

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____
_____ as Principal, and
_____ as Surety, are hereby held and firmly
bound unto _____ as OWNER in the penal sum of _____

for payment of which, well and truly to be made, we hereby jointly and severally bind ourselves, successors and assigns.

Signed, this _____ day of _____, 19_____.

The Condition of the above obligation is such that whereas the Principal has submitted to
_____ a certain BID, attached hereto and
hereby made a part hereof to enter into a contract in writing, for the

NOW, THEREFORE,

- (a) If said BID shall be rejected, or
- (b) If said BID shall be accepted and the Principal shall execute and deliver a contract in the Form of Contract attached hereto (properly completed in accordance with said BID) and shall furnish a BOND for his faithful performance of said contract, and for the payment of all persons performing labor or furnishing materials in connection therewith, and shall in all other respects perform the agreement created by the acceptance of said BID,

then, this obligation shall be void, otherwise the same shall remain in force and effect; it being expressly understood and agreed that the liability of the Surety for any and all claims hereunder shall, in no event, exceed the penal amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its BOND shall be in no way impaired or affected by any extension of the time within which the OWNER may accept such BID; and said Surety does hereby waive notice of any such extension.

IN WITNESS WHEREOF, the Principal and the Surety have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereto affixed and these presents to be signed by their proper officers, the day and year first set forth above.

_____ (L.S.)
Principal

Surety

By: _____

IMPORTANT -- Surety companies executing BONDS must appear on the Treasury Department's most current list (circular 570 as amended) and be authorized to transact business in the state where the project is located.

AGREEMENT

THIS AGREEMENT, made this _____ day of _____, 19_____, by
and between _____ (hereinafter called "OWNER"),
(Name of Owner), (an Individual)
and _____ doing business as (an individual,) or (a partnership,) or (a
corporation) hereinafter called "CONTRACTOR".

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned:

1. The CONTRACTOR will commence and complete the construction of _____

2. The CONTRACTOR will furnish all of the material, supplies, tools, equipment, labor and other services necessary for the construction and completion of the PROJECT described herein.
3. The CONTRACTOR will commence the work required by the CONTRACT DOCUMENTS within _____ calendar days after the date of the NOTICE TO PRO-CEED and will complete the same within _____ calendar days unless the period for completion is extended otherwise by the CONTRACT DOCUMENTS.
4. The CONTRACTOR agrees to perform all of the WORK described in the CONTRACT DOCUMENTS and comply with the terms therein for the sum of \$_____, or as shown in the BID schedule.
5. The term "CONTRACT DOCUMENTS" means and includes the following:
 - (A) Advertisement for BIDS
 - (B) Information for BIDDERS
 - (C) BID
 - (D) BID BOND
 - (E) Agreement
 - (F) General Conditions
 - (G) SUPPLEMENTAL GENERAL CONDITIONS
 - (H) Payment BOND
 - (I) Performance BOND
 - (J) NOTICE OF AWARD

(K) NOTICE TO PROCEED

(L) CHANGE ORDER

(M) DRAWINGS prepared by _____ numbered _____
_____ through _____, and dated _____, 19____

(N) SPECIFICATIONS prepared or issued by _____

dated _____, 19____

(O) ADDENDA:

No. _____, dated _____, 19____

6. The OWNER will pay to the CONTRACTOR in the manner and at such times as set forth in the General Conditions such amounts as required by the CONTRACT DOCUMENTS.

7. This Agreement shall be binding upon all parties hereto and their respective heirs, executors, administrators, successors, and assigns.

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed by their duly authorized officials, this Agreement in (_____) each of which shall be deemed
(Number of Copies)
an original on the date first above written.

OWNER:

BY _____

Name _____

(Please Type)

Title _____

(SEAL)

ATTEST:

Name _____
(Please Type)

Title _____

CONTRACTOR:

BY _____

Name _____
(Please Type)

Address _____

(SEAL)

ATTEST:

Name _____
(Please Type)

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal, and

(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of _____

_____ Dollars, (\$ _____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 19____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said contract during the original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and during the one year guaranty period, and if he shall satisfy all claims and demands incurred under such contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each
(Number)
one of which shall be deemed an original, this the _____ day of _____,
19_____.

ATTEST:

Principal
By _____ (s)
Principal Secretary

(SEAL)

(Witness as to Principal) _____
(Address)

(Address) _____
Surety

ATTEST:

Surety Secretary

(SEAL)

(Witness as to Surety) By _____
Attorney-in-Fact

(Address) _____
(Address)

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and must be authorized to transact business in the state where the PROJECT is located.

PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS: that

(Name of Contractor)

(Address of Contractor)

a _____, hereinafter called Principal, and

(Corporation, Partnership, or Individual)

(Name of Surety)

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto _____

(Name of Owner)

(Address of Owner)

hereinafter called OWNER, in the penal sum of _____

_____ Dollars, (\$ _____)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain contract with the OWNER, dated the _____ day of _____, 19 ____, a copy of which is hereto attached and made a part hereof for the construction of:

NOW THEREFORE, if the Principal shall promptly make payments to all persons, firms, SUBCONTRACTORS, and corporations furnishing materials for or performing labor in the prosecution of the WORK provided for in such contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED FURTHER, that the said surety, for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the contract or to the WORK to be performed thereunder or the SPECIFICATIONS accompanying the same shall in any way affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the contract or to the WORK or to the SPECIFICATIONS.

PROVIDED, FURTHER, that no final settlement between the OWNER and the CON-TRACTOR shall abridge the right of any beneficiary hereunder, whose claim may be unsatisfied.

IN WITNESS WHEREOF, this instrument is executed in _____ counterparts, each
(Number)
one of which shall be deemed an original, this the _____ day of _____,
19_____.

ATTEST:

Principal

(SEAL)

By _____(s)
Principal Secretary

(Address)

(Witness as to Principal)

(Address)

Surety

ATTEST:

By _____
Attorney-in-Fact

(Witness as to Surety)

Address

(Address)

NOTE: Date of BOND must not be prior to date of Contract.
If CONTRACTOR is Partnership, all partners should execute BOND.

IMPORTANT: Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and must be authorized to transact business in the state where the PROJECT is located.

General Conditions

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1. Definitions

1.1 Wherever used in the CONTRACT DOCUMENTS, the following terms shall have the meanings indicated which shall be applicable to both the singular and plural thereof:

1.2 ADDENDA—Written or graphic instruments issued prior to the execution of the Agreement which modify or interpret the CONTRACT DOCUMENTS, DRAWINGS and SPECIFICATIONS, by additions, deletions, clarifications or corrections.

1.3 BID—The offer or proposal of the BIDDER submitted on the prescribed form setting forth the prices for the WORK to be performed.

1.4 BIDDER—Any person, firm or corporation submitting a BID for the WORK.

1.5 BONDS—Bid, Performance, and Payment Bonds and other instruments of security, furnished by the CONTRACTOR and his surety in accordance with the CONTRACT DOCUMENTS.

1.6 CHANGE ORDER—A written order to the CONTRACTOR authorizing an addition, deletion or revision in the WORK within the general scope of the CONTRACT DOCUMENTS, or authorizing an adjustment in the CONTRACT PRICE or CONTRACT TIME.

1.7 CONTRACT DOCUMENTS—The contract, including Advertisement For Bids, Information for Bidders, BID, Bid Bond, Agreement, Payment Bond, Performance Bond, NOTICE OF AWARD, NOTICE TO PROCEED, CHANGE ORDER, DRAWINGS, SPECIFICATIONS, and ADDENDA.

1.8 CONTRACT PRICE—The total monies payable to the CONTRACTOR under the terms and conditions of the CONTRACT DOCUMENTS.

1.9 CONTRACT TIME—The number of calendar days stated in the CONTRACT DOCUMENTS for the completion of the WORK.

1.10 CONTRACTOR—The person, firm or corporation with whom the OWNER has executed the Agreement.

1.11 DRAWINGS—The part of the CONTRACT DOCUMENTS which show the characteristics and scope of the WORK to be performed and which have been prepared or approved by the ENGINEER.

1.12 ENGINEER—The person, firm or corporation named as such in the CONTRACT DOCUMENTS.

1.13 FIELD ORDER—A written order effecting a change in the WORK not involving an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, issued by the ENGINEER to the CONTRACTOR during construction.

1.14 NOTICE OF AWARD—The written notice of the acceptance of the BID from the OWNER to the successful BIDDER.

1.15 NOTICE TO PROCEED—Written communication issued by the OWNER to the CONTRACTOR authorizing him to proceed with the WORK and establishing the date of commencement of the WORK.

1.16 OWNER—A public or quasi-public body or authority, corporation, association, partnership, or individual for whom the WORK is to be performed.

1.17 PROJECT—The undertaking to be performed as provided in the CONTRACT DOCUMENTS.

1.18 RESIDENT PROJECT REPRESENTATIVE—The authorized representative of the OWNER who is assigned to the PROJECT site or any part thereof.

1.19 SHOP DRAWINGS—All drawings, diagrams, illustrations, brochures, schedules and other data which are prepared by the CONTRACTOR, a SUBCONTRACTOR, manufacturer, SUPPLIER or distributor, which illustrate how specific portions of the WORK shall be fabricated or installed.

1.20 SPECIFICATIONS—A part of the CONTRACT DOCUMENTS consisting of written descriptions of a technical nature of materials, equipment, construction systems, standards and workmanship.

1.21 SUBCONTRACTOR—An individual, firm or corporation having a direct contract with the CONTRACTOR or with any other SUBCONTRACTOR for the performance of a part of the work at the site.

1.22 SUBSTANTIAL COMPLETION—That date as certified by the ENGINEER when the construction of the PROJECT or a specified part thereof is sufficiently completed, in accordance with the CONTRACT DOCUMENTS, so that the PROJECT or specified part can be utilized for the purposes for which it is intended.

1.23 SUPPLEMENTAL GENERAL CONDITIONS—Modifications to General Conditions required by a Federal agency for participation in the PROJECT and approved by the agency in writing prior to inclusion in the CONTRACT DOCUMENTS, or such requirements that may be imposed by applicable state laws.

1.24 SUPPLIER—Any person or organization who supplies materials or

equipment for the WORK, including that fabricated to a special design, but who does not perform labor at the site.

1.25 WORK—All labor necessary to produce the construction required by the CONTRACT DOCUMENTS, and all materials and equipment incorporated or to be incorporated in the PROJECT.

1.26 WRITTEN NOTICE—Any notice to any party of the Agreement relative to any part of this Agreement in writing and considered delivered and the service thereof completed, when posted by certified or registered mail to the said party at his last given address, or delivered in person to said party or his authorized representative on the WORK.

2. Additional Instructions and Detail Drawings

2.1 The CONTRACTOR may be furnished additional instructions and detail drawings, by the ENGINEER, as necessary to carry out the WORK required by the CONTRACT DOCUMENTS.

2.2 The additional drawings and instruction thus supplied will become a part of the CONTRACT DOCUMENTS. The CONTRACTOR shall carry out the WORK in accordance with the additional detail drawings and instructions.

3. Schedules, Reports and Records

3.1 The CONTRACTOR shall submit to the OWNER such schedule of quantities and costs, progress schedules, payrolls, reports, estimates, records and other data where applicable as are required by the CONTRACT DOCUMENTS for the WORK to be performed.

3.2 Prior to the first partial payment estimate the CONTRACTOR shall submit construction progress schedules showing the order in which he proposes to carry on the WORK, including dates at which he will start the various parts of the WORK, estimated date of completion of each part and, as applicable:

3.2.1 The dates at which special detail drawings will be required; and

3.2.2 Respective dates for submission of SHOP DRAWINGS, the beginning of manufacture, the testing and the installation of materials, supplies and equipment.

3.3 The CONTRACTOR shall also submit a schedule of payments that he anticipates he will earn during the course of the WORK.

4. Drawings and Specifications

4.1 The intent of the DRAWINGS and SPECIFICATIONS is that the CONTRACTOR shall furnish all labor, materials, tools, equipment, and transportation necessary for the proper execution of the WORK in accordance with the CONTRACT DOCUMENTS and all incidental work necessary to complete the PROJECT in an acceptable manner, ready for use, occupancy or operation by the OWNER.

4.2 In case of conflict between the DRAWINGS and SPECIFICATIONS, the SPECIFICATIONS shall govern. Figure dimensions on DRAWINGS shall govern over scale dimensions, and detailed DRAWINGS shall govern over general DRAWINGS.

4.3 Any discrepancies found between the DRAWINGS and SPECIFICATIONS and site

conditions or any inconsistencies or ambiguities in the DRAWINGS or SPECIFICATIONS shall be immediately reported to the ENGINEER, in writing, who shall promptly correct such inconsistencies or ambiguities in writing. WORK done by the CONTRACTOR after his discovery of such discrepancies, inconsistencies or ambiguities shall be done at the CONTRACTOR'S risk.

5. Shop Drawings

5.1 The CONTRACTOR shall provide SHOP DRAWINGS as may be necessary for the prosecution of the WORK as required by the CONTRACT DOCUMENTS. The ENGINEER shall promptly review all SHOP DRAWINGS. The ENGINEER'S approval of any SHOP DRAWING shall not release the CONTRACTOR from responsibility for deviations from the CONTRACT DOCUMENTS. The approval of any SHOP DRAWING which substantially deviates from the requirement of the CONTRACT DOCUMENTS shall be evidenced by a CHANGE ORDER.

5.2 When submitted for the ENGINEER'S review, SHOP DRAWINGS shall bear the CONTRACTOR'S certification that he has reviewed, checked and approved the SHOP DRAWINGS and that they are in conformance with the requirements of the CONTRACT DOCUMENTS.

5.3 Portions of the WORK requiring a SHOP DRAWING or sample submission shall not begin until the SHOP DRAWING or submission has been approved by the ENGINEER. A copy of each approved SHOP DRAWING and each approved sample shall be kept in good order by the CONTRACTOR at the site and shall be available to the ENGINEER.

6. Materials, Services and Facilities

6.1 It is understood that, except as otherwise specifically stated in the CONTRACT DOCUMENTS, the CONTRACTOR shall provide and pay for all materials, labor, tools, equipment, water, light, power, transportation, supervision, temporary construction of any nature, and all other services and facilities of any nature whatsoever necessary to execute, complete, and deliver the WORK within the specified time.

6.2 Materials and equipment shall be so stored as to insure the preservation of their quality and fitness for the WORK. Stored materials and equipment to be incorporated in the WORK shall be located so as to facilitate prompt inspection.

6.3 Manufactured articles, materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned as directed by the manufacturer.

6.4 Materials, supplies and equipment shall be in accordance with samples submitted by the CONTRACTOR and approved by the ENGINEER.

6.5 Materials, supplies or equipment to be incorporated into the WORK shall not be purchased by the CONTRACTOR or the SUBCONTRACTOR subject to a chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller.

7. Inspection and Testing

7.1 All materials and equipment used in the construction of the PROJECT shall be subject to adequate inspection and testing in accordance with generally accepted standards, as required and defined in the CONTRACT DOCUMENTS.

7.2 The OWNER shall provide all inspection and testing services not required by the CONTRACT DOCUMENTS.

7.3 The CONTRACTOR shall provide at his expense the testing and inspection services required by the CONTRACT DOCUMENTS.

7.4 If the CONTRACT DOCUMENTS, laws, ordinances, rules, regulations or orders of any public authority having jurisdiction require any WORK to specifically be inspected, tested, or approved by someone other than the CONTRACTOR, the CONTRACTOR will give the ENGINEER timely notice of readiness. The CONTRACTOR will then furnish the ENGINEER the required certificates of inspection, testing or approval.

7.5 Inspections, tests or approvals by the engineer or others shall not relieve the CONTRACTOR from his obligations to perform the WORK in accordance with the requirements of the CONTRACT DOCUMENTS.

7.6 The ENGINEER and his representatives will at all times have access to the WORK. In addition, authorized representatives and agents of any participating Federal or state agency shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records. The CONTRACTOR will provide proper facilities for such access and observation of the WORK and also for any inspection, or testing thereof.

7.7 If any WORK is covered contrary to the written instructions of the ENGINEER it must, if requested by the ENGINEER, be uncovered for his observation and replaced at the CONTRACTOR'S expense.

7.8 If the ENGINEER considers it necessary or advisable that covered WORK be inspected or tested by others, the CONTRACTOR, at the ENGINEER'S request, will uncover, expose or otherwise make available for observation, inspection or testing as the ENGINEER may require, that portion of the WORK in question, furnishing all necessary labor, materials, tools, and equipment. If it is found that such WORK is defective, the CONTRACTOR will bear all the expenses of such uncovering, exposure, observation, inspection and testing and of satisfactory reconstruction. If, however, such WORK is not found to be defective, the CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to such uncovering, exposure, observation, inspection, testing and reconstruction and an appropriate CHANGE ORDER shall be issued.

8. Substitutions

8.1 Whenever a material, article or piece of equipment is identified on the DRAWINGS or SPECIFICATIONS by reference to brand name or catalogue number, it shall be

understood that this is referenced for the purpose of defining the performance or other salient requirements and that other products of equal capacities, quality and function shall be considered. The CONTRACTOR may recommend the substitution of a material, article, or piece of equipment of equal substance and function for those referred to in the CONTRACT DOCUMENTS by reference to brand name or catalogue number, and if, in the opinion of the ENGINEER, such material, article, or piece of equipment is of equal substance and function to that specified, the ENGINEER may approve its substitution and use by the CONTRACTOR. Any cost differential shall be deductible from the CONTRACT PRICE and the CONTRACT DOCUMENTS shall be appropriately modified by CHANGE ORDER. The CONTRACTOR warrants that if substitutes are approved, no major changes in the function or general design of the PROJECT will result. Incidental changes or extra component parts required to accommodate the substitute will be made by the CONTRACTOR without a change in the CONTRACT PRICE or CONTRACT TIME.

9. Patents

9.1 The CONTRACTOR shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and save the OWNER harmless from loss on account thereof, except that the OWNER shall be responsible for any such loss when a particular process, design, or the product of a particular manufacturer or manufacturers is specified, however if the CONTRACTOR has reason to believe that the design, process or product specified is an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the ENGINEER.

10. Surveys, Permits, Regulations

10.1 The OWNER shall furnish all boundary surveys and establish all base lines for locating the principal component parts of the WORK together with a suitable number of bench marks adjacent to the WORK as shown in the CONTRACT DOCUMENTS. From the information provided by the OWNER, unless otherwise specified in the CONTRACT DOCUMENTS, the CONTRACTOR shall develop and make all detail surveys needed for construction such as slope stakes, batter boards, stakes for pile locations and other working points, lines, elevations and cut sheets.

10.2 The CONTRACTOR shall carefully preserve bench marks, reference points and stakes and, in case of willful or careless destruction, he shall be charged with the resulting expense and shall be responsible for any mistakes that may be caused by their unnecessary loss or disturbance.

10.3 Permits and licenses of a temporary nature necessary for the prosecution of the WORK shall be secured and paid for by the CONTRACTOR unless otherwise stated in the SUPPLEMENTAL GENERAL CONDITIONS. Permits, licenses and easements for permanent structures or permanent changes in existing facilities shall be secured and paid for by the OWNER, unless otherwise specified. The CONTRACTOR shall give all notices and

comply with all laws, ordinances, rules and regulations bearing on the conduct of the WORK as drawn and specified. If the CONTRACTOR observes that the CONTRACT DOCUMENTS are at variance therewith, he shall promptly notify the ENGINEER in writing, and any necessary changes shall be adjusted as provided in Section 13, CHANGES IN THE WORK.

11. Protection of Work, Property and Persons

11.1 The CONTRACTOR will be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the WORK. He will take all necessary precautions for the safety of, and will provide the necessary protection to prevent damage, injury or loss to all employees on the WORK and other persons who may be affected thereby, all the WORK and all materials or equipment to be incorporated therein, whether in storage on or off the site, and other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

11.2 The CONTRACTOR will comply with all applicable laws, ordinances, rules, regulations and orders of any public body having jurisdiction. He will erect and maintain, as required by the conditions and progress of the WORK, all necessary safeguards for safety and protection. He will notify owners of adjacent utilities when prosecution of the WORK may affect them. The CONTRACTOR will remedy all damage, injury or loss to any property caused directly or indirectly, in whole or in part, by the CONTRACTOR, any SUBCONTRACTOR or anyone directly or indirectly employed by any of them or anyone for whose acts any of them be liable, except damage or loss attributable to the fault of the CONTRACT DOCUMENTS or to the acts or omissions of the OWNER or the ENGINEER or anyone employed by either of them or anyone for whose acts either of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of the CONTRACTOR.

11.3 In emergencies affecting the safety of persons or the WORK or property at the site or adjacent thereto, the CONTRACTOR, without special instruction or authorization from the ENGINEER or OWNER, shall act to prevent threatened damage, injury or loss. He will give the ENGINEER prompt WRITTEN NOTICE of any significant changes in the WORK or deviations from the CONTRACT DOCUMENTS caused thereby, and a CHANGE ORDER shall thereupon be issued covering the changes and deviations involved.

12. Supervision by Contractor

12.1 The CONTRACTOR will supervise and direct the WORK. He will be solely responsible for the means, methods, techniques, sequences and procedures of construction. The CONTRACTOR will employ and maintain on the WORK a qualified supervisor or superintendent who shall have been designated in writing by the CONTRACTOR as the CONTRACTOR'S representative at the site. The supervisor

shall have full authority to act on behalf of the CONTRACTOR and all communications given to the supervisor shall be as binding as if given to the CONTRACTOR. The supervisor shall be present on the site at all times as required to perform adequate supervision and coordination of the WORK.

13. Changes in the Work

13.1 The OWNER may at any time, as the need arises, order changes within the scope of the WORK without invalidating the Agreement. If such changes increase or decrease the amount due under the CONTRACT DOCUMENTS, or in the time required for performance of the WORK, an equitable adjustment shall be authorized by CHANGE ORDER.

13.2 The ENGINEER, also, may at any time, by issuing a FIELD ORDER, make changes in the details of the WORK. The CONTRACTOR shall proceed with the performance of any changes in the WORK so ordered by the ENGINEER unless the CONTRACTOR believes that such FIELD ORDER entitles him to a change in CONTRACT PRICE or TIME, or both, in which event he shall give the ENGINEER WRITTEN NOTICE thereof within seven (7) days after the receipt of the ordered change. Thereafter the CONTRACTOR shall document the basis for the change in CONTRACT PRICE or TIME within thirty (30) days. The CONTRACTOR shall not execute such changes pending the receipt of an executed CHANGE ORDER or further instruction from the OWNER.

14. Changes in Contract Price

14.1 The CONTRACT PRICE may be changed only by a CHANGE ORDER. The value of any WORK covered by a CHANGE ORDER or of any claim for increase or decrease in the CONTRACT PRICE shall be determined by one or more of the following methods in the order of precedence listed below:

- (a) Unit prices previously approved.
- (b) An agreed lump sum.

(c) The actual cost for labor, direct overhead, materials, supplies, equipment, and other services necessary to complete the work. In addition there shall be added an amount to be agreed upon but not to exceed fifteen (15) percent of the actual cost of the WORK to cover the cost of general overhead and profit.

15. Time For Completion and Liquidated Damages

15.1 The date of beginning and the time for completion of the WORK are essential conditions of the CONTRACT DOCUMENTS and the WORK embraced shall be commenced on a date specified in the NOTICE TO PROCEED.

15.2 The CONTRACTOR will proceed with the WORK at such rate of progress to insure full completion within the CONTRACT TIME. It is expressly understood and agreed, by and between the CONTRACTOR and the OWNER, that the CONTRACT TIME for the completion of the WORK described herein is a reasonable time, taking into consideration the average climatic and economic conditions and other factors prevailing in the locality of the WORK.

15.3 If the CONTRACTOR shall fail to complete the WORK within the CONTRACT TIME, or extension of time granted by the OWNER, then the CONTRACTOR will pay to the OWNER the amount for liquidated damages as specified in the BID for each calendar day that the CONTRACTOR shall be in default after the time stipulated in the CONTRACT DOCUMENTS.

15.4 The CONTRACTOR shall not be charged with liquidated damages or any excess cost when the delay in completion of the WORK is due to the following, and the CONTRACTOR has promptly given WRITTEN NOTICE of such delay to the OWNER or ENGINEER.

15.4.1 To any preference, priority or allocation order duly issued by the OWNER.

15.4.2 To unforeseeable causes beyond the control and without the fault or negligence of the CONTRACTOR, including but not restricted to, acts of God, or of the public enemy, acts of the OWNER, acts of another CONTRACTOR in the performance of a contract with the OWNER, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and abnormal and unforeseeable weather: and

15.4.3 To any delays of SUBCONTRACTORS occasioned by any of the causes specified in paragraphs 15.4.1 and 15.4.2 of this article.

16. Correction of Work

16.1 The CONTRACTOR shall promptly remove from the premises all WORK rejected by the ENGINEER for failure to comply with the CONTRACT DOCUMENTS, whether incorporated in the construction or not, and the CONTRACTOR shall promptly replace and reexecute the WORK in accordance with the CONTRACT DOCUMENTS and without expense to the OWNER and shall bear the expense of making good all WORK of other CONTRACTORS destroyed or damaged by such removal or replacement.

16.2 All removal and replacement WORK shall be done at the CONTRACTOR'S expense. If the CONTRACTOR does not take action to remove such rejected WORK within ten (10) days after receipt of WRITTEN NOTICE, the OWNER may remove such WORK and store the materials at the expense of the CONTRACTOR.

17. Subsurface Conditions

17.1 The CONTRACTOR shall promptly, and before such conditions are disturbed, except in the event of an emergency, notify the OWNER by WRITTEN NOTICE of:

17.1.1 Subsurface or latent physical conditions at the site differing materially from those indicated in the CONTRACT DOCUMENTS: or

17.1.2 Unknown physical conditions at the site, of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in WORK of the character provided for in the CONTRACT DOCUMENTS.

17.2 The OWNER shall promptly investigate the conditions, and if he finds that such conditions do so materially differ and cause an increase or decrease in the cost of, or in the time required for, performance of the WORK, an equitable adjustment shall be made and the CONTRACT DOCUMENTS

shall be modified by a CHANGE ORDER. Any claim of the CONTRACTOR for adjustment hereunder shall not be allowed unless he has given the required WRITTEN NOTICE; provided that the OWNER may, if he determines the facts so justify, consider and adjust any such claims asserted before the date of final payment.

18. Suspension of Work, Termination and Delay

18.1 The OWNER may suspend the WORK or any portion thereof for a period of not more than ninety days or such further time as agreed upon by the CONTRACTOR by WRITTEN NOTICE to the CONTRACTOR and the ENGINEER which notice shall fix the date on which WORK shall be resumed. The CONTRACTOR will resume that WORK on the date so fixed. The CONTRACTOR will be allowed an increase in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, directly attributable to any suspension.

18.2 If the CONTRACTOR is adjudged as bankrupt or insolvent, or if he makes a general assignment for the benefit of his creditors, or if a trustee or receiver is appointed for the CONTRACTOR or for any of his property, or if he files a petition to take advantage of any debtor's act, or to reorganize under the bankruptcy or applicable laws, or if he repeatedly fails to supply sufficient skilled workmen or suitable materials or equipment, or if he repeatedly fails to make prompt payments to SUBCONTRACTORS or for labor, materials or equipment or if he disregards laws, ordinances, rules, regulations or orders of any public body having jurisdiction of the WORK or if he disregards the authority of the ENGINEER, or if he otherwise violates any provision of the CONTRACT DOCUMENTS, then the OWNER may, without prejudice to any other right or remedy and after giving the CONTRACTOR and his surety a minimum of ten (10) days from delivery of a WRITTEN NOTICE, terminate the services of the CONTRACTOR and take possession of the PROJECT and of all materials, equipment, tools, construction equipment and machinery, thereon owned by the CONTRACTOR, and finish the WORK by whatever method he may deem expedient. In such case the CONTRACTOR shall not be entitled to receive any further payment until the WORK is finished. If the unpaid balance of the CONTRACT PRICE exceeds the direct and indirect costs of completing the PROJECT, including compensation for additional professional services, such excess SHALL BE PAID TO THE CONTRACTOR. If such costs exceed such unpaid balance, the CONTRACTOR will pay the difference to the OWNER. Such costs incurred by the OWNER will be determined by the ENGINEER and incorporated in a CHANGE ORDER.

18.3 Where the CONTRACTOR'S services have been so terminated by the OWNER, said termination shall not affect any right of the OWNER against the CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of monies by the OWNER due the CONTRACTOR will not release the CONTRACTOR from compliance with the CONTRACT DOCUMENTS.

18.4 After ten (10) days from delivery of a WRITTEN NOTICE to the CONTRACTOR

and the ENGINEER, the OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the PROJECT and terminate the Contract. In such case, the CONTRACTOR shall be paid for all WORK executed and any expense sustained plus reasonable profit.

18.5 If, through no act or fault of the CONTRACTOR, the WORK is suspended for a period of more than ninety (90) days by the OWNER or under an order of court or other public authority, or the ENGINEER fails to act on any request for payment within thirty (30) days after it is submitted or the OWNER fails to pay the CONTRACTOR substantially the sum approved by the ENGINEER or awarded by arbitrators within thirty (30) days of its approval and presentation, then the CONTRACTOR may, after ten (10) days from delivery of a WRITTEN NOTICE to the OWNER and the ENGINEER, terminate the CONTRACT and recover from the OWNER payment for all WORK executed and all expenses sustained. In addition and in lieu of terminating the CONTRACT, if the ENGINEER has failed to act on a request for payment or if the OWNER has failed to make any payment as aforesaid, the CONTRACTOR may upon ten (10) days written notice to the OWNER and the ENGINEER stop the WORK until he has been paid all amounts then due, in which event and upon resumption of the WORK, CHANGE ORDERS shall be issued for adjusting the CONTRACT PRICE or extending the CONTRACT TIME or both to compensate for the costs and delays attributable to the stoppage of the WORK.

18.6 If the performance of all or any portion of the WORK is suspended, delayed, or interrupted as a result of a failure of the OWNER or ENGINEER to act within the time specified in the CONTRACT DOCUMENTS, or if no time is specified, within a reasonable time, an adjustment in the CONTRACT PRICE or an extension of the CONTRACT TIME, or both, shall be made by CHANGE ORDER to compensate the CONTRACTOR for the costs and delays necessarily caused by the failure of the OWNER or ENGINEER.

19. Payments to Contractor

19.1 At least ten (10) days before each progress payment falls due (but not more often than once a month), the CONTRACTOR will submit to the ENGINEER a partial payment estimate filled out and signed by the CONTRACTOR covering the WORK performed during the period covered by the partial payment estimate and supported by such data as the ENGINEER may reasonably require. If payment is requested on the basis of materials and equipment not incorporated in the WORK but delivered and suitably stored at or near the site, the partial payment estimate shall also be accompanied by such supporting data, satisfactory to the OWNER, as will establish the OWNER'S title to the material and equipment and protect his interest therein, including applicable insurance. The ENGINEER will, within ten (10) days after receipt of each partial payment estimate, either indicate in writing his approval of payment and present the partial payment estimate to the OWNER, or return the partial payment estimate to the CONTRACTOR indicating in writing his reasons for refusing to approve payment. In

the latter case, the CONTRACTOR may make the necessary corrections and resubmit the partial payment estimate. The OWNER will, within ten (10) days of presentation to him of an approved partial payment estimate, pay the CONTRACTOR a progress payment on the basis of the approved partial payment estimate. The OWNER shall retain ten (10) percent of the amount of each payment until final completion and acceptance of all work covered by the CONTRACT DOCUMENTS. The OWNER at any time, however, after fifty (50) percent of the WORK has been completed, if he finds that satisfactory progress is being made, shall reduce retainage to five (5%) percent on the current and remaining estimates. When the WORK is substantially complete (operational or beneficial occupancy), the retained amount may be further reduced below five (5) percent to only that amount necessary to assure completion. On completion and acceptance of a part of the WORK on which the price is stated separately in the CONTRACT DOCUMENTS, payment may be made in full, including retained percentages, less authorized deductions.

19.2 The request for payment may also include an allowance for the cost of such major materials and equipment which are suitably, stored either at or near the site.

19.3 Prior to SUBSTANTIAL COMPLETION, the OWNER, with the approval of the ENGINEER and with the concurrence of the CONTRACTOR, may use any completed or substantially completed portions of the WORK. Such use shall not constitute an acceptance of such portions of the WORK.

19.4 The OWNER shall have the right to enter the premises for the purpose of doing work not covered by the CONTRACT DOCUMENTS. This provision shall not be construed as relieving the CONTRACTOR of the sole responsibility for the care and protection of the WORK, or the restoration of any damaged WORK except such as may be caused by agents or employees of the OWNER.

19.5 Upon completion and acceptance of the WORK, the ENGINEER shall issue a certificate attached to the final payment request that the WORK has been accepted by him under the conditions of the CONTRACT DOCUMENTS. The entire balance found to be due the CONTRACTOR, including the retained percentages, but except such sums as may be lawfully retained by the OWNER, shall be paid to the CONTRACTOR within thirty (30) days of completion and acceptance of the WORK.

19.6 The CONTRACTOR will indemnify and save the OWNER or the OWNER'S agents harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. If the CONTRACTOR fails to do so the OWNER may, after having notified the

CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed, in accordance, with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, his Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

19.7 If the OWNER fails to make payment thirty (30) days after approval by the ENGINEER, in addition to other remedies available to the CONTRACTOR, there shall be added to each such payment interest at the maximum legal rate commencing on the first day after said payment is due and continuing until the payment is received by the CONTRACTOR.

20. Acceptance of Final Payment as Release

20.1 The acceptance by the CONTRACTOR of final payment shall be and shall operate as a release to the OWNER of all claims and all liability to the CONTRACTOR other than claims in stated amounts as may be specifically excepted by the CONTRACTOR for all things done or furnished in connection with this WORK and for every act and neglect of the OWNER and others relating to or arising out of this WORK. Any payment, however, final or otherwise, shall not release the CONTRACTOR or his sureties from any obligations under the CONTRACT DOCUMENTS or the Performance BOND and Payment BONDS.

21. Insurance

21.1 The CONTRACTOR shall purchase and maintain such insurance as will protect him from claims set forth below which may arise out of or result from the CONTRACTOR'S execution of the WORK, whether such execution be by himself or by any SUBCONTRACTOR or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

21.1.1 Claims under workmen's compensation, disability benefit and other similar employee benefit acts;

21.1.2 Claims for damages because of bodily injury, occupational sickness or disease, or death of his employees;

21.1.3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than his employees;

21.1.4 Claims for damages insured by usual personal injury liability coverage which are sustained (1) by any person as a result of an offense directly or indirectly related to the employment of such person by the CONTRACTOR, or (2) by any other person; and

21.1.5 Claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom.

21.2 Certificates of Insurance acceptable to the OWNER shall be filed with the OWNER prior to commencement of the WORK. These Certificates shall contain a provision that coverages afforded under the policies will not be canceled unless at least fifteen (15) days prior WRITTEN NOTICE has been given to the OWNER.

21.3 The CONTRACTOR shall procure and maintain, at his own expense, during the CONTRACT TIME, liability insurance as hereinafter specified;

21.3.1 CONTRACTOR'S General Public Liability and Property Damage Insurance including vehicle coverage issued to the CONTRACTOR and protecting him from all claims for personal injury, including death, and all claims for destruction of or damage to property, arising out of or in connection with any operations under the CONTRACT DOCUMENTS, whether such operations be by himself or by any SUBCONTRACTOR under him, or anyone directly or indirectly employed by the CONTRACTOR or by a SUBCONTRACTOR under him. Insurance shall be written with a limit of liability of not less than \$500,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$500,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$200,000 for all property damage sustained by any one person in any one accident; and a limit of liability of not less than \$200,000 aggregate for any such damage sustained by two or more persons in any one accident.

21.3.2 The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTORS as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the CONTRACT DOCUMENTS to fully complete the PROJECT.

21.4 The CONTRACTOR shall procure and maintain at his own expense, during the CONTRACT TIME, in accordance with the provisions of the laws of the state in which the work is performed, Workmen's Compensation Insurance, including occupational disease provisions, for all of his employees at the site of the PROJECT and in case any work is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Workmen's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Workmen's Compensation statute, the CONTRACTOR shall provide, and shall cause each SUBCONTRACTOR to provide, adequate and suitable insurance for

the protection of his employees not otherwise protected.

21.5 The CONTRACTOR shall secure, if applicable, "All Risk" type Builder's Risk Insurance for WORK to be performed. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the CONTRACT PRICE totaled in the BID. The policy shall cover not less than the losses due to fire, explosion, hail, lightning, vandalism, malicious mischief, wind, collapse, riot, aircraft, and smoke during the CONTRACT TIME, and until the WORK is accepted by the OWNER. The policy shall name as the insured the CONTRACTOR, the ENGINEER, and the OWNER.

22. Contract Security

22.1 The CONTRACTOR shall within ten (10) days after the receipt of the NOTICE OF AWARD furnish the OWNER with a Performance Bond and a Payment Bond in penal sums equal to the amount of the CONTRACT PRICE, conditioned upon the performance by the CONTRACTOR of all undertakings, covenants, terms, conditions and agreements of the CONTRACT DOCUMENTS, and upon the prompt payment by the CONTRACTOR to all persons supplying labor and materials in the prosecution of the WORK provided by the CONTRACT DOCUMENTS. Such BONDS shall be executed by the CONTRACTOR and a corporate bonding company licensed to transact such business in the state in which the WORK is to be performed and named on the current list of "Surety Companies Acceptable on Federal Bonds" as published in the Treasury Department Circular Number 570. The expense of these BONDS shall be borne by the CONTRACTOR. If at any time a surety on any such BOND is declared a bankrupt or loses its right to do business in the state in which the WORK is to be performed or is removed from the list of Surety Companies accepted on Federal BONDS, CONTRACTOR shall within ten (10) days after notice from the OWNER to do so, substitute an acceptable BOND (or BONDS) in such form and sum and signed by such other surety or sureties as may be satisfactory to the OWNER. The premiums on such BOND shall be paid by the CONTRACTOR. No further payments shall be deemed due nor shall be made until the new surety or sureties shall have furnished an acceptable BOND to the OWNER.

23. Assignments

23.1 Neither the CONTRACTOR nor the OWNER shall sell, transfer, assign or otherwise dispose of the Contract or any portion thereof or of his right, title or interest therein, or his obligations thereunder, without written consent of the other party.

24. Indemnification

24.1 The CONTRACTOR will indemnify and hold harmless the OWNER and the ENGINEER and their agents and employees from and against all claims, damages, losses and expenses including attorney's fees arising out of or resulting from the performance of the WORK, provided that any such claims, damage, loss or expense is attributable to bodily injury sickness, disease or death, or to injury to or destruction of

tangible property including the loss of use resulting therefrom; and is caused in whole or in part by any negligent or willful act or omission of the CONTRACTOR, and SUBCONTRACTOR, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

24.2 In any and all claims against the OWNER or the ENGINEER, or any of their agents or employees, by any employee of the CONTRACTOR, any SUBCONTRACTOR, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or any SUBCONTRACTOR under workmen's compensation acts, disability benefit acts or other employee benefits acts.

24.3 The obligation of the CONTRACTOR under this paragraph shall not extend to the liability of the ENGINEER, his agents or employees arising out of the preparation or approval of maps, DRAWINGS, opinions, reports, surveys, CHANGE ORDERS, designs or SPECIFICATIONS.

25. Separate Contracts

25.1 The OWNER reserves the right to let other contracts in connection with this PROJECT. The CONTRACTOR shall afford other CONTRACTORS reasonable opportunity for the introduction and storage of their materials and the execution of their WORK, and shall properly connect and coordinate his WORK with theirs. If the proper execution or results of any part of the CONTRACTOR'S WORK depends upon the WORK of any other CONTRACTOR, the CONTRACTOR shall inspect and promptly report to the ENGINEER any defects in such WORK that render it unsuitable for such proper execution and results.

25.2 The OWNER may perform additional WORK related to the PROJECT by himself, or he may let other contracts containing provisions similar to these. The CONTRACTOR will afford the other CONTRACTORS who are parties to such Contracts (or the OWNER, if he is performing the additional WORK himself), reasonable opportunity for the introduction and storage of materials and equipment and the execution of WORK, and shall properly connect and coordinate his WORK with theirs.

25.3 If the performance of additional WORK by other CONTRACTORS or the OWNER is not noted in the CONTRACT DOCUMENTS prior to the execution of the CONTRACT, written notice thereof shall be given to the CONTRACTOR prior to starting any such additional WORK. If the CONTRACTOR believes that the performance of such additional WORK by the OWNER or others involves him in additional expense or entitles him to an extension of the CONTRACT TIME, he may make a claim therefor as provided in Sections 14 and 15.

26. Subcontracting

26.1 The CONTRACTOR may utilize the services of specialty SUBCONTRACTORS on those parts of the WORK which, under normal contracting practices, are performed by specialty SUBCONTRACTORS.

26.2 The CONTRACTOR shall not award WORK to SUBCONTRACTOR(s), in excess of fifty (50%) percent of the CONTRACT PRICE, without prior written approval of the OWNER.

26.3 The CONTRACTOR shall be fully responsible to the OWNER for the acts and omissions of his SUBCONTRACTORS, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him.

26.4 The CONTRACTOR shall cause appropriate provisions to be inserted in all subcontracts relative to the WORK to bind SUBCONTRACTORS to the CONTRACTOR by the terms of the CONTRACT DOCUMENTS insofar as applicable to the WORK of SUBCONTRACTORS and to give the CONTRACTOR the same power as regards terminating any subcontract that the OWNER may exercise over the CONTRACTOR under any provision of the CONTRACT DOCUMENTS.

26.5 Nothing contained in this CONTRACT shall create any contractual relation between any SUBCONTRACTOR and the OWNER.

27. Engineer's Authority

27.1 The ENGINEER shall act as the OWNER'S representative during the construction period. He shall decide questions which may arise as to quality and acceptability of materials furnished and WORK performed. He shall interpret the intent of the CONTRACT DOCUMENTS in a fair and unbiased manner. The ENGINEER will make visits to the site and determine if the WORK is proceeding in accordance with the CONTRACT DOCUMENTS.

27.2 The CONTRACTOR will be held strictly to the intent of the CONTRACT DOCUMENTS in regard to the quality of materials, workmanship and execution of the WORK. Inspections may be made at the factory or fabrication plant of the source of material supply.

27.3 The ENGINEER will not be responsible for the construction means, controls, techniques, sequences, procedures, or construction safety.

27.4 The ENGINEER shall promptly make decisions relative to interpretation of the CONTRACT DOCUMENTS.

28. Land and Rights-of-Way

28.1 Prior to issuance of NOTICE TO PROCEED, the OWNER shall obtain all land and rights-of-way necessary for carrying out and for the completion of the WORK to be performed pursuant to the CONTRACT DOCUMENTS, unless otherwise mutually agreed.

28.2 The OWNER shall provide to the CONTRACTOR information which delineates and describes the lands owned and rights-of-way acquired.

28.3 The CONTRACTOR shall provide at his own expense and without liability to the OWNER any additional land and access thereto that the CONTRACTOR may desire for temporary construction facilities, or for storage of materials.

29. Guaranty

29.1 The CONTRACTOR shall guarantee all materials and equipment furnished and WORK performed for a period of one (1) year from the date of SUBSTANTIAL COMPLETION. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of SUBSTANTIAL COMPLETION of the system that the completed system is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary by reason of such defects including the repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other WORK that may be made necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost thereby incurred. The Performance BOND shall remain in full force and effect through the guarantee period.

30. Arbitration

30.1 All claims, disputes and other matters in question arising out of, or relating to, the CONTRACT DOCUMENTS or the breach thereof, except for claims which have been waived by the making and acceptance of final payment as provided by Section 20, shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association. This agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

30.2 Notice of the demand for arbitration shall be filed in writing with the other party to the CONTRACT DOCUMENTS and with the American Arbitration Association, and a copy shall be filed with the ENGINEER. Demand for arbitration shall in no event be made on any claim, dispute or other matter in question which would be barred by the applicable statute of limitations.

30.3 The CONTRACTOR will carry on the WORK and maintain the progress schedule during any arbitration proceedings, unless otherwise mutually agreed in writing.

31. Taxes

31.1 The CONTRACTOR will pay all sales, consumer, use and other similar taxes required by the law of the place where the WORK is performed.

NOTICE OF AWARD

To: _____

PROJECT Description: _____

The OWNER has considered the BID submitted by you for the above described WORK in response to its Advertisement for Bids dated _____, 19_____, and information for Bidders.

You are hereby notified that your BID has been accepted for items in the amount of \$ _____.
You are required by the Information for Bidders to execute the Agreement and furnish the required CONTRACTOR'S Performance BOND, Payment BOND and certificates of insurance within ten (10) calendar days from the date of this Notice to you.
If you fail to execute said Agreement and to furnish said BONDS, within ten (10) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your BID as abandoned and as a forfeiture of you BID BOND. The OWNER will be entitled to such rights as may be granted by law.
You are required to return an acknowledged copy of this NOTICE OF AWARD to the OWNER.

Dated this _____ day of _____, 19_____.

Owner
By _____
Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE OF AWARD is hereby acknowledged

by _____,

this the _____ day of _____, 19_____.

By _____

Title _____

NOTICE TO PROCEED

To: _____ Date: _____

Project: _____

You are hereby notified to commence WORK in accordance with the Agreement dated _____, 19____, on or before _____, 19____, and you are to complete the WORK within _____ consecutive calendar days thereafter. The date of completion of all WORK is therefore _____, 19____.

Owner

By _____

Title _____

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged

by _____

this the _____ day of _____, 19____

By _____

Title _____

CHANGE ORDER

Order No. _____

Date: _____

Agreement Date: _____

NAME OF PROJECT: _____

OWNER: _____

CONTRACTOR: _____

The following changes are hereby made to the CONTRACT DOCUMENTS:

Justification:

Change to CONTRACT PRICE:

Original CONTRACT PRICE \$ _____.

Current CONTRACT PRICE adjusted by previous CHANGE ORDER \$ _____

The CONTRACT PRICE due to this CHANGE ORDER will be (increased) (decreased)

by: \$ _____.

The new CONTRACT PRICE including this CHANGE ORDER will be \$ _____.

Change to CONTRACT TIME:

The CONTRACT TIME will be (increased) (decreased) by _____ calendar days.

The date for completion of all work will be _____ (Date).

Approvals Required:

To be effective this Order must be approved by the Federal agency if it changes the scope or objective of the PROJECT, or as may otherwise be required by the SUPPLEMENTAL GENERAL CONDITIONS.

Requested by: _____

Recommended by: _____

Ordered by: _____

Accepted by: _____

Federal Agency Approval (where applicable) _____

Exhibit G—[Reserved]

Exhibit H—[Reserved]

SAMPLE**QUARTERLY PERFORMANCE REPORT**

This report is for:
 EDA Project No. _____ Date of report preparation: _____
 Period covered by this report: _____ to _____
 Report number _____

Grantee: _____
 Name Address

Grantee's Authorized Representative: _____
 Name

_____ Title

Grantee's Architect/Engineer: _____
 Name

_____ Address

Current status of the project:**YESNO**

- ___ ___ 1. Is the Grantee's share of expected project cost on hand or immediately available? If not, explain in the Narrative section on the next page why funds are not available and of when the funds give an estimate here, _____ of when the funds are expected to be on hand.
- ___ ___ 2. Has all land, rights-of-way, and easements necessary for the project been acquired? If not, explain in the Narrative section on the next page what is causing the delay and give an estimate here, _____ of when the problem will be resolved.
- ___ ___ 3. Are any problems expected in meeting any of the Special Conditions to the EDA Grant Offer? If so, explain in the Narrative section on the next page giving an estimated date for satisfying each Special Condition if a delay is expected.
- ___ ___ 4. The EDA approved date for completion of design is, _____. Is the design completed? If so, give date of completion, _____. If design is not completed, give date here, _____ of expected completion. If expected date is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA.
- ___ ___ 5. The EDA approved date for start of construction is _____. Has construction started? If construction has started, the date was _____. If construction has not started, the estimated date for start of construction is _____. If the expected date is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA.
- ___ ___ 6. The EDA approved date for completion of construction is _____. Is construction complete? If construction is complete, the date of completion was _____. If construction is not complete, the estimated date for completion is _____ and the percent of completion is ____%. If the estimated date for construction completion is later than the EDA approved date, the Grantee will be required to secure a formal time extension from EDA.

If not previously furnished to EDA please include the following date when applicable:

Architect/Engineer Agreement executed: _____
 Design started: _____ Design completed: _____
 Design approved by EDA: _____
 Advertisement for construction bids: _____
 Construction bid opening: _____
 Construction bid award: _____
 Issue of Notice to Proceed: _____
 Construction start: _____

Construction completion: _____
Acceptance of facility by Grantee: _____
Warranty start: _____ Warranty end: _____
Final payment request: _____

NARRATIVE

PROBLEMS BEING EXPERIENCED:

ACTION TAKEN:

ACTION RECOMMENDED:

NOTE: If more space is needed for the above narrative, attach a separate sheet.

SAMPLE

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

ARCHITECT/ENGINEER'S CERTIFICATE

Project No. _____

I, _____, Architect/Engineer for the
_____ certify that the following plans and specifications (check
appropriate item):

Sheets numbered

- Site Plan** _____
- Architectural** _____
- Structural** _____
- Mechanical** _____
- Electrical** _____
- Equipment** _____
- Other (identify)** _____

- (a) Are adequate and suitable for, and are in conformity with, the project contemplated in the approved application.
- (b) Comply with applicable State and local laws, ordinances, and regulations pertaining to standards of construction and safety, and have been approved by:

AUTHORITYDATE OF APPROVAL

Approved:

Architect/Engineer/Owner

License Number Address Date

SAMPLE

Form ED-126 (Rev. 4-4-72)

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION**CERTIFICATE OF GRANTEE/BORROWER'S ATTORNEY**

I, the undersigned, _____, the duly authorized and
acting legal representative of _____ do hereby certify

as follows:

I have examined the attached contracts and surety bonds and the manner of execution thereof, and I am of the opinion that each of the aforesaid agreements has been duly executed by the proper parties thereto acting through their duly authorized representatives; that said representatives have full power and authority to execute said agreements on behalf of the respective parties named thereon; and that the foregoing agreements constitute valid and legally binding obligations upon the parties executing the same in accordance with terms, conditions and provisions thereof.

Date: _____

**Information Normally Required for
EPA/State Certification as to Adequacy of Treatment**

Applicant: _____ EDA Award No.: _____

Contact: _____ Telephone: _____

Project Description:

Sanitary Sewage Contribution

Estimate of flows: _____

Type of sewage: _____

Storm Sewer Contribution

Estimate of flows: _____

Projection of Type of Tenants for Industrial Developments

Type of Tenants: _____

Quantity of flows: _____

Strength of flows: _____

Receiving Sewage Treatment Plant

Name of Receiving Plant: _____

NPDES Number: _____

Design Capacity: _____

Effluent Disposal Capacity: _____

Current Flows: _____

**CORE PERFORMANCE MEASURES REPORT
TITLE I/TITLE IX CONSTRUCTION FACILITIES**

EDA Project No.: _____

IV. OUTCOMES (ACTUAL) REPORTED AT PROJECT COMPLETION AND AT 3 YEARS AND 6 YEARS AFTER PROJECT COMPLETION.

- | | | |
|---|---------------|-----------------|
| 1. Permanent Jobs | Direct | Indirect |
| a. Created: | _____ | _____ |
| b. Retained (saved): | _____ | _____ |
| c. Total jobs: | _____ | _____ |
| d. If you used a multiplier to determine indirect jobs, show the multiplier here: | | (). |

- | | | |
|---|---------------|-----------------|
| 2. Additional dollars invested: | Direct | Indirect |
| a. Private sector: | \$ _____ | \$ _____ |
| b. Local public: | \$ _____ | \$ _____ |
| c. State: | \$ _____ | \$ _____ |
| d. Other Federal: | \$ _____ | \$ _____ |
| e. Totals: | \$ _____ | \$ _____ |
| f. If you used a multiplier to determine indirect investment, show multiplier here: | | (). |

- 3. Increase in Local Real or Business Property Tax Base:**
- a. Enter value of increase in tax base (prior to any abatement): \$ _____
- b. If you used a multiplier to determine increased tax base show multiplier here: ().

4. Local Capacity Anticipated and Actual Results:

Local Capacity	Percent Anticipated:	Actual Results (Scale of 1-10, with 10 being highest):
a. Created infrastructure to support private investment:	_____	_____
b. Created infrastructure to stimulate economic development:	_____	_____
c. Stabilized and maintained the local economic base:	_____	_____
d. Diversified the local economy:	_____	_____
e. Other non-quantifiable benefits	_____	_____
Specify: _____:		
Note: Attach brief explanation of results.		

V. Please submit a good quality photograph of the EDA project and/or businesses assisted.

AUTHORIZED CERTIFYING OFFICIAL

Signature: _____ Date Report Submitted: _____

Typed or Printed Name & Title: _____ Telephone: _____

Instructions for Completion of EDA'S Core Performance Measures Report for Title I/IX Construction Facilities

The instructions below are in outline form and correspond to identical items in the Core Performance Measures Report. Complete the report by filling in the spaces and responding to the questions. If there is not sufficient space on the report for a response, please respond on an attachment to the report. On page one of the Report, indicate the EDA Project Number and the Reporting Period.

Part I: Grantee Organization

1. *Grantee Name:* Enter the legal name of the Grantee.
2. *Address:* Enter the physical address of the Grantee.
3. *Telephone:* Enter the telephone number, including area code, of the Grantee.
4. *Fax:* Enter the facsimile number, including area code, of the Grantee.
5. *E-mail Address:* Enter the Internet address of the Grantee.
6. *Contact Person & Title:* Name the person to contact on matters related to this report. Also, provide the contact person's telephone number, including area code, if different from the Grantee's telephone number.
7. *Project Location:* Enter the county, state and zip code of project location.
8. *GIS Coordinates:* Provide geographic mapping coordinates for project location, if available.

Part II: EDA Project Budget

Enter the project budget as estimated at time of approval.

Enter the actual project budget at time of project completion and close-out.

Enter only dollars used as part of the EDA total project cost for the construction project (scope of work and eligible costs defined in the grant agreement).

Part III: Outcomes (Actual) Reported at Project Completion Only

1. Compliance With Construction Schedule

a. *Construction start date:* Enter the estimated date (specified in the Special Award Conditions) for starting construction on the EDA project. Also, enter the actual date (substantiated by the Grantee's construction records and source documentation) for starting construction on the EDA project.

b. *Construction completion date:* Enter the estimated date (specified in the Award Conditions) for completing construction on the EDA project. Also, enter the actual date (substantiated by the Grantee's construction records and source documentation) for completing construction on the EDA project.

2. **Construction Jobs Created** (Please provide information on construction jobs for all construction projects, not just PWIP)

a. *Construction jobs created:* Enter the estimated number of construction jobs at the time of project approval and the actual number of construction jobs at project completion (Part-time construction jobs which were created during the construction phase of the EDA project should be converted to FTE.). If estimated/actual figures are not available, please provide the average annual

construction wage for your area \$_____ and the proportion of total project costs allocated to labor for this or similar projects of this type _____%.

Part IV: Outcomes (Actual) Reported at Project Completion and at 3 Years and 6 Years After Project Completion.

1. Permanent Jobs:

a. *Created jobs:* Enter the number of private sector jobs created by project beneficiaries as a result of the EDA construction project. In tallying direct jobs, only permanent and direct jobs may be counted; part-time jobs should be converted to full-time equivalents (by summing the total hours worked per week for all part-time employees and dividing by the standard hourly work week for full-time employees, normally 35-40 hours). Indirect jobs should be reported separately in the space provided.

1. *Direct Jobs:* These are jobs that are created at the project site by the identified beneficiaries, and other directly-related jobs created by subsequent employers as a result of the project. For some projects (e.g., roads, water and sewer lines), direct jobs may include those created by firms that which were not originally anticipated as part of the project, but which located or expanded in the area as a result of the project.

2. *Indirect Jobs:* These are jobs that are created within the local labor market area by the EDA project through increased supplier or consumer demand—commonly referred to as spin-off jobs resulting from increased employment by local suppliers and increased commercial/retail jobs due to increased wages generated by direct jobs. (For the purpose of this report, there is no need to distinguish between indirect and induced effects).

b. *Retained (saved) jobs:* Enter the number of private sector jobs retained or saved by project beneficiaries as a result of the EDA construction project. In tallying jobs, follow the instructions for created jobs in the paragraph (IV.1.a.) above.

c. *Total jobs:* Add the number of created jobs in IV.1.a. and the number of retained jobs in IV.1.b. and enter the total jobs here in IV.1.c.

Note: A list of the employers showing the number of jobs created or saved by each should be maintained as part of the supporting data in the Grantee's project files.

2. Additional Dollars Invested:

(Note: Dollars should be separated between: (1) dollars invested in the EDA construction project; and (2) dollars directly related to, but not a part of, the EDA construction project. Dollars invested in the EDA construction project are the non-Federal matching funds that were identified at the time of EDA grant approval and are included in the total project costs for the construction project shown in Section II above. Do not double count these dollars below.)

Additional dollars invested include dollars that support project objectives, but are not included as part of the EDA project costs. Though occasionally difficult to quantify these directly-related investments, an attempt should be made to identify them on this report. Examples are investments in facilities

occupied by project beneficiaries or employers that were constructed with other public or private funds as a result of the EDA project. Also include investments by firms using residual capacity of EDA-financed infrastructure (notably water and sewer services).

Indirect investments are those associated with the location or expansion of spin-off commercial business and/or wholesalers resulting from increased demand for goods and services generated by the project, or new investment in retail and consumer services.

If you cannot determine indirect jobs or investment, estimate the number of firms which located or expanded in the area as result of the increased supplier/consumer demand generated by the project below: Estimated number of firms creating indirect jobs _____ and/or investment _____.

a. *Private Sector:* Enter the total dollars from private sector investors, employers and other private sector sources such as the local financing institutions, and private donors. Include private investment in plant and equipment.

b. *Local public:* Enter the total dollars from local public sources such city/county appropriations, G.O./revenue bond issues, and economic development sales taxes.

c. *State:* Enter the total dollars from state sources such as state appropriations and CDBG funds to the state.

d. *Other Federal:* Enter the total dollars from other Federal sources as HUD, Agriculture, and Transportation funds.

e. *Totals:* Add the other dollars from IV.2.a through IV.2.d. and enter the total dollars on IV.2.e.

3. Increase in Local Tax Base:

Enter here on IV.3 the dollar increase in the local tax base (the taxable real and business personal property) attributable to the EDA project. Please check whether these are actual dollars of dollars computed using a multiplier. Please provide the multiplier, if applicable.

4. Local Capacity Anticipated and Actual Results:

An evaluation should be made regarding how well the EDA construction project has met the initial objectives listed in IV.4.a through IV.4.e below. Indicate by percentages, that portion of the project which was initially envisioned as the justification for the project under one or more of the listed categories. Individual ratings (with 10 being the "best" (i.e., the project has totally met the objective in every conceivable way) and 1 being the "worst" (i.e., the project has not met the objective in any way at all). As an example, a project may have initially been intended to support a single private business (100%), but may actually have resulted in creating jobs associated with other businesses, perhaps diversified the local economy, or provided other community benefits. Thus, a rating would be warranted for those categories as well as for the first category.

Not all objectives listed here may apply to the EDA project. Please mark "NA" if a given result was not anticipated or achieved. A narrative explaining the results or any unique situations associated with the project would also be useful.

V. Please submit a photograph of the project and/or business activity assisted by the project.

PART 306—PLANNING ASSISTANCE

Sec.

- 306.1 Purpose and scope.
- 306.2 Application evaluation criteria.
- 306.3 Award requirements.
- 306.4 Award conditions.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

§ 306.1 Purpose and scope.

The primary objective of planning assistance is to provide funding for administrative expenses to support the formulation and implementation of economic development planning programs and for the conduct of planning activities designed to create and retain permanent jobs and increase incomes, particularly for the unemployed and underemployed in the nation's most economically distressed areas. Planning activities supported by these funds must be part of a continuous process involving the active participation of public officials and private citizens, and include the following:

- (a) Analyzing local economies;
- (b) Defining economic development goals;
- (c) Determining project opportunities; and
- (d) Formulating and implementing an economic development program that includes systematic efforts to reduce unemployment and increase incomes.

§ 306.2 Application evaluation criteria.

(a) EDA uses the application evaluation criteria set forth in part 304 of this chapter. In addition, EDA evaluates applications on the following:

- (1) Quality of the proposed work program;
- (2) Management and staff capacity and qualifications of the applicant organization; and
- (3) Extent of broad-based representation including for example, involvement of the local civic, business, leadership, labor, minority, and other community interests in the applicant's economic development activities.

(b) Previously funded grantees, in addition to the requirements of paragraph (a) of this section, will also be evaluated on the basis of the quality of their past performance.

§ 306.3 Award requirements.

(a) Planning assistance shall be used in conjunction with any other available Federal planning assistance to ensure adequate and effective planning and economical use of funds.

- (b) Grant rate:

(1) The maximum Federal grant rate for a project under this part is,

(i) 50 percent, except as supplemented as provided in § 301.4(b), or

(ii) 75 percent, if that is greater than the maximum supplemented grant rate provided in § 301.4(b), and the project meets the criteria of paragraph (b)(2) of this section.

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 75 percent when the applicant is able to demonstrate that,

(i) The project is intended to address problems arising from actual or threatened severe unemployment, significantly low per capita income, or a special need that qualifies an area for eligibility under § 301.2(b),

(ii) The project is in substantial part devoted to activities addressing the needs of the most economically distressed parts of the total area served by the applicant,

(iii) The applicant is uniquely qualified to address the major causes of actual or threatened economic distress in the area served by the applicants, and

(iv) The applicant cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (b)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d).

(c) As a condition of the receipt of assistance by a State under this part 306:

(1) The State must have or develop a CED Strategy;

(2) Any State plan developed with such assistance must be developed cooperatively by the State, political subdivisions of the State, and the economic development districts located wholly or partially within the State;

(3) Any overall State economic development planning assisted under this section shall be a part of a comprehensive planning process that shall consider the provision of public works to:

(i) Promote economic development and opportunity,

(ii) Foster effective transportation access,

(iii) Enhance and protect the environment, and

(iv) Balance resources through the sound management of physical development;

(4) Upon completion of the State plan, the State must,

(i) Certify to EDA that, in the development of the State plan, local and

economic development district plans were considered and, to the maximum extent practicable, the State plan is consistent with the local and economic development district plans; and

(ii) Identify any inconsistencies between the State plan and the local and economic development district plans and provide a justification for each inconsistency; and

(5) The State must submit to EDA an annual report on the planning process so assisted.

§ 306.4 Award conditions.

Financial, performance and progress reports, and project products will be as specified in the Special Award Conditions of the grant.

PART 307—LOCAL TECHNICAL ASSISTANCE, UNIVERSITY CENTER TECHNICAL ASSISTANCE, NATIONAL TECHNICAL ASSISTANCE, TRAINING, RESEARCH, AND EVALUATION

Subpart A—Local Technical Assistance

Sec.

- 307.1 Purpose and scope.
- 307.2 Application evaluation criteria.
- 307.3 Award and grant rate requirements.

Subpart B—University Center Program

- 307.4 Purpose and scope.
- 307.5 Application evaluation criteria.
- 307.6 Award and grant rate requirements.

Subpart C—National Technical Assistance, Training, Research, and Evaluation

- 307.7 Purpose and scope.
- 307.8 Application evaluation criteria.
- 307.9 Award and grant rate requirements.

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

Subpart A—Local Technical Assistance

§ 307.1 Purpose and scope.

Local Technical Assistance projects are intended to:

(a) Determine the causes of excessive unemployment, underemployment, low per capita income, or high poverty rates in areas and regions of the Nation;

(b) Assist in formulating and implementing new economic development tools, models, and innovative techniques that will raise employment and income levels; and

(c) Assist distressed communities in formulating and implementing new economic development programs to increase the technology and human capacity of the communities. Local Technical Assistance funds may not be used to start or expand a private business.

§ 307.2 Application evaluation criteria.

EDA selects local technical assistance projects for grant awards according to

the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

- (a) Strengthens the local capacity to undertake and promote effective economic development programs targeted to people and areas of distress;
- (b) Benefits distressed areas;
- (c) Helps to diversify distressed economies;
- (d) Demonstrates innovative approaches to stimulating economic development in distressed areas;
- (e) Is consistent with the CED Strategy or other strategy accepted by EDA for the area in which the project is located; and
- (f) Presents a reasonable, itemized budget.

§ 307.3 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work, generally not to exceed twelve months.

(b) Financial reports, progress reports, and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

(c) If the project is regional in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(d) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b); or

(ii) 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 75 percent when the applicant is able to demonstrate that,

(i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;

(ii) The project is addressing major causes of distress in the service area and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(iii) The project is for the benefit of local, State, regional, or national

economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (d)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d).

Subpart B—University Center Program

§ 307.4 Purpose and scope.

The University Center technical assistance program is designed to help improve the economies of distressed areas. It helps institutions of higher education (or other applicants) use their own and other resources to address the economic development problems and opportunities of areas serviced.

§ 307.5 Application evaluation criteria.

EDA selects University Center projects for grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

(a) Has the commitment of the highest management levels of the sponsoring institution;

(b) Provides evidence of adequate non-Federal financial support, either from the sponsoring institution or other sources;

(c) Outlines activities consistent with the expertise of the proposed staff, the academic programs, and other resources available within the sponsoring institution;

(d) Presents a reasonable budget;

(e) Documents past experience of the sponsoring institution in operating technical assistance programs; and

(f) Balances the geographic distribution of University Centers across the country. Only the Assistant Secretary has the authority to approve the selection for grant assistance of a University Center that has not received University Center assistance for the previous year.

§ 307.6 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work, generally not to exceed twelve months.

(b) If the project is regional in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(c) Financial reports, progress reports and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

(d) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b), or

(ii) 75 percent, if that is greater, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 75 percent when the applicant is able to demonstrate that:

(i) It cannot provide the non-Federal share otherwise required because in the overall economic situation there is a lack of available non-Federal share due, for instance, to the pressing demand for its use elsewhere;

(ii) The project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(iii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

(3) A project receiving a supplemental grant increasing the Federal share under paragraph (e)(2) of this section is not eligible for additional Federal grant assistance under § 301.4(d).

Subpart C—National Technical Assistance, Training, Research, and Evaluation

§ 307.7 Purpose and scope.

(a) The purposes of National Technical Assistance, Training, Research, and Evaluation projects are:

(1) To determine the causes of excessive unemployment, underemployment, outmigration or other problems indicating economic distress in areas and regions of the Nation;

(2) To assist in formulating and implementing new economic development tools and national, State, and local programs that will raise employment and income levels and otherwise produce solutions to problems resulting from the above conditions;

(3) To evaluate the effectiveness and economic impact of programs, projects, and techniques used to alleviate economic distress and promote economic development, and

(4) To assist in disseminating information about effective programs,

projects and techniques that alleviate economic distress and promote economic development.

(b) EDA may during the course of the year, identify specific national technical assistance, training, research or evaluation projects it wishes to have conducted. Ordinarily, EDA specifies these projects in a NOFA, which also provides the appropriate point of contact and address.

(c) National technical assistance, research, training, and evaluation funds may not be used to start or expand a private business.

§ 307.8 Application evaluation criteria.

EDA selects projects for national technical assistance, training, research or evaluation grant awards according to the general application evaluation criteria set forth in part 304 of this chapter and the extent, as appropriate, the project:

(a) Does not depend upon further EDA or other Federal funding assistance to achieve results;

(b) Strengthens the capability of local, State, or national organizations and institutions, including nonprofit economic development groups, to undertake and promote effective economic development programs targeted to people and areas of distress;

(c) Benefits severely distressed areas;

(d) Helps to diversify distressed economies; and

(e) Demonstrates innovative approaches to stimulating economic development in distressed areas.

§ 307.9 Award and grant rate requirements.

(a) EDA will provide assistance for the period of time required to complete the project scope of work. Normally, this does not exceed twelve months.

(b) If the project is regional or national in scope, EDA may determine that the requirement that public or private nonprofit organizations must act in cooperation with officials of a political subdivision of a State is satisfied by the nature of the project;

(c) Financial reports, progress reports, and project products will be specified in the Special Award Conditions of the grant or cooperative agreement.

(d) Grant rate:

(1) The maximum Federal grant rate for a project under this subpart is:

(i) 50 percent, except as supplemented as provided in § 301.4(b); or

(ii) 100 percent, if the project is not feasible without, and merits, a reduction or waiver of the non-Federal share required under the rate provided in § 301.4(b).

(2) A project is eligible for a supplemental grant increasing the Federal share to up to 100 percent when the applicant is able to demonstrate that

(i) The project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate in the program if it must provide all or part of a 50 percent non-Federal share; or

(ii) The project is for the benefit of local, State, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient.

PART 308—REQUIREMENTS FOR ECONOMIC ADJUSTMENT GRANTS

Sec.

308.1 Purpose and scope.

308.2 Criteria.

308.3 Use of economic adjustment grants.

308.4 Selection and evaluation factors.

308.5 Applicant requirements.

308.6 Post-approval requirements.

Appendix A to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund; Plan Guidelines.

Appendix B to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Standard Terms and Conditions.

Appendix C to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Administrative Manual.

Appendix D to Part 309—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Audit Guidelines

Authority: 42 U.S.C. 3211; Department of Commerce Organization Order 10-4.

§ 308.1 Purpose and scope.

(a) The purpose of economic adjustment grants is to address the needs of communities experiencing adverse economic changes that may occur suddenly or over time, including but not limited to those caused by:

(1) Military base closures or realignments, defense contractor reductions in force, or Department of Energy defense-related funding reductions,

(2) Disasters or emergencies, in areas with respect to which a major disaster or emergency has been declared under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*),

(3) International trade,

(4) Fishery failures, in areas with respect to which a determination that there is a commercial fishery failure has been made under sec. 312(a) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1861a(a)),

(5) Long-term economic deterioration, or

(6) Loss of a major community employer.

(b) Economic Adjustment grants are intended to enhance a distressed community's ability to compete economically by stimulating private investment in targeted economic sectors through use of tools that:

(1) Help organize and carry out a CED Strategy;

(2) Expand the capacity of public officials and economic development organizations to work effectively with businesses;

(3) Assist in overcoming major obstacles identified in the strategy;

(4) Enable communities to plan and coordinate: The use of Federal and other resources available to support economic recovery, development of regional economies, or recovery from natural or other disasters; and

(5) Encourage the development of innovative public/private approaches to economic restructuring and revitalization.

§ 308.2 Criteria.

(a) A grant may be made under this part only when the project will help the area to meet a special need arising from actual or threatened severe unemployment or economic adjustment problems resulting from severe changes in economic conditions; and the area for which a project is to be carried out has a strategy and the project is consistent with the strategy, except that the strategy requirement shall not apply to planning projects.

(b) The term "special need" in paragraph (a) of this section means conditions of unemployment, per capita income, or special need that qualify an area for eligibility under § 301.2(b).

(c) Additional criteria, and/or priority consideration factors for assistance, may be set forth in a NOFA.

§ 308.3 Use of economic adjustment grants.

(a) Grants may be used to pay for developing a strategy to alleviate long-term economic deterioration or a sudden and severe economic dislocation, or to pay for a project in implementation of such a strategy.

(1) Strategy grants may support developing, updating, or refining a strategy.

(2) Implementation grants support activities identified in an EDA-approved strategy. Specific activities may be funded as separate grants or as multiple elements of a single grant. Examples of implementation activities include:

(i) Infrastructure improvements, such as site acquisition, site preparation,

construction, rehabilitation and/or equipping of facilities;

(ii) Provision of business or infrastructure financing through the funding of locally administered Revolving Loan Funds (RLFs), which may include interest rate buy downs;

(iii) Market or industry research and analysis;

(iv) Technical assistance, including organizational development such as business networking, restructuring or improving the delivery of business services, or feasibility studies;

(v) Public services;

(vi) Training (provided that it does not duplicate Department of Labor, Department of Education or other Federally-supported training programs), and

(vii) Other activities as justified by the strategy which meet statutory and regulatory requirements.

(b) Economic Adjustment grants may be spent directly by the grantee or redistributed to other entities.

(1) Redistribution in the form of grants may only be to eligible recipients of grants under part 308.

(2) Redistribution in the form of loans, loan guarantees, or equivalent assistance may be to public or private entities, including private for-profit entities.

(c) Revolving Loan Fund (RLF) applicants must submit an RLF Plan in accordance with this part and RLF guidelines, Appendix A of this part, displayed at EDA's web site, <http://www.doc.gov/eda>. A copy of the RLF guidelines is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

§ 308.4 Selection and evaluation factors.

(a) Projects will be selected in accordance with part 304 of this chapter and the additional criteria as provided in subsections (b) and (c), as applicable.

(b) *Strategy grants.* EDA will review strategy grant applications for:

(1) Proper authority, mandate, and capacity of the applicant to lead and manage the planning process and strategy implementation;

(2) Representation of the public and private sectors in the development of the strategy's objectives. Representation may include: Public program and service providers, trade and business associations, educational and research institutions, community development corporations, minorities, labor, low-income, etc.; and

(3) The proposed scope of work for the strategy focuses on the structural economic problem(s) and includes provisions for undertaking appropriate research and analysis to support a

realistic, market-based, adjustment strategy.

(c) *Implementation Grants.*

(1) EDA will review implementation grant applications for the extent to which,

(i) The strategy shows

(A) An understanding of the economic problems being addressed;

(B) An analysis of the economic sectors that constitute the community's economic base, including particular strengths and weaknesses that contribute to or detract from a community's current and potential economic competitiveness;

(C) Strategic objectives that focus on stimulating investment in new and/or existing economic activities that offer good prospects for revitalization and growth; and

(D) Identified resources and plans for coordinating such resources to implement the overall strategy; and

(ii) The proposed project is identified as a necessary element of or consistent with the strategy.

(2) *Revolving Loan Fund (RLF) Grants.*

For applicants asking to capitalize or recapitalize an RLF, EDA will review the application for:

(i) The need for a new or expanded public financing tool to enhance other business assistance programs and services targeting economic sectors and/or locations described in the strategy;

(ii) The types of financing activities anticipated; and

(iii) The capacity of the RLF organization to manage lending, create networks between the business community and other financial providers, and contribute to the adjustment strategy.

(d) Additional criteria, or priority consideration factors for assistance, may be set forth in a NOFA.

§ 308.5 Applicant requirements.

Each application for a grant under part 308 must:

(a) Include evidence of area and applicant eligibility (see part 301);

(b) Include, or incorporate by reference, if so approved by EDA, a strategy, as provided in § 301.3 (except that a strategy is not required when a funding request is for planning assistance, i.e., a strategy grant);

(c) Identify the sources of the other funds, both eligible Federal and non-Federal, that will make up the balance of the proposed project's financing, including any private sources of financing. The application must show that such other funds are committed to the project and will be available as needed. The local share must not be encumbered in any way that would

preclude its use consistent with the requirements of the grant; and

(d) Explain how the proposed project meets the criteria of § 308.2.

§ 308.6 Post-Approval requirements.

(a) Financial, performance, and progress reports will be specified in the Special Award Conditions of the grant.

(b) Projects involving construction shall comply with the provisions of subpart B of part 305.

(c) RLF Supplemental Requirements and Guidelines—RLF grants are subject to the requirements set forth in this part and the publications: EDA's RLF Standard Terms, EDA's RLF Administrative Manual, and EDA's RLF Audit Guidelines, Appendices B–D of this part displayed at EDA's web site, <http://www.doc.gov/eda>. A copy of these documents is available from EDA and a copy will be furnished to an award recipient with the Offer of Financial Assistance.

Appendix A to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund; Plan Guidelines

OMB Approval No. 0610–0095.

Approval expires 07/31/99

Burden Statement for Revolving Loan Fund Plan

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105–393. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 40 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Purpose

EDA requires Revolving Loan Fund (RLF) grantees to manage their RLFs in accordance with a plan. The Plan must be approved by EDA prior to the grant award, but may be modified subsequently, with EDA approval,

as provided for in the RLF Administrative Manual (Section X.D.). These guidelines are designed to assist grant applicants prepare and document an RLF Plan that (1) is tailored to supporting implementation of the area's Economic Adjustment Strategy, (2) provides for administrative clarity, continuity and consistency, and (3) is acceptable to EDA.

EDA Evaluation Criteria

EDA will use the following criteria in evaluating RLF Plans:

1. The Plan flows from and is consistent with the Economic Adjustment Strategy for the area, as approved by EDA.

2. It is internally consistent, i.e., it is a coherent statement of the strategic purpose of the particular RLF and the various considerations influencing the selection of its financing strategy, policies and loan selection criteria.

3. The financing strategy demonstrates a knowledgeable analysis of the local capital market and the financing needs of the targeted businesses.

4. The financing policies and portfolio standards are consistent with EDA policy and requirements.

5. The strategic objectives defined are sufficiently meaningful, though not necessarily quantified, so that progress toward them can be assessed over time.

6. The administrative procedures for operating the RLF are consistent with generally accepted prudent lending practices for public lending institutions.

Format and Content

The format for the Plan provides for two distinct parts: the Revolving Loan Fund Strategy and the Operational Procedures. Each part contains a number of sections designed to facilitate the orderly and logical presentation of the required information. However, the organization of the material and the level of detail provided in the subsections of Part I may be varied to improve the narrative flow, provided the substantive content is adequately covered.

The title page of the Plan document should show the grant recipient organization's name and the date the Plan was approved. Normally, approval is required to be by resolution of the organization's governing board. States are exempted from this requirement.

Part I: The Revolving Loan Fund Strategy

The RLF strategy is the approach selected by the grant recipient organization for using RLF financing as part of the broader business development strategy designed to support achievement of the goals and objectives established through the area/community's economic adjustment or development planning process. The sequence of the subsections of this Part are designed to lead the reader from the general to the more specific, providing the reader with an understanding of how the RLF strategy was arrived at, and establishing the strategic, organizational and programmatic context for the proposed use of the RLF.

A. Economic Adjustment Program Overview

A short description of the area's economic adjustment program, i.e., the strategy and the

full range of activities planned and being implemented, should be provided. The following topics must be included:

1. The nature and scale of the economic adjustment problem(s) underlying the economic distress statistics that resulted in the area becoming eligible for Section 209 assistance.

2. The process through which the Economic Adjustment Strategy was developed. Was it an outgrowth of an ongoing economic development program, such as the Overall Economic Development Program (OEDP) required for other forms of EDA assistance, or a special initiative undertaken in-house or by a consultant? What community organizations and interest groups were, and continue to be, involved in further refining the strategy and overseeing its implementation?

3. Area resources/assets (potential or actual growth industries, industries that could be more productive, work force skills, natural resources, etc.) on which the strategy is designed to build. What specific opportunities have been identified for expanding or strengthening existing economic activities and/or creating new activities?

4. The strategic adjustment goals and objectives derived from the conclusions described above and an assessment of the capacity of the community to invest in pursuing the opportunities identified.

5. The implementation programs and activities, both underway and planned, that support the strategic objectives. Note that while business development activities should be identified here, in addition to other activities, Section B requires a detailed discussion of the business development strategy.

6. The organizational structure and distribution of responsibility for managing the on-going adjustment program. What agency is responsible for maintaining the adjustment strategy, evaluating results and updating it as needed? What agencies/organizations manage or coordinate implementation of key elements in the overall strategy, in particular, the business development strategy of which the RLF is to be a component.

B. The Business Development Strategy

As emphasized in EDA's guidelines for preparing an Economic Adjustment Strategy, a key element of any community's adjustment program should be its business development strategy. A community's business development strategy will depend on the particular opportunities identified for stimulating business investment and productivity. Participation of the business community in the development of the strategy is essential, as is a firsthand knowledge of the characteristics of firms within the targetted economic sectors and their individual needs for assistance.

It is the experience of working with the business sector in designing and implementing a business development strategy that enables the community to (1) determine the need for an RLF, and (2) define the types of RLF investments that will be most effective in complementing other types

of business assistance in supporting the objectives of the adjustment program.

If the business development strategy is already well documented in the community's Economic Adjustment Strategy, it need only be summarized sufficiently to provide a bridge between the adjustment strategy and the RLF financing strategy. If not well documented, it should be described in more detail. The following features of the strategy should be addressed:

1. The objectives of the business development strategy, for example, increase the capacity of local firms to supply parts and services to a major local manufacturer, encourage creation of firms to develop and commercialize products that add value to a local resource, assist small manufacturing firms incorporate new production technologies and/or develop new markets, etc.

2. The pertinent characteristics of the businesses or prospective businesses in the economic sectors targeted by the strategy; for example, their size, age, ownership, management, products, markets, competitiveness, production processes, capital, etc.

3. The types of assistance needed by these businesses and would-be entrepreneurs to take advantage of the opportunities identified; for example, access to technical information (market data, new technologies and production processes, exporting), hands-on management and technical assistance, financing, incubator space, etc. How were and are these needs being identified: surveys, on-site interviews, business forums, etc.?

4. The programs/activities being undertaken by the public sector and/or development organizations to address the identified needs. Are there other sources of assistance available; for example, a technical college, business development center, industrial extension service, SCORE program, an SBA Small Business Development Center and/or a Certified Development Corporation, etc.? Are there private sector organizations, industry and/or business associations that promote information exchange and technical support?

C. The Financing Strategy

The community's financing strategy should take into account all the sources of financing, public and private, available to support its business development objectives, and should identify the best and appropriate sources to meet the differing creditworthiness and needs of the types of businesses targeted for investment. Analysis of the characteristics of the demand for and supply of financing will determine the appropriate financing niche for the RLF. This should be discussed in terms of the following:

1. The current types of financing needs and opportunities in the targeted business sectors and specific types of firms within them. What further needs and opportunities are expected to emerge as implementation of the strategy progresses?

2. The current availability of public and private financing in the area. What are the prevailing commercial lending policies/restrictions? What role is anticipated for the public and private lenders in supporting the community's business development strategy?

3. The characteristics of the financing niche that the RLF would occupy.
 - a. Types of businesses/firms?
 - b. Types of financing?
 - c. Types of terms?
4. The impact RLF financing is anticipated to have on accomplishing the community's economic adjustment objectives in the next 3–5 years. For example, with respect to:
 - a. Restructuring/strengthening the local economy.
 - b. Stimulating private investment, both through leveraging commercial financing and "showing the way to other investors."
 - c. Enhancing job opportunities.

D. Financing Policies

Consistent with the role identified for the RLF in the community's financing strategy, and with due consideration for the need to manage and protect the RLF capital, the specific policies designed to govern RLF financing should be discussed as follows:

1. The standard lending terms, and any concessionary or special financing techniques that the RLF will entertain to accomplish the objectives of the business development strategy. Discuss the key factors that will determine how such techniques might be employed.
 - a. The range of allowable interest rates the RLF will charge borrowers.
 - b. Requirements for equity or cash injections to be provided by the RLF borrower.
 - (1) Will the policy be the same for new as opposed to established businesses?
 - (2) Will any deviations be allowed, e.g., for working capital loans?
 - c. The standard repayment terms for both working capital and fixed asset loans, and any deviations.
 - (1) If the RLF anticipates moratoria on principal payments, specify the maximum moratorium period.
 - (2) What key factors will determine when any deviations will be employed?
2. The types of collateral to be required of borrowers.
3. The minimum and maximum loan sizes that the RLF will entertain.

E. Portfolio Standards and Targets

RLF portfolio standards and targets are used by EDA as surrogate measures for the economic performance of an RLF. They should be established as follows:

1. The anticipated percentage of RLF investments in each of the following:
 - a. Industrial/commercial/Service businesses (Show any subcomponents, if significant and if identified in the business development strategy.)
 - b. New businesses/expansion/retention
2. The anticipated percentage of the RLF portfolio that will be targeted towards working capital loans and fixed asset loans (note that EDA allows a maximum of 50 percent for working capital loans during the grant disbursement phase of the RLF)
3. Private investment leveraging ratio for the portfolio overall. Sources of private investment that may be included are: financing from other lenders (e.g., banks, investment companies, etc.) or private investment on the part of the borrower or

other firms in conjunction with the RLF financing.

4. Cost per job for the portfolio overall.

F. RLF Loan Selection Criteria

In addition to the required selection criterion that financing is not otherwise available, what "economic impact" criteria will be used to evaluate proposed loans?

G. Performance Assessment Process

Describe the process and factors that the grant recipient will use (1) to periodically assess the performance of the RLF in accomplishing its stated economic adjustment objectives, and (2) to modify the RLF Plan as needed.

Part II: Revolving Loan Fund Operational Procedures

This part of the RLF Plan is designed to cover in detail the specific operational procedures to be followed by the grant applicant/recipient in administering the RLF.

Section A requires an overview of the organizational distribution of responsibility for the key elements in operating the RLF. Sections B. through E. require, for each item indicated, a short description of (1) how it will be addressed, the procedure/requirement to be used, if any, (2) the documentation that will be used, (3) the party(ies) responsible for carrying out the requirement, and (4) the time frame within which it is to be implemented.

A. Organizational Structure

1. Provide an overview of the organizational structure within which the RLF will be operated. For each of the functions critical to the conduct of the RLF's lending activities, identify the responsible parties including any from outside the organization. Use a schematic diagram if helpful.

Critical operational functions include: identification and development of appropriate financing opportunities; provision of business assistance and advisory services to prospective and actual borrowers (identify the types and sources of services available); environmental reviews; and loan management (loan processing, credit analysis, loan write-ups and recommendations, closings, collections and servicing, handling defaulted loans and foreclosures, and compliance with grant requirements). Note that a more detailed description of how some of these functions will be handled is requested in sections below.

2. Describe the size and general composition of the organization's RLF loan board; include experience and occupational requirements. Describe its duties and responsibilities, membership terms and quorum requirements.

An RLF loan board must be responsible for approving loans, all major loan modifications (or waivers), and loan foreclosure actions. It must also be responsible for at least recommending RLF loan policy (actual approval of loan policy may take place at a higher level). The loan board should include members with business experience (representation of targeted industries and/or business sectors is desirable provided it will not cause a conflict of interest), members

with financing experience, members from both the public and private sectors and minority members representative of the community. At least one member with financing experience (similar to the type of loans to be made under the RLF program) must be present for each loan decision.

B. Loan Processing Procedures

1. Standard Loan Application Requirements—include a list of items or a checklist showing the items to be required of RLF loan applicants. [It is acknowledged that not all items will apply to each loan applicant and that certain situations may require additional items not on the list.]

2. Credit Reports.

3. Appraisal Reports.

4. Environmental Reviews.

5. Standard Collateral Requirements—include requirements for personal guarantees and insurance (hazard, keyman life, flood, and title).

6. Standard Equity Requirements—when listing equity requirements, differentiate between existing and new companies, and fixed asset and working capital loans. Note that an allowable requirement for a working capital loan may simply require a borrower to have a certain net working capital position. Equity is defined as an amount or percentage of capital (or lien free assets) that is required to be added to a project from borrower or investor sources.

7. Loan Write-up—indicate the items to be addressed in the RLF loan write-up. At a minimum, a loan write-up must discuss how the proposed RLF loan is not replacing private lender funding sources—refer to Section IV.B.3. of the RLF Administrative Manual. Other items should include a summary of the firm's history, management, product, production capability, market conditions, financing, collateral, repayment ability, consistency with the RLF's financing policy and whether there are any environmental problems associated with the project. A Loan Write-up summarizes the key aspects of a loan; it is prepared by the RLF grant recipient and is usually provided to the RLF loan board prior to the loan decision.

8. Procedures for loan approvals, documentation of loan board decisions, and notification of borrowers.

C. Loan Closing and Disbursement Procedures

1. General Closing Requirements—include documentation required to confirm any needed equity injection and private lender financing.

2. Loan Closing Documentation Requirements—provide a checklist of the standard documents that will be required for the types of loans to be made under the RLF. Indicate any special timing requirements, e.g., Uniform Commercial Code (UCC) searches prior to and/or subsequent to a UCC filing on personal property.

3. Loan Disbursement Requirements—indicate borrower requirements for drawing loan funds, i.e., is a borrower required to provide any evidence (e.g., an invoice) that it has ordered an asset prior to receiving loan funds to ensure that funds are ordered only when actually needed and that they will be

used as agreed in the loan agreement, any pre-disbursement requirements for working capital loans, any special requirements for construction financing, and any other disbursement procedures that are necessary to protect RLF assets.

D. Loan Servicing Procedures

1. Loan Payment and Collection Procedures—indicate the standard method(s) of loan payment by RLF borrowers, e.g., payment coupon books, automatic payment withdrawals, or other methods. Indicate any procedures for protection and timely deposit of RLF loan payments. Note that unused RLF funds must be Federally insured if deposited in a financial institution.

2. Loan Monitoring Procedures—indicate the standard procedures for monitoring loan conditions, including requirements/procedures for financial statements, annual insurance renewals, UCC refilings, borrower site visits, tickler files, and compliance with any Federal requirements of the grant.

3. Late Payment Follow-up Procedures—indicate the standard procedures for handling loans that are in arrears up to 90 days and discuss any late penalty requirements (which should be stated in the note).

4. Procedures for Handling Loans over 90 days in arrears.

5. Write-off Procedures—indicate how the RLF will account for loan write-offs.

E. Administrative Procedures

1. Procedures for Loan Files and Loan Closing Documentation—indicate what should be included in an RLF loan file, e.g., the application, loan commitment letters, copy of private lender loan agreement, financial statements, annual insurance certifications, annual site visit reports, general correspondence, job reports, etc. Indicate any procedures for safekeeping loan documents, particularly the loan closing documents. At a minimum, all original notes, loan agreements, personal guarantees and security agreements should be placed in a fireproof facility or container.

2. Procedures for Complying with EDA Reporting Requirements—provide an overview of how RLF loan payments and RLF Income sources will be tracked and accounted for in order to meet EDA reporting requirements. [RLF Income sources including interest from loans and from accounts holding idle RLF funds, loan fees, late payment fees, and any other sources of RLF revenue.]

3. Grantee control procedures for ensuring compliance with all grant requirements and for monitoring the RLF portfolio.

Prior to the initial grant disbursement, the grant recipient must also certify that the basic loan documents are in place and that these documents have been reviewed by counsel for adequacy to protect the interests of the RLF. The minimum documents required are:

- Note
- Loan Agreement
- Security Agreement(s)
- Deed of trust or Mortgage
- Agreement of Prior Lienholder

Appendix B to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Standard Terms and Conditions

Approval expires 07/31/99.

Burden Statement for Revolving Loan Fund Standard Terms and Conditions

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105-393. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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A. Program Statement

These Standard Terms and Conditions apply to all Economic Adjustment Program awards for revolving loan fund activities funded under Section 209 of the Public Works and Economic Development Act of 1965, P.L. 89-136, as amended (42 U.S.C. 3121, *et seq.*).

For the purpose of these Standard Terms and Conditions, (a) the term "Government" refers to the Economic Development Administration (EDA); (b) the term "Recipient" refers to the undersigned recipient of Government funds under the Agreement to which this attachment is made a part; (c) the term "Department" refers to the Department of Commerce; (d) the term "Regional Office" refers to the appropriate Regional Office of the Economic

Development Administration; (e) the term "Federal Program Officer" refers to the Regional Director of the appropriate EDA Regional Office (the Federal Program Officer is responsible for programmatic and technical aspects of this award); (f) the term "Grants Officer" refers to the Assistant Secretary for Economic Development or his or her designated representative (the Grants Officer is responsible for all administrative aspects of this award and is authorized to award, amend, suspend, and terminate financial assistance awards); (g) the term "Project" refers to the activity for which the Government grant was awarded; and (h) "RLF" refers to this revolving loan fund grant project.

B. Overall Statutory and Executive Order Requirements

Some of the terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes or regulations issued by a Federal agency and published in the Code of Federal Regulations. To the extent that it is a summary, such term or condition is not in derogation of, or an amendment to, the statute or regulation.

The Recipient shall comply, and require any contractor which provides services on behalf of the Recipient to comply with all applicable Federal, state, territorial, and local laws, in particular, the following Federal public laws, the regulations issued thereunder, Executive Orders and OMB Circulars, and the requirements listed in Section D. herein:

.01 EDA Statute and Regulations: Applicable provisions of the Public Works and Economic Development Act of 1965, P.L. 89-136, as amended (42 U.S.C. 3121, *et seq.*) and regulations in 13 CFR, Chapter III.

.02 Administrative Requirements: Administrative requirements for grants, OMB Circular No. A-110, "Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," and its attachments, as amended or as superseded in the Department's regulations, or those found in 15 CFR Part 24, "Uniform Administrative Requirements For Grants and Cooperative Agreements to State and Local Governments," as applicable. In the event of inconsistency or conflict between the administrative requirements and EDA's enabling legislation or regulations, the latter shall prevail;

.03 Civil Rights Requirements: Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d-2000d-4); 15 CFR Part 8; Executive Orders 11246 and 11375; 41 CFR Part 60-4; P.L. 92-65, Section 112, prohibiting sex discrimination on programs under the Public Works and Economic Development Act; 13 CFR Part 317 imposing civil rights requirements on recipients; regulations issued pursuant to the Age Discrimination Act of 1965 (42 U.S.C. 6101 *et seq.*) 15 CFR Part 20; Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and the implementing regulations of the Department of Commerce in 15 CFR 8b, prohibiting discrimination against and providing fair and equitable treatment of the handicapped under

programs or activities receiving Federal financial assistance; and such other civil rights legislation, regulations, and Executive Orders as applicable;

.04 Hatch Act: Recipient will comply with the provisions of the Hatch Act (5 U.S.C. Section 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment is funded in whole or in part with Federal funds.

C. General Requirements

.01 Grant Terms and Conditions: The Recipient and any consultant/contractor providing services on behalf of the Recipient shall comply with the Grant Award and all terms and conditions thereto. The decision of the Government in interpreting the terms and conditions of this grant shall be final.

.02 Compliance with EDA Instructions: The Recipient shall comply with EDA Revolving Loan Fund guidelines, manuals and other instructions as may be issued from time to time by the Government in connection with the assistance herein offered. All such instructions are to be applied on the effective date of the award.

.03 Exclusion from Certification and Disclosure requirements: An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide (preferably in an attorney's opinion) the Government with the citation of the provision or provisions of Federal law upon which it relies to conduct lobbying activities that would otherwise be subject to the prohibitions in and to the Certification and Disclosure requirements of Section 319 of Public Law No. 101-121.

.04 Duplication of Work: The purpose and scope of work for which this award is made shall not duplicate programs for which monies have been received, committed, or applied for from other sources, public or private. The Recipient shall submit full information about related programs that may be initiated within the award period. The Recipient shall immediately provide written notification to the Federal Program Officer in the event that other Federal financial assistance is received during the award period relative to the scope of work of this award.

.05 Reimbursement of Costs Prior to Award: Funds provided under this award shall not be used to pay for the cost of any work started or completed prior to the effective date of this award.

.06 Other Funding Sources: Federal-share funds budgeted or awarded for this Project shall not be used to replace any financial support previously provided or assured from any other source. The Recipient agrees that the general level of expenditure by the Recipient for the benefit of program area and/or program designated in the Special Terms and Conditions of this award, or any amendment or modification thereto, shall be maintained and not reduced as a result of the Federal-share funds received under this Project.

.07 Availability of Information: The Recipient agrees that all information resulting from its activities and not exempt from disclosure under the Freedom of

Information Act, 5 U.S.C. 522, shall be made freely available to the public. This requirement is exclusive to the Recipient and is not applicable to confidential information disclosed or obtained in the normal borrower/lender relationship.

.08 Procurement Standards & Use of Consultants/Contractors: The procurement standards and procedures set forth in 15 CFR Part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," Section 24.36 or OMB Circular No. A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," Attachment O or its implementing Department regulation, as appropriate, shall apply to all awards. For all proposals and contracts where costs are expected to exceed the simplified acquisition threshold, the scope of work (request for proposal) and the cost of such must be submitted to and approved by the Government prior to employment of such consultants or contractors. The Recipient shall ensure that any consultant or contractor paid from funds provided under this award either directly or through program income is bound by all applicable award terms and conditions. The Government shall not be liable hereunder to a third party nor to any party other than the Recipient.

.09 Program Performance Notification: The Recipient shall inform the Government as soon as the following types of conditions become known:

a. Problems, delays, or adverse conditions that materially affect the ability to attain program objectives, prevent the meeting of time schedules or goals, or preclude the attainment of project work units by established time periods. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any EDA assistance needed to resolve the situation.

b. Favorable developments or events that enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

.10 Attorney and Consultant Fees: The Recipient hereby agrees that no funds made available from this grant shall be used, directly or indirectly, for paying attorneys' or consultants' fees in connection with securing this grant or other grants or cooperative agreements from EDA.

.11 Suspension and Termination of Grant:

a. When a Recipient has failed to comply with the grant award stipulations, standards, or conditions, EDA may, on reasonable notice to the Recipient, suspend the grant and withhold further payments, or prohibit the Recipient from incurring additional obligations of grant funds, pending corrective action by the Recipient or a decision to terminate in accordance with the following paragraphs. EDA shall allow all necessary and proper costs which the Grantee could not reasonably avoid during the period of suspension, provided they meet the provisions of applicable OMB cost principles and the grant terms and conditions.

b. Whenever the Recipient shall fail in its fiduciary responsibilities, or shall be unable

or unwilling to perform, as trustee of this grant to serve the purpose of the Economic Adjustment program for which it was made, EDA may suspend, terminate or transfer this grant to an eligible successor Recipient, with jurisdiction over the Project area, to administer it as such trustee. The Recipient shall cooperate with EDA in accomplishing the transfer of this grant to such successor Recipient.

c. EDA may terminate any grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Recipient has failed to comply with the conditions of the grant (termination for cause). EDA shall promptly notify the Recipient in writing of the determination and the reasons for the termination, together with the effective date. Payments made to recipients or recoveries by the Federal sponsoring agencies under grants or other agreements terminated for cause shall be in accordance with the legal rights and liabilities of the parties. Whenever EDA terminates any RLF grant for cause, in whole or in part, it has the right to recover residual funds and assets of the RLF grant in accordance with the legal rights of the parties.

d. In accordance with subsections (a) (b) and (c) above, EDA may suspend or terminate any grant for cause based on, but not limited to, the following: (1) failure to make loans in accordance with the RLF Plan, including the time-schedule for loan closings; (2) failure to obtain prior EDA approval for such changes to the RLF Plan, including provisions for administering the RLF, as specified in the RLF Administrative Manual, as amended; (3) failure to submit progress, financial or audit reports as required by the terms and conditions of the grant agreement; (4) failure to comply with prohibitions against conflict-of-interest for any transactions involving the use of RLF funds; (5) failure to operate the RLF in accordance with the RLF Plan and the terms and conditions of the grant agreement.

e. EDA or the Recipient may terminate this grant in whole or, in part, when the parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditure of funds (termination for convenience). The parties shall agree upon the termination conditions, including the effective date and, in the case of partial terminations, the portion to be terminated. The Recipient shall cancel as many outstanding obligations as possible. EDA shall allow full credit to the Recipient for the Federal share of the noncancelable obligations, properly incurred by the Recipient prior to termination.

f. If there is a partial termination of the EDA grant, the full amount of the original nonfederal matching share is expected to be retained in the RLF for lending purposes unless otherwise provided for in the grant agreement or agreed to in writing by the Government.

g. Other grant closeout procedures set forth in 15 CFR, Part 24, or OMB Circular No. A-110, or its implementing Department regulation, as applicable, shall also apply.

D. RLF Requirements for Recipients and Borrowers

.01 Prudent Lending Practices: The Recipient agrees to administer the RLF in accordance with lending practices generally accepted as prudent for public loan programs. Such practices cover loan processing, documentation, loan approval, collections, servicing, administrative procedures and recovery actions. The Recipient agrees to follow local laws and filing requirements to perfect and maintain security interests in RLF collateral.

.02 Inclusion of requirements in RLF Loan Documents: The Recipient agrees to incorporate applicable Federal requirements described herein in RLF loan agreements to ensure borrower compliance.

.03 Annual RLF Plan Certifications: The Recipient agrees to certify annually to the Government that the RLF is being operated in accordance with the RLF Plan (as referenced in the Special Terms and Conditions of the grant, as amended); and that the RLF Plan is consistent with, and supports, implementation of the current Economic Adjustment Strategy for the project area.

.04 RLF Plan Modifications: The Recipient agrees, because economic conditions change and new approaches to stimulating economic adjustment may be needed, to seek EDA approval of such modifications to the RLF Plan as may be required for the RLF to continue to be fully supportive of the area's Economic Adjustment Strategy, as updated and approved by EDA. The Recipient further agrees to request EDA approval of modifications to the Plan at any time there is evidence that such modifications are needed to ensure effective use of the RLF as a strategic financing tool.

.05 Eligible Area: The Recipient shall use the RLF only in the areas eligible for Section 209 assistance as approved by the Government and defined in the Special Terms and Conditions of the grant. To add a new eligible area to a previously awarded RLF grant, the Recipient shall obtain the prior written approval of the Government. To ensure that the economic benefits of RLF loans remain within eligible lending areas, the Recipient shall include a *provision* in RLF loan documents to call loans if the economic activity financed is moved outside the eligible lending area.

.06 Relocation: The Recipient agrees that RLF funds shall not be used to relocate jobs from one commuting area to another. The Recipient shall include a *provision* in RLF loan documents to call loans if it is determined that (a) the business used the RLF loan to relocate jobs from another commuting area or (b) the economic activity financed is moved to another commuting area to the detriment of local workers.

.07 Grant Disbursement Schedule: The Recipient agrees, unless otherwise specified in the Special Terms and Conditions of the grant award, to make loans in the initial round of lending at a rate such that no less than 50 percent of the grant funds are disbursed within 18 months, 80 percent within two years and 100 percent within three years of the date of the grant award.

The Recipient acknowledges that if it fails to meet any of these disbursement deadlines, the Government will not disburse additional grant funds unless (1) the funds are required to close loans approved prior to the deadline and which will be fully disbursed to the borrower(s) within 45 days, or (2) the funds are required to meet continuing disbursement obligations on loans closed prior to the deadline, or (3) the Government has approved in writing an extension of the deadline. In no event, will the time permitted for full disbursement of the grant funds extend beyond September 30, of the fifth year after the fiscal year of the grant award. Funds not disbursed in accordance with the foregoing will automatically be retained by the Federal Government.

.08 Capital Utilization Standard: Subsequent to full disbursement of the grant funds, the Recipient agrees to manage its repayment and lending activities to maintain 75 percent or more of the RLF capital loaned out or committed at all times, unless a different standard has been agreed to in writing by the Government. The Recipient agrees to comply with Government sanctions if the applicable capital utilization standard is not met within a reasonable time period.

.09 Civil Rights: The Recipient agrees that RLF funds will be made available on a nondiscriminatory basis and that no applicant will be denied a loan on the basis of race, color, national origin, religion, age, handicap, or sex. The Recipient agrees to market the RLF program to prospective minority and women borrowers. The Recipient shall include a *provision* in the RLF loan documents that prohibits borrowers from discriminating against employees or applicants for employment or providers of goods and services. The Recipient agrees to monitor borrower compliance with civil rights laws.

.10 Environment: The Recipient shall develop and implement an environmental review process in accordance with the intent of the National Environmental Policy Act of 1969, as amended (P.L. 91-190), as implemented by the "Regulations" of the President's Council on Environmental Quality (40 CFR Parts 1500-1508).

In addition, the Recipient shall indemnify and hold the Government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist, directly or indirectly, in the preparation of site(s) or construction, renovation or repair of any facility or site(s), if applicable, to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the Recipient or any of its predecessors on the property;

The Recipient shall adopt procedures to review the impacts of prospective loan proposals on the physical environment. The RLF Plan shall provide for disapproval of any loan project which would adversely (without mitigation) impact flood plains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable natural resources. In administering the RLF, the Recipient shall adopt procedures to comply with applicable laws and statutes including, but not limited to, the following:

- a. The Clean Air Act, as amended (42 U.S.C. 7401 *et seq.*);
 - b. The Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, *et seq.*);
 - c. The Coastal Zone Management Act of 1972, P.L. 92-583, as amended (16 U.S.C. 1451, *et seq.*);
 - d. Executive Order 11988, Floodplain Management (May 24, 1977), and regulations and guidelines issued thereunder by the Economic Development Administration;
 - e. Executive Order 11990, Protection of Wetlands (May 24, 1977);
 - f. The Endangered Species Act of 1973 P.L. 93-205, as amended (16 U.S.C.1531, *et seq.*);
 - g. The Safe Drinking Water Act, P.L. 93-523, as amended (42 U.S.C. 300f-300j-9);
 - h. The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271, *et seq.*);
 - i. The Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended (42 U.S.C. 6901);
 - j. The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), P.L. 96-510, as amended, by Superfund Amendments and Reauthorization Act of 1986 (SARA) (42 U.S.C. 9601, *et seq.*) [As deemed necessary, the Recipient shall require compliance with EDA policy and procedures regarding the identification of hazardous and toxic waste on real property affected by RLF activities in accordance with EDA Directive 17.01, promulgated to reduce liabilities for environmental cleanup under CERCLA and SARA. This will require a certification to demonstrate a "due diligence" examination of project site(s) and for any environmental contamination that may affect real property for which EDA might be placed in the chain of title, or that is affected by EDA assisted construction activities.];
 - k. The National Historic Preservation Act P.L. 89-665 (16 U.S.C. 470, *et seq.*), (36 CFR Part 800);
 - l. Coastal Barriers Resources Act P.L. 97-348 (16 U.S.C. 3501, *et seq.*); and
 - m. All state and local environmental review requirements with all applicable Federal, state and local standards. The Recipient shall ensure that potential borrowers' environmental submittal is reviewed. Should a proposed RLF project require the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement/Report (EIS/EIR) in response to Federal, state or local requirements, the Recipient shall be responsible for ensuring compliance with the requirement prior to providing any loan assistance under the RLF.
- .11 Earthquake Requirements:** For use in new building construction projects: The Recipient is aware of and intends to comply with one of three model Codes outlined by the Committee on Seismic Safety in Construction (ICSSC): 1991 ICBO Uniform Building Code; 1992 Supplement to the BUCA National Building Code; or 1991 Amendments to the SBCC Standard Building Code.
- .12 Flood Hazard Insurance:** Where applicable, the Recipient shall require RLF borrowers to obtain flood hazard insurance pursuant to the Flood Disaster Protection Act of 1973, P.L. 93-234, as amended (42 U.S.C. 4002, *et seq.*);

.13 Davis-Bacon: The Recipient shall require borrowers to comply with the Davis-Bacon Act, as amended [40 U.S.C. 276a-276a-5]; 42 U.S.C. 3222], when construction is financed in whole or in part by the RLF and when any related construction contract exceeds \$2,000.

.14 Contract Work Hours and Safety Standards Act & Anti-Kickback Act: The Recipient shall require borrowers to comply, where applicable, with the Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327-333) and with the Anti-Kickback Act, as amended (40 U.S.C. 276(c); 18 U.S.C. 874);

.15 Access for the Handicapped: The Recipient shall ensure that if the RLF is used in whole or in part to finance a building or facility intended for use by the public or for the employment of physically handicapped, it must be accessible to the physically handicapped, pursuant to Public Law 90-480, as amended (42 U.S.C. 4151, *et seq.*), and the regulations issued thereunder;

.16 Conflict of Interest:

a. The Recipient shall not make RLF funds available to a business entity if the owner of such entity or any owner of an interest in such entity is related by blood, marriage, law or business arrangement to the Recipient or an employee of the Recipient or any member of the Recipient's Board of Directors, or a member of any other Board (hereinafter referred to as "other Board") which advises, approves, recommends or otherwise participates in decisions concerning loans or the use of grant funds.

b. No officer, employee, or member of the Recipient's Board of Directors, or other Board, or person related to the officer, employee, or member of the Board by blood, marriage, law, or business arrangement shall receive any benefits resulting from the use of loan or grant funds, unless the officer, employee, or Board member affected first discloses to the Recipient on the public record the proposed or potential benefit and receives the Recipient's written determination that the benefit involved is not so substantial as to affect the integrity of the Recipient's decision process and of the services of the officer, employee or board member.

c. An officer, employee or board member of the Recipient shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for himself or for another person, from any person or organization seeking to obtain a loan or any portion of the grant funds.

d. Former board members and/or officers are ineligible to apply for or receive loan or grant funds for a period of one year from the date of termination of his/her services.

E. Financial Requirements

.01 Budget: The line item budget for this award is found in the budget summary of the grant award. Funds budgeted under the RLF portion of a grant shall be used for loan projects and, if specified, for audit costs related to the RLF, but shall not be used for other administrative costs related to the RLF.

.02 Method of Payment: Payments will be made by the Automated Clearing House Electronic Funds Transfer (ACH/EFT) System

which transfers funds directly to a Recipient's bank account without regard to dollar amount. Initially, the Recipient must complete the Payment Information Form ACH Vendor Payment System (SF 3881) and return it to the EDA Regional Office. The award number must be included on the first line of the COMPANY INFORMATION section. The SF 3881 should first be forwarded to the Recipient's bank so that the bank can fill in the FINANCIAL INSTITUTION INFORMATION section before returning the SF 3881 to the EDA Regional Office.

The completed SF 3881 shall be submitted together with the completed Request for Advance or Reimbursement (SF 270), to the EDA Regional Office. Subsequently, only a completed SF 270 is necessary to request a transfer of funds unless information on the original SF 3881 has changed. *Note:* When completing SF 270 for an ACH/EFT transfer of funds, type "ACH/EFT" in Item No. 10 of the form to indicate a transfer of funds through the Automated Clearing House Electronic Funds Transfer System.

.03 Request For Budget Change: Request for budget changes must be submitted to the Federal Program Officer for approval. However, a budget change involving a reduction in the line item for audit costs for an equal increase in the RLF capital requires only written notification to the Government to be effective.

.04 Matching and Cost Sharing: a. Local Share: In affirming this award, the Recipient certifies that the non-Federal share of project costs is committed and is available as needed for the project, that the non-Federal share is from sources which can be used as match for the EDA project and that the non-Federal share is not encumbered or otherwise conditional.

b. To the extent applicable to this award, cash contributions by the Recipient are expected to be paid out at the same general rate as the Federal share, but in no event shall the Federal share be paid out at a faster rate than the Recipient's contribution. Any exceptions must be approved in writing by the Grants Officer based on sufficient documentation demonstrating previously determined plans for or later commitment of cash contributions.

c. The approved budget for this award is predicated normally upon a sharing of allowable costs. In the event allowable costs are less than the approved budget, the Federal share of this award will be limited to the Federal pro-rata share of the total allowable costs not to exceed the total Federal dollar amount reflected on the award document. However, consistent with Section C.11.f, the full amount of the nonfederal matching share will be expected to remain for use in the RLF unless otherwise provided for.

.05 Program Income: Program Income includes repayments of RLF loan principal and RLF Income (defined in Section E.06 below). Program Income, with the exception of current RLF Income, may be used only for relending and must be used by the Recipient (1) prior to requesting a disbursement of EDA grant funds, or (2) concurrently with the proceeds of such a disbursement.

.06 *RLF Income*: RLF Income is defined as interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. The Recipient may use RLF Income only to capitalize the RLF and/or to cover eligible and reasonable costs necessary to administer the RLF, unless otherwise provided for in the Special Terms and Conditions of the grant.

If RLF Income will be used to pay for RLF administrative expenses, the Recipient agrees (1) to use RLF Income only for those administrative expenses incurred during the same twelve-month period in which it is earned, and (2) to add any RLF Income remaining unexpended at the end of each period to the RLF capital base. RLF Income added to the RLF capital base may not be withdrawn, other than for lending purposes, without the prior written consent of the Government. The Recipient should refer to current EDA administrative instructions regarding specification of the twelve-month accounting period, the format for documenting income and expenses and such reporting requirements as may be applicable.

.07 *Indirect Costs*: a. The Recipient may use indirect costs as an eligible administrative expense chargeable against RLF Income if the indirect costs reflect an established indirect cost rate negotiated and approved by a cognizant Federal agency prior to the year end in which the costs are charged, subject to the limitation in subparagraph b. below.

b. The Department's acceptance of negotiated rates as provided in this section is subject to total indirect costs not to exceed 100 percent of total direct costs charged against RLF Income. Where the indirect cost rate exceeds 100 percent, a 100 percent rate shall be used to compute the dollar amount of indirect costs.

c. Excess indirect costs will not be used to offset unallowable or disallowed direct costs when the total allowable costs are determined.

d. If the Recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable OMB costs principles and the following subparagraphs:

1. The Office of Inspector General (OIG) is authorized to negotiate indirect cost rates on behalf of the Department for those organizations which the Department is cognizant. The OIG will negotiate only fixed rates. The Recipient is required to submit to the OIG (with a copy of its transmittal letter provided to the Grants Officer) the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates 90 days prior to the year end in which indirect costs will be charged. If the documentation is not submitted during this time period, charges of indirect costs against RLF Income for that year will not be allowable and cannot be carried forward, unless the OIG determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documents.

2. When a Federal agency other than the Department of Commerce has responsibility for establishing an indirect cost rate, the Recipient is required to submit to that Federal agency (with a copy of its transmittal letter provided to the Grants Officer and the Department of Commerce OIG) the documentation (indirect cost proposal, cost allocation plan, etc.) necessary to establish such rates within the Recipient's fiscal year during which indirect costs will be charged against RLF Income. If the documentation is not submitted during this time period, charges of indirect costs against RLF Income will be unallowable and cannot be carried forward, unless the OIG determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documents.

.08 *Additional Funding and/or Extension of Award*: The Government has no obligation to provide any additional funding in connection with this award. Any renewal of this award to increase funding or to extend the period of performance is at the sole discretion of the Government.

.09 *Debts*: a. Any debts determined to be owed the Federal Government shall be paid promptly by the Recipient. A debt will be considered delinquent if it is not paid within 30 days of the due date. If the debt is not paid by the stated due date, the Recipient shall be subject to late payment charges imposed by the Federal Government. The late payment charges are as follows:

1. Interest charge on the delinquent debt. As established by the Debt Collection Act of 1982, the minimum annual rate to be assessed is the Department of the Treasury's Current Value of Funds Rate. The interest charge shall accrue from the date of the letter which notifies the debtor of the debt and the interest requirements. This rate is published in the **Federal Register** by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness;

2. A penalty charge on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent; and

3. An administrative charge to cover processing and handling of the amount due.

b. State and local governments are not subject to subparagraphs .11 a.2 and 3 above.

c. Once an account receivable has been established or a repayment agreement to pay the debt has been approved, failure to pay the debt by the due date on the billing may result in the suspension of payments to the Recipient under any current Department of Commerce awards and/or placement of the Recipient on a Reimbursement *Only* by Treasury Check method of payment until the debt is paid.

d. If a debt is over 30 days old, any Department of Commerce awards to the Recipient may be suspended and the Recipient may be suspended or debarred from further Federal financial and non financial assistance and benefits, as provided in 15 CFR Part 26, until the debt has been paid in full or until a repayment agreement has been approved and payments are made in accordance with the agreement. Failure to pay the debt or establish a repayment

agreement by the due date will also result in the referral of the debt for collection action.

e. Payment of the debt may not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made during future program visits and audits.

.10 *Interest-Bearing Accounts*: All RLF grant funds disbursed to reimburse Recipients for loan obligations already incurred must be held in interest bearing accounts until disbursed to the borrower. In the event that a loan disbursement is delayed beyond 30 days from the date of receipt of the Federal disbursement, the undisbursed funds must be returned to the Government for credit to the Recipient's account. Interest earned on prematurely withdrawn funds must be returned to the Government (with the exception of \$100 per year which may be retained for administrative expenses by states, local governments and Indian tribes per 15 CFR Part 24, and \$250 for those subject to OMB Circular A-110 or its implementing Department regulation) and shall be remitted promptly, but no less frequently than quarterly. All checks submitted should state "EDA" on their face and the award number followed by the word INTEREST in order to identify the check in question as remittance of interest income. Checks will be sent to the address below: Economic Development Administration, P.O. Box 100202, Atlanta, Georgia 30384.

.11 *Bonding and Payment of Funds*: Prior to payment of funds hereunder, the Recipient shall provide evidence to the Government that it has fidelity bond coverage of persons authorized to handle funds under this award in an amount determined by the Government sufficient to protect the interests of the RLF and the Government.

.12 *Grant Violations and Ineligible Costs*: The Recipient hereby agrees that the Government may, at its option, withhold disbursement of any award funds if the Government learns, or has knowledge, that the Recipient has failed to comply in any manner with any provision of the award. The Government will withhold funds until the violation or violations have been corrected to the Government's satisfaction. The Recipient further agrees to reimburse the Government for any ineligible costs which were paid from award funds. If a violation occurs or an ineligible expenditure is made subsequent to full disbursement of the grant, the Government, at its option, may elect to have the Recipient repay the RLF for the amount of any ineligible cost incurred. Failure to remedy an ineligible expenditure or grant violation will be grounds for suspension and/or termination.

F. Reporting Requirements

Financial and Performance Reports must be submitted according to the schedule indicated below. Failure to submit required reports in a timely manner may result in (1) withholding payments under this award, (2) deferring the processing of new awards, amendments, or supplemental funding pending the receipt of the overdue report(s), (3) establishing an account receivable for the difference between the total Federal share of Outlays last reported and the amount

disbursed, and/or, (4) suspending or terminating the grant in whole, or in part.

.01 Financial and Performance Reports: The Recipient shall submit financial and status reports to the EDA Regional Office semiannually unless otherwise instructed by the Government. The reports will be in a form prescribed by the Government and shall be submitted for a minimum of one year following full disbursement of the grant. Subsequently, the Recipient may be eligible for graduation to a shortened, annual reporting format at the discretion of the Federal Program Officer. Graduation to the annual report will be based on an assessment of the Recipient's track record and on current RLF operations. The Recipient must obtain written authorization from the Government to convert to the annual reporting option.

Subsequently, the Recipient shall submit annual reports for the duration of the RLF unless the Federal Program Officer determines that more frequent and/or detailed reporting is necessary due to grant violations or other problems. Following remedial action, the Recipient may request the Federal Program Officer to convert back to annual reporting.

a. Initial Semiannual Report: Except for recapitalization awards, the Recipient shall submit the initial semiannual report on April 30, covering loan activity for the period ending March 31, (if the grant was awarded from April 1, through September 30), and on October 31, covering loan activity for the period ending September 30, (if the grant was awarded from October 1, through March 31).

b. Subsequent Semiannual Reports: Following the initial report, other than for recapitalization awards, the Recipient shall submit subsequent semiannual reports on either April 30, or October 31, covering RLF activity for the periods ending March 31, and September 30, respectively.

c. Annual Reports: If authorized by the Government, the Recipient shall submit annual reports in place of semiannual reports as instructed by the Government.

d. Performance Measures: The Recipient agrees to submit to EDA as part of the semiannual or annual reports referenced in F.01. (a.), (b.) and (c.) above, the information identified as the Core Performance Measures listed below. EDA will advise the Recipient in writing, not less than 90 days prior to the time for submission, in the event there are any modifications in the information required to be submitted.

A. Performance and Outcomes at the Completion of the Initial Round of Funding¹

- Compliance with implementation schedule for disbursement of RLF dollars.
- Jobs created and saved (actual) through RLF loans.
- Number of loans made by the RLF.
- Non-RLF dollars leveraged by the RLF loan.
- 1. Private sector dollars.
- 2. Other dollars leveraged.
- RLF Capital Base (total RLF funding + program income – loan writeoffs).

B. Project Outcomes after Full Disbursement of Grant

- Jobs created and saved (actual) through RLF loans.
- Number of loans made by the RLF.
- Non-RLF dollars leveraged by the RLF loan.
- 1. Private sector dollars.
- 2. Other dollars leveraged.
- RLF Capital Base (total RLF funding + program income – loan writeoffs).

.02 Other Reports: The Recipient agrees to submit other reports, as may be required from time to time, to the Government.

.03 Subcontracting Reports: Recipients of awards which involve both Federal financial assistance valued at \$500,000 or more and procurement of supplies, equipment, construction or services shall be required to submit the SF-334, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements, and Other Federal Financial Assistance." Reports shall be submitted on a quarterly basis for the period ending March 31, June 30, September 30, and December 31. Reports are due no later than 30 days following the end of the reporting period during which any procurement in excess of \$10,000 is executed under this award. The report should be submitted in duplicate to the EDA Regional Office.

G. Administrative Cost and Loan Records Retention

.01 Administrative Cost Records: Records of administrative costs incurred for activities relating to the operation of the RLF shall be retained for three years from the actual submission date of the last Semiannual or Annual Report which covers the period during which such costs were claimed, or for five years from the date the costs were claimed, whichever is less. The retention period for records of equipment acquired in connection with the RLF shall be three years from the date of disposition, replacement, or transfer of the equipment.

.02 Loan Records: Loan files and related documents and records shall be retained over the life of the loan and for a three year period from the date of final disposition of the loan. The date of final disposition of the loan is defined as the date of: (1) full payment of the principal, interest, fees, penalties, and other fees or costs associated with the loan; or (2) final settlement or write-off of any unpaid amounts associated with the loan.

.03 General: If any litigation, claim, negotiation, audit or other action involving the RLF or its assets has commenced before the expiration of the three-year (or five-year) period, all administrative and program records pertaining to such matters shall be retained until completion of the action and the resolution of all issues which arise from it, or until the end of the regular three-year (or five-year) period, whichever is later.

The record retention periods described in this section (Administrative Cost and Loan Records Retention) are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement. Any records retained for a period longer than so prescribed shall be available for inspection the same as records retained as prescribed. In any event, EDA will not

question administrative costs claimed more than three years old, unless fraud is an issue.

H. Audit

The Inspector General of the Department of Commerce, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the Recipient, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law.

.01 Requirements: a. Federal Audit: Under the Inspector General Act of 1978, as amended, 5 USC App. I, section 1 *et seq.*, an audit of this award may be conducted at any time. The Office of Inspector General usually will make the arrangements to audit this award, whether the audit is performed by Inspector General personnel, an independent accountant under contract with the Department, or any other Federal, State or local audit entity.

b. Recipient Audit: 1. For awards to institutions of higher education, and other nonprofit organizations, the Recipient is subject to the audit requirements found at 15 CFR Part 29b; for awards to governmental entities, the Recipient is subject to the audit requirements found at 15 CFR Part 29a.

2. Any audit report performed in compliance with the requirements of 15 CFR Part 29a or Part 29b shall be sent to the cognizant Federal agency and to the Federal Program Officer. A copy of the transmittal letter to the cognizant Federal agency should be provided to the Grants Officer. If the Department of Commerce is the cognizant Federal agency, the audit report should be sent to the following address: Federal Audit Clearinghouse, Bureau of the Census, 1201 East 10th Street, Jeffersonville, Indiana 47132.

c. For awards where a special award condition stipulates that an audit be conducted of this particular award, the Recipient shall arrange for an audit of the award in accordance with Governmental auditing standards.

.02 Establishment and Collection of Audit-Related Debts: a. An audit of this award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due the Government. For this reason, a 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 and the Recipient has the opportunity to comment.

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. Unless the Inspector General determines otherwise, the Recipient will be given 30 days from the transmittal of the *draft* audit report in which to submit written comments and documentary evidence.

2. The Recipient will be given 30 days from the transmittal of the *final* audit report in which to submit written comments and documentary evidence. There will be no

¹ Full disbursement of the grant award.

extension of this deadline. Based on all of the evidence available at the expiration of this time period, the Department will make a decision on the actions it will take as a result of the final audit report.

3. The Government's decisions to disallow costs under the award and to establish a debt (as well as its decisions on non financial issues) will be sent to the Recipient in an Audit Resolution Determination letter. The Recipient will be given 30 days from the transmittal of this letter in which to pay any debt. This letter will contain information on the procedures to be followed by the Recipient to appeal the Department's decisions. An appeal does not preclude the Recipient's obligation to pay the debt nor does the appeal preclude the accrual of interest on the debt. The appeal must be submitted to the Grants Officer and the Office of Inspector General within 30 days after receipt of the Audit Resolution Determination letter. There will be no extension of this deadline. This appeal is the last opportunity for the Recipient to submit to the Department arguments and evidence that dispute the validity of the audit-related debt.

4. After the opportunity to appeal has expired, or after the final decision on reconsideration has been made, the Department will not accept any submissions from the Recipient concerning its dispute of the Department's decisions on the settlement of costs under the award. If the debt is not paid, the Department will undertake other collection action but will not thereafter reconsider the legal validity of the debt.

c. There are no other administrative appeals available in the Department of Commerce concerning this matter.

I. Miscellaneous Items

.01 *Programmatic Changes:* All requests by the Recipient for programmatic changes must be submitted to the Government which will notify the Recipient in writing of the determination.

.02 *Name Check Review:*

a. A name check review shall be performed by the Office of Inspector General on key individuals associated with non profit organizations. b. The Department reserves the right to take any of the actions described in subparagraph H.02 c. below if one of the following occurs as a result of the name check review:

1. Any of the key individuals associated with non profit organizations who are not exempt from the name check review fails to submit the Form CD-346 and, if required, the Form FD-258;

2. The Recipient, key individual, or any other person associated with this award made an incorrect statement or omitted a material fact on the Form CD-346 or Form FD-258; or

3. Significant adverse findings result from the name check review that reflect on the integrity or responsibility of the Recipient and/or key individual.

c. In the event of significant adverse findings from the name check review, the Government, at its discretion, may take one or more of the following actions:

1. Terminate the award immediately for cause;

2. Require the removal from association with the management of and/or implementation of the Project any person or persons and, if appropriate, require that the Grants Officer be afforded the right of final approval of any person or persons to replace any individual removed as a result of this condition; and/or

3. Make appropriate provisions or revisions at the Government's discretion with respect to method of payment and/or financial reporting requirements.

.03 *Prohibition Against Assignment:* Notwithstanding any other provision of this award, the Recipient shall not transfer, pledge, mortgage, or otherwise assign this award, or any interest therein, or any claim arising thereunder, to any party or parties, bank trust companies, or other financing or financial institutions.

.04 *Covenant Against Contingent Fees:* Unless otherwise specified in the Special Award Conditions, the Recipient warrants that no person or selling agency has been employed or retained to solicit or secure this 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 the Recipient for the purpose of securing business. For breach or violation of the warrant, the Government shall have the right to cancel this award without liability or, at its discretion, to deduct from the award sum, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

.05 *Officials Not To Benefit:* No member of or delegate to Congress or resident Federal Commissioner shall be admitted to any share or part of this award or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this award if made to a corporation, education, or nonprofit institution for its general benefit.

.06 *Sub-Award and/or Contract to Other Federal Agencies:* a. The Recipient, subrecipient, contractor and/or subcontractor shall not sub-grant or subcontract the Project in whole or in any part to any agency of the Department of Commerce.

b. The Recipient, subrecipient, contractor and/or subcontractor, shall not sub-grant or subcontract any part of the Project to any other Federal department, agency or instrumentality, without the advance written approval of the Grants Officer.

.07 *Property Management:* The Recipient may utilize RLF Income generated from loan activities to acquire property necessary to administer the RLF. Neither grant funds nor match funds shall be used to purchase property for RLF administration. RLF Income (defined in Section E.06) can only be used to acquire necessary RLF property to the extent of the benefits received.

Eligible property for RLF activities will normally include (1) Expendable Personal Property (which includes all tangible personal property, including supplies, other than nonexpendable property), and (2) Nonexpendable Personal Property (which includes tangible personal property, including equipment).

Title to Expendable and Nonexpendable Personal Property acquired in whole or in

part with RLF Income for use in the RLF shall vest with the Recipient. The Recipient shall not encumber its title or other interests in RLF property without prior written approval from the Government. The Recipient shall use and manage nonexpendable personal property as long as needed and shall maintain nonexpendable personal property records, control systems and physical inventories.

a. *Disposition of Personal Property:* In the ordinary course of business, the Recipient may dispose of personal property for upgrading purposes or when no longer needed for the project activity. The RLFs share of the proceeds from any disposition shall be treated as a contribution to RLF Income and may be returned to the RLF for lending or used for RLF administrative expenses.

b. *Disposition of Expendable and Nonexpendable Property Under RLF Termination:* If the RLF is terminated, the Recipient shall submit a request for disposition instructions to the Federal Program Officer who shall provide the Recipient with disposition instructions. Disposition may include one of the following:

1. If the total aggregate fair market value of unused personal property at the termination of the RLF is \$1,000 or less for awards subject to OMB Circular A-110 or any Department rule superseding such Circular, or \$5,000 or less for awards subject to 15 CFR Part 24 and is not needed for any other Federally-sponsored project or program, the Recipient may retain or sell the expendable personal property without compensating the Government.

2. If the total aggregate fair market value of personal property at the termination of the award exceeds \$1,000 for awards subject to OMB Circular A-110 or any Department rule superseding such Circular, or \$5,000 for awards subject to 15 CFR Part 24 and is not needed for any other Federally-sponsored project or program, the Recipient may retain, sell, or otherwise dispose of the property and shall compensate the Government for its share.

3. The following apply only to the disposition of nonexpendable personal property:

(a) The Recipient shall submit a completed form CD-281, "Report of Government Property in Possession of Contractor" along with the request for disposition instructions.

(b) The Government's disposition instructions may additionally include the following: (1) The Recipient may be instructed to ship the nonexpendable personal property elsewhere. The Recipient may receive the nonfederal share of the market value plus shipping costs; or (2) for awards subject to the provisions of OMB Circular A-110 or Department regulation superseding such Circular, the Government reserves the right to transfer title to the Federal Government or to a third party named by the awarding agency if the nonexpendable personal property had a unit acquisition cost of \$1,000 or more. For awards subject to 15 CFR Part 24, the Government reserves the right to transfer title to the Federal Government or to a third party

named by the awarding agency for any nonexpendable personal property. When title is transferred, the Recipient shall be compensated for its share.

c. Disposition of Real Property Under RLF Termination: If the RLF is terminated and the Recipient holds title to real property through foreclosure or other legal actions, the Recipient shall request disposition instructions from the Regional Program Officer. Disposition may include one of the following:

1. The Recipient shall retain title after it compensates the Federal Government for its share;

2. The Recipient shall sell the property and pay the Federal Government for its share after the deduction of any actual and reasonable selling and fix-up expenses, if any, from the sales proceeds; or

3. The Recipient shall transfer title to the property to the Federal Government provided that in such cases the Recipient shall be entitled to compensation computed by applying the Recipient's percentage of participation in the cost of the project to the current fair market value of the property.

d. Debt Instruments Under RLF Termination: If the RLF is terminated, the Recipient shall request disposition instructions from the Regional Program Officer for disposition of debt instruments in the RLF portfolio.

.08 Rights to Inventions Made by Nonprofit Organizations and Small Business Firms: The policy and procedures set forth in Department of Commerce regulations 37 CFR Part 401, Rights to Inventions made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements, published in the **Federal Register** on March 18, 1987, shall apply to all grants and cooperative agreements made where the purpose is experimental, developmental, or research work.

Pursuant to Executive Order 12899, the Department is required to notify the owner of any valid patent covering technology whenever the Department or its financial assistance Recipients, 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 Recipient uses or has used patented technology under this award without a license or permission from the owner, the Recipient must notify the Department Patent Counsel at the following address, with a copy to the Grants Officer: U.S. Department of Commerce, Office of Chief Counsel for Technology, Patent Counsel, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The notification shall include the following information:

- a. The award number.
- b. The name of the Department awarding agency.
- c. A copy of the patent.
- d. A description of how the patented technology was used.
- e. The name of the Recipient contact, including an address and telephone number.

.09 Executive Order 12432, Minority Business Enterprise: In support of Executive Order 12432, signed by the President on July 14, 1983, the Department of Commerce encourages all Recipients to utilize minority firms and enterprises in contracts under grants and cooperative agreements. The Office of Program Development, Minority Business Development Agency, will assist Recipients in matching qualified minority enterprises with contract opportunities. For further information contact: U.S. Department of Commerce, Minority Business Development Agency, Office of Program Development, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

.10 Internal Revenue Service (IRS) Information: a. A Recipient classified for tax purposes as an individual, partnership, proprietorship, or medical corporation is required to submit a taxpayer identification number (TIN) (either social security number or employer identification number as applicable) on Form W-9, "Payer's Request for Taxpayer Identification Number."

Tax-exempt organizations and corporations (with the exception of medical corporations) are excluded from this requirement. The Recipient should submit the form to the Grants Officer within 60 days of the effective date of award.

The Department provides the Recipient's TIN to the IRS on Form 1099-G, "Statement for Recipients of Certain Government Payments." Applicable Recipients who either fail to provide their taxpayer identification number or provide an incorrect number may not be eligible for funding or have funding suspended until the requirement is met.

b. Privacy Act Statement—Mandatory Disclosure, Authority, Purpose, and Uses: Disclosure of your social security number or employer identification number is mandatory for Federal income tax reporting purposes under the authority of 26 U.S.C., Section 6011 and 6109(d), and 26 CFR Part 301, Section 301.6109-1. This is to ensure the accuracy of income computation by the Internal Revenue Service. This information will be used to identify an individual who is compensated by funds of the Department of Commerce or paid interest under the Prompt Payment Act. A Recipient who either fails to provide the taxpayer identification number or provides an incorrect number may not be eligible for funding or have funding suspended until requirement is met. This information is being provided to the Internal Revenue Service on Form 1099.

.11 Government wide Debarment, Suspension and Other Responsibility Matters (Nonprocurement): a. This award is subject to Executive Order 12549, Debarment and Suspension, and 15 CFR Part 26, "Government wide Debarment and Suspension (Nonprocurement)." A person (as defined at 15 CFR § 26.105(n)) who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities except to the extent prohibited by law or authorized in writing by the Department.

b. The Recipient shall provide immediate notification to the Grants Officer if at any

time the Recipient learns that its certification, Form CD-511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," was erroneous when submitted or has become erroneous by reason of changed circumstances. Subrecipients in lower tier transactions shall provide the same updated notice to the Recipient.

c. Unless the Department authorizes in writing an exception in accordance with 15 CFR §§ 26.215, 26.220, and/or 26.625, the Recipient of this award shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. The Recipient shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in 15 CFR Part 26.215. Violation of this restriction may result in disallowance of costs, annulment or termination of award, issuance of a stop work order, debarment or suspension, or other remedies, as appropriate.

d. The Recipient shall require each applicant/bidder for a lower tier covered transaction (except subcontracts for goods or services under the \$100,000 small purchase threshold unless the subtier Recipient will have a critical influence on or substantive control over) at any tier under this award to file a certification, Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," without modification, for it and its principals in any proposal/solicitation submitted in connection with the lower tier covered transaction. Certifications shall be retained by the Recipient.

e. The Recipient shall include the following provisions regarding debarment and suspension in all subtier covered transactions:

1. This lower tier covered transaction is subject to Executive Order 12549, "Debarment and Suspension," and 15 CFR Part 26, "Government wide Debarment and Suspension (Nonprocurement)." Unless authorized by the Department in writing, a person (as defined at 15 CFR § 26.105(n)) who is debarred or suspended shall be excluded from Federal financial and nonfinancial assistance and benefits under Federal programs and activities except to the extent prohibited by law or authorized by the Department.

2. Unless the Department authorizes in writing an exception in accordance with 15 CFR §§ 26.215, 26.220, and/or 26.625, the Recipient of this lower tier covered transaction shall not knowingly do business under a covered transaction with a person who is debarred or suspended, or with a person who is ineligible for or voluntarily excluded from that covered transaction. The Recipient of this sub-award shall not renew or extend covered transactions (other than no-cost time extensions) with any person who is debarred, suspended, ineligible, or voluntarily excluded, except as provided in 15 CFR § 26.215.

f. The Recipient shall include the following provision in each application and in each bid for a lower tier covered transaction at any tier under this award:

Each applicant/bidder for a lower tier covered transaction (except subcontracts for goods or services under the \$100,000 small purchase threshold unless the subtier Recipient will have a critical influence on or substantive control over the award) at any tier under this Federal award must file Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," without modification, at the time of application/bid.

Applicants/bidders should review the instructions for certification included in the regulations before completing the certification. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Certifications shall be retained by the Recipient.

.12 Restrictions on Lobbying (applicable to awards exceeding \$100,000 in Federal funding): a. This award is subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented by 15 CFR Part 28. The Recipient of this award and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award.

b. The Recipient shall require each person who requests or receives from the Recipient a sub-grant, contract, or subcontract exceeding \$100,000 of Federal funds at any tier under this award, to file Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," without modification, and, if applicable, SF-LLL, "Disclosure of Lobbying Activities," form regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient, who shall forward all disclosure forms to the Grants Officer.

c. The Recipient shall include the following provision in all contracts, subcontracts, or sub-grants:

This contract, subcontract, or sub-grant is subject to Section 319 of Public Law 101-121, which added Section 1352, regarding lobbying restrictions, to Chapter 13 of Title 31 of the United States Code as implemented by 15 CFR Part 28. Each bidder/applicant/recipient of this contract, subcontract, or sub-grant and subrecipients are generally prohibited from using Federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this award.

d. The Recipient shall include the following contract clauses regarding lobbying in each application for a sub-grant and in each bid for a contract or subcontract

exceeding \$100,000 of Federal funds at any tier under the Federal award:

Each applicant/recipient of a subgrant and each bidder/applicant/recipient of a contract or subcontract exceeding \$100,000 of Federal funds at any tier under the Federal award must file Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," and Standard Form-LLL, "Disclosure of Lobbying Activities," regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the Federal award, who shall forward all disclosure forms to the Grants Officer.

Each subgrantee, contractor, or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form within 15 days of the end of each 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 by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the Federal award (grant), who shall forward all disclosure forms to the Grants Officer.

Appendix C to Part 308—Section 209 Economic Adjustment Program Revolving Loan Fund Grants; Administrative Manual

OMB Approval No. 0610-0095
Approval expires 07/31/99

Burden Statement for Revolving Loan Fund Administrative Manual:

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

The information is required to obtain or retain benefits from the Economic Development Administration pursuant to Economic Development Administration Reform Act, Public Law 105-393. No confidentiality for the information submitted is promised or provided except that which is exempt under 5 U.S.C. 552(b)(4) as confidential business information.

The public reporting burden for this collection is estimated to average 12 hours per response including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Economic Development Administration, Herbert C. Hoover Building, Washington, DC, 20230, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

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I. Purpose

This Manual describes the compliance, reporting, grant record keeping and other administrative requirements and procedures that apply to Revolving Loan Fund (RLF) grants funded by the Economic Development Administration (EDA) under Section 209 of the Public Works and Economic Development Act of 1965, as amended. These requirements apply to new RLFs and to the future actions of all RLFs funded prior to the Manual's effective date. The requirements apply to RLFs funded under the Sudden and Severe Economic Dislocation (SSED) and the Long-Term Economic Deterioration (LTED) components of Section 209. They also apply to the revolving phases of RLFs funded for the initial purpose of providing financing to one or more identified business firms.

II. Authority

A. *Grant Recipients as Trustees*: Recipients of EDA grants to operate RLFs hold RLF funds in trust to serve the purpose of the Economic Adjustment program for which the grant award was made. The grant recipient's obligation to the Federal Government continues as long as the Federal interest in EDA RLF assets, in the form of cash, receivables, personal and real property, and notes or other financial instruments developed through the use of the funds, continues to exist. If EDA determines that a grant recipient is failing to meet this obligation, the Agency will assert its equitable reversionary interest in the RLF assets. However, EDA's nonassertion of its interest does not constitute a waiver thereof.

B. *Grantor Authority to Change Policies*: EDA, as the Federal agency charged with implementing the program, is obligated to promulgate policies and procedures applicable to all RLF grant recipients to insure compliance with Federal requirements, to safeguard the public's interest in the grant assets, and to promote effective use of the funds in accomplishing the purpose for which they were granted.

Pursuant to this obligation, grant terms and conditions require grant recipients to comply with changes in regulations and other requirements and policies that EDA may issue from time-to-time. Such changes apply to actions taken by all grant recipients, existing and prospective, after the effective date of the changes. Loans made by grant recipients prior to the effective date of the changes are not affected unless so required by law.

As a matter of policy, EDA will subject proposed RLF changes to public review when practicable.

EDA's policy is to administer RLF grants uniformly, but it is understood that there may be situations warranting a variance. To accommodate these situations and to encourage innovative and creative ways to address economic adjustment problems,

requests for variances to the requirements of this Manual will be considered if they are consistent with the goals of the Section 209 program and with an RLF's strategy, make sound economic and financial sense, and do not conflict with applicable legal requirements.

C. *Precedence of Grant Documents and Published Regulations*: The Grant Award, executed by EDA and the recipient, together with the Budget, Special Terms and Conditions and the Standard Terms and Conditions, as may be amended, and the current regulations, published at 13 CFR Part 308, constitute the requirements, hereinafter referred to as "Terms and Conditions," applicable to an EDA RLF grant. This Manual is designed to clarify and administratively implement those requirements. In the event of conflict, the aforementioned documents take precedence over this Manual.

III. Grantee Responsibilities

A. *Prudent Lending Practices*: RLF grant recipients are required to operate RLFs in accordance with lending practices generally accepted as prudent for public loan programs. Such practices cover loan processing, documentation, servicing and administrative procedures, as outlined in the current RLF Plan Guidelines.

B. *Protection of RLF Assets*: RLF grant recipients are required (1) to obtain adequate and appropriate collateral from borrowers, and (2) to act diligently to protect the interests of the RLF, through collection, foreclosure, or other recovery actions on defaulted loans.

C. *Federal Requirements Applicable to Grant Recipients*: Grant recipients are responsible for complying with the Federal laws and regulations, Executive Orders and Office of Management and Budget (OMB) Circulars which are referenced in the Terms and Conditions, as may be amended, for RLF grants. These include administrative and audit requirements, cost principles, and other laws, regulations and Executive Orders pertaining to requirements from civil rights to lobbying restrictions.

D. *Federal Requirements Applicable to RLF Borrowers*: Grant recipients are responsible for ensuring that prospective borrowers are aware of, and comply with, the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. The most common of these requirements relate to environmental protection, civil rights, Davis-Bacon wage rates and handicap access on construction projects, and the prohibited use of RLF funds for businesses that relocate jobs from one commuting area to another.

Grant recipients are responsible for developing an appropriate review process in accordance with the intent of the National Environmental Policy Act of 1969, (P.L. 91-190) as amended, as implemented by the "Regulations" of the President's Council on Environmental Quality. The process shall include disapproval of loan projects which would adversely (without mitigation) impact floodplains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable natural resources. Grant recipients are also

responsible for openly marketing the RLF to prospective minority and women borrowers, and monitoring borrower compliance with civil rights requirements that prohibit borrowers from discriminating against employees or applicants for employment, or providers of goods and services. These and the other Federal requirements described in the Terms and Conditions of each grant should be included, as applicable, in each RLF's standard loan agreement to ensure borrower compliance where necessary. Grant recipients are expected to act diligently to correct instances of noncompliance, including the recall of loans, if necessary.

IV. Revolving Loan Fund Restrictions

The following restrictions apply generally to RLFs:

A. Lending Area Restrictions

1. *Eligible Lending Area*: The economic activity and the benefits of RLF loans must be located within the eligible areas identified in the grant award.

2. *Modification of the Eligible Area*: Areas within the operational jurisdiction of the grant recipient that were not identified in the grant award, but that meet or may subsequently meet the Agency's criteria for eligibility under Section 209, may qualify to be added to an RLF's eligible lending area. To ascertain qualification, a grant recipient must make a written request to EDA to determine whether a new area is eligible for assistance under existing grant terms. Area eligibility data are updated quarterly and eligibility lists are maintained by EDA's Regional Offices. Unless stipulated otherwise in the grant award, once an area's eligibility is approved by EDA, that area retains its eligibility indefinitely.

3. *Recapitalization Rule*: If EDA funds are used to recapitalize an existing RLF, the new grant funds may be used only in areas eligible for assistance at the time the recapitalization grant is invited (and in areas that become eligible between the time of invitation and the grant award). Areas that were eligible under the previous EDA grant award but not under the new award may continue to receive RLF assistance under the previous grant award only. Areas which become eligible subsequent to the grant award require EDA approval as discussed above in Section IV.A.2.

If a grant recipient has received EDA funds to recapitalize an existing RLF and the respective grants serve different eligible lending areas, the grant recipient is responsible for maintaining adequate accounting records to substantiate that each grant is being used in the appropriate eligible lending area.

B. Borrower Restrictions

1. *Eligible Lending Area*: An RLF borrower must retain the activity financed in the eligible lending area for the term of the loan. The RLF's standard loan agreement should include a provision to call the loan if the activity financed is moved from the eligible lending area.

2. *Relocation*: RLF financing may not be used by a borrower for any activity that serves to relocate jobs from one commuting area to another. This applies both to a

business which uses RLF financing to relocate jobs into an eligible area from a different commuting area, and to a business which relocates jobs, created as a result of RLF financing, to a different commuting area. An RLF's standard loan agreement should include a provision for calling the loan if it is determined that (a) the business used the RLF loan to relocate jobs from another commuting area, or (b) the activity financed was subsequently moved to a different commuting area to the detriment of local workers. The commuting area is that area defined by the distance people travel to work in the locality of the project receiving RLF financial assistance.

3. *Credit Otherwise Available:* A borrower is not eligible for RLF financing if credit is otherwise available on terms and conditions which would permit completion and/or the successful operation or accomplishment of the project activities to be financed. The grant recipient is responsible for determining that each borrower meets this requirement and for documenting the basis for its determination in the loan write-up. A loan write-up must include a discussion of the particular features of the local capital market and/or of the individual borrower or project to be financed that result in the need for RLF financing. It should also briefly describe the key aspects of the business and the loan including a discussion of the prospective borrower's ability to repay.

The grant recipient is also responsible for obtaining supplemental evidence, as appropriate, to support the need for RLF financing. This may include the following:

- a. A commitment letter from a participating bank stating the loan terms, the maximum amount to be extended by the bank, and the need for the RLF's participation; and/or
- b. Bank rejection letter(s), if obtainable, listing the proposed loan terms.

Exception to Credit Test: RLF financing may also be used as an incentive, through favorable loan terms, to attract a new business or a business expansion into an eligible area. The business may be credit worthy but would otherwise not locate in the area without RLF financing as an incentive. To undertake this type of project, the grant recipient must sufficiently document the need for RLF assistance and should obtain certification from the company, stating that it would not locate the proposed project at the intended location without RLF assistance. Grant recipients are cautioned that failure to document adequately the need for an RLF loan may be grounds for declaring a loan ineligible and requiring the grant recipient to repay any outstanding loan balance to the RLF, or return the Federal share to EDA.

4. *Public and Quasi-Public Borrowers:* A public or quasi-public organization is not eligible to receive RLF financial assistance unless (a) the activity financed directly benefits or will directly benefit identifiable business concerns, and (b) there is reasonable assurance that the activity financed will result in increased business activity in the near term.

5. *Private Developers:* Private developers are not eligible for RLF assistance unless the activity financed is non-speculative, consistent with the strategic and lending

objectives of the RLF, and directly benefits or will directly benefit identifiable business concerns.

6. *Other:* A grant recipient shall not use its RLF to make a loan to itself or to a related organization.

C. Financing Restrictions

1. Loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit, or other investments not related to the objectives of the RLF are prohibited. To preclude ineligible uses of RLF funds, the purpose of each RLF loan should be clearly stated in the RLF loan agreement.

2. For initial RLF grants, the total dollar amount of loans for working capital purposes may not exceed 50% of the total RLF capital prior to the full disbursement of grant funds, unless otherwise stipulated in the grant agreement. ("*RLF capital*" consists of the funds which capitalized the RLF plus such earnings and fees generated by RLF activities as may be added to the RLF capital base to be used for lending.) For recapitalization grants and for initial grants after the grant funds are fully disbursed, the portfolio working capital percentage may, with EDA's prior written approval, exceed 50 percent. In reviewing requests to increase the 50 percent limit on working capital loans, EDA will consider, among other things, the grant recipient's experience with working capital loans and whether the request is consistent with the area's Economic Adjustment Strategy and the RLF Plan.

3. RLF capital may not be used to:

- a. Acquire an equity position in a private business;
- b. Subsidize interest payments on an existing loan;
- c. Provide the equity contribution required of borrowers under other Federal loan programs;
- d. Enable an RLF borrower to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless the need for RLF financing is sufficiently justified, and documented in the loan write-up (referenced in IV.B.3 above). Acceptable justification could include acquiring a business to substantially save it from imminent foreclosure or acquiring it to expand it with increased investment. In any case, the resulting economic benefits should be demonstrably consistent with the strategic objectives of the RLF;
- e. Refinance existing debt unless:

(1) There is sound economic justification and the grant recipient sufficiently documents in the loan write-up that the RLF is not replacing private capital solely for the purpose of reducing the risk of loss to an existing lender(s) or to lower the cost of financing to a borrower, or

(2) An RLF uses RLF income sources and/or recycled RLF funds to purchase the rights of a prior lienholder during an in-process foreclosure action in order to preclude a significant loss on an RLF loan. This action may be undertaken only if there is a high probability of receiving compensation within a reasonable time period (18 months) from the sale of assets sufficient to cover an RLF's

expenses plus a reasonable portion of the outstanding loan obligation.

(Note: Since a grant recipient will be required to repay the amount of an ineligible loan, it is recommended that EDA be contacted for clarification or written confirmation if there is any question regarding either of the refinancing exceptions described above.)

4. Prior to full disbursement of grant funds, the grant recipient may not use the RLF to guarantee loans made by other lenders. In the revolving phase, after the full disbursement of grant funds, the RLF may be used to guarantee loans of private lenders provided the Recipient has obtained EDA's prior written approval of its proposed loan guarantee activities. The plan for any loan guarantee activities should include the following information:

- a. The maximum guarantee percentage that will be offered;
- b. A certification from the RLF attorney that the guarantee agreement is acceptable by local standards. At minimum, the guarantee agreement must include the following: the maximum reserve requirement; the rights and duties of each party in regard to loan collections, servicing, delinquencies and defaults; foreclosures; bankruptcies; collateral disposition and the call provisions of the guarantee; and interest income and loan fees, if any, which will accrue to the RLF.

D. Interest Rates

A grant recipient can make loans and loan guarantees to eligible borrowers at interest rates and under conditions determined by the Recipient to be most appropriate in achieving the goals of the RLF. However, the minimum interest rate an RLF can charge is four (4) percentage points below the current money center prime rate quoted in the Wall Street Journal or the maximum interest rate allowed under State law, whichever is lower, but in no event may the interest rate be less than four (4) percent. However, should the prime interest rate exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if to do so would compromise the ability of the RLF to implement its financing strategy.

E. Private Leveraging

Unless stipulated otherwise in the grant agreement, RLF loans must be used to leverage private investment of at least two dollars for every one dollar of RLF investment. This leveraging requirement applies to the portfolio as a whole rather than to individual loans and is effective for the life of the RLF. Private investment, to be classified as leveraged, must be made concurrently with an RLF loan as part of the same business development project and may include (1) capital invested by the borrower or others, (2) financing from private entities, and (3) 90 percent of the guaranteed portions of SBA 7(a) and SBA 504 debenture loans. Private investments do not include equity build-up in a borrower's assets or prior capital investments by the borrower unless made within nine months of the RLF loan and with the concurrence of the RLF Recipient. If a grant recipient can

demonstrate that the 2:1 leverage requirement is too restrictive for its lending area and that it impedes the purpose for which the grant was made, it may request EDA to waive or modify the grant agreement.

V. RLF Capital

A. RLF Capitalization

The original sources of capital for EDA RLFs are normally EDA grant funds and a nonfederal cash matching share. The EDA grant funds and the nonfederal matching funds can be used only for the purpose of making loans under an RLF, unless otherwise provided for in the grant agreement and grant budget, e.g., budgeted audit costs. Costs associated with the preparation of the grant application are not eligible expenses and are not reimbursable from the funds invested as RLF capital.

B. Nonfederal Matching Share

The grant agreement specifies the amount of nonfederal cash share required for an RLF grant. This is usually not less than 25% of the total RLF capital investment. The nonfederal share funds must be loaned either before or proportionately with EDA funds. Upon repayment, the nonfederal share funds are treated the same as EDA funds, repayments of principal must be placed in the RLF for relending and interest payments must be used either for relending or for eligible RLF administrative costs. The nonfederal matching share must be available when needed for lending and must be under the control of the grant recipient (or its designee) for the duration of the RLF for use in accordance with the terms of the grant.

C. Partial Termination and Deobligation

In the event that a portion of the EDA grant is terminated and deobligated (refer to Section XII. below) and is no longer available to a grant recipient due to its failure to meet the terms of a grant, the nonfederal matching share shall remain in the RLF unless otherwise specified in the grant agreement or agreed to in writing by EDA.

VI. RLF Administrative Costs

A. General Requirements

Grant recipients are responsible for the administrative costs associated with operating an RLF. Evidence of sufficient and reliable sources of funds to cover RLF administrative expenses is a key factor in project selection. As grant funds are disbursed for loans and an RLF begins to generate income from lending activities, such income (referred to as "RLF Income" and defined in Section VII.A.), as distinguished from principal repayments, may be used to cover eligible, reasonable, and documented administrative costs necessary to operate the RLF. When RLF Income is used for RLF administrative expenses, rather than added to the RLF capital base for lending, grant recipients are required to complete an RLF Income and Expense Statement as discussed in Section VII.C.2.

B. Auditing Costs

The grant budget accompanying the grant award lists the maximum amount of grant funds that may be used to defray the costs

of audits required under the terms of the grant. In addition to funds budgeted in the grant award, audit costs may be reimbursed from RLF Income and from resources of the grant recipient. Audit costs are chargeable against the grant award if permitted in the grant budget and RLF Income to the extent that the costs charged are equitably distributed and reflect the benefits received. Grant funds budgeted for audit costs that are unused may be reallocated to the RLF capital base without EDA's permission. Additional information on grant audits is discussed in Section XI.B. and in EDA's Revolving Loan Funds Grants Audit Guidelines (RLF Audit Guidelines).

C. Other Eligible RLF Administrative Costs

Costs eligible for reimbursement from RLF Income must be consistent with the cost principles outlined in the appropriate OMB cost principle circular (OMB A-21, A-87 or A-122) and with the RLF Audit Guidelines. The requirements for using RLF Income are discussed in detail in Section VII.

Some of the common administrative costs that may be charged against RLF Income include RLF staff salaries and fringe benefits, RLF-related training, travel, marketing, general administration, business counseling and management assistance, portfolio management, materials and supplies, equipment rental and acquisitions prorated based on RLF usage, building rent, outside professional services, insurance, loan closing costs and the costs to protect collateral subsequent to foreclosure.

RLF administrative costs may be separated into direct and indirect costs. Direct costs are those that can be identified specifically with a particular cost objective, such as an RLF program; indirect costs are those that are incurred for a common or joint purpose benefitting more than one program or cost objective and are not readily assignable. All costs charged against RLF Income must be supported by formal accounting records and source documentation. All indirect and joint costs charged against RLF Income must additionally be supported by a cost allocation plan approved by the cognizant Federal agency.

VII. RLF Income

A. Definition

RLF Income includes interest earned on outstanding loan principal, interest earned on accounts holding RLF funds not needed for immediate lending, all loan fees and loan-related charges received from RLF borrowers, and other income generated from RLF operations. (Note that the definition of RLF Income does not include repayments of loan principal because RLF principal repayments represent the return of capital and not "income". Consequently, RLF Income is a narrower definition of income than "program income" in the Uniform Administrative Requirements For Grants And Cooperative Agreements To State And Local Governments in 15 CFR Part 24.25, which includes principal repayments).

In accounting for RLF Income, any proceeds from the sale, collection, or liquidation of a defaulted loan, up to the amount of the unpaid principal, will be

treated as repayments of RLF principal and placed in the RLF for lending purposes only. Any proceeds in excess of the unpaid principal will be treated as RLF Income.

B. Eligible Uses

While RLF Income can be used to pay for eligible and reasonable administrative costs as discussed above, RLF grant recipients are expected to add a reasonable percentage of RLF Income to the RLF capital base to compensate not only for loan losses and the effects of inflation over time, but also to maintain a minimum funding level for the future borrowing needs within the eligible lending area. To determine the appropriate amount of RLF Income to return to an RLF, RLF operators should consider the costs necessary to operate an RLF program, the availability of other monetary resources, the portfolio risk level and projected capital erosions from loan losses and inflation, the community's (or area's) commitment to the RLF, and the anticipated demand for RLF loans.

(Note: RLF Income that is not used for administrative purposes during the twelve month period in which it is earned must be added to the RLF capital base for lending purposes by the end of the twelve month period (see Section VII.C.2. below for selection of the twelve month period). Only RLF Income earned during a current period may be used for current administrative expenses. RLF Income may not be withdrawn from an RLF in a subsequent period for any uses, other than lending, without the written consent of EDA.)

C. Administrative Requirements

Grant recipients electing to use RLF Income to cover all or part of a RLF's administrative costs must comply with the following provisions:

1. *Accounting Records:* Grant recipients must (a) maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs, and (b) comply with applicable OMB cost principles and with the RLF Audit Guidelines when charging costs against RLF Income. Records must be retained by grant recipients for at least three years. If fraud is an issue, records must be retained until the issue is resolved.

2. *RLF Income and Expense Statement:* The Recipient must complete the RLF Income and Expense Statement (RLF Income Statement) located in Exhibit A, within 90 days of the twelve month period ending either September 30 or the Recipient's fiscal year end, whichever period is selected by the Recipient. The Recipient shall notify EDA of its selection in its first report to EDA. Once the period is selected, it may not be changed without prior written permission of EDA.

In lieu of completing an RLF Income Statement, the grant recipient may substitute information contained in an independent audit report provided it is in substance and in detail comparable to that provided in the RLF Income Statement. Should an audit report be used, the grant recipient will have to provide additional information certifying certain employee information requested in the RLF Income Statement.

3. *Reporting Requirements:* Grant recipients using fifty (50) percent or more or \$100,000 or more of RLF Income for RLF administrative expenses during the selected twelve month period must submit the completed RLF Income Statement to the EDA Regional Office within 90 days of the period ending date. Grant recipients whose RLF Income usage is under 50 percent and less than \$100,000 shall retain the RLF Income Statement for three years. The grant recipient shall make it available to EDA personnel upon request.

4. *Ineligible Costs:* For any costs determined by EDA to have been an ineligible use of RLF Income, the grant recipient shall reimburse the RLF or EDA. EDA will notify the grant recipient of the time period allowed for, and the manner in which to make, reimbursement.

VIII. Revolving Loan Fund Plan

A. Purpose

Grant recipients are required by the terms and conditions of the grant agreement to manage RLFs in accordance with an RLF Plan (Plan) generally approved prior to the grant award. The Plan serves two purposes. First, it summarizes how the RLF will be used to support implementation of the area's economic adjustment strategy, a statutory prerequisite to award of a Section 209 Implementation grant. Second, it documents the operating procedures established by the grant recipient to ensure consistent administration of the RLF in accordance with the Terms and Conditions of the grant and prudent public lending practices.

B. Format and Content

The Plan has two distinct parts. Part I, "The RLF Strategy," summarizes the area's economic adjustment strategy, including the business development objectives, and describes the RLF's financing strategy, policies and portfolio standards. Part II, "RLF Operating Procedures," serves as the internal operating manual for the RLF. The grant recipient is required to address a number of topics specifically identified by EDA, but otherwise has considerable discretion in designing and documenting operating procedures appropriate to the relative scale and complexity of its financing function. The required format and content for the two parts of the Plan are described in EDA's RLF Plan Guidelines.

C. EDA Approval

Unless specifically otherwise permitted by EDA, the Plan must be approved by EDA prior to the grant award.

D. Annual Plan Certification

Grant recipients are required to certify annually with the submission of the program report for the period ending September 30 (see Section XI.A), that the RLF loan board and the grant recipient's governing board have reviewed the RLF's performance for the preceding year relative to the area's adjustment strategy and the RLF Plan and have determined that:

1. The RLF Plan is consistent with and supportive of the area's current economic adjustment strategy; and

2. The RLF is being operated in accordance with the policies and procedures contained in the RLF Plan, and the loan portfolio meets the standards contained therein.

With the exception of States, the certification should normally be in the form of a resolution passed by the grant recipient's governing board. Certification by State grantees should be by an authorized State official.

E. Plan Modifications

Approval of modifications to Part I of the Plan may be requested at any time the grant recipient or EDA determines that the Plan is either outdated relative to the current adjustment needs and objectives of the area or specific lending policies and/or requirements are impeding effective use of the RLF as a strategic financing tool. Prerequisites for EDA's consideration of proposed modifications to Part I of the Plan include the following:

1. When the modification request is based on a significant redirection of an area's economic adjustment strategy, it must be accompanied by a copy of the current strategy. The strategy submitted must:

a. Have been prepared or reviewed and updated, as necessary and appropriate, within the last 12 months by the grant recipient or area organization responsible for its preparation and maintenance;

b. Address, for the purposes of EDA, the same geographic/jurisdictional area covered by the original strategy, unless the eligible area has been/is being expanded as provided for by the terms and conditions of the grant;

c. Include the information specified in EDA's current guidelines for preparing and documenting an economic adjustment strategy, including evidence of the continuing need for the RLF; and

d. Provide sufficient evidence that the proposed modifications are necessary and justified.

2. When the proposed modification is designed to permit more effective use of RLF financing in support of its unchanged strategic objectives, the grant recipient must submit adequate written justification for the proposed change(s). Submission of a current adjustment strategy is not required.

3. Certification that the proposed revisions are consistent with EDA policy and do not violate the terms and conditions of the grant.

4. Certification that the purpose and scope of the RLF as a financing tool for supporting implementation of the area's economic adjustment strategy remain unchanged.

5. Certification that prudent management of the RLF assets would not be compromised.

Grant recipients funded prior to the effective date of this Manual are encouraged but not required, unless determined otherwise by EDA, to comply with the new RLF Plan format when modifying any part of their plan.

Operational procedures, as documented in Part II of the Plan, so long as consistent with EDA requirements and the terms and conditions of the grant award, may be modified with the approval of the grant recipient's governing board. A copy of any revisions to Part II should be submitted for the EDA file within 30 days of approval. For

grant recipients other than States, Plan modifications should be approved by resolution of the organization's governing board.

IX. Disbursement of Grant Funds

A. Pre-Disbursement Requirements

1. The grant recipient is required to provide evidence that it has fidelity bond coverage for persons authorized to handle funds under the grant award in an amount sufficient to protect the interests of EDA and the RLF. Such insurance coverage must exist at all times during the life of the RLF.

2. The grant recipient is required to provide a certification by an independent accountant familiar with the grant recipient's accounting system that its accounting system is adequate to identify, safeguard, and account for all RLF funds, including RLF Income.

3. The grant recipient is required to certify that the standard RLF loan documents necessary for lending are in place and that these documents have been reviewed by legal counsel for adequacy and compliance with the terms and conditions of the grant. The standard loan documents must include at a minimum, the following: Loan Application, Loan Agreement, Promissory Note, Security Agreement(s), Deed of Trust or Mortgage, and Agreement of Prior Lien Holder.

B. Disbursement Procedures

The grant recipient is required to draw grant funds electronically by the Automated Clearing House Electronic Funds Transfer (ACH/EFT) system. A grant recipient may request disbursements only at the time and in the amount immediately needed to close a loan or disburse funds to a borrower. RLF grant funds are considered to be made available to grant recipients on a reimbursement basis (as an obligation is incurred by the grant recipient at the time of loan approval and loan announcement). Grant funds should be requested only for immediate use, i.e., when the intent is to disburse the funds within 14 days of receipt. If grant funds are requested and the loan disbursement is subsequently delayed, a grant recipient may hold the funds up to 30 days from the date of receipt, but should return the funds if disbursement of the grant funds is unlikely within the 30 day period. Returned funds will be normally available to the grant recipient for future drawdown. When returning prematurely drawn funds, checks should identify on their face the name of the grantor agency—"EDA" followed by the grant award number and the words "Premature Draw." The grant recipient may also indicate, if a cover letter is sent, that a credit in the amount of the check is to be made to the grant award number for future drawdown. Checks should be submitted to: Economic Development Administration, P.O. Box 100202, Atlanta, Georgia 30384.

As stated above, the nonfederal matching share must be disbursed either proportionately with the EDA grant funds or at a faster rate. Interest earned on prematurely drawn grant funds must be returned to EDA at least quarterly for deposit in the U.S. Treasury. (Note: Grantees may deduct and retain a portion of such earned

interest for administrative expenses up to the maximum amounts allowed under either 15 CFR Part 24 or OMB Circular A-110 or its implementing Department regulation, as applicable). Returned interest payments should indicate on the face of the check "EDA" followed by grant award number and the word "Interest". Checks for interest should be submitted to the same Atlanta, Georgia address as above.

To request a grant disbursement by the ACH/EFT method, a grant recipient must submit a completed Request For Advance or Reimbursement, Standard Form 270 to the EDA Regional Office using the attached Special Instructions (Exhibit B) which are specific to RLF grants. Grant recipients may generally expect to have funds available for subsequent disbursement from five to ten working days after the EDA Regional Office receives the SF 270.

C. Principal Repayments During Grant Disbursement Phase

Principal repayments from active RLF loans that are received by the grant recipient must be placed immediately in the loan fund to be available for relending only. As each new loan is made, the grant recipient may request a disbursement of grant funds only for the difference, if any, between the amount of funds available for relending (from repayments of loan principal and RLF Income) and the amount of the new loan, less an amount for local matching funds as may be required to be disbursed concurrent with the grant (refer to Section V.B. for matching fund requirements). However, RLF Income received during the current period (as defined in Section VII.C.2.) may be held for the duration of the period to cover eligible administrative expenses, and need not be disbursed in order to draw additional grant funds.

D. Loan Closing/Disbursement Schedule

RLF loan activity must be sufficient to draw down grant funds in accordance with the prescribed time schedule for loan closings and disbursements to eligible RLF borrowers. Unless otherwise stated in the grant agreement, the time schedule requires that the initial round of lending (i.e., the grant disbursement phase) be completed within three (3) years of the grant award with no less than 50 percent of the grant funds, and of the nonfederal matching share, disbursed within eighteen months and 80 percent within two years.

Should the grant recipient substantially fail to meet any of the prescribed deadlines, additional grant funds will not be disbursed unless (1) funds are needed to close and disburse funds on loans approved prior to the deadline and will be disbursed within 45 days of the deadline, (2) funds are needed to meet continuing disbursement obligations on loans closed prior to the deadline, or (3) EDA has approved a time schedule extension.

(Note: An approved loan is defined as a loan that has been approved by the RLF loan board but has not been closed. A loan is closed when the loan agreement and note have been signed by the borrower. The full amount of a loan may be disbursed to the borrower at the time of loan closing, or may

be disbursed in installments and under conditions specified in the loan agreement.)

E. Time Schedule Extensions

Grant recipients are responsible for contacting EDA as soon as conditions become known that may materially affect their ability to meet any of the required disbursement deadlines. Except under the conditions described, a grant recipient is required to submit a written request for continued use of grant funds beyond the missed deadline. Extension requests must provide good reason for the delay and demonstrate that (1) the delay was unforeseen or generally beyond the control of the Recipient, (2) the need for the RLF still exists, (3) the current or planned use, and anticipated benefits of the RLF remain consistent with the current adjustment strategy and RLF Plan, and (4) achievement of a new proposed time schedule is reasonably possible and why no further delays are foreseen. EDA is under no obligation to grant a time extension, and in the event an extension is denied, EDA will deobligate (terminate) all or part of the unused portion of grant.

By law, grant funds remain available to EDA for disbursement only until September 30 of the fifth year after the fiscal year of the grant award. No time extensions will be granted beyond that time and any undisbursed funds remaining will be deobligated.

X. Capital Utilization Standard

A. Definition

During the revolving phase, grant recipients are expected to manage their repayment and lending schedules to maximize the amount of capital loaned out or committed at all times. Under normal circumstances, at least 75 percent of an RLF's capital should be in use. [RLF Income earned during the current period (as defined in Section VII.C.2) is not included as RLF capital.] EDA may recognize exceptions for RLFs whose Plan calls for making loans that are large relative to the size of the capital base. RLFs with capital bases in excess of \$4 million are expected to maintain a proportionately higher percentage of their funds loaned out. The percentage will be determined by EDA on a case-by-case basis.

When the percentage of capital loaned out falls below the applicable standard, the dollar amount of the funds equivalent to the difference between the actual percentage of capital loaned out and the standard is referred to as "excess funds."

B. Deviation

In the event that there are excess funds at the time a semiannual report is due, the grant recipient must submit an explanation of the situation with the report, and if there is a significant deviation from the standard, as determined by EDA, the grant recipient must describe the remedial action to be taken.

C. Sequestration of Excess Funds

At any time subsequent to a second consecutive report showing that the applicable standard has not been met, EDA may require the grant recipient to deposit excess funds in an interest bearing account;

that portion of the interest earned on that account, attributable to the EDA grant, will be remitted to the U.S. Treasury. EDA approval will be required to withdraw sequestered funds.

D. Persistent Noncompliance

EDA will normally give the grant recipient a reasonable period of time to loan the excess funds and achieve the standard. However, when a grant recipient fails to achieve the applicable standard after a reasonable period of time, as determined by EDA, the grant will be subject to sanctions for suspension and/or termination as described in Section XII of this Manual.

XI. Monitoring

EDA monitors grant recipients for compliance with the Terms and Conditions of the grant, for performance against national norms and individual portfolio standards, and for the contribution of the RLF to the area's economic adjustment process. Monitoring and performance assessments are based on periodic reports submitted by the grant recipients, organizational and Federal audits, and site visits by EDA staff.

A. Reports

1. *Grant Status Reports:* Grant recipients are required to submit standard Federal grant status reports to EDA during the grant disbursement phase as specified in the Terms and Conditions of the grant agreement. These include: (a) Standard Form 270, Request for Advance or Reimbursement, which is submitted each time a grantee needs to draw Federal funds (see Section IX.B. and Exhibit B); and (b) Standard Form 272, Federal Cash Transactions Report (Exhibit C), which is due within 15 days following the end of each calendar quarter and shows the status of grant funds. Failure to submit a Standard Form 272, when due, will prevent a grant recipient from obtaining funds until the form is submitted.

2. *Financial and Performance Reports:* All grant recipients are required to complete and submit Financial and Performance Reports (Exhibit D) semiannually unless otherwise notified by EDA.

a. *Initial Report:* For grants, other than recapitalizations, awarded between October 1, and March 31, the initial report due date is the following October 31. For grants awarded between April 1 and September 30, the initial report due date is the following April 30.

b. *Subsequent Reports:* After the initial report, the semiannual report is due on October 31, for the period of loan activity ending September 30, and April 30, for the period ending March 31.

Generally, RLF grant recipients will be required to submit reports to the EDA Regional Office every six months for a minimum of one year after disbursement of all grant funds, after which a grant recipient may be eligible for "graduation" to a shorter, annual reporting format (Exhibit E). Grant recipients must request this in writing. Recipients of recapitalization grants shall report on the full amount of their RLF funds in each subsequent semiannual or annual report submitted.