

## AGREEMENT FOR ADMINISTRATION OF CITY OF FRESNO REVOLVING LOAN FUND

THIS AGREEMENT is made and entered into effective the 22<sup>nd</sup> day of November, 2019 (Effective Date), by and between the CITY OF FRESNO, a California municipal corporation (City), and Cen Cal Business Finance Group, Inc., a California Non-profit Corporation (Administrator).

### RECITALS

- A. In 1980 the U.S. Department of Commerce – Economic Development Administration (EDA) approved a Grant (the “Grant”) to City to establish a revolving loan fund program (RLF).
- B. The City is obligated to administer the Economic Adjustment Assistance Grant in compliance with the (i) Grant Award; (ii) Revolving Loan Fund Financial Assistance Award Standards Terms and Conditions, dated March 14, 2018, as may be amended; and (iii) Revolving Loan Fund Program Administrative Plan (Plan), approved October 10, 2019, as may be amended (Program Requirements).
- C. RLF Grant funds may only be lent to businesses that meet Program Requirements, and any guidelines that the City has established, and the administrator may establish under this agreement that are consistent with the program requirements.
- D. The Program Requirements permit the City to engage the services of another organization to perform certain duties and responsibilities under the RLF Grant.
- E. Administrator is engaged in the business of furnishing technical and expert services as an administrator of loan programs and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement.
- F. Administrator has submitted a proposal to the City under cover letter dated April 16, 2019, in response to the City’s soliciting Request for Proposals (RFP) for the administration of the RLF, under RFP No.9481.
- G. The EDA wants to continue the RLF Program with the City, and the City wants to engage Administrator as an independent contractor to administer the RLF for the City.
- H. Administrator acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19.
- I. This Agreement will be administered for the City by its Economic Development Department Director (Director) or designee.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Condition Precedent to the Effectiveness. This Agreement will not become effective until the City and Administrator have met any conditions imposed by the EDA to permit Administrator to draw against the RLF Grant fund for making loans and paying administrative expenses including, without limitation, making any modifications to this Agreement necessary to comply with Program Requirements.

2. The Services. City engages Administrator to provide the services set forth in **Exhibit A** and to market and administer the RLF Program that (i) strictly complies with the Program Requirements, current copies of which have been delivered to Administrator, and (ii) complies with the City’s guidelines set forth herein, to the extent practicable and consistent with the Program Requirements (collectively, the Services). As of the Effective Date, the balance available in the RLF

Grant is approximately \$795,000. Administrator shall maintain a local office and use local underwriting and approval.

3. Compensation. Administrator's compensation for the Services is payable from and limited to the RLF income it generates through granting and collecting loans. Administrator will retain its compensation from the RLF income strictly as permitted under the Program Requirements for administration expenses. Income generated under the RLF may include, to the extent permitted under Program Requirements, loan packaging, fee income, interest income, and loan servicing income. City will not compensate Administrator for Services in any other manner. City will not pay any additional compensation to Administrator, and will not reimburse it for any administrative, marketing, or other costs associated with its Services. Subject to the limitations above, any compensation for administration expenses will be limited to the following fees at the following rates:

(i)	Interest Rate Charged	Prime + min 2.5% Fixed for Life of Loan	
(ii)	Application Fees		\$ 0
(iii)	Packaging Fees *		\$ 0
(iv)	Loan Origination Fee		1.5%
(v)	Servicing Fees		\$ 1,300–2,500
(vi)	Other Fees **	Describe:	
		Document Preparation	\$ 500
		Credit Report	\$ 50 - \$100
		Fresno County Rec. Fees**	\$ 200

No prepayment penalties  
Free business plan assistance

\*The application fee [is/is not] in addition to packaging fees. N/A

\*\*Any public filing fees will be at the then current rate.

Minimum interest rate charge per EDA guidelines is 4%.

4. Term of Agreement; Suspension and Termination.

(a) The term of this Agreement shall be 5 years beginning on the Effective Date, subject to any earlier termination in accordance with this Agreement.

(b) The City may terminate this Agreement without cause by giving the other party 60 days' prior written notice. Upon written notice to the Administrator, City may suspend new lending activity by Administrator pending Administrator's taking corrective actions as specified by the Director. Either party may terminate this Agreement with cause after giving the other party prior written notice and at least 30 days to cure the default. Upon expiration or early termination of this Agreement by City without cause, Administrator shall aid the City in continuing, uninterruptedly, the requirements of this Agreement, by continuing to perform on a temporary basis, when specifically requested to do so in writing by the Director, for a specified term not to exceed twelve months.

(c) On expiration or termination of this Agreement, any uncollected principal and interest loan funds, any undisbursed RLF Grant funds, and any undisbursed revolving borrowing base, subject to Program Requirements, will be paid or assigned to the City. Unless modified by mutual agreement of the parties, on expiration or termination of the Agreement, Administrator will return all documents to City or, at the City's request, to the City's new RLF Administrator. Administrator will cooperate with City and any new RLF Administrator to coordinate transfer of documents, payments, and servicing data including, without limitation, all computer files.

(d) If Administrator fails to perform any obligation under this Agreement, and does not cure the failure within 30 calendar days after City gives written notice of it, the failure will be a material breach of this Agreement. The City may after that immediately terminate this Agreement, and exercise any right, remedy, or privilege available to it under this Agreement, at law or in equity.

5. Assurances and Force Majeure.

(a) Administrator shall provide City with adequate written assurances of future performance, upon Director's request, in the event Administrator fails to comply with any terms or conditions of this Agreement.

(b) Administrator shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Administrator and without its fault or negligence such as, acts of God or the public enemy, acts of City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Administrator shall notify Director in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Director of the cessation of such occurrence. Administrator shall have no claim for damages against City for any such cause of delay, but shall be entitled to an extension of time necessary to complete performance as determined by the Director. The decision of the Director as to the number of additional days, if any, to be allowed for completion on account of such occurrence will be given in writing to Administrator.

6. Compliance with all Laws and Regulations. Administrator will perform the Services in compliance with the Program Requirements, and all applicable laws, ordinances, regulations, and guidelines, as existing, and after this amended, whether federal, state, regional, or by local administrative or regulatory agencies.

7. Books and Records. Administrator will maintain segregated accounts, books, and records for the RLF Program, and will not combine any accounts, books, or records with those for loans it administers for any other program or entity, or its general books, accounts and records. Administrator will maintain the records for at least 4 years after this Agreement terminates, or 4 years after each loan matures or is paid, whichever is later. In the event Administrator is making loans to a borrower under both the RLF and another program, copies of all application documents including, without limitation, loan applications and financial statements, shall be included in the RLF file. Copies of all updated financial statements prepared during the servicing period shall also be included in the RLF file. This section shall survive expiration or termination of this Agreement.

8. Audits and Reports. Administrator will comply and be solely responsible for complying with reporting and audits required by EDA and its program requirements. Administrator will prepare reports and audits as required by EDA and Program Requirements and forward to the City. The City is responsible to the EDA for the compliance and reporting requirements. The City and the EDA may audit Administrator's books and records for the RLF anytime during this Agreement and at least 4 years after this Agreement terminates or 4 years after each loan matures or is paid, whichever is later. Upon City's request, Administrator shall immediately make available and give City staff access to Administrator's RLF Grant program books, records, loan files, financial statements, and computer or other electronic records. City will conduct any audits during normal business hours. Audits performed by outside Certified Public Accountants will be at the expense of the requesting party. Administrator will cooperate with City by providing information needed to satisfy City's Single Audit requirements. Any monies determined to be owed to the City's RLF Program or to the EDA shall be paid promptly by Administrator along with any interest charge approved in accordance with the Program Requirements. This section shall survive expiration or termination of this Agreement.

9. Indemnification.

(a) To the furthest extent allowed by law, Administrator shall indemnify, hold harmless and defend City and each of its officers, officials, employees, agents, and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including

reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Administrator, its principals, officers, employees, agents, or authorized volunteers in the performance of this Agreement.

(b) Administrator shall protect and hold City and EDA harmless from and against all liabilities that may arise as a result of providing an award to assist (directly or indirectly) in site preparation or construction as well as renovation or repair of any facility or site. This applies to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of borrower or any of its predecessors on the property.

(c) If the Administrator subcontracts all or any portion of the Services to be performed under this Agreement, the Administrator shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents, and authorized volunteers in accordance with the terms of preceding paragraph (a) and City and EDA in accordance with the terms of preceding paragraph (b).

(d) This section 9 shall survive the termination or expiration of this Agreement.

#### 10. Insurance.

(a) Throughout the life of this Agreement, Administrator shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** or as may be authorized in writing by City's Risk Manager or designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement, Administrator or any of its subcontractors fail to maintain any required insurance in full force and effect, all Services and work under this Agreement shall be discontinued immediately, and all compensation due or becoming due to Administrator shall accrue to the City's account until City receives notice and evidence that Administrator has restored the required insurance to full force and effect and has paid the premiums therefore for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve Administrator of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by Administrator shall not be deemed to release or diminish the liability of Administrator, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Administrator. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Administrator, its principals, officers, agents, employees, persons under the supervision of Administrator, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of City, Administrator shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If Administrator should subcontract all or any portion of the Services to be performed under this Agreement, Administrator shall require each subcontractor to provide insurance protection in favor of City and each of its officers, officials, employees, agents, and authorized volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with Administrator and City prior to the commencement of any Services by the subcontractor.

11. Fidelity Bond or Crime Insurance. Throughout the life of this Agreement, Administrator will either pay for and maintain in full force and effect (i) a Fidelity Bond from a Treasury Listed corporate surety, admitted by the California Insurance Commissioner to do business in the State of California, in the amount of \$880,000, naming the City and EDA as obligees thereunder; or (ii) a policy of Commercial Crime insurance in accordance with section 10, above, which shall include coverage for employee theft, with limits of liability of not less than \$880,000 (the policy shall contain a Blanket Client Property – Off Premises Endorsement and Joint Loss Payee Endorsement in favor of the City).

12. Conflict of Interest and Non-Solicitation.

(a) Prior to City's execution of this Agreement, Administrator shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, Administrator shall have the obligation and duty to immediately notify City in writing of any change to the information provided by Administrator in such statement.

(b) Administrator shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, 13 C.F.R. § 302.17, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of City, Administrator shall provide at its sole cost and expense a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, Administrator and the respective subcontractor(s) are in full compliance with all laws and regulations. Administrator shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Administrator shall immediately notify City of these facts in writing.

(c) In performing the work or Services to be provided hereunder, Administrator shall not employ or retain the services of any person while such person either is employed by City or is a member of any City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) Administrator represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither Administrator, nor any of Administrator's subcontractors performing any Services, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with the RLF unless fully disclosed to and approved by the City Manager, in advance and in writing. Administrator and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with the RLF unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, Administrator shall remain responsible for complying with paragraph (b), above.

(f) If Administrator should subcontract all or any portion of the work to be performed or Services to be provided under this Agreement, Administrator shall include the provisions of this section in each subcontract and require its subcontractors to comply therewith.

(g) This section 12 shall survive expiration or termination of this Agreement.

13. Further Grant Applications and Responses. Administrator, with support from the City, will solicit, apply and respond appropriately to future EDA grant possibilities in support of this RLF. RLF funds and or income will not be utilized to cover related expenses for the solicitation of future grant funds.

14. Administrator Representations and Warranties. Administrator represents and warrants that the factual statements set forth in its proposal to the City under the RFP are true and, during the terms of this Agreement, Administrator will notify the City of any changes that may affect Administrator or its ability to carry out its obligations under this Agreement.

15. Independent Contractor.

(a) In the furnishing of the Services, Administrator is acting solely as an independent contractor. Neither Administrator, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of City for any purpose. City shall have no right to control or supervise or direct the manner or method by which Administrator shall perform its work and functions. However, City shall retain the right to administer this Agreement so as to verify that Administrator is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between Administrator and City. Administrator shall have no authority to bind City absent City's express written consent. Except to the extent otherwise provided in this Agreement, Administrator shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, Administrator and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to City employees. Administrator shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Administrator shall be solely responsible, indemnify, defend and save City harmless from all matters relating to employment and tax withholding for and payment of Administrator's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in City employment benefits, entitlements, programs and/or funds offered employees of City whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, Administrator may be providing services to others unrelated to City or to this Agreement.

16. Nondiscrimination. To the extent required by controlling federal, state and local law, Administrator shall not employ discriminatory practices in the provision of Services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, Administrator agrees as follows:

- (i) Administrator will comply with all applicable laws and regulations providing that no person shall, on the ground of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.
- (ii) Administrator will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Administrator shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race,

religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era. Such requirement shall apply to Administrator's employment practices including, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Administrator agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

- (iii) Administrator will, in all solicitations or advertisements for employees placed by or on behalf of Administrator in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran, or veteran of the Vietnam era.
- (iv) Administrator will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of Administrator's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

17. Recycling Program. In the event Administrator maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, Administrator at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by City's Solid Waste Management Division, for each office and facility. Literature describing City recycling programs is available from City's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact City's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of City's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

18. General Terms.

(a) City Authorized Signature. Except as otherwise provided by law, all notices expressly required of City within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or designee.

(b) Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as Administrator represents to City that Administrator is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the Services, City relies upon the skill of Administrator to do and perform such Services in a skillful manner and Administrator agrees to thus perform the Services. Therefore, any acceptance of such Services by City shall not operate as a release of Administrator from said professional standards.

(c) **Notices.** Any notice, request, demand, consent, approval or other communication (the "Notice") required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile provided the machine prints a dated and time confirmation and the noticing party provides a hard copy by mail, or sent by United States registered or certified mail with postage prepaid, return receipt requested, addressed to the party to which the Notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written Notice. Unless otherwise specified, a Notice will be deemed given when received if sent return receipt requested or the date of receipt is otherwise verifiable, but if delivery is not accepted or verifiable, then delivery will be deemed on the earlier of the date that delivery is refused or 48 hours after Notice is sent.

(d) **Binding.** Subject to paragraph (e), below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees, and representatives.

(e) **Assignment.** This Agreement is personal to Administrator and there shall be no assignment, sale or subcontracting by Administrator of its rights or obligations under this Agreement without the prior written approval of the Director or designee. Any attempted assignment, sale or subcontracting by Administrator, its successors or assigns, shall be null and void unless approved in writing by the Director or designee. Administrator shall not subcontract to any federal agency, instrumentality, bureau, or employee without the prior approval of the EDA.

(f) **Waiver.** The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

(g) **Governing Law and Venue.** This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

(h) **Headings.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

(i) **Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

(j) **Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

(k) **Attorney's Fees.** If any arbitration, proceeding, controversy, claim, dispute or litigation occurs between the parties or by EDA to enforce or interpret any of the provisions of this Agreement or the Program Requirements, the nonprevailing party will pay to the prevailing party all costs and expenses including, without limitation, reasonable attorneys' fees, incurred therein. Attorneys' fees will include, without limitation, fees incurred in-house, during a trial of the action, and because of an appeal from any judgment entered in the litigation or proceeding.

(l) **Precedence of Documents.** Administrator will, in all respects, perform the Services and carry out the terms of this Agreement according to the Program Requirements. The



priority or precedence of authority in interpreting and carrying out this Agreement will be as follows: (i) the law and regulations specifically applicable to the RLF Grant program, (ii) the Program Requirements issued by the EDA, (iii) the guidelines and requirements established by the City (including, without limitation, the Plan), and then (iv) the procedures established by Administrator.

(m) Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

(n) No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

(o) Time is of the Essence. Time is of the essence of every provision herein contained.

(p) Independent Advice. Each party's counsel has reviewed this Agreement and contributed to its drafting, or each party has been given a chance for its counsel to review and contribute to the drafting. No party has received, from the other, any accounting, tax, legal and other advice. Each party has relied solely upon the advice of its own accounting, tax, legal and other advisors.

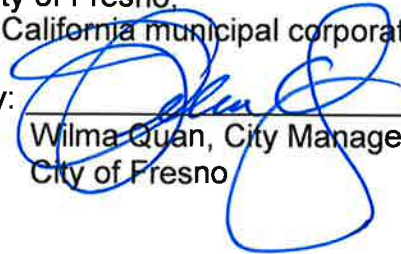
(q) Further Assurances. The parties will sign all further documents and take any further steps necessary to carry out the intent and purpose of this Agreement.

(r) Extent of Agreement. The exhibits, and the Program Requirements referenced in this Agreement are by the references incorporated into and made a part of this Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement is the entire Agreement between the parties hereto with respect to the administration of the City's EDA RLF and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may not be modified, amended, or otherwise changed in any manner except by a writing signed by an authorized representative of the party against whom enforcement is sought.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

City of Fresno,  
A California municipal corporation

By:   
Wilma Quan, City Manager  
City of Fresno

Cen Cal Business Finance Group, a  
California Non-profit Corporation

By: 

Name: Tal Cloud

Title: President  
(If corporation or LLC., Board Chair,  
Pres. or Vice Pres.)

APPROVED AS TO FORM:  
DOUGLAS T. SLOAN  
City Attorney

11-18-19

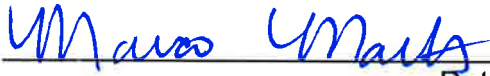
By:   
John Hastrup Tracy Parvanian Date  
Deputy City Attorney

By: 

Name: Frank C. Gallegos

Title: Assistant Secretary  
(If corporation or LLC., CFO, Treasurer,  
Secretary or Assistant Secretary)

ATTEST:  
YVONNE SPENCE, CRM MMC  
City Clerk

By:   
Date  
Deputy Marco Martinez

11/22/19

Addresses:  
CITY:  
City of Fresno  
Attention: Kelly Trevino  
Economic Development Analyst  
2600 Fresno Street  
Fresno, CA 93721  
Phone: (559) 621-8426  
FAX: (559)

CONSULTANT:  
Cen Cal Business Finance Group  
Attention: Frank Gallegos  
Executive Director  
5094 N. Fruit, Suite 103  
Fresno, CA 93711  
Phone: (559) 227-1158  
FAX: (559) 227-7926

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

## Exhibit A

### SCOPE OF SERVICES

Administrator shall perform the following services:

1. Administer the City of Fresno Revolving Loan Fund ("RLF") in compliance with the EDA Revolving Loan Fund Financial Assistance Award Standard Terms & Conditions, dated March 14, 2018 (the "Terms and Conditions"); and the RLF Administrative Plan, effective October 10, 2019 (copies attached). The foregoing, along with the City's 1980 Economic Adjustment Assistance Grant Award ("Grant") from the U.S. Department of Commerce – Economic Development Administration ("EDA") shall collectively be referred to herein as the "Program Requirements."
2. Service new loans and the existing portfolio of loans under the RLF program. This includes, but is not limited to, processing, tracking, collecting, and accounting for payments; releasing collateral and satisfying liens when the loans are paid off; and pursuing appropriate collection efforts.
3. Marketing the loan program. This will be done independently, and in collaboration with economic development organizations, including the City of Fresno.
4. Assisting potential borrowers, providing technical assistance, providing appropriate referrals to other economic development organizations, accepting loan applications, underwriting the request in accordance with the Plan, and in accordance with federal and State of California laws and regulations ("Laws & Regs").
5. Approving loans, conditionally approving loans, or declining loans, as appropriate, in accordance with the Plan, Laws & Regs (including, without limitation, "Prudent Lending Practices" as defined in 13 C.F.R. § 307.8), and generally accepted underwriting principles.
6. Prepare loan documents, perfect all liens, close all loans, and disburse funds.
7. Maintain all documents and records in a safe and secure facility.
8. Prepare required reports, correctly, and within required time limits. Currently, this includes one fiscal year report (Financial status and Federal Cash Transactions Reports) as of June 30th, which is due to the City and the EDA by July 31<sup>st</sup>. This also includes all financial and audit reports required pursuant to 13 C.F.R. § 307.14 and by the EDA. Please note that the number of reports required per year can change per EDA and City requirements.
9. Work cooperatively with the City to develop any modifications to the Plan if they become necessary due to changes in laws, regulations, changes dictated by the EDA, or changes that will make administration of the program more effective. This shall also include making recommendations to City, and responding to questions from City, about the program and for the purpose of making administration of the program more effective.
10. Operate the RLF in accordance with generally accepted accounting principles.
11. Provide City with the following written certification (dated and signed under penalty of perjury under the laws of the State of California) prior to conducting loan activities and disbursement of any RLF funds:

[Administrator's Name] certifies that standard RLF loan documents reasonably necessary for lending are in place and these documents have been reviewed by our legal counsel for adequacy and compliance with the EDA Revolving Loan Fund

Financial Assistance Award Standard Terms & Conditions, dated March 14, 2018, and applicable State and local laws.

12. Submit a completed Form SF-LLL, "*Disclosure of Lobbying Activities*" in accordance with the Terms and Conditions and 31 U.S.C. § 1352, including implementing regulations found at 15 C.F.R. part 28, "*New Restrictions on Lobbying*."
13. Submit a completed Form CD-512, "*Certifications Regarding Debarment, suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying*" in accordance with the Terms and Conditions.
14. To the extent consistent with the geographic eligibility requirements in the Program Requirements, Administrator will administer the RLF Grant to serve businesses within the incorporated limits of the City, as defined and amended by City and approved by the DA.
15. Administrator will include, as part of its loan review process, the City's threshold loan eligibility requirements, as the City may revise the requirements from time to time, with notice to Administrator. Currently, the City's threshold requirements include the creation and retention of jobs and reasonable likelihood of business success.
16. Administrator will evaluate each loan application to decide whether the proposed borrower and proposed loan are eligible under the Program Requirements.
17. Administrator will set up, to the extent practicable and to the extent within the Program Requirements, a loan application process that includes, without limitation, each of the following:
  - (i) An Administrator loan officer will meet with each loan applicant (proposed borrower) and explain the RLF and Administrator's role in helping the applicant.
  - (ii) If the applicant and the loan proposal generally meet the City's threshold eligibility requirements and the loan criteria that Administrator establishes, Administrator will give the applicant an information checklist. The checklist will outline the format and the order in which the applicant must assemble information for the loan application, and will contain the specific Program Requirements governing Administrator's grant and administration of the proposed RLF loan.
  - (iii) Administrator's lending practices and procedures will incorporate commercial underwriting standards, consistent with lending practices generally accepted as prudent for public loan programs, and as outlined in the RLF Plan Guidelines. Loan documentation, terms, and conditions will comply with the Program Requirements.
  - (iv) An Administrator staff loan committee will prepare the loan write-up and present it to the Administrator Loan Committee or Board of Directors ("Board") only when it is prepared to recommend approval. Staff presentations to the Loan Committee or Board will include each of the following:
    - Summary of Loan
    - Details of Loan Request
    - Analysis of the Business
    - Market Analysis
    - Financial Analysis
    - Proforma Statements
    - Management Assessment
    - Recommendation

18. Administrator will set up, to the extent practicable and to the extent consistent with the Program Requirements, the following procedures to monitor loans it grants under the RLF:
- (i) Administrator will require borrowers to provide periodic financial statements, prepared in-house by the borrower, and will require the borrower to provide CPA-prepared financial statements and tax returns at least annually to Administrator.
  - (ii) Administrator will review, at least annually, each borrower's business operations to decide whether the borrower is complying with the loan agreements. This review will include, without limitation, borrower's compliance with working capital and inventory levels, draws from business operations and capital, turnover, and liquidity ratios, and borrower's maintenance of required documents, such as life and "all risk" insurance policies/binders, assignment of rents, landlord waivers, and such. Administrator will maintain a computer calendaring and tracking system to help in carrying out this obligation. Administrator will follow up compliance requirements, as needed, with each borrower by telephone and confirming letters. If Administrator identifies compliance problems, and after notice to the borrower, the borrower does not cure the compliance problem, Administrator will request a special meeting with the borrower (generally at Administrator offices).
  - (iii) In the event Administrator is making loans to a borrower under both the RLF and another program, copies of all application documents including, without limitation, loan applications and financial statements, shall be included in the RLF file. Copies of all updated financial statements prepared during the servicing period shall also be included in the RLF file.
19. Administrator will maintain all RLF Grant funds and all repayments of loan principal in a segregated RLF account. As borrowers repay loans, Administrator will deposit the repaid principal and RLF income into the segregated account as part of the revolving borrowing base to make additional loans, all as set forth in the Program Requirements.

## EXHIBIT B

### INSURANCE REQUIREMENTS Agreement between City of Fresno (City) and Cen Cal Business Finance Group, Inc. (Administrator) Administration of City of Fresno Revolving Loan Fund

#### Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the City, its officers, officials, employees, agents, and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) and Cyber Liability (Privacy and Data breach) insurance appropriate to Administrator's profession.

#### **MINIMUM LIMITS OF INSURANCE**

Administrator, or any party the Administrator subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to City, its officers, officials, employees, agents, and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
  - (i) \$1,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$1,000,000 per occurrence for personal and advertising injury;
  - (iii) \$2,000,000 aggregate for products and completed operations; and,
  - (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.
2. **COMMERCIAL AUTOMOBILE LIABILITY:**  
\$1,000,000 per accident for bodily injury and property damage.
3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.
4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **PROFESSIONAL LIABILITY** (Errors and Omissions):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

6. **CYBER LIABILITY** insurance with limits of not less than:

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate

**UMBRELLA OR EXCESS INSURANCE**

In the event Administrator purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the City, its officers, officials, employees, agents, and volunteers.

**DEDUCTIBLES AND SELF-INSURED RETENTIONS**

Administrator shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and Administrator shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to on the Certificate of Insurance, and approved by, the City's Risk Manager or designee. At the option of the City's Risk Manager or designee, either:

- (i) The insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents, and volunteers; or
- (ii) Administrator shall provide a financial guarantee, satisfactory to City's Risk Manager or designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

**OTHER INSURANCE PROVISIONS/ENDORSEMENTS**

The General Liability and Automobile Liability insurance policies are to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds. Administrator shall establish additional insured status for the City and for all ongoing operations by use of ISO Form CG 20 10 11 85 or CG 20 10 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents, and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims relating to this Agreement, Administrator's insurance coverage shall be primary insurance with respect to the City, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, agents, and volunteers shall be excess of Administrator's

insurance and shall not contribute with it. Administrator shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Administrator and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents, and volunteers.

The Cyber Liability insurance shall cover claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information (including credit monitoring costs), alteration of electronic information, extortion and network security. Such coverage is required for claims involving any professional services for which Administrator is engaged with the City for such length of time as necessary to cover any and all claims

If the Professional (Errors and Omissions) and Cyber Liability insurance policy(ies) is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Administrator.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Administrator, Administrator must purchase "extended reporting" coverage for a minimum of five (5) years completion of the Agreement work or termination of the Agreement, whichever occurs first.
4. A copy of the claims reporting requirements must be submitted to City for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days' written notice by certified mail, return receipt requested, has been given to City. Administrator is also responsible for providing written notice to the City under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Administrator shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Administrator shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days' prior to the expiration date of the expiring policy.

Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

The fact that insurance is obtained by Administrator shall not be deemed to release or diminish the liability of Administrator, including, without limitation, liability under the indemnity provisions of this Agreement. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Administrator. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Administrator, its principals, officers, agents,



employees, persons under the supervision of Administrator, vendors, suppliers, invitees, consultants, subcontractors, or anyone employed directly or indirectly by any of them.

#### **VERIFICATION OF COVERAGE**

Administrator shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or designee prior to City's execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of City, Administrator shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

**SUBCONTRACTORS** - If Administrator subcontracts any or all of the services to be performed under this Agreement, Administrator shall require, at the discretion of the City Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by City Risk Manager or designee. If no Side Agreement is required, Administrator will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

**EXHIBIT C**

**DISCLOSURE OF CONFLICT OF INTEREST**  
Administration of City of Fresno Revolving Loan Fund

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization, or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers, or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers, or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Additional page(s) attached.



Signature \_\_\_\_\_

Frank C. Gallegos  
 \_\_\_\_\_  
 (name)

Cen Cal Business Finance Group  
 \_\_\_\_\_  
 (company)

5094 N. Fruit Avenue, Suite 103  
 \_\_\_\_\_  
 (address)

Fresno, CA 93711  
 \_\_\_\_\_  
 (city state zip)



**U.S. DEPARTMENT OF COMMERCE  
ECONOMIC DEVELOPMENT ADMINISTRATION**

**REVOLVING LOAN FUND  
STANDARD TERMS AND CONDITIONS**

**March 14, 2018**

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**PART I:  
GENERAL PROVISIONS**

**A) RLF Award.**

This financial assistance award, executed by the Economic Development Administration (EDA) and the recipient (Recipient), is awarded for the purpose of establishing a Revolving Loan Fund (the RLF Award).

**B) Authorities.**

**1) In General.**

Recipient must administer the RLF Award in conformance with the terms of the RLF Award, including any properly executed amendment thereto, the EDA-approved budget and scope of work, these RLF Standard Terms and Conditions, and any Special Award Conditions or Specific Award Conditions; relevant policies issued by EDA; applicable Federal statutes, regulations, and Executive Orders; and the provisions of the Office of Management and Budget *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* codified at 2 CFR part 200 (OMB Uniform Guidance).

**2) PWEDA.**

The RLF Program is authorized under section 209 of the Public Works and Economic Development Act of 1965 (42 U.S.C. § 3149) (PWEDA).

**3) EDA Regulations.**

The regulations implementing PWEDA are contained in chapter III of 13 CFR, and apply in full to this RLF Award. The regulations specific to the RLF Program can be found at subpart B of 13 CFR part 307.

**4) Conflicts Among Authorities.**

Any inconsistency or conflict among the authorities governing Recipient's administration of the RLF Award will be resolved in the following order of precedence: public laws, regulations (including the OMB Uniform Guidance), applicable notices published in the *Federal Register*, Executive Orders, these RLF Standard Terms and Conditions, Special Award Conditions and Specific Award Conditions, and any written policy guidance issued by EDA. However, a Special Award Condition or Specific Award Condition may amend or take precedence over a provision of the RLF Standard Terms and Conditions on a case-by-case basis, when warranted by the specific circumstances of the RLF Award. In the event of a conflict between Part I or Part II of these RLF Standard Terms and Conditions and Part III, Department of Commerce Standard Terms and Conditions, Part I and Part II will control.

**C) Updates to Authorities.**

**1) Updates to Regulations.**

EDA may issue changes from time to time to the regulations in chapter III of 13 CFR and OMB may issue changes from time to time to the regulations at 2 CFR part 200.

Recipient must adhere to any such regulatory change in administering the RLF Award as of the effective date of such change. However, RLF loans made by Recipient prior to the effective date of the change are not affected unless so required by law. In the event of a conflict between these RLF Standard Terms and Conditions and the regulations in chapter III of 13 CFR or 2 CFR part 200, the regulations will control.

**2) Effective Date of RLF Standard Terms & Conditions.**

These RLF Standard Terms and Conditions are effective as of the date of execution of the RLF Award or, if attached to the RLF Award by amendment, as of the date of execution of such amendment.

**D) Recipient as Trustee.**

Recipient holds RLF Award funds in trust to serve the purposes of the RLF Award.

Recipient's obligation to the Federal Government continues as long as the Federal assets continue to exist. The Federal assets may include cash, receivables, Personal Property, Real Property, and notes or other financial instruments acquired through the use of RLF Award funds. If EDA determines that Recipient has failed to meet any of its obligations under this RLF Award, the agency may assert its equitable reversionary interest, or the Federal Interest, in the RLF assets. However, EDA's non-assertion of its Federal Interest does not constitute a waiver thereof.

**E) Additional Funding.**

EDA has no obligation to provide any additional funding in connection with the RLF Award. Any amendment of the RLF Award to increase funding or to extend the period of performance is at the sole discretion of EDA and must be memorialized in writing.

**F) Definitions.**

Capitalized terms used but not otherwise defined in these RLF Standard Terms and Conditions have the meanings ascribed to them at 13 CFR §§ 300.3, 307.8, and 314.1.

"Days" as used herein means calendar days unless expressly stated otherwise.



**PART II:  
RECIPIENT'S OPERATION OF THE RLF**

**A) RLF Plan.**

**1) General Requirements.**

Recipient must administer the RLF in accordance with an EDA-approved RLF Plan. Recipient must develop an RLF Plan and submit it to EDA for approval. EDA will evaluate the RLF Plan, and EDA may require changes before approving the RLF Plan. Recipient may not make RLF loans prior to EDA approval of Recipient's initial RLF Plan.

**2) Format and Content. (13 CFR § 307.9(a))**

- a) Title Page: The RLF Plan must begin with a title page that includes the name of Recipient and the date that the Plan was adopted by Recipient.
- b) Part I: The RLF Plan must include a Part I entitled "Revolving Loan Fund Strategy," which summarizes the following:
  - (i) the Comprehensive Economic Development Strategy (CEDS) or EDA-approved economic development plan for the region in which the RLF operates;
  - (ii) the business development objectives of the RLF; and
  - (iii) the financing strategy, policy, and portfolio standards of the RLF.
- c) Part II: The RLF Plan must include a Part II entitled "Operational Procedures," to serve as the internal operating manual for the RLF and include procedures to ensure Recipient and borrowers comply with applicable laws and regulations, including but not limited to 13 CFR part 307. Part II must also include the following:
  - (i) administrative procedures for operating the RLF consistent with "Prudent Lending Practices," as defined at 13 CFR § 307.8;
  - (ii) environmental review and compliance procedures as set forth at 13 CFR § 307.10; and
  - (iii) conflicts of interest rules set forth at 13 CFR § 302.17.

**3) EDA Evaluation of RLF Plan. (13 CFR § 307.9(b))**

In evaluating an RLF Plan, EDA will ensure that the RLF Plan:

- a) Demonstrates consistency with the CEDS or EDA-approved development plan for the region in which the RLF is located;
- b) Does not contravene EDA's conflict of interest rules;

- c) Identifies the strategic purpose of the RLF and the considerations influencing the selection of its financing strategy and lending criteria, including:
  - (i) An analysis of the local capital market and the financing needs of the targeted businesses; and
  - (ii) Financing policies and portfolio standards which are consistent with EDA's policies and requirements;
- d) Demonstrates an adequate understanding of commercial loan portfolio management procedures, including loan processing, underwriting, closing, disbursement, servicing, collection, monitoring, and foreclosure; and
- e) Provides sufficient administrative procedures to prevent conflicts of interest, require accountability, safeguard RLF assets, and ensure compliance with Federal, State, and local laws.

**4) Updates and Modifications. (13 CFR § 307.9(c))**

Recipient's RLF Plan must be updated once every five years, or sooner if necessary to adapt to changing economic conditions. However, EDA may require Recipient to update the RLF Plan at any time to incorporate new approaches, align with an updated CEDS, or as otherwise required by EDA. Recipient must submit any updates or modifications to the RLF Plan for EDA approval, and EDA may condition such approval on any changes that EDA deems necessary.

**B) Pre-Disbursement Requirements.**

**1) Accounting Certification. (13 CFR § 307.11(a)(1)(i))**

Within 60 days before the initial disbursement of EDA funds, Recipient must provide in a form acceptable to EDA a certification signed by an authorized representative of Recipient certifying that Recipient's accounting system is adequate to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations. Recipient is required to maintain the adequacy of the RLF's accounting system for the duration of the RLF's operation.

**2) Loan Document Certifications. (13 CFR § 307.11(a)(1)(ii))**

Within 60 days before the initial disbursement of EDA funds, Recipient must provide in a form acceptable to EDA a certification signed by an authorized representative of Recipient that standard RLF loan documents reasonably necessary or advisable for lending are in place, and a certification from Recipient's legal counsel that the standard RLF loan documents are adequate and comply with the terms and conditions of the RLF Award, RLF Plan, and applicable State and local law. Recipient is required to maintain and appropriately update standard RLF loan documents at all times for the duration of the RLF's operation. The standard loan documents must include, at a minimum, the following:

- (i) Loan application;
- (ii) Loan agreement;
- (iii) Board of directors' meeting minutes approving the RLF loan;
- (iv) Promissory note;
- (v) Security agreement(s);
- (vi) Deed of trust or mortgage (as applicable);
- (vii) Agreement of prior lien holder (as applicable); and
- (viii) Evidence demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.

**3) Fidelity Bond Coverage.** (13 CFR § 307.11(a)(1)(iii))

Within 60 days before the initial disbursement of EDA funds, Recipient must provide in a form acceptable to EDA evidence of fidelity bond coverage for persons authorized to handle funds under the RLF Award in an amount sufficient to protect the interests of EDA and the RLF. At a minimum, the amount of coverage must be the maximum loan amount allowed for in the EDA-approved RLF Plan. Recipient must maintain sufficient fidelity bond coverage as described in this Subsection for the duration of the RLF's operation.

**C) Disbursement of RLF Funds.**

**1) Purpose of Disbursements.** (13 CFR § 307.11(b))

RLF Award funds disbursed by EDA to Recipient may only be used by Recipient to close a loan or otherwise disburse loan funds to a borrower.

**2) Amount of Disbursement.** (13 CFR § 307.11(c))

EDA will only disburse to Recipient an amount of RLF Award funds equal to the amount required to meet the Federal Share requirement of a new RLF loan. Recipient need not apply RLF Income earned or principal repaid to new RLF loans during the Disbursement Phase of the RLF Award, unless otherwise specified in the terms of the RLF Award.

**3) Interest-bearing Account.** (13 CFR § 307.11(d))

Recipient must hold in an interest-bearing account all RLF Award funds that have been disbursed by EDA to Recipient but that have not yet been disbursed to a borrower by Recipient. (RLF Cash Available for Lending must also be held in an interest-bearing account, as discussed further in Section E, Financial Administration of the RLF.)

**4) Delays.** (13 CFR § 307.11(e))

All RLF Award funds disbursed by EDA to Recipient must in turn be disbursed by Recipient to a borrower within 30 days of Recipient's receipt of the RLF Award funds. Recipient must refund to EDA any RLF Award funds not disbursed to a borrower within the 30-day period, pursuant to the procedures set forth at 13 CFR § 307.11(e). However,

RLF Award funds returned to EDA pursuant to this Subsection may be available to Recipient for future draw-downs.

**5) Local Share. (13 CFR § 307.11(f))**

Recipient's matching funds required pursuant to the RLF Award are known as the Local Share. Recipient must maintain the Local Share committed to the RLF Award, available as needed, and not conditioned or encumbered in any way that precludes its use consistent with the RLF Award.

Recipient must use its cash Local Share of the RLF Award for lending purposes only. Recipient's cash Local Share must be used either in proportion to the RLF Award funds or at a faster rate than the RLF Award funds. Any in-kind share provided by Recipient as part of the RLF Award must be treated in accordance with the procedures set forth at 13 CFR § 307.11(f)(2).

**6) Disbursement Schedule. (13 CFR § 307.11(g))**

Recipient must draw down RLF Award funds in accordance with the terms of RLF Award, including any draw-down schedule in the Special Award Conditions or Specific Award Conditions. If Recipient fails to adhere to any of these terms, EDA may de-obligate part or all of the non-disbursed balance of the RLF Award. Factors that EDA may consider in choosing whether to de-obligate part or all of the non-disbursed balance are set forth at 13 CFR § 307.11(g)(2). Additionally, the procedure for Recipient to request an extension to draw down the RLF Award and the factors that EDA will consider in evaluating such a request are set forth at 13 CFR § 307.11(h).

**7) Method of Disbursement.**

EDA will determine the method by which RLF Award funds will be disbursed to Recipient. EDA generally disburses RLF funds using an Electronic Funds Transfer rather than the ASAP system discussed at Section B., Financial Requirements, Subsection .02, Award Payments, of the DOC Standard Terms and Conditions (incorporated into these RLF Standard Terms and Conditions in Part III). Recipient must include the RLF Award number on all payment-related correspondence, information, and forms.

**8) DOC Standard Terms and Conditions.**

See the DOC Standard Terms and Conditions, Section B., Financial Requirements, Subsection .02, Award Payments (incorporated into these RLF Standard Terms and Conditions in Part III), for additional information related to disbursement, including special disbursement procedures for States and procedures for requesting disbursements.

## **D) Lending.**

### **1) Prudent Lending Practices. (13 CFR § 307.8)**

Recipient must administer the RLF in accordance with Prudent Lending Practices, which means generally accepted underwriting and lending practices for public loan programs based on sound judgment to protect Federal and Recipient interests. Prudent Lending Practices must be applied to loan processing, documentation, loan approval, servicing, administrative procedures, collateral protection, collections, and recovery actions, as well as compliance with local laws and filing requirements to perfect and maintain a security interest in RLF collateral.

### **2) Lending Area. (13 CFR § 307.18(a))**

- a) General Requirement. Recipient may make loans only within the EDA-approved lending area, as set forth and defined in the RLF Award and the RLF Plan.
- b) Modification of Lending Area. Recipient may add an additional lending area to its existing lending area to create a new lending area only with EDA's prior written approval and subject to the provisions and conditions set forth at 13 CFR § 307.18(a).

### **3) Interest Rates. (13 CFR § 307.15(b))**

- a) Recipient may make loans to eligible borrowers at interest rates and under conditions determined by Recipient to be appropriate in achieving the goals of the RLF, subject to the minimum interest rate requirement in Subsection b), below.
- b) The minimum interest rate that Recipient may charge is four (4) percentage points below the lesser of the current money center prime rate quoted in the *Wall Street Journal* or the maximum interest rate allowed under State law. In no event shall an interest rate be less than the lower of four (4) percent or 75 percent of the prime interest rate listed in the *Wall Street Journal*. However, should the prime interest rate listed in the *Wall Street Journal* exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of Recipient to implement its financing strategy.

### **4) Purpose of Loans and Use of RLF Cash Available for Lending. (13 CFR § 307.17(c))**

- a) Recipient shall not use RLF Award funds to:
  - (i) Acquire an equity position in a private business.
  - (ii) Subsidize interest payments on an existing RLF loan.
  - (iii) Provide a loan to a borrower for the purpose of meeting the requirements of equity contributions under another Federal agency's loan program.

- (iv) Enable a borrower to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF.
  - (v) Provide funds to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit, or any investment unrelated to the RLF.
  - (vi) Refinance existing debt, unless:
    - (a) Recipient sufficiently demonstrates in the loan documentation a “sound economic justification” for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or
    - (b) RLF funds will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF funds may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF’s costs plus a reasonable portion of the outstanding RLF loan within a reasonable time frame approved by EDA following the date of refinancing.
  - (vii) Serve as collateral to obtain credit or any other type of financing without EDA’s prior written approval (e.g., loan guarantees).
  - (viii) Support operations or administration of the RLF Recipient.
  - (ix) Undertake any activity that would violate EDA Property regulations found at 13 CFR part 314.
  - (x) Finance gambling activity, performances or products of a prurient sexual nature, or any illegal activity, including the cultivation, distribution, or sale of marijuana that is illegal under Federal law.
- b) Nonrelocation.** Recipient must not use RLF Award funds to induce the relocation of existing jobs within the U.S. that are located outside of Recipient’s jurisdiction to within its jurisdiction in competition with other U.S. jurisdictions for those same jobs. In the event that EDA determines that RLF Award funds were used for such purposes, EDA may pursue appropriate enforcement action, including suspension of disbursements and termination of the RLF Award, which may include the establishment of a debt requiring the Recipient to reimburse EDA.
- c) Each loan agreement must clearly and in detail state the purpose of each loan.**

**5) Credit Not Otherwise Available.**

Recipient must explicitly determine and demonstrate in the loan documentation for each RLF loan that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.

**6) RLF Leveraging. (13 CFR § 307.15(c))**

a) Unless otherwise specified in the terms of the RLF Award, Recipient must leverage additional investment of at least two (2) dollars for every one (1) dollar of RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, additional investment must be made within twelve months of approval of an RLF loan closing, as part of the same business development project, and may include:

- (i) Capital invested by the borrower or others;
- (ii) Financing from private entities;
- (iii) The non-guaranteed portions and ninety (90) percent of the guaranteed portions of any Federal loan; or
- (iv) Loans from other State and local lending programs.

b) Accrued equity in a borrower's assets may not be included in the calculation of leveraged additional investment.

**7) Environmental Impact. (13 CFR § 307.10(a))**

Recipient must adopt and the RLF Plan must include procedures for compliance with applicable environmental laws and regulations, including to review the impacts of prospective loan proposals on the physical environment. Recipient must also comply with, and ensure that potential borrowers comply with, applicable environmental laws and regulations. See the DOC Standard Terms and Conditions, Section G., National Policy Requirements, Subsection .04, Environmental Requirements (incorporated into these RLF Standard Terms and Conditions in Part III), for additional information related to environmental requirements.

**8) Protection of RLF Assets. (13 CFR § 307.10(b))**

Recipient must ensure that prospective borrowers, consultants, and contractors are aware of and comply with the Federal, State, and local statutory and regulatory requirements that apply to activities carried out with RLF loans. RLF loan agreements must include applicable Federal, State, and local requirements to ensure compliance, and Recipient must adopt procedures to diligently correct instances of non-compliance, including loan call stipulations.

**9) Hold Harmless Provision. (13 CFR § 307.10(c))**

All RLF loan documents and procedures must protect and hold the Federal Government harmless from and against all liabilities that the Federal Government may incur as a result of providing an award to assist (directly or indirectly) in site preparation or construction, as well as the direct or indirect renovation or repair of any facility or site. These protections apply to the extent that the Federal Government may become potentially liable as a result of ground water, surface, soil or other natural or man-made conditions on the property caused by operations of Recipient or any of its borrowers, predecessors or successors.

**10) Requirements Relating to RLF Loans Funding Construction.**

- a) Davis-Bacon. In accordance with section 602 of PWEDA (42 U.S.C. § 3212), all laborers and mechanics employed by contractors or subcontractors on construction-related projects receiving investment assistance under PWEDA shall be paid wages not less than those prevailing on similar construction in the locality, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. See 13 CFR § 302.13. Therefore, Recipient must comply with, and must further ensure that any borrower, contractor, or subcontractor complies with Davis-Bacon prevailing wage rates where construction work is financed in whole or in part with RLF Award funds. Where the land facilitating construction is purchased in part or in whole with RLF Award funds, this requirement extends to construction work, including that which is not directly paid for with RLF Award funds.
- b) The Contract Work Hours and Safety Standards Act. Recipient must ensure that any borrower, contractor, or subcontractor complies with the Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701, et seq.), which provides work hour standards for every laborer and mechanic employed by a contractor or subcontractor in the performance of certain work financed at least in part with Federal funds.

**E) Financial Administration of the RLF.**

**1) General Requirements.**

Recipient is responsible for the administrative costs associated with operating the RLF. Any future funding to recapitalize the RLF Award is dependent upon the successful management of the RLF Award from both a programmatic and financial perspective, future Congressional appropriations to support the program, and Recipient securing a competitive award of EDA funds.



**2) RLF Cash Available for Lending.** (13 CFR § 307.17(a))

- a) Defined. RLF Cash Available for Lending means the portion of the RLF Capital Base that is held as cash and available to make loans. RLF Cash Available for Lending does not include cash committed to loans that have been approved but have not yet been funded.
- b) General Requirements. Recipient must deposit and hold all RLF Cash Available for Lending in an interest-bearing account. (RLF funds that have been disbursed by EDA to Recipient but that have not yet been disbursed to a borrower by Recipient must also be held in an interest-bearing account, as discussed further in Section C, Disbursement of RLF Funds). RLF Cash Available for Lending must be used only for the purpose of making RLF loans, or such other purpose as approved in writing by EDA.

**3) RLF Income.** (13 CFR § 307.12(a))

- a) Defined. RLF Income means interest earned on outstanding loan principal and accounts holding RLF funds, all fees and charges received by the RLF, and other income generated from RLF operations.
- b) Use of RLF Income. Recipient may use RLF Income to pay for RLF administrative costs, provided the RLF Income is earned and the administrative costs are accrued in the same fiscal year of Recipient. Recipient must add to the RLF Capital Base any RLF Income that is not used for administrative costs during the same fiscal year of Recipient that it was earned.
- c) Administrative Costs Exceeding RLF Income. Recipient shall not use funds from the RLF Capital Base to pay for or reimburse administrative costs unless EDA has approved such use in writing.

**4) Cost Principles.** (13 CFR § 307.12(b))

When charging costs against RLF Income, Recipient must comply with the cost principles of the OMB Uniform Guidance set forth at 2 CFR part 200 subpart E – Cost Principles.

**5) Priority of Payments on Defaulted RLF Loans.** (13 CFR § 307.12(c))

- a) When Recipient receives proceeds on a defaulted or written off RLF loan, Recipient must apply such proceeds in the following order of priority:
  - (i) First, towards any costs of collection;
  - (ii) Second, towards outstanding penalties and fees;

- (iii) Third, towards any accrued interest to the extent due and payable; and
- (iv) Fourth, towards any outstanding principal balance.

**6) Voluntarily Contributed Capital. (13 CFR § 307.12(d))**

If Recipient wishes to inject additional capital into the RLF Capital Base to augment the amount of resources available to lend, Recipient must submit a written request to EDA which specifies the source of the funds to be added. Once approved by EDA, any additional capital injected into the RLF becomes an irrevocable part of the RLF Capital Base and may not be subsequently withdrawn or separated from the RLF. Upon termination, the Federal Share will be calculated by applying the Investment Rate to the entire RLF Capital Base, including any such additional capital, unless otherwise approved by the EDA Grants Officer.

**7) Accounting Principles. (13 CFR § 307.15(a))**

- a) Recipient must operate the RLF in accordance with generally accepted accounting principles (GAAP) as in effect in the United States and the provisions outlined in the audit requirements set out as subpart F to 2 CFR part 200 and the Compliance Supplement, which is appendix XI to 2 CFR part 200, as applicable.
- b) In accordance with GAAP, a loan loss reserve may be recorded in Recipient's financial statements to show the fair market value of the RLF's loan portfolio, provided this loan loss reserve is non-funded and represented by a non-cash entry. However, a loan loss reserve may not be used to reduce the value of the RLF in the Schedule of Expenditures of Federal Awards (SEFA) required as part of Recipient's audit requirements under 2 CFR part 200 or in reporting to EDA in the RLF Financial Report (Form ED-209).

**8) Audits. (13 CFR § 307.12(b)(3))**

- a) In General. Recipient must comply with the audit requirements set out as subpart F to 2 CFR part 200, which applies to audits of Recipient's fiscal years beginning on or after December 26, 2014. In addition, the Compliance Supplement, which is appendix XI to 2 CFR part 200, applies as appropriate. Generally, if Recipient expends \$750,000 or more in Federal awards during Recipient's fiscal year, Recipient must have a single or program-specific audit conducted for that fiscal year.
- b) Audit Requirement if Recipient is under the \$750,000 Threshold.
  - (i) If Recipient was not otherwise required to arrange for a single or program-specific audit for the fiscal year preceding the effective date of these RLF Standard Terms and Conditions, either because Recipient expends less than \$750,000 in Federal awards annually or for any other reason, Recipient is hereby required to submit to EDA a program-specific independent audit that fulfills the requirements of 2 CFR

§ 200.507 and adheres to the Compliance Supplement in appendix XI to 2 CFR part 200 for the fiscal year preceding the effective date of these RLF Standard Terms and Conditions, unless such requirement is waived by EDA.

- (ii) In lieu of the program-specific audit required under Subsection (i) of this Section, Recipient may submit an organization-wide independent audit to EDA. EDA will inform Recipient whether such audit fulfills Recipient's obligations under this Section. If EDA determines that Recipient's organization-wide audit is not an adequate substitute for the program-specific audit, Recipient must submit a program-specific audit that meets the requirements of Subsection (i) of this Section.
- (iii) EDA may require a program-specific audit that meets the requirements of Subsection (i) of this Section as frequently as once per Recipient fiscal year, or less frequently as EDA determines appropriate.
- (iv) Such program-specific audit or organization-wide audit must be submitted to EDA within the earlier of 30 days after receipt of the auditor's report, or nine months after the end of the audit period (i.e., Recipient's fiscal year).
- (v) RLF Income may be used to pay for a program-specific audit required under Subsection (i) of this Section. If Recipient has insufficient RLF income to pay for such an audit, Recipient may seek EDA approval to use RLF Capital Base funds to cover such audit costs, and EDA approval will not be unreasonably withheld.

- c) DOC Standard Terms and Conditions. See the DOC Standard Terms and Conditions, Section D., Audits (incorporated into these RLF Standard Terms and Conditions in Part III), for additional information related to audit requirements.

**F) RLF Reports.** (13 CFR § 307.14)

**1) Frequency of Reports.**

Recipient must complete and submit an RLF report, using Form ED-209, at a frequency as required by EDA. EDA may allow high-performing RLFs, as evaluated through the Risk Analysis System outlined in Section G, to report on an annual basis, with Form ED-209 generally due within 90 days of Recipient's fiscal year end. Other RLFs will generally report on a semiannual basis, with Form ED-209 generally due within 30 days of Recipient's fiscal year end and again six months later.

**2) Report Certification.**

Recipient must certify to EDA as part of the RLF report that the information provided is complete and accurate, and that the RLF is operating in accordance with the applicable EDA-approved RLF Plan. This certification is included on Form ED-209.

**3) Government Performance and Results Act Reporting.**

Recipient must report to EDA on RLF performance for Government Performance and Results Act (GPRA) purposes as required by EDA. Recipient shall provide required data

on a standardized form provided by EDA. Data used by Recipient in preparing such reports must be accurate and from independent sources whenever possible.

**4) DOC Standard Terms and Conditions.**

See the DOC Standard Terms and Conditions, Section A., Programmatic Requirements, Subsection .01, Reporting Requirements (incorporated into these RLF Standard Terms and Conditions in Part III), for additional information related to reporting requirements. In particular, note that the Federal Financial Report (Form SF-425) must be submitted regularly during the Disbursement Phase of the RLF Award.

**G) EDA Evaluation and Oversight of the RLF Award.**

**1) Allowable Cash Percentage. (13 CFR § 307.17(b))**

a) In General. EDA will notify Recipient on an annual basis of the Allowable Cash Percentage that is applicable to lending during Recipient's ensuing fiscal year. During the Revolving Phase, Recipient must manage its loan repayment and lending schedule in order to avoid exceeding the Allowable Cash Percentage.

b) Noncompliance. Recipient must not hold RLF Cash Available for Lending so that it is 50 percent or more of the RLF Capital Base for 24 months without an EDA-approved extension request based on other EDA risk analysis factors or extenuating circumstances.

**2) Risk Analysis System. (13 CFR § 307.16(a))**

EDA will evaluate Recipient's management and operation of the RLF Award using a Risk Analysis System that measures a variety of factors, including but not limited to capital, assets, management, earnings, liquidity, and strategic results. EDA plans to provide to Recipient a risk analysis rating of the RLF on at least an annual basis.

**3) Corrective Action. (13 CFR § 307.16(b))**

Recipient will generally be allowed a reasonable period of time to increase its performance relative to risk factors identified by EDA through the Risk Analysis System. However, persistent noncompliance with risk factors identified through the Risk Analysis System will result in EDA seeking appropriate remedies for noncompliance, including those set forth at 13 CFR § 307.21.

**4) Noncompliance. (13 CFR §§ 307.20, 307.21)**

Recipient must operate the RLF in accordance with the terms of the RLF Award, these RLF Standard Terms and Conditions, the RLF Plan, and any other requirements that may apply to the RLF. If Recipient fails to operate the RLF accordingly, including through one of the types of noncompliance set forth at 13 CFR § 307.20, EDA may pursue one or more of the remedies for noncompliance set forth at 13 CFR § 307.21, including

suspension or termination of the RLF Award (discussed in more detail in paragraphs 5) and 6) below).

**5) Suspension.** (13 CFR § 307.21(c))

EDA may suspend an RLF Award when EDA determines that circumstances warrant temporarily stopping all activity under the RLF Award, including making payments to Recipient, until Recipient takes corrective action as specified by EDA. Upon suspension, Recipient would be prohibited from engaging in new lending activity, although normal loan servicing and collection efforts would continue. Recipient might also be subject to restrictions on the use of RLF Income and directed to take specific actions to protect the RLF assets, as appropriate.

**6) Termination.** (2 CFR § 200.339)

The RLF Award may be terminated in whole or in part as follows:

- a) Termination by EDA for Recipient's Failure to Comply with the Terms of the RLF Award. EDA may terminate the RLF Award, in whole or in part, if Recipient fails to materially comply with the terms of the RLF Award, including, but not limited to, persistent noncompliance with risk factors identified through the Risk Analysis System or the types of noncompliance described at 13 CFR § 307.20.
- b) Termination by EDA for Cause. EDA may terminate the RLF Award for cause, including if required by a circumstance beyond EDA's control, such as a Congressional mandate.
- c) Termination by Recipient. Recipient may terminate the RLF Award in whole or in part upon sending the EDA Grants Officer for the RLF Award written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if EDA determines in the case of partial termination that the reduced or modified portion of the RLF Award will not accomplish the purposes for which the RLF Award was made, EDA may terminate the RLF Award in its entirety.
- d) Termination Upon Mutual Agreement. EDA and Recipient may mutually agree to terminate the RLF Award in whole or in part. In such cases, EDA and Recipient must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
- e) If the RLF Award is wholly or partially terminated, Recipient remains responsible for compliance with the Closeout and Post-closeout adjustments and continuing responsibilities requirements as described at 2 CFR §§ 200.343 and 200.344.

**H) Consolidation and Merger of RLF Awards. (13 CFR § 307.18(b))**

**1) Consolidation of Recipient's Awards.**

With EDA's prior written approval, and provided Recipient satisfies the conditions set forth at 13 CFR § 307.18(b)(1), Recipient may consolidate two or more of its EDA-funded RLFs into one surviving RLF.

**2) Merger of Recipient and Other Recipients' Awards.**

With EDA's prior written approval, and provided that the conditions set forth at 13 CFR § 307.18(b)(2) are satisfied, Recipient may merge its RLF Award(s) with another recipient's EDA-funded RLF award(s), resulting in one surviving RLF.

**I) Conflicts of Interest.**

**1) Definitions. (13 CFR § 300.3)**

An "Interested Party" is any officer, employee or member of the board of directors or other governing board of Recipient, including any other parties that advise, approve, recommend or otherwise participate in the business decisions of Recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. An Interested Party also includes such a person's "Immediate Family" (defined as a person's spouse, significant other or partner in a domestic relationship, parents, grandparents, siblings, children and grandchildren, but not distant relatives, such as cousins, unless the distant relative lives in the same household as the person) and other persons directly connected to that person by law or through a business arrangement.

**2) Conflicts of Interest Generally. (13 CFR § 302.17(a))**

a) A conflict of interest generally exists when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party's personal or financial interests or there is an appearance that an Interested Party's objectivity in performing his or her responsibilities under the Project is impaired.

b) An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable or potentially unable to render impartial assistance, services, or advice to the Recipient. It also could result from non-financial gain to an Interested Party, such as benefit to reputation or prestige in a professional field.

**3) Conflicts of Interest Rules Specific to RLFs. (13 CFR § 302.17(c))**

Recipient must adhere to EDA conflicts of interest rules set forth at 13 CFR § 302.17, including the following rules specific to RLFs:

- a) An Interested Party of Recipient shall not receive, directly or indirectly, any personal or financial interest or benefit resulting from the disbursement of RLF loans. A financial interest or benefit may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward.
  - b) Recipient shall not lend RLF funds to an Interested Party.
  - c) Former board members of Recipient and members of their Immediate Family may not receive a loan from the RLF for a period of two years from the date that the board member last served on the board of directors.
- 4) Duty to Disclose. (2 CFR § 200.112)**  
Recipient must, in a timely fashion, disclose to EDA in writing any actual or potential conflict of interest.
- 5) Written Standards of Conduct.**
- a) Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of a personal or organizational conflict of interest or personal gain in the administration of the RLF Award.
  - b) Recipient must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. See Section K, Other EDA Requirements, Subsection 4., Codes of Conduct and Sub-Award, Contract and Subcontract Provisions, Subsection d), Competition and Codes of Conduct for Subawards.
- 6) DOC Standard Terms and Conditions.**  
Recipient must also adhere to the requirements for conflicts of interest set forth in the DOC Standard Terms and Conditions, Section F., Conflict of Interest, Code of Conduct and other Requirements Pertaining to DOC Financial Assistance Awards, Including Subawards and Procurements Actions, Subsection .01, Conflict of Interest and Code of Conduct (incorporated into these RLF Standard Terms and Conditions in Part III).
- 7) Other Conflicts of Interest Rules.**  
Recipient must adhere to any state or local conflicts of interest rules, as well as any industry-specific conflicts of interest rules.

## **J) Records and Retention.**

### **1) Closed Loan Files and Related Documents. (13 CFR § 307.13(a))**

Recipient must maintain closed loan files and all related documents, books of account, computer data files and other records over the term of the closed loan and for a three-year period from the date of final disposition of the closed loan. The date of final disposition of a closed loan is the date:

- a) Principal, interest, fees, penalties, and all other costs associated with the closed loan have been paid in full; or
- b) Final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the closed loan have occurred.

### **2) Administrative Records. (13 CFR § 307.13(b))**

- a) Recipient must maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF income expended for eligible RLF administrative costs.
- b) Recipient must retain records of administrative costs incurred for activities and equipment relating to the operation of the RLF for three years from the actual submission date of the report that covers the fiscal year in which such costs were claimed.
- c) For the duration of RLF operations, Recipient must maintain records to demonstrate:
  - (i) The adequacy of the RLF's accounting system to identify, safeguard, and account for the entire RLF Capital Base, outstanding RLF loans, and other RLF operations;
  - (ii) That standard RLF loan documents reasonably necessary or advisable for lending are in place; and
  - (iii) Evidence of fidelity bond coverage for persons authorized to handle funds under the RLF Award in an amount sufficient to protect the interests of EDA and the RLF. At a minimum, the amount of coverage shall be the maximum loan amount allowed for in the EDA-approved RLF Plan.
- d) Recipient must make retained records available for inspection to the parties set forth at 13 CFR § 302.14(b), including those retained for longer than the required period. Records must be made available in a timely and reasonable manner. See 2 CFR § 200.336. The record retention periods described in this Section are minimum periods and such prescription does not limit any other record retention obligation required by law or agreement. EDA will not question any claimed administrative costs that are more than three years old, unless fraud is at issue.



**3) Other Records Requirements. (2 CFR § 200.333)**

- a) If any litigation, claim, or audit is started before the expiration of the record retention period, Recipient shall retain all records related to or necessary for such action until all litigation, claims, or audit findings involving the records have been resolved and final actions taken.
- b) If Recipient is notified in writing by EDA, the cognizant agency for either audit or indirect costs, or the oversight agency for audit, Recipient must retain the records as directed.
- c) If Recipient obtains real property or equipment with RLF funds, Recipient must retain records related to such property or equipment for three years after the final disposition of such real property or equipment. Equipment is defined as set forth at 2 CFR § 200.33: tangible personal property (including information technology systems) having a useful life of more than one year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by Recipient for financial statement purposes, or \$5,000.
- d) When records are transferred to EDA or maintained by EDA, the three-year retention requirement is not applicable to Recipient.
- e) Indirect cost rate proposals and cost allocations plans. This Subsection applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
  - (i) If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.
  - (ii) If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
- f) Recipient is responsible for monitoring any subrecipients and contractors to ensure their compliance with the records retention requirements. Recipient must immediately notify EDA if records are lost, destroyed, or are otherwise no longer available, or if

Recipient anticipates that it will not be able to comply with the record retention requirements under the RLF Award for the general retention periods noted above.

**K) Other EDA Requirements.**

**1) Other Award Requirements.**

- a) **Unauthorized Use of RLF Award Funds.** Recipient must promptly notify EDA if Recipient or a borrower expends RLF Award funds for an Unauthorized Use, including a use that violates the terms of the RLF Award or the certifications and assurances of a loan agreement. (This does not apply to routine loan defaults where such defaults are due to business reasons and RLF Award funds have not been expended for an Unauthorized Use.) If directed by EDA, Recipient must restore funds to the RLF Capital Base or compensate the Federal Government for the Federal Share of the RLF Award funds expended for an Unauthorized Use. See 13 CFR §§ 314.4 and 314.5.
- b) **Prohibition on Use of Third Parties to Secure Award.** Unless otherwise specified in any Special Award Condition or Specific Award Condition of the RLF Award, Recipient warrants that no person or selling agency has been employed or retained to solicit or secure the RLF Award upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees, or bona fide established commercial or selling agencies maintained by Recipient for the purpose of securing business. For breach or violation of this warrant, EDA has the right to terminate the RLF Award without liability, or at its discretion, to deduct from the RLF Award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
- c) **Payment of Attorneys' or Consultants' Fees.** No RLF Award funds shall be used, directly or indirectly, to reimburse attorneys' or consultants' fees incurred in connection with obtaining investment assistance under PWEDA, such as, for example, preparing the Application. See 13 CFR § 302.10(a). However, ordinary and reasonable attorneys' and consultants' fees incurred for meeting RLF Award requirements (e.g., conducting a title search) may be eligible costs and may be paid out of RLF Award funds, provided such costs are otherwise eligible. See 2 CFR § 200.459.
- d) **Recipient's Duty to Refrain from Employing Certain Government Employees.** Pursuant to section 606(2) of PWEDA (42 U.S.C. § 3216), for the two-year period beginning on the date EDA executes the RLF Award, if Recipient is a nonprofit organization, District Organization, or for-profit entity, Recipient agrees that it will not employ, offer any office or employment to, or retain for professional services any person who:

- (i) On the date EDA executes the RLF Award or within the one-year period ending on that date, served as an officer, attorney, agent, or employee of the Department of Commerce, and
- (ii) Occupied a position or engaged in activities that the Assistant Secretary for Economic Development determines involved discretion with respect to the awarding of investment assistance under PWEDA.

**2) Freedom of Information Act.**

EDA must comply with the Freedom of Information Act (FOIA) (5 U.S.C. § 552). DOC regulations at 15 CFR part 4 set forth the requirements and procedures that EDA must follow in order to make requested material, information, and records publicly available. Unless prohibited by law and to the extent required under the FOIA, contents of the Application and other information submitted by Recipient may be released in response to a FOIA request. Recipient should be aware that EDA may make certain Application and other submitted information publicly available. Accordingly, as set forth in 15 CFR § 4.9, Recipient should identify any “business information” it believes to be protected from disclosure pursuant to 5 U.S.C. § 552(b)(4).

**3) Lobbying Restrictions.**

- a) In General. Recipient must comply with the lobbying restrictions described in the DOC Standard Terms and Conditions, Section G., National Policy Requirements, Subsection .03, Lobbying Restrictions (incorporated into these RLF Standard Terms and Conditions in Part III).
- b) Special Provisions Relating to Indian Tribes. As set out in 31 U.S.C. § 1352, there are special provisions applicable to Indian Tribes, tribal organizations, or other Indian organizations eligible to receive Federal contracts, grants, loans, or cooperative agreements. In accordance with DOC policy, EDA recognizes Tribal Employment Rights Ordinances (TEROs), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, firing, and the payment of a TERO fee generally are allowable provisions under Federal awards granted to American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is “necessary and reasonable for proper and efficient performance and administration” of an RLF Award, as provided at 2 CFR § 200.403.

**4) Codes of Conduct and Sub-Award, Contract and Subcontract Provisions.**

- a) In General. Recipient may subaward RLF Award funds only with prior EDA approval pursuant to 13 CFR § 309.2(a) and subject to the conditions at 13 CFR § 309.2(b). A subaward includes any award from Recipient or another pass-through entity to a

subrecipient for the subrecipient to carry out part of the RLF Award. Beneficiaries of the RLF Award, including loan borrowers, are not subrecipients. See 2 CFR § 200.92.

- b) Applicability of RLF Award Provisions to Subrecipients.** Recipient shall require any subrecipients under the RLF Award, including lower tier subrecipients, to comply with the provisions of the RLF Award, including applicable provisions of the OMB Uniform Guidance, and all associated terms and conditions. See 2 CFR § 200.101(b)(1), which describes the applicability of the OMB Uniform Guidance to various types of Federal awards and 2 CFR §§ 200.330 through 200.332, which describes subrecipient monitoring and management.
- c) Competition and Codes of Conduct for Subawards.**

  - (i) Recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition.
  - (ii) Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he or she serves as an officer or which employs or is about to employ any of the parties mentioned in this Subsection, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of Recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, Recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of Recipient.
  - (iii) A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.
- d) Applicability of Provisions to Subawards, Contracts, and Subcontracts.**

  - (i) Recipient shall include the following notice in each request for applications or bids for a subaward, contract, or subcontract, as applicable:

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a DOC official) are subject to subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 CFR part 28, "New Restrictions on Lobbying."

Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, Applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying—Lower Tier Covered Transactions," completed without modification.

- (ii) Recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts) requiring lower tier participants to comply with subpart C of 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)."
- (iii) Required subaward and contractual provisions:
  - (a) Recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding \$100,000 in Federal funds that the subaward, contract, or subcontract is subject to 31 U.S.C. § 1352, as implemented at 15 CFR part 28 ("New Restrictions on Lobbying"). Recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by Recipient. Recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Project Officer within 30 days following the end of the calendar quarter.
  - (b) In addition to other provisions required by the Federal agency or Recipient, in accordance with 2 CFR § 200.326, all contracts made by Recipient under this Award must contain the applicable provisions set out in Appendix II to 2 CFR part 200, which address various contractual requirements including remedies, termination for cause and convenience, Equal Employment Opportunity, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, rights to inventions, environmental quality, energy efficiency, debarment and suspension, the Byrd Anti-Lobbying Amendment, and procurement of recovered materials. See Appendix II to 2 CFR part 200 for a full explanation of these requirements.

**5) Property Management.**

With respect to any Property acquired or improved in whole or in part with RLF Award funds, Recipient shall comply with the Property Standards set forth at 2 CFR §§ 200.310 through 200.316 and EDA's regulations at 13 CFR part 314. Property acquired or improved in whole or in part by Recipient under this RLF Award may consist of real property; personal property, including equipment and supplies; and intangible property, such as money, notes, and security interests. Any property reports required under 2 CFR §§ 200.310 through 200.316, such as periodic inventories and requests for disposition instructions, must be submitted to the Grants Officer through the Project Officer on Form SF-428 and/or SF-429, as applicable. For the purposes of this Section only, these requirements do not apply to Property acquired or improved by a borrower with RLF Award funds, including loan collateral to which Recipient has taken title pursuant to collection activities on a defaulted loan.

**6) American-Made Equipment and Products.**

Recipient is hereby notified that Recipient is encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under the RLF Award.

**PART III:  
DEPARTMENT OF COMMERCE  
STANDARD TERMS & CONDITIONS**

The Department of Commerce Standard Terms and Conditions dated March 31, 2017, are incorporated herein as Part III of these RLF Standard Terms and Conditions.

In the event of a conflict between Part I or Part II of these RLF Standard Terms and Conditions and the Part III Department of Commerce Standard Terms and Conditions, Part I and Part II will control.

DEPARTMENT OF COMMERCE  
FINANCIAL ASSISTANCE  
STANDARD TERMS AND CONDITIONS



31 March 2017



**DEPARTMENT OF COMMERCE  
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS**

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## PREFACE

This document sets out the standard terms and conditions applicable to this U.S. Department of Commerce (DOC or Commerce) financial assistance award (hereinafter referred to as the DOC ST&Cs or Standard Terms). A non-Federal entity<sup>1</sup> receiving a DOC financial assistance award must, in addition to the assurances made as part of the application, comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (E.O.s), Office of Management and Budget (OMB) circulars, provisions of the OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (codified at 2 C.F.R. Part 200) (OMB Uniform Guidance), provisions of these Standard Terms, and any other terms and conditions incorporated into this DOC financial assistance award. In addition, as applicable and unless otherwise provided by the terms and conditions of this DOC financial assistance award, Subparts A through E of 2 C.F.R. Part 200 and the Standard Terms are applicable to for-profit entities, foreign public entities and to foreign organizations that carry out a DOC financial assistance award as a recipient or as a subrecipient.<sup>2</sup>

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: public laws, regulations, applicable notices published in the *Federal Register*, E.O.s, OMB circulars, DOC ST&Cs, agency standard award conditions (if any), and specific award conditions. A specific award condition may amend or take precedence over a Standard Term on a case-by-case basis, when allowed by the DOC ST&Cs.

Some of the Standard Terms herein contain, by reference or substance, a summary of the pertinent statutes, regulations published in the *Federal Register* or Code of Federal Regulations (C.F.R.), E.O.s, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (*e.g.*, SF-424, SF-424B, or SF-424D) or through DOC forms (*e.g.* Form

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<sup>1</sup> Please note that the OMB Uniform Guidance uses the term “non-Federal entity” to generally refer to an entity that carries out a Federal award as a recipient or subrecipient. Because some of the provisions of these DOC ST&Cs apply to recipients rather than subrecipients, or vice versa, for clarity, these DOC ST&Cs use the terms “non-Federal entity,” “recipient,” and “subrecipient” consistent with their meanings in the OMB Uniform Guidance. In addition, the OMB Uniform Guidance uses the term “pass-through entity” to refer to a non-Federal entity that makes a subaward.

“Non-Federal entity” is defined at 2 C.F.R. § 200.69 as “a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.”

“Recipient” is defined at 2 C.F.R. § 200.86 as “a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.”

“Subrecipient” is defined at 2 C.F.R. § 200.93 as “a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.”

“Pass-through entity” is defined at 2 C.F.R. § 200.74 as “a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.”

<sup>2</sup> See 2 C.F.R. § 200.46 for the definition of “foreign public entity” and 2 C.F.R. § 200.47 for the definition of “foreign organization.”

CD-511). To the extent that it is a summary, such Standard Term provision is not in derogation of, or an amendment to, any such statute, regulation, E.O., OMB circular, certification, or assurance.

## A. PROGRAMMATIC REQUIREMENTS

### .01 Reporting Requirements

a. Recipients must submit all reports as required by DOC, electronically or if unable to submit electronically, in hard copy, as outlined below and as may be supplemented by the terms and conditions of a specific DOC award.

b. Performance (Technical) Reports. Recipients must submit performance (technical) reports, which may be Form SF-PPR (Performance Progress Report) or any successor form, or another format as required by DOC, to the Program Officer. Performance (technical) reports should be submitted in the same frequency as the Form SF-425 (Federal Financial Report), unless otherwise directed by the Grants Officer.

1. Performance (technical) reports must contain the information prescribed in 2 C.F.R. § 200.328 (Monitoring and reporting program performance), unless otherwise specified in the award conditions.

2. As appropriate and in accordance with the SF-PPR or other OMB-approved information collections, recipients are required to relate financial data to the performance accomplishments of this Federal award. When applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The recipient's performance will be measured in a way that will help DOC to improve program outcomes, share lessons learned, and spread the adoption of best or promising practices. As described in 2 C.F.R. § 200.210 (Information contained in a Federal award), DOC will identify the timing and scope of expected performance by the recipient as related to the outcomes intended to be achieved by the Federal program.

c. Financial Reports. In accordance with 2 C.F.R. § 200.327 (Financial reporting), the recipient must submit a Form SF-425 (Federal Financial Report) or any successor form on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a specific award condition. Reports must be submitted to DOC as directed by the Grants Officer, in accordance with the award conditions and are due no later than 30 calendar days following the end of each reporting period. A final Form SF-425 must be submitted within 90 calendar days after the expiration of the period of performance. A recipient may submit a final financial report in lieu of an interim financial report due at the end of the period of performance (e.g., in lieu of submitting a financial report for the last semi-annual or other reporting under an award, a recipient may submit a final (cumulative) financial report covering the entire award period).

d. Real Property, Tangible Personal Property and Intangible Property Reports and Requests for Dispositions. Unless otherwise required by the terms and conditions of a DOC financial assistance award, where real property, tangible personal property or intangible property is acquired or improved (in the case of real property or tangible personal property), or produced or acquired (in the case of intangible property), pursuant to a DOC award, non-Federal entities are required to submit the following real property, tangible personal property and intangible property reports (as appropriate):

1. Real Property Status Reports and Requests for Dispositions: Non-Federal entities must submit reports using Form SF-429 (Real Property Status Report) or any successor form, including appropriate attachments thereto, at least annually disclosing the status of real property that is Federally-owned property or real property in which the Federal Government retains a Federal Interest, unless the Federal Interest in the real property extends 15 years or longer. In cases where the Federal Interest attached is for a period of 15 years or more, the DOC or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (e.g., every two years or every three years, not to exceed a five-year reporting period; or, the DOC or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years). In addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-429, with appropriate attachments, in connection with a non-Federal entity's request to acquire, improve or contribute real property under a DOC financial assistance award. Non-Federal entities wishing to dispose of real property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-429, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 C.F.R. § 200.311(c). *See also* the real property standards set forth in Section C. of these Standard Terms (Property Standards).

2. Tangible Personal Property Status Reports and Requests for Dispositions: DOC or a pass-through entity may also require a non-Federal entity to submit periodic reports using Form SF-428 (Tangible Personal Property Report) or any successor form, including appropriate attachments thereto, concerning tangible personal property that is Federally-owned or tangible personal property in which the Federal Government retains an interest. In addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-428 in connection with a non-Federal entity's request to dispose of, tangible personal property acquired under a DOC financial assistance award. Non-Federal entities wishing to dispose of tangible personal property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-428, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 C.F.R. § 200.313(e). *See also* the tangible property standards set forth in Section C. of these Standard Terms (Property Standards).

3. Intangible Property Status Reports and Requests for Dispositions: The specific requirements governing the development, reporting, and disposition of rights to intangible property, including inventions and patents resulting from DOC awards, are set forth in 37

C.F.R. Part 401, which is hereby incorporated by reference into this award. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at [www.iedison.gov](http://www.iedison.gov). Non-Federal entities may obtain a waiver of this electronic submission requirement by providing to the Grants Officer compelling reasons for allowing the submission of paper reports. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 C.F.R. § 200.313(e). *See also* the intangible property standards set forth in Section C. of these Standard Terms (Property Standards).

e. Subawards and Executive Compensation Reports. For reporting requirements on subawards and Executive Compensation, see paragraph G.05.n of these Standard Terms (The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)).

f. Recipient Integrity and Performance Matters. For reporting requirements pertaining to integrity and performance matters, see paragraph G.05.o of these Standard Terms (Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)).

## **.02 Revisions of Program Plans**

In accordance with 2 C.F.R. § 200.308 (Revisions of budget and program plans) and 2 C.F.R. § 200.407 (Prior written approval (prior approval)), the recipient must obtain prior written approval from the DOC Grants Officer for certain proposed programmatic change requests, unless otherwise provided by the terms and conditions of a DOC award. Requests for prior approval for changes to program plans must be submitted to the Federal Program Officer (or electronically for awards administered through Grants Online). Requests requiring prior DOC approval are not effective unless and until approved in writing by the DOC Grants Officer.

## **.03 Other Federal Awards with Similar Programmatic Activities**

The recipient must immediately provide written notification to the DOC Program Officer and the DOC Grants Officer in the event that, subsequent to receipt of the DOC award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DOC award. DOC will not pay for costs that are funded by other sources.

## **.04 Prohibition against Assignment by a Non-Federal Entity**

A non-Federal entity must not transfer, pledge, mortgage, assign, encumber or hypothecate a DOC financial assistance award or subaward, or any rights to, interests therein or claims arising thereunder, to any party or parties, including but not limited to banks, trust companies, other financing or financial institutions, or any other public or private organizations or individuals without the express prior written approval of the DOC Grants Officer or the pass-through entity (which, in turn, may need to obtain prior approval from the DOC Grants Officer).



## **.05 Disclaimer Provisions**

a. The United States expressly disclaims any and all responsibility or liability to the non-Federal entity or third persons (including but not limited to contractors) for the actions of the non-Federal entity or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any subaward, contract, or subcontract under this award.

b. The acceptance of this award or any subaward by the non-Federal entity does not in any way constitute an agency relationship between the United States and the non-Federal entity or the non-Federal entity's contractors or subcontractors.

## **.06 Unsatisfactory Performance or Non-Compliance with Award Provisions**

a. Failure to perform the work in accordance with the terms of the award and maintain satisfactory performance as determined by DOC may result in the imposition of additional award conditions pursuant to 2 C.F.R. § 200.207 (Specific conditions) or other appropriate enforcement action as specified in 2 C.F.R. § 200.338 (Remedies for noncompliance).

b. Failure to comply with the provisions of an award will be considered grounds for appropriate enforcement action pursuant to 2 C.F.R. § 200.338 (Remedies for noncompliance), including but not limited to: the imposition of additional award conditions in accordance with 2 C.F.R. § 200.207 (Specific conditions); temporarily withholding award payments pending the correction of the deficiency; changing the payment method to reimbursement only; the disallowance of award costs and the establishment of an accounts receivable; wholly or partially suspending or terminating an award; initiating suspension or debarment proceedings in accordance with 2 C.F.R. Parts 180 and 1326; and such other remedies as may be legally available.

c. 2 C.F.R. §§ 200.339 (Termination) through 200.342 (Effects of suspension and termination) apply to an award that is terminated prior to the end of the period of performance due to the non-federal entity's material failure to comply with the award terms and conditions. In addition, the failure to comply with the provisions of a DOC award may adversely impact the availability of funding under other active DOC or Federal awards and may also have a negative impact on a non-Federal entity's eligibility for future DOC or Federal awards.

## **B. FINANCIAL REQUIREMENTS**

### **.01 Financial Management**

a. In accordance with 2 C.F.R. § 200.302(a) (Financial Management), each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's own funds. In addition, the State's and any other non-Federal entity's financial management systems, including records documenting compliance with

Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with Federal statutes, regulations, and the terms and conditions applicable to the Federal award. *See also* 2 C.F.R. § 200.450 (Lobbying) for additional management requirements to verify that Federal funds are not used for unallowable lobbying costs.

b. The financial management system of each non-Federal entity must provide all information required by 2 C.F.R. § 200.302(b). *See also* 2 C.F.R. §§ 200.333 (Retention requirements for records); 200.334 (Requests for transfer of records); 200.335 (Methods for collection, transmission and storage of information); 200.336 (Access to records); and 200.337 (Restrictions on public access to records).

## .02 Award Payments

a. Consistent with 2 C.F.R. § 200.305(a) (Payment), for States, payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 C.F.R. Part 205 (Rules and Procedures for Efficient Federal-State Funds Transfers) and Treasury Financial Manual Volume I, 4A-2000 (Overall Disbursing Rules for All Federal Agencies).

b. Consistent with 2 C.F.R. § 200.305(b), for non-Federal entities other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.

1. The Grants Officer determines the appropriate method of payment and, unless otherwise stated in a specific award condition, the advance method of payment must be authorized. Advances must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the non-Federal entity in carrying out the purpose of the approved program or project. Unless otherwise provided by the terms and conditions of a DOC award, non-Federal entities must time advance payment requests so that Federal funds are on hand for a maximum of 30 calendar days before being disbursed by the non-Federal entity for allowable award costs.

2. If a non-Federal entity demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement by the non-Federal entity or if a non-Federal entity otherwise fails to continue to qualify for the advance method of payment, the Grants Officer or the pass-through entity may change the method of payment to reimbursement only.

c. Unless otherwise provided for in the award terms, payments from DOC to recipients under this award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers directly to the recipient's bank account, in accordance

with the requirements of the Debt Collection Improvement Act of 1996. In order to receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP:

1. ASAP account number – the Federal award identification number found on the cover sheet of the award;
2. Agency Location Code (ALC); and
3. Region Code.

d. Recipients enrolled in the ASAP system do not need to submit a Form SF-270 (Request for Advance or Reimbursement), for payments relating to their award. Awards paid under the ASAP system will contain a specific award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.

e. When the Form SF-270 (Request for Advance or Reimbursement) or successor form is used to request payment, the recipient must submit the request no more frequently than monthly, and advances must be approved for periods to cover only expenses reasonably anticipated over the next 30 calendar days. Prior to receiving payments via the Form SF-270, the recipient must complete and submit to the Grants Officer, the Form SF-3881 (ACH Vendor Miscellaneous Payment Enrollment Form) or successor form along with the initial Form SF-270. Form SF-3881 enrollment must be completed before the first award payment can be made via a Form SF-270 request.

f. The Federal award identification number must be included on all payment-related correspondence, information, and forms.

g. Non-Federal entities receiving advance award payments must adhere to the depository requirements set forth in 2 C.F.R. §§ 200.305(b)(7) through (b)(9). Interest amounts up to \$500 per year may be retained by the non-Federal entity for administrative expenses.

### **.03 Federal and Non-Federal Sharing**

a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares must be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs exceed the total approved budget, the Federal share must not exceed the total Federal dollar amount authorized by the award.

b. The non-Federal share, whether in cash or third party in-kind contributions, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or third party in-kind contributions. In any case, the recipient must meet its cost share commitment as set forth in the terms and conditions of the award; failure to do so may result in the assignment of specific award conditions or other further action as specified in Standard Term A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). The non-Federal entity must create and maintain sufficient records justifying all non-Federal sharing requirements to facilitate questions and audits; see Section D of these Standard Terms (Audits), for audit requirements. See 2 C.F.R. § 200.306 for additional requirements regarding cost sharing.

#### **.04 Budget Changes and Transfer of Funds among Categories**

a. Recipients are required to report deviations from the approved project budget and request prior written approval from DOC in accordance with 2 C.F.R. § 200.308 (Revision of budget and program plans) and 2 C.F.R. § 200.407 (Prior written approval (prior approval)). Requests for such budget changes must be submitted to the Grants Officer (or electronically for awards serviced through Grants Online) who will notify the recipient of the final determination in writing. Requests requiring prior DOC approval are not effective unless and until approved in writing by the DOC Grants Officer.

b. In accordance with 2 C.F.R. § 200.308(e), transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is \$150,000 or less. For awards in which the Federal share of the project exceeds \$150,000, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct costs transfers exceeds 10 percent of the total budget as last approved by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. This transfer authority does not authorize the recipient to create new budget categories within an approved budget without Grants Officer approval. Any transfer that causes any Federal appropriation, or part thereof, to be used for an unauthorized purpose will not be permitted. In addition, this provision does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. See 2 C.F.R. § 200.308 (Revision of budget and program plans) (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.

#### **.05 Program Income**

Unless otherwise indicated in the award terms, program income may be used for any required cost sharing or added to the project budget, consistent with 2 C.F.R. § 200.307 (Program income).

## .06 Indirect or Facilities and Administrative Costs

a. Indirect costs (or facilities and administration costs (F&A)) for major institutions of higher education and major nonprofit organizations can generally be defined as costs incurred for a common or joint purpose benefitting more than one cost objective, and not readily assignable to the cost objectives specifically benefitted, without effort disproportionate to the results achieved. Indirect (F&A) costs will not be allowable charges against an award unless permitted under the award and specifically included as a line item in the award's approved budget.

b. Unrecovered indirect costs, including unrecovered indirect costs on cost sharing or matching, may be included as part of cost sharing or matching as allowed under 2 C.F.R. § 200.306(c) (Cost sharing or matching) or the terms and conditions of a DOC award.

c. Cognizant Agency for Indirect (F&A) Costs. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with non-Federal entities in common areas. The cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates. In accordance with Appendices III – VII to 2 C.F.R. Part 200 the cognizant agency for indirect costs reviews and approves non-Federal entities' indirect cost rates. With respect to for profit organizations, the term cognizant Federal agency generally is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. *See* 48 C.F.R. § 42.003. If the only Federal funds received by a commercial organization are DOC award funds, then DOC becomes the cognizant Federal agency for the purpose of indirect cost negotiations.

### 1. General Review Procedures Where DOC is the Cognizant Agency.

i. Within 90 calendar days of the award start date the recipient must submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow DOC to perform the indirect cost rate proposal review. For guidance on how to put an indirect cost plan together go to:

<http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm>

ii. The recipient may use the rate proposed in the indirect cost plan as a provisional rate until such time as the DOC provides a response to the submitted plan.

2. When DOC is not the oversight or cognizant Federal agency, the recipient must provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.

d. If the recipient fails to submit required documentation to DOC within 90 calendar days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines

there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

e. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient is the lesser of:

1. The line item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or
2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, provided that the rate is approved on or before the award end date.

f. In accordance with 2 CFR § 200.414(g), any non-Federal entity that has a negotiated indirect cost rate may apply to the entity's cognizant agency for indirect costs for a one-time extension of a currently negotiated indirect cost rate for a period of up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency. In addition, in accordance with 2 CFR § 200.414(f), any non-Federal entity that has never received a negotiated indirect cost rate, except for those non-Federal entities described in Paragraph D.1.b of Appendix VII to 2 CFR Part 200 (specifically, a governmental department or agency that receives more than \$35 million in direct Federal funding), may elect to charge a de minimis rate of 10 percent of modified total direct costs.

#### **.07 Incurring Costs or Obligating Federal Funds Before and After the Period of Performance**

a. In accordance with 2 C.F.R. § 200.309 (Period of performance) and the terms and conditions of a DOC award a non-Federal entity may charge to the Federal award only allowable costs incurred during the period of performance, which is established in the award document. As defined at 2 C.F.R. § 200.77, the "period of performance" is "the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award." The period of performance may sometimes be referred to as the project period or award period. This Standard Term is subject to exceptions for allowable costs pertaining to: (i) pre-award costs (*see* 2 C.F.R. § 200.458); (ii) publication and printing costs (*see* 2 C.F.R. § 200.461); and administrative costs incurred in connection with the close-out of an award (*see* 2 C.F.R. § 200.343).

b. Reasonable, necessary and allocable administrative award closeout costs are authorized for a period of up to 90 calendar days following the end of the period of performance. For this purpose, award closeout costs are those strictly associated with close-out activities and are typically limited to the preparation of final progress, financial, and required project audit reports, unless otherwise approved in writing by the Grants Officer. A non-Federal entity may request an extension of the 90-day closeout period, as provided in 2 C.F.R. § 200.343 (Closeout).

c. Unless authorized by a specific award condition, any extension of the period of performance may only be authorized by the Grants Officer in writing. Verbal or written assurances of funding from anyone other than the Grants Officer does not constitute authority to obligate funds for programmatic activities beyond the end of the period of performance.

d. The DOC has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the period of performance is at the sole discretion of DOC.

## **.08 Tax Refunds**

The non-Federal entity shall contact the Grants Officer immediately upon receipt of the refund of any taxes, including but not limited to Federal Insurance Contributions Act (FICA) taxes, Federal Unemployment Tax Act (FUTA) taxes, or Value Added Taxes (VAT) that were allowed as charges to a DOC award, regardless of whether such refunds are received by the non-Federal entity during or after the period of performance. The Grants Officer will provide written disposition instructions to the non-Federal entity, which may include the refunded taxes being credited to the award as either a cost reduction or a cash refund, or may allow the non-Federal entity to use such refunds for approved activities and costs under a DOC award. *See* 2 C.F.R. § 200.470 (Taxes (including Value Added Tax)).

## **.09 Internal Controls**

Each recipient must comply with standards for internal controls described at 2 C.F.R. § 200.303 (Internal controls). The “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States referenced in § 200.303 are available online at <http://www.gao.gov/assets/80/76455.pdf> and the “Internal Control Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) is available online at <http://www.coso.org/documents/Internal%20Control-Integrated%20Framework.pdf>.

## **C. PROPERTY STANDARDS**

### **.01 Standards**

Each non-Federal entity must comply with the Property Standards set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship).

### **.02 Real and Personal Property**

a. In accordance with 2 C.F.R. § 200.316 (Property trust relationship), real property, equipment, and other personal property acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under

which the property was acquired or improved. This trust relationship exists throughout the duration of the property's estimated useful life, as determined by the Grants Officer in consultation with the Program Office, during which time the Federal Government retains an undivided, equitable reversionary interest in the property (Federal Interest). During the duration of the Federal Interest, the non-Federal entity must comply with all use and disposition requirements and restrictions as set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship), as applicable, and in the terms and conditions of the Federal award.

b. The Grants Officer may require a non-Federal entity to execute and to record (as applicable) a statement of interest, financing statement (form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part with Federal funds is subject to the Federal Interest, and that certain use and disposition requirements apply to the property. The statement of interest, financing statement (form UCC-1), lien, mortgage or other public notice must be acceptable in form and substance to the DOC and must be placed of record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the Grants Officer may further require the non-Federal entity to provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be returned to the Grants Officer. Without releasing or excusing the non-Federal entity from these obligations, the non-Federal entity, by execution of the financial assistance award or by virtue of expending Federal financial assistance funds (in the case of a subrecipient), authorizes the Grants Officer and/or program office to file such notices and continuations as it determines to be necessary or convenient to disclose and protect the Federal Interest in the property. The Grants Officer may elect not to release any or a portion of the Federal award funds until the non-Federal entity has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the Grants Officer are made.

### .03 Intellectual Property Rights

a. General. The rights to any work or other intangible property, produced or acquired under a Federal award are determined by 2 C.F.R. § 200.315 (Intangible property). The non-Federal entity owns any work produced or purchased under a Federal award subject to the DOC's royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work or authorize others to receive, reproduce, publish, or otherwise use the work for Government purposes.

b. Inventions. Unless otherwise provided by law, the rights to any invention made by a non-Federal entity under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and as codified in 35 U.S.C. § 200 *et seq.*, and modified by E.O. 12591 (52 FR 48661), as amended by E.O. 12618 (52 FR 48661). 35 U.S.C. § 201(h) defines "small business firm" as "a small business concern as defined at section 2 of Public Law 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small



Business Administration.” Section 1(b)(4) of E.O. 12591 extended the Bayh-Dole Act to non-Federal entities “regardless of size” to the extent permitted by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from Federal awards are described in more detail in 37 C.F.R. Part 401, which implements 35 U.S.C. 202 through 204 and includes standard patent rights clauses in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this award.

1. Ownership. A non-Federal entity may have rights to inventions in accordance with 37 C.F.R. Part 401. These requirements are technical in nature and non-Federal entities are encouraged to consult with their IP counsel to ensure the proper interpretation of and adherence to the ownership rules. Unresolved questions pertaining to a non-Federal entities’ ownership rights may further be addressed to the Grants Officer.

2. Responsibilities - iEdison. The non-Federal entity must comply with all the requirements of the standard patent rights clause and 37 C.F.R. Part 401, including the standard patent rights clause in 37 C.F.R. § 401.14. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at [www.iedison.gov](http://www.iedison.gov). Non-Federal entities may obtain a waiver of this electronic submission requirement by providing the Grants Officer with compelling reasons for allowing the submission of paper reports.

c. Patent Notification Procedures. Pursuant to E.O. 12889 (58 FR 69681), the DOC is required to notify the owner of any valid patent covering technology whenever the DOC or a non-Federal entity, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the non-Federal entity uses or has used patented technology under this award without a license or permission from the owner, the non-Federal entity must notify the Grants Officer.

This notice does not constitute authorization or consent by the Government to any copyright or patent infringement occurring under the award.

d. A non-Federal entity may copyright any work produced under a Federal award, subject to the DOC’s royalty-free, nonexclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use the work, or authorize others to do so for Government purposes. Works jointly authored by DOC and non-Federal entity employees may be copyrighted, but only the part of such works authored by the non-Federal entity is protectable in the United States because, under 17 U.S.C. § 105, copyright protection is not available within the United States for any work of the United States Government. On occasion and as permitted under 17 U.S.C. § 105, DOC may require the non-Federal entity to transfer to DOC a copyright in a particular work for Government purposes or when DOC is undertaking primary dissemination of the work.

e. Freedom of Information Act (FOIA). In response to a FOIA request for research data relating to published research findings (as defined by 2 C.F.R. § 200.315(e)(2)) produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the DOC will request, and the non-Federal entity must provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA.

## D. AUDITS

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, §§ 1 *et seq.*, an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, must have the right to access any pertinent books, documents, papers, and records of the non-Federal entity, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law. This right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents. *See* 2 C.F.R. § 200.336 (Access to records). When the DOC Office of Inspector General (OIG) requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, State, or local audit entity.

### .01 Organization-Wide, Program-Specific, and Project Audits

a. Within 90 calendar days of the end of the fiscal year of a recipient subject to Subpart F of 2 C.F.R. Part 200, the recipient is responsible for notifying the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, the recipient expended during its fiscal year.

b. Organization-wide or program-specific audits must be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by Subpart F to 2 C.F.R. Part 200, Audits Requirements. Recipients that are subject to the provisions of 2 C.F.R. Part 200 and that expend \$750,000 or more in a year in Federal awards must have an audit conducted for that year in accordance with the relevant requirements. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, a copy of the audit must be submitted electronically to the Federal Audit Clearinghouse (FAC) through the FAC's Internet Data Entry System (IDES) (<https://harvester.census.gov/facides/>).

1. Unless otherwise specified in the terms and conditions of the award, non-Federal entities that are not subject to Subpart F of 2 C.F.R. Part 200 (e.g., for-profit entities) and that expend \$750,000 or more in DOC funds during their fiscal year must have an audit conducted for that year in accordance with Subpart F of 2 C.F.R. Part 200. The audit must be completed and submitted to the Grants Officer within the earliest of 30 calendar days of the recipient's receipt of the audit report or nine months following the end of the recipient's fiscal year.

2. For-profit entities that expend less than \$750,000 in DOC funds in a given fiscal year are not required to have an annual audit for that year but must make their award-related records available to DOC or other designated officials for review and audit.

Failure to provide audit reports within the timeframes specified above may result in appropriate enforcement action, up to and including termination of the award, and may jeopardize eligibility for receiving future DOC awards.

c. Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 C.F.R. § 200.507 (Program-specific audits). The recipient may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit must be submitted to the Grants Officer.

d. Recipients are responsible for compliance with the above audit requirements and for informing the Grants Officer of the status of their audit, including when the relevant audit has been completed and submitted in accordance with the requirements of this section. In accordance with 2 C.F.R. § 200.331(d)(3), pass-through entities are responsible for issuing a management decision for any audit findings pertaining to the Federal award provided to a subrecipient.

## .02 Audit Resolution Process

a. An audit of the award may result in the disallowance of costs incurred by the recipient and the establishment of a debt (account receivable) due to DOC. For this reason, the recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.

b. A recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:

1. The recipient has 30 calendar days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
2. The recipient has 30 calendar days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
3. The DOC will review the documentary evidence submitted by the recipient and will notify the recipient of the results in an *Audit Resolution Determination Letter*. The recipient has 30 calendar days from the date of receipt of the *Audit Resolution Determination Letter* to submit a written appeal, unless this deadline is extended in writing by the DOC. The appeal

is the last opportunity for the recipient to submit written comments and documentary evidence to the DOC to dispute the validity of the audit resolution determination.

4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.

5. The DOC will review the recipient's appeal and notify the recipient of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

## **E. DEBTS**

### **.01 Payment of Debts Owed to the Federal Government**

a. The non-Federal entity must promptly pay any debts determined to be owed to the Federal Government. Any funds paid to a non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal government. In accordance with 2 C.F.R. § 200.345 (Collection of amounts due), if not paid within 90 calendar days after demand, DOC may reduce a debt owed to the Federal Government by:

1. Making an administrative offset against other requests for reimbursement;
2. Withholding advance payments otherwise due to the non-Federal entity; or
3. Taking any other action permitted by Federal statute.

The foregoing does not waive any claim on a debt that DOC may have against another entity, and all rights and remedies to pursue other parties are preserved.

b. DOC debt collection procedures are set out in 15 C.F.R. Part 19. In accordance with 2 C.F.R. § 200.345 (Collection of amounts due) and 31 U.S.C. § 3717, failure to pay a debt owed to the Federal Government must result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Commerce entities will transfer any Commerce debt that is delinquent for more than 120 calendar days to the U.S. Department of the Treasury's Financial Management Service for debt collection services, a process known as cross-servicing, pursuant to 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12, and 15 C.F.R. § 19.9. DOC may also take further action as specified in DOC ST&C A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions). Funds for payment of a debt must not come from other Federally-sponsored programs, and the DOC may

conduct on-site visits, audits, and other reviews to verify that other Federal funds have not been used to pay a debt.

## **.02 Late Payment Charges**

a. Interest will be assessed on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701 *et seq.*). The minimum annual interest rate to be assessed is the U.S. Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at [https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr\\_home.htm](https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm) and also published by the Department of the Treasury in the *Federal Register* (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the *Treasury Financial Manual Bulletin*. The assessed rate must remain fixed for the duration of the indebtedness.

b. Penalties will accrue at a rate of not more than six percent per year or such other higher rate as authorized by law.

c. Administrative charges, i.e., the costs of processing and handling a delinquent debt, will be determined by the Commerce entity collecting the debt, as directed by the Office of the Chief Financial Officer and Assistant Secretary for Administration.

## **.03 Barring Delinquent Federal Debtors from Obtaining Federal Loans or Loan Insurance Guarantees**

Pursuant to 31 U.S.C. § 3720B and 31 C.F.R. § 901.6, unless waived by DOC, the DOC is not permitted to extend financial assistance in the form of a loan, loan guarantee, or loan insurance to any person delinquent on a nontax debt owed to a Federal agency. This prohibition does not apply to disaster loans.

## **.04 Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs**

Pursuant to 28 U.S.C. § 3201(e), unless waived by the DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

## **F. CONFLICT OF INTEREST, CODE OF CONDUCT AND OTHER REQUIREMENTS PERTAINING TO DOC FINANCIAL ASSISTANCE AWARDS, INCLUDING SUBAWARDS AND PROCUREMENTS ACTIONS**

### **.01 Conflict of Interest and Code of Conduct**

a. DOC Conflict of Interest Policy. In accordance with 2 C.F.R. § 200.112 (Conflict of interest), the non-Federal entity must disclose in writing any potential conflict of interest to the DOC or pass-through entity. In addition, a non-Federal entity will establish and maintain written standards of conduct that include safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of an award. It is the DOC's policy to maintain the highest standards of conduct and to prevent real or apparent conflicts of interest in connection with DOC financial assistance awards.

b. A conflict of interest generally exists when an interested party participates in a matter that has a direct and predictable effect on the interested party's personal or financial interests. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. A conflict also may exist where there is an appearance that an interested party's objectivity in performing his or her responsibilities under the project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an interested party is unable to render impartial assistance, services or advice to the recipient, a participant in the project or to the Federal Government. Additionally, a conflict of interest may result from non-financial gain to an interested party, such as benefit to reputation or prestige in a professional field. For purposes of the DOC Conflict of Interest Policy, an interested party includes, but is not necessarily limited to, any officer, employee or member of the board of directors or other governing board of a non-Federal entity, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family and other persons directly connected to the interested party by law or through a business arrangement.

c. Procurement-related conflict of interest. In accordance with 2 C.F.R. § 200.318 (General procurement standards), non-Federal entities must maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award and administration of contracts. *See* paragraph F.04 of these Standard Terms (Requirements for Procurements).

### **.02 Nonprocurement Debarment and Suspension**

Non-Federal entities must comply with the provisions of 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement

transactions either through primary or lower tier covered transactions, and which set forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

### **.03 Requirements for Subawards**

The recipient or pass-through entity must require all subrecipients, including lower tier subrecipients, to comply with the terms and conditions of a DOC financial assistance award, including applicable provisions of the OMB Uniform Guidance (2 C.F.R. Part 200), and all associated Terms and Conditions set forth herein. *See* 2 C.F.R. § 200.101(b)(1) (Applicability), which describes the applicability of 2 C.F.R. Part 200 to various types of Federal awards and 2 C.F.R. §§ 200.330 (Subrecipient and contractor determinations) through 200.332, (Subrecipient monitoring and management).

### **.04 Requirements for Procurements**

a. **States.** Pursuant to 2 C.F.R. § 200.317 (Procurements by states), when procuring property and services under this Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State must comply with 2 C.F.R. § 200.322 (Procurement of recovered materials), and ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.326 (Contract provisions).

b. **Other Non-Federal Entities.** All other non-Federal entities, including subrecipients of a State, must follow the requirements of 2 C.F.R. §§ 200.318 (General procurement standards) through 200.326 (Contract provisions) which includes the requirement that non-Federal entities maintain written standards of conduct covering conflicts of interest and governing the performance of their employees engaged in the selection, award, and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest.

### **.05 Whistleblower Protections**

This award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information), which generally provide that an employee or contractor (including subcontractors and personal services contractors) of a non-Federal entity may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward. These persons or bodies include:

a. A Member of Congress or a representative of a committee of Congress.

- b. An Inspector General.
- c. The Government Accountability Office.
- d. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
- e. An authorized official of the Department of Justice or other law enforcement agency.
- f. A court or grand jury.
- g. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Non-Federal entities and contractors under Federal awards and subawards must inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

#### **.06 Small Businesses, Minority Business Enterprises and Women's Business Enterprises**

In accordance with 2 C.F.R. § 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), the recipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus areas firms are used when possible. DOC encourages non-Federal entities to use small businesses, minority business enterprises and women's business enterprises in contracts under financial assistance awards. The Minority Business Development Agency within the DOC will assist non-Federal entities in matching qualified minority business enterprises with contract opportunities. For further information visit MBDA's website at <http://www.mbda.gov>. If you do not have access to the Internet, you may contact MBDA via telephone or mail:

U.S. Department of Commerce  
Minority Business Development Agency  
Herbert C. Hoover Building  
14th Street and Constitution Avenue, N.W.  
Washington, D.C. 20230  
(202) 482-0101

### **G. NATIONAL POLICY REQUIREMENTS**

#### **.01 United States Laws and Regulations**

This award is subject to the laws and regulations of the United States. The recipient must comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.



## .02 Non-Discrimination Requirements

No person in the United States must, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving Federal financial assistance. The recipient agrees to comply with the non-discrimination requirements below:

### a. Statutory Provisions

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and DOC implementing regulations published at 15 C.F.R. Part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.

For purposes of complying with the accessibility standards set forth in 15 C.F.R. § 8b.18(c), non-federal entities must adhere to the regulations, published by the U.S. Department of Justice, implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards), which replace and supersede the former Uniform Federal Accessibility Standards for new construction and alteration projects;

5. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and DOC implementing regulations published at 15 C.F.R. Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance; and
6. Any other applicable non-discrimination law(s).

## b. Other Provisions

1. Parts II and III of E.O. 11246 (Equal Employment Opportunity, 30 FR 12319),<sup>3</sup> which requires Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b)).

2. E.O. 13166 (65 FR 50121, Improving Access to Services for Persons with Limited English Proficiency), requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. The DOC issued policy guidance on March 24, 2003 (68 FR 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-Federal entities provide meaningful access to their LEP applicants and beneficiaries.

## c. Title VII Exemption for Religious Organizations

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e *et seq.*, provides that it is an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, "a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities."

## .03 LOBBYING RESTRICTIONS

### a. Statutory Provisions

Non-Federal entities must comply with 2 C.F.R. § 200.450 (Lobbying), which incorporates the provisions of 31 U.S.C. § 1352; and OMB guidance and notices on lobbying restrictions. In addition, non-Federal entities must comply with the DOC regulations published at 15 C.F.R. Part 28, which implement the New Restrictions on Lobbying. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying. Lobbying includes attempting to improperly influence, meaning any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter, either directly or indirectly. Costs incurred on to improperly influence are unallowable. *See* 2 C.F.R. § 200.450(b) and (c).

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<sup>3</sup> As amended by E.O. 11375(32 FR 14303), E.O. 12086 (43 FR 46501), and E.O. 13672 (79 FR 42971).

## b. Disclosure of Lobbying Activities

Any recipient that receives more than \$100,000 in Federal funding and conducts lobbying with non-federal funds in connection with a covered Federal action must submit a completed Form SF-LLL (Disclosure of Lobbying Activities). The Form SF-LLL must be submitted within 30 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit any required Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

## .04 Environmental Requirements

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to approve: (1) a proposal for Federal assistance; (2) the proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Each non-Federal entity must comply with all environmental standards, to include those prescribed under the following statutes and E.O.s, and must identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

### a. The National Environmental Policy Act (42 U.S.C. §§ 4321 *et seq.*)

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 C.F.R. Parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions to determine whether they have significant impacts on the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements when the award activities remain subject to Federal authority and control. Non-Federal entities are required to identify to the awarding agency any direct, indirect or cumulative impact an award will have on the quality of the human environment, and assist the agency in complying with NEPA. Non-Federal entities may also be requested to assist DOC in drafting an environmental assessment or environmental impact statement if DOC determines such documentation is required, but DOC remains responsible for the sufficiency and approval of the final documentation. Until such time as the appropriate NEPA documentation is complete and in the event that any additional information is required during the period of performance to assess project environmental impacts, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit the appropriate environmental information and NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.

**b. The National Historic Preservation Act (16 U.S.C. §§ 470 *et seq.*)**

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation (ACHP) implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties and, when appropriate, provide the ACHP with a reasonable opportunity to comment. Historic properties include but are not necessarily limited to districts, buildings, structures, sites and objects. In this connection, archeological resources and sites that may be of traditional religious and cultural importance to Federally-recognized Indian Tribes, Alaskan Native Villages and Native Hawaiian Organizations may be considered historic properties. Non-Federal entities are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Non-Federal entities may also be requested to assist DOC in consulting with State or Tribal Historic Preservation Officers, ACHPs or other applicable interested parties necessary to identify, assess, and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation are complete and in the event that any additional information is required during the period of performance in order to assess project impacts on historic properties, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit any information sufficient to enable DOC to make the requisite assessment under the NHPA.

Additionally, non-Federal entities are required to assist the DOC in assuring compliance with the Archeological and Historic Preservation Act of 1974 (54 U.S.C. § 312502 *et seq.*, formerly 16 U.S.C. § 469a-1 *et seq.*); Executive Order 11593 (Protection and Enhancement of the Cultural Environment, May 13, 1971); Executive Order 13006 (Locating Federal Facilities on Historic Properties in Our Nation's Central Cities, May 21, 1996); and Executive Order 13007 (Indian Sacred Sites, May 24, 1996).

**c. Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands)**

Non-Federal entities must identify proposed actions in Federally defined floodplains and wetlands to enable DOC to make a determination whether there is an alternative to minimize any potential harm.

**d. Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. §§ 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 ("Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans")**

Non-Federal entities must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Clean Water Act (33 U.S.C. §§ 1251 *et seq.*), and E.O. 11738 (38 FR 25161), and must not use a facility on the Environmental Protection Agency's (EPA) List of Violating Facilities (this list is incorporated into the Excluded Parties List System found at

the System for Award Management (SAM) website located SAM.gov) in performing any award that is nonexempt under 2 C.F.R. § 1532, and must notify the Program Officer in writing if it intends to use a facility that is on the EPA List of Violating Facilities or knows that the facility has been recommended to be placed on the List.

e. **The Flood Disaster Protection Act (42 U.S.C. §§ 4002 *et seq.*)**

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas. Per 2 C.F.R. § 200.447(a), the cost of required flood insurance is an allowable expense, provided that it is reflected in the approved project budget.

f. **The Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*)**

Non-Federal entities must identify any impact or activities that may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to a protected species or habitat occur from actions under Federal assistance awards and conduct the reviews required under the Endangered Species Act, as applicable.

g. **The Coastal Zone Management Act (16 U.S.C. §§ 1451 *et seq.*)**

Funded projects must be consistent with a coastal State's approved management program for the coastal zone.

h. **The Coastal Barriers Resources Act (16 U.S.C. §§ 3501 *et seq.*)**

Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

i. **The Wild and Scenic Rivers Act (16 U.S.C. §§ 1271 *et seq.*)**

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

j. **The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. §§ 300f *et seq.*)**

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

k. **The Resource Conservation and Recovery Act (42 U.S.C. §§ 6901 *et seq.*)**

This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that non-Federal entities give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

**l. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, commonly known as Superfund) (42 U.S.C. §§ 9601 *et seq.*) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note *et seq.*)**

These requirements address responsibilities related to hazardous substance releases, threatened releases and environmental cleanup. There are also reporting and community involvement requirements designed to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

**m. Executive Order 12898 ("Environmental Justice in Minority Populations and Low Income Populations")**

Federal agencies are required to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on low income and minority populations.

**n. The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*)**

Non-Federal entities must identify to DOC any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with the National Marine Fisheries Service (NMFS) regarding the potential effects of their actions, and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the regulations are met, EFH consultations will be incorporated into interagency procedures previously established under NEPA, the ESA, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

**o. Clean Water Act (CWA) Section 404 (33 U.S.C. § 1344)**

CWA Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as levees and some coastal restoration activities), and infrastructure development (such as highways and airports). CWA Section 404 requires a permit from the U.S. Army Corps of Engineers before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).

**p. Rivers and Harbors Act (33 U.S.C. § 407)**

A permit may be required from the U.S. Army Corps of Engineers if the proposed activity involves any work in, over or under navigable waters of the United States.

Recipients must identify any work (including structures) that will occur in, over or under navigable waters of the United States and obtain the appropriate permit, if applicable.

**q. The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), and Executive Order 13186 (Responsibilities of Federal Agencies to Protect Migratory Birds, January 10, 2001)**

A number of prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

**r. Executive Order 13112 (Invasive Species, February 3, 1999)**

Federal agencies must identify actions that may affect the status of invasive species and use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them. In addition, an agency may not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

**s. Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*)**

During the planning of water resource development projects, agencies are required to give fish and wildlife resources equal consideration with other values. Additionally, the U.S. Fish and Wildlife Service and fish and wildlife agencies of states must be consulted whenever waters of any stream or other body of water are “proposed or authorized, permitted or licensed to be impounded, diverted... or otherwise controlled or modified” by any agency under a Federal permit or license.

## **.05 OTHER NATIONAL POLICY REQUIREMENTS**

### **a. Criminal and Prohibited Activities**

1. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).

2. The False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States must be subject to imprisonment of not more than five years and must be subject to a fine in the amount provided by 18 U.S.C. § 287.
3. The Civil False Claims Act (31 U.S.C. §§ 3729 - 3733), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.
4. The Copeland Anti-Kickback Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland Anti-Kickback Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.
5. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and implementing regulations issued at 15 C.F.R. Part 11, which provides for fair and equitable treatment of displaced persons or of persons whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
6. The Hatch Act (5 U.S.C. §§ 1501-1508 and 7321-7326), which limits the political activities of employees or officers of state or local governments whose principal employment activities are funded in whole or in part with Federal funds.
7. In order to ensure compliance with Federal law pertaining to financial assistance awards, an authorized representative of a non-Federal entity may be required to periodically provide certain certifications to the DOC regarding Federal felony and Federal criminal tax convictions, unpaid federal tax assessments, delinquent Federal tax returns and such other certifications that may be required by Federal law.

**b. Drug-Free Workplace**

The non-Federal entity must comply with the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8102) and DOC implementing regulations published at 2 C.F.R. Part 1329 (Government wide Requirements for Drug-Free Workplace – Financial Assistance), which require that the non-Federal entity take certain actions to provide a drug-free workplace.



### c. Foreign Travel

1. Each non-Federal entity must comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.
2. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.
3. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website <http://www.gsa.gov/portal/content/103191>. Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's website <http://www.state.gov/e/eeb/tra/>.
4. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award the non-Federal entity must receive prior approval from the Grants Officer. When requesting such approval, the non-Federal entity must provide a justification in accordance with guidance provided by 41 C.F.R. § 301-10.142, which requires the non-Federal entity to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the non-Federal entity meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the non-Federal entity must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer must make the final determination and notify the non-Federal entity in writing (which may be done through the recipient in the case of subrecipient travel). Failure to adhere to the provisions of the Fly America Act will result in the non-Federal entity not being reimbursed for any transportation costs for which any non-Federal entity improperly used a foreign air carrier.

#### **d. Increasing Seat Belt Use in the United States**

Pursuant to E.O. 13043 (62 FR 19217), non-Federal entities should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally owned vehicles.

#### **e. Federal Employee Expenses and Subawards or Contracts Issued to Federal Employees or Agencies**

1. Use of award funds (Federal or non-Federal) or the non-Federal entity's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy may prohibit the acceptance of gifts, including travel payments for federal employees, from non-Federal entities regardless of the source. Therefore, before award funds may be used by Federal employees, non-Federal entities must submit requests for approval of such action to the Federal Program Officer who must review and make a recommendation to the Grants Officer. The Grants Officer will notify the non-Federal entity in writing (generally through the recipient) of the final determination.

2. A non-Federal entity or its contractor may not issue a subaward, contract or subcontract of any part of a DOC award to any agency or employee of DOC or to other Federal employee, department, agency, or instrumentality, without the advance prior written approval of the DOC Grants Officer.

#### **f. Minority Serving Institutions Initiative**

Pursuant to E.O.s 13555 (White House Initiative on Educational Excellence for Hispanics) (75 FR 65417), 13592 (Improving American Indian and Alaska Native Educational Opportunities and Strengthening Tribal Colleges and Universities) (76 FR 76603), and 13779 (White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities) (82 FR 12499), DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. DOC's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and non-Federal entities to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

#### **g. Research Misconduct**

The DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication,

falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Non-Federal entities that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Non-Federal entities must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity's inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the results of any investigation. The DOC may take appropriate administrative or enforcement action at any time under the award, up to and including award termination and possible suspension or debarment, and referral to the Commerce OIG, the U.S. Department of Justice, or other appropriate investigative body.

#### **h. Research Involving Human Subjects**

1. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. Part 27 (Protection of Human Subjects). No research involving human subjects is permitted under this award unless expressly authorized by specific award condition, or otherwise in writing by the Grants Officer.
2. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
3. DOC regulations at 15 C.F.R. Part 27 require that non-Federal entities maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the non-Federal entity (generally through the recipient) must submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. As applicable, this documentation must include:
  - i. Documentation establishing approval of an activity in the project by an Institutional Review Board (IRB) approved for Federal-wide use under Department of Health and Human Services guidelines (*see also* 15 C.F.R. § 27.103);
  - ii. Documentation to support an exemption for an activity in the project under 15 C.F.R. § 27.101(b);
  - iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form;

iv. Documentation of an IRB approval of continuing review approved prior to the expiration date of the previous IRB determination; and

v. Documentation of any reportable events, such as serious adverse events, unanticipated problems resulting in risk to subjects or others, and instances of noncompliance.

4. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. In accordance with 15 C.F.R. § 27.118, if research involving human subjects is proposed after an award is made, the non-Federal entity must contact the Federal Program Officer and provide required documentation. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

**i. Care and Use of Live Vertebrate Animals**

Non-Federal entities must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. §§ 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations (9 C.F.R. Parts 1, 2, and 3); the Endangered Species Act (16 U.S.C. §§ 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. §§ 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. §§ 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm-blooded animals held for research, teaching, or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any DOC financial assistance award unless authorized by the Grants Officer.

**j. Management and Access to Data and Publications**

1. In General. The recipient acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by recipients, may be used by the DOC in conducting reviews and evaluations of its financial assistance programs. For this purpose, recipient information and data may be accessed, reviewed and evaluated by DOC employees, other Federal employees, Federal agents and contractors, and/or by non-Federal personnel, all of who enter into appropriate or are otherwise subject to confidentiality and nondisclosure agreements covering the use of such information. Recipients are expected to support program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperating with DOC and external program evaluators. In accordance with 2 C.F.R. § 200.303(e), recipients are reminded that they must take reasonable measures to safeguard protected personally

identifiable information and other confidential or sensitive personal or business information created or obtained in connection with a DOC financial assistance award.

2. Scientific Data. Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Special Award Conditions.

3. Publications, Videos, and Acknowledgment of Sponsorship.

i. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (e.g., scientific research). Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Special Award Conditions.

ii. Non-Federal entities may be required to submit a copy of any publication materials, including but not limited to print, recorded, or Internet materials, to the funding agency.

iii. When releasing information related to a funded project, non-Federal entities must include a statement that the project or effort undertaken was or is sponsored by DOC and must also include the applicable financial assistance award number.

iv. Non-Federal entities are responsible for assuring that every publication of material based on, developed under, or otherwise produced pursuant to a DOC financial assistance award contains the following disclaimer or other disclaimer approved by the Grants Officer:

*This [report/video/etc.] was prepared by [recipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.*

#### **k. Homeland Security Presidential Directive**

If the performance of this DOC financial assistance award requires non-Federal entity personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term “routine access” is defined as more than 180 calendar days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services’ (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or

services delivered under a financial assistance award must comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12 (Policy for a Common Identification Standard for Federal Employees and Contractors), Federal Information Processing Standard (FIPS) PUB 201, and OMB Memorandum M-05-24. The recipient must ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient must insert the following term in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

*The subrecipient or contractor must comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.*

*The subrecipient or contractor must account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor must return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by DOC: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; (3) Upon subaward or contract completion or termination.*

#### **I. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations**

1. This clause applies to the extent that this financial assistance award involves access to export-controlled items.
2. In performing this financial assistance award, a non-Federal entity may gain access to items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The non-Federal entity is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and re-exports provisions. The non-Federal entity must establish and maintain effective export compliance procedures at DOC and non-DOC facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled items, including by foreign nationals.

### 3. Definitions

i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application.

ii. Deemed Export/Re-export. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national (*see* 15 C.F.R. § 734.2(b)(2)(ii)). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed re-export to the foreign national's home country. Licenses from DOC may be required for deemed exports or re-exports.

4. The non-Federal entity must control access to all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable Federal laws, E.O.s, and/or regulations, including the EAR.

5. As applicable, non-Federal entity personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items.

6. To the extent the non-Federal entity wishes to provide foreign nationals with access to export-controlled items, the non-Federal entity must be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed re-exports.

7. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, E.O.s or regulations.

8. Compliance with this term will not satisfy any legal obligations the non-Federal entity may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports of munitions items subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including releases of such items to foreign nationals.

9. The non-Federal entity must include the provisions contained in this term in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled items.

m. The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended, and the implementing regulations at 2 C.F.R. Part 175

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if any non-Federal entity engages in certain activities related to trafficking in persons. The DOC hereby incorporates the following award term required by 2 C.F.R. § 175.15(b):

***Trafficking in persons.***

***a. Provisions applicable to a recipient that is a private entity.***

*1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—*

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;*
- ii. Procure a commercial sex act during the period of time that the award is in effect; or*
- iii. Use forced labor in the performance of the award or subawards under the award.*

*2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —*

- i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or*
- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension).*

***b. Provision applicable to a recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—***

*1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or*



2. *Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—*

i. *Associated with performance under this award; or*

ii. *Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326, (Nonprocurement Debarment and Suspension).*

**c. Provisions applicable to any recipient.**

1. *You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.*

2. *Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:*

i. *Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and*

ii. *Is in addition to all other remedies for noncompliance that are available to us under this award.*

3. *You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.*

**d. Definitions. For purposes of this award term:**

1. *“Employee” means either:*

i. *An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or*

ii. *Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.*

2. *“Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through*

*the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.*

3. *“Private entity”:*

*i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25;*

*ii. Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b); and (B) A for-profit organization.*

4. *“Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).*

n. **The Federal Funding Accountability and Transparency Act (FFATA) (31 U.S.C. § 6101 note)**

1. **Reporting Subawards and Executive Compensation.** Under FFATA, recipients of financial assistance awards of \$25,000 or more are required to report periodically on executive compensation and subawards, as described in the following term from 2 C.F.R. Part 170, Appendix A, which is incorporated into this award:

***Reporting Subawards and Executive Compensation***

***a. Reporting of first-tier subawards.***

*1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111–5) for a subaward to an entity (see definitions in paragraph e. of this award term).*

*2. Where and when to report.*

*i. You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.*

*ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)*

*3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.*

**b. Reporting Total Compensation of Recipient Executives.**

1. *Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—*

- i. *the total Federal funding authorized to date under this award is \$25,000 or more;*
- ii. *in the preceding fiscal year, you received—*

*(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and*

*(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and*

iii. *The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. § 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)*

2. *Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:*

- i. *As part of your registration profile found at the System for Award Management (SAM) website located at SAM.gov.*
- ii. *By the end of the month following the month in which this award is made, and annually thereafter.*

**c. Reporting of Total Compensation of Subrecipient Executives.**

1. *Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you must report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—*

- i. *in the subrecipient's preceding fiscal year, the subrecipient received—*
  - (A) *80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and*
  - (B) *\$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and*
- ii. *The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).*

*See also 2 C.F.R. § 200.300(b).*

*2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:*

- i. *To the recipient.*
- ii. *By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.*
- d. **Exemptions.** *If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.*

*e. Definitions. For purposes of this award term:*

*1. Entity means all of the following, as defined in 2 C.F.R. Part 25:*

- i. *A Governmental organization, which is a State, local government, or Indian tribe;*
- ii. *A foreign public entity;*
- iii. *A domestic or foreign nonprofit organization;*
- iv. *A domestic or foreign for-profit organization; and*

- v. *A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.*
2. *Executive means officers, managing partners, or any other employees in management positions.*
3. *Subaward:*
- i. *This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.*
  - ii. *The term does not include your procurement of property and services needed to carry out the project or program. For further explanation, see Sec. \_\_.210 of the attachment to OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations).*
  - iii. *A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.*
4. *Subrecipient means an entity that:*
- i. *Receives a subaward from you (the recipient) under this award; and*
  - ii. *Is accountable to you for the use of the Federal funds provided by the subaward.*
5. *Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):*
- i. *Salary and bonus.*
  - ii. *Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.*
  - iii. *Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.*
  - iv. *Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.*

- v. *Above-market earnings on deferred compensation which is not tax-qualified.*
- vi. *Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.*

2. **Central Contractor Registration (CCR) and Universal Identifier Requirements.**

Under FFATA, recipients must obtain a Data Universal Numbering System (DUNS) number, maintain an active registration in the Central Contractor Registration (CCR) database, and notify potential first-tier subrecipients that no entity may receive a first-tier subaward unless the entity has provided its DUNS number to the recipient, as described in the following term from 2 C.F.R. Part 25, Appendix A, which is incorporated into this award:

***Central Contractor Registration and Universal Identifier Requirements***

a. ***Requirement for Central Contractor Registration (CCR).*** *Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain the currency of your information in the CCR until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.*

b. ***Requirement for Data Universal Numbering System (DUNS) Numbers.*** *If you are authorized to make subawards under this award, you:*

1. *Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.*
2. *May not make a subaward to an entity unless the entity has provided its DUNS number to you.*

c. ***Definitions for purposes of this award term:***

1. *Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management Internet site (currently at SAM.gov).*

2. *Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).*

3. *Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:*

- i. *A Governmental organization, which is a State, local government, or Indian Tribe;*
- ii. *A foreign public entity;*
- iii. *A domestic or foreign nonprofit organization;*
- iv. *A domestic or foreign for-profit organization; and*
- v. *A Federal agency, but only as a subrecipient under an award or subaward to a recipient.*

4. *Subaward:*

- i. *This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.*
- ii. *The term does not include your procurement of property and services needed to carry out the project or program. For further explanation, see Sec. .210 of the attachment to OMB Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations).*
- iii. *A subaward may be provided through any legal agreement, including an agreement that you consider a contract.*

5. *Subrecipient means an entity that:*

- i. *Receives a subaward from you under this award; and*
- ii. *Is accountable to you for the use of the Federal funds provided by the subaward.*

*See also 2 C.F.R. § 200.300(b).*

**o. Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)**

### ***Reporting of Matters Related to Recipient Integrity and Performance***

1. **General Reporting Requirement.** If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in

the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2. Proceedings About Which You Must Report Submit the information required about each proceeding that:

- i. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- ii. Reached its final disposition during the most recent five-year period; and
- iii. Is one of the following:
  - (A) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
  - (B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - (C) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - (D) Any other criminal, civil, or administrative proceeding if:
    - I. It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
    - II. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
    - III. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures. Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards



that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency. During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions. For purposes of this award term and condition:

i. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

ii. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

iii. Total value of currently active grants, cooperative agreements, and procurement contracts includes:

(A) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(B) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

**p. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown**

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

1. Unless there is an actual rescission of funds for specific grant or cooperative agreement obligations, non-Federal entities under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Non-Federal entities are advised that ongoing activities by Federal employees involved in grant or cooperative agreement

**City of Fresno**

# **Revolving Loan Fund**

**Administrative Plan**



**2019**

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## SECTION ONE: PROGRAM ELEMENTS OF THE PLAN

### Executive Summary

The US Department of Commerce Economic Development Administration (EDA) approved Grant #07-39-02434 (CFDA #11.307), an originally issued \$600,000 grant to the City of Fresno was granted on September 30, 1980 to establish a Revolving Loan Fund (RLF). In 1989, the EDA deobligated \$100,750 of the grant funds resulting in a RLF balance of \$499,250. The goal of this RLF is to provide financial assistance to businesses that, while credit worthy, are not able to obtain financing from the private sector.

#### 1. Goals and Objectives: The goals and objectives of the RLF Program include:

- A. Improve the City of Fresno economy and reduce unemployment by assisting in the start-up of small businesses.
- B. Improve the City of Fresno economy and reduce unemployment by assisting small businesses to expand sales, profits, services and employment.
- C. Afford woman and minority owned small businesses access to capital that would not otherwise be available to them on reasonable terms or conditions.
- D. Assist in the revitalization and occupancy of vacant commercial and industrial properties within the City of Fresno.

These goals and objectives are consistent with the City's overall Comprehensive Economic Development Strategy (CEDS).

#### 2. Identification of the Target Area's Financial Problems:

- A. **Unemployment/Poverty:** The "Target Area" for the RLF (City of Fresno limits) has suffered from unemployment and poverty rates that have been significantly higher than the national average for decades. In 2018, while the average unemployment rate for the State of California was 4.2%, Fresno County was nearly 80% higher with an average rate of 7.5%. To mitigate this situation, the City has proactively sought resources to improve the economy and encourage business development and job creation. This effort has included obtaining the following State and Federal incentive zone designations in order to create a more business friendly environment to facilitate the creation of jobs and put our residents to work. The RLF Program provides an incentive for banks to participate in various industrial and commercial projects within these incentive zones:
  - i. *State of California Enterprise Zone* (eliminated in 2013): The Enterprise Zone (EntZ) boundary encompassed over 19,000 acres and spanned across some of the most economically depressed areas in the city including all of downtown, as well as parts of southwest and southeast Fresno, the airport area, the 99 corridor and all of Blackstone Avenue. It provided State sales and use tax credits for qualified purchases, as well as hiring tax credits to businesses who hired individuals with specific barriers to employment (including those on public assistance, low income, veterans, disabled individuals and ex-offenders)
  - ii. *State of California Governor's Economic Development Initiative (GEDI) New Employment Credit (NEC)*: In 2014, the GEDI program replaced the EntZ program and census tracts that had the highest unemployment and poverty in

the state, including all of the former EntZ designated areas, were identified as Designated Geographic Areas (DGAs) for the New Employment Credit. Businesses located within these DGA's are eligible for tax credits for certain qualified new employees.

- iii. *Federal Empowerment Zone*: In January, 2002, the City of Fresno received a Round III Empowerment Zone designation designed to stimulate economic development. The program was originally slated to expire in 2008, but subsequent extensions have kept the program alive since then. Businesses in the Fresno Empowerment Zone are eligible for Federal tax incentives designed to encourage investment and expansion. Residents in the Empowerment Zone can benefit from job development and training programs, improving employability.
- iv. *Federal Foreign Trade Zone*: The Federal Foreign Trade Zone (FTZ) encourages investment and job creation that will improve the United States balance of trade. The FTZ is a designated area that is considered "outside of the United States" for US customs purposes. The FTZ benefits both the local and the national economy by helping businesses compete on a global level.
- v. *Historically Underutilized Business Zone (HUBZone)*: The HUBZone program provides bonus points to qualified small businesses when bidding on Federal contracts. To qualify, 35% of the business' employees must reside in a HUBZone.
- vi. *Opportunity Zone*: An Opportunity Zone is an economically-distressed community where new investments, under certain conditions, may be eligible for preferential tax treatment. The City of Fresno has 38 census tracts in its Opportunity Zone designated area.

In addition to these State and Federal incentive programs, the City of Fresno has developed a number of local incentives to assist in improving the business climate. These include:

- a. Industrial & Large Office Development Impact Fee Elimination/Reduction (iDIFER) Program: The iDIFER Program reduces or eliminates development impact fees for qualified industrial and large office projects that support, leverage or expand opportunities for the existing industrial or commercial base.
- b. Commercial Build Act: The Commercial Build Act offers an exemption of impact fees for the replacement or reconstruction of an existing commercial building or structure on the site that has been destroyed or demolished.
- c. Economically Disadvantaged Neighborhoods Act: The Economically Disadvantaged Neighborhoods Act offers an exemption of impact fees for qualified projects located in economically disadvantaged neighborhoods.
- d. Economic Expansion Act: The Economic Expansion Act is an extension of the first three local incentives which are considered "Level One" of the Act. It then goes on to further expand the incentives offered at a "Level Two" and "Level Three" which include revenue sharing for qualified larger projects.

- e. Enhanced Economic Development Rate (E-EDR): For qualifying businesses expanding or locating in Fresno or Fresno County with a load of at least 200kW, Pacific Gas and Electric offers a reduction of industrial electric rates of up to 25% for up to five years.
- B. Traditional Financing Obstacles:** Commercial banks are the primary source for capital for small businesses. Banks in the Fresno area include a mixture of local, regional and nationwide institutions. Though commercial banks earn a large portion of their profits from lending to businesses, their lending policies often make it difficult for new, woman/minority owned and small businesses to obtain the financing they need for a variety of reasons, including:
- i. **Interest Rate Fluctuations** – Small businesses may not have the resources to withstand sudden increases in payments caused by interest rate increases. Unfortunately, most banks charge variable interest rates on business loans. The fixed rate offered through the RLF Program eliminates interest rate risk on a portion of the borrowing.
  - ii. **Cash Flow Requirements** – Banks require that businesses have the ability to prove sufficient cash flow from profitable operations over a multi-year period to service any loans under consideration. New businesses do not have the track record established to meet such a requirement. Participation by the RLF Program encourages banks to give credence to pro-forma financial statements.
  - iii. **Collateral** – Banks require that loans to all but the most well-established businesses be fully secured by collateral that is easily valued independently by a recognized authority; easily converted into cash; and margined so that, in a rapid liquidation, there would still be sufficient value to pay off the loan. Newer businesses lack the collateral to adequately secure bank loans. The RLF Program reduces the bank’s exposure on a loan with limited collateral.
  - iv. **Credit Score/Credit History** – Because of the work required to underwrite commercial loans, most banks use a credit scoring system for smaller loans and establish minimum loan amounts (whether formally or informally) for “customized” commercial loans. The limited track record and credit histories of new businesses often cause their credit score to be too low; the credit needs for newer and smaller businesses often fall below the minimum loan amount for a customized loan. Involvement by the RLF Program encourages banks to “take a second look” at deals that make sense, but do not match standard criteria.

**3. Target Criteria:**

<b>CITY OF FRESNO RLF PROGRAM ELIGIBLE</b>	<b>CITY OF FRESNO RLF PROGRAM <i>NON</i>-ELIGIBLE</b>
For Profit Businesses	Not For Profit Businesses
Industrial	Real Estate Investment or Development
Commercial	Consumer
Retail	Acquisition of Business Equity
Service	Investment/Speculation
Ag-Related	

It is the policy of the City of Fresno to emphasize that loans be made to those businesses that demonstrate the greatest long-range economic impact on the community. These include:

- A. Industries that show the greatest opportunity for growth in employment and investment;
- B. Manufacturing businesses;
- C. Industries that will have an important secondary effect in the community such as the processing of agricultural products grown in the area;
- D. Businesses that provide a service or product that is not currently available in the area;
- E. Businesses that will employ a high percentage of lower skilled workers and hire individuals who have a history of long-term unemployment or seasonable employment; and
- F. Businesses located in any of Fresno's Incentive Zones.

Therefore, loans will be made for projects that demonstrate the greatest likelihood of achieving the objectives of the RLF Program as set forth in the preceding portion of this document.

**4. Standards for the Revolving Loan Fund Portfolio:**

The following are City requirements for the RLF Program portfolio. These criteria are consistent with and in accordance with 13 CFR 307.

- A. Cost per job – as a general guide, each borrower must create or save at least one job for every \$35,000 of RLF monies loaned. Exceptions may be made so long as the cost per job is maintained for the overall loan portfolio.
- B. Long-term or seasonally unemployed – Preference will be given to loan requests where 50% of all jobs created will be given to the long-term unemployed, or seasonally unemployed, consistent with the RLF objectives.
- C. Leveraging of private dollars—RLF Funds may finance no more than one third of a total project. Private dollars (loans from non-federal sources and owner investment) must be used to ensure a ratio of two private dollars for every one dollar from the RLF. Exceptions may be made if the leverage ratio of 2:1 is maintained for the overall loan portfolio.
- D. Credit not available elsewhere—The purpose of the RLF is to provide financing to borrowers unable to obtain financing at reasonable terms elsewhere. The RLF will not be used to provide more favorable terms. Refinances will be permitted only when the refinancing of debt will keep a business from closing, or where it is necessary to free up collateral to be used as a part of a larger financing package. Documentation to demonstrate credit not available elsewhere will include: a written referral (email, letter or any other form of written communication) from a bank on their inability to lend funds under their guidelines, or a written explanation of reason(s) why credit isn't otherwise available.

**5. Financing Policies:**

Loans will be available for the acquisition of fixed assets, real property, working capital and equipment. Loans will be made at a fixed rate of interest and will be secured by the asset or other form of collateral.

- A. Number of Loans – Loans shall be made according to the RLF resources available.
- B. Loan Amount – The loan amount shall be made in an amount appropriate to the project and borrower's ability to service the debt. It is anticipated that loans will range from a minimum of \$10,000 and will not exceed 25% of the capital base or \$100,000 (subject to increase if more funds granted by EDA at which point should not exceed \$250,000).
- C. Loan Term – Loan terms shall be structured as appropriate to the project and the asset being financed. Generally, loans secured by real property shall be fully amortized and

not exceed a term of twenty years. Loans made for the acquisition of equipment shall be amortized over the useful life of the asset, but no longer than seven years. Short-term working capital loans secured by inventories and accounts receivable will be made for a term of no more than three to five years

- D. Standard Terms for ALL Loans – Standard terms for all loans will be monthly amortizing payments. Consideration of interest only payments for the first six months will be given to those applicants considered to be “start-ups.”
- E. Equity and Collateral Requirements – The Loan Review Board will review the borrower’s equity position and loan collateral as appropriate to the project. A personal guarantee will be required by individuals holding an interest of twenty percent or greater in the project or operating entity. In keeping with the spirit of the RLF Program, lack of collateral shall not be a reason for declining a loan. Every application will be viewed on its own merits.
- F. Amortization of Loans – Loans made from RLF proceeds for the purpose of rehab, revitalization, construction and for start-ups will be required to make interest-only payments for the first six months of the life of the loan. Dependent upon the nature of the project, the time may be shortened, but in no case shall exceed 12 months.
- G. Restructuring RLF Loans – The Loan Review Committee may recommend revisions to the terms and provisions of a private lender approved RLF loan as it deems appropriate provided such revisions strengthen the borrower’s ability to retire the loan obligation thus providing tangible benefits to the borrower.
- H. Use of Principal Repayments – Proceeds from principal repayments will be utilized to make additional loans.
- I. Interest Rate – Loans to eligible borrowers will be made at interest rates and under conditions determined to be appropriate in achieving the goals of the RLF. The minimum interest rate charged is four (4) percentage points below the lesser of the current money center prime interest rate allowed under State law. In no event shall the interest rate be less than the lower of four (4) percent or 75 percent of the prime interest rate listed in the Wall Street Journal. However, if the prime interest rate listed in the Wall Street Journal exceeds fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability to implement the financing strategy.

The following rate guideline will be used to determine individual loan rate:

Loan Amount	Prime Rate +
\$10,000 to \$24,999	+3.50
\$25,000 to \$49,999	+3.25
\$50,000 to \$74,999	+3.00
\$75,000 to \$99,999	+2.75
\$100,000 and above	+2.50

- J. RLF Loan Fees – Loan fees charged to the borrower shall not exceed two percent (plus \$500) of the loan amount and may be financed.
- K. Closing Costs – Borrower will pay for all out of pocket costs for such items as appraisals, title insurance, lien perfection etc....
- L. Ineligible Projects – Recipient shall not use RLF Award Funds to:
  - i. Acquire an equity position in a private business.
  - ii. Subsidize interest payments on an existing RLF loan.



- iii. Provide a loan to a borrower for the purpose of meeting the requirements of equity contributions under another Federal agency's loan program.
- iv. Enable a borrower to acquire an interest in a business either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification must include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF.
- v. Provide funds to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit, or any investment unrelated to the RLF.
- vi. Refinance existing debt, unless:
  - a. Recipient sufficiently demonstrates in the loan documentation a "sound economic justification" for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or
  - b. RLF funds will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF funds may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within a reasonable time frame approved by EDA following the date of refinancing.
- vii. Serve as collateral to obtain credit or any other type of financing without EDA's prior written approval (e.g., loan guarantees).
- viii. Support operations or administration of the RLF Recipient.
- ix. Undertake any activity that would violate EDA Property regulations found at 13 CFR part 314.
- x. Finance gambling activity, performances or products of a prurient sexual nature, or any illegal activity, including the cultivation, distribution, or sale of marijuana that is illegal under Federal law.

**6. Time Schedule for Loan Closing:**

Loans shall be closed as soon as practical and in accordance with EDA regulations.

**7. Related Activities:**

- A. *Technical and Management Assistance* – As part of the underwriting process, an assessment will be made of the borrower's technical and management assistance needs to determine whether borrowers can be helped indirectly. When appropriate, borrowers will be provided with referrals to outside agencies such as the U.S. Small Business Administration, Service Core of Retired Executives or community-based organizations such as the Small Business Development Center, Workforce Development Board, Economic Development Corporation Serving Fresno County or local Chambers of Commerce. Referrals may also be made to private business consultants in the area who

are capable of developing business plans or providing assistance with marketing, inventory control or production.

- B. *Loan Packaging and Referral Service* – Ineligible applicants may be referred to alternative loan packaging providers for the purposes of securing other financing.

## SECTION TWO: ADMINISTRATIVE ELEMENTS OF THE PLAN

### Loan Administration of the Revolving Loan Fund (RLF):

The City of Fresno may contract with a non-profit, public purpose corporation to act as the Loan Review Board and provide loan packaging and loan servicing. Any such organization must have a loan approval board that includes members who represent a cross section of the area's community leadership (both government and private), minorities and individuals with experience and expertise in business lending.

At least one board member with commercial lending experience will be present for all major loan decisions. To ensure the integrity of the Board's decision process, disclosure must be made of any proposed or potential benefit realized as a result of Board action. Such disclosure must be made to the Board on the public record. Those parties required to disclose would be any Board Member, staff person, employee or professional associated with the Revolving Loan Fund Program; any person related by blood, marriage, law, or member of the household of anyone required to disclose; or anyone with any business relationship with someone otherwise required to disclose. In the event of such a required disclosure, the Board must provide a written determination that the benefit involved is not substantial as to affect the integrity of the Board's decision process and of the services of the officer, employee or professional associated with the Revolving Loan Fund Program or Board Member.

In the event representatives from the financial community who serve on the Loan Review Board have a separate financial interest (excluding regular checking and savings accounts) in a loan applicant, such member will not participate in related loan deliberations.

- A. **Conflict of Interest Policy** - The City is a unit of local government who's City Council Members, Loan Administration Board Member and professional staff are chosen to provide public benefit. These persons have a duty to conduct the affairs of the City in a manner consistent with the mission of the City and not to advance their personal interests. This conflict of interest policy is intended to permit the City and its Councilmembers, Loan Administration Board Members and professional staff to identify, evaluate and address any real, potential or apparent conflict of interest that might, in fact or in appearance, call into question their duty to put the interests of the City ahead of their personal interests.
  - i. **Covered Persons:** This policy applies to the City's Councilmembers, Loan Administration Board Members, professional staff and contractors. Each covered person shall be required to acknowledge that they have read and are in compliance with this policy.
  - ii. **Covered Transactions:** This policy applies to transactions between the City and a covered person, or between the City and another party with which the covered person has a significant relationship. A covered person is considered to have a significant relationship with another party if:
    - a. The other party is a family member, including a spouse (or domestic partner or significant other), parent, sibling, child, stepchild, grandparent or grandchild. This does not include distant relatives such as cousins, unless the distant relative lives in the same household as the covered person.

- b. The other party is an entity in which the covered person has a material financial interest.
  - c. The covered person is an officer, director, trustee, partner, consultant or employee of the other party.
  - d. A covered transaction also includes any other transaction in which there may be an actual or perceived conflict of interest, including any transaction in which the interests of the covered person may be seen as competing or at odds with the interests of the City.
- iii. Disclosure, Refrain from Influence and Recusal: When a Covered Person becomes aware of a covered transaction, the individual has a duty to take the following actions:
- a. Immediately disclose the existence and circumstances of such covered transaction to the City's City Manager or designated staff person.
  - b. Refrain from using their personal influence to encourage the City to enter into the covered transaction.
  - c. Physically excuse themselves from any discussions regarding the covered transaction except to answer questions, including Loan Board discussions and decisions on the subject.
- iv. Standard for Approval of Covered Transactions: The City may enter into a covered transaction where:
- a. Such transaction does not constitute an act of self-dealing.
  - b. The Loan Board determines, acting without the participation or influence of the covered person and based on comparable market data, that such a transaction is fair and reasonable to the City.

The Board shall document the basis for this determination in the minutes of the meeting at which the covered transaction is considered, and shall consult with the City's legal advisor as necessary to ensure that the transaction does not constitute an act of self-dealing.

- v. Lending Activities: The following conflict of interest policy shall apply specifically to the City's direct loan programs: No personal or private loans may be made by the City to its Councilmembers or their immediate families as provided in the Federal Regulations, as amended, the State of California and City of Fresno. No member of the City Council or their immediate families may be an officer, director or owner of a small business concern receiving financial assistance from the City. Former City Councilmembers, Loan Administration Board Members and staff are ineligible to apply for or receive loan funds for a period of **two years** from the date of termination of their services.

**1. Request for Reconsideration:**

Loan applicants turned down by the loan approval board may follow a process of reconsideration. For an applicant to request a reconsideration of their application, they must do so within 30 days after having been declined. A different loan officer will be assigned to handle any further consideration request submitted by the applicant. In order for the reconsideration to be viewed, the following steps must be met:

1. The request must be in writing.

2. All information must be up to date. Financial statements, less than ninety days old, must accompany the request for reconsideration.
3. The applicant must provide clear justification of the reason why the declined application should be reconsidered and approved.

**2. Staff Capacity:**

The City may contract with a qualified non-profit organization (CITY/CONTRACTOR) to manage the day-to-day administration of the Revolving Loan Fund Program including:

1. Publicity and marketing.
2. Conducting a preliminary screening of loan applicants and determining project feasibility.
3. Completing all loan underwriting.
4. Preparing loan packages.
5. Conducting loan closing.
6. Disbursing loan proceeds in a timely fashion.
7. Providing counseling to delinquent borrowers.
8. Managing overall program performance and monitoring.
9. Complying with all applicable laws, rules and regulations relating to operation of the RLF Program.
10. Providing financial reports for the RLF Program including individual account status.
11. Completing RLF Income and Expense Statements and other reports accurately, completely, and within EDA time requirements.
12. Complying with audit requirements and requests as may be deemed appropriate.

**3. Marketing Strategy:**

The promotion of the RLF Program will be achieved through the efforts of the City of Fresno and the non-profit entity with which the City contracts for management of the RLF.

The loan administrating entity will work closely with and maintain a good working relationship with the financial community in order to direct businesses to appropriate lending institutions as the needs of a business may dictate. Private-sector banks and other lending institutions will be made aware of the program so that they are able to refer potential clients to the RLF Program. Referred clients from lending institutions obviously would not have met the minimum loan amounts or the requirements through regular lending channels, therefore it is the policy of the City of Fresno RLF Program to consider that borrowers referred from financial institutions will have already met the “credit not available elsewhere” test described in Section One, 4. D.

**4. Loan Application Processing Procedures:**

The City of Fresno is an equal opportunity lender and treats all applicants equally and fairly. Each applicant will be subject to the following procedures and requirements:

- a. **Standard Loan Application Requirements:** All applicants for loans from the RLF shall be required to fill out a standard RLF application form and supply the additional items as indicated in the application. The following list of exhibits is attached to the application and should be submitted as appropriate:
  - i. Business history and forecast (include management team, industry statistics marketing niche, etc. Note: A formal business plan is preferred)
  - ii. Resumes of owners, partners or key officers and key personnel
  - iii. Balance sheets and income statements for the last three years

- iv. Complete IRS returns – both business and personal for the last 3 years
  - v. Current interim balance sheet and income statement (not over 90 days old)
  - vi. Personal financial statements for each proprietor, partner or shareholder
  - vii. Cash flow projections and income statement projections for 3 years (1<sup>st</sup> year monthly)
  - viii. Schedule of long term debt
  - ix. List of collateral offered
  - x. Environmental questionnaire
  - xi. Aging of accounts payable and/or accounts receivable
  - xii. Copy of equipment/working capital list and bids
  - xiii. Site plan
  - xiv. Earnest money agreements, financial agreements, contract agreements, lease/rental agreements
  - xv. Copy of bids or cost estimates by contractor
  - xvi. Schedule for construction start and completion
  - xvii. Appraisal
  - xviii. Bank commitment or denial letter
  - xix. Legal description of property
  - xx. Evidence of acceptable zoning/land use compliance
  - xxi. Articles of incorporation, by-laws and certificate of good standing if a corporation/partnership agreement/LLC organization documents
  - xxii. List of any affiliates and current financial statement for each
- b. **Credit Reports:** Credit reports will be obtained on applicants. Other evidence of credit worthiness documented (i.e., indication from participating bank that they have a good credit report on file or that they have good credit record with the bank or documentation of making loan payments as agreed) may be considered if an applicant has no credit references or limited credit references or negative reporting on their credit record.
- c. **Appraisals:** Appraisals may be required on real estate pledged for collateral. If the financing is less than \$100,000, a real estate valuation from a qualified source may be substituted, such as a county property tax statement valuation. Appraisals done for a participating bank or another third party may be accepted if they are done by a licensed appraiser who is also CITY/CONTRACTOR approved. Appraisals are valid for 6 months after date of appraisal. Appraisals older than 12 months may be updated by the appraiser and used as a current appraisal or accepted if approved by CITY/CONTRACTOR staff.
- d. **Environmental Reviews:** CITY/CONTRACTOR has developed and implemented an environmental review process in accordance with the intent of the National Environmental Policy Act of 1969, as amended (P.L. 91-190), as implemented by the “Regulations” of the President’s Council on Environmental Quality (40CFR Parts 1500 – 1508) as listed in Section d. paragraph 10 of the Economic Development Administration Revolving Loan Fund Grants, Standard Terms and Conditions. This review process includes the following requirements:
- i. All borrowers will complete an environmental questionnaire if the loan will involve acquiring interest in real property

- ii. All real property to be taken as collateral will have an environmental site inspection or environmental site report performed by CITY/CONTRACTOR staff. If site inspection, site report and/or environmental questionnaire indicate the potential for environmental issues that need to be resolved, CITY/CONTRACTOR staff will contact a qualified person, agency or business to further inspect the real property to identify specific environmental issues and provide options to resolve identified environmental issues. CITY/CONTRACTOR will not loan to applicants with unresolved environmental issues related to collateral real property.

The Loan Administration Board will disapprove any loan project which would adversely (without mitigation) impact flood plains, wetlands, significant historic or archaeological properties, drinking water resources or nonrenewable natural resources. CITY/CONTRACTOR staff will review the environmental questionnaires to ensure compliance with the above requirements. A Flood Determination Service and Certificate will be required to meet this guideline. The fee for the Service is \$75.00 and will be incurred by the applicant.

- e. **Historical Building Review:** CITY/CONTRACTOR will meet all requirements relating to historical buildings from its funding source agencies, state and federal regulations. CITY/CONTRACTOR staff will list appropriate issues, requirements and resolutions of any issues relating to historical building requirements in its Loan Proposal to the Loan Administration. Meeting all historical building requirements will be a condition to obtaining loan funding.
- f. **Collateral and Equity Requirements:** Loan proposals will be evaluated as they adhere to the collateral and equity requirements listed in this revolving loan fund plan under Section One, #5. "Financing Policies".
- g. **Loan Proposals:** Loan proposals will be produced by CITY/CONTRACTOR staff for each loan and provided to the Loan Administration Board prior to the loan decision. The loan proposal may include, but is not limited to the following:
  - i. Overview – the company's history, product, capacity and management; a discussion and analysis demonstrating the need for RLF funds and how the RLF is not replacing private lending sources; and job creation. To support the need for an RLF loan, bank support letters will serve as secondary support for the analysis.
  - ii. Principals – Background and experience of owners.
  - iii. Market – A discussion of the business's market and competitive environment.
  - iv. Financing – Uses and sources of project financing and collateral.
  - v. Credit Summary or Financial Analysis – An analysis of the business and personal financial condition, credit reports, and repayment ability.
  - vi. Environmental Issues – Information about any environmental impact and/or required mitigation.
  - vii. Summary – Usually points out strengths and weaknesses of the proposed loan.
  - viii. Recommendation – Staff recommendation to the Loan Administration Board including proposed terms and conditions. Each staff recommendation will utilize prudent lending practices.

- ix. Other topics that may be discussed in a loan proposal are collateral, jobs, CITY and funding source agency criteria, strengths and weaknesses of application.
- h. **Loan Selection and Approval Process:** The following are established regulations for the selection and approval of loans through the RLF:
- i. Applicants will be requested to complete and return a loan application which will include: existing debt schedule, business plan and a source of and use of funds schedule.
  - ii. Applicants shall be asked to submit a credit report fee of \$15.00.
  - iii. Applicants shall provide current and at least three years of past financial statements.
  - iv. Approval is based upon a reasonable assurance and determination of repayment ability, potential economic benefits to the community (i.e., job creation), amount of taxes to be paid, relation to other business, and services.
  - v. The credit worthiness of the loan applicant will be one of the primary factors for loan approval.
  - vi. Applicants will be asked to provide a history of business success.
  - vii. It is anticipated that the majority of RLF borrowers will be in a position to continue their operations with little or no further assistance. However, a small percentage may require on-going management assistance.
- i. **Screening Process:** As part of the screening process, it will be determined that all prospective RLF loan applicants and projects meet eligibility requirements for the City of Fresno RLF Program. In evaluating applicants, the Loan Review Board should consider the following factors and make note of the results in the official file:
- i. Will minimum job/loan ratio of one job/\$35,000 be achieved? If not, will the overall loan portfolio remain at 1:\$35,000 or better?
  - ii. Is the minimum leverage ratio of 2 to 1 achieved?
  - iii. Is there a reasonable assurance of repayment of the loan?
  - iv. Will newly created job opportunities likely be filled with employees from the City of Fresno?
  - v. Would project financing be otherwise available on reasonable terms without the RLF?
  - vi. Will the loan provide repair or improvement to an existing deteriorated structure?
  - vii. Will the loan provide significant improvements to the tax base?
  - viii. Will the project be an asset to the community through its relationship to the agricultural community of other businesses?
- j. **Eligible Project:** If the project is eligible, then a credit report will be obtained and a preliminary loan package will be developed. However, if the project is rejected, all preliminary documentation submitted by the applicant should be returned to the prospective applicant, along with a letter of denial. Should applicant decide to have his/her application reconsidered, he/she must conform to the requirements included in this Administrative Manual under Section 2, #2 "Request for Reconsideration".

Once a project is determined to be eligible, the underwriting process will include:



- i. Performing a financial and economic analysis of the borrower's financial statements and business plan.
- ii. Obtaining the remaining loan package documents from borrower.
- iii. Obtaining appraisal reports as appropriate; and
- iv. Assembling the final loan package and presenting the loan to the Loan Approval Board for consideration.

Once the Board approves the application, staff will prepare closing instructions and documentation for the escrow and disbursement of funds for closing.

In the event the project is determined to be ineligible and the Loan Review Board declines the loan, staff will:

- i. Transmit a letter to the applicant explaining any appeal procedure.
- ii. Provide information on alternate sources of funding.

- k. **Loan Servicing:** Loan servicing will include the following:
  - i. Reporting and documenting any loan delinquency of one or more payments;
  - ii. Assembling post-closing documentation such as hazard and life insurance policies, closing statements, UCC filings and other documents as may be deemed appropriate;
  - iii. Creating and maintaining a loan servicing file for each RLF borrower;
  - iv. Collecting payments and monitoring loan conditions (i.e., insurance renewal certificates, property tax payments, employment data, etc.)

## 5. Loan Servicing Procedures

- a. **Loan Payment and Collection Procedures:** Borrowers will make loan payments directly to CITY/CONTRACTOR at principle office or by mail. All payments are logged in and marked with the date of receipt, along with any other checks received that day, by the employee handling the mail. Each payment by cash or check is given to the Office Administrator or other appropriate CITY/CONTRACTOR staff to deposit into the bank account for the RLF Program. A copy of the check and deposit record is given to the loan department staff for posting to the borrower's Payment Record Ledger. Each loan will be individually and separately maintained in the CITY/CONTRACTOR loan portfolio software and loan payments will be recorded for each loan. This record will be referred to as the "Payment Record Ledger". The payment will be posted to the borrower's Payment Record Ledger showing the date and amount of the payment along with the breakdown of principal and interest and the new balance. Each loan client will be invoiced for each payment due and a record of the previous payment will be provided to each loan client showing the application of loan payments to fees, interest and principal.

Each month CITY/CONTRACTOR accounting records are reconciled with CITY/CONTRACTOR Loan Portfolio records to verify that the ledger posting account and amount and the deposit account and amount are correct. This reconciliation is done by loan department staff and accounting staff.

- b. **Loan Monitoring Procedures:** A tickler system is used to remind loan staff of insurance expiration dates, financial statements due or other requirements that have regular or

expiring terms. Annual site visits, UCC renewals and compliance requirements are examples of tickled items. Financial statements will be required on an annual basis for all existing loan clients and potentially more frequently for start-up business loan clients. Additional reporting to CITY/CONTRACTOR by the borrower may be requested on a loan by loan basis.

- c. **Late Payment Follow-up Procedures:** Borrower's Payment Record Ledgers for each loan are checked on a regular monthly basis to find any late payments. A loan that has a monthly loan payment of more than 30 days past due is in technical default, although a loan that has a monthly loan payment less than 90 days past due is referred to as "delinquent" or "past due". If a payment is late, the borrower is notified by staff that the payment is late. A late fee is assessed as per the terms listed in the borrower's loan agreement and the security agreement. If a payment is two months late, the borrower receives a second notification from CITY/CONTRACTOR staff. If a payment is three months late, a letter is sent or other notification is made indicating that the loan is in default and possible actions may be taken. In addition, a personal telephone call or visit will be initiated by CITY/CONTRACTOR staff within 30 days of initial delinquency and subsequently as appropriate. Every effort will be made to work with the borrower to resolve the delinquency. Modification of the terms of the loan will be used only when it can be demonstrated that the modification will improve the ability of the borrower to repay.
- d. **Procedures for Handling Loans Over 90 Days in Arrears (Past Due):** If a loan becomes 90 days delinquent, this loan is referred to as in default. CITY/CONTRACTOR staff will make a recommendation to the Loan Administration Board on actions to be taken, such as repossession of collateral, foreclosure, etc. The Loan Administration Board makes decisions on such actions. CITY/CONTRACTOR staff will ensure that all documentation is in order and will contact an attorney if necessary. Notification will be sent to all guarantors indicating their liability. Other lenders will be notified.

When monies are received by CITY/CONTRACTOR on defaulted RLF loans, these proceeds shall be applied in the following order of priority for EDA funded loans:

- i. First, towards any cost of collections.
- ii. Second, towards any outstanding penalties and fees.
- iii. Third, towards any accrued interest to the extent due and payable.
- iv. Fourth, towards any outstanding principal balance.

For loans funded through other funding sources, when monies are received by CITY/CONTRACTOR on defaulted RLF loans, these proceeds shall be applied in the order dictated by the funding source agency's policies and procedures.

- e. **Restructures:** CITY/CONTRACTOR staff may recommend terms to the Loan Administration Board for restructuring a loan that is delinquent, in default or has the potential for delinquency in order to increase the likelihood of repayment of the loan. The Loan Administration Board shall have the authority to authorize all restructures.
- f. **Write-off Procedures:** If a loan or portion of a loan remaining after liquidation of collateral is determined to be uncollectable, it will be written off. The direct write off

method of accounting is used. However, collection efforts will continue after the loan is written off until it is determined by the Loan Administration Board that such efforts are no longer cost effective.

## **6. Administrative Procedures**

- a. **Procedures for Audits and Accounting:** Financial audits shall be conducted annually consistent with EDA and other funding source agencies audit requirements of all program transactions and a written report shall be provided to the CITY/CONTRACTOR Loan Administration Board. An independent, established, professional auditor shall be retained to conduct the audit of agency records including, if required by Part 2 CFR 200 regulations, a Special Single Audit Report. CITY/CONTRACTOR shall employ recommended generally accepted accounting principles (GAAP) and accounting procedures to record and report all financial transactions. The accounting system will follow grantor regulations and use a double entry system. Monthly financial reports shall be provided to the Loan Administration Board. Each RLF fund is accounted for separately. Income and expense line items are accounted for separately from principal repayments and loans made.
  
- b. **Procedures for Loan Files and Loan Closing Documentation:** Each loan file must contain all of the documentation on that loan or provide reference as to where the required documentation is stored. Included in each file are all documents relevant to the loan including all of the following as they apply to the loan:
  - i. Application and any other documents submitted with application, including a business plan;
  - ii. Private and/or traditional lender loan commitment;
  - iii. Written form of denial (letter, email or other correspondence) from a bank or other traditional lender indicating that credit is not otherwise available on terms and conditions that permit the completion of the project.;
  - iv. Loan proposal;
  - v. Minutes from the loan board meeting approving the loan and minutes from meetings taking significant action related to the loan;
  - vi. Loan Agreement;
  - vii. Security Agreement;
  - viii. Promissory Note (or Note);
  - ix. Trust Deed(s);
  - x. UCC filings and searches;
  - xi. Insurance Certificates;
  - xii. Financial statements, job reports, correspondence, servicing/site visit notes and any other documentation regarding the loan

The loan files are kept in a fireproof filing cabinet when not being used by CITY/CONTRACTOR staff. Closed loan files and related documents and computer records and all other related records must be maintained over the term of the approved loan and for a three year period from the final date of the loan or according to the requirements of funding source agencies, whichever is the longest period of time.

Denied or withdrawn loan applications and supporting documentation and CITY/CONTRACTOR created documents and forms associated with a denied or withdrawn loan will be retained for a period of one (1) year after the date of denial or withdrawn loan or according to the requirements of funding source agencies, whichever is the longest period of time.

- c. **Hold Harmless Policy:** Each CITY/CONTRACTOR applicant is required to sign the Cen Cal Business Finance Group Loan Agreement with submission of a loan application. This form contains a Hold Harmless Statement at Section 4.13: Indemnification. At loan closing, all borrowers will sign loan documents that contain a Hold Harmless Agreement.
- d. **Procedures for Complying with EDA Reporting Requirements:** The CITY/CONTRACTOR Loan Fund Manager is responsible for preparing required EDA Semi-Annual Reports, in consultation with the CITY/CONTRACTOR Executive Director and CITY Economic Development Analyst. The CITY/CONTRACTOR is responsible for preparing the required financial reports to EDA as well as ensuring that an independent audit is sent to EDA annually. These reports will be submitted in compliance with the deadlines and regulations established by the EDA.
- e. **Procedures for Complying with Other Funding Agency Requirements (if any):** The CITY/CONTRACTOR Loan Fund Manager is responsible for preparing required Quarterly, Semi-Annual and Annual Reports required by the City and EDA. The CITY/CONTRACTOR Loan Fund Manager is responsible for preparing the required financial reports, in consultation with the CITY/CONTRACTOR Executive Director and CITY Staff, as well as ensuring that an independent audit is sent to the funding agency annually, as requested. These reports will be submitted in compliance with deadlines and regulations established by the funding agency covered under this RLF plan.
- f. **Grantee Control Procedures for Ensuring Compliance with All Grant Requirements and for Monitoring the RLF Portfolio:** CITY/CONTRACTOR staff maintains a grantee file with copies of all required reports, audits and EDA compliance manuals, Regulations and Standard Terms and Conditions. The forms used for documentation of RLF loans have been reviewed by an attorney.

RLF funds will be made available on a nondiscriminatory basis and no applicant will be denied a loan on the basis of race, color, national origin, religion, age, handicap or sex. A provision is included in the RLF loan documents that prohibit borrowers from discriminating against employees or applicants for employment or providers of goods or services. CITY/CONTRACTOR will monitor borrower compliance with civil rights laws periodically, by reviewing the job reports that will be submitted to the CITY/CONTRACTOR for subsequent reporting to EDA and other funding source agencies.

Confidentiality regarding financial information will be guarded at all times. Confidential information provided to CITY/CONTRACTOR will not be disclosed without the written permission from the client; this includes third party information obtained in confidentiality by client that is not public information. Clients may sign an authorization to release information for marketing purposes which could include, but not be limited to, CITY/CONTRACTOR newsletters, press releases or Chamber of Commerce articles.

No CITY/CONTRACTOR Board, Loan Administration Board or staff member will use his or her official position or office to obtain confidential information or in any other way obtain financial gain for him/herself, other than salary and/or reimbursement of expenses, or for any member of his household, or for any business with which he/she, or a member of his household, is associated.

- g. **Sources of Funding to Cover Administrative Costs:** Records will be maintained by the contractor to document and support eligible administrative costs that are charged against RLF income. The contractor will establish a methodology for allocating these costs, and maintain records that shall be made available immediately upon request by the City or any member of the City Management Staff including auditors representing the City/or the City Controller's Office.
  - i. In accordance with EDA regulations, as grant funds are disbursed for loans and RLF begins to generate income from lending activities, such income (referred to as "RLF Income"), as distinguished from principal repayments, may be used to cover eligible, reasonable and documented administrative costs necessary to operate the RLF.
  - ii. RLF Income and Expense Statements and all other reports will be prepared accurately, completely and within EDA time requirements.
  - iii. A reasonable percentage of RLF income will be added to the RLF capital base to compensate for loan losses and the effects of inflation over time, as well as to maintain a minimum funding level for the future borrowing needs within the eligible target area.
  - iv. Auditing costs may be reimbursed from RLF Income and from resources of the grant recipient. Audit costs are chargeable against the grant award if permitted in the grant budget and RLF Income to the extent that the costs charged are equitably distributed and reflect the benefits received.
  - v. Accurate timesheets, with the time allocated throughout the year to the Program, will be kept with proper manager signoff.
- h. **Recapitalization Strategy:** In order to maximize the Revolving Loan Fund for re-lending purposes, all principal repayments and appropriate interest accruals shall be returned to the RLF. Furthermore, RLF income must be added to the RLF for lending, then used for allowable costs, such as staff costs to operate the program. These costs are to be properly documented and included in the semiannual reports.
- i. **Loan Loss Reserve:** A loan loss reserve will be established for the loan fund. The reserve is a provision set aside to cover potential loan losses including bad loans, customer defaults and renegotiated terms of a loan that incur lower than previously estimated payments. The loss reserve will be a minimum of \$25,000 or equal to 5% of the total fund.
- j. **Other Requirements:**
  - i. **Administrative Requirements** – In the event that RLF Income is used to cover all or part of a RLF's administrative costs and in accordance with EDA regulations, CITY/CONTRACTOR must comply with the following provisions:
  - ii. **Accounting Records** – CITY/CONTRACTOR must:

- i. Maintain accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs.
- ii. Comply with applicable RLF Audit Regulations when charging costs against RLF Income. CITY/CONTRACTOR must retain records for at least three years.
  - 1. **Collection and Recovery Expenses** – From time to time, borrowers may encounter repayment difficulties that will necessitate collection and recovery efforts by the CITY/CONTRACTOR. The CITY/CONTRACTOR will advance funds necessary for collection and recovery of loans and will, at its discretion, determine when the cost of collection and recovery would exceed the likely value of assets that would be recovered. At such time as the CITY/CONTRACTOR makes such a determination, they may cease collection and recovery efforts and recoup collection and recovery costs from the assets recovered. If recovery value is insufficient, the CITY/CONTRACTOR may use program revenues to recoup collection and recovery costs.
  - 2. **Administrative Plan Targets** – Loan portfolio reports must be consistent with the specified sets of targets indicated under Section One, 3.
    - a. **Monitoring Requirements** – EDA Monitors grant recipients for compliance with the Terms and Conditions of the grant. The grant recipient is required by law to ensure that RLF Program Administrators conform to the same level of standards and comply with all program requirements as stated in the EDA Administrative Manual.
    - b. **Financial and Performance Reports** – The City of Fresno as grant recipient (grantee) will require the contractor to submit financial reports as specified in the EDA Regulations and in accordance with the terms and conditions of the Agreement.
    - c. **Audits** – The grantee (CITY) will ensure that an audit of the contractors operations is conducted in accordance with EDA audit regulations.
    - d. **Non-Performance** – In the event that the contractor fails to submit accurate, clear, timely and satisfactory reports in accordance with EDA Regulations the City, under the terms of the agreement, shall exercise the right to terminate the agreement.
    - e. **Equal Opportunities Requirements** – All prospective borrowers shall be apprised of Equal Employment Opportunity requirements upon application. The Revolving Loan Fund Agreement contains a specific assurance from the borrower of compliance with Title VI of the Civil Rights Act of 1964 and further provides that any incorrect representation or warranty made by the borrower shall constitute an event of default.

- f. **Relocation** – The location of a loan project must be within the RLF target area. The loan application shall be appraised that relocating the project from the target area will constitute an event of default and the loan would, therefore, become due in its entirety.
- g. **New Employees** – To the extent possible, loan recipients agree to hire new employees from public assistance providers.
- h. **Plan Amendment Procedures** – Any material modification, such as a merger, consolidation or change in the EDA approved lending area under Federal Regulations, change in critical management staff or a change to the strategic purpose of the RLF must be submitted to EDA for approval prior to any revision of the Plan. If the EDA approves the modification, the RLF recipient must submit an updated Plan to the EDA in electronic format, unless EDA approves a paper submission.

This Plan is authorized for five years from the date of final EDA approval, and supersedes all previous administrative plans under these awards. In the case of any conflicts between the approved Plan and the terms and conditions governing this award, the terms and conditions shall prevail.