

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**



**ITEM: 3.7
(ID # 13878)**

MEETING DATE:

FROM: BUSINESS AND COMMUNITY SERVICES:

Tuesday, December 15, 2020

SUBJECT: BUSINESS AND COMMUNITY SERVICES (BCS): Ratify and Approve the Application for and Financial Assistance Award from the U.S. Department of Commerce Economic Development Administration for the Coronavirus Aid, Relief, and Economic Security (CARES) Act Revolving Loan Fund (RLF) Supplemental Disaster Recovery and Resiliency Award project in the amount of \$858,000, Approve the Subrecipient Agreement with AMPAC Tri-State CDC, Inc. for microloan services without seeking competitive bids in the amount of \$819,000, Approve the First Amendment to Subrecipient Agreement with AMPAC Tri-State CDC, Inc. in the amount of \$250,000 for microloan services; and Approve updated RLF Administrative Plan, [All Districts], [\$1,108,000] Federal USED A Grant Funds 91%, Business and Community Services Funds 9%; Not A Project Under CEQA

RECOMMENDED MOTION: That the Board of Supervisors:

1. Find that the Financial Assistance Award, the Subrecipient Agreement, the First Amendment to the Subrecipient Agreement and the updated Revolving Loan Fund Administration Plan for the Revolving Loan Fund (RLF) and the County of Riverside Revolving Loan Fund Program are not projects under the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15378 (b) (4);
2. Find that the Financial Assistance Award, the Subrecipient Agreement the First Amendment to the Subrecipient Agreement and the updated Revolving Loan Fund Administration Plan for the Revolving Loan Fund is Categorical Excluded under the National Environmental Policy Act (NEPA) in accordance with Economic Development Administration Directive 17.02-2.02.(j) for the U.S. Department of Commerce's Economic Development Administration;


ACTION: Policy


Suzanne Holland, Director of EDA 11/19/2020

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Spiegel, seconded by Supervisor Jeffries and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: December 15, 2020
xc: BCS, Auditor

Kecia R. Harper
Clerk of the Board
By 
Deputy

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3. Ratify and Approve the Application for and Financial Assistance Award Document No. 07-79-07580 (Form CD-450) from the U.S. Department of Commerce, Economic Development Administration (USEDA) for the Revolving Loan Fund's Coronavirus Aid, Relief, and Economic Security Act Revolving Loan Fund Supplemental Disaster Recovery and Resiliency Award project ("RLF Supplemental Award"), and Acceptance of the Grant thereunder in the amount of \$858,000 for the period of performance from July 23, 2020 through July 30, 2020, (Exhibit F);
4. Ratify and Approve the USED A Specific Award Conditions (Exhibit D), USED A Revolving Loan Fund Standard Terms and Conditions, and Department of Commerce Financial Assistance Standard Terms and Conditions (Exhibit C);
5. Approve the attached Subrecipient Agreement with AMPAC Tri-State CDC, Inc., doing business as AmPac Business Capital, ("Subrecipient Agreement") for RLF Program microloan services for businesses located in the County of Riverside without seeking competitive bids for a total aggregate amount of \$819,000 for seven years through June 30, 2027, and authorize the Chairman of the Board to sign the Agreement on behalf of the County;
6. Approve the attached First Amendment to the Subrecipient Agreement with AMPAC Tri-State CDC, Inc., doing business as AmPac Business Capital, ("First Amendment") for RLF Program microloan services to increase the total contract aggregate amount by \$250,000 from \$500,000 to \$750,000, and authorize the Chairman of the Board to sign the First Amendment on behalf of the County;
7. Approve the updated Riverside County Business and Community Services Revolving Loan Fund Program, Small Business Financial Assistance Program Policies and Procedures ("RLF Administrative Plan"), (Exhibit A); and
8. Authorize the Director of Business and Community Services, or designee, to take all necessary steps to implement the USED A RLF Supplemental Award, the Subrecipient Agreement, and the First Amendment, including, but not limited to: negotiating, approving, and executing, subsequent essential and relevant documents, including, but not limited to the RLF loan documents for borrowers such as loan applications, loan agreements, promissory notes, deeds of trust, security agreements, reconveyance documents, subordination agreements, UCC-1 forms, security releases (Exhibit E), and other agreements required by the USED A, subject to approval as to form by County Counsel.
9. Approve and direct the Auditor-Controller to make the budget adjustments as detailed in the attached Schedule A.

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FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$1,108,000	\$0	\$1,108,000	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS: \$1,097,273 Federal USED A Grant Funds 91%; \$10,727 Business and Community Services Funds 9%			Budget Adjustment: No	
			For Fiscal Year: 2020/21	

C.E.O. RECOMMENDATION: Approve.

BACKGROUND:

Summary

On August 23, 2016, the Board of Supervisors of the County of Riverside (County) approved a Financial Assistance Award from the U.S. Department of Commerce, Economic Development Administration (USED A) to establish a Revolving Loan Fund in the County. The purpose of the fund is to support economic development and provide for a source of business capital. The Board of Supervisors also approved and adopted Resolution No. 2016-026, establishing the County of Riverside Economic Development Revolving Loan Fund Program (RLF Program) and approved the Administrative Plan with the Policies and Procedures for the RLF Program. The total loan pool of \$1,528,633 was capitalized with the grant from USED A (80% of total) and matched by County of Riverside Economic Development funds (20% of total). Business and Community Services has been operating the RLF Program since inception and has made eight loans totaling \$1,000,000 to local businesses. On May 5, 2020 the Board of Supervisors approved the reprogramming of \$500,000 of RLF funds through an agreement with AMPAC Tri-State CDC, Inc., doing business as AmPac Business Capital (AmPac). Due to the ongoing economic impacts of the COVID-19 pandemic USED A has awarded the County of Riverside \$858,000 of supplemental funds for the County RLF Program. The purpose of this item is to request approval and acceptance of the U. S. Department of Commerce’s Economic Development Administration (USED A) Coronavirus Aid, Relief, and Economic Security (CARES) Act Revolving Loan Fund Supplemental Disaster Recovery and Resiliency Award (RLF Supplemental Award) for the Revolving Loan Fund, request approval of the Subrecipient Agreement, the First Amendment to Subrecipient Agreement and updated Revolving Loan Fund Administrative Plan.

RLF Supplemental Award

The U.S. Department of Commerce, Economic Development Administration (USED A) received a supplemental appropriation to prevent, prepare for, and respond to coronavirus, including for necessary expenses for responding to economic injury as a result of coronavirus, as part of the Coronavirus Aid, Relief, and Economic Security

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(CARES) Act. As part of USEDA's CARES Act Recovery Assistance, USEDA invited certain current recipients of existing USEDA-funded Revolving Loan Fund (RLF) awards to apply for a supplemental RLF award to help respond to the unusual and compelling urgency of the coronavirus pandemic. USEDA determined that these RLF partners, by virtue of their longstanding and substantial investment in making credit available to small businesses, possess unique abilities to support the CARES Act Recovery Assistance initiative and that it was therefore in the public interest to make awards to these organizations on a noncompetitive basis. BCS received a Non-Competitive USEDA RLF award of \$858,000; the funds allocation is \$780,000 to be used for loans to County of Riverside businesses and \$78,000 for administrative costs. The period of performance for the award is 24 months; all award funds must be disbursed and lent or used for administrative costs during this period. USEDA will fund the award at a 100 percent federal grant rate; no matching share is required by the County.

Subrecipient Agreement

Business and Community Services has proposed to partner with AmPac Tristate CDC, Inc. doing business as AmPac Business Capital (AmPac) to make microloans available to county businesses using the Supplemental RLF Grant Award funds. The Subrecipient Agreement will capitalize on the existing relationship with AmPac to engage the business community and quickly deploy microloan funds to small businesses quickly. AmPac will have to adhere to all standard terms and conditions imposed by USEDA and the Department of Commerce. Riverside County BCS will program \$819,000 from the RLF Supplemental Award to AmPac for the loan program; \$780,000 for loans to businesses and \$39,000 for administrative expenses associated with processing and closing loans including costs for processing, underwriting, legal preparation, UCC filings, and other related expenses. AmPac will collect applications, process, underwrite, and recommend loan approval per established underwriting guidelines approved by its loan committee. AmPac will also close, fund, and book loans into its portfolio and will service loans over the term of the loan. Once borrowers begin to make payments on the loans, AmPac will report on loans to Riverside County BCS as required by the County and USEDA. The loans made on behalf of the County will provide funding for small businesses within the county in the amounts between \$15,000 and \$30,000 with payment terms of five years, with an interest rate of 3.75%. With this funding, AmPac will be able to issue between 26 to 52 loans to County businesses. AmPac will have to adhere to all standard terms and conditions imposed by USEDA and the Department of Commerce. AmPac and Riverside County Business and Community Services will comarket the loan program. AmPac will collect applications, process, underwrite, and recommend loan approval per established underwriting guidelines approved by its loan committee. AmPac will also close, fund, and book loans into its portfolio and will service loans over the term of the loan.

First Amendment to Subrecipient Agreement

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On May 5, 2020, the Board Approved an Agreement with AmPac Tristate CDC, Inc. doing business as AmPac Business Capital (AmPac) to make microloans available to county businesses. The approved Agreement allowed Business and Community Services (BCS) to reprogram \$500,000 from its existing USEDAs grant Revolving Loan Fund Program (RLF) to AmPac for the loan program. The Agreement provided Business and Community Services the flexibility to work with AmPac to engage the business community and quickly deploy microloan funds to small businesses. With the RLF funding AmPac issued 24 loans that helped retain 89 employees of the businesses that received the loans. The RLF program has accumulated funds from repaid principal and interest of the loans previously made by BCS and BCS proposes to make a First Amendment to the original Subrecipient Agreement (First Amendment) to make an additional \$250,000 of funding available to AmPac for lending. The proposed First Amendment will allocate an additional \$250,000 to the previously awarded \$500,000 of RLF funds for an aggregated total of \$750,000. The additional funds will be for loans to small businesses within the county in the amounts between \$15,000 and \$30,000 with payment terms of five years, with an interest rate of 3.75%. The funding will allow AmPac to fund an additional 8-16 loans to County businesses. AmPac will continue to adhere to the existing agreement's terms and to report on loans to Riverside County BCS as required by the County and USEDAs.

RLF Administrative Plan

USEDAs requires that the RLF Administrative Plan (RLF Admin Plan) be reviewed and updated every five years to conform to changes in economic conditions and the Comprehensive Economic Development Strategy (CEDs), adopted by the County and approved by USEDAs every five years. The current CEDs is period is from 2019 to 2024. On May 5, 2020 the Board approved changes to the RLF Admin Plan that have been incorporated into the written plan along with changes to reflect department name and added procedures for the release of security once borrower has paid loan in full. Upon approval of RLF Admin Plan, BCS will be send to USEDAs for review and their approval.

The RLF Supplemental Award, the Subrecipient Agreement, the First Amendment and the updated RLF Admin Plan were reviewed and determined not to fall within the definition of a project under the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15378 (b) (4).The RLF Supplemental Award, the Subrecipient Agreement, the First Amendment and the updated RLF Admin Plan (collectively the "Activities") create a government funding mechanism which does not involve any commitment to any specific project which may result in a potentially significant physical impact on the environment. The Activities just allow the County to accept funding and provide funds to AmPac for commercial loans to small businesses

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and makes updates to existing plan. No specific projects have been identified and committed in connection with the approval of the RLF Supplemental Award, the Subrecipient Agreement, the First Amendment and the RLF Admin Plan. Each loan derived from the RLF and/or issued in connection with the RLF program will be subject to separate CEQA and/or National Environmental Policy Act (NEPA) environmental review, as applicable, prior to taking any choice limiting action or discretionary action on those specific loans. Additionally, accepting the award of the USEDA Grant RLF Supplemental Award, approving the Subrecipient Agreement, the First Amendment and updated RLF Admin Plan are categorically excluded activities under NEPA pursuant to Economic Development Administration Directive 17.02-2.02(j). The actions to be undertaken to accept RLF Supplemental Award and execute the Subrecipient Agreement, First Amendment and updated RLF Admin Plan do not individually or cumulatively have a significant effect on the human environment, they only have financial impacts.

EDA staff recommends (i) ratification and approval of the Financial Assistance Award from the U.S. Department of Commerce Economic Development Administration, Specific Award Conditions USEDA, Revolving Loan Fund Financial Assistance Award Standard Terms and Conditions, and Department of Commerce Financial Assistance Standard Terms and Conditions, (ii) acceptance of the USEDA RLF Supplemental Award Grant, (iii) Approve the Subrecipient Agreement with AMPAC Tri-State CDC, Inc. for Supplemental Disaster Recovery and Resiliency Award microloan services without seeking competitive bids, (iv) Approve the First Amendment to Subrecipient Agreement with AMPAC Tri-State CDC, Inc. in the amount of \$250,000 for the Revolving Loan Fund Program microloan services and (v) Approve the updated Revolving Loan Fund Administrative Plan. County Counsel has approved as to form the Financial Assistance Award Form, the Subrecipient Agreement, the First Amendment to the Agreement and the RLF Admin Plan.

Impact on Residents and Businesses

By administering the RLF Supplemental Award and executing the Subrecipient Agreement, the First Amendment and updating the RLF Admin Plan, the County is encouraging private sector job growth for citizens, promoting public-private partnerships, an increase in sales and property taxes, and providing an incentive to attract new businesses.

SUPPLEMENTAL:

Additional Fiscal Information

The proposed RLF activities will be funded entirely by USEDA Grant RLF Supplemental Award and existing RLF Program funds and will not impact the County's General Fund.

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ATTACHMENTS:

- Ampac Subrecipient Agreement
- Exhibit A- RLF Administrative Plan
- Exhibit B- Budget Provisions
- Exhibit C- EDA RLF STC's and DOC STC's
- Exhibit D- Specific Award Conditions
- Exhibit E- Federal Funds Disbursement Procedures
- Exhibit F-County of Riverside Application and Financial Assistance Award
- First Amendment to Subrecipient Agreement



COUNTY OF RIVERSIDE
 BUSINESS & Community SERVICES
 3403 10th Street, Suite 400
 Riverside, CA 92501
 (951) 955-8916

Date Stamp Received at
 County Counsel:

RECEIVED
 NOV 24 2020
 COUNTY COUNSEL

Date: 11/24/2020

FORM APPROVED COUNTY COUNSEL
 BY: LISA SANCHEZ *LS* 12/03/2020
 DATE

To: County Council

- | | | | |
|-------------------------------------|----------------------|--------------------------|---|
| <input type="checkbox"/> | Synthia Gunzel | <input type="checkbox"/> | Aaron Gettis |
| <input type="checkbox"/> | Kristine Bell-Valdez | <input type="checkbox"/> | Susana Oh |
| <input checked="" type="checkbox"/> | Lisa Sanchez | <input type="checkbox"/> | Thomas Oh 2 nd , 4 th Districts |
| <input type="checkbox"/> | Amrit Dhillon | <input type="checkbox"/> | Wes Stanfield 1 st , 3 rd , 5 th Districts |
| <input type="checkbox"/> | _____ | <input type="checkbox"/> | _____ |

Division: Business Services
 Project Manager: Joaquin Tijerina
 Subject: Revolving Loan Fund- Approved Subrecipient Agreement with attachments
 PeopleSoft Project Code:

PROJECTED BOARD DATE: December 8, 2020

Return to: Joaquin Tijerina

Tracking: MT 13878

Quantity	Submittal Date	Description	Pages
1	11/24/2020	First Amendment to Sub-agreement with AmPac-Signed	
1	11/24/2020	Sub-Agreement with AmPac for USED A RLF CARES Act Supplemental funds Award with Exhibits A-F-Signed	

EDA Remarks Please contact Joaquin Tijerina at 760-408-8953 for any questions.

County Council Remarks:

COUNTY OF RIVERSIDE
FIRST AMENDMENT TO THE SUBRECIPIENT AGREEMENT
WITH
AMPAC TRI-STATE CDC, INC.,
DOING BUSINESS AS AMPAC BUSINESS CAPITAL

This First Amendment to the Subrecipient Agreement is entered into by and between the County of Riverside, a political subdivision of the State of California (herein referred to as "COUNTY" or "GRANTEE") through its Business and Community Services Department and AMPAC TRI-STATE CDC, INC., a California nonprofit public benefit corporation, doing business as AmPac Business Capital ("SUBRECIPIENT"), sometimes collectively referred to as the "Parties".

RECITALS

WHEREAS, the Subrecipient Agreement between County of Riverside and AMPAC TRI-STATE CDC, INC., a California nonprofit public benefit corporation, doing business as AmPac Business Capital (AmPac Business Capital), was entered into as of May 5, 2020, ("Sub-agreement") for services associated with implementation of the COVID-19 Small Business Assistance Grant Program; and to address the coronavirus disease 2019 pandemic emergency situation.

WHEREAS, the Parties desire to amend the Agreement to increase the Budget amount and add procedures to Use and Reversion of Assets; and

WHEREAS, the Original Agreement together with this Amendment are collectively referred to herein as the "Sub-agreement";

NOW THEREFORE, for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

1. **Budget.** Section 3.1 of the Sub-agreement is amended with the following:

The total estimated capital budget for full performance under this Sub-Recipient Agreement is increased in the amount of Two Hundred Fifty Thousand dollars (\$250,000) for a sum total of Seven Hundred Fifty Thousand dollars (\$750,000). Disbursement of the capital budget funds shall be in accordance with the below allocated amounts:


- (a) Amount of Federal Funds obligated by this action by COUNTY to SUBRECIPIENT is Six Hundred Thirty-Nine Thousand Four Hundred dollars (\$639,273).
 - (b) Total amount of COUNTY Economic Development Funds obligated by this action by COUNTY to SUBRECIPIENT, including the current obligations, is One Hundred Ten Thousand Six Hundred dollars (\$110,727).
2. All other terms and conditions of the Agreement not modified herein shall remain unchanged.
 3. The Effective Date of this Amendment shall be date approved by the Board of Supervisors.

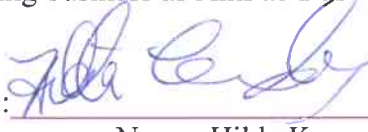
COUNTY OF RIVERSIDE
FIRST AMENDMENT TO THE SUBRECIPIENT AGREEMENT
WITH
AMPAC TRI-STATE CDC, INC.,
DOING BUSINESS AS AMPAC BUSINESS CAPITAL

IN WITNESS WHEREOF, the Parties hereto have caused their duly authorized representatives to execute this Amendment.

COUNTY OF RIVERSIDE, a political
subdivision of the State of California

AMPAC TRI-STATE CDC, INC., a
California nonprofit public benefit corporation
doing business as AmPac Business Capital

By: 
Manuel V. Perez, Chairman
Board of Supervisors

By: 
Name: Hilda Kennedy
Title: Founder/President

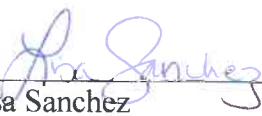
Dated: 12/15/2020

Dated: 11/19/2020

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

By: 
Deputy

APPROVED AS TO FORM:
Gregory P. Priamos
County Counsel

By: 
Lisa Sanchez
Deputy County Counsel

SUBRECIPIENT AGREEMENT

for

REVOLVING LOAN FUND

between

COUNTY OF RIVERSIDE

and

AMPAC TRI-STATE CDC, INC.,

Doing Business As AmPac Business Capital



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Exhibit C-USEDA Standard Terms and Conditions for RLF Awards and Department of Commerce Financial Assistance
Standard Terms and Conditions.....

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Exhibit E-Federal Funds Disbursement Procedures.....

Exhibit F-County of Riverside Application and Financial Assistance Award Form.....

This Subrecipient Agreement (“Sub-agreement”) is made and entered into this ___ day of _____, 202___, by and between the COUNTY OF RIVERSIDE, a political subdivision of the State of California, through its Business and Community Services Department (herein referred to as "COUNTY" or “GRANTEE”), and AMPAC TRI-STATE CDC, INC., a California nonprofit public benefit corporation, doing business as AmPac Business Capital (herein referred to as "SUBRECIPIENT"), to address the coronavirus disease 2019 (“COVID-19”) pandemic emergency situation (“Coronavirus Emergency 2020”). The parties agree as follows:

1. Description of Services

1.1 SUBRECIPIENT shall provide all services necessary to enable COUNTY to complete its obligations under the COUNTY RLF agreement through the Financial Assistance Award from the U. S. Department of Commerce’s Economic Development Administration Coronavirus Aid, Relief, and Economic Security Act Revolving Loan Fund Supplemental Disaster Recovery and Resiliency Award for the Revolving Loan Fund (USEDA Supplemental RLF Award), to make small business loans consistent with COUNTY’s approved Revolving Loan Fund Administrative Plan, attached hereto as Exhibit A.

1.2 SUBRECIPIENT will meet with COUNTY (either in person or by telephone), to review the Revolving Loan Fund (RLF) status on an as needed for the USED A Supplemental Award, but no less than quarterly, basis.

1.3 SUBRECIPIENT shall report to COUNTY in a manner consistent with reporting requirements contained in Section 8F of the United States Department of Commerce, Economic Development Administration (“USED A”) RLF Standard Terms and Conditions, which define reporting as the completion of form ED-209 at a frequency required by USED A, which is generally on a semiannual basis. If reporting frequency to USED A is reduced to one annual report based on the RLF’s Risk Analysis evaluation, SUBRECIPIENT will provide the annual report to the COUNTY and six (6) months later, provide a written progress report to the COUNTY in lieu of a second USED A report.

1.4 The description of services hereunder may be amended as needed pursuant to Section 23.14 of this Sub-agreement.

1.5 SUBRECIPIENT represents that it has the skills, experience, and knowledge necessary to perform under this Sub-agreement, and the COUNTY relies upon this representation. SUBRECIPIENT shall perform to the satisfaction of the COUNTY, and in conformance to and consistent with the highest standards of professionals in the same discipline in the State of California.

1.6 SUBRECIPIENT affirms that it is fully apprised of all of the work to be performed under this Sub-agreement, and that it will not perform the services described herein for COUNTY outside of the Sub-agreement.

1.7 Acceptance by the COUNTY of the SUBRECIPIENT's performance under this Sub-agreement does not operate as a release of SUBRECIPIENT's responsibility for full compliance with the terms of this Sub-agreement.

2. Period of Performance

2.1 This Sub-agreement shall be effective upon signature by both parties and continues in effect through June 30, 2027, unless terminated earlier or otherwise modified. SUBRECIPIENT shall commence performance upon signature of this Sub-agreement by both parties and shall diligently and continuously perform thereafter. The Riverside County Board of Supervisors is the only authority that may obligate the County for a non-cancelable multi-year agreement.

2.2 Time shall be of the essence as to all aspects of the SUBRECIPIENT's performance under this Sub-agreement.

3. Budget

3.1 The total estimated capital budget for full performance of this Sub-agreement is Eight Hundred Nineteen Thousand dollars (\$819,000) in RLF funds from the Coronavirus Aid, Relief, and Economic Security (CARES) Act Revolving Loan Fund Supplemental Disaster Recovery and Resiliency Award. The capital budget may be amended as needed pursuant to Section 23.14 of this Sub-agreement. Disbursement of the capital budget funds shall be in accordance with the below allocated amounts:

- (a) Amount of Federal Funds obligated by this action by COUNTY to SUBRECIPIENT for loans is Seven Hundred Eighty Thousand dollars (\$780,000). Disbursement of the Federal funds of capital budget shall be in accordance with Federal Funds Disbursement Procedures, attached hereto as Exhibit E.
- (b) Total amount of Federal Administrative Funds obligated by this action by COUNTY to SUBRECIPIENT, including the current obligations, is Thirty-Nine Thousand dollars (\$39,000). Administrative Funds of capital budget will be disbursed to SUBRECIPIENT upon submittal of invoice for the expenditures once this Sub-agreement has been fully executed. Administrative Funds must be used for administrative expenses associated with processing and closing loans including costs for processing, legal preparation, UCC filings, and other related expenses in

conjunction with Federal Funds to fund loans to businesses physically located in Riverside County.

3.2 SUBRECIPIENT shall provide COUNTY an operating budget with expected income, borrower volume, recurring expenses, and one-time costs, which shall be attached hereto as Exhibit B (Budget Provisions). SUBRECIPIENT shall pay its pro-rated share of direct Single Audit costs incurred by COUNTY as required by funding agency, USEDA.

3.3 COUNTY shall provide SUBRECIPIENT with an estimated Single Audit costs by May of each fiscal year for budgetary purposes.

3.4 COUNTY is not responsible for any fees or costs incurred above or beyond the contracted amount and shall have no obligation to purchase any specified amount of services. Unless otherwise specifically stated in Exhibit B, COUNTY shall not be responsible for payment of any of SUBRECIPIENT's expenses related to this Sub-agreement.

3.5 COUNTY obligation under this Sub-agreement beyond the current fiscal year end is contingent upon and limited by the availability of COUNTY funding. In the State of California, Government agencies are not allowed to pay excess interest and late charges, per Government Code Section 926.10. No legal liability on the part of the COUNTY shall arise for payment beyond June 30 of each calendar year unless funds are made available for such payment. In the event that such funds are not forthcoming for any reason, COUNTY shall immediately notify SUBRECIPIENT in writing; and this Sub-agreement shall be deemed terminated and have no further force and effect.

4. RLF Income

4.1 RLF Income means interest earned on outstanding loan principal and accounts holding RLF funds, all fees and charges by the RLF and other income generated from RLF operations.

4.2 SUBRECIPIENT may use RLF income to pay for RLF administrative costs, provided the income earned and administrative costs are accrued in the same SUBRECIPIENT fiscal year and the costs are reimbursable based on USEDA regulations. SUBRECIPIENT must add to the RLF capital base any RLF income that is not used for administrative costs in the same fiscal year.

4.3 RLF funds authorized by COUNTY to SUBRECIPIENT will be deposited, in a lump sum, into a segregated account established by the SUBRECIPIENT.

4.4 The Project Director for SUBRECIPIENT shall be Hilda Kennedy, Founder/President, AmPac Tri-State CDC, Inc. doing business as AmPac Business Capital (Authorized Organizational Representative or "AOR"), and is considered essential to the work performance under this Sub-agreement. SUBRECIPIENT

shall notify COUNTY within fifteen (15) calendar days if any AOR has left or will leave their employment with SUBRECIPIENT or has otherwise become incapable of performing under this Sub-agreement. With notice of a change of AOR, the parties may exercise the option to continue this Sub-agreement unchanged, with SUBRECIPIENT providing COUNTY with an acceptable operational plan. Alternatively, the parties may agree to terminate this Sub-agreement subject to the terms outlined under Section 5 of this Sub-agreement.

5. Suspension or Termination

5.1. COUNTY may terminate this Sub-agreement without cause upon thirty (30) days written notice served upon the SUBRECIPIENT stating the extent and effective date of termination.

5.2 COUNTY may, upon five (5) days written notice, suspend or terminate this Sub-agreement for cause for SUBRECIPIENT's default, if SUBRECIPIENT refuses or fails to comply with the terms of this Sub-agreement, which include (but are not limited to) the following:

- (a) Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and guidelines, policies or directives as may become applicable at any time, and which are made known to SUBRECIPIENT; and
- (b) Failure, without correction, of the SUBRECIPIENT to fulfill in a timely and proper manner its obligations under this Sub-agreement, including its reporting requirements to the COUNTY; and
- (c) Ineffective or improper use of funds provided under this Sub-agreement; or
- (d) Failure to make progress that may endanger performance and SUBRECIPIENT does not immediately cure such failure.

5.3 If the Sub-agreement is terminated because of a non-performance under Section 5.2 by the SUBRECIPIENT, the COUNTY shall be responsible for expenses incurred by the SUBRECIPIENT in relation to the award, but only up to the date that the SUBRECIPIENT receives the notice of the breach. In the event of such termination, the COUNTY may proceed with the work in any manner deemed proper by COUNTY.

5.4 COUNTY may terminate this Sub-agreement in the event COUNTY receives a notice of termination from the Federal Government. Upon such notification, SUBRECIPIENT shall proceed in an orderly fashion to limit or terminate any outstanding commitments. The SUBRECIPIENT will provide the

COUNTY with a closeout proposal for any reasonable and reimbursable termination costs, a final financial report and/or progress report within sixty (60) days of the notice of termination.

5.5 After receipt of the notice of termination, SUBRECIPIENT shall:

- (a) Stop all work under this Sub-agreement on the date specified in the notice of termination; and
- (b) Transfer to COUNTY and deliver in the manner as directed by COUNTY any materials, reports or other products, which, if the Sub-agreement had been completed or continued, would have been required to be furnished to COUNTY.

5.6 After termination, SUBRECIPIENT shall:

- (a) Provide COUNTY with a repayment schedule for all uncommitted cash, outstanding loans receivable net of the SUBRECIPIENT's share of local match. SUBRECIPIENT may, at its own discretion, refinance these outstanding loan commitments with other available funds at its disposal as a means to accelerate payment to COUNTY.
- (b) Submit a final Report no later than forty-five (45) days after closeout of this Sub-agreement.
- (c) Receive payment only for SUBRECIPIENT's performance up to the date of termination in accordance with this Sub-agreement, unless otherwise provided for herein.

5.7 SUBRECIPIENT's rights under this Sub-agreement shall terminate (except for fees accrued prior to the date of termination) upon dishonesty or a willful or material breach of this Sub-agreement by SUBRECIPIENT; or in the event of SUBRECIPIENT's unwillingness or inability for any reason whatsoever to perform the terms of this Sub-agreement. In such event, SUBRECIPIENT shall not be entitled to any further compensation under this Sub-agreement.

5.8 Closeout expenses upon termination may include accounting, legal, clerical, and similar costs reasonably necessary to terminate SUBRECIPIENT activities under this Sub-agreement, the termination and settlement of any subcontracts, reasonable costs for storage, transportation, protection of any property or records related to this Sub-agreement, and any management costs such as salaries and wages and any normal indirect costs limited to payroll taxes, fringe benefits, occupancy costs, and other reasonable overhead costs.

5.9 If the Sub-agreement is federally or State funded, SUBRECIPIENT cannot be debarred from the System for Award Management (SAM). SUBRECIPIENT must notify the COUNTY immediately of a debarment. Reference: System for Award Management (SAM) at <https://www.sam.gov> for Central

SUBRECIPIENT Registry (CCR), Federal Agency Registration (Fedreg), Online Representations and Certifications Application, and Excluded Parties List System (EPLS)). Excluded Parties Listing System (EPLS) (<http://www.epls.gov>) (Executive Order 12549, 7 CFR Part 3017, 45 CFR Part 76, and 44 CFR Part 17). The System for Award Management (SAM) is the Official U.S. Government system that consolidated the capabilities of CCR/FedReg, ORCA, and EPLS.

5.10 The rights and remedies of COUNTY provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or this Sub-agreement.

6. Ownership/Use of Materials

The SUBRECIPIENT agrees that all materials, reports or products in any form, including electronic, created by SUBRECIPIENT for which SUBRECIPIENT has been compensated pursuant to this Sub-agreement shall be the sole property of the COUNTY. The material, reports or products may be used by the COUNTY for any purpose that the COUNTY deems to be appropriate, including, but not limit to, duplication and/or distribution within the COUNTY or to third parties. SUBRECIPIENT agrees not to release or circulate in whole or part such materials, reports, or products without prior written authorization of the COUNTY.

7. Conduct of Subrecipient

7.1 The SUBRECIPIENT covenants that it presently has no interest, including, but not limited to, other projects or contracts, and shall not acquire any such interest, direct or indirect, which would conflict in any manner or degree with SUBRECIPIENT's performance under this Sub-agreement. The SUBRECIPIENT further covenants that no person or subcontractor having any such interest shall be employed or retained by SUBRECIPIENT under this Sub-agreement. The SUBRECIPIENT agrees to inform the COUNTY of all the SUBRECIPIENT's interests, if any, which are or may be perceived as incompatible with the COUNTY's interests.

7.2 The SUBRECIPIENT shall not, under circumstances which could be interpreted as an attempt to influence the recipient in the conduct of his/her duties, accept any gratuity or special favor from individuals or firms with whom the SUBRECIPIENT is doing business or proposing to do business, in accomplishing the work under this Sub-agreement.

7.3 The SUBRECIPIENT or its employees shall not offer gifts, gratuity, favors, and entertainment directly or indirectly to COUNTY employees.

8. Performance Monitoring

8.1 SUBRECIPIENT shall submit program performance reports to COUNTY, consistent with COUNTY's reporting requirements to the USEDA, in the USEDA's prescribed format, in the timeframe indicated below:

REPORT	FORMAT	DUE DATE OR TIME FRAME EXPECTED
TECHNICAL	Semi-annual ED-209 support information	20 days after end of semi-annual period
FINANCIAL	Audit	120 days after end of fiscal year

8.2 COUNTY will evaluate SUBRECIPIENT's management and operation of the RLF using USEDA's annual application of a Risk Analysis System that measures a variety of factors, including but not limited to capital, assets, management, earnings, liquidity, and strategic results.

8.3 SUBRECIPIENT will generally be allowed sixty (60) days to submit Deliverables, or to increase its performance relative to risk factors identified by USEDA through the Risk Analysis System. However, persistent noncompliance with risk factors identified through the Risk Analysis System will result in COUNTY seeking appropriate remedies for noncompliance.

8.4 COUNTY will review the audit of the SUBRECIPIENT to ensure that award funds are used for authorized purposes in compliance with laws, regulations, and the provisions of contracts or grant agreements noted under Section 12.1 below.

8.5 If action to correct such substandard performance is not taken by the SUBRECIPIENT within a reasonable period after being notified by COUNTY, suspension or termination procedures may be initiated by COUNTY according to Section 5 of this Sub-agreement.

8.6 All performance (which includes services, workmanship, materials, supplies and equipment furnished or utilized in the performance of this Sub-agreement) shall be subject to inspection and test by the COUNTY or other regulatory agencies at all times. The SUBRECIPIENT shall provide adequate cooperation to any inspector or other COUNTY representative to permit him/her to determine the SUBRECIPIENT's conformity with the terms of this Sub-agreement. If any services performed by SUBRECIPIENT are not in conformance with the terms of this Sub-agreement, the COUNTY shall have the right to require the SUBRECIPIENT to perform the services in conformance with the terms of the Sub-agreement at no additional cost. The COUNTY may also terminate this Sub-agreement for default and charge to SUBRECIPIENT any costs incurred by the COUNTY because of the SUBRECIPIENT's failure to perform.

8.7 SUBRECIPIENT shall establish adequate procedures for self-monitoring and quality control and assurance to ensure proper performance under this Sub-agreement; and shall permit a COUNTY representative or other regulatory official to monitor, assess, or evaluate SUBRECIPIENT's performance under this Sub-agreement at any time, upon reasonable notice to the SUBRECIPIENT.

9. **Independent Contractor/Employment Eligibility**

9.1 The SUBRECIPIENT is, for purposes relating to this Sub-agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the SUBRECIPIENT (including its employees, agents, and subcontractors) shall in no event be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and SUBRECIPIENT shall hold COUNTY harmless from any and all claims that may be made against COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Sub-agreement. Nothing in the Sub-agreement is intended to, or shall be deemed to, constitute a partnership or joint venture between the parties. It is further understood and agreed by the parties that SUBRECIPIENT in the performance of this Sub-agreement is subject to the control or direction of COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

9.2 SUBRECIPIENT warrants that it shall make its best effort to fully comply with all federal and state statutes and regulations regarding the employment of noncitizens and others and to ensure that employees performing work under this Sub-agreement ("Covered Individuals") meet the citizenship or other immigration status requirement set forth in federal statutes and regulations. SUBRECIPIENT shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status lawfully required by federal or state statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. SUBRECIPIENT shall retain all such documentation for all covered employees, for the period prescribed by the law.

9.3 Ineligible Person shall be any individual or entity who: Is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; or has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the federal health care programs after a period of exclusion, suspension, debarment, or ineligibility.

9.4 SUBRECIPIENT shall screen prospective Covered Individuals prior to hire or engagement. SUBRECIPIENT shall not hire or engage any Ineligible Person to provide services directly relative to this Sub-agreement. SUBRECIPIENT shall screen all current Covered Individuals within sixty (60) days of execution of this Sub-agreement to ensure that they have not become Ineligible Persons unless SUBRECIPIENT has performed such screening on same Covered Individuals under a separate Sub-agreement with COUNTY within the past six (6) months. Covered Individuals shall be required to disclose to SUBRECIPIENT immediately any debarment, exclusion or other event that makes the Covered Individual an Ineligible Person. SUBRECIPIENT shall notify COUNTY within five (5) business days after it becomes aware if a Covered Individual providing services directly relative to this Sub-agreement becomes debarred, excluded or otherwise becomes an Ineligible Person.

9.5 SUBRECIPIENT acknowledges that Ineligible Persons are precluded from providing federal and state funded health care services by contract with COUNTY in the event that they are currently sanctioned or excluded by a federal or state law enforcement regulatory or licensing agency. If SUBRECIPIENT becomes aware that a Covered Individual has become an Ineligible Person, SUBRECIPIENT shall remove such individual from responsibility for, or involvement with, COUNTY business operations related to this Sub-agreement.

9.6 SUBRECIPIENT shall notify COUNTY within five (5) business days if a Covered Individual or entity is currently excluded, suspended or debarred, or is identified as such after being sanction screened. Such individual or entity shall be promptly removed from participating in any activity associated with this Sub-agreement.

10. Subcontract for Work or Services

No contract shall be made by the SUBRECIPIENT with any other party for furnishing any of the work or services under this Sub-agreement without the prior written approval of the COUNTY; but this provision shall not require the approval of contracts of employment between the SUBRECIPIENT and personnel assigned under this Sub-agreement, or for parties named in the proposal and agreed to under this Sub-agreement.

11. Disputes

11.1 The parties shall attempt to resolve any disputes amicably at the working level through informal means. If that is not successful, the dispute shall be referred to the senior management of the parties. Any dispute relating to this Sub-agreement, which is not resolved by the parties, shall be decided by the COUNTY's Director of Economic Development who shall furnish the decision in writing. The decision of

the COUNTY's Director of Economic Development shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous to imply bad faith. The SUBRECIPIENT shall proceed diligently with the performance of this Sub-agreement pending the resolution of a dispute.

11.2 Prior to the filing of any legal action related to this Sub-agreement, the parties shall be obligated to attend a mediation session in Riverside County before a neutral third-party mediator. A second mediation session shall be required if the first session is not successful. The parties shall equally share the cost of the mediations.

12. Funding Requirements

12.1 General Compliance. SUBRECIPIENT agrees to comply with:

- (a) USED A RLF Standard Terms and Conditions, and Department of Commerce Financial Assistance Standard Terms and Conditions, including anti-lobbying restrictions, minority and women-owned businesses, suspension and debarment, drug-free workplace, and securing the Federal Interest in property acquired or improved with Federal funds, dated April 30, 2019, as may be amended or replaced from time to time (Exhibit C);
- (b) USED A Specific Award Conditions included in COUNTY's award (Exhibit D);
- (c) Federal Funds Disbursement Procedures, (Exhibit E);
- (d) The activities described in the COUNTY's application for funding and any amendments thereto (Exhibit F);
- (e) The COUNTY's approved RLF Administrative Plan, as amended (Exhibit A);
- (f) 2 CFR part 200 including:
 - 1. Applicable administrative requirements, such as financial management standards, and record keeping (See 2 C.F.R. § 200 Subpart D);
 - 2. Applicable cost principles (See 2 C.F.R. § 200 Subpart E);
 - 3. Audit requirements found in DOC Standard Terms & Conditions and OMB Circular A-133; (See 2 C.F.R. § 200 Subpart F);
- (g) 13 CFR Section 307;
- (h) Registration with SAM;
- (i) All other applicable Federal, state and local laws, regulations, and policies, governing the funds provided under this Sub-agreement.

12.2 Insurance and Bonding. Evidence of Fidelity bond coverage for persons authorized to handle funds under the Sub-agreement in an amount sufficient to protect the interests of the Federal Government and the COUNTY's Revolving Loan Fund shall be provided to the COUNTY on an annual basis. At a minimum, the amount of coverage shall be the greater of the maximum loan amount allowed by the Sub-agreement or 25% of the SUBRECIPIENT portfolio capital base. Such insurance coverage must exist always during the duration of the Sub-agreement.

12.3 USEDA Supplemental RLF Award. SUBRECIPIENT is hereby provided with relevant information pertaining to COUNTY's Supplemental RLF award from USEDA:

Funding Agency Name	U.S. Department of Commerce – Economic Development Administration (EDA)
Grant # (“Prime Award”)	07-79-07580
Federal Award Issue Date	FY 2015
Total Federal Award Amount	\$858,000.00
Federal Award Grant Rate	100%
CFDA #	11.307
CFDA Title	Economic Adjustment Assistance Program
Award Type	Revolving Loan Fund (RLF) (a Non-Research and Development Award)
Federal Agency Contact	EDA Seattle Regional Office- RLF administrator
Sub-recipient DUNS #	960029028
Project (“Project”)	Revolving Loan Fund

13. Administrative Requirements

13.1 Accounting Standards. SUBRECIPIENT agrees to comply with the Standard Terms and Conditions of the USEDA RLF award, attached hereto as Exhibit C, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. Amendments to the USEDA Standard Terms and Conditions for RLF Awards may occur from time to time during this award.

13.2 Cost Principles. SUBRECIPIENT will administer its program in conformance with OMB Circular A-122, “Cost Principles for Non-Profit Organizations,” or 2 CFR part 200, as applicable.

13.3 Access to Records and Retention. SUBRECIPIENT shall make available, upon written request by any duly authorized Federal, State, or COUNTY agency, a copy of this Sub-agreement and such books, documents and records as are necessary to certify the nature and extent of the SUBRECIPIENT's costs related to this Sub-agreement. All such books, documents, and records pertinent to work undertaken under this Sub-agreement shall be retained by the SUBRECIPIENT for at least six (6) years following termination of this Sub-agreement and or after final audit of the COUNTY's RLF, whichever is later, unless a longer period is

required to resolve audit findings or litigation. In such cases, the COUNTY will request a longer period of record retention. SUBRECIPIENT shall provide to the COUNTY reports and information related to this Sub-agreement as requested by COUNTY.

13.4 Audits and Inspections. All SUBRECIPIENT records with respect to any matters covered by this Sub-agreement will be made available to the COUNTY and duly authorized officials of the state and federal government, at any time during normal business hours, as often as deemed necessary, to audit, examine, and make excerpts or transcripts of all relevant data. SUBRECIPIENT hereby agrees:

- (a) Any deficiencies noted in audit reports must be fully cleared by the SUBRECIPIENT within thirty (30) days after receipt by the SUBRECIPIENT. Failure of the SUBRECIPIENT to comply with the above audit requirements will constitute a violation of this Sub-agreement and may result in suspension or termination; and
- (b) To have an annual audit conducted in accordance with current COUNTY's policy concerning SUBRECIPIENT audits and OMB Circular A-133 or 2 CFR part 200, as applicable.

13.5 Use and Reversion of Assets. SUBRECIPIENT will transfer to the COUNTY any USED A funds, net of the SUBRECIPIENT share of match, on hand and any accounts receivable attributable to the use of funds under this Sub-agreement at the time of cancellation, or termination.

13.6 Conduct. No party has the authority to bind any other party in contract or to incur any debts or obligations on behalf of any other party, and no party (including any employee or other representative of a party with responsibility for program matters) shall take any action that attempts or purports to bind any other party in contract or to incur any debts or obligations on behalf of any other party, without the affected party's prior written approval.

13.7 Conflict of Interest. SUBRECIPIENT hereby agrees:

- (a) That no member of the SUBRECIPIENT's governing body who exercises any functions or responsibilities in connection with the planning or carrying out of the RLF, will have any personal financial interest, direct or indirect, in this agreement; and the SUBRECIPIENT will take appropriate steps to assure compliance; and
- (b) To maintain a written code or standards of conduct that will govern the performance of its officers, employees or agents engaged in the activities funded by this award.

14. Use By Other Political Entities

The SUBRECIPIENT agrees to extend the same pricing, terms, and conditions as stated in this Sub-agreement to each and every political entity, special district, and related non-profit. It is understood that other entities shall make purchases in their own name, make direct payment, and be liable directly to the SUBRECIPIENT; and COUNTY shall in no way be responsible to SUBRECIPIENT for other entities' purchases.

15. Non-Discrimination

SUBRECIPIENT shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Sub-agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Gov. Code 12900 et. seq), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.) and all other applicable laws or regulations.

16. Confidentiality

16.1 The SUBRECIPIENT shall not use for personal gain or make other improper use of privileged or confidential information which is acquired in connection with this Sub-agreement. The term "privileged or confidential information" includes but is not limited to: unpublished or sensitive technological or scientific information; medical, personnel, or security records; anticipated material requirements or pricing/purchasing actions; COUNTY information or data which is not subject to public disclosure; COUNTY operational procedures; and knowledge of selection of SUBRECIPIENTs, subcontractors or suppliers in advance of official announcement.

16.2 The SUBRECIPIENT shall protect from unauthorized disclosure names and other identifying information concerning persons receiving services pursuant to this Sub-agreement, except for general statistical information not identifying any person. The SUBRECIPIENT shall not use such information for any purpose other than carrying out the SUBRECIPIENT's obligations under this Sub-agreement. The SUBRECIPIENT shall promptly transmit to the COUNTY all third party requests for disclosure of such information. The SUBRECIPIENT shall not disclose, except as otherwise specifically permitted by this Sub-agreement or authorized in advance in writing by the COUNTY, any such information to anyone other than the COUNTY. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph.

17. Administration/Liaison

17.1 The Board of Supervisors or the Director of Economic Development, or their designee(s), are the only authorized COUNTY representatives who may at any time, by written order, alter this Sub-agreement. The Director of Economic Development, or designee, shall administer this Sub-agreement on behalf of the COUNTY.

17.2 Both parties shall identify an individual to serve as the liaison with the other party in connection with this Sub-agreement.

18. Notices

All correspondence and notices required or contemplated by this Sub-agreement shall be delivered to the respective parties at the addresses set forth below and are deemed submitted two days after their deposit in the United States mail, postage prepaid:

COUNTY OF RIVERSIDE

ECONOMIC DEVELOPMENT

3403 10th Street, 4th floor

Riverside, CA 92501

Attn: Robert Moran, Deputy Director

SUBRECIPIENT

AMPAC TRI-STATE CDC, INC.

22365 Barton Road, Suite 304

Grand Terrace, CA 92313

Attn: Hilda Kennedy, Founder/President

19. Force Majeure

If either party is unable to comply with any provision of this Sub-agreement due to causes beyond its reasonable control, and which could not have been reasonably anticipated, such as acts of God, acts of war, civil disorders, or other similar acts, such party shall not be held liable for such failure to comply.

20. EDD Reporting Requirements

In order to comply with child support enforcement requirements of the State of California, the COUNTY may be required to submit a Report of Independent SUBRECIPIENT(s) form **DE 542** to the Employment Development Department. The SUBRECIPIENT agrees to furnish the required data and certifications to the COUNTY within 10 days of notification of award of Sub-agreement when required by the EDD. This data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders. Failure of the SUBRECIPIENT to timely submit the data and/or certificates required may result in the contract being awarded to another SUBRECIPIENT. In the event a contract has been issued, failure of the SUBRECIPIENT to comply with all federal and state reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignments Orders and Notices of Assignment shall constitute a material breach of Sub-agreement. If

SUBRECIPIENT has any questions concerning this reporting requirement, please call (916) 657-0529. SUBRECIPIENT should also contact its local Employment Tax Customer Service Office listed in the telephone directory in the State Government section under “Employment Development Department” or access their Internet site at www.edd.ca.gov.

21. Hold Harmless/Indemnification

21.1 SUBRECIPIENT shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (individually and collectively hereinafter referred to as Indemnitees) from any liability, action, claim or damage whatsoever, based or asserted upon any services of SUBRECIPIENT, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Sub-agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature. SUBRECIPIENT shall defend the Indemnitees at its sole expense including all costs and fees (including, but not limited, to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such acts, omissions or services.

21.2 With respect to any action or claim subject to indemnification herein by SUBRECIPIENT, SUBRECIPIENT shall, at their sole cost, have the right to use counsel of their own choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of COUNTY; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes SUBRECIPIENT indemnification to Indemnitees as set forth herein.

21.3 SUBRECIPIENT’S obligation hereunder shall be satisfied when SUBRECIPIENT has provided to COUNTY the appropriate form of dismissal relieving COUNTY from any liability for the action or claim involved.

21.4 The specified insurance limits required in this Sub-agreement shall in no way limit or circumscribe SUBRECIPIENT’S obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

22. Insurance

22.1 Without limiting or diminishing the SUBRECIPIENT'S obligation to indemnify or hold the COUNTY harmless, SUBRECIPIENT shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage’s during the term of this Sub-agreement. As respects to the insurance section only, the COUNTY herein refers to the County of Riverside, its Agencies, Districts, Special

Districts, and Departments, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents, or representatives as Additional Insureds.

22.2 Workers' Compensation:

If the SUBRECIPIENT has employees as defined by the State of California, the SUBRECIPIENT shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than \$1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of The County of Riverside.

22.3 Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, unmodified contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of SUBRECIPIENT'S performance of its obligations hereunder. Policy shall name the COUNTY as Additional Insured. Policy's limit of liability shall not be less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Sub-agreement or be no less than two (2) times the occurrence limit.

22.4 Vehicle Liability:

If vehicles or mobile equipment is used in the performance of the obligations under this Sub-agreement, then SUBRECIPIENT shall maintain liability insurance for all owned, non-owned, or hired vehicles so used in an amount not less than \$1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this Sub-agreement or be no less than two (2) times the occurrence limit. Policy shall name the COUNTY as Additional Insureds.

22.5 Professional Liability:

SUBRECIPIENT shall maintain Professional Liability Insurance providing coverage for the SUBRECIPIENT's performance of work included within this Sub-agreement, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 annual aggregate. If SUBRECIPIENT's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Sub-agreement and SUBRECIPIENT shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Sub-agreement; or 3) demonstrate through Certificates of Insurance that SUBRECIPIENT has Maintained continuous

coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

22.6 General Insurance Provisions - All lines:

a) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

b) The SUBRECIPIENT must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceeds \$500,000 per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Sub-agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, SUBRECIPIENT'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Sub-agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

c) SUBRECIPIENT shall cause SUBRECIPIENT'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Sub-agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. SUBRECIPIENT shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier shall sign the original endorsements for each policy and the Certificate of Insurance.

d) It is understood and agreed to by the parties hereto that the SUBRECIPIENT'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

e) If, during the term of this Sub-agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of work; or, the term of this Sub-agreement, including any extensions thereof, exceeds five (5) years; the COUNTY reserves the right to adjust the types of insurance and the monetary limits of liability required under this Sub-agreement, if in the County Risk Manager's reasonable judgment, the amount or type of insurance carried by the SUBRECIPIENT has become inadequate.

f) SUBRECIPIENT shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Sub-agreement.

g) The insurance requirements contained in this Sub-agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

h) SUBRECIPIENT agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Sub-agreement.

23. General

23.1 SUBRECIPIENT shall not delegate or assign any interest in this Sub-agreement, whether by operation of law or otherwise, without the prior written consent of COUNTY. Any attempt to delegate or assign any interest herein shall be deemed void and of no force or effect.

23.2 Any waiver by COUNTY of any breach of any one or more of the terms of this Sub-agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other term of this Sub-agreement. Failure on the part of COUNTY to require exact, full, and complete compliance with any terms of this Sub-agreement shall not be construed as in any manner changing the terms or preventing COUNTY from enforcement of the terms of this Sub-agreement.

23.3 In the event the SUBRECIPIENT receives payment under this Sub-agreement, which is later disallowed by COUNTY for nonconformance with the terms of the Sub-agreement, the SUBRECIPIENT shall promptly refund the disallowed amount to the COUNTY on request; or at its option the COUNTY may offset the amount disallowed from any payment due to the SUBRECIPIENT.

23.4 SUBRECIPIENT shall not provide partial delivery of services unless specifically stated in the Sub-agreement.

23.5 SUBRECIPIENT shall not provide any services or products subject to any chattel mortgage or under a conditional sales contract or other Sub-agreement by which an interest is retained by a third party. The SUBRECIPIENT warrants that it has good title to all materials or products used by SUBRECIPIENT or provided to COUNTY pursuant to this Sub-agreement, free from all liens, claims, or encumbrances.

23.6 Nothing in this Sub-agreement shall prohibit the COUNTY from acquiring the same type or equivalent equipment, products, materials or services from other sources, when deemed by the COUNTY to be in its best interest. The COUNTY reserves the right to purchase more or less than the quantities specified in this Sub-agreement.

23.7 The COUNTY agrees to cooperate with the SUBRECIPIENT in the SUBRECIPIENT's performance under this Sub-agreement, including, if stated in the Sub-agreement, providing the SUBRECIPIENT with reasonable facilities and timely access to COUNTY data, information, and personnel.

23.8 SUBRECIPIENT shall comply with all applicable Federal, State and local laws and regulations. SUBRECIPIENT will comply with all applicable COUNTY policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, the SUBRECIPIENT shall comply with the more restrictive law or regulation.

23.9 SUBRECIPIENT shall comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9 of Division 3 of the Business and Professions Code. All licensing requirements shall be met at the time proposals are submitted to the COUNTY. SUBRECIPIENT warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Sub-agreement as required by the laws and regulations of the United States, the State of California, the County of Riverside and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Sub-agreement.

23.10 SUBRECIPIENT shall comply with all air pollution control, water pollution, safety and health ordinances, statutes, or regulations, which apply to performance under this Sub-agreement.

23.11 SUBRECIPIENT shall comply with all requirements of the Occupational Safety and Health Administration (OSHA) standards and codes as set forth by the U.S. Department of Labor and the State of California (Cal/OSHA).

23.12 This Sub-agreement shall be governed by the laws of the State of California. Any legal action related to the performance or interpretation of this Sub-agreement shall be filed only in the Superior Court of the State of California located in Riverside, California, and the parties waive any provision of law providing for a change of venue to another location. In the event any provision in this Sub-agreement is held by a court

of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

23.13 The parties acknowledge and agree that SUBRECIPIENT is a private business providing emergency services at the request of the State of California and/or COUNTY under the California Emergency Services Act (California Government Code §§ 8550 *et seq.*) to address the COVID-19 pandemic emergency situation, and that the parties are subject to certain immunities with respect thereto. COUNTY shall not be liable for any claim based upon the exercise or performance of, or the failure or exercise to perform, a discretionary function or duty on the part of the COUNTY or any employee of the COUNTY in carrying out its provisions.

23.14 This Sub-agreement, including any attachments or exhibits, constitutes the entire agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Sub-agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.


[Remainder of Page Intentionally Blank]

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized representatives to execute this Sub-agreement as of the date and year last written below.

COUNTY

COUNTY OF RIVERSIDE, a political subdivision of the State of California

By: 
Manuel V. Perez, Chairman
Board of Supervisors

Dated: 12/15/2020

ATTEST:
Kecia Harper-Ihem
Clerk of the Board

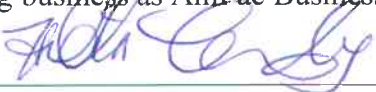
By: 
Deputy

APPROVED AS TO FORM:
Gregory P. Priamos
County Counsel

By: 
Lisa Sanchez
Deputy County Counsel

SUBRECIPIENT

AMPAC TRI-STATE CDC, INC., a California nonprofit public benefit corporation doing business as AmPac Business Capital

By: 
Name: Hilda Kennedy
Title: Founder/President

Dated: 11/19/2020

GRANT COOPERATIVE AGREEMENT

FINANCIAL ASSISTANCE AWARD

FEDERAL AWARD ID NUMBER
07-79-07580
URI: 115061

RECIPIENT NAME
County of Riverside Business and Community Services

PERIOD OF PERFORMANCE
Date of Grant Officer Signature to 7/30/2022

STREET ADDRESS
1325 Spruce Street, Suite 110

FEDERAL SHARE OF COST
\$858,000

CITY, STATE, ZIP CODE
Riverside, CA, 92507

RECIPIENT SHARE OF COST
\$ 0

AUTHORITY
Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3149)

TOTAL ESTIMATED COST
\$858,000

CFDA NO. AND NAME
11.307 Economic Adjustment Assistance

PROJECT TITLE
Coronavirus Aid, Relief, and Economic Security (CARES) Act Revolving Loan Fund Supplemental Disaster Recovery and Resiliency Award

This Award Document (Form CD-450) signed by the Grants Officer constitutes an obligation of Federal funding. By signing this Form CD-450, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, the Form CD-450 must be signed by an authorized representative of the Recipient and returned to the Grants Officer. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally withdraw this Award offer and de-obligate the funds.

- DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS
- R & D AWARD
- FEDERAL-WIDE RESEARCH TERMS AND CONDITIONS, AS ADOPTED BY THE DEPT. OF COMMERCE
- SPECIFIC AWARD CONDITIONS
- LINE ITEM BUDGET
- 2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101
- 48 CFR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES
- MULTI-YEAR AWARD. PLEASE SEE THE MULTI-YEAR SPECIFIC AWARD CONDITION.
- OTHER(S): 13 CFR Chapter III;

2019.4.30 EDA RLF Standard Terms & Conditions

SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER

A. Leonard Smith, Regional Director



Digitally signed by A SMITH
DN: cn=US, ou=U.S. Government, ou=Department of Commerce, ou=Economic
Development Administration, cn=A SMITH,
0.9.2342.19200300.100.1.1=200100086842
Date: 2020.07.23 08:17:23 -0700
Adobe Acrobat version: 2011.011.30171

DATE

PRINTED NAME, PRINTED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL

Joaquin Tijerina, Economic Development Regional Manager



DATE

8.4.2020



**RIVERSIDE
C O U N T Y**

RIVERSIDE COUNTY
BUSINESS AND COMMUNITY SERVICES
REVOLVING LOAN FUND PROGRAM

SMALL BUSINESS FINANCIAL ASSISTANCE PROGRAM

POLICIES AND PROCEDURES

December 15, 2020



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INTRODUCTION.....

The County of Riverside (County) is committed to strengthening its local economy with a focus on providing assistance to small business owners who were particularly impacted by the Great Recession. Scarce access to capital continues to be one of the biggest challenges faced by small businesses in the county.

One of the County's main economic initiatives is focused on accelerating and growing small businesses by creating access to new sources of capital for businesses owners that are experiencing difficulty securing conventional business loans. To that end, the Revolving Loan Fund (RLF) Program is being established to provide businesses access to affordable capital for real property acquisition, building improvements and renovations, equipment purchases, short-term working capital, and other eligible activities.

The County has allocated \$305,721 towards establishing a revolving loan fund for a small business loan program. These funds will provide the required match for the U.S. Department of Commerce, Economic Development Administration (USEDA) Grant award of \$1,222,906. The USED A Grant and the County Match will be used to capitalize the RLF. The USED A Grant and County Match will provide a total project budget of \$1,528,633 to provide loans to local small businesses.

PART I. REVOLVING LOAN FUND STRATEGY

A. ECONOMIC ADJUSTMENT PROGRAM OVERVIEW

The County proposes to create a RLF as a general lending program that will assist small businesses in obtaining access to capital enabling them to fund expansion plans.

1. Economic Adjustment Dislocation

Riverside County has lagged behind other coastal counties in recovery from the last recession. A major barrier to small business expansion was the inability of businesses to access capital. Riverside County is the fourth largest county in California in of population. Riverside County, along with San Bernardino County, comprises the Inland Empire, one of the fastest growing metropolitan areas in the nation from 2012 to 2019. The recession had an outsized impact on the region, but general economic improvements have been observed over the last three years. Riverside County has a population of 2.3 million people and a total of 640,447 wage and salary jobs. The income per capita is \$30,383, and the average salary per worker is \$61,623. In 2019, total employment increased by 1% percent

across Southern California. Riverside County added a total of 15,200 jobs, representing a growth rate of 1.5 percent. The unemployment rate also improved, falling from 4.5 percent in 2018 to 4.2 percent in 2019. In 2019, job growth was strongest in education and healthcare (+5,800 jobs), leisure and hospitality (+3,700 jobs), Administrative and Support and Waste Service (+1,500 jobs), and professional and business services (+2,500 jobs).

No Sectors showed negative growth. In 2019, the Riverside County population increased by 0.8 percent – the smallest increase on record. Population growth will accelerate over the next five years but will remain well below the levels observed in the mid-2000s.

The Riverside County economy will continue to expand in 2021. Over the longer-term forecast, the Inland Empire will experience greater growth than the coastal counties, due largely to the availability of land at lower costs.

Forecast Highlights

- The labor market strengthened in 2019 as employment increased by approximately 1.5 percent. From 2016 to 2026, total employment is projected to grow at an annual average rate of 2 percent.
- Average salaries are currently below the California state average and will remain so over the foreseeable future. In Riverside County, inflation-adjusted salaries are forecasted to rise by an average of 1.3 percent per year between 2014 and 2019.
- From 2016 to 2026, employment growth is projected to be broad-based. Almost every sector will increase by at least 2 percent, with the only exceptions being mining and logging, agriculture and information.
- The largest employment increases over the 2016-2026 period will be observed in Transportation and Warehousing (+44,200 jobs), Health and Social Assistance (+47,200 jobs), Construction (+27,600 jobs), and Leisure and Hospitality (+29,100 jobs).
- The population is expected to increase by 1.0 percent in 2021. Annual growth in the 2019-2024 period is expected to average 1 percent.
- Net migration will gradually increase. An average of 14,325 net migrants are expected to enter the county each year between 2019 and 2024.
- Real per capita income is expected to rise by 3.5 percent in 2014 and increase by an average of 1.7 percent per year between 2014 and 2019.
- Total taxable sales are expected to increase by an average of 3.4 percent per year over the next five years.
- Industrial production is expected to rise by 4.4 percent in 2014. From 2014 to 2019, the growth rate of industrial production is expected to average 3.6 percent per year.

2. Economic Adjustment Strategy

The objectives of the Riverside County Revolving Loan Fund Program are to assist eligible businesses create and retain employment opportunities and increase capital investment by:

- Providing financial assistance to targeted businesses who are facing challenges in securing capital.
- Leveraging private sector funding to increase financing for business creation, expansion and retention.
- Provide financing in areas where high unemployment and poverty are more prevalent than other parts of the county.
- Support self-employment and entrepreneurship.

3. Area Resources

Riverside County shares borders with Los Angeles, Imperial, Orange, San Diego, and San Bernardino counties and spreads from within 14 miles of the Pacific Ocean to the Colorado River. Because of its strategic location, the county offers superior transportation and logistical advantages by providing timely access to domestic and global markets. The county is within a 60 mile radius of world-class air, land, rail and sea facilities for commercial shipping and cargo. The county also has an expanding transportation network. Through 2016, Riverside County will invest almost \$2 billion in transportation investments.

A key component of this county's and region's success lies in the education system from its K-12 system through its many community colleges and universities. This system produces a network of highly skilled graduates specializing in entrepreneurship, engineering, and healthcare. In August 2013, the University of California, Riverside welcomed its inaugural class of students to the first new University of California medical school in over 40 years.

Riverside County offers businesses the unique combination of location within a marketplace of 22 million Southern California customers, easy access to main east/west and north/south transportation routes, an available trained workforce, a reasonable cost of living and business-friendly environment, a global perspective and the lowest net cost of doing business in Southern California.

4. Implementation Programs and Activities

County will be responsible for the implementation of the following:

- a) Marketing: Staff will initiate contact with stakeholders in the county to provide RLF



- b) Program information and requirements.
- c) Evaluation/Screening: Staff will work to evaluate, screen and package prospective loan applicants.
- d) Processing: Staff will process individual loans, including filling out all the necessary forms, preparing lender packages, working with prospective borrowers and private lenders.
- e) Closings: Staff performs final review, orders UCC searches and files UCCs and Deeds of Trust, if applicable, and works with specific loan packages.
- f) Disbursing and Servicing: Staff will be directly responsible for disbursing and servicing of all loans. Required documentation for disbursements includes completed loan documents and recorded UCC files and Deeds of Trust, if applicable.
- g) Accounting: Business and Community Services Fiscal Department will be responsible for accounting.

5. Organizational Structure

The County will be the responsible entity for the RLF. The Riverside County Business and Community Services Department (BCS) will take lead for County in administering RLF. Under BCS there are divisions including those responsible for the economic and community development programs of the County.

BCS works to promote community revitalization attract new businesses; encourage job creation and retention and capital investment in the County.

The RLF capitalization of USEDA grant funds, County match, and re-invested program income will be used to increase access to capital for businesses located in County.

The RLF will complement other County programs designed to create or retain private sector jobs by stimulating private sector investment and leveraging RLF funds.

B. Business Development Strategy

1. Overview and Objectives

The County's USEDA Comprehensive Economic Development Strategy (CEDS) was prepared and adopted by the County in 2019 as a part of its regular planning cycle

process. The 5-year CEDS covers active period from 2019-2024. Annual updates are completed and submitted to USEDA to reflect current conditions.

The strategy has built substantial economic development program capability involving public/private partnerships, active redevelopment efforts, and collaboration amongst partners.

Economic development activities funded through the RLF program are intended to meet the following objectives:

- To encourage the creation and retention of permanent jobs which provide a wage appropriate to the skills and experience of the local labor force.
- To encourage the leveraging of new private investment in the County in the form of fixed asset and working capital investments.
- To perpetuate a positive and proactive business climate that encourages the retention and expansion of existing businesses and helps to attract desirable new businesses.
- To lend monies at interest rates and loan maturities that encourages business development and facilitates reinvestment in the County, while providing for the recapitalization and growth of the RLF.

It is anticipated that continuing the program will stimulate an increase in small businesses acquiring much needed capital for diverse business activities which will result in the creation and retention of higher-paying jobs and increased capital investment. Additional goals include:

- Increasing the RLF fund by partnering with private sector lending institutions to leverage available financing for business creation and retention
- Provide financing in areas where high unemployment and poverty are more prevalent than other parts of the county
- Support self-employment and entrepreneurship

2. Target Business Characteristics

Financial assistance will be directed to provide an infusion of new capital for businesses having difficulty accessing commercial loans for eligible activities. Businesses eligible for consideration of financing will be commercial and industrial businesses, technology and manufacturing companies.



Examples Include:

- Firms with cash flow problems
- Firms considered too large for SBA regulations
- Firms ineligible for conventional financing
- RLF participation enables SBA participation

3. Types of Assistance

BCS staff shall be responsible for the day-to-day administration of the RLF program, including assisting applicants in completing applications, processing requests for financing, and, where necessary and appropriate, counseling and guiding loan applicants to other more appropriate technical and financial resources when the loan applicant has needs that cannot be met through the RLF program. Technical assistance will be provided in navigating County's entitlement and business license processes along with referrals to service providers to assist applicants in completing needed documentation for RLF Program.

4. Other Programs and Activities

Technical and Management Assistance: A close relationship will be maintained with borrowers during the post-loan phase. Besides requiring semi-annual employment reports to verify the job assurances given during the pre-loan phase, the RLF will require financial statements annually from borrowers. In addition, the County will maintain relationships as appropriate with private lending institutions; community based economic development corporations, and other agencies providing financial and/or technical assistance to small businesses. Contacts and referrals will be made to these groups as appropriate.

Loan Packaging and Referral Services: Loan packaging services will not usually be provided unless a RLF loan is involved. Referrals will generally be made to other financial institutions and providers of assistance to businesses, as appropriate, when firms applying for assistance are not eligible or turned down.

Linking Jobs to Long Term Unemployed: Close contact will be maintained with Riverside County's Workforce Development Centers, a division under the county's organization. Where funded firms or organizations need job training assistance or where there will be significant new hires, firms will be encouraged to contact the Workforce Development Center nearest their location.

BCS staff shall be responsible for marketing the RLF program to local businesses, explaining the RLF program and providing written information to prospective applicants. BCS has established links to other alternative, nontraditional microenterprise lenders to cross promote programs for the benefit of RLF applicants. In addition, close collaboration

with Workforce Development Center will ensure all applicants receive additional assistance for their day-to-day business activities.

The RLF will be part of the County's overall economic development program and will be identified as a financing program in conjunction with other existing loan programs. All of these programs support job creation and increased capital investment. The RLF is not subordinate to or a part of these other programs. Businesses seeking financing will be directed to the appropriate program based on a project needs assessment by staff.

C. Financing Strategy

1. Financing Needs and Opportunities

A successful technique for persuading companies to remain in a region and to expand their employment levels is to increase the availability of debt financing and working capital. Traditionally, the kind of long-term debt financing, especially working capital, required for the expansion of businesses has not been readily available. Most local lending institutions have been hesitant to carry business loans for periods longer than 3 years. Lending institutions have been willing to offer only short-term financing. However, in building a new facility or renovating an old one, or obtaining working capital, businesses find short term financing prohibitively expensive in terms of its impact on company cash flow.

An additional source of financing for small and medium sized businesses is Small Business Administration (SBA) loans. Challenges arise, however, because lending criteria are stringent and hard asset collateralization is generally required by participating commercial banks and the SBA. Typically, real estate with adequate amounts of equity is required.

To supplement the demand for accessible capital, it has become necessary to develop public sector lending programs to complement and encourage private sector financing. For example, public sector lending programs can be used for those borrowers who are employing low-and moderate-income employees or who are building in CDBG areas.

Often banks will participate when a public lender or intermediary is involved that mitigates and dilutes risk.

2. Local Capital Market

Although the local area's traditional lending institutions have loosened somewhat and are reaching out to small businesses, their lending criteria has not changed. The current lending situation continues to provide hurdles for small businesses that do not meet stringent lending requirements of most banks.

3. RLF Financing Niche



To be eligible for assistance from the RLF a business must be located in Riverside County. The RLF will provide an immediate, flexible and accessible source of funding to be made available in conjunction with private lenders for existing firms that require loans for the acquisition, construction or renovation of real estate, inventory, working capital, machinery and equipment, and leasehold improvements. Consistent with the current USED A Administrative Manual, business buy-outs, and acquisition, construction or renovation of developer and investor real estate will be either restricted or not allowed.

The RLF will be open to general lending. It is expected that loans will be made in the range from \$15,000 to a maximum of 25 percent of the loan capital base or approximately \$382,000, with most loans falling in the range from \$150,000 to \$350,000.

D. Financing Policy

1. Loan Related Fee

Loan fees will be assessed to all loan recipients. The BCS shall require a loan application fee of 1% percent of the RLF loan amount, with a \$500 minimum and a 1% maximum.

In addition, the BCS shall require the applicant to pay all of the costs incurred by the BCS for the RLF loan closing, including but not limited to appraisal, legal, environmental, title insurance, recording costs and filing fees. The fees may be included in the loan application as an eligible use of RLF loan proceeds. The maximum total fee will be two (2) points.

2. Interest Rates Policy

Interest rates will be based on the prime rate plus two percentage points for all borrowers. In no event will 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, or the maximum interest rate allowed under California State law.

However, should the prime interest rate listed in the Wall Street Journal exceed (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the County to implement its financing strategy. The RLF will operate with fixed interest rate schedules. Interest rates will generally be below local financial institutions short-term rates.

3. Collateral & Equity

Full collateral is not a requirement for financial assistance. However, some collateral must be available to secure each loan. Collateral requirements shall be determined on an individual basis by BCS and may include: deeds of trust on land and buildings; liens on fixed and major movable equipment; liens on accounts receivable and inventory; liens on the corporate assets of affiliated businesses, when appropriate; corporate guarantee(s), as applicable; and assignments of leases, patents, and insurance, as deemed appropriate.

Such liens and other security may be subordinate to existing liens of record and/or liens securing other loans involved in the project. The RLF will generally secure each loan to the maximum extent possible. Personal guarantees may be collateralized with the assets of the guarantor.

Unlimited personal guarantees from the principals of the business who have 20 percent ownership or more shall be required. Limited personal guarantees for the owners of the business who have less than 20 percent ownership may be required, where appropriate. In addition, junior deeds of trust on personal property may be required on projects with limited collateral.

The RLF program will require a cash equity injection of 10% of total project costs for each RLF loan. Consideration will be given for individuals that have made substantial equity commitments to the applicant business, as well as to individuals who do not have sufficient financial resources to contribute to the RLF project.

The RLF will maintain a minimum ratio of \$2 in private financing for every \$1 in RLF financing for its overall portfolio. The minimum ration will apply to individual borrowers unless a valid rationale is demonstrated.

4. Standard Repayment Terms

The term for repayment will be generally based on the useful life of the assets being financed or the borrower's ability to repay. The useful lives are 3 to 5 years for working capital, 7 years for equipment and up to 10 years for real estate. If appropriate, shorter terms will be negotiated in order to increase the velocity of funds for recycling to other businesses.

A "Loan Exit Fee" of \$250.00 will be charged for loans that are retired earlier than their stated maturity. This charge will be used to defray the additional time and expense incurred by staff and by the County.

From time to time the County is asked to subordinate the priority of its UCC filing/collateral, note and/or loan payments to other lenders. In general, it is the position of the County not to subordinate. However, the County does recognize that under certain limited situations subordination to another lender may be to the benefit of all parties. Restructuring of a RLF loan will be considered only to improve the repayment prospects of the borrower or to protect the interests of the RLF.

Prior approval from USEDA is required in order to subordinate a loan to a third party. Once approval from USEDA has been granted, the Loan Committee must review and approve all subordination of the County's UCC filings/collateral, note(s) and/or loan payments to other lenders.

Subordination by the County is viewed as an extension of credit. As an extension of credit, a fee of a maximum 1 percent on the current outstanding loan balance will be charged.



Subordinate liens positions will be considered to facilitate new capital injection. The RLF will take first position for any asset financed by the RLF.

5. Loan Size

The amount of funds available for any single business enterprise may range from minimum of \$15,000 to a maximum of \$380,000 or 40% of the total project cost, whichever is less. Loan size will take into consideration participation of other public and private funding in order to determine loan size for each business.

E. Portfolio Standards and Targets Policy

1. Business Types

The RLF will target all new and existing business types in the county; sole proprietorships, limited liability companies, joint ventures and corporations. New companies include those businesses that have been in the start-up phases of operation for less than one year. Existing businesses are those companies that have been in operation for two or more years and have a track record of sales and positive earnings.

Financing of a start-up or a business acquisition will normally require a minimum equity investment (injection) of up to 20 percent.

2. Loan Purpose

Business loans may be used for start-ups or second stage companies for expansion including equipment, inventory, real estate, working capital, business purchase, and construction. The RLF, except as noted herein, will follow standard USEDA requirements for revolving loan fund programs, including reporting requirements and compliance with applicable Federal laws and regulations, Executive Orders and Office of Management and Budget Circulars, as amended.

3. Leveraging

The portfolio will be leveraged by public and private investment by SBA, banks, insurance or investment companies and/or by equity injection by participating or parent companies. Private loans or equity injection will be monitored at the time of loan funding, with a minimum of 2:1 ratio requirement imposed upon the 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, private investment must be made within 12 months prior to or after approval of an RLF closing, as part of the same business development project and may include:

- Capital invested by the borrower or others



- Financing from private entities; or
- The non-guaranteed portion and ninety (90) percent of the guaranteed portions of U.S. Small Business Administration's 7 (A) loans and 504 debenture loans.
- Private investments shall not include accrued equity in a borrower's assets. In order to ensure that loan funds do not substitute for private funds, each loan applicant must demonstrate that sufficient funds are not available from private funding sources to fund the project or that the project is not financially feasible without subsidized financing.

4. Cost per Job

Borrowers should not be so strong as to be able to obtain full financing from commercial and conventional lending institutions. The borrowing individual or entity also must demonstrate loan repayment ability. As a general rule, the program will be looking for one job created for each \$50,000 loaned from the RLF.

F. Loan Selection Policy

1. Eligible Applicants

RLF financing will be available to support the start-up and expansion of businesses that will help diversify the economy and that will create significant long-term permanent employment within the County of Riverside. Borrowers shall be approved based upon a reasonable assurance and determination of repayment ability and potential economic benefits to the community.

Applications may be submitted by the authorized representatives of any eligible business wishing to establish a new operation or expand an existing operation in the County. Eligible businesses are defined to include commercial and industrial businesses, advanced technology companies, and manufacturing firms.

No member of the Board of Supervisor's; BCS; or any other official, employee, or agent of the County who exercises decision-making functions or responsibilities in connection with the implementation of the RLF program is eligible for financial assistance under this program.

Applicants shall not be disqualified based on age, race, religion, color, handicap, sex, physical condition, development disability, sexual orientation or national origin.

The applicant must not be delinquent or in default on federal, state or local taxes or any existing private or publicly financed loan and will be required to sign an affidavit to that effect.

2. Eligible Projects

Potential loan projects shall meet the general intent and purpose of the RLF. In evaluating applicants, the Loan Review Committee shall consider whether the project/loan:

- Meets the minimum leveraged ratio established for the RLF
 - Presents a reasonable assurance of repayment of the loan
 - Meets the targeting area and job creation/retention requirement
 - RLF loans may be provided to eligible applicants for the following:
 - Land costs, including engineering, legal, grading, testing, site mapping and related costs associated with acquisition and preparation of land that increases capacity;
 - Building costs, including real estate, engineering, architectural, legal and related costs associated with acquisition, construction and rehabilitation of a building;
 - Machinery and equipment costs including delivery, installation, engineering, architectural, legal, insurance and related costs associated with acquisition and installation of machinery and equipment;
 - Infrastructure costs, such as seismic retrofitting for hazard mitigation;
 - Supplementary working capital when used in conjunction with the above, which can include payment of current liabilities (creditors) as part of working capital; and
 - Other activities that the BCS may identify as appropriate for the RLF Program
- Businesses receiving loans for fixed assets shall be required to obtain property-casualty insurance for property being financed, businesses receiving construction loans shall be required to have builder's risk insurance for the amount of the debt financing attendant to the project, and businesses purchasing real estate shall be required to have title insurance for the amount of RLF real estate financing attendant to the project. Flood insurance shall also be required for RLF loans secured by real property located in a flood zone. The BCS shall be listed as an additional insured on all property-casualty, builder's risk and flood insurance policies.

Eligible working capital loans may be used for the following:

- Inventory
- Operating expenses

3. Ineligible Loan Activities

RLF loans shall not be available for the following activities:



- Loans outside the County of Riverside;
- Subsidize interest payments on any existing RLF loan;
- Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;
- Provide for borrowers 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 benefit must be clearly consistent with the strategic objectives of the RLF;
- Provide RLF loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposits, or any investments unrelated to the RLF;
- Loans that assist the relocation of jobs from or to another labor area are prohibited;
- Former Board of Supervisors, board members, county employees, committee and members of his or her Immediate Family will not receive a loan from the RLF for a period of two (2) years from the date that the board member last served on the RLF's board of directors.
- Loans inconsistent with Conflict of Interest regulations contained in the RLF Standard Terms and Conditions of the USEDA grant agreement;
- 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; and
- Other activities that BCS may identify as inappropriate for the RLF Program.

4. Application Requirements

To be eligible for funding, a proposed project shall meet the following minimum requirements;

- Compliance with all State, County and/or City zoning regulations, building codes and other applicable local and State ordinances;
- Compliance with all Federal, State and local regulations concerning historic properties and environmental matters; and
- BCS will refer loan applicants to technical assistance in such areas as business

planning, marketing, accounting, cash management, and inventory control. When determined appropriate, the BCS will contract with a third-party provider for this technical assistance.

- The applicant shall demonstrate that the proposed project is viable, and that the business has the economic ability to repay the funds.
- In order to apply for RLF assistance, a prospective borrower must submit the following materials to the Loan Officers:
 - **Basic Company Information.** Description of operations, type of business, present/future facilities, principals, business profile (history and forecasts), employment (current and/or projected).
 - **Financial Data.** Current personal financial statements of principals; the last three years' business financial statements and tax returns for established operations (not applicable for startup concerns and businesses operating for less than three years who should submit available financial information) including balance sheets, and income statement; interim business financial statements (less than 90 days old); and income and expense proforma, as required by staff.
 - **Project Data.** Amount of loan requested and description of all project costs; e.g. purchase price of land and building, cost of renovation by contractors, cost of equipment, working capital needs.

5. Loan Processing and Approval process

- **Initial Application.** The business applicant submits basic data and financial documents, including current personal and business financial statements, as available, to staff for a preliminary credit and financial analysis.
- **Review.** Staff reviews applicant's eligibility for various loan programs. If qualified, applicant's information is processed accordingly. If ineligible for the RLF and other programs, application is rejected and possibly referred to other funding sources.
- **Loan Request.** If the request meets the criteria for program participation, staff will analyze the credit and prepare a credit memorandum.
- **Approval.** Staff will present the credit memorandum to the Loan Review Committee for review. The credit memorandum will analyze the business' financial operations, ability to service debt, and provide collateral. If the Loan Review Committee approves the request, staff will, if necessary, work cooperatively with any other participating agencies or financial institutions, if appropriate.
- **Loan Closing.** Upon approval by the Loan Review Committee, staff works with the business to fund and close the loan, assuring that loan agreements, notes and other documentation are executed properly.



6. Security Release Procedures

Once a borrower has paid off RLF Loan, either at the end of term or by prepayment, the Fiscal Department will send a Memo to the Loan Officer documenting loan has been paid in full. The Loan Officer will review for deeds of trusts or UCC-1 filings to determine what releases will be required. For deeds of trusts, Loan Officer will prepare a full reconveyance of deed of trust and submit for execution to the Director. The Director's signature will be notarized, and statement provided along with full reconveyance. Once signed by Director, the reconveyance will then be delivered to County Counsel for review and signature. The Loan Officer will then submit to the County Clerk Recorder to be duly filed for record in the Official Records of the County of Riverside. Upon recordation of the full reconveyance, the Clerk Recorder will send electronic copy to Loan Officer who will then provide to borrower and upon request, deliver the original note and deed of trust to the borrower. Loan Officer will then deliver a copy to Clerk of the Board of Supervisors to file. For UCC1's that have been filed, Loan Officer will prepare release and file online.

G. Performance Assessment Policy

1. Annual Loan Portfolio Review

The County will review the performance of the RLF on a semi-annual basis and certify to USEDA, and other agencies as required that the RLF plan is consistent with the area's development strategy as defined in the CEDS and that the RLF is being operated in compliance with the policies and procedures contained in the RLF plan.

The RLF will assess performance by:

- Number of loans and amount of funds placed
- Number of performing loans (full repayment)
- Number of jobs created and/or retained
- Amount of capital investment

2. Reviewing and updating RLF Plan

The RLF Plan will be amended and updated every 5 years, as appropriate, to conform to changes in economic conditions and the Comprehensive Economic Development Strategy.

3. RLF Loan Portfolio Sales and Securitizations

With prior approval from USEDA, County may enter into a sale or a securitization of all or a portion of its RLF loan portfolio, provided County: (1) uses all the proceeds of any sale or a securitization to make additional RLF loans; and (2) requests USEDA to subordinate its interest in all or a portion of any RLF loan portfolio sold or securitized (42 USC 3149; and 13 CFR section 307.19).

A. Organizational Structure

1. Administration

The County will administer the RLF and is a fully integrated department and is responsible for economic development activities, and administering many programs and projects for the County of Riverside. County has extensive experience managing grant funding and marketing, packaging and servicing loans under Redevelopment.

The County is governed by the County Board of Supervisors. Administrative operations of the Business and Community Services Department of the County of Riverside are under the management of the Director.

County will administer the RLF on a day-to-day basis. All financial transactions, including deposit of funds, issuing of checks and collecting of program income, will be the responsibility of County. Loan Officers, Fiscal staff, and County Counsel will perform all services described in the Administrative Plan. County will be responsible for marketing, screening, processing, closings, servicing (including recovery of delinquent loans), accounting, and capital management functions as outlined in the Administrative Plan. Certain specific services, such as underwriting, may be contracted out to private partners with expertise in a given subject area for efficiency.

2. RLF Loan Review Committee

The Loan Review Committee will consist of five persons appointed by the Director. The Loan Review Committee's responsibility will be to review and recommend loan applications for approval, review and recommend policy and make recommendations concerning RLF loans. The Loan Review Committee shall consist of two members from private sector finance industry and three members shall come from local government.

Vacancies, voting, and all related organizational and operational matters, including loan decisions, are made by majority vote of the Loan Review Committee. The Loan Review Committee will address additional loan policies, including special repayment terms,



before any loans are made. A quorum for meetings of the Loan Review Committee will be three members, with one of the three in the quorum having financial or banking experience.

The Loan Review Committee is responsible for recommending approval of all loans, all major modifications or waivers and loan foreclosure actions. It is also responsible for recommending RLF loan policy, which shall be set by the Director, or his designee. No County Supervisor, officer, employee, or member of County, or Loan Review Committee, or other person related to Loan Officer or Loan Review Committee, by blood, marriage, law or business arrangement shall receive any benefits resulting from the use of loan funds, unless the Loan Officer or Loan Review Committee member, affected first discloses to the Loan Review Committee on the public record the proposed or potential benefit and receives the Loan Review Committee's written determination that the benefit involved is not as substantial as to affect the integrity of the Loan Review Committee's decision process and or the services of the Loan Officer or Loan Review Committee member. The Loan Review Committee shall be guided by the conflict of interest policies as detailed in the County RLF Standard Terms & Conditions, as amended.

The Loan Review Committee may meet as needed to accomplish work necessary for loan program. Topics of meetings will include new loan requests, loan modifications and/or review of problem loans and recommend appropriate actions. Loan Review Committee meetings may be held in person, via telephone conferencing or video conferencing. Recommendations for approval of loans, modifications of terms and other actions may be taken by the Loan Review Committee without a formal meeting if approved by a majority of Loan Review Committee members by written confirmation.

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

3. Conflict of Interest Policy

The County of Riverside is a unit of local government whose Board of Supervisors (Board), Loan Officers, and Loan Review Committee members are chosen to provide a public benefit. These persons have a duty to conduct the affairs of the County in a manner consistent with the mission of the County of Riverside and not to advance their personal interests. This conflict of interest policy is intended to permit the County, Board, Loan Officers and Loan Review Committee members 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 County ahead of their personal interests.

Covered Persons: This policy applies to all County, Board, Loan Officers and Loan Review Committee members and each Covered Person shall be required to acknowledge that they have read and are in compliance with this policy.

Covered Transactions: This policy applies to transactions between the County, Board,

Loan Officer and Loan Review Committee members and a Covered Person, or between the County, Board, Loan Officers and Loan Review Committee members 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, and grandchild. This does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person.
- b) The other party is an entity in which the Covered Person has a material financial interest; or
- c) The Covered Person is an officer, director, trustee, partner, consultant or employee of the other party.

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 County of Riverside and the RLF Program.

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 Loan Review Committee or Executive Director.
- b) Refrain from using their personal influence to encourage the Loan Review Committee to enter into the Covered Transaction; and
- c) Physically excuse themselves from any discussions regarding the Covered Transaction except to answer questions, including Loan Review Committee discussions and decisions on the subject.

Standard for Approval of Covered Transactions: The County may enter into a Covered Transaction where:

- a) Such Transaction does not constitute an act of self-dealing; and
- b) The Loan Review Committee determines, acting without the participation or influence of the Covered Person and based on comparable market data, that such transaction is fair and reasonable to County. County 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 County's legal advisor as necessary to ensure that the Transaction does not constitute an act of self-dealing.



Lending Activities: The following conflict of interest policy shall apply specifically to County's loan program: No personal or private loans may be made by the Loan Review Committee to its members, or their immediate families as provided in 13 CFR 302.3 and in ORS 65.364. No member of the Loan Review Committee or their immediate families may be an officer, director, or owner of a small business concern receiving financial assistance from the County.

In addition to above and the rules set forth in 13C.F.R.302.17(a) and (b), the Recipient must adhere to these special conflicts-of-interest rules set out in 13 C.F.R. 302.17(c):

- An Interested Party of a Recipient of an RLF Award will not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of the RLF loans.
- A Recipient will not lend RLF funds to an Interested Party.
- Former board members of a Recipient and members of his or her Immediate Family will not receive a loan from the RLF for a period of two (2) years from the date that the board member last served on the RLF's board of directors.

4. Staff Capacity

The Loan Officers will consist of economic development staff that have been selected for program due to experience and knowledge with loan processing. The staff will originate, screen, process, structure, service and monitor all loans. The staff will also act as liaison with other funding agencies for borrowers. Professional legal, lending and accounting services will be available. The primary activities of the staff regarding the RLF will be as follows:

- Work with prospective borrowers to help them prepare and complete loan requests, perform loan and credit reviews and make final recommendations to Loan Review Committee
- For approved loans, ensure proper execution of documents, compliance with all appropriate regulations, timely loan closing and implementation of projects
- Monitor ongoing operations of loan recipients
- Manage loan servicing and accounting
- Manage loan collections with attorney, including asset liquidation if any
- Provide financial reports as needed for the RLF, including individual account status

Staff will make recommendations to the Loan Review Committee for final decisions. Professional legal and accounting services are available to whatever extent required.

B. Loan Processing Procedures

1. Standard Loan Application Requirements

Upon determination by a Loan Officer that an opportunity for a financing exists, Loan Officer shall contact the potential borrower and request the following information or documentation as may be required for consideration of their loan request:

- A maximum of three years of business and personal tax returns
- A maximum of three years of business financial statements which contain balance sheets and profit and loss statements
- Personal Financial Statement dated within the most recent quarter and not more than 3 months old (SBA 413 is acceptable) from all principals with more than 20% ownership
- Business Plan with financial projections for start-up businesses
- Proof of Hazard and Liability Insurance
- Accounts Receivable and Accounts Payable aging if applicable
- Schedule of debts including current outstanding balances, repayment schedules and due dates, and schedule of collateral
- Authorization to request business or personal credit reports as required

The Loan Officer is responsible for adding to the credit file checklist the following items as may be applicable:

- Appraisal and Credit Reports
- Environmental Reviews
- Standard Collateral Requirements
- Standard Equity Requirements
- Standard Insurance Requirements
- Public Benefit Requirements and required certifications or documentation

The Loan Officer is responsible for preparing the Credit Memorandum. The standard loan documentation will include, at a minimum, the (1) loan application, (2) loan agreement,



(3) board of directors' meeting minutes approving the RLF loan, (4) promissory note, (5) security agreement(s), (6) deed of trust or mortgage (if applicable), (7) agreement of prior lien holder (if applicable), and (8) signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.

2. Credit Reports

In connection with a RLF application a credit report for each principal of the small business will be required for underwriting purposes. An Authorization for Release of Information form will need to be completed and signed by applicant(s).

3. Appraisal Reports

Appraisals may be required of real property or other fixed assets that are being used as collateral for the loan.

4. Environmental Reviews

Environmental reviews will be required if loans involve the acquisition of real property or the alteration of the physical environment as in construction. In these cases all borrowers will:

- Complete an environmental questionnaire as may be required
- Permit a site inspection of the property and an environmental audit (Phase I or Phase II) by a qualified inspector selected by County as appropriate
- Provide such documentation as may be required

Environmental reviews shall comply with the intent of the National Environmental Policy Act of 1969, as amended, as implemented in regulations and as listed in County's RLF Standard Terms and conditions. Construction loans will comply with the California Environmental Quality Act (CEQA) as amended.

5. Historic Buildings Reviews

All projects will comply through the Lender with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 470), Executive Order 11593, and the Archeological and Historical Preservation Act of 1966 (16 USC 469a-1 et seq.): (1) by consulting with the state's Historic Preservation Officer on the conduct of investigation, as necessary to identify properties listed in or eligible for inclusion in National Register of Historic Placed that are subject to adverse effects (see 36 CFR Part 800.8) by the activity, and noting the Lender of the existence of any such properties; and (2) by complying with all requirements established by the Lender to avoid or mitigate adverse effects.

6. Collateral and Equity Requirements

The RLF will obtain a perfected interest in a borrower's assets, including the outside assets of related parties as may be required. Loans may be secured with the following types of collateral: real property, machinery, equipment, inventory, accounts receivable, securities and personal guarantees, including collateralized personal guarantees.

A personal guarantee shall be obtained from all principals having a 20 percent or more ownership in the company being considered. Appropriate hazard and liability insurance shall be required, and key man life insurance shall be considered depending upon the size and nature of the transaction and the health and ages of the principals. A Lender's Loss Payable endorsement naming RLF will normally be required, as appropriate, to protect the interests of the RLF.

Trust deeds will be obtained and supported by a lot book report or lender's title policy as appropriate. Liens on personal property will be perfected by UCC-1 filings and Security Agreements where fixed assets and/or soft assets are taken as collateral.

7. Loan Write-up

The loan write-up, or Credit Memorandum, is a written summary signed by the Loan Officer member and presented to the Loan Review Committee. It fully describes the recommended loan transaction and is organized as follows:

- **Basic Information.** The date, the name of the company and the location of the business involved, including Supervisorial district.
- **Background.** The type of company, market conditions, current trends and pertinent detail about the principals and the company's products.
- **Economic Impact.** The effect of the loan and the public benefit to be expected.
- **Purpose.** What the loan will finance such as equipment purchase, working capital, and so on and the effect of that action on company operations.
- **Terms of Proposed Financing.** The amount, term, interest rate, fees, collateral, guarantees and requirements of the RLF loan and related loans.
- **Uses and Sources of Funds.** (A tabular presentation.)
- **Identification of Problems.** (Environmental, management etc.)
- **Cash Flow Repayment Analysis.** (A tabular presentation with explanations and footnotes.)
- **Estimated Annual Debt Service.** (A tabular presentation.)



- Financial Statements. An analysis of the financial statements.
- Proforma Analysis. An analysis of the business proforma.
- Balance Sheet Analysis. (A tabular presentation.)
- Discussion of Collateral. An analysis of the collateral.
- Justification. Reasons for the RLF loan (i.e., how it is not substituting for private financing) including support documents, as appropriate.
- Recommendation. The recommendation of the Loan Officer member, including contingencies.

8. Loan Approval

Recommendation for loan approval by the Loan Review Committee shall be in writing and signed by all participating Loan Review Committee members. Following Loan Review Committee recommendation for approval, loan package will be sent to Director for review. Loans in amounts of \$75,000 or less will be approved by Director. For loans in excess of \$75,000, upon approval of Director or his designee, loan documents will be submitted to Board of Supervisors for the County of Riverside for approval. Once approved a letter shall be sent to the applicant indicating approval and the terms and conditions of approved loan.

9. Appeal of Denial

If the applicant does not agree with the Loan Review Committee determination to fail to recommend the loan, the applicant has the right to appeal the decision of the Loan Review Committee to a Sub-Committee comprised of three (3) board members for the following:

1. If the person/company feels that the Loan Review Committee did not have the necessary information to make the appropriate decision. Further consideration of the credit request is subject to receipt of additional information.
2. A person/Company may file an appeal in any case, wherein the person believes that the Loan Review Committee has failed to properly consider the person's application for loan assistance.
3. Applicant must file a written appeal within 30 days from date person received notification of Loan Review Committee's determination of denial of recommendation. Time limit may be extended on case-by- case basis, for good cause as stated on item 1 above.

The Loan Review Committee Shall:

- Cause the appeal committee to conduct a prompt review of the written appeal, regardless of form by the Sub Committee.
- Have a determination issued within 6 weeks of the date of appeal and a complete package.

C. Loan Closing and Disbursement Procedures

1. General Closing Requirements

Loan Officer will perform a final loan review, including credit reports, ordering UCC searches and filing UCCs and Deeds of Trust, as applicable, and will work with a closing attorney, if necessary, to perform all necessary functions related to closing specific loan packages. County staff will review the public benefit requirements and ensure that required documentation includes required employment certification and other forms needed to fulfill the public benefit requirements of the loan.

2. Loan Disbursement

Borrower will comply with the use of funds as stated on the Loan agreement. Once the above documentation requirements are met, security interests are perfected and borrower's certification that the funds are to be used for the purpose intended, funds will be disbursed as directed by the Loan Review Committee recommendation action and in accordance with the loan agreement and instructions of the Loan Officer. Fixed asset loans may require the opening of a loan escrow for the perfection of collateral and the coordination of fund distribution. Working Capital loans will be funded in a single disbursement or on an agreed schedule depending upon the circumstances. Fixed asset loans will require backup documentation including invoices or bank statements, or other verifiable documentation.

D. Loan Servicing Procedures

1. Loan Payment and Collection

Direct Loans are set up in the Accounting Department in the Fiscal Division of County. Borrower will be provided specific instructions on where and how to submit loan payments.

Once received payments will be deposited in federally insured accounts in accordance with California Government Code on the same day as received, if received before 12 p.m., or the next business day.

2. Loan Monitoring



Under the direction of the Loan Officer, each loan file will be monitored for compliance with public benefit requirements and for the proper and timely submission of financial data, reports, UCC renewals and insurance documents. Every six months, on July 1 and January 1, for the period of the loan a letter will be sent to the borrower requesting submission of job hiring and saving data in accordance with the loan agreement. Every twelfth month, a copy of the annual financial statement of the business will be requested and an appointment will be made for a site visit and inspection of collateral.

Borrowers are required to maintain adequate records and books of account in which complete entries will be made reflecting all of its business and financial activities, and to submit financial statements annually for the life of the loan.

A successful business will keep payments current and meet the above monitoring requirements without difficulty. Failure to comply with the above monitoring routine will result in the loan file being pulled, scheduling a site visit and determination of proper action.

3. Late Payment Follow-up

If a payment not timely made remains overdue for a period of ten (10) days after the same becomes due and payable, Borrower, without notice or demand by County or any holder of the note, shall apply a late charge in the amount of five (5) percent of the delinquent payment owing. The loan is placed on the delinquent loan report, which is submitted to the Loan Officer on a monthly basis.

During the first 30 days of delinquency, the loan file will be pulled and returned to Loan Officer for oral communication with the borrower and for a determination of appropriate action. The loan will be placed on the Delinquency report.

During the second 30 days of delinquency the Loan Officer will visit the site, if this has not already been done, to inventory the collateral and to determine a plan to resolve the delinquency. A Borrower may request, and the County may approve a deferral period during the life of the loan.

4. Loans Over 90 days in Arrears

The Loan Officer will work to exercise all rights and privileges of the lender in order to collect the proceeds on delinquent loans. Loan Officer will:

- Make sure all loan documentation is in order
- Contact County Counsel to coordinate collection efforts
- Formally notify other lenders of the delinquency, as appropriate

- Formally notify the guarantors of the defaulted loan and put them on notice that they are expected to make payment
- Notify the Loan Review Committee
- When the Loan Officer determines that he has exercised all reasonable attempts at collection the loan file will be transferred to the Fiscal Division for liquidation action per the requirement of the County's Debt Collection Policy.

5. Default Loan Monitoring Procedures

The Loan Officer can recommend to the Loan Review Committee that a loan be declared in default and that action should be taken to initiate recovery against collateral, if it appears that the threat to the collateral or to the repayment of the loan is immediate or the situation is rapidly deteriorating. The Loan Review Committee must approve foreclosure or necessary litigation. The Loan Review Committee shall be briefed and County Counsel consulted with respect to the possibility of a successful workout.

The file will be reviewed, and the Loan Officer will recommend a liquidation plan. The plan will be presented to the Loan Review Committee and the Executive Director for approval. The liquidation officer will be responsible for all actions related to collection of past amounts due including disposition of collateral and negotiations of any "Offer in Compromise" (OIC). The OIC will require the approval of the Executive Director.

6. Loan Restructuring

If the cash flows of the business are inadequate to make the scheduled payments, it may be necessary to alter the terms of the note in order to cure defaults. If there is no need to cure defaults, payment terms may be reached with amending the notes. Restructuring of loans include, but are not limited to; interest rate amendments, deferral of payments, maturity date extensions and balloon payments. All loan modifications will be reviewed and approved by Loan Review Committee or by the Board of Supervisors.

7. Write off

Collection efforts will be continued until all collateral has been liquidated and all other actions have been exhausted. Loan Officer will recommend either returning the loan to the respective division for preparation of a charge off request or forwarding the loan to an outside collection agency for additional collection efforts. Loans deemed uncollectible will be returned to the respective division for preparation of the charge off request. Write off requests will be submitted to the Loan Review Committee and the Director for approval.

E. Administrative Procedures



1. Accounting

County will maintain a separate bank account established for the RLF so that repayments and interest income are clearly identifiable and auditable and portfolio and cash are clearly distinguishable from any other loan programs. This includes both the USED A and local share portions of the RLF. County will ensure that the RLF is operating in accordance with Generally Accepted Accounting Principles (GAAP).

2. Reporting

County will submit financial and status reports to the USED A Regional Office semi-annually. The reports will be in a format acceptable to USED A. Semi-annual reports will be submitted by April 30th, covering RLF activity through March 31st, and October 31st covering activity through September 30th. Other reports or special reports will be submitted as required.

County will ensure that the RLF Portfolio is in compliance with applicable capital utilizations standards and sequestration requirements.

3. Audits

County acknowledges that USED A RLF funds are subject to an annual audit requirement and the full value of the RLF (outstanding loans and available cash) will be shown every year on the Recipient's Schedule of Federal Expenditures. County will ensure that the auditor performs the required federal audit procedures.

4. Loan Files and Loan Closing Documentation

All original loan documents will be maintained in a fireproof file cabinet on the premises. Original loan documents requiring storage in fireproof facilities include: original notes, loan agreements, Loan Review Committee's meeting minutes approving the RLF loan, security agreement(s), deed of trust(s), title policy, collateral perfection documents and other original legal documents. Copies of the collateral documents will be kept in the loan files located in ordinary file cabinets located on the premises.

The loan files will contain the complete record of the individual loan including original applications and supporting documents and verifications, Credit memorandum and amendments thereto, public benefit documents and verifications, copies of the notes, deeds and other collateral, correspondence and checklists.

5. County Reporting Requirements

Loan Officer shall maintain a separate file containing all original documents approving the application and all applications, approvals and documents relating to the loans. Files of all required reports will be maintained and kept current.

A portfolio report will be maintained that will document the outstanding balances of loans and the performance of the portfolio with respect to the guidelines set forth in Part I. This report is an operational report, which will guide the marketing practices of the loan officers in order to keep the ratios within desired limits. It will be updated monthly.

RLF loan payments and program income will be tracked and budgeted through the County's annual budget process. All funds will be accounted for within the normal operating requirements of the County and will be subject to all restrictions and practices required by the California Government Code.

F. Funding for Administration Costs

Administrative costs for the RLF will be covered under existing programs of the County and will not come from grant funds or program income.

G. Capital Management Strategy

1. Ongoing Recapitalization

Ongoing recapitalization is provided by repayment of principal, interest and fees for outstanding loans.

2. Excess Retention Policy

In considering the amount of funds retained on hand, the RLF program will be guided by USEDA Excess Retention Policy, which sets the limit at 20 percent of total capital, including all funds available for lending. This policy will be closely observed, after initial funds have been disbursed. Excess funds will be invested in interest bearing accounts. All federal funds will be held in insured accounts; federal funds greater than \$100,000 will be held in collaterally insured accounts.

H. Miscellaneous Procedures

In addition to the conditions and requirements of the application, the trust deed or other security instrument(s) and the promissory note, each borrower will be required to observe all applicable federal, state and local statutes and regulations. Applicable provisions will be included in each loan agreement.

A violation by any borrower of any of the federal requirements applicable to this RLF including, but not limited to, civil rights, environment, historic preservation, relocation, flood hazard, access for the handicapped and Loan Review Committee



recommendations or wage laws, will be cause for default on the loan.

1. Civil Rights Consideration

The RLF will comply with all Federal civil rights requirements that prohibit discrimination against employees or applicants for employment or providers of goods and services on the basis of race, color or national origin, sex, age, handicap, religion or as amended.

The RLF will aggressively outreach to minority communities for the initial and subsequent lending rounds to ensure equal opportunity in the award and performance of any loans to all persons without regard to race, color, sex, religion, national origin, ancestry, age, marital status, physical, mental disability or sexual preference.

2. Environmental Considerations

Loan Officer with the assistance of appropriate staff, shall assess the significance of all environmental impacts of activities to be financed in compliance with the National Environmental Policy Act of 1969 and other Federal environmental mandates, as per the Assurances (SF 424D as revised) executed with the Economic Development Administration. No activity shall be financed which would result in a significant adverse environmental impact unless the impact is to be mitigated to the point of insignificance. When necessary to ensure compliance, any required mitigation shall be made part of the loan conditions.

No project shall be approved which would result in the alteration of or have an adverse impact on any wetland without prior consultation with the U.S. Department of the Interior, Fish and Wildlife Service, and, if applicable, obtaining a section 404 permit from the Army Corps of Engineers

Consistent with E.O. 11988, no project shall be approved which would result in new above ground development in a 100 year flood plain. This determination will be made by reviewing the proposed development against FEMA Flood Insurance Rate Maps.

The State Historic Preservation Officer, (SHPO) shall be notified of each loan proposal that involves significant new construction or expansion and asked to submit comments on the effect of the proposed activity on historic and archaeological resources. The RLF Administrator shall work with the SHPO and USEDA in cases where the SHPO has recommended actions or has been determined an adverse impact.

All loan applicants shall be requested to provide information indicating whether or not there was hazardous materials such as EPA listed (see 40 CFR 300), hazard substances, leaking underground storage tanks, asbestos, polychlorinated biphenyls (PCB), or other hazardous materials on site that have been improperly handled and have the potential of endangering public health. If deemed necessary, loan applicants may be required to perform or provide evidence of a Phase I site assessment to identify possible sources of contamination, a Phase II site assessment to test soil and/or groundwater samples, and a Phase III site remediation involving mitigation of applicable contaminants. In cases

where there are unresolved site contamination issues, the RLF Administrator shall work with the loan applicant and the appropriate state environmental agency office to resolve these outstanding issues.

3. Flood Hazard Insurance

RLF loans will not be made for project activity located in a flood plain unless proof of flood hazard insurance is provided, as per the flood insurance purchase requirements of Section 102(1) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition, if the total cost of insurable construction and acquisition is \$10,000 or more for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect federal assistance.

4. Access for Handicapped

County will assure that any building or facility financed in whole or in part by funds provided under the Program will be designed, constructed or altered so as to assure ready access to and use of such building or facility by the physically handicapped, pursuant to Public Law 90-480, as amended (42 USC 415 1, et seq.)

5. Relocation

Projects will not be funded if located outside the County of Riverside. Loans will be called if project activity is removed from the County of Riverside. All projects funded will comply with Section 2, of the Public Works and Economic Development Act, as amended, which states that under the provisions of this Act new employment opportunities should be created by developing and expanding new and existing facilities and resources rather than by merely transferring jobs from one labor area to another. It shall be an event of default and the loan shall be called it is determined that (1) the firm or organization used the RLF loan to relocate jobs from another commuting area or (2) the economic activity financed is moved outside the commuting area to the detriment of local workers.

6. Davis-Bacon Act Requirements

All laborers and mechanics employed by contractors or subcontractors on construction, alteration, or repair, including painting and decorating projects financed in whole or in part by RLF loans shall be paid at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All projects undertaken with



RLF loans must meet the requirements, and comply, as applicable, with the provisions of the Davis-Bacon Act as amended (42 USC 3212; 13 CFR section 302.13; Section 1606 of ARRA), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327333) regarding labor standards for federally-assisted construction subagreements.

7. Subrecipient Awards

County may subaward RLF Award funds only with prior USEDA approval pursuant to 13 CFR § 309.2(a) and subject to the conditions at 13 CFR § 309.2(b). A subaward 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.

County 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.

8. Additional Requirements

Projects will comply with all requirements by the federal sponsoring agency concerning special requirements of the law, program requirements, and other administrative requirements; will comply, where applicable, with the Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) and with the Anti-Kickback Acts, as amended (40 USC 276 (c); 18 USC 874); will comply, where applicable, with the earthquake Hazards Reduction Act of 1977 (Public Law 9520 124), as amended (40 USC 770'4, et seq.) and Executive Order 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction" for the design of newly constructed buildings.

County will follow the most current US Department of Commerce, Economic Development Administration Revolving Loan Fund Financial Assistance Standard Terms and Conditions (dated April 30, 2019), which includes Part I (General Requirements and Responsibilities), Part II (RLF Recipients' Management and Administrative Requirements), Part III (Lending Restrictions and Borrower Requirements) and all amendments thereafter.

EXHIBIT B

Budget Provisions

Budget

Lending Capital	\$780,000				
Loan amounts	\$15,000 to \$30,000				
Anticipated Loan Numbers	26 to 52				
Administrative Cost 5%	\$ 39,000.00				
Fees: Processing, underwriting, legal servicing, recording and ancillary					
Total Capital Budget	\$819,000				

Exhibit E

Federal Funds Disbursement Procedures

COUNTY Economic Development will process requests for the disbursement of the Federal Funds obligated to fund loans individually upon the receipt of a written request from SUBRECIPIENT along with the loan documents. Standard loan documents to be submitted shall include, at a minimum, the following:

1. Loan Application (or Business Plan)
2. Loan Agreement
3. Board of Director's meeting minutes approving the RLF loan (or other documentation that satisfactorily approves the loan, i.e. staff approval with AOR's approval)
4. Promissory Note
5. Deed of Trust or Mortgage (as applicable)
6. Security Agreement(s) (as applicable)
7. Agreement of prior lien holder (as applicable)
8. Loan Write Up used in presenting loans to approving body

COUNTY Economic Development will review all documentation received from Subrecipient in support of the request of Federal Funds and upon determination that the request and documentation are in line with program parameters will submit to USEDA signed SF-270 requesting federal share of loan amount.

USEDA will fund Federal Funds share through COUNTY Economic Development upon submittal of SF-207 and required supporting documents. Once funds are in County Economic Development account, they will be wired to AmPac's account to fund loan.

Exhibit C



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

REVOLVING LOAN FUND STANDARD TERMS AND CONDITIONS

April 30, 2019

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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 April 30, 2019, 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



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

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PREFACE

This document sets out the standard terms and conditions (ST&Cs) 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 entity¹ 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, 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.²

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: federal laws and 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.³ A specific award condition may amend or take precedence over a Standard Term on a case-by-case basis, when indicated by the specific award condition.

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 CD-511). To the extent that it is a summary, such Standard Term provision is not in derogation

¹ 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.”

² 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.”

³ To match the terminology used in the OMB Uniform Guidance, the DOC now uses the phrase “specific award condition” in lieu of “special award condition.”

of, or an amendment to, any such statute, regulation, E.O., OMB circular, certification, or assurance.

DOC commenced implementation of the Research Terms and Conditions (RT&Cs) for Federal awards effective October 1, 2017; the RT&Cs address and implement the Uniform Guidance issued by OMB. For awards designated on the Form CD-450 (Financial Assistance Award) as Research, both the ST&Cs and the RT&Cs as implemented by the Department apply to the award. The RT&Cs as well as the Department's implementation statement, agency specific requirements, prior approval matrix, and subaward requirements are posted on the National Science Foundation's website – <https://www.nsf.gov/awards/managing/rtc.jsp>. The ST&Cs and the RT&Cs are generally intended to harmonize with each other; however, where the ST&Cs and the RT&Cs differ in a Research award, the RT&Cs prevail, unless otherwise indicated in a specific award condition.

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 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 format provided by the Program Officer (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, relating to 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. 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.o 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.p of these Standard Terms (Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)).

g. Research Performance Progress Reports. All research awards shall submit the Research Performance Progress Report (RPPR) in accordance with instructions set forth in the following link: [RPPR Instructions](#).

.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 if, 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 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. 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 non-Federal entity's fiscal 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 do not become 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 \$250,000 or less. For awards in which the Federal share of the project exceeds \$250,000, 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 is not and 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 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. Below are two sources available for guidance on how to put an indirect cost plan together:

(A) Department of Labor: <https://www.dol.gov/oasam/boc/dcd/np-comm-guide.htm>
or

(B) Department of the Interior: <https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/>.

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

iii. The recipient is required to annually submit indirect cost proposals – no later than six months after the recipient's fiscal year end, except as otherwise provided by 2 C.F.R. § 200.414(g).

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 within 30 calendar days of receipt of a negotiated rate agreement or submission of a negotiated rate proposal.

3. If the recipient is proposing indirect costs as part of a project budget, but is not required to have a negotiated rate agreement pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b (*i.e.*, a governmental department or agency that receives \$35 million or less in direct Federal funding), the recipient may be required to provide the Grants Officer with a copy of its Certificate of Indirect Costs as referenced in 2 C.F.R. Part 200, Appendix VII, Paragraph D.3. or such other documentation, acceptable in form and substance to the Grants Officer, sufficient to confirm that proposed indirect costs are calculated and supported by documentation in accordance with 2 C.F.R. Part 200, Appendix VII. In cases where the DOC is the recipient's cognizant Federal agency, the DOC reserves the right, pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b, to require the recipient to submit its indirect cost rate proposal for review by DOC.

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(c)(3), DOC set forth policies, procedures, and general decision-making criteria for deviations from negotiated indirect cost rates. These policies and procedures are applicable to all Federal financial assistance programs awarded and administered by DOC bureaus as Federal awarding agencies and may be found at http://www.ossec.doc.gov/oam/grants_management/policy/documents/FAM%202015-02.pdf.

g. 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.

h. 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, 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 relating to the close-out of an award (*see* 2 C.F.R. § 200.343).

b. Reasonable, necessary, allowable 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. This is not a delegable authority. 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 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 13414), 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.

The Bayh-Dole regulations set forth in 37 C.F.R. part 401 and 404 were amended by 83 FR 15954, with an effective date of May 14, 2018 (Amended Bayh-Dole Regulations). The Amended Bayh-Dole Regulations apply to all new financial assistance awards issued on or after May 14, 2018. The Amended Bayh-Dole Regulations do not apply to financial assistance awards issued prior to May 14, 2018, including amendments made to such awards, unless an award amendment includes a specific condition incorporating the Amended Bayh-Dole Regulations into the terms and conditions of the subject 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 Intellectual Property 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. 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, 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 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. A recipient must, within 90 days of the end of its fiscal year, notify the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, that the recipient expended during its fiscal year.

b. Recipients that are subject to the provisions of Subpart F of 2 C.F.R. Part 200 and that expend \$750,000 or more in a year in Federal awards during their fiscal year must have an audit conducted for that year in accordance with the requirements contained in Subpart F of 2 C.F.R. Part 200. 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, unless a different period is specified in a program-specific audit guide, 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/>). In accordance with 2 C.F.R. § 200.425, the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer.

c. Unless otherwise specified in the terms and conditions of the award, entities that are not subject to Subpart F of 2 C.F.R. Part 200 (e.g., for-profit entities, foreign public entities and foreign organizations) and that expend \$750,000 or more in DOC funds during their fiscal year (including both as a recipient and a subrecipient) must submit to the Grants Officer either: (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) a project specific audit for each award or subaward in accordance with the requirements contained in 2 C.F.R. § 200.507. 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, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to the Grants Officer. In accordance with 2 C.F.R. § 200.425, the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer. Entities that are not subject to Subpart F of 2 C.F.R. Part 200 and that expend less than \$750,000 in DOC funds in a given fiscal year are not required to submit an audit(s) for that year, but must make their award-related records available to DOC or other designated officials for review and audit.

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. 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.

e. 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 by the pass-through entity 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.

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 applicable interest, penalties and administrative fees on the debt in accordance with 15 C.F.R. Part 19. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively.

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 11 of the Debt Collection Act of 1982, as amended (31 U.S.C. § 3717(a)). 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 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 §§ 200.330-332 (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),⁴ 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 based on 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 to improperly influence are unallowable. *See* 2 C.F.R. § 200.450(b) and (c).

⁴ As amended by E.O. 11375(32 FR 14303), E.O. 11478 (34 FR 12985), E.O. 12086 (43 FR 46501), E.O. 12107 (44 FR 1055), E.O. 13279 (F67 FR 77141), E.O. 13665 (79 FR 20749), 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 relating to 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 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 decide 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 Excluded Parties List (EPL) (located on the System for Award Management (SAM) website, 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 EPL or knows that the facility has been recommended to be placed on the EPL.

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, if 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 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 (“Federal Actions to Address 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)

Many 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. Buy-American Preferences

Strengthening Buy-American Preferences for Infrastructure Projects. Recipients of covered programs (as defined in Executive Order 13858, 31 January 2019) are hereby notified that they are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable under this Award.

b. 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. 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.

c. 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.

d. 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.

Note: When using code-sharing flights (two or more airlines having flight numbers assigned to the same flight) involving U.S. flag carriers and non-U.S. flag carriers, the airline symbol and flight number of the U.S. flag carrier must be used on the ticket to qualify as a U.S. flag carrier (e.g. "*Delta Airlines Flight XXXX, operated by KLM*"). Conversely, if the ticket shows "[*Foreign Air Carrier*] XXX, operated by Delta," that travel is using a foreign air carrier and is subject to the Fly America Act and must receive prior approval from the Grants Officer as outlined in paragraph G.05.d.4.

e. 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.

f. 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.

g. 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 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.

h. 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.

i. 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 (whether professional or student) conducting research (1) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (2) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens. 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) under a Federal wide Assurance issued by Department of Health and Human Services or other Federal agency 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. § 27.104(d);

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.

j. 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.

k. 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 relating to 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 Specific 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 Specific 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.

I. 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.

m. 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 encompasses activities that involve export-controlled items.
2. In performing this financial assistance award, a non-Federal entity may participate in activities involving 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, including facilities located abroad, throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate restrictions on export-controlled items, to guard against any unauthorized exports, including in the form of releases or transfers to foreign nationals. Such releases or transfers may occur through visual inspection, including of technology transmitted electronically, and oral or written communications.
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. The export (shipment, transmission, or release/transfer) of export-controlled items may require a license from DOC.
 - ii. Deemed Export/Re-export. The EAR defines a deemed export as a release or transfer of export-controlled items (specifically, technology or source code) to a foreign person (foreign national) in the U.S. Such release is "deemed" to be an export to the foreign person's most recent country of citizenship or permanent residency (*see* 15 C.F.R. § 734.13(a)(2) & (b)). A release may take the form of visual inspection or

oral or written exchange of information. See 15 C.F.R. § 734.15(a). If such a release or transfer is made abroad to a foreign person of a country other than the country where the release occurs, it is considered a deemed re-export to the foreign person's most recent country of citizenship or permanent residency. See 15 C.F.R. § 734.14(a)(2). Licenses from DOC may be required for deemed exports or re-exports. An act causing the release of export-controlled items to a foreign person (e.g., providing or using an access key or code) may require authorization from DOC to the same extent that an export or re-export of such items to the foreign person would. See 15 C.F.R. § 734.15(b).

4. The non-Federal entity must secure all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that the export of such items, including in the form of release or transfer to foreign persons, is prevented, 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 from unauthorized export.

6. To the extent the non-Federal entity wishes to release or transfer export-controlled items to foreign persons, the non-Federal entity will be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed re-exports. Failure to obtain any export licenses required under the EAR may subject the non-Federal entity to administrative or criminal enforcement. See 15 C.F.R. part 764.

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 and re-exports of defense articles and services subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including the release of defense articles to foreign persons in the United States and abroad.

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 research or other activities that implicate export-controlled items.

n. 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).

o. 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. System for Award Management (SAM) and Unique Entity Identifier Requirements.

Under FFATA, recipients must obtain a unique entity identifier, currently known as the Data Universal Numbering System (DUNS) number, maintain an active registration in the SAM 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 2 C.F.R. Part 25, Appendix A, which is incorporated into this award:

System for Award Management (SAM) and Unique Entity Identifier Requirements

a. Requirement for SAM Registration. *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 SAM 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 Unique Entity Identifier. *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 Unique Entity Identifier, currently known as the DUNS number, to you.*
- 2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier, currently known as the DUNS number, to you.*

c. Definitions for purposes of this award term:

1. SAM is the comprehensive system into which the Central Contractor Registration (CCR) system was migrated and is part of the overall Integrated Award Environment (IAE). The information previously maintained in CCR is now contained within the Entity Management area in SAM.gov.

2. 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).

p. 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 relating to 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 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 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.

q. 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 administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

2. All award actions will be delayed during a government shutdown; if it appears that a non-Federal entity's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise non-Federal entities that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, non-Federal entities whose ability to withdraw funds is subject to prior agency approval, which in general are non-Federal entities that have been designated high risk, non-Federal entities under construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able to draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Non-Federal entities should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Non-Federal entities whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

3. The ASAP system should remain operational during a government shutdown. Non-Federal entities that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown (see section B.02.b.1 of these terms).

Exhibit D

SPECIFIC AWARD CONDITIONS
U.S. DEPARTMENT OF COMMERCE
Economic Development Administration (EDA)

REVOLVING LOAN FUND AWARD: Economic Adjustment Assistance for Disaster Economic Recovery Under Sections 209 and 703 of the Public Works and Economic Development Act of 1965, as amended, 42 U.S.C. §§ 3149 and 3233

Recipient Name: County of Riverside Business and Community Services	Award Number: 07-79-07580
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PROJECT TITLE: Coronavirus Aid, Relief, and Economic Security (CARES) Act Revolving Loan Fund Supplemental Disaster Recovery and Resiliency Awards.

- 1. SCOPE OF WORK:** This EDA Award supports the work described in the approved final scope of work, which is incorporated by reference into this Award, as the *Authorized Scope of Work* (Attachment 1). All work on this project must be consistent with the *Authorized Scope of Work*, unless the Grants Officer has authorized a modification of the scope of work in writing through an amendment memorialized through execution of a Form CD-451, *Amendment to Financial Assistance Award*.
- 2. PROJECT CONTACT INFORMATION:** Contact information for Recipient and key EDA staff with responsibilities for this Award is contained in Attachment 2. Recipient agrees to notify EDA promptly of any changes to Recipient's contact information.
- 3. ADDITIONAL INCLUDED DOCUMENTS:** In addition to the regulations, documents, or authorities incorporated by reference on the Financial Assistance Award (Form CD-450), the following additional documents are hereby incorporated by reference into this Award:
 - Recipient's application, including any attachments, project descriptions, schedules, and subsequently submitted supplemental documentation
 - Authorized Scope of Work (Attachment 1)
 - Project Contact Information (Attachment 2)
 - Authorized Budget (Attachment 3)
 - Authorized Staffing Plan (Attachment 4)

Should there be a discrepancy among these documents, these Specific Award Conditions shall control.

4. **PROJECT DEVELOPMENT TIME SCHEDULE:** Recipient agrees to the following Project Development Time Schedule:

Authorized Award End Date.....24 months from the Date of Award

Submission of Final Project Progress Report.....No later than 90 days from the Authorized Award End Date

Submission of Final Financial Documents (SF-425).....No later than 90 days from the Authorized Award End Date

Recipient shall diligently pursue the development and implementation of the project upon receipt of the EDA Award so as to ensure completion within this time schedule, and shall promptly notify EDA in writing of any event that could substantially delay meeting any of the time limits set forth above. Recipient further acknowledges that failure to meet the Project Development Time Schedule may result in EDA pursuing remedies for non-compliance, potentially including termination of the Award, in accordance with the regulations set forth at 2 C.F.R. §§ 200.338–200.342.

5. **UNUSUAL AND COMPELLING URGENCY:** As set forth in the *Authorized Scope of Work* (Attachment 1), this Award is made pursuant to the Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. 116-136 (March 27, 2020) to respond to the coronavirus pandemic. EDA is making this Award to Recipient non-competitively, based on EDA’s finding that the coronavirus (COVID-19) pandemic constitutes a situation of unusual and compelling urgency and that it is therefore in the public interest to make noncompetitive awards to existing grantees, including Recipient, that have made substantial investment in establishing revolving loan fund lending capacity and therefore possess unique abilities to respond to the pandemic quickly.

Because of the unusual and compelling urgency of the situation, time is of the essence in the implementation of the Authorized Scope of Work. By accepting this Award, Recipient certifies that it will use its best efforts to implement the *Authorized Scope of Work* expeditiously to maximize the benefits of the project in responding to the pandemic. Recipient acknowledges that failure to implement the project at an acceptable pace, as determined in EDA’s reasonable discretion in accordance with the approved Grant Administration Plan (see paragraph 27, below), may result in EDA taking action to modify or terminate the Award in accordance with 2 C.F.R. § 200.338. If at any point during the period of performance (through the Authorized Award End Date), EDA determines there is an unacceptable risk that Recipient will be unable to disburse the full amount of the award designated for RLF lending, EDA may reduce that portion of the Award by an amount that EDA, in its reasonable discretion, deems appropriate.

6. PROJECT REPORTING AND FINANCIAL DISBURSEMENTS INSTRUCTIONS:

- A. AWARD DISBURSEMENTS:** EDA will make disbursements using the Department of the Treasury's Automated Standard Application for Payments (ASAP) system or through Electronic Funds Transfer (EFT) directly to Recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996. For disbursements using ASAP, Recipient is required to furnish documentation required by ASAP. Complete information concerning the ASAP system may be obtained by visiting <https://www.fiscal.treasury.gov/asap/>.

To receive disbursements, Recipient must submit a Form SF-270 "*Request for Advance or Reimbursement*" for the applicable period electronically to the Project Officer, who will review and process the request. Due to the unusual and compelling urgency of the project, Recipient must request disbursements at least once per calendar quarter.

Prior to the initial disbursement, Recipient must complete an "*ACH Vendor/Miscellaneous Payment Enrollment Form*" (Form SF-3881 or any successor form) and submit it to NOAA's Accounting Office by fax at (301) 528-3675. (Fax is required to secure confidentiality of sensitive information.) The form must be completed by the respective parties (EDA, Recipient Bank, and Recipient) at the start of each new award.

EDA retains the right to change Recipients from Advance to Reimbursement or Agency Review status if the Grants Officer deems it necessary or prudent to ensure successful monitoring of Federal funds. In such cases, Recipients may be required to submit a complete Form SF-270, "*Request for Reimbursement*" for the applicable period electronically to the Project Officer, who will review and process the request.

B. REPORTS:

1. **RLF FINANCIAL REPORT:** Recipient must submit an RLF Financial Report (Form ED-209), including a Portfolio Loan List, on a semiannual basis during the period of performance of this Award and after the period of performance of this Award (during the Revolving Phase). The Report must be submitted within 30 calendar days of the midpoint and end of Recipient's fiscal year. However, after the period of performance of this Award (during the Revolving Phase), EDA may allow high-performing RLFs, as evaluated through EDA's Risk Analysis System (see paragraph 15, below), to submit the RLF Financial Report on an annual basis, generally within 90 calendar days of Recipient's fiscal year end. The Report must be submitted as long as the RLF exists (i.e., before and after the Authorized Award End Date).

2. PROJECT PROGRESS REPORTS: Recipient agrees to provide the Project Officer with project progress reports, communicating the important activities and accomplishments of the project, on a semiannual basis during the period of performance of this Award (through the Authorized Award End Date). The Report must be submitted within 30 calendar days of the midpoint and end of Recipient's fiscal year.

Performance progress reports shall be submitted to EDA in an electronic format no later than the due date. Reports shall be in a clear format, not exceeding six pages, and shall:

- a. Provide a concise overview of the activities undertaken during the semi-annual reporting period;
- b. Document accomplishments, benefits, and impacts of the project. Recipient should identify activities that have led to specific outcomes, such as job creation/retention, private investment, increased regional collaboration, engagement with historically excluded groups or regions, enhanced regional capacity, or other positive economic development benefits;
- c. Identify any upcoming or potential press events or opportunities for collaborative press engagements to highlight the benefits of the EDA investment;
- d. Compare progress on the project with the targeted schedule, explaining any departures, identifying how those departures will be remedied, and projecting the course of work for the next semi-annual reporting period;
- e. Outline challenges impeding or that may impede progress on the project over the next semi-annual reporting period and identify ways to address those challenges;
- f. Outline any areas in which EDA assistance is needed to support the project; and
- g. Provide any other information that would be helpful for your EDA Project Officer to know.

Final Project Reports may be posted on EDA's website, used for promotional materials or policy reviews, or otherwise shared. Recipients should not include any copyrighted or other sensitive business information in these reports. There is no page limit for Final Project Reports; however, such reports should concisely communicate key project information and should:

- a. Provide a high-level overview of the activities undertaken;

- b. Explain how the project activities have prevented, prepared for, or responded to the coronavirus pandemic and advanced economic development;
 - c. Document the expected and actual economic benefits of the project as of the time the report is written;
 - d. Detail lessons learned during the project that may be of assistance to EDA or other communities undertaking similar efforts; and
 - e. Provide any other information necessary to understand the project and its impacts.
3. **FEDERAL FINANCIAL REPORT:** Recipient must submit the Federal Financial Report (Form SF-425) on a semiannual basis during the period of performance of this Award (through the Authorized Award End Date). The Report must be submitted within 30 calendar days of the midpoint and end of Recipient's fiscal year. Form SF-425 and instructions for completing the Form are available at: <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>.

A final Form SF-425 must be submitted no more than 90 calendar days after the Award End Date specified on the Form CD-450 (or any subsequently executed Form CD-451). Final Financial Reports should follow the instructions for submitting mid-term financial reports, but should ensure that all fields accurately reflect the total outlays for the entire project period and that all matching funds and program income (if applicable) are fully reported. Determination of the final grant rate and final balances owed to the government will be determined based on the information on the final Form SF-425, so it is imperative that it be submitted in a timely and accurate manner.

7. **ALLOWABLE COSTS AND AUTHORIZED BUDGET:** Total allowable costs will be determined after the final financial documents are submitted in accordance with the applicable authorities specified on the Financial Assistance Award (Form CD-450), including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. part 200. The *Authorized Budget* for this Project is set forth in Attachment 3, *Authorized Budget*.
8. **FEDERAL SHARE:** The Federal Share of total allowable project cost for this Award is 100 percent. EDA will fund 100 percent of the total allowable project costs or the grant amount shown on the Financial Assistance Award (Form CD-450), whichever is less.
9. **VOLUNTARILY CONTRIBUTED CAPITAL:** 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 that 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 (13 CFR § 307.12(d)).

- 10. RLF PLAN:** Recipient agrees to administer this Award in accordance with an EDA-approved RLF Plan (13 CFR § 307.9), and Recipient agrees to submit an RLF Plan prior to disbursing loan funds to an RLF borrower but no later than 60 calendar days of the date of this Award. Should there be a conflict between the terms and conditions of this Award and the RLF Plan, the terms and conditions of this Award shall control.

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, to 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 (13 CFR § 307.9(c)).

- 11. DISBURSEMENT PHASE AND REVOLVING PHASE:** The Disbursement Phase of this Award is the period of lending activity during which award funds have not been fully disbursed to Recipient. The end of the Disbursement Phase coincides with the earlier of the Authorized Award End Date or upon disbursement closeout after all grant funds have been disbursed to Recipient. The Revolving Phase commences at the end of the Disbursement Phase and continues as long as the RLF exists.

- 12. RLF REGULATIONS & DISBURSEMENT PHASE VARIANCES:** The regulations governing RLF awards at subpart B of 13 CFR part 307 generally apply to this Award. However, to make credit more quickly and easily available to borrowers impacted by COVID-19, during the initial round of lending under this Award (the Disbursement Phase) the following three regulations do not apply to loans made under this Award:

- A. The minimum interest rate requirement (13 CFR § 307.15(b)(1)).
- B. The leveraged capital requirement (13 CFR § 307.15(c)).
- C. The requirement to demonstrate that credit is not otherwise available (13 CFR § 307.11(a)(1)(ii)(H)).

During the Revolving Phase when RLF funds are re-lent to new borrowers the three above-listed regulations will apply to this Award.

- 13. WAIVER OF PRE-DISBURSEMENT CERTIFICATIONS:** EDA imposes certain pre-disbursement requirements on new RLFs, including: (1) a certification that the recipient has an accounting system adequate to identify, safeguard, and account for the entire RLF Capital Base (13 C.F.R. § 307.11(a)(1)(i)) and (2) a certification from the recipient's legal counsel that

the recipient's standard loan documents are adequate and comply with the terms and conditions of applicable state and local law (13 C.F.R. § 307.11(a)(1)(ii)). Because this Award is being made to an existing RLF recipient, EDA has concluded that the accounting system and loan document certifications are redundant and thus unnecessary. For this reason, Recipient need not submit those two certifications. Recipient must utilize the accounting system and loan documents that Recipient uses for its existing RLF unless Recipient obtains EDA's prior written approval to do otherwise.

14. FIDELITY BOND COVERAGE: In accordance with 13 CFR § 307.11(a)(1)(iii), Recipient must submit in a form acceptable to EDA evidence of fidelity bond coverage for persons authorized to handle funds under the 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 for the duration of the RLF's operation. However, because this Award is being made to an existing RLF recipient that already maintains fidelity bond coverage, EDA has concluded that Recipient may begin lending before Recipient has made any necessary adjustments to its fidelity bond coverage. Recipient must provide evidence of adequate coverage to EDA as soon as reasonably practicable following the date of award.

15. RISK ANALYSIS SYSTEM: 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 Recipient a risk analysis rating of the RLF on at least an annual basis during the Revolving Phase of this Award (13 CFR § 307.16(a)).

16. ALLOWABLE CASH PERCENTAGE: The Allowable Cash Percentage is the average percentage of the RLF Capital Base maintained as RLF Cash Available for Lending by RLF Recipients in the EDA Regional Office's portfolio of RLF Grants over the previous year (13 CFR § 307.8, definition of Allowable Cash Percentage). 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 operation of the RLF following the Authorized Award End Date (i.e., the Revolving Phase), Recipient must manage its loan repayment and lending schedule in order to avoid exceeding the Allowable Cash Percentage (13 CFR § 307.17(b)). Additionally, 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 (13 CFR § 307.20(e)).

17. ENVIRONMENTAL REVIEW: In accordance with 13 CFR § 307.10(a) and Part II, section D(7), of the RLF Standard Terms and Conditions, 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.

18. REFUND CHECKS, INTEREST, OR UNUSED FUNDS: If Recipient needs to return money to EDA, it may use one of the following two methods:

- A. The first is the pay.gov website, which allows Recipient to pay EDA online. Recipient will have the option to make a one-time payment or to set up an account to make regular payments.
- B. The second is paper check conversion. All checks must be made payable to “Department of Commerce, Economic Development Administration” and include the award number and a description of no more than two words identifying the reason for the payment. A copy of the check should be provided to the EDA Project Officer. The check should be mailed to NOAA’s Accounting Office, which processes EDA’s accounting functions, at the following address:

U.S. Department of Commerce
National Oceanic and Atmospheric Administration
Finance Office, AOD, EDA Grants
20020 Century Boulevard
Germantown, MD 20874

When funds are remitted to EDA by check, the check will be converted into an Electronic Funds Transfer (EFT) by using the account information on the check to debit the payor’s account electronically. The debit from the payor’s account will usually occur within 24 hours. EDA will not return the check; the original will be destroyed and a copy will be retained. If the EFT cannot be completed because of insufficient funds, EDA will charge a one-time fee of \$25.00, which will be collected by EFT.

19. PLANNING COORDINATION: In keeping with regional economic development principles, Recipient should coordinate economic development planning and implementation projects with other economic development organizations active in the area, especially EDA-funded recipients such as State and urban planning grantees, adjoining Economic Development Districts (EDDs) and Indian Tribes, and University Centers (UCs).

20. TECHNICAL ASSISTANCE TO BUSINESSES: Recipient shall advertise and make accessible any technical assistance offered to businesses as intended beneficiaries under this Award as widely as is reasonably permitted under the terms of this Award. Recipient shall maintain adequate documentation of any technical assistance offered and/or provided to benefitting businesses under this Award.

- 21. PROCUREMENT:** Recipient agrees that all procurement transactions shall be in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 CFR §§ 200.317 through 200.326.
- 22. BUY-AMERICAN PREFERENCES:** Consistent with Executive Order 13858, “*Strengthening Buy-American Preferences for Infrastructure Projects*,” Recipient is encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable under this Award.
- 23. NONRELOCATION:** By accepting this Award of financial assistance, Recipient attests that EDA funding is not intended by Recipient to assist efforts to induce the relocation or the movement of existing jobs from one region to another region in competition with those jobs. In the event that EDA determines that its assistance was used for such purposes, EDA reserves the right to pursue appropriate enforcement actions, including suspension of disbursements, termination of this Award for convenience or cause (which may include the establishment of a debt requiring Recipient to reimburse EDA), and disallowance of any costs attributable, directly or indirectly, to the relocation.
- 24. PERFORMANCE MEASURES:** Recipient agrees to report on program performance measures and program outcomes in such form and at such intervals as may be prescribed by EDA in compliance with the Government Performance and Results Act (GPRA) of 1993, and the Government Performance and Results Modernization Act of 2010. Recipient must retain sufficient documentation so that they can submit these required reports. Failure to submit these required reports may adversely impact the ability of Recipient to secure future funding from EDA.
- Performance measures and reporting requirements that apply to program activities funded by this investment will be provided in a separate GPRA information collection document, if applicable. EDA staff will contact Recipient in writing within a reasonable period prior to the time of submission of the reports with information on how this data should be submitted.
- 25. STAFFING CHANGES:** The *Authorized Staffing Plan* for this Award is set out in Attachment 4. In the event of a change in the professional staff positions primarily funded with the EDA grant, Recipient shall provide the name of the individual selected to fill the position to the Project Officer and a copy of his or her resume within 30 business days of the selection.
- 26. REAFFIRMATION OF APPLICATION:** Recipient acknowledges that Recipient’s application for this Award may have been submitted to the Government and signed by Recipient, or by an authorized representative of Recipient, electronically. Regardless of the means by which Recipient submitted its application to the Government or whether Recipient

or an authorized representative of Recipient submitted its application to the Government, Recipient hereby reaffirms and states that:

- A. All data in the application and documents submitted with the application are true and correct as of the date the application was submitted and remain true and correct as of the date of this Award;
- B. The application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of Recipient; and
- C. Recipient has read, understood, and will comply with all terms of this Award, including the Assurances and Certifications submitted with, or attached to, the application.

The term “application” includes all documentation and any information provided to the Government as part of, and in furtherance to, the request for funding, including submissions made in response to information requested by the Government after submission of initial application.

27. GRANT ADMINISTRATION PLAN: Within 60 calendar days of accepting the EDA Financial Assistance Award, Recipient shall provide to the Project Officer a Grant Administration Plan, not to exceed three pages, that outlines how Recipient will implement the *Authorized Scope of Work*. The plan must include the following information:

- A. A list of tasks that Recipient will undertake to implement the *Authorized Scope of Work* at a sufficient level of detail to allow EDA to monitor Recipient’s progress in implementing the project. The list of tasks must be consistent with the *Authorized Scope of Work* and the Project Narrative submitted as part of Recipient’s application;
- B. An explanation of the primary tasks to be undertaken by each individual identified in the *Authorized Staffing Plan*;
- C. A timeline for implementing the tasks identified; and
- D. If Recipient intends to hire additional staff to implement the project, a hiring plan including target start dates for new staff.

Upon approval by EDA, the Grant Administration Plan shall be incorporated into and become an enforceable part of these Specific Award Conditions. Subsequent changes to the Grant Administration Plan shall require the Project Officer’s prior written approval, which shall not be unreasonably withheld.

28. SUBAWARDS: Recipient shall not subaward any portion of this award without EDA’s prior written approval. Before any subawardee undertakes any work to be funded through this award,

the Recipient shall provide to EDA for review and approval a subaward agreement between the Recipient and the subawardee that meets the requirements of 2 C.F.R. § 200.331(a) and includes a requirement that the subawardee comply with all of the terms and conditions of this Financial Assistance Award, including but not limited to the Standard and Specific Award conditions and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 C.F.R. part 200). Any work performed by the subawardee prior to EDA's approval of the subaward agreement shall be at the Recipient's and subawardee's own risk and EDA may disallow costs related to that work. The Recipient shall be responsible for monitoring the subawardee's performance under any subaward in accordance with the requirements of 2 C.F.R. § 200.331.

All awardees of applicable grants and cooperative agreements are required to report to the Federal Subaward Reporting System (FSRS) available at www.FSRS.gov on all sub-awards over \$25,000. Please see the OMB guidance published at 2 C.F.R. part 170 (2015), which can be accessed at <http://www.gpo.gov/fdsys/pkg/CFR-2015-title2-vol1/pdf/CFR-2015-title2-vol1-part170.pdf>.

29. WASTE, FRAUD AND ABUSE: Consistent with 2 CFR part 200, at EDA's direction, at any time(s) during the estimated useful life of the Project, Recipient's key personnel will take a training on preventing waste, fraud and abuse as provided by the Government. Key personnel include those responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors or sub-grantees (for financial matters and/or general oversight related to this Project). EDA will provide instructions on when and how to take the training. Within sixty days of accepting the EDA Financial Assistance Award, the Recipient shall provide to the Project Officer all Certificates of Completion for the Waste, Fraud, and Abuse training. In the event there are co-recipients of this Award, the obligations in the Specific Award Condition shall apply to all recipients whether or not designated in this Award as the Lead Recipient.

Further, Recipient will monitor award activities for common fraud schemes (hereinafter "Fraud Schemes"), such as but not limited to:

- false claims for materials and labor,
- bribes related to the acquisition of materials and labor,
- product substitution,
- mismarking or mislabeling on products and materials, and
- time and materials overcharging.

Should Recipient detect any Fraud Schemes or any other suspicious activity, Recipient will contact the EDA staff listed above and the Department of Commerce, Office of Inspector General, as indicated at <https://www.oig.doc.gov/Pages/Contact-Us.aspx>, as soon as possible.

30. NON-DUPLICATION OF FEDERAL SUPPORT: Recipient shall adopt procedures to detect and prevent RLF borrowers from obtaining funding from multiple federal funding sources (including federal grants, federal loans, and federally guaranteed loans) for identical expenses. At a minimum, Recipient shall require loan applicants (1) to disclose any other federal funding sources that the applicant has applied for or received for purposes related to the purpose for which the RLF loan is being sought and (2) to certify that no RLF loan proceeds will be used to fund expenses for which the applicant has received other federal funding. Should the Recipient determine that a borrower has received federal funding from multiple sources for identical expenses, the Recipient shall demand immediate repayment of the portion of the RLF loan allocable to those expenses and may take any other action against the borrower permitted by the loan documents, the RLF plan, and applicable law, as the Recipient deems appropriate for prudent management of the loan portfolio.

ATTACHMENT 1

Authorized Scope of Work

The Scope of Work for this Award is to capitalize a Revolving Loan Fund (RLF) to alleviate sudden and severe economic dislocation caused by the coronavirus (COVID-19) pandemic, to provide permanent resources to support economic resiliency, and to further the long-term economic adjustment objectives of the region served by this Award.

The RLF capitalized pursuant to this Award may lend to borrowers in the following geographic region: County of Riverside in California.

The Scope of Work for this Award includes administrative and other activities to manage and expedite RLF lending including one or more of the following activities:

- Administration of the RLF and other EDA-funded RLFs managed by Recipient, including advertising the availability of lending, processing loan applications, originating loans, servicing loans, and engaging in loan collection efforts
- Professional services, including legal and accounting services, to update or revise RLF policies, procedures, or standard loan documents
- Required reporting, including audit costs
- Technical assistance to borrowers and prospective borrowers related to loan applications or loan repayment
- Organizational capacity support, including technology costs, training, and personnel costs

ATTACHMENT 2

Project Contact Information

RECIPIENT INFORMATION:

Joaquin Tijerina Regional Manager Phone: 760.863.2529 Email: rmoran@eda.gov	County of Riverside Business and Community Services 1325 Spruce Street, Suite 110 Riverside, CA, 92507
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EDA INFORMATION:

EDA Project Team	Roles and Responsibilities
A.Leonard Smith Regional Director Phone: 206.220.7656 Email: asmith@eda.gov	<u>Grants Officer</u> : Authorized to award, amend, suspend, and terminate financial assistance awards.
CJ Jackson Administrative Director Phone: 206.220.7662 Email: cjackson1@eda.gov	<u>Program Officer</u> : Oversees the programmatic aspects of this Award.
Frank Wessbecher Economic Development Specialist Phone: 206.220.7689 Email: fwessbecher@eda.gov	<u>Project Officer</u> : Responsible for day-to-day administration of this Award; liaises with Recipient and receives all reports and payment requests.

ATTACHMENT 3

Authorized Budget

Budget Category	Amount
Revolving Loan Fund	\$780,000.00
Personnel	\$39,000.00
Fringe	
Travel	
Equipment	
Supplies	
Contractual	
Other	\$39,000.00
Indirect	
Total	\$858,000.00

ATTACHMENT 4

Authorized Staffing Plan

Position	Annual Rate	% of Annual Hours (in decimal)	Annual \$ from Award	Number of Years	Total Cost by Employee
Deputy Director	\$130,000.00	.070	\$9,100.00	2	\$18,200.00
Regional Manager	\$98,571.00	.070	\$6,899.97	2	\$13,799.94
Office Assistant II	\$50,000.00	.070	\$3,500.00	2	\$7,000.00
			\$0.00		\$0.00
			\$0.00		\$0.00
			\$0.00		\$0.00
			\$0.00		\$0.00
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