>0 = current account      1 = 30-59      2 = 60-89 days      3 = 90-119 days</i>  <i>4 = 120-149 days      5 = 150-179 days      6 = 180+ days      B = no pmt data available,</i>  <i>D = no pmt data available      E = 0 balance or current      L = charged off      because account not yet opened</i> </p>

<b>DELINQUENCY</b>	
Date of Default	First date when the loan went 30 days past due
Default Amount (\$)	Total amount passed due
Current Balance (\$)	Principal balance due on a loan that is unpaid by the borrower.

<b>CHARGE OFFS</b>	
Sale of Assets (\$)	Proceeds from sales of assets to recover unpaid loan amount (if applicable)
Net Lender Loss (\$)	The net lender loss is the total amount of money lost by lender (i.e. current balance - assets sale amount).

**Quarterly Report (EXAMPLE ONLY)**

QUARTERLY REPORT to CITY from Summit as lender and Escrow Agent  
Pursuant to Solar Loan Program Agreement dated [ ], 20XX

Reporting Period: [ ], 2011 to [ ], 2011

Total number of loan applications for the period: \_\_\_\_ Approved \_\_\_\_ Denied

**Funds to be Transferred from Escrow Account to Reserve Account  
for these new Loans as per Agreement Section 4.02**

50.00% \$1,600

Funds Transferred from Escrow Account to Reserve Account, per all prior Quarterly Reports \$200,000  
Funds Transferred from Escrow Account to Reserve Account, with this Quarterly Report \$1,600  
Total Funds transferred from Escrow Account to Reserve Account, as of this Quarterly Report \$201,600

**Funds to be Disbursed to Summit from Reserve Account for total Net Loss  
Amount per this Quarterly Report, as per Agreement Section 3.04**

90.00% \$10,800

Funds Disbursed to FI from Reserve Account, per all prior Quarterly Reports \$0  
Funds to be Disbursed to FI from Reserve Account, with this Quarterly Report \$10,800  
Total Funds Disbursed to FI from Reserve Account, as of this Quarterly Report \$10,800

**Quarterly Portfolio Data**

1	Total Loans in Segment, prior Quarterly Report	
2	Total # New Loans Added, this Quarterly Report	
3	Total # Loans as of this Quarterly Report	
4	Total Original Loan Principal, all Loans in Segment, with prior Quarterly Report	
5	Total Original Principal, all New Loans, this Quarterly Report	
6	Total Original Principal, all Loans in Segment, this Quarterly Report	
7	Total Outstanding Principal, all Loans in Segment, as of Mar 31, 2010	
8	# Loans current	
9	# Loans past due 30 days	
10	# Loans past due 60 days	
11	Total Outstanding Principal, all Loans in Segment past due 60 days	
12	Total outstanding principal of Loans in default	

**Fully Matured Loans**

Total # Loans that were paid in full during Quarterly

1 Report period

Total \$ amount moved from Reserve Account to  
Reflow Escrow Account during Quarterly Report

2 period

Prepared By: \_\_\_\_\_

Approved By: \_\_\_\_\_  
Manager [ ] Summit

**Annex B**  
**Financing Terms, Conditions, and Underwriting Criteria – Residential Loans**

**Eligible Customer(s):** means a resident owner(s) of single family residences or owner-occupied multi-family residences up to three dwelling units located within City of Milwaukee, Wisconsin. An owner must own the property as an individual natural person, not as an LLC, trust, or other form of ownership.

**Eligible Borrower:** has the meaning set forth in Article I of this Agreement.

**Program Lender:** Summit Credit Union

**Use of Proceeds & Eligible Projects:** Pursuant to this Agreement Loans must fund Eligible Projects. Multi-family residences qualify for Eligible Loans if and only if they are occupied by an Eligible Customer and comply with Program requirements.

**Minimum Loan:** \$1,000

**Maximum Loan:** \$20,000

**Minimum Down Payment:** No down payment is required.

**Loan Term:** Not to exceed 15 years.

**Fees:** Summit shall charge the necessary UCC-1 Financing Statement fee to the Escrow Account for each Eligible Loans, so an individual Eligible Borrower does not pay that fee. No other fees shall apply.

**Payment Schedule:** Payments will be fully amortized, fixed monthly amounts of principal and interest, beginning with the initial payment.

**Interest Rate:** Summit will be applying the following interest rates to these loans and they will be underwritten as unsecured credits. Interest rates shall be based on the Prime rate as published in the Wall Street Journal as of the date of the loan application approval plus an adder of 2.25% for Loans with a term over 60 months. For Loan with a term of 60 months or less, the interest rate shall be on the Prime rate as published in the Wall Street Journal plus an adder of 1.50%.

Rates are subject to change based on the formulas noted above or by agreement of the Parties to change those formulas. The Parties agree to develop alternate rate formulas that may be included in this Agreement. Any changes in rates will be communicated to City. Rates will be fixed for each loan at the time of loan application approval and for 90 days after such approval unless the interest rate should decrease during that period, in which case the loan shall be made at the lower interest rate plus appropriate adder.

**Prepayment Option:** Interest on all loans is calculated using the simple interest approach, and loans will not include any penalties for pre-payment.

**Loan Disbursement:** Loans will be disbursed only payable to the Approved Installer(s). Summit is allowed to distribute loan funds based on an agreed upon contractor schedule if so desired. Each Loan disbursement on each project will be contingent upon prior written approval by Eligible Borrower and Approved Installer(s), and a written approval from Focus on Energy based upon an Accepted Small System Incentive Registration, an example of which is set forth in Annex E. To receive final payment, Approved Installer(s) will provide a copy of final approved City inspections, We Energies interconnection agreement, and final bill of project costs.

**Loan Security:** All loans may 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 Eligible Borrower’s monthly income. Borrowers will be fully obligated to repay the credit via the promissory note and any associated filing to perfect Summit’s interests.

Should the Eligible Borrower default on repayment, the Loss Reserve Account will be drawn upon to cover a portion of the loss.

**Underwriting Criteria:**

The underwriting criteria to be used by Summit both for automatic approval and for reconsideration of Loan applications initially denied are as follows. First line approval as follows:

	FICO	690 AND UP	689-650	649-610	609 AND DOWN
Characteristic	Comparison				
Length of Employment (at least one applicant)	Greater than or equal to	12 months	24 months	24 months	24 months
Amount	Less than or equal to	20000	20000	20000	20000
Term	Less than or equal to	180 months	180 months	180 months	180 months
Number of Trade lines in credit report	Greater than or equal to	2	3	5	5
Debt to Income	Less than or equal to	.45	.40	.35	.30
# of Open Collections		2	1	0	0
Amount past due	Less than or equal to	50	0	0	0

Number of Public Records	Less than or equal to	2	0	0	0
There are no delinquent property taxes owed the City on the property where the work will be performed	Applies to all borrowers in all FICO score categories				

Loans not meeting these guidelines will be individually reviewed by Summit. Compensating factors and strengths of the borrowers may be considered (such as: anticipated savings in energy bills, degree of change to monthly financial obligations, remaining disposable income or a strength in one particular characteristic), and loans may still be approved by Summit based on strength of those compensating factor(s) offsetting another weakness.

**Loan Origination Procedures and Schedule:**

- Loan applications must be submitted to one of Summit’s branches.
- Applications may be submitted in person, by fax, by email, or by mail. The application must note the street address of the subject property and the owner(s) of the subject property.
- An approved Loan application shall only be effective for ninety (90) days after the date of approval by Summit. After that time an applicant must file a new application for a Loan. An initial Loan application shall include the following:
  - An estimate of the cost of the intended work, a general description of the potential Eligible Project including Eligible Measures, and an estimate of the amount of potential financing requested.
  - Income documentation: current pay stub, evidence of retirement/investment income, or for self-employed applicants a full, signed copy of their last federal income tax return (unless the applicant is a current member of Summit with such information already on file) and other information necessary to complete the Summit loan application..
  - Summit will underwrite the complete loan application and associated documentation, and will have a benchmark to respond back to the applicant within ten (10) minutes of the application. The number of applications received, approved and denied shall be reported to City as part of Summit’s Quarterly Report. For declined applications, the reasons for decline will be disclosed only to the applicant. All initial loan application approvals shall be conditioned upon Summit’s receipt of the final bill for the installed cost(s) of Eligible Measures for an Eligible Project from the Approved Contractor(s) signed by the borrower and Approved Contractor and a signed, fully completed Installation Completion Certificate. An initial conditional Loan approval shall include an amount that includes a ten percent (10%) cost overrun contingency. An initial conditional Loan application approval shall only be effective for ninety (90) days within which the Eligible Project must be completed and all of the requirements for a final contract approval have been satisfied.

- Summit shall not execute a final loan agreement with an Eligible Borrower or make payment to an Approved Contractor(s) until it has received final Eligible Project costs and received a fully signed Installation Completion Certificate. Once Summit has executed a final Loan agreement with the Eligible Borrower, Summit shall pay the Approved Contractor(s) within 48 business hours of the signing of said Loan Agreement if a Right to Cancel pursuant to Chapter 423 of the Wisconsin Statutes is not applicable and within six (6) business days of the signing of the final Loan agreement if a Right to Cancel pursuant to Chapter 423 if Summit is uncertain whether a Right to Cancel pursuant to Chapter 423 applies to the Loan agreement.
- Loan documents for execution by the Eligible Borrower and Summit will normally be available the following business day of an approved application. Loan closing will occur in a Summit branch or where there are multiple borrowers in a limited geographic area that is not easily accessible to a Summit branch office at a location identified by Summit that is convenient to those borrowers. City may request that Summit close Loans in this latter situation as appropriate.

**Annex C**  
**Project Eligibility Design Criteria – Residential Loans**

**Borrowers:** Eligible Borrowers as defined in Annex B.

**Eligible Installs:** Eligible Installs are solar electric or solar hot water installations as described in the Focus on Energy Small System Incentive Registration. As outlined in the Focus on Energy Small System Incentive Registration, an eligible solar hot water installation for Eligible Borrows is a system between one (1) and eight (8) panels. An eligible solar electric system installation for Eligible Borrows as outlined above is a system between 0.5 and 6.0 kW (DC).

**Eligible Measures:** All equipment, labor and permits (electrical, plumbing and building), and interconnection fees directly related to the installation of Eligible Projects can be included in the Eligible Loan. Structural re-enforcement can be included in the Eligible Loan, so long as there is an Eligible Project included in the loan.

**Eligible Projects:** To qualify an Eligible Project, an Approved Installer must submit the *Focus on Energy Small Solar System Incentive Registration Form*, and receive written notification from Focus on Energy that the project has been registered and approved for a listed incentive amount. Eligible Projects as defined in Annex D must be completed by an Approved Installer(s). City shall provide Summit direct access to a current list of Approved Installers under the Program.



**Annex D**  
**Project Eligibility Determination Procedure**

1. All prospective residential projects must submit the *Focus on Energy Small Solar System Incentive Registration Form*, and receive notification from Focus on Energy that your project has been registered with an estimated incentive amount. If the lead on a prospective project first originates with Summit, Summit will coordinate with City or its designee to evaluate the project for eligibility. If the lead on a prospective project first originates with City, City will coordinate with Summit to evaluate the project for financing eligibility. City and Summit will coordinate together in the Loan origination and approval process.
2. A prospective project will receive approval as an “Eligible Project” if it meets the following criteria:
  - a. The prospective borrower meets Summit’s underwriting criteria, as set forth in Annex B and Annex C, and Summit has issued a conditional loan approval with disbursement of funds conditioned upon Summit receiving a copy of final approved City inspections, We Energies interconnection agreement, and final Approved Installer billed costs at the completion of project; and
  - b. The prospective project meets Program eligibility requirements as set forth in Annex C.
3. Upon completion of installation, the Approved Installer(s) will receive payment after Approved Installer submits a copy of the final building inspection, final electrical or plumbing inspection (as determined by type of system install), completed We Energies interconnection agreement, and final copy of installer billed costs.

## Annex E

[http://www.focusonenergy.com/files/Document\\_Management\\_System/Renewables/renewablereSolarorwind\\_applicationform.pdf](http://www.focusonenergy.com/files/Document_Management_System/Renewables/renewablereSolarorwind_applicationform.pdf)



Annex F
Sample Notice to Cure

PO BOX 8046, MADISON WI 53708-8046 | SummitCreditUnion.com | 608-243-5000 | 800-236-5560

NOTICE OF RIGHT TO CURE DEFAULT
(Required before legal action for collection is commenced. Wisconsin Statutes 425.105)

TO: In responding Please Contact:

Our records show you are in default on the following loan: # taken out with an original principal balance of \$ for nonpayment of amounts due.

You may cure the default on or before by paying:

Table with 2 columns: Description (Late Payment) and Amount (\$). Contains 8 rows of late payment entries.

Total \$ to the credit union

You have the right to a court hearing on the issue of default before any repossession of any Collateral\*, but surrendering the Collateral you waive such right. You may initiate surrender by contacting the creditor and suggesting arrangements. \*as defined in Wis. Stat. Sec.425.202 Pursuant to the terms and the agreement executed by you, Summit Credit Union has the right to freeze all shares and deposits in your individual and/or joint accounts up to the amount of the default contained in the Notice of Right to Cure Default.

You will be responsible for all NSF fees as a result of this freeze.

In the event that you have not cured the default by the time frame indicated on this Notice of Right to Cure Default, Summit Credit Union will either apply the funds to you delinquency or retain the funds until the delinquency is resolved.

We have told a credit bureau about a late payment, missed payment or other default on your account. This information may be reflected in your credit report.

Dated

SUMMIT CREDIT UNION
PO BOX 8046
Madison, WI 53708

By: \_\_\_\_\_

**Annex H**  
**Certificate of Liability Insurance**

**Schedule 1**  
**Quarterly Reports**

**[It is intended that each Quarterly Report be annexed to and become part of this Agreement]**