

COUNTY OF MONTEREY STANDARD AGREEMENT

This **Agreement** is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter “County”) and:

California Coastal Rural Development Corporation (CCRD)

(hereinafter “CONTRACTOR”).

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION:

The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide: Day to day program management of the County's Small Business Revolving Loan Fund as described in Exhibit A - Scope of Services/Payment Provisions.

2.0 PAYMENT PROVISIONS:

County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement shall not exceed the sum of: \$725,000 FY23-27

3.0 TERM OF AGREEMENT:

3.01 The term of this Agreement is from September 1, 2022 to June 30, 2027, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS:

The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services/Payment Provisions

Exhibit B Other: RFP #10863 SBRLF Program Administrator

5.0 PERFORMANCE STANDARDS:

- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS:

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided in this paragraph. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION:

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. “Good cause” includes the failure of CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

7.03 The County’s payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County’s purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION:

CONTRACTOR shall indemnify, defend, and hold harmless the County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys’ fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with the CONTRACTOR’s performance of this Agreement, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of the County. “CONTRACTOR’s performance” includes CONTRACTOR’s action or inaction and the action or inaction of CONTRACTOR’s officers, employees, agents and subcontractors.

9.0 INSURANCE REQUIREMENTS:

9.01 **Evidence of Coverage:** Prior to commencement of this Agreement, the Contractor shall provide a “Certificate of Insurance” certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County’s Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a “Notice to Proceed” with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

9.02 **Qualifying Insurers:** All coverage’s, except surety, shall be issued by companies which hold a current policy holder’s alphabetic and financial size category rating of not less than A- VII, according to the current Best’s Key Rating Guide or a company of equal financial stability that is approved by the County’s Purchasing Manager.

9.03 **Insurance Coverage Requirements:** Without limiting CONTRACTOR’s duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance: including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Requestor must check the appropriate Automobile Insurance Threshold:

Requestor must check the appropriate box.

Agreement Under \$100,000 Business Automobile Liability Insurance: covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

Agreement Over \$100,000 Business Automobile Liability Insurance: covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit or Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers’ Compensation Insurance: if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer’s Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers’ compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance: if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a “claims-made” basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage (“tail coverage”) with the same liability limits. Any such tail

coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

9.04 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, **and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance.** The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect. CONTRACTOR shall always during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of

Title: SBRLF Program
Term: Sept 1, 2022 - June 30, 2027
NTE Amount: \$725,000

this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY:

- 10.1 **Confidentiality:** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.
- 10.2 **County Records:** When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.3 **Maintenance of Records:** CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three-year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.4 **Access to and Audit of Records:** The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.5 **Royalties and Inventions:** County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

11.0 NON-DISCRIMINATION:

- 11.1 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sexual orientation, or any other characteristic set forth in California Government code § 12940(a), either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and

treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS:

If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 COMPLIANCE WITH APPLICABLE LAWS:

13.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state, and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT as well as any privacy laws including, if applicable, HIPAA. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices require by law in the performance of the Services.

13.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.

13.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations, and guidelines that are in force at the time such documentation is prepared.

14.0 INDEPENDENT CONTRACTOR:

In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is always acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

15.0 NOTICES:

Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR’S contract administrators at the addresses listed below:

FOR COUNTY:	FOR CONTRACTOR:
Richard Vaughn, Economic Development Manager	Lee T. Takikawa, President and CEO
Name and Title	Name and Title
168 W. Alisal St. 3rd Floor Salinas, Ca 93901	221 Main Street, Suite 301 Salinas, Ca 93901
Address	Address
(831) 784-5602	(831) 424-1099
Phone:	Phone:

16.0 MISCELLANEOUS PROVISIONS.

- 16.01 **Conflict of Interest:** CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.
- 16.02 **Amendment:** This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.
- 16.03 **Waiver:** Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 16.04 **Contractor:** The term “CONTRACTOR” as used in this Agreement includes CONTRACTOR’s officers, agents, and employees acting on CONTRACTOR’s behalf in the performance of this Agreement.
- 16.05 **Disputes:** CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 16.06 **Assignment and Subcontracting:** The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

- 16.07 **Successors and Assigns:** This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 16.08 **Headings:** The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 16.09 **Time is of the Essence:** Time is of the essence in each and all of the provisions of this Agreement.
- 16.10 **Governing Law:** This Agreement shall be governed by and interpreted under the laws of the State of California; venue shall be Monterey County.
- 16.11 **Non-exclusive Agreement:** This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 16.12 **Construction of Agreement:** The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 16.13 **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
- 16.14 **Authority:** Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 16.15 **Integration:** This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 16.16 **Interpretation of Conflicting Provisions:** In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

17.0 **CONSENT TO USE OF ELECTRONIC SIGNATURES.**

- 17.1 The parties to this Agreement consent to the use of electronic signatures via DocuSign to execute this Agreement. The parties understand and agree that the legality of electronic signatures is governed by state and federal law, 15 U.S.C. Section 7001 et seq.; California Government Code Section 16.5; and, California Civil Code Section 1633.1 et. seq. Pursuant to said state and federal law as may be amended from time to time, the parties to this Agreement hereby authenticate and execute this Agreement, and any and all Exhibits to this

Agreement, with their respective electronic signatures, including any and all scanned signatures in portable document format (PDF).

17.2 Counterparts.

The parties to this Agreement understand and agree that this Agreement can be executed in two (2) or more counterparts and transmitted electronically via facsimile transmission or by delivery of a scanned counterpart in portable document format (PDF) via email transmittal.

17.3 Form: Delivery by E-Mail or Facsimile.

Executed counterparts of this Agreement may be delivered by facsimile transmission or by delivery of a scanned counterpart in portable document format (PDF) by e-mail transmittal, in either case with delivery confirmed. On such confirmed delivery, the signatures in the facsimile or PDF data file shall be deemed to have the same force and effect as if the manually signed counterpart or counterparts had been delivered to the other party in person.

***** THIS SECTION INTENTIONALLY LEFT BLANK *****

18.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

California Coastal Rural Development Corp

Contractor/Business Name *

By:

Contracts/Purchasing Officer

Date:

By:

Department Head (if applicable)

Date:

Approved as to Form
Office of the County Counsel
Leslie J. Girard, County Counsel

By:

County Counsel

Date:

Approved as to Fiscal Provisions

By:

Auditor/Controller

Date:

Approved as to Liability Provisions
Office of the County Counsel-Risk Manager
Leslie J. Girard, County Counsel-Risk Manager

By:

Risk Management

Date:

DocuSigned by:

Lee T. Takikawa

By:

(Signature of Chair, President, or Vice-President)

President and CEO

Date:

8/19/2022 | 1:15 PM PDT

DocuSigned by:

Fred Madison

By:

(Signature of Secretary, Asst. Secretary, CFO, Treasurer, or Asst. Treasurer)

CFO

Date:

8/19/2022 | 1:49 PM PDT

County Board of Supervisors' Agreement No. _____ approved on _____

*INSTRUCTIONS: If CONTRACTOR is a corporation, including non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two (2) specified officers per California Corporations Code Section 313. If CONTRACTOR is a Limited Liability Corporation (LLC), the full legal name of the LLC shall be set forth above together with the signatures of two (2) managers. If CONTRACTOR is a partnership, the full legal name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement or Amendment to said Agreement.

1 Approval by County Counsel is required

2 Approval by Auditor-Controller is required

3 Approval by Risk Management is necessary only if changes are made in paragraphs 8 or 9

Title: SBRLF Program
Term: Sept 1, 2022 - June 30, 2027

EXHIBIT A
SCOPE OF SERVICES TO
PROFESSIONAL SERVICE AGREEMENT
BETWEEN THE
COUNTY OF MONTEREY AND
CALIFORNIA COASTAL RURAL DEVELOPMENT CORPORATION

WHEREAS, the County of Monterey (hereinafter the “COUNTY”) has received grant funds from the U.S. Department of Commerce Economic Development Administration (“EDA”), the California Department of Trade and Commerce, and various local sources (the “Original Funding Entities”) specifically for the purpose of establishing a Small Business Revolving Loan Fund (the “SBRLF”);

WHEREAS, the COUNTY issued Request for Proposals #10863 (“Exhibit B”) to competitively select a Program Administrator for the SBRLF;

WHEREAS, two (2) proposals were received in response to RFP #10863, 4 Front Partners and California Coastal Rural Development Corporation;

WHEREAS, California Coastal Rural Development Corporation (“CAL COASTAL”) was the winning proposal;

WHEREAS, CAL COASTAL is an established business lending organization that has managed the SBRLF for the COUNTY since 2000;

WHEREAS, the COUNTY and CAL COASTAL wish to enter into an agreement for CAL COASTAL to provide day-to-day management of the SBRLF;

The following is the Scope of Services (Exhibit A) to that Professional Services Agreement entered into as of September 1, 2022:

Article I. Shared Responsibilities

The COUNTY and CALCOASTAL shall share responsibility for ensuring that the SBRLF is operated in a manner consistent with achieving the County’s overall economic development goals as identified in the SBRLF Administrative Plan as it is currently written or as it may be amended from time to time in the future.

The following program elements are considered essential elements for the overall success of the SBRLF.

Section 1.01 The SBRLF program is one of the County’s economic development tools for assisting small businesses. The SBRLF program requires that sound underwriting standards be applied to all loans.

Section 1.02 Both parties to this Agreement have a responsibility to make the other party aware of ways in which the SBRLF could be modified to address changing lending conditions or market needs.

Section 1.03 In order to best meet the business finance needs or in response to requirements of the original grant agencies, the COUNTY may from time to time amend the Small Business Revolving Loan Fund Administrative Plan. If such amendments are not imposed by the Original Funding Entities, then the COUNTY shall only amend the SBRLF Administrative Plan after consultations with CALCOASTAL.

Section 1.04 The SBRLF requires that businesses meet additional goals to meet the County's economic development objectives and grant agency requirements, as outlined in the SBRLF Administrative Manual (Exhibit C), or as subsequently amended which include but are not limited to:

- (a) Job creation or retention: For approximately every \$20,000 of SBRLF dollars loaned, one full-time job should be created or retained.
- (b) Private sector leveraging: The borrower is expected to match one to one every SBRLF dollar loaned with either a new equity contribution or private loans.
- (c) Up to 70% of the portfolio can be for commercial enterprises. The remaining 30% is intended to assist industrial businesses.
- (d) Each portfolio has additional, specific requirements including geographic limitations and who should principally benefit from the program.

Section 1.05 The COUNTY and CALCOASTAL shall cooperatively work to adopt appropriate underwriting guidelines and collections procedures for delinquent loans.

- (a) The guidelines and collections procedures shall be developed and approved by the County Board of Supervisors and updated as necessary.
- (b) The collections procedures will be developed to maximize the return of capital to the SBRLF and minimize the period loans remain delinquent and subject to inclusion in the calculation of fees as described in Article IV of this Agreement.

Section 1.06 The following documents are incorporated by reference into this document so that all parties are aware of the original and ongoing requirements of the SBRLF:

- (a) Monterey County Small Business Revolving Loan Fund Administrative Manual (Exhibit C).
- (b) US Department of Commerce, Economic Development Administration Revolving Loan Fund Financial Assistance Award Standard Terms and Conditions dated May 1, 2013 or as subsequently amended by EDA (Exhibit D).

Article II. CALCOASTAL's Responsibilities

Section 2.01 MARKETING

- (a) Implement a marketing strategy that will reach the population targeted by each program.
- (b) Ensure that the marketing strategy is in compliance with all EDA grant regulations and

the County's SBRLF Administrative Manual.

- (c) Consistent with requirements of the Original Funding Entities, CALCOASTAL shall cause one printed notice of availability to be published annually in the Monterey Herald and the Salinas Californian, or such other newspaper as may be mutually agreed upon.

Section 2.02 UNDERWRITING AND APPROVAL:

- (a) Prepare loan applications in compliance with the County's SBRLF Administrative Manual and all EDA grant regulations.
- (b) Document jobs created divided by retained.
- (c) CALCOASTAL will utilize their own Loan Committee to review and recommend action on loans proposed for the County's SBRLF program.
- (d) For purposes of this Section, the CALCOASTAL Loan Committee shall include a representative from the COUNTY as a voting member of the Loan Committee when loans proposed for funding with SBRLF dollars are being considered.

Section 2.03 LOAN MANAGEMENT:

- (a) Document and book approved loans.
- (b) Prepare monthly statements for each individual borrower
- (c) Receive and post borrower payments.
- (d) Prepare annual tax statements for borrowers.
- (e) Monitor, on an ongoing basis, loans to ensure that all terms and conditions of the loans are being met.
- (f) Conduct annual on-site visits of all current borrowers.
- (g) Maintain security interest in collateral, e.g. renew UCC filings as necessary

Section 2.04 PROGRAM ADMINISTRATION:

- (a) Appoint the COUNTY's Economic Development Manager, or their designee, to the CALCOASTAL Loan Committee for purposes of reviewing and acting on loans proposed for funding with SBRLF dollars and ensuring that Loan Committee packets are delivered in a timely manner.
- (b) Prepare monthly financial statements for the County, including:
 - (i) Bank statements
 - (ii) Account Reconciliation Report - Detailed
 - (iii) Accruals Report
 - (iv) Balance Sheet
 - (v) Income Statement
 - (vi) Journal Report
 - (vii) Loan History
 - (viii) Trial Balance
 - (ix) Portfolio Report with the following information:
 - 1) Business Name
 - 2) Borrower Last Name
 - 3) Original Loan Date
 - 4) Original Loan Amount
 - 5) Maturity Date

- 6) Beginning Principal Balance
- 7) Loan Draws
- 8) Payment Date
- 9) Payment Amount
- 10) Principal Amount
- 11) Interest Amount
- 12) Fee Amount
- 13) Ending Principal Balance
- 14) Number of Days Delinquent
- 15) Comments on Delinquent Loans

- (c) Provide the County with financial and borrower information necessary to complete the Original Funding Entities grant reports as required.

Section 2.05 COLLECTIONS

- (a) Periodically it may become necessary to refer borrowers who are delinquent on their debt and not responding to CALCOASTAL's collections efforts to professional debt collectors.
- (b) The COUNTY has an agreement with Credit Consulting Services (CCS) to provide these services. CALCOASTAL, at the direction of the Manager of Economic Development and after a loan has been determined to be in default, shall work with CCS to transfer all records necessary for CCS to provide the services described in the COUNTY's Agreement with CCS and incorporated at Exhibit D.

Article III. County Responsibilities

Section 3.01 To ensure that the COUNTY's Economic Development Manager, or designee, attends all meetings of CALCOASTAL's Loan Committee when loans proposed for funding with SBRLF dollars are being considered.

Section 3.02 To actively work on developing a loan pipeline through its business attraction and retention programs.

Section 3.03 To actively work with CALCOASTAL to resolve loan delinquencies within 120 days, including meeting with borrowers if requested by CALCOASTAL.

Section 3.04 Prepare and submit all grant reports required by the Original Funding Agencies.

Article IV. Payment Provisions

Section 4.01 TOTAL COMPENSATION

Total compensation paid under this agreement:

- (a) Cannot exceed the amount of RLF Income, as defined in Section 4.02, earned during the invoice period. The maximum compensation paid in any one County fiscal year shall be

\$150,000 in the event that RLF Income for that year is greater than \$150,000.

- (b) The amount due for services under this Agreement is calculated as follows:
 - (i) Determining the amount due for loans in good standing or delinquent (defined in Section 4.03);
 - (ii) Determining the amount due for loans that have defaulted on their original repayment plan or are subject to an alternative repayment plan or bankruptcy payment plan (defined in Section 4.04); and
 - (iii) Determining amount payable which is calculated as follows:
 - 1) Adding either (a) RLF Income or the amount due for loans in good standing or delinquent to (b) the amount due for loans that have defaulted on their original repayment plan or are subject to an alternative repayment plan or bankruptcy payment plan.
 - (iv) Provided that there is a source of funds which may be used to subsidize the general administration of the SBRLF, the County will use these additional funds to subsidize RLF Income not earned because extenuating economic circumstances have caused the County to approve loan deferments, including but not limited to; charge lower than usual interest rates, waiver of application fees or other mutually agreed reason.
 - (v) In general, it shall be the goal of the County to allocate these funds so that the P.A. receives 67% of the funds and the County receives 33% of the funds.

Section 4.02 SOURCE OF FUNDS TO PAY FOR SERVICES

- (a) The SBRLF is intended to be self-sufficient and not have any net cost to the County for the day-to-day management of the program.
- (b) For all loans that are current or delinquent on payments, RLF Income is the only source of funds to compensate CALCOASTAL for services under this Agreement.
- (c) RLF Income Defined - RLF Income is defined as fees, interest earned on idle funds and interest earned on outstanding loan principal.
 - (i) RLF Income does not include interest earned on cash held in sequestration at the direction of an Original Funding Entity.
 - (ii) This interest, in excess of the first \$100, must be remitted to the U.S. Treasury.
- (d) RLF Income may not be used to pay costs in periods other than the one in which the RLF Income was received.

Section 4.03 INVOICING FOR LOANS IN GOOD STANDING OR DELINQUENT

- (a) The amounts paid under this Section 4.03 shall be the lesser of the calculated invoice due, as defined in Sections 4.03 (b) (i) through (v) below, or RLF Income, as defined in Section 4.02 (c) above, received during the same period as covered by the invoice.
- (b) CALCOASTAL shall submit quarterly invoices based on the following schedule for all loans not subject to alternative repayment plans, subject to bankruptcy payment plans, or otherwise in default (EDA considers a loan in default if repayment is 90 or more days outside of the approved payment schedule) of their approved repayment plan:
 - (i) Underwriting of New Loans - "Origination Fees"
 - 1) 2.0% of loan value of loans between minimum and \$50,000
 - 1) 2.5% of loan value of loans between \$50,000.01 and \$100,000
 - 2) 3% of loan value of loans between \$100,000.01-\$250,000
 - 3) These fees are to be recaptured as part of the loan closing costs with the borrower.
 - (ii) Documentation of new loans for both business and personal assets – "Documentation Fee" of \$250.00.
 - (iii) Annual Loan Administration Fee
 - 1) \$1,000 per loan paid in quarterly installments
 - 2) Formula for determining quarterly fee is:
 - a) $((\# \text{ loans outstanding month 1 plus month 2 plus month 3}) \text{ divided by } 3) \text{ times } 1000) \text{ divided by } 4)$
 - b) Loans outstanding do not include loans subject to repayment as described in Section 4.04
 - (iv) Annual Management Fee
 - 1) \$12,000 flat fee paid in quarterly installments to manage the program.
 - (v) Loan Servicing Fee
 - 1) Variable fee based on the outstanding principal of all loans in good standing or delinquent (last payment was within 90-days of agreed payment schedule).
 - 2) Formula for determining quarterly fee is:
 - i) $(\text{Outstanding principal month 1 plus month 2 plus month 3}) \text{ divided by } 3 \text{ equals average principal balance}$
 - b) $(7.5\% \text{ times } \$250,000) \text{ divided by } 4$
 - c) $\text{Plus } (5\% \text{ times } \$250,000) \text{ divided by } 4$
 - d) $\text{Plus } (2.5\% \text{ times } \$1,000,000) \text{ divided by } 4$
 - e) $\text{Plus } (2\% \text{ times average principal balance greater than } \$1,500,000.01) \text{ divided by } 4$
 - f) Equals Quarterly Loan Servicing Fee

Section 4.04 INVOICING FOR LOANS THAT HAVE DEFAULTED ON THEIR ORIGINAL REPAYMENT PLAN, ARE SUBJECT TO AN ALTERNATIVE REPAYMENT PLAN, OR A BANKRUPTCY PAYMENT

- (a) This Section establishes CALCOASTAL's compensation for loans that have defaulted on their original repayment plan or are subject to an alternative repayment plan or bankruptcy payment plan.
- (b) Payments made under this Section 4.04 are subject to the annual cap described in Section 4.01 (a).
- (c) Payments made under this Section 4.04 shall be calculated on each payment made by any borrower whose loan is in default on their original repayment plan, or are subject to an alternative repayment plan or bankruptcy payment plan.
- (d) The amount due for each loan subject to alternative repayment plans, subject to bankruptcy payment plans, or otherwise in default of their originally approved repayment obligations based is (5%) percent of the principal outstanding at the time payment is made, divided by twelve (12).
 - (i) (Outstanding principal of loan at the time the payment is made times 5%) divided by 12
 - (ii) In no event shall the amount payable under this Section 4.04 exceed 50% of the amount received.

Section 4.05 PAYMENT OF COLLECTIONS ON LOANS REFERRED TO AN OUTSIDE COLLECTION AGENCY

- (a) CCS will remit the net amount collected from referred borrowers to CALCOASTAL for deposit into the COUNTY's bank account.
- (b) The net amount collected, provided CCS has provided an accounting of the full amount collected, is the full amount collected from referred borrowers less:
 - (i) Fifteen (15%) of any funds recovered by without a judgement.
 - (ii) Twenty-five (25%) of any funds recovered as a result of a judgement, provided that such action was authorized in advance by the Board of Supervisors.
 - (iii) Payments made under this Section 4.05(b) and paid to CCS shall not count against the Total Compensation cap described in Section 4.01(a).
- (c) CALCOASTAL shall be entitled to a processing fee for the receipt, deposit, and payment services provided under this Section 4.05.
 - (i) Such fee shall be calculated according to Section 4.04(a) - (d) and are subject to the Total Compensation described in Section 4.01(a).

Section 4.06 DIRECT THIRD PARTY COSTS including, but not limited to, UCC searches, filings, recordings, appraisals and fees to release liens on paid off loans shall be collected from the borrower by CALCOASTAL.

CALCOASTAL is authorized to collect these fees from the borrower and pay the

associated third party costs out of the COUNTY's SBRLF account.

- (a) Fees collected and paid pursuant to this section 4.06, including fees paid to CALCOASTAL by borrowers for miscellaneous services, e.g. fees for notarizing recorded documents, are not subject to the Total Compensation described in Section 4.01(a).

Section 4.07 CALCOASTAL warrants that the cost charged for services under the terms of this contract are not in excess of those charged any other client for the same services performed by the same individuals.

Article V. Other Provisions

Section 5.01 County Standard Agreement Section 3.02 TERM OF A shall be deleted and replaced in its entirety with the following:

- (a) During the term of this Agreement, the County or CALCOASTAL may terminate the Agreement, without cause, with a ninety (90) day written notice, or with cause immediately.

Section 5.02 County Standard Agreement Section 7.01 TERMINATION shall be deleted and replaced in its entirety with the following:

- (a) During the term of this Agreement, the County or CALCOASTAL may terminate the Agreement for any reason by giving written notice of termination to the other party at least ninety (90) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.

Section 5.03 RFP #10863 Article 7.1, Section 9, Bonds

- (a) The COUNTY agrees to amend the RFP requirement that the CALCOASTAL have Fidelity Bond Insurance in the amount of Two Million Six Hundred Thousand Dollars (\$2,600,000.00) to Two Hundred Thousand Dollars (\$200,00.00). The \$2,600,000 represents the full amount of original capitalization for the SBRLF and was required at the time the original grants were made to the COUNTY. Since the SBRLF is now actively revolving and most funds should be loaned out, a lower level of Fidelity Bond Insurance is appropriate because there are fewer idle funds which may be misappropriated due to employee dishonesty. In addition, CALCOASTAL has provided the County with documentary evidence of its inability to obtain bonds greater than Two Hundred Thousand Dollars (\$200,000).
- (b) The COUNTY will accept evidence that CALCOASTAL has Fidelity Bond Insurance in the amount of Two Hundred Thousand Dollars (\$200,000.00) at the time this Agreement is executed.



**COUNTY OF MONTEREY
CONTRACTS/PURCHASING DIVISION
1488 SCHILLING PLACE
SALINAS, CA 93901
(831) 755-4990**

**REQUEST FOR PROPOSALS
#10863**

For

**SMALL BUSINESS REVOLVING
LOAN FUND PROGRAM**

Proposals are due by 3:00 pm (PST) on June 29, 2022

(THIS PAGE INTENTIONALLY LEFT BLANK)

TABLE OF CONTENTS:

1.0 INTENT	4
2.0 BACKGROUND	4
3.0 CALENDAR OF EVENTS	5
4.0 COUNTY POINTS OF CONTACT	5
5.0 SCOPE OF WORK.....	6
6.0 CONTRACT TERM.....	8
7.0 PROPOSAL PACKAGE REQUIREMENTS	8
8.0 SUBMITTAL INSTRUCTIONS & CONDITIONS	12
9.0 SELECTION CRITERIA	13
10.0 PREFERENCE FOR LOCAL CONTRACTORS	14
11.0 CONTRACT AWARDS.....	14
12.0 SEQUENTIAL CONTRACT NEGOTIATION.....	15
13.0 AGREEMENT TO TERMS AND CONDITIONS	15
14.0 COLLUSION.....	15
15.0 RIGHTS TO PERTINENT MATERIALS	15
SAMPLE AGREEMENT SECTION	16
SAMPLE AGREEMENT BETWEEN COUNTY OF MONTEREY AND CONTRACTOR	17
SAMPLE RECITALS.....	17
S1.0 PERFORMANCE OF THE AGREEMENT	17
S2.0 SCOPE OF SERVICE	18
S3.0 TERM OF AGREEMENT	18
S4.0 COMPENSATION AND PAYMENTS.....	19
S5.0 INVOICES AND PURCHASE ORDERS	19
S6.0 STANDARD INDEMNIFICATION.....	20
S7.0 INSURANCE REQUIREMENTS.....	20
S8.0 RECORDS AND CONFIDENTIALITY	22
S9.0 NON-DISCRIMINATION	23
S10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS.....	24
S11.0 CONFLICT OF INTEREST.....	24
S12.0 COMPLIANCE WITH APPLICABLE LAWS	24
S13.0 DRUG FREE WORKPLACE	25
S14.0 TIME OF ESSENCE	25
S15.0 PERFORMANCE ASSURANCE AND WAIVER OF BREACH.....	25
S16.0 FORCE MAJEURE	26
S17.0 BOND REQUIREMENTS	26
S18.0 NOTICES	26
S19.0 LEGAL DISPUTES	27
ATTACHMENTS AND APPENDICES.....	28
ATTACHMENT A: COST SHEET	29
APPENDIX A.....	30
APPENDIX B	31
APPENDIX C	32
APPENDIX D.....	33
APPENDIX E.....	34
SIGNATURE PAGE	35

1.0 INTENT

- 1.1 The County of Monterey County Administrative Office - Economic Development, hereinafter referred to as “County”, is soliciting proposals from a qualified organization(s), hereinafter referred to as “CONTRACTOR”, to provide administration of the County’s Small Business Revolving Loan Fund.
- 1.2 This solicitation is intended for a single, exclusive AGREEMENT.

2.0 BACKGROUND

- 2.1 The County of Monterey is located on the Central Coast of California, approximately 120 miles south of San Francisco.
- 2.2 The County of Monterey is seeking a partner to assist with the County Small Business Revolving Loan Fund (SBRLF). The selected CONTRACTOR will work with the County, local financial institutions and business advocacy organizations to develop new lending opportunities; underwrite and package new loan requests; and manage daily loan servicing obligations, such as preparing monthly statements and posting payments; preparing monthly financial and portfolio activity reports; and act as the County’s fiscal agent for loan disbursement and collections. The selected firm will be expected to develop on-going relationships with all clients and proactively manage loans to identify potential issues early and present timely recommendations that may help prevent the borrower from going into default..
- 2.3 The loan program’s goal is to assist expanding businesses in Monterey County that have been unable to obtain full financing through conventional lenders. This program is not meant to compete with banks or other lenders. It is intended to act in partnership with traditional lenders in order to supply the necessary capital to support job creation and/or retention within the County of Monterey. The SBRLF can make loans of \$10,000 to \$250,000. Loans are generally amortized over five to twenty years based on collateral and how the loan proceeds will be used. The minimum interest rate is 4%.
- 2.4 The SBRLF was originally capitalized with grants from the U.S. Department of Commerce, Economic Development Administration (EDA) and local cities and the County. As of April 30, 2022, the loan portfolio had 27 outstanding loans with more than \$939,504.48 principal outstanding and approximately \$550,000 available to lend. The SBRLF can charge interest rates between 4% and 10%. The average rate on current loans is approximately 5.5%.
- 2.5 The SBRLF is self-supporting and relies on program fees, interest paid on loans, and interest earned on accounts to cover all costs associated with the program. There are various grant agency limits on how much of this income may be used for administrative expenses.

Please refer to the attached SBRLF Administrative Manual for details on how the program operates. Because of the multiple funding sources and different requirements of the various programs, the selected CONTRACTOR must be able to understand and apply the requirements to each loan.

- 2.6 The County will not be obligated to utilize any financial resources beyond those allowed by the grant sources to compensate the selected CONTRACTOR for implementing the SBRLF program and CONTRACTOR'S sale source of compensations for services provided to County shall be from loan fees and loan interest actually collected.

3.0 CALENDAR OF EVENTS

- | | | |
|-----|-------------------------------------|--|
| 3.1 | Issue RFP | Friday, June 3, 2022 |
| 3.2 | Deadline for Written Questions | 3:00 p.m., PST, Friday, June 10, 2022 |
| 3.3 | Proposal Submittal Deadline | 3:00 p.m., PST, Wednesday, June 29, 2022 |
| 3.4 | Estimated Notification of Selection | July 2022 |
| 3.5 | Estimated AGREEMENT Date | August 2022 |

This schedule is subject to change as necessary.

- 3.6 **FUTURE ADDENDA:** CONTRACTORS, who received notification of this solicitation by means other than through a County of Monterey mailing, shall contact the person designated in the COUNTY POINTS OF CONTACT herein to request to be added to the mailing list. Inclusion on the mailing list is the only way to ensure timely notification of any addenda and/or information that may be issued prior to the solicitation submittal date. **IT IS THE CONTRACTORS' SOLE RESPONSIBILITY TO ENSURE THAT THEY RECEIVE ANY AND ALL ADDENDA FOR THIS RFP** by informing the County of their mailing information.

4.0 COUNTY POINTS OF CONTACT

- 4.1 Questions and correspondence regarding this solicitation shall be directed to:

Primary Contact for the County	Jaime Ayala, Management Analyst /Deputy Purchasing Agent 1488 Schilling Place Salinas, CA 93901 PHONE: (831) 783-7047 FAX: (831) 755-4969 ayalaj@co.monterey.ca.us
--------------------------------	--

- 4.2 All questions regarding this solicitation shall be submitted in writing (E-mail or FAX is acceptable). The questions will be researched and the answers will be communicated to all known interested CONTRACTORS.
- 4.3 The deadline for submitting written questions regarding this solicitation is indicated in the **CALENDAR OF EVENTS herein**. Questions submitted after the deadline will not be answered.
- 4.4 Only answers to questions communicated by formal written addenda will be binding.
- 4.5 Prospective CONTRACTOR shall not contact County officers or employees with questions or suggestions regarding this solicitation except through the primary contact person listed above. **Any unauthorized contact may be considered undue pressure and cause for disqualification of the CONTRACTOR.**

5.0 SCOPE OF WORK

- 5.1 Contractor Minimum Work Performance Percentage: CONTRACTOR shall perform with his own organization contract work amounting to not less than 50 percent of the original total contract price, except that any designated 'Specialty Items' may be performed by subcontractors upon written approval of the Economic Development Director and the amount of any such 'Specialty Items' so performed may be deducted from the original total AGREEMENT price before computing the amount of work required to be performed by CONTRACTOR with its organization.
- 5.2 The Scope of Work includes but is not limited to the following and will be divided into three sections: Marketing, Underwriting and Program Administration. CONTRACTOR shall provide a cost estimate for fees associated with each of the program sections listed below (**Attachment A**). The selected CONTRACTOR, as the Program Administrator, shall be responsible for ensuring the on-going success of the SBRLF programs, and compliance with the SBRLF Administrative Manual.

The CONTRACTOR'S services shall include the following:

5.3 MARKETING

- 5.3.1 Implementation of a marketing strategy that will reach the population targeted by each program.
- 5.3.2 Ensure that the marketing strategy is in compliance with all EDA grant regulations and the County's SBRLF Administrative Manual.

5.4 UNDERWRITING

- 5.4.1 Prepare loan applications in compliance with all EDA grant regulations and the County's SBRLF Administrative Manual.
- 5.4.2 Document jobs created/retained.
- 5.4.3 Presentation of completed loan requests to Loan Committee for consideration/approval.

5.5 LOAN MANAGEMENT

- 5.5.1 Document and book approved loans.
- 5.5.2 Prepare monthly statements for each individual borrower and receive/post borrower payments.
- 5.5.3 Ongoing monitoring of loans to insure that all terms and conditions of the loans are being met.
- 5.5.4 Conduct annual on-site visits of all current borrowers.
- 5.5.5 Maintain security interest in collateral, e.g. renew UCC filings as necessary
- 5.5.6 Notify the County of any loan no later than 45-days late after a missed payment. Such notice shall include a description of why the payment/s were missed and specific steps that the CONTRACTOR will take to work with the borrower to bring the account current and provide contact logs for delinquent loans with subsequent invoices.
 - 5.5.6.1 Any loan which the County identifies as delinquent without receiving notice from the CONTRACTOR or which is missing contact logs shall not be included in the calculation of fees due.

5.6 PROGRAM ADMINISTRATION:

- 5.6.1 Preparation of monthly financial statements for the County.
- 5.6.2 Provide financial and borrower information necessary to complete EDA grant reports as required.
- 5.6.3 Provide necessary support to complete EDA grant reports as required.
- 5.6.4 Ensure that the programs are in compliance with all EDA grant regulations and the County's SBRLF Administrative Manual.

5.7 PROGRAM ELEMENTS

The following program elements are not part of the initial scoring for this RFP; however, they are key components to the Scope of Work that will be required for the awarded vendor.

The following is for informational purposes.

- 5.7.1 The Small Business Revolving Loan Fund (SBRLF) program is one of the County's economic development tools for assisting small businesses. The SBRLF program requires that sound underwriting standards be applied to all loans.
- 5.7.2 The program also requires that businesses meet additional goals to meet the County's economic development objectives and grant agency requirements, as outlined in the attached SBRLF Administrative Manual, or as subsequently amended which include but are not limited to:
 - 5.7.2.1 Job creation or retention: For every \$20,000 of SBRLF dollars loaned, one full-time job must be created or retained.
 - 5.7.2.2 Private sector leveraging: The borrower is expected to match one to

one every SBRLF dollar loaned with either a new equity contribution or private loans.

5.7.2.3 Up to 70% of the portfolio can be for commercial enterprises. The remaining 30% is intended to assist industrial businesses.

5.7.2.4 Each portfolio has additional, specific requirements including geographic limitations and who should principally benefit from the program.

5.8 The SBRLF must be self-supporting.

5.8.1 County can only use interest and fees earned on loan originations, interest earned on bank accounts and interest paid on outstanding principal to pay for all aspects of the CONTRACTOR's services.

5.9 The full program requirements are contained in the attached **Appendices A, B, C&D**.

6.0 CONTRACT TERM

6.1 The term of the AGREEMENT(s) will be for a period of three (3) years, with the option to extend the AGREEMENT for 2 additional one (1) year period(s).

6.2 The AGREEMENT shall contain a clause that provides that County reserves the right to cancel the AGREEMENT, or any extension of the AGREEMENT, without cause, with a thirty day (30) written notice, or immediately with cause.

7.0 PROPOSAL PACKAGE REQUIREMENTS

7.1 CONTENT AND LAYOUT:

7.1.1 CONTRACTOR should provide the information as requested and as applicable to the proposed goods and services. The proposal package shall be organized as per the table below; headings and section numbering utilized in the proposal package shall be the same as those identified in the table. Proposal packages shall include at a minimum, but not limited to, the following information in the format indicated:

Proposal Package Layout Organize and Number Sections as Follows:	
Section 1	COVER LETTER (INCLUDING CONTACT INFO)
	SIGNATURE PAGE
	RECEIPT OF SIGNED ADDENDA (IF ANY)
	TABLE OF CONTENTS
Section 2	PRE-QUALIFICATIONS
Section 3	PROJECT EXPERIENCE AND REFERENCES
Section 4	TECHNICAL ASPECTS OF PROPOSAL
Section 5	ENVIRONMENTALLY FRIENDLY PRACTICES
Section 6	PRICING (<i>ATTACHMENT A</i>)
Section 7	EXCEPTIONS

Section 8	APPENDIX
Section 9	BONDS

Section 1. Requirements:

Cover Letter: All proposals must be accompanied by a cover letter not exceeding two (2) pages and should provide firm information and contact information as follows:

Contact Info: The name, address, telephone number, and fax number of CONTRACTOR's primary contact person during the solicitation process through to potential contract award.

Firm Info: Description of the type of organization (e.g. corporation, partnership, including joint venture teams and subcontractors) and how many years it's been in existence.

Signed Signature Page and Signed Addenda (if any addenda were released for this solicitation). Proposal packages submitted without this page will be deemed non-responsive. All signatures must be manual and in BLUE ink. All prices and notations must be typed or written in BLUE ink. Errors may be crossed out and corrections printed in ink or typed adjacent, and must be initialed in BLUE ink by the person signing the proposal.

Table of Contents

Section 2, Pre-Qualifications:

Pre-Qualifications: CONTRACTOR must acknowledge in writing that it meets all of the pre-qualifications requirements as set forth herein.

Licenses and Certifications: The firm must hold and maintain at all times, all licenses and registrations required by applicable federal and state laws for businesses offering underwriting or investment banking services. All licenses and registrations must be current and in good standing with each of the following:

1. U.S. Securities and Exchange Commission (SEC);
2. Financial Industry Regulatory Authority (FINRA);
3. FINRA Series 53: The firm must maintain at all times, at least one full-time professional supervisory employee with a FINRA Series 53 license (Municipal Securities Principal).

Section 3, Project Experience & References:

Key Staff Persons: CONTRACTOR shall identify key staff and their qualifications and experience proposed for the service identified herein.

Experience & References: CONTRACTOR shall describe at least 3 similar projects for which it provided services similar to the scope of work described herein. Please include phone number and email address if possible as the County will conduct reference checks using this information.

Violations: CONTRACTOR shall submit copies of all notices of violations, corrective action notices, enforcement actions or orders, warning notices, writings, or other forms of permit violation/non-compliance documentation (such as OSHA) received by CONTRACTOR, or any business organization owned or operated by the CONTRACTOR which are its parent company and/or subsidiaries, from any public agency during 2005 up to and including the present day.

Section 4, Technical Aspects:

CONTRACTOR shall provide a written and signed statement in this section which confirms that their proposal is inclusive of all elements necessary for a turn-key project.

CONTRACTOR shall also include:

- Proposed Project Timeline to ensure compliance with meeting the County's needs as indicated in this solicitation.
- Descriptions of the proposed portfolio management elements, including responsibility for loan monitoring and initiating contact with delinquent borrowers.
- A description of the loan documentation software that the CONTRACTOR will use to originate and collateralize loans, including information about the publisher and how the software meets California laws for lending, collateralization and documentation.
- A description of the CONTRACTOR's current loan approval process and how the CONTRACTOR envisions incorporating the SBRLF into the process.
- A description of any Loan Committees that the CONTRACTOR has established to review credit requests and monitor portfolio performance, including the economic sectors represented and demographic composition of the Loan Committee.
- A description of the CONTRACTOR's marketing and outreach efforts to small businesses.
- A description of how the CONTRACTOR follows up and works with delinquent borrowers.

Section 5, Environmentally Friendly Practices:

CONTRACTOR shall summarize all environmentally friendly practices it adheres to in the course of doing business as relevant to County's Climate-Friendly Purchasing Policy (*Reference:* www.co.monterey.ca.us/admin/policies.htm).

CONTRACTOR shall indicate whether or not it is a 'Green Certified' Business and state which governing authority administered the certification.

Section 6, Pricing & Warranty:

CONTRACTOR shall complete and submit pricing as per *Attachment A- Cost Sheet* attached hereto.

Section 7, Exceptions:

Submit any and all exceptions to this solicitation on separate pages, and clearly identify the top of each page with "EXCEPTION TO MONTEREY COUNTY SOLICITATION #10863" (indicate the applicable solicitation number). Each Exception shall reference the page number and section number, as appropriate. CONTRACTOR should note that the submittal of an Exception does not obligate the County to revise the terms of the RFP or AGREEMENT.

Section 8, Appendix:

Appendices: CONTRACTOR may provide any additional information that it believes to be applicable to this proposal package and include such information in an Appendix section.

Section 9, Bonds:

The selected CONTRACTOR shall maintain and provide evidence that they have Fidelity Bond Insurance in an amount at least equal to Two Million Six Hundred Thousand Dollars (\$2,600,000) at the time the contract is executed.

7.2 **ADDITIONAL REQUIREMENTS:** To be considered "responsive," submitted proposal packages shall adhere to the following:

- 7.2.1 Four (4) sets of the proposal package (one original proposal marked "Original" plus three copies) shall be submitted in response to this solicitation. Each copy shall include a cover indicating the company name submitting, and reference to "RFP #10863". In addition, submit one (1) electronic version of the entire proposal or qualifications package on a USB memory stick. Additional copies may be requested by the COUNTY at its discretion.
- 7.2.2 Proposal packages shall be prepared on 8-1/2" x 11" paper, preferably duplex printed and stapled together without binder or plastic enclosure (environmentally friendly). Fold out charts, tables, spreadsheets, brochures, pamphlets, and other pertinent information or work product examples may be included as Appendices.
- 7.2.3 Reproductions of the Monterey County Seal shall not be used in any documents submitted in response to this solicitation.

- 7.2.4 CONTRACTOR shall not use white-out or a similar correction product to make late changes to their proposal package but may instead line out and initial in BLUE ink any item which no longer is applicable or accurate.
- 7.2.5 To validate your proposal package, **submit the SIGNATURE PAGE** (contained herein) **with your proposal**. Proposal packages submitted without that page will be deemed non-responsive. Proposal signature must be manual, in BLUE ink, and included with the original copy of the proposal. Photocopies of the Signature Page may be inserted into the remaining proposal copies. All prices and notations must be typed or written in BLUE ink in the original proposal copy as well. Errors may be crossed out and corrections printed in BLUE ink or typed adjacent, and must be initialed in BLUE ink by the person signing the proposal. See section 13.1 of this RFP for additional information.
- 7.3 **CONFIDENTIAL OR PROPRIETARY CONTENT:** Any page of the proposal package that is deemed by CONTRACTOR to be a trade secret by the CONTRACTOR shall be clearly marked “CONFIDENTIAL INFORMATION” or “PROPRIETARY INFORMATION” at the top of the page.

8.0 SUBMITTAL INSTRUCTIONS & CONDITIONS

- 8.1 **Submittal Identification Requirements:** ALL SUBMITTALS MAILED OR DELIVERED CONTAINING PROPOSAL PACKAGES MUST BE SEALED AND BEAR ON THE OUTSIDE, PROMINENTLY DISPLAYED IN THE LOWER LEFT CORNER: **THE SOLICITATION NUMBER RFP #10863 and CONTRACTORS COMPANY NAME.**
- 8.2 **Mailing Address:** Proposal packages shall be mailed to County at the mailing address indicated on the **Signature Page** of this solicitation.
- 8.3 **Due Date:** Proposal packages must be received by County ON OR BEFORE the time and date specified, at the location and to the person specified on the **Signature Page** of this solicitation. It is the sole responsibility of the CONTRACTOR to ensure that the proposal package is received at or before the specified time. Postmarks and facsimiles are not acceptable. Proposals received after the deadline shall be rejected and returned unopened.
- 8.4 **Shipping Costs:** Unless stated otherwise, the F.O.B. for receivables shall be destination. Charges for transportation, containers, packaging and other related shipping costs shall be borne by the shipper.
- 8.5 **Acceptance:** Proposals are subject to acceptance at any time within 90 days after opening. Monterey County reserves the right to reject any and all proposal packages, or part of any proposal or qualifications package, to postpone the scheduled deadline date(s), to make an award in its own best interest, and to waive any informalities or technicalities that do not significantly affect or alter the substance of an otherwise responsible proposal package and

that would not affect a CONTRACTOR'S ability to perform the work adequately as specified.

- 8.6 Ownership: All submittals in response to this solicitation become the property of the County of Monterey. If a CONTRACTOR does not wish to submit a proposal package but wishes to acknowledge the receipt of the request, the reply envelope shall be marked "No Bid".
- 8.7 Compliance: Proposal packages that do not follow the format, content and submittal requirements as described herein, or fail to provide the required documentation, may receive lower evaluation scores or be deemed non-responsive.
- 8.8 CAL-OSHA: The items proposed shall conform to all applicable requirements of the California Occupational Safety and Health Administration Act of 1973 (CAL-OSHA).

9.0 SELECTION CRITERIA

- 9.1 The selection of CONTRACTOR and subsequent contract award(s) will be based on the criteria contained in this Solicitation, as demonstrated in the submitted proposal. CONTRACTOR should submit information sufficient for the County to easily evaluate proposals with respect to the selection criteria. The absence of required information may cause the Proposal to be deemed non-responsive and may be cause for rejection.
- 9.2.1 The selection criteria include, but are not limited to, demonstrated competence in the following:
- 9.2.1 Marketing loan programs to small businesses.
 - 9.2.2 Underwriting experience.
 - 9.2.3 Ability to request, prepare and/or file all documents necessary to underwrite and collateralize loans.
 - 9.2.4 Ability to document approved loans in a timely manner.
 - 9.2.5 Ability to prepare monthly statements and receive/post payments in a timely manner.
 - 9.2.6 Experience developing work out plans with delinquent borrowers.
 - 9.2.7 Experience in urgent project delivery with critical timelines.
 - 9.2.8 Experience in documentation of jobs created or retained.
- 9.3 A selected number of firms may be invited for an interview. CONTRACTORS invited for an interview will be evaluated based on the firm's presentation in terms of:
- 9.3.1 Grasp of project and services requirements
 - 9.3.2 Related project experience
 - 9.3.3 Experience in meeting critical delivery schedules
 - 9.3.4 Proposed methodology to fulfill the intent of this RFP, including how the CONTRACTOR proposes to use COUNTY funds to leverage other sources of financing and keep all transactions at arms-length
 - 9.3.5 Ability and capacity to fulfill the intent of this RFP

9.3.6 Ability to deliver within established time constraints

9.4 The successful CONTRACTOR will be invited to enter into negotiations with the County. The successful CONTRACTOR will be required to enter into an agreement with the County, which will include, but is not limited to the **Sample Agreement** attached hereto. The terms and conditions of an agreement are subject to provisions governing grants awarded to the County of Monterey. For additional information on those provisions see:

9.4.1 ECONOMIC DEVELOPMENT ADMINISTRATION

[Appendix A: EDA Revolving Loan Fund Financial Assistance Award Standard Terms and Conditions](#)

[Appendix B: Monterey County Small Business Revolving Loan Fund Administrative Manual](#)

9.5 AGREEMENT award(s) will not be based on cost alone.

10.0 PREFERENCE FOR LOCAL CONTRACTORS

Intentionally Omitted

11.0 CONTRACT AWARDS

- 11.1 No Guaranteed Value: County does not guarantee a minimum or maximum dollar value for any AGREEMENT or AGREEMENTS resulting from this solicitation.
- 11.2 Board of Supervisors: The award(s) made from this solicitation may be subject to approval by the County Board of Supervisors.
- 11.3 Interview: County reserves the right to interview selected CONTRACTOR before a contract is awarded. The costs of attending any interview are the CONTRACTOR'S responsibility.
- 11.4 Incurred Costs: County is not liable for any cost incurred by CONTRACTOR in response to this solicitation.
- 11.5 Notification: All CONTRACTORS who have submitted a Proposal Package will be notified of the final decision as soon as it has been determined.
- 11.6 In County's Best Interest: The award(s) resulting from this solicitation will be made to the CONTRACTOR that submit(s) a response that, in the sole opinion of County, best serves the overall interest of County.

12.0 SEQUENTIAL CONTRACT NEGOTIATION

- 12.1 County will pursue contract negotiations with the CONTRACTOR who submit(s) the best proposal or is deemed the most qualified in the sole opinion of County, and which is in accordance with the criteria as described within this solicitation. If the contract negotiations are unsuccessful, in the opinion of either County or CONTRACTOR, County may pursue contract negotiations with the entity that submitted a Proposal which County deems to be the next best qualified to provide the services, or County may issue a new solicitation or take any other action which it deems to be in its best interest.

13.0 AGREEMENT TO TERMS AND CONDITIONS

- 13.1 CONTRACTOR selected through the solicitation process will be expected to execute a formal AGREEMENT with County for the provision of the requested service. The AGREEMENT shall be written by County in a standard format approved by County Counsel, similar to the “**SAMPLE AGREEMENT SECTION**” herein. Submission of a signed bid/proposal and the **SIGNATURE PAGE** will be interpreted to mean **CONTRACTOR HAS AGREED TO ALL THE TERMS AND CONDITIONS** set forth in the pages of this solicitation and the standard provisions included in the **SAMPLE AGREEMENT** Section herein. County may but is not required to consider including language from the CONTRACTOR’S proposed AGREEMENT, and any such submission shall be included in the EXCEPTIONS section of CONTRACTOR’S proposal.

14.0 COLLUSION

- 14.1 CONTRACTOR shall not conspire, attempt to conspire, or commit any other act of collusion with any other interested party for the purpose of secretly, or otherwise, establishing an understanding regarding rates or conditions to the solicitation that would bring about any unfair conditions.

15.0 RIGHTS TO PERTINENT MATERIALS

- 15.1 All responses, inquiries, and correspondence related to this solicitation and all reports, charts, displays, schedules, exhibits, and other documentation produced by the CONTRACTOR that are submitted as part of the submittal will become the property of the County when received by the County and may be considered public information under applicable law. Any proprietary information in the submittal must be identified as such and marked “**CONFIDENTIAL INFORMATION**” or “**PROPRIETARY INFORMATION**”. The County will not disclose proprietary information to the public, unless required by law; however, the County cannot guarantee that such information will be held confidential.

- 15.2 Contractor acknowledges that County is a California Public Agency subject to the Brown Act, California Government Code section 54950 et seq., and the Public Records Act, California Government Code Section 6250 et seq., and that the successful proposal submittal in response to this RFP will be presented to the Monterey County Board of Supervisors at an open and public meeting for approval, and will be available to the public for viewing and/or downloading on the COUNTY's website and otherwise considered a public record pursuant to Government Code sections 6250 et seq., and 54957.5.

SAMPLE AGREEMENT SECTION

SAMPLE AGREEMENT BETWEEN COUNTY OF MONTEREY AND CONTRACTOR

This AGREEMENT is made and entered into by and between the County of Monterey, a political subdivision of the State of California, hereinafter referred to as “County”, and _____, hereinafter referred to as “CONTRACTOR.”

SAMPLE RECITALS

WHEREAS, County has invited proposals through the Request for Proposals (RFP # _____) for _____, in accordance with the specifications set forth in this AGREEMENT; and

WHEREAS, CONTRACTOR has submitted a responsive and responsible proposal to perform such services; and

WHEREAS, CONTRACTOR has the expertise and capabilities necessary to provide the services requested.

NOW THEREFORE, County and CONTRACTOR, for the consideration hereinafter named, agree as follows:

S1.0 PERFORMANCE OF THE AGREEMENT

S1.1 After consideration and evaluation of the CONTRACTOR’S proposal, the County hereby engages CONTRACTOR to provide the services set forth in RFP # _____ and in this AGREEMENT on the terms and conditions contained herein and in RFP # _____. The intent of this AGREEMENT is to summarize the contractual obligations of the parties. The component parts of this AGREEMENT include the following:

- This AGREEMENT including all its attachments, Exhibits and Appendix
- RFP # _____ Addendum (or Addenda) # _____
- RFP # _____ dated _____, including all attachments and exhibits
- CONTRACTOR’S Proposal dated _____,
- Payment and Performance Bonds
- Certificate of Insurance
- Additional Insured Endorsements

S1.2 All of the above-referenced contract documents are intended to be complementary. Work required by one of the above-referenced contract documents and not by others shall be done as if required by all. In the event of a conflict between or among component parts of the contract, the contract documents shall be construed in the following order: AGREEMENT including all Attachments, Exhibits and Appendix, RFP # _____ Addendum/Addenda # _____,

RFP # _____ including all attachments and exhibits, Bonds, Certificate of Insurance, and Additional Insured Endorsements.

S1.3 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR’s agents, employees, and subcontractors performing services under this AGREEMENT are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this AGREEMENT and are not employees of the County, or immediate family of an employee of the County.

S1.4 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this AGREEMENT that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements. S1.4.1 CONTRACTOR must maintain all licenses throughout the term of the AGREEMENT.

S1.5 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this AGREEMENT, except as otherwise specified in this AGREEMENT. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this AGREEMENT.

S2.0 SCOPE OF SERVICE

[_____]

(Shall be consistent with Scope of Work defined in this Solicitation and shall include description of goods and/or services provided including timelines and deliverables. Shall also include itemized pricing (including tax), a total price, and all associated payment provisions. Additional conditions may be stated such as details regarding training, meetings, any “Acceptance Testing” or “Notice to Proceed” clauses and project management requirements if applicable.

S3.0 TERM OF AGREEMENT

S3.1 The initial term shall commence with the signing of this AGREEMENT through and including _____, with the option to extend this AGREEMENT for _____ additional _____ year periods.

S3.1.1 County is not required to state a reason if it elects not to renew this AGREEMENT.

S3.2 CONTRACTOR shall commence negotiations for any desired rate changes a minimum of ninety days (90) prior to the expiration of this AGREEMENT in order to be considered.

S3.2.1 Both parties shall agree upon rate extension(s) or changes in writing.

S3.3 County reserves the right to cancel this AGREEMENT, or any extension of this AGREEMENT, without cause, with a thirty day (30) written notice, or immediately with cause.

S4.0 COMPENSATION AND PAYMENTS

- S4.1 It is mutually understood and agreed by both parties that CONTRACTOR shall be compensated under this AGREEMENT in accordance with the pricing sheet attached hereto.
- S4.2 Prices shall remain firm for the initial term of this AGREEMENT and, thereafter, may be adjusted annually as provided in this paragraph. County does not guarantee any minimum or maximum amount of dollars to be spent under this AGREEMENT.
- S4.3 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of this AGREEMENT.
- S4.4 Any discount offered by the CONTRACTOR must allow for payment after receipt and acceptance of services, material or equipment and correct invoice, whichever is later. In no case will a discount be considered that requires payment in less than 30 days.
- S4.5 CONTRACTOR shall levy no additional fees or surcharges of any kind during the term of this AGREEMENT without first obtaining approval from County in writing.
- S4.6 Tax:
 - S4.6.1 Pricing as per this AGREEMENT is inclusive of all applicable taxes.
 - S4.6.2 County is registered with the Internal Revenue Service, San Francisco office, and registration number 94-6000524. The County is exempt from Federal Transportation Tax; an exemption certificate is not required where shipping documents show Monterey County as consignee.

S5.0 INVOICES AND PURCHASE ORDERS

- S5.1 Invoices for all services rendered per this AGREEMENT shall be billed directly to the _____ department at the following address:

- S5.2 CONTRACTOR shall reference the RFP number on all invoices submitted to County. CONTRACTOR shall submit such invoices periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. County shall certify the invoice, either in the requested amount or in such other amount as County approves in conformity with this AGREEMENT, and shall promptly submit such invoice to County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

- S5.3 All County of Monterey Purchase Orders issued for the AGREEMENT are valid only during the fiscal year in which they are issued (the fiscal year is defined as July 1 through June 30).
- S5.4 Unauthorized Surcharges or Fees: Invoices containing unauthorized surcharges or unauthorized fees of any kind shall be rejected by County. Surcharges and additional fees not included the AGREEMENT must be approved by County in writing via an Amendment.

S6.0 STANDARD INDEMNIFICATION

- S6.1 CONTRACTOR shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any and all claims, liabilities, and losses whatsoever (including damages to property and injuries to or death of persons, court costs, and reasonable attorneys' fees) occurring or resulting to any and all persons, firms or corporations furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from any and all claims, liabilities, and losses occurring or resulting to any person, firm, or corporation for damage, injury, or death arising out of or connected with CONTRACTOR's performance of this AGREEMENT, unless such claims, liabilities, or losses arise out of the sole negligence or willful misconduct of County. "CONTRACTOR's performance" includes CONTRACTOR's action or inaction and the action or inaction of CONTRACTOR's officers, employees, agents and subcontractors.

S7.0 INSURANCE REQUIREMENTS

- S7.1 Evidence of Coverage:
- S7.1.1 Prior to commencement of this AGREEMENT, CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition CONTRACTOR upon request shall provide a certified copy of the policy or policies.
- S7.1.2 This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. CONTRACTOR shall not receive a "Notice to Proceed" with the work under this AGREEMENT until it has obtained all insurance required and such, insurance has been approved by County. This approval of insurance shall neither relieve nor decrease the liability of CONTRACTOR.
- S7.2 Qualifying Insurers: All coverages, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by County's Purchasing Officer.

S7.3 Insurance Coverage Requirements:

S7.3.1 Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this AGREEMENT a policy or policies of insurance with the following minimum limits of liability:

S7.3.1.1 Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broadform Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

S7.3.1.2 Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this AGREEMENT, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

S7.3.1.3 Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this AGREEMENT, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

S7.3.1.4 Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, CONTRACTOR shall, upon the expiration or earlier termination of this AGREEMENT, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this AGREEMENT.

S7.4 Other Insurance Requirements:

S7.4.1 All insurance required by this AGREEMENT shall be with a company acceptable to County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this AGREEMENT, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this AGREEMENT.

- S7.4.2 Each liability policy shall provide that County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this AGREEMENT, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.
- S7.4.3 Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.
- S7.4.4 Prior to the execution of this AGREEMENT by County, CONTRACTOR shall file certificates of insurance with County's contract administrator and County's Contracts/Purchasing Division, showing that CONTRACTOR has in effect the insurance required by this AGREEMENT. CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this AGREEMENT, which shall continue in full force and effect.
- S7.4.5 CONTRACTOR shall at all times during the term of this AGREEMENT maintain in force the insurance coverage required under this AGREEMENT and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this AGREEMENT, which entitles County, at its sole discretion, to terminate this AGREEMENT immediately.

S8.0 RECORDS AND CONFIDENTIALITY

- S8.1 Confidentiality: CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the

confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this AGREEMENT, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by CONTRACTOR in the performance of this AGREEMENT except for the sole purpose of carrying out CONTRACTOR's obligations under this AGREEMENT.

- S8.2 County Records: When this AGREEMENT expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this AGREEMENT.
- S8.3 Maintenance of Records: CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this AGREEMENT.
- S8.4 Access to and Audit of Records: County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of CONTRACTOR and its subcontractors related to services provided under this AGREEMENT. The parties to this AGREEMENT may be subject, at the request of County or as part of any audit of County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this AGREEMENT for a period of three years after final payment under the AGREEMENT.

S9.0 NON-DISCRIMINATION

- S9.1 During the performance of this contract, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code, §12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, §7285.0, et seq.).
- S9.2 The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, §12900, et seq., set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full.
- S9.3 CONTRACTOR shall include the non-discrimination and compliance provisions of the clause in all AGREEMENTs with subcontractors to perform work under the contract.

S10.0 OVERRIDING CONTRACTOR PERFORMANCE REQUIREMENTS

- S10.1 Independent Contractor: CONTRACTOR shall be an independent contractor and shall not be an employee of Monterey County, nor immediate family of an employee of County. CONTRACTOR shall be responsible for all insurance (General Liability, Automobile, Workers' Compensation, unemployment, etc.) and all payroll-related taxes. CONTRACTOR shall not be entitled to any employee benefits. CONTRACTOR shall control the manner and means of accomplishing the result contracted for herein.
- S10.2 Non-Assignment: CONTRACTOR shall not assign this contract or the work required herein without the prior written consent of County.
- S10.3 Any subcontractor shall comply with all of County of Monterey requirements, including insurance and indemnification requirements as detailed in SAMPLE AGREEMENT.

S11.0 CONFLICT OF INTEREST

- S11.1 CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this AGREEMENT. Without limitation, CONTRACTOR represents to and agrees with COUNTY that CONTRACTOR has no present, and will have no future, conflict of interest between providing COUNTY services hereunder and any other person or entity (including but not limited to any federal or state environmental or regulatory agency) which has any interest adverse or potentially adverse to COUNTY, as determined in the reasonable judgment of the Board of Supervisors of COUNTY.
- S11.2 CONTRACTOR agrees that any information, whether proprietary or not, made known to or discovered by it during the performance of or in connection with this AGREEMENT for COUNTY will be kept confidential and not be disclosed to any other person. CONTRACTOR agrees to immediately notify COUNTY in accordance with the Notices Section of this AGREEMENT, if it is requested to disclose any information made known to or discovered by it during the performance of or in connection with this AGREEMENT. These conflict of interest and future service provisions and limitations shall remain fully effective five (5) years after termination of services to COUNTY hereunder.

S12.0 COMPLIANCE WITH APPLICABLE LAWS

- S12.1 CONTRACTOR shall keep itself informed of and in compliance with all federal, state and local laws, ordinances, regulations, and orders, including but not limited to all state and federal tax laws that may affect in any manner the Project or the performance of the Services or those engaged to perform Services under this AGREEMENT. CONTRACTOR shall procure all permits and licenses, pay all charges and fees, and give all notices required by law in the performance of the Services.

S12.2 CONTRACTOR shall report immediately to County's Contracts/Purchasing Officer, in writing, any discrepancy or inconsistency it discovers in the laws, ordinances, regulations, orders, and/or guidelines in relation to the Project of the performance of the Services.

S12.3 All documentation prepared by CONTRACTOR shall provide for a completed project that conforms to all applicable codes, rules, regulations and guidelines that are in force at the time such documentation is prepared.

S13.0 DRUG FREE WORKPLACE

S13.1 CONTRACTOR and CONTRACTOR'S employees shall comply with the COUNTY'S policy of maintaining a drug free workplace. Neither CONTRACTOR nor CONTRACTOR'S employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR is convicted or pleads nolo contendere to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR shall, within five days thereafter notify the head of the COUNTY department/agency for which the AGREEMENT services are performed. Violation of this provision shall constitute a material breach of this AGREEMENT.

S14.0 TIME OF ESSENCE

S14.1 Time is of the essence in respect to all provisions of this AGREEMENT that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this AGREEMENT.

S15.0 PERFORMANCE ASSURANCE AND WAIVER OF BREACH

S15.1 Assurance of Performance: If at any time County believes CONTRACTOR may not be adequately performing its obligations under this AGREEMENT or that CONTRACTOR may fail to complete the Services as required by this AGREEMENT, County may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to County, to correct the observed deficiencies in CONTRACTOR'S performance. CONTRACTOR shall provide such written assurances and written plan within ten (10) calendar days of its receipt of County's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this AGREEMENT. If County accepts the plan it shall issue a signed waiver.

S15.1.1 Waiver: No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this AGREEMENT shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

S16.0 FORCE MAJEURE

S16.1 "Force Majeure" means any cause beyond the reasonable control of a party, including but not limited to acts of God, civil or military disruption, fire, strike, flood, riot, war, or inability due to the aforementioned causes to obtain necessary labor, materials or facilities.

S16.2 If any party hereto is delayed or prevented from fulfilling its obligations under this AGREEMENT by Force Majeure, said party will not be liable under this AGREEMENT for said delay or failure, nor for damages or injuries resulting directly from the inability to perform scheduled work due to Force Majeure.

S16.3 CONTRACTOR shall be granted an automatic extension of time commensurate with any delay in performing scheduled work arising from Force Majeure. CONTRACTOR agrees to resume such work within three (3) days after the Force Majeure has subsided enough to do so.

S17.0 BOND REQUIREMENTS

S17.1 The selected CONTRACTOR shall maintain and provide evidence that they have Fidelity Bond Insurance in an amount at least equal to Two Million Six Hundred Thousand Dollars (\$2,600,000) at the time the contract is executed.

S18.0 NOTICES

S18.1 Notices required to be given to the respective parties under this AGREEMENT shall be deemed given by any of the following means: (1) when personally delivered to County's contract administrator or to CONTRACTOR'S responsible officer; (2) when personally delivered to the party's principle place of business during normal business hours, by leaving notice with any person apparently in charge of the office and advising such person of the import and contents of the notice; (3) 24 hours after the notice is transmitted by FAX machine to the other party, at the party's FAX number specified pursuant to this AGREEMENT, provided that the party giving notice by FAX must promptly confirm

receipt of the FAX by telephone to the receiving party’s office; or, (4) three (3) days after the notice is deposited in the U. S. mail with first class or better postage fully prepaid, addressed to the party as indicated below.

Notices mailed or faxed to the parties shall be addressed as follows:

TO COUNTY:
Economic Development Manager
County of Monterey
168 W. Alisal Street, 3rd Floor.
Salinas, CA 93901-2439
Tel. No.: (831) 784-5602
VaughnR@co.monterey.ca.us

TO CONTRACTOR:
Name _____
Address _____

Tel. No. _____
FAX No. _____
Email _____

S19.0 LEGAL DISPUTES

- S19.1 CONTRACTOR agrees that this AGREEMENT and any dispute arising from the relationship between the parties to this AGREEMENT, shall be governed and interpreted by the laws of the State of California, excluding any laws that direct the application of another jurisdiction’s laws.
- S19.2 Any dispute that arises under or relates to this AGREEMENT (whether contract, tort, or both) shall be resolved in the Superior Court of California in Monterey County, California.
- S19.3 CONTRACTOR shall continue to perform under this AGREEMENT during any dispute.
- S19.4 The parties agree to waive their separate rights to a trial by jury. This waiver means that the trial will be before a judge.

--END OF SAMPLE AGREEMENT SECTION--

ATTACHMENTS AND APPENDICES

APPENDIX A

Please see the following document for details:

**US Department of Commerce Economic Development Administration
Revolving Loan Fund
Financial Assistance Award
Standard Terms and Conditions**

APPENDIX B

Please see the following document for details:

**Monterey County
Small Business Revolving Loan Fund
Administrative Manual**

APPENDIX C

Please see the following document for details:

**Department of Commerce
Financial Assistance
Standard Terms and Conditions**

APPENDIX D

Please see the following document for details:

Amendment to Financial Assistance Award

APPENDIX E

Please see the following document for details:

**Specific Award Conditions
U.S. Department of Commerce
Economic Development Administration (EDA)**

SIGNATURE PAGE

COUNTY OF MONTEREY
ECONOMIC DEVELOPMENT DEPARTMENT

RFP #10863
ISSUE DATE: MARCH 31, 2022



RFP TITLE: SMALL BUSINESS REVOLVING LOAN FUND PROGRAM

PROPOSALS ARE DUE TO THE CONTRACTS/PURCHASING DIVISION BY
3:00 P.M., LOCAL TIME, ON JUNE 29, 2022

MAILING ADDRESS:
COUNTY OF MONTEREY
CONTRACTS/PURCHASING DIVISION
1488 SCHILLING PLACE
SALINAS, CA 93901

QUESTIONS ABOUT THIS RFP SHOULD BE DIRECTED TO
DEAUNDR LEWELLING, LEWELLINGDL@CO.MONTEREY.CA.US, (831) 755-4998

CONTRACTOR MUST INCLUDE THE FOLLOWING IN EACH PROPOSAL (1 original plus 3 copies):

ALL REQUIRED CONTENT AS DEFINED PER SECTION 7.0 HEREIN

This Signature Page must be included with your submittal in order to validate your proposal.
Proposals submitted without this page will be deemed non-responsive.

CHECK HERE IF YOU HAVE ANY EXCEPTIONS TO THIS SOLICITATION.

CONTRACTOR MUST COMPLETE THE FOLLOWING TO VALIDATE PROPOSAL

I hereby agree to furnish the articles and/or services stipulated in my proposal at the price quoted, subject to the instructions and conditions in the Request for Proposal package. I further attest that I am an official officer representing my firm and authorized with signatory authority to present this proposal package.

Company Name: _____ Date _____

Signature: _____ Printed Name: _____

Street Address: _____

City: _____ State: _____ Zip: _____

Phone: () _____ Fax: () _____ Email: _____

License No. (If applicable): _____

License Classification (If applicable): _____

Monterey County
Small Business
Revolving Loan Fund
Administrative Manual

Approved by the
Monterey County Board of Supervisors
December 15, 2015

Contents

PART I: REVOLVING LOAN FUND STRATEGY	4
SECTION 1 INTRODUCTION.....	4
SECTION 2 SOURCE OF RLF FUNDS	4
SECTION 3 PORTFOLIO MERGER.....	5
SECTION 3 BACKGROUND.....	5
Section 3.1 Economic Distress Qualification for EDA Assistance	5
Section 3.2 Nature and Scale of Economic Adjustment Problems.....	6
Section 3.3 Development of the Economic Development Strategy.....	6
Section 3.4 Area Resources/ Assets.....	7
Section 3.5 Summary of Monterey County Comprehensive Economic Development Strategy.....	9
SECTION 4 FINANCING STRATEGY AND LOCAL CAPITAL MARKETS	10
Section 4.1 Business Development Strategy	11
Section 4.2 Project Eligibility.....	13
Section 4.3 Documentation of Jobs Created or Retained.....	16
Section 4.4 Priority Lending Criteria	17
Section 4.5 Portfolio Standards	25
Section 4.6 Cost per Job for Portfolio.....	26
SECTION 5 LENDING POLICIES	26
Section 5.1 General Lending Policy.....	26
Section 5.2 Minimum and Maximum Loan Sizes for RLF Program.....	27
Section 5.3 Loan Application, Documentation and Origination Fees.....	27
Section 5.4 Range of Allowable Interest Rates.....	27
Section 5.5 Borrower Equity and/ or Cash Injection	28
Section 5.6 Repayment Terms.....	28
Section 5.7 Collateral Requirements.....	29
Section 5.8 Private Investment Leveraging Ratio for Loans	30
Section 5.10 Hiring of Displaced Workers.....	31
Section 5.11 Key Factors to Determine When Deviations will be Employed.....	31
SECTION 6 LOAN COMMITTEE	31
Section 6.1 Loan Committee Composition	31
Section 6.2 Role of Loan Committee	31
Section 6.3 Loan Committee Policy.....	32
PART II OPERATIONAL PROCEDURES	33
SECTION 1 LOAN APPLICATION AND REVIEW	33
Section 1.1 Standard Loan Application Requirements.....	33
Section 1.2 Use of Appraisal Reports.....	34
Section 1.3 Loan Write-Up	34
Section 1.4 Loan Review	35
Section 1.5 Loan Closing and Disbursement.....	35
Section 1.6 Loan Closing Documentation Requirements	35
Section 1.7 Loan Disbursement Requirements.....	36
Section 1.8 Loan File Closing and Documentation.....	36
Section 1.9 Appeal of Loan Committee Action	37
SECTION 2 ADMINISTRATION OF THE SBRLF	37
Section 2.1 General Administrative Guidelines	37
Section 2.2 Roles and Responsibilities.....	37
Section 2.3 Reporting Requirements	39
Section 2.4 Records and Retention	39
SECTION 3 LOAN SERVICING	40
Section 3.1 Loan Payment & Posting Procedures	40

<i>Section 3.2</i>	<i>Loan Monitoring Procedures</i>	41
<i>Section 3.3</i>	<i>Delinquency, Default, Write-Off & Bankruptcy Procedures</i>	42
SECTION 4	EFFECTIVE UTILIZATION OF REVOLVING LOAN FUNDS	46
<i>Section 4.1</i>	<i>Capital Utilization Standard</i>	46
<i>Section 4.2</i>	<i>Sequestration of Excess Funds</i>	46
<i>Section 4.3</i>	<i>Sequestration Not Required</i>	47
SECTION 5	MONITORING OF HIGH LOAN DEFAULTS (13 CFR § 307.16)	47
SECTION 6	PRIORITY OF PAYMENTS ON DEFAULTED RLF LOANS	47
SECTION 7	OVERSIGHT	48
SECTION 8	MONITORING	48
SECTION 9	ENVIRONMENTAL REVIEW	48
SECTION 10	SEGREGATION OF FUNDS	50
SECTION 11	CONFLICT OF INTEREST	50
SECTION 12	EMPLOYEE DISHONESTY	51
SECTION 13	TREATMENT OF PROPRIETARY INFORMATION.....	51
SECTION 14	EQUAL OPPORTUNITY/AFFIRMATIVE ACTION POLICY	51
SECTION 15	COUNTY’S COUNSEL REVIEW OF ALL CONTRACTS AND LEGAL FORMS.....	51
SECTION 16	GENERAL REQUIREMENTS AND RESPONSIBILITIES.....	51
APPENDIX A – EDD FORMS DE6 AND DE34.....		52

PART I: REVOLVING LOAN FUND STRATEGY

Section 1 Introduction

The Monterey County Revolving Loan Fund Program helps meet the critical capital needs of small businesses in the County of Monterey.

Since 1989, the County of Monterey has received two grants from the U.S. Department of Commerce, Economic Development Administration and two grants from the California State Community Development Block Grant (CDBG) Program to capitalize Small Business Revolving Loan Funds. The SBRLF was also capitalized with local funds and a California Trade and Commerce Agency Defense Adjustment Matching Grant. Each of the SBRLFs had slightly different target areas or beneficiaries. Collectively these grants, State grants, and local funds pledged as local share to the EDA grants are referred to as the Small Business Revolving Loan Fund (SBRLF). The original grants, sources of local match, and areas of benefit are:

Rural RLF (RRLF [EDA Award #07-39-03105]) - This was the County's first RLF grant and was originally targeted for the Salinas Valley south of the City of Salinas and the unincorporated communities of Castroville, Moss Landing and Pajaro. In 2004, the program was expanded Countywide to meet demand for RLF loans in other regions of the County. The \$300,000 loan pool was capitalized using \$200,000 from EDA and local contributions totaling \$100,000.

Countywide RLF (CWRLF [EDA Award #07-49-02640.01]) - This was the County's second RLF grant and was made in response to the economic dislocation associated with the closure of Fort Ord. The \$1,446,820 loan pool was capitalized using \$1,333,205 from EDA and \$206,641 from local resources.

Section 2 Source of RLF Funds

The source of funds for this SBRLF was originally capitalized with assistance from the U.S. Department of Commerce, Economic Development Administration through the Economic Adjustment Assistance program (CDFA No. 11.307), through repayment of loans made from the SBRLF, through repayment of loans made through other program funds that are designated to be deposited in the SBRLF, and through the balance(s) of other defunct EDA RLF funds.

Table 1¹

Source of Funding	EDA Award 07-49-02640.01	EDA Award 07-39-03105	Total
EDA Grants	\$1,333,205	\$200,000	\$1,533,205
Local Share			
CTA	\$93,026		\$93,026
County	\$113,615	\$34,000	\$147,615
Greenfield		\$33,000	\$33,000
King		\$33,000	\$33,000
Program Total	\$1,446,820	\$300,000	\$1,839,846

¹ The figures shown in Table 1 differ from the original grant amounts and match requirements. The table reflects the actual funds drawn down from each grant source for lending activities.

The SBRLF was not funded with Redevelopment Agency funds.

Section 3 Portfolio Merger

In 2014, the County asked EDA for permission to merge all three programs into one for purposes of continued reporting. The justification for the merger was:

- In 2004, EDA approved the expansion of the target area for the Rural Portfolio to be the same, geographically, as the Countywide Portfolio. The Portfolios use the same economic impact measures and goals. Thus, the EDA approval of expansion of the Rural Portfolio essentially created one program.
- The County, with EDA approval, had already consolidated the Contractors RLF (EDA Award 07-49-02640.01) with the Countywide Portfolio.
- In July 2015, EDA directed the County to prepare this Administrative Plan which merges the two grants.

The relatively small capital base of the Rural Portfolio means that the cost of managing that Portfolio separately will continually absorb any RLF Income generated by loan activity. Efficiencies achieved through program merger will enable the County to make RLF Income available to loan applicants.

Section 3 Background

Section 3.1 Economic Distress Qualification for EDA Assistance

Grant applicants need to qualify based on at least one of three criteria established in the Public Works Act funding EDA. These criteria are:

1. An unemployment rate that is, for the most recent 24-month period for which the data are available, at least one percentage point greater than the national average unemployment rate;
2. Per capita income, for the most recent period for which data is available, eighty percent (80%) or less than the national per capita income; or
3. “Special Need”, e.g. plant closures

Monterey County qualifies for assistance based upon an unemployment rate that is more than one percent (1%) higher than the national average. During 2012 and 2013, the national unemployment rate averaged seven point seven percent (7.7%). Monterey County’s unemployment rate during the same period averaged ten point four percent (10.4%).

Additionally, five (5) cities (Gonzales, Greenfield, King, Salinas, and Soledad) and five (5) Census Designated Places (Castroville, Chualar, Pajaro, San Ardo, and San Lucas) within the County qualify for assistance based upon per capita incomes that are less than eighty percent (80%) of the national per capita income. These ten (10) communities are home to more than fifty-four percent (54%) of the County’s population.

Monterey County continues to experience economic distress as seen in its high annual average unemployment rate. The two (2) largest economic engines in the County, agriculture and tourism, employ large, seasonal workforces. Because of the seasonal nature of these industries, the County’s unemployment rate is subject to dramatic seasonal variations.

Based on the two (2) year average unemployment rate, Monterey County qualifies for EDA assistance at the eighty percent (80%) level of the original project cost. This level of EDA assistance is reflected in Table 1 above.

Section 3.2 Nature and Scale of Economic Adjustment Problems

In addition to its chronically high unemployment rate, the County has experienced a number of natural disasters and military base closures over the last twenty-six (26) years. These events, including the 1989 Loma Prieta earthquake, the closure of Fort Ord in 1992, flooding in 1995 and 1998, the closure of the U.S. Army Test and Evaluation Center in 1998, and the realignment of Fort Hunter Liggett in 1998 have contributed to the County's eligibility for Title IX funding.

In 2011, the number of jobs in Monterey County totaled 167,400, reflecting growth of three-tenths (0.3%) growth since 2001. Agriculture experienced the biggest numeric growth (9,000 new jobs) and grew to represent a larger share of total employment (rising from one in five (5) jobs in 2001 to one in four (4) jobs in 2011) during this period. Health and other services also experienced double digit growth rates during this period. The gains in these industries offset job loss in other industries including: construction (-2,800 jobs) manufacturing (-3,700 jobs); financial services (-2,300 jobs); retail trade (-1,300 jobs), and computer services (-1,200 jobs).

The economy of Monterey County is based upon agriculture, tourism and an emerging educational/research sector, collectively generating in excess of \$4.0 billion annually. Monterey County is the fourth highest agricultural-producing county in the state. Leading commodities include lettuce, strawberries, grapes, spinach, and broccoli. The economic value of agriculture historically has grown by one to two percent (1-2%) annually and has not been subject to the extreme fluctuations seen in other economic sectors.

However, this profile should not obscure the economic problems that currently exist in expansive sub-areas of several cities and unincorporated areas of the Salinas Valley area of the County. Specifically, the Cities of Gonzales, Greenfield, King City, Salinas, and Soledad, portions of the Cities of Marina and Seaside, and the unincorporated areas of Castroville, Chualar, Las Lomas, Moss Landing, Pajaro, San Ardo, and San Lucas have been experiencing economic distress and the resulting effects of high unemployment and low per capita income among most of their populations. Further, businesses in these areas have been impeded by slow economic growth and development.

Section 3.3 Development of the Economic Development Strategy

In February and March 1992, the County of Monterey, in conjunction with more than 120 community leaders, engaged in a strategic planning process to develop a vision for the County. The resulting Vision calls for a life of abundant quality with opportunities for individuals to develop their full potential and pursue their dreams. The Vision focuses on protecting and enhancing the County's educational opportunities, economy, and environment. Based on the County's Vision, the Board of Supervisors continued to work with the community and developed a fifteen (15) - point Economic Development Strategy. The County's Economic Development Strategy was adopted in June 1996. Since the Strategy was adopted in 1996, the Board of Supervisors has sponsored three Economic Strategy Forums to continue the process of refining the County's economic development policies.

The Monterey County Economic Development Committee is charged with overseeing the preparation of the Comprehensive Economic Development Strategy (CEDS). The CEDS is updated

as needed to evaluate the County's progress toward implementing the County's Economic Development Strategy and to identify areas of the strategy that need to be amended. The CEDS must be updated at least once every five (5) years in order for a jurisdiction to continue to be eligible to apply for and receive grant funding from EDA. The most recent plan was completed and adopted by the Board of Supervisors on December 15, 2015.

In 2011, the Monterey County Board of Supervisors began a new economic development strategic planning program. This multifaceted effort will include updated basic economic information for the County, identifying the County's key competitive edges, and identifying any financing gaps in the local lending community. This program will provide the basis for future economic development activities in the County and will inform the next revision of the SBRLF Administrative Plan.

Section 3.4 Area Resources/Assets

Section 3.4.1 Industries

Monterey County's economic development strategy supports continued development and diversification of the County's two major industries, agriculture and tourism. With an annual payroll of over \$1.2 billion, agriculture is the mainstay of Monterey County's economy. Uniquely rich soils, mild climate, normally abundant rainfall and water resources, progressive land use policies, a highly skilled farming community, and major food processing plants and facilities which have operated in the area for generations help to form the most important single economic resource in the area. The County is actively working to develop more facilities that add value to its raw agricultural products.

This includes adding new product lines to existing food processors and developing new products. This strategy will create more permanent manufacturing jobs without endangering or ignoring Monterey County's great natural agricultural strengths. One recent example of developing new opportunities for local agriculture is the Monterey Peninsula Airport District's work with the Monterey County Vintners and Growers Association to persuade airlines to waive baggage fees for the first case of Monterey County wines travelers take home with them.

Tourism is the second major component of the Monterey County economy. The spectacular coastline, mild weather, accessible beaches, wooded mountains, historic landmarks, and world class hotels, restaurants and wineries, all in close proximity to several northern California metropolitan areas, have made Monterey County an important recreational area and vacation destination. The County is working with the industry to develop additional destinations and develop the County's agricultural tourism assets, such as boutique wineries and farm stay opportunities. This industry also offers the opportunity to further diversify the County's economic base by attracting businesses that provide goods and services to visitors.

Section 3.4.2 Natural resources

Monterey County's two largest industries are agriculture and tourism and exist largely because of the County's natural resources. These industries benefit from the mild climate, dramatic geography and rich soil. The County is currently working to develop policies and programs that will help link these industries together. Examples of these projects include farm stays and enhancing the tourism aspects of the wine industry. The large amount of produce grown in the County also provides the

opportunity to support development of additional, value-added processing facilities such as those producing salads in a bag.

Section 3.4.3 Work Force

In 2012, the County's labor force numbered approximately 226,500 people and an annual average unemployment rate of eleven point four percent (11.4%). While the annual average unemployment was only three point three percent (3.3%) higher than the national rate (and less than one percent (1%) higher than the state), unemployment in Monterey County is subject to large variation during the year. For example, in January 2012, the County's unemployment rate was over sixteen percent (16%) but dropped to eight point six percent (8.6%) in September. This pattern of high unemployment in winter and lower unemployment during the peak summer months has been a fairly stable pattern in the County for at least the last ten (10) years. The pattern also mirrors the cyclical nature of agricultural and tourist activity in the County.

The educational level of the County's labor force does not track with state or national educational attainment. The most extreme difference is found in the 31.2% of the County labor force, older than twenty-five (25) years, who do not have at least a high school or equivalent degree.² The high rate of people who have not completed high school in Monterey County is possibly related to the relatively high proportion of the population that is not native born. Thirty-one percent (31%) of the County's population is foreign born as compared to thirteen percent (13%) of the U.S. population. It may also be related to the proportion of the Monterey County population who are not U.S. citizens; forty-five percent (45%) of foreign born U.S. residents have become naturalized citizens while only twenty-seven percent (27%) of foreign born residents of Monterey County have become citizens.

Section 3.4.4 Other Resources

The Monterey Bay region (Monterey, San Benito, and Santa Cruz counties) is home to more than fifteen (15) research facilities, community colleges and state universities. The County is actively exploring ways to capitalize on the economic development potential these organizations represent. The County recognizes these institutions represent an excellent source of untapped potential; however, the dominant economic sectors, agriculture and visitor servicing businesses, do not provide sufficient opportunities or compensation to entice people to stay in the area once they complete their education.

Section 3.4.5 Opportunities to Expand and Strengthen Existing and New Economic Activities

Monterey County has made major strides in establishing goals and developing plans and projects to accomplish the goals of redevelopment and economic development on land formerly encompassing Fort Ord, and in unincorporated areas of Monterey County.

Goals:

- Promote projects that create new jobs to help achieve the jobs/housing policies of the Fort Ord Reuse Plan.
- Enhance revenue potential to help support service requirements of planned housing.
- Support base-wide habitat restoration efforts by promoting eco-tourism activities.

² American Community Survey, Table ACS_11_1YR-DP02; accessed June 6, 2013

- Complement the re-use efforts of other jurisdictions and agencies through increased collaboration.
- Encourage use of new housing in East Garrison I as work force and affordable housing to support new jobs in Fort Ord.

Section 3.4.6 Strategic Adjustment Goals and Objectives

Goals for Economic Development

The Economic Development Goals that follow are drawn from the Monterey County Economic Development Element of the Monterey County General Plan, adopted by the Monterey County Board of Supervisors on October 26, 2010. Those goals are as follows:

- Support the development of jobs and business opportunities in Monterey County.
- Develop public/private partnerships between key constituents, the County, Cities, business organizations, and key industries to support economic growth within each key industry cluster.
- Create and maintain an adaptive/skilled workforce to meet the needs of existing and future businesses.
- Improve the business climate to retain and expand existing businesses, recruit new businesses, and support emerging industries.

Vision:

- To create a business climate that fosters sustainable economic development that provides employment opportunities, business opportunities, and diversifies our economic base.

Objectives:

- The following objectives will support and enhance the competitiveness of Monterey County's key industry clusters. It is critical to constantly re-assess the performance of these clusters (as they may change over time) through on-going research and public-private sector dialogue and collaboration.
- Diversified Employment Opportunities: Create a wider diversity of employment opportunities so that wealth will be generated within the County.
- Industry Cluster Development: Support key industries so that they remain competitive, innovative and profitable while at the same time diversifying the region's job base to promote a wider range of higher-paying job opportunities.
- Employment Center Economic Development: Increase the number of career ladder jobs within each of the major employment centers, rural centers and community areas, and sub-regions.
- Infrastructure Support: Work to assure that adequate infrastructure is provided to support existing and emerging industries and targeted clusters.

Section 3.5 Summary of Monterey County Comprehensive Economic Development Strategy

The Monterey County Economic Development Department (MCEDD) is responsible for implementing the County Economic Development Program. The MCEDD contracts with a Program Administrator (P.A.) to manage all day-to-day activities for the SBRLF. The MCEDD also

provides a variety of business development and retention services, including site location assistance, permit assistance, and business counseling.

The MCEDD continues to develop programs that will contribute to the overall success of the County's Economic Development Strategy. These programs include enhanced support for business retention, expansion and attraction. The Central Coast Marketing Team (CCMT) is a regional marketing program that represents cities in six Central California counties on the Internet and at trade shows.

The Monterey County Board of Supervisors is responsible for adopting the County's Economic Development Strategy and Policies. The Board has charged the Monterey County Economic Development Committee (MCEDC) with developing economic development strategy and policy recommendations for the Board's consideration. The MCEDD provides staffing to the MCEDC and is responsible for the day-to-day implementation of the County's Economic Development Strategy and policies.

The MCEDC reviews the County's business development strategy and SBRLF Administrative Plans, as needed, to ensure that they remain consistent with amendments to the County's CEDS. The Monterey County Board of Supervisors annually reviews the SBRLF portfolio to ensure that the goals of this SBRLF Administrative Plan are being met.

The MCEDD is the County's lead agency for managing and implementing the County's Comprehensive Economic Development Strategy (CEDS). The MCEDD is responsible for the coordination and management of all economic development grant programs in the County, including the Revolving Loan Funds. The County contracts with a Program Administrator (P.A.) to manage all day-to-day activities for the SBRLF, including marketing, loan packaging, and loan servicing.

MCEDD also works closely with a variety of community and economic development organizations throughout the County to coordinate economic development activities and implement policies that support economic development. The public sector agencies that MCEDD works with include the various city and County land use departments, i.e. planning, public works and environmental health, and the economic development coordinators from the twelve cities in the County. MCEDD also works with the Chambers of Commerce and Small Business Development Centers located at Cabrillo Community College and CSU Monterey Bay to provide direct business assistance.

Section 4 Financing Strategy and Local Capital Markets

Like many other areas, Monterey County's capital markets are dominated by large lending institutions that do not have close ties to the community and tend to rely on formulas to determine eligibility for credit. Additionally, because these institutions are not local, they frequently do not understand local markets or have local staff who can work with borrowers before they default. Some of these institutions, such as Rabobank, do make an effort to reach out to large scale agricultural ventures; however, they frequently cannot meet the needs of smaller or specialty farmers. There are two or three local banks that are still active in business lending. When evaluating borrowers for credit worthiness, however, most of them rely on either long term personal relationships with borrowers or focus only on borrowers who qualify for SBA loans. California Coastal Rural

Development Corporation (CalCoastal) is another source of local small business lending. CalCoastal uses a variety of specialized government loan and loan guarantee programs to assist small businesses. CalCoastal is good at meeting the needs of small agricultural producers and borrowers who qualify for SBA programs.

The local capital market is underserved by lenders:

- Who are not marketing SBA products;
- Who are willing to work with small or start-up businesses where the borrower does not have long personal history with the bank;
- Who have experienced, locally-based staff with the authority to help borrowers when they experience repayment issues.

Within this context, the primary objective of the SBRLF is to assist borrowers that cannot otherwise obtain financing for their business formation and/or expansion plans. The SBRLF will be used to stimulate new investment in plant and equipment purchases, and the retention and creation of private sector jobs. SBRLF funds will be used to provide funding for a variety of small firms that are unable to finance some or all of their start-up or expansion plans through conventional financing resources for a variety of reasons, including a short operating history or inadequate collateral.

Once an SBRLF loan has been repaid, it is expected that the business will be qualified to successfully apply for conventional financing for its future expansion. At that point, the overall goals of increasing access to capital resources will have been accomplished and the repaid funds are available to “revolve” into another loan to another business.

Section 4.1 Business Development Strategy

The County's primary objective is to support the enhancement of the economic base and to promote economic diversification that will utilize the County's available labor force and promote the retraining of workers to meet the needs of a changing economy. The County will focus on business retention, expansion and development of industries that preserve the environmental quality of the region, and that have national and global market potential including, but not limited to, agribusiness, tourism, retail trade and education.

Paramount in consideration and selection of projects for development and funding will be the extent to which the project has community participation, as demonstrated by community support for the project. Such support and participation must be meaningful in terms of its current and prospective commercial value.

The following describes the criteria used to guide the program and project selection portion of the Comprehensive Economic Development Strategy (CEDS). The County uses these criteria when evaluating potential EDA grant applications. Projects, programs, and applicants for SBRLF loans, will be evaluated based on the extent to which they meet and/or maximize these criteria:

- Conforms to locally adopted plans or programs, the CEDS, and any relevant state and federal programs, plans and policies;
- Public and private sector cost-effectiveness in terms of cost savings and long-term economic growth potential;
- Compatibility with the environment;

- Offering significant employment potential;
- Raising the average income in the municipalities and unincorporated areas of Monterey County to above the state average;
- Potential benefit to the unemployed and underemployed and to distressed communities within the County;
- Contributing to the diversification of the local economy; and
- Project or program can be completed in a reasonable amount of time and within budget.

Other areas of concern with all projects include:

- | | |
|--|--|
| • Cost Effectiveness | • Area Need |
| • Job Creation | • Market Demand |
| • Number of Jobs Created or Preserved | • Economic Reasonableness |
| • Ratio of federal funds to each job created | • Status of Projects & Project Development Schedule |
| • Permanent vs. Part-time employment | • Project's ability to leverage federal funding to attract other public / private funds. |
| • Employment or Training Plan for new jobs created | • Endorsement from governing municipality where project is located, if sponsored by not for-profit organization. |
| • Living Wage Considerations | |
| • Whether project involves relocation of business. | |
| • Project Feasibility | |

Economic development projects and programs will be located throughout the Monterey County, with particular attention paid to economically distressed areas with high unemployment rates and low per capita incomes. Projects and programs will be sponsored and administered by the appropriate local government or non-profit agency serving the area.

Section 4.1.1 The SBRLF will stimulate private sector investment by:

- Providing gap financing and accepting subordinate lien positions to leverage conventional financing;
- Working with private sector lenders to make tandem loans that require the borrower to make only one payment to the private sector lender who will then apply a portion of the payment to the County loan;
- Guaranteeing private sector loans;
- Helping to reduce debt service requirements for small businesses by providing a more affordable means to finance business start-up and expansion than high interest revolving credit.

Section 4.1.2 Meeting the Job Creation or Job Retention Goals of the SBRLF

To ensure that displaced workers and the long-termed unemployed will be linked with the jobs created through the SBRLF, the County will work with the local Workforce Development Board (WDB), the County Office for Employment Training (OET), and the County Department of Social Services. Companies that receive SBRLF assistance will be encouraged to use these resources to fill new jobs. Companies that apply for large loans of more than \$150,000 will generally be required to enter into a first source hiring agreement with these agencies.

The SBRLF will target creation of permanent full-time jobs in the industrial, commercial, retail and tourism areas. Loans to be used solely for saving existing jobs will be approved only when it is clearly evident, and documented, that the jobs will be lost in the imminent future without SBRLF assistance. Firms receiving assistance primarily to save jobs must be integral to the functioning of the local economy.

Section 4.2 Project Eligibility

Section 4.2.1 Eligible Applicants, Projects & Use of Funds

Eligible applicants include on-going and start-up private, for-profit business concerns, corporations, partnerships, sole proprietorships, and cooperatives that are incorporated and licensed, and are located in or expanding to the County of Monterey.

SBRLF funds may be used by any business that employs fewer than five (5) people and that will create or retain jobs in Monterey County. Although small, these are typically businesses that have national and international market potential, including, but not limited to, agribusiness, retail trade, education, manufacturing, visual arts, film making, language arts/publishing, technology, and marine science enterprises.

Section 4.2.1.1 Eligible Projects

- Projects must be located in the County of Monterey. Projects must create or retain jobs and must leverage privately invested funds. The project must be commercial or industrial.
- Projects must be consistent with; 1) Monterey County's Comprehensive Economic Development Strategy (CEDS), or 2) relevant city economic development policies or strategies.

Section 4.2.1.2 Eligible Uses and Costs

In general, SBRLF funds may be used for the following uses and their associated costs:

- Land & Building Acquisition: Acquisition of owner-occupied land and facilities for existing businesses, including engineering and legal fees, grading, testing, site mapping, and related costs associated with acquisition and preparation of land, or construction and rehabilitation of buildings, including leasehold improvements. The County will review 13 CFR § 302.13 and consult with EDA to determine the applicability of Davis-Bacon wage requirements prior to approving any loan where the loan proceeds will be used for grading or construction.
- Acquisition of machinery, equipment, furniture, fixtures & leasehold improvements: This includes delivery, installation, engineering, architectural, legal, insurance, and related costs (i.e. sales and use taxes) associated with acquisition and installation of machinery and equipment.
- Brownfield Recycling: investments which will accelerate recycling land and facilities and will create job activity, such as assistance to firms that plan to locate or expand in such facilities.
- Working capital needs: This includes financing the non-tangible costs associated with starting and/or expanding a business, such as payroll, inventory, and raw materials, etc.
- Economic Development Incentives: SBRLF financing may also be used as an incentive, through favorable loan terms, to attract new business or a business expansion into an eligible area. The business may be creditworthy but would otherwise not locate to the area without SFRLF financing as an incentive. When SBRLF financing is proposed for this type of project, the P.A. must

sufficiently document the need for SBRLF assistance and should obtain certification from the company that it would not locate the proposed project at the intended location without SBRLF assistance.

- **Business Acquisition:** SBRLF financing may be used to purchase an existing business if it can be documented that the business will cease to exist without SBRLF assistance. Business acquisitions should be rare and the P.A. must ensure that acquisitions meet the more rigorous tests for repayment ability associated with loans made purely for job retention.

Section 4.2.2 Credit Otherwise Available

A borrower is not eligible for SBRLF financing if credit is otherwise available on similar terms and conditions that would permit completion and/or the successful operation or accomplishment of the project activities to be financed. The County's P.A. will document this in the loan write-up. The P.A. will ensure that a loan write-up includes a discussion of the particular borrower or project to be financed that result in the need for SBRLF financing.

The P.A. is responsible for obtaining supplemental evidence, as appropriate, to support the need for SBRLF financing. This may, but not always, include the following:

- 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 SBRLF's participation,
- Bank rejection letter(s), if obtainable, indicating reasons for denying the borrower a traditional loan, thereby demonstrating the unavailability of conventional financing, or
- The determination and documentation by P.A. senior loan staff that, due to weaknesses in a borrower's unique credit circumstances (e.g. limited time in business, non-standard financial ratios, operating losses in prior periods, lack of guarantor strength); or due to situations that may exist within the credit markets, such as the unavailability of credit within the previous two years, it would be impractical for the borrower to approach another conventional lender for financing.

Failure to adequately document the need for a SBRLF loan may be grounds for declaring a business ineligible. If it is subsequently determined that a business was not eligible for a SBRLF loan, ineligibility requires the County, through its P.A., to pay any outstanding loan balance to the SBRLF, or to EDA.

Section 4.2.3 Ineligible Applicants, Projects & Uses of Funds

Relocation - Federal funds, including the SBRLF, cannot be used by the County as an economic development incentive to relocate a viable business from one labor market area to another labor market area, e.g. the County cannot make a loan to relocate a business from the San Francisco Bay Area to Monterey County.

In general, SBRLF funds may not be used to assist for the following types of entities:

- **Public/Quasi-Public Organizations:** A public or quasi-public organization is not eligible to receive SBRLF financial assistance unless 1) the activity financed directly benefits, or will directly benefit, identifiable business concerns, and 2) there is reasonable assurance that the activity financed will result in increased business activity in the near term;
- **Speculative Developers:** Private developers are not normally eligible for SBRLF assistance unless the activity financed is non-speculative, consistent with the strategic and lending

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

Section 4.2.3.1 Ineligible Projects

In general, SBRLF funds may not be used for the following types of projects:

- Projects that are residential in nature.
- Projects that will not provide more than temporary alleviation of unemployment or underemployment within the County.
- Projects for which funds are judged to be otherwise available from private lenders;
- Projects that do not have a reasonable assurance of repayment of the proposed loan(s);
- Projects that would create a conflict-of-interest (as defined at 13 CFR § 302.17) for any current or former employee or officer of the P.A., a P.A. Board member, Loan Committee member, or elected officials of the jurisdiction where the project will be located (or people related to them by blood, marriage or law).

Section 4.2.3.2 Ineligible Costs

SBRLF funds may not be used to defray costs incurred prior to the occurrence of any of the following: EDA grant execution (if relying on new grant funds), submittal of the loan application, and completion of any required environmental review.

Section 4.2.3.3 Ineligible RLF Uses

Restrictions on use of SBRLF Capital (13 CFR § 307.17); SBRLF funds may not be used to:

- Acquire an equity position in a private business;
- Subsidize interest payments on an existing loan;
- Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;
- Enable borrowers to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure, acquiring a business to facilitate a significant expansion, or acquiring a business to increase investment resulting in a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the SBRLF;
- Provide SBRLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit, or any investment unrelated to the SBRLF; or
- Refinance existing debt, unless:
 - The SBRLF borrower sufficiently demonstrates in the loan documentation a “sound economic justification” for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower shall not, without other indicia, constitute a sound economic justification; or
 - The SBRLF loan will finance the purchase of the rights of a prior lien holder in a foreclosure action and is necessary to preclude a significant loss on an SBRLF loan. SBRLF funds may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an SBRLF loan costs, plus a reasonable portion of the outstanding SBRLF loan principal, within eighteen (18) months following the date of refinancing.

Section 4.2.4 Compliance and Loan Quality Review

To ensure that the SBRLF Recipient—here, Monterey County—makes eligible SBRLF loans consistent with its SBRLF Plan, or such other purposes approved by EDA, EDA may require an independent third party to conduct a compliance and loan quality review for the SBRLF Grant every three (3) years. The SBRLF Recipient, Monterey County, may undertake this review charged as an administrative cost associated with the SBRLF's operations, provided the requirements set forth in 13 CFR § 307.12 are satisfied.

Section 4.2.6 Administrative Costs

EDA does not have a maximum limit on how much SBRLF income grantees may use to administer the SBRLF.

Section 4.3 Documentation of Jobs Created or Retained

Section 4.3.1 General Documentation Requirements

The following documentation, in addition to that specified at 13 CFR § 307.15(b)(2), is required of all projects funded to create or retain jobs. Refer to Part 2, Section 2 of this Administrative Manual for information on general SBRLF requirements for loan documentation.

All SBRLF loans must require that businesses benefiting from these loans agree to provide copies of their “Quarterly Wage and Withholding Report” and their “Report of New Employees” to the P.A., at the same time they are submitted to the California Employment Development Department (EDD). As of December 2011, these reports are EDD Form DE6 and DE34, which are included in Appendix A.

Section 4.3.1.1 Employment Agreement

An Employment Agreement must be executed between the County and the assisted business in which that business agrees to keep or create a specific number of jobs, identifies each such job by type, and states whether the job(s) retained or created will be full-time or part-time.

Individual Job Creation or Retention Requirements

The P.A. shall ensure that program records document which individual jobs were actually created or retained as a result of the SBRLF loan.

Section 4.3.1.2 Documentation Requirements for Job Creation Activities

Records for jobs created must include the following minimum information.

- The full-time equivalency status of each job, and the number of FTEs³ for all jobs created and filled. If there are multiple part-time positions, the positions must be consolidated into FTE.

Section 4.3.1.3 Documentation Requirements for Job Retention Activities

“Otherwise lost” - The P.A. is to ensure that specific evidence is submitted demonstrating that, in the absence of SBRLF assistance, the identified jobs would have been lost.

³ An employee is considered to be full time if they received compensation for 40 hours per week. Two part-time employees working 20 hours each would be the equivalent of one full time employee or “FTE.”

Section 4.4 Priority Lending Criteria

The two primary eligibility criteria for the SBRLF loan programs are job creation/saving jobs and stimulating private sector investment. Any loan request that meets both of these criteria will be considered for funding. In the event that there is more demand than available funds, the County, through the P.A., will prioritize loans based on those criteria and those described below.

- Businesses in economic sectors targeted by the County's economic development strategy
- Businesses related to the economic revitalization of the former Fort Ord
- Businesses producing the greatest economic multiplier effect, i.e. industrial or commercial activities that add value to a locally produced product and result in additional money flowing into the County
- Businesses that provides a good or service that was formerly purchased outside the area.
- Businesses that create a new visitor destination or support additional travel spending
- Business projects with the greatest potential to increase sales and/or property tax receipts
- Businesses that meet Disaster Selection Criteria Considerations: In the event that Monterey County is impacted by extraordinary natural or man-made disasters, the County may use the SBRLF to support business recovery and job preservation, consistent with this approved SBRLF Administrative Plan.

Section 4.4.1 Project Underwriting Policies

The loan underwriting policies of the Monterey County SBRLF are designed to insure the Fund's on-going viability, to assist businesses that could not proceed without the SBRLF loans, and to ensure that the SBRLF assistance is "appropriate." At a minimum, underwriting for all loans must comply with 13 CFR § 307.15 and 24 CFR § 570, Appendix A, "Guidelines and Objectives for Evaluating Project Costs and Financial Requirements"

The objectives of the underwriting guidelines are to ensure:

- that project costs are reasonable;
- that all sources of project financing are committed;
- that to the extent practicable, SBRLF funds are not substituted for non-federal financial support;
- that the project is financially feasible;
- that to the extent practicable, the return on the owner's equity investment will not be unreasonable; and,
- that, to the extent practicable, SBRLF funds are disbursed on a pro rata basis with other financing provided to the project.

Section 4.4.2 Project Costs are Reasonable

All project costs will be reviewed for reasonableness, and to avoid providing either too much or too little SBRLF assistance. The amount of time and resources expended evaluating the reasonableness of a cost element shall be commensurate with the amount of cost. In some instances, it will be necessary to obtain third-party, fair-market price quotations for assessment of a cost

element. Particular attention will be paid to documenting the reasonableness of cost elements in a non-arms-length transaction⁴.

Procedures:

For each use of SBRLF Funds, the P.A, on behalf of the County, will determine if costs are reasonable as follows:

- For construction, machinery, equipment, determine if the costs are estimated by a third-party (e.g. architect, engineer, equipment supplier, etc.). Determine if the estimates are included in the loan application. Determine if the construction contingency is adequate. Determine if the costs include compliance with Davis-Bacon wage requirements, if required by 13 CFR § 305.
- For land, determine if the price is based upon fair market value. If not, determine the fair market value and evaluate how the proposed price was determined. Obtain an appraisal or an opinion of fair market value.
- For development costs (building fees, architectural/engineering costs, financing costs, franchise fees, etc.), determine if these costs are itemized and supported by contracts or other documentation.
- For working capital, compare the amount of working capital to industry averages, risk, historical needs of the business, and the projected need. Analyze business financial statements, projections, operating cycles, and financial ratios.

⁴ A transaction involving a party that is controlled by another entity and does not act on its own behalf. The party sets aside independent interest in order to focus on the wishes of the controlling party. Non-arm's length transactions must involve at least one interested party that is concerned about the possible consequences of the transaction. Transactions involving family members, and parent companies and subsidiaries would not be considered non-arm's length transactions because the parties are acting independently.

Sources of information:

- Sources and Uses of Funds statement
- Financial Statements and Projections
- Industry Averages (Robert Morris)
- Third party costs estimates
- County or local Building Department / Public Works
- Realtors
- Appraisers
- Architects/Engineers
- Contractors
- Equipment Suppliers
- Other similar projects
- Commitment of All Sources of Project Financing

Prior to the commitment of SBRLF funds to the project, the P.A. shall conduct a review to determine if sufficient sources of funds have been identified and committed to the project, and if the participating parties have the financial capacity to provide the funds to demonstrate the project is viable and will move ahead in a timely manner. In certain circumstances, the County, through the P.A. may commit SBRLF funds in advance of final commitments from other funding sources. However, to conduct the underwriting analysis, the P.A. must ascertain approximate terms and conditions of the other funding sources. Final commitments from the other funding sources, with substantially similar terms and conditions as used in the underwriting analysis, will be required by County, through the P.A., prior to any SBRLF loan closing or disbursement of SBRLF funds.

Procedures:

For all sources of funds, the P.A. will determine if there is evidence verifying commitment or intent to commit.

For debt sources, the P.A. will obtain letters of intent or interest which specify the level of commitment and terms/conditions of other loan(s). The proposed terms of these other loans should be reflected in the businesses' projected debt schedule and in its financial projections. The P.A. shall determine if actual loan packages have been submitted to lenders by the proposed borrower.

For equity sources, the P.A. shall determine if the equity injection is verified on the business or personal financial statements of the business/individual in question. If the equity is provided by an investor, the P.A. shall obtain evidence of the level and terms of commitment (e.g. letter of intent, with accompanying financial statement verifying availability of funds).

Sources of information:

- Sources and Uses of Funds
- Business and Personal Financial Statements
- Letters of intent/interest from lenders, partners and investors

Section 4.4.3 Avoid Substitution of EDA Funds for Non-federal Financial Support

The P.A. will review the project to ensure that, to the extent practicable, SBRLF funds will not be used to substantially reduce the amount of non-federal financial support for the project, in order to make the most efficient use of SBRLF funds.

In order to receive SBRLF funds, a project must have a "financial gap." This gap must be documented. There are three types of financial gaps, two are discussed below, and the third is discussed under the criteria of "Return on Equity Investment." One project may have two different gaps. The types of gaps are as follows:

Section 4.4.4 Unavailability of Capital:

The business can afford the cost of financing the project, but is unable to obtain funds from either debt and/or equity sources. In regards to debt, the gap may be a result of a lender's loan to value requirements or the inherent risk of the industry or project. For example, the lender will only loan seventy percent (70%) of the project's cost. In this case, the business may not have the cash to bridge the gap, or if the business bridges the gap, its cash flow may be so restricted as to jeopardize the business. In order to document this gap, the P.A. needs to undertake several steps. The P.A. needs to contact the lender to determine if there is any ability to increase the size of its loan. The P.A. needs to explore other lending sources, both public and private. This includes examination, by the P.A., of the business owner(s) personal financial statements for potential funds, including home equity loans. Finally, in addition to looking at business and personal financial statements and tax returns, the P.A. needs to prepare and analyze a pro forma cash flow analysis, with and without SBRLF funds, to demonstrate the gap.

The terms and conditions of a loan made to bridge this type of gap – inability to obtain funds from other sources, notwithstanding borrower ability to pay – must be on terms found in conventional loans by traditional lenders..

Section 4.4.5 Cost of Capital:

The business cannot support the interest rate, loan term and/or collateral requirements of a lender for the project. In analyzing this type of gap, P.A. discussions with the lender are important to determine if there is any flexibility in lending terms. A business's project may not be able to support the rate, terms and collateral requirements, or may just face a single hurdle. In addition, the gap may only exist in the early years of the project. To determine the existence of the gap, the P.A. shall analyze the borrower's business and personal financial statements and tax returns. The P.A. shall explore sources of equity. The P.A. shall evaluate public and private funding sources that would bridge the gap. The P.A. shall develop pro forma cash flow analysis with and without the SBRLF funds to demonstrate the gap. Depending on the amount of the gap, the County, through the P.A., shall adjust the loan to terms or a rate to allow the project to proceed but are not too generous. Terms can be adjusted to allow for deferrals of principal and /or interest payments, or to allow loans to be amortized over a longer period. Interest rates can be adjusted, including increases in the rate over time as cash flow allows.

Procedures:

The P.A. shall:

- Review the project Sources and Uses to determine if other sources of funds are available (e.g. SBA, business, personal or investor equity, etc.)
- If the need for SBRLF funds is based upon a lender's loan-to-value requirements, determine if this requirement is reasonable and based upon the project's risk and location.
- If the need is based upon the cost of funds, then conduct a review of the financial information to validate the need for the SBRLF funds:
- Review historical and projected financial statements.

- Determine if revenues, expenses, debt service, officer's salaries, owner's draw, and net operating income are reasonable via a comparison of historical financial information and industry averages (Robert Morris).
- Review projections with and without SBRLF funds. Determine if the project can support more debt within prudent underwriting guidelines. Determine if net operating income, owner's draw, and the degree of equity participation is reasonable.

Sources of information:

- Sources and Uses of Funds
- Financial Statements
- Projections
- Industry Averages (Robert Morris)
- Other Financing Programs
- Lenders

Section 4.4.6 Financial Feasibility of the Project

The P.A. will examine each project to determine the financial viability of the project, and thus the reasonable assurance that the public benefit will be realized. To do so, the P.A. shall take the following actions: The current and past financial statements for both the business and individuals must be analyzed, along with tax returns and projections. The assumptions behind the projections must be critically analyzed. Income and expense costs shall be evaluated and compared historically, where applicable, and compared to industry averages (using guides such as Robert Morris' Annual Financial Statements). Project costs, including both hard and soft costs, must be determined to be reasonable. Accurate project costs are vital to determining project feasibility.

As part of the financial analysis, the P.A. shall analyze past, current, and projected financial data to determine if the job estimates (job creation and job retention) are reasonable and supportable. Labor costs shall be analyzed based at the point where business revenues and expenses are equal, i.e. no profit is made or loss incurred. In addition, labor costs shall be checked against industry averages. The P.A. should explain variations from industry averages in the loan analysis.

The terms and conditions of the SBRLF loan must be "appropriate." In general, the interest rate shall be set at a rate where available cash flow is sufficient to meet debt obligations, after other obligations are met, with enough cash flow remaining to operate successfully. The loan term typically is based upon the nature of the asset being financed. The term should not exceed the economic life of the asset being financed. However, a longer loan amortization schedule, with the loan due at the end of economic life, may be justifiable.

The P.A. shall include, with each loan, a written explanation of the "appropriate" analysis that was undertaken, and the reason the terms and conditions of the loan were approved.

Section 4.4.7 Financial Analysis

Historical and projected financial statements will be subject to financial analysis to determine the gap, and to structure the terms and conditions of the SBRLF loan as discussed above, but also to determine whether the project is feasible. In addition, the County, through the P.A., shall use prudent underwriting guidelines, demonstrating that the proposed loan is of sound value, and shall note how past earnings and future prospects indicate an ability to meet debt obligations out of profit.

The P.A. will require the applicant to submit information that will be dependent on the project, ownership structure, and whether it is an on-going or start-up business. In general, the information required is outlined in the SBRLF checklist in the exhibits.

The P.A.'s financial analysis will differ depending on whether the business is a start-up or existing business. The analysis will include, for existing businesses, a spread of its current and earlier financial statements to determine trends. The pro forma statements will then be compared to these past statements. Financial ratios will be analyzed. The P.A. will compare statements and ratios to industry averages. For start-up business, the P.A. will analyze projections and develop ratios, and compare both to industry averages.

Section 4.4.7.1 Ratios that will be analyzed include:

Current Ratio: current assets/current liabilities. This ratio is an approximate indication of a firm's ability to service its current obligations. A ratio of 2:1 is considered secure.

Quick Ratio: cash & equivalents plus accounts & notes receivable/current liabilities. This ratio is a refinement of the current ratio. A ratio of 1:1 usually indicates ample liquidity.

Cash Flow Coverage: net profit & depreciation & depletion-amortization expenses/current portion of long term debt. This ratio is a measure of a business's ability to service long term debt.

Another type of cash flow coverage ratio is: earnings before interest & taxes/annual interest expenses. This ratio is a measure of a firm's ability to meet interest payments. Cash flow coverage of 1.25:1 (cash flow to debt service) shall be used as a guideline.

Debt to Worth: total liabilities/tangible net worth. This ratio is the relationship between debt and a business' net worth. A lower ratio is an indication of greater long-term financial safety and greater flexibility to borrow. In general, a debt to worth ratio of higher than 5:1 should not be exceeded as an underwriting policy. There are exceptions when the industry average is high due to its capital intensive nature or when projections show the ratio lowering quickly.

Collateral Coverage: The value of collateral as compared to the amount of the loan. Typical underwriting guidelines suggest that the collateral should be worth one hundred and twenty-five percent (125%) of the loan balance. However, this is highly dependent on the quality and security value of the collateral. In addition, collateral requirements are a cause of "financial gaps." The P.A. shall use one hundred and twenty-five percent (125%) as a guideline, which shall only be lowered if the P.A. obtains specific and detailed analysis and explanation from a business for a lower collateral value.

Break-even Analysis: The analysis of the project's ability to support the projected labor costs and additional debt service at its break-even point (BEP) will be analyzed by the P.A. to determine what proportion of the jobs can be supported at that BEP. This will serve as a worst case look at the business' prospects for success, ability to service new debt, etc.

The financial and ratio analyses must be supported by the business plan. The business plan must provide a clear understanding of the project, competition, market strategy, sales estimates, management capacity and other relevant factors.

Lastly, to ensure project feasibility, the P.A. will conduct an evaluation of the experience and capacity of the principals of the business to manage the business and achieve projections.

Procedures:

The P.A. shall:

- Perform financial underwriting analysis.
- Spread historical financial statements and projections. Identify any significant differences between the two. Compare financial statements and projections to industry averages.
- Review assumptions to projections. Determine if projections are reasonable and supported by market studies, the business plan, and historical trends.
- Review financial ratios for projects. Compare project financial ratios to industry averages. If significantly different, determine the reasons and impact on feasibility.
- Review cash flow for the project. Determine if there is adequate working capital.
- Determine the breakeven point for project, and how much the projections are above the breakeven point. Determine if the public benefit will be realized at the breakeven point.
- Review the business plan, market information, historical financial statements, projections, conduct ratio analysis, break even analysis, spreadsheet analysis; and management capability to determine the project feasibility.

Sources of information:

- Historical financial statement
- Financial Projections
- Business plan
- Market and industry information
- Industry Averages

Section 4.4.8 Return on Equity Investment

The return on equity investment is the amount of cash that the investor/business owner is projected to receive in relation to their initial invested equity. For a sole proprietor, this equates to salary plus net income. To the extent practicable, the SBRLF should not provide more than a reasonable return on investment to the business owner. This will help ensure that the SBRLF will maximize the use of SBRLF funds to assist numerous businesses and not unduly enrich a particular business owner(s)/investor(s). However, care shall be taken to ensure that the rate of return will not be too low, so that the business owner's motivation to pursue the business with vigor remains high.

If the project's financial returns are projected to be too low to motivate the business and/or investor to proceed with the project, then risks of the project outweigh the returns. An inadequate rate of return, adjusted for industry and locational risks, is a third method to determine the gap appropriate to be funded with SBRLF funds. To analyze this gap, the projected return on investment must be compared to the return on investment on similar projects. If it is shown that a gap does exist, then the SBRLF financing rate and terms must be set at a rate which provides a return on investment equal to the "market rate." Real estate appraisers and lenders are important sources of information on "market rate" returns.

Procedures:

The P.A. shall review projections as follows:

- Review revenues, expenses (including officers' salary/owners' draw), debt service and net operating income. Compare to historical financial information and to industry averages. Determine if these items are reasonable.
- Review indicators of owners' return on equity, including officers' salary, owners' draw, and net operating income. Given the project's risk and local conditions, determine if the return on equity is reasonable compared to industry averages.
- Review business and personal obligations. Determine what return on equity is necessary to meet personal and business obligations.

If return on equity is above industry averages, adjusted for risk and local conditions, the P.A. shall take steps to reduce the return to a reasonable rate by restricting owners' draw/officers' salary, or adjusting the SBRLF loan terms.

If return is below average, the P.A. shall adjust SBRLF loan terms to bring the rate of return closer to the industry average.

Sources of information:

- Financial projections
- Historical financial statements
- Personal financial statements
- Industry averages
- Disbursement of SBRLF funds on a Pro-Rata-Basis

To the extent practicable, SBRLF funds should be disbursed on a pro rata basis with other funding sources to avoid placing SBRLF funds at a greater risk than other funding sources. When it is determined that it is not practicable to disburse SBRLF funds on a pro rata basis, the P.A. shall take other steps to safeguard SBRLF funds in the event of a default.

Procedures:

The P.A. shall:

- Review Sources and Uses of Funds. Determine when SBRLF funds will be expended as compared to other funds.
- Determine other funding sources' policies towards expenditure of funds. These policies may require the use of SBRLF funds first. If so, the P.A. may need to negotiate with other funding sources.
- If SBRLF funds are to be expended first, the P.A. shall consider actions to safeguard SBRLF funds (e.g. performance or completion bonds).

Sources of information:

- Sources and Uses of Funds
- Construction Contracts
- Lender Requirements/Policies

Section 4.5 Portfolio Standards

Small/Large Businesses

- At least eighty-five percent (85%) of SBRLF loan funds are targeted for small businesses, as defined by the US Small Business Administration (SBA). The SBA small business definition is based on the North American Industry Code System (NAICS) and either annual sales or number of employees and is available on-line at www.sba.gov/size.
- Fifteen percent (15%) of SBRLF loan funds may be used to assist large businesses (as defined by the SBA for the type of business), otherwise eligible for SBRLF funds.

Commercial/Industrial:

Seventy percent (70%) of SBRLF loan funds are targeted for commercial projects and thirty-percent (30%) targeted to support industrial projects.

Commercial projects must meet one of the following standards:

- Significant job creation potential, i.e. SBRLF funds loaned must be significantly less than the portfolio standard (\$20,000:1 job)
- Offer services that are underserved or not currently offered in the community
- Significant potential for stimulating other economic development activity
- Provide vitally needed services

Because Monterey County's economy is dominated by agricultural and visitor services, there may be insufficient demand for industrial/manufacturing loans to meet this target. In order to continue supporting business and job development, the County may use more than seventy percent (70%) of the funds for commercial projects. In the event that the County needs to reduce the industrial portion of the SBRLF portfolio below thirty percent (30%), the County's first priority will be to target loans for businesses that provide services that support the agricultural or visitor-serving industries but are not currently available locally. The County will then consider other commercial projects that have significant potential to increase employment or contribute to the tax base.

New Business

It is anticipated that sixty percent (60%) of the SBRLF portfolio will be made to start-up businesses.

Business Expansion

It is anticipated that twenty-five percent (25%) of the SBRLF portfolio will be made to support the expansion of existing businesses.

Business Retention

It is anticipated that fifteen percent (15%) of the SBRLF portfolio will be made to support business retention, to save jobs that would be lost without SBRLF financing.

Loans for this purpose will require extensive P.A. review to ensure that the business will remain viable as a result of SBRLF financing and to maximize likelihood of repayment.

Anticipated Percentage of RLF Portfolio for Specific Uses:

In general, the portfolio will be managed so that no more than eighty-five percent (85%) of the portfolio is for working capital. The balance of the portfolio will be targeted to loans for purchasing fixed assets. It is not anticipated that a significant percentage of the portfolio will be used to purchase real property. Conventional financing will fund real property purchases. Conventional financing will also fund tenant improvements because of the added cost of complying with Davis-Bacon and/or prevailing wage requirements.

Private Investment Leveraging Ratio for Portfolio

The private sector leveraging ratio is defined as the amount of private dollars proposed as part of the finance package divided by the amount of the proposed SBRLF loan. The standard private sector leverage ratio is established at two private dollars to one SBRLF dollar. This ratio may vary in individual cases, so long as the SBRLF portfolio as a whole achieves a standard ratio of 2:1 private to public dollars.

If other public lending sources are involved in a loan package, the maximum public participation in such a package may not normally exceed fifty percent (50%) of the total project cost. The P.A., on behalf of the County, will administer the SBRLF to maximize private sector involvement in each project in order to leverage SBRLF funds and diversify risk.

Private leverage for SBRLF funds may consist of financing from conventional lenders and/or other private sources, including new cash investments made by the owners and stockholders of the business.

Private leveraging - "The non-guaranteed portions and ninety percent (90%) of the guaranteed portions of the U.S. Small Business Administration's 7(A) loans and 504 debenture loans", are allowed to be considered private (13 CFR § 307.15 (d)).

Section 4.6 Cost per Job for Portfolio

- In general, the SBRLF portfolio will have a ratio of \$20,000 per job-created or saved.
- Individual loans may have job to cost ratios that exceed \$20,000 per job.
 - This is a Monterey County goal, not a CDBG or EDA requirement.
- No loan funded using EDA may have a job to cost ratio that exceeds \$35,000 per job.

Section 5 Lending Policies

Section 5.1 General Lending Policy

The SBRLF program is intended to be sufficiently flexible to provide borrowers with loan terms that will allow them to become stable business ventures. The SBRLF program will help entrepreneurs take advantage of start-up and/or expansion opportunities by minimizing monthly debt service requirements during the initial start-up or expansion phase, when the potential return on investment is smallest.

To accomplish this goal, loan terms will be determined on a case-by-case basis to balance the goal of supporting small business creation and growth while maximizing the rate at which SBRLF funds revolve.

Terms may include longer repayment periods, stepped payments and the use of balloon payments.

In general, loan terms will not exceed the useful life of equipment financed or five (5) years for working capital loans.

Section 5.2 Minimum and Maximum Loan Sizes for RLF Program

The minimum loan amount will generally be \$10,000. The maximum loan size will generally be \$250,000. The Loan Committee may approve loans that are within two percent (2.0%) of these limits without seeking additional approval from the Board of Supervisors.

Section 5.3 Loan Application, Documentation and Origination Fees

- Applicants will be charged a \$200 application fee and a loan origination fee equal to four percent (4%) of the loan amount for loans up to \$50,000; two point five percent (2.5%) of the loan amount for loans between \$50,000.01 and \$100,000; and two percent (2%) of the loan amount for loans of \$100,000.01 and more.
- The borrower shall pay a documentation fee based on the assets collateralizing the loan. The fee shall be \$1,000 to document loans secured solely by business assets and \$2,000 to document loans secured by business and personal assets.
- The borrower shall pay any direct costs incurred in loan processing and closing (e.g. appraisals and title insurance).
- When deemed appropriate by the P.A. and the Loan Committee, the loan origination fees may be deducted from the loan amount.

The P.A., with the County's approval, may waive any or all fees. The P.A. shall request, in writing, the County's approval to waive or reduce any application, underwriting or documentation fees. Such request shall be submitted to the County, by submittal to MCEDD, for consideration and approval before any commitments are made to the applicant for an SBRLF loan. The County, by decision of the Director of the MCEDD will decide whether to waive or reduce fees for particular loans consistent with the goals of the SBRLF program.

Section 5.4 Range of Allowable Interest Rates

The minimum and maximum interest rates allowable for an SBRLF loan are tied to the prime interest rate as published by the Wall Street Journal (WSJ) on the date of loan closing. The minimum interest rate may not be less than four percent (4%), unless the published rate is less than four percent (4%) in which case the minimum interest rate may be seventy-five percent (75%) percent of the prime interest rate listed in the WSJ. However, should the prime interest rate listed in the Wall Street Journal exceed fourteen percent (14%), the minimum SBRLF interest rate is not required to be raised above ten percent (10%) - if doing so compromises the ability of the SBRLF loan applicant to implement its financing strategy (13 CFR § 307.15(c)). Within this broad spectrum of allowable interest rates, the County may use set, fixed, or variable interest rates on individual loans.

In administering the SBRLF program on behalf of the County, the P.A. shall base utilization of sub-prime or adjustable interest rates on the following criteria:

- Linking interest rates to job creation - the more jobs the business states and documents, as provided by this Manual, it is going to create, the lower the interest rate. The P.A. should review the interest rate annually to ensure that the anticipated job creation actually takes place and if it does not, increase the interest rate.
- Capital improvement projects may be offered lower interest rates to offset the increased cost of compliance with Davis-Bacon and/or prevailing wage requirements.
- Higher interest rates will be charged for loans to be used as working capital.
- Lower interest rates will be charged to business sectors targeted by the County's Comprehensive Economic Development Strategy.

Section 5.5 Borrower Equity and/or Cash Injection

In general, the P.A., on behalf of the County, shall require evidence that the borrower is committed to the project. Generally this will be demonstrated by a personal financial interest in the business venture that will be financed. The amount of personal resources or percentage of capital or lien free assets required as contribution to the project from borrower or investor sources (equity) will be determined by the proposed use of SBRLF funds and the business' operating history.

- Fixed asset loans, the standard equity requirement will normally be twenty percent (20%) of the total project cost
- Working capital loans, the standard equity requirement will be twenty percent (20%) of the total project cost
- New companies (those with less than two (2) years of operating history), the equity requirement will be twenty percent (20%).

The County may consider deviations from these general guidelines if the proposed project is in an area that has been targeted by the County's business development strategy, if there is evidence of excess security, and/or if the borrower has a proven history of operating successful businesses.

For each individual loan, the personal equity requirement will generally be twenty percent of the total project cost. It is the County's general philosophy that existing equity or existing cash injection into the business indicates a reasonable level of commitment to the business; therefore, consideration will be given to existing equity in determining the amount of new equity required to finance the SBRLF project.

Exceptions may be made on a case-by-case basis depending upon the particular project and how it helps accomplish the County's business development strategy.

A financial statement not more than one hundred and twenty (120) days old will be used to determine existing equity. Working capital loans may satisfy the equity requirement by demonstrating an equivalent amount of net working capital.

Section 5.6 Repayment Terms

In general, loan repayment periods will be based on the useful life of the assets being financed and the cash flow of the borrower. The P.A. will use the following guidelines to establish maximum loan repayment periods:

- Real property purchase loans will not exceed twenty (20) years

- Machinery and equipment purchase loans will be for the useful life of the machinery and/or equipment financed and generally will not exceed ten (10) years
- Working capital loans will not exceed seven (7) years

Within these general guidelines, the County, through the P.A., will place an emphasis on making shorter-term loans to accelerate the reuse of the SBRLF dollars by making loans to other borrowers.

Repayment will normally be accomplished in equal monthly installments, including principal and interest over the life of the loan. SBRLF loan repayment periods will normally equal the repayment period of the participating private lender, but may extend beyond that of the private lender if necessary.

In certain situations the SBRLF can be used as a tool to meet a short-term financing gap. The SBRLF may also employ the use of balloon loans, i.e. the loan may be amortized over a longer period than the loan term (not to exceed the weighted average useful life of the fixed assets financed or five (5) years in the case of working capital loans), so that there is a balloon payment due at the end of the loan term.

A moratorium on principal payments, providing for interest only payments for up to six (6) months, will be allowed if necessary to assist a borrower with temporary cash flow problems.

Section 5.7 Collateral Requirements

The County will generally seek to fully collateralize (i.e. at acquisition cost or book value) all SBRLF loans and to obtain the maximum amount of collateral available to minimize losses in event of loan default. In order to better protect the SBRLF, the County may take a superior position on selective collateral, or it may enter into co-lender agreements with private lenders that share collateral and provide a pro-rata distribution formula for disposing of assets in the event of loan default. However, the County may accept a subordinate collateral position, or accept less than full collateralization, in order to further the economic development objectives of the SBRLF.

The County, through the P.A., may negotiate with private lenders to enter into a co-lender agreement that will spell out rights and duties of all parties, their interest in business assets, and how business assets will be disposed of in the event of loan default. This arrangement will be used whenever possible.

The County, through the P.A., will generally secure its loans to the maximum extent possible to ensure an adequate secondary source of repayment. The P.A. is to seek the following types of collateral to secure SBRLF loans:

- Business assets
- If insurance is required, (i.e. business asset, flood), the County must be named as the loss payee and/or mortgagee.
- Adequate liability and hazard insurance may be required, including flood insurance, as appropriate.
- A landlord's consent to County or P.A. entry, or similar document, will normally be obtained where a borrower leases its facility in order to ensure adequate access to inventory and equipment collateral.

- Real property will require a Deed of Trust and Title Insurance.
- Fixed asset loans will generally require UCC-1 Financing Statements on all assets financed by the loan, plus UCC-1 Financing Statements on existing business assets
- Working capital loans will generally require UCC-1 Financing Statements on all accounts receivable, inventory, and available fixed assets.
- Any other assets of the business and/or owner/investor(s), (i.e. personal residences), necessary to adequately collateralize the loan.

Generally, the P.A. is to require personal guarantees of the owner, or any affiliate controlling twenty percent (20%) or more of the business, to fully collateralize the loan. Personal guarantees may be secured by appropriate liens on personal assets, (i.e. personal residences).

Collateral pledged for each loan will depend upon the SBRLF loan amount, the overall risk of the credit, and the availability of personal and business assets to be pledged as collateral. Personal guarantees of all twenty percent (20%) or more owners and affiliate companies will be required for each loan unless sound justification is included in the loan write-up, and thereafter approved by the Loan Committee.

In general, the County's collateral position within a given transaction will be determined on a case-by-case basis. The one exception will be if the SBRLF loan is part of a financing package that includes funds that are controlled or managed by the P.A. and the P.A. thereby has a potential risk of loss, either from a loan or from compensation. In this case, the County SBRLF must have a superior or equal collateral position to the P.A. This provision is intended to avoid the appearance that the P.A. has a potential conflict of interest by placing the SBRLF funds at greater risk than it places its own funds.

Section 5.8 Private Investment Leveraging Ratio for Loans

The private sector leveraging ratio is defined as the amount of private dollars proposed as part of the finance package divided by the amount of the proposed SBRLF loan. This ratio may vary in individual cases, so long as the SBRLF loan portfolio as a whole achieves a standard ratio of 2:1 private to public dollars.

If other public lending sources are involved in the loan package, the maximum total public participation in such a package may not normally exceed fifty percent (50%) of the total project.

When the SBRLF program is used in conjunction with an SBA 504 loan program, ninety percent (90%) of the guaranteed amount plus the entire un-guaranteed amount will count as the privately leveraged part of the SBRLF loan ratio.

Private leverage for SBRLF funds may consist of financing from conventional lenders and/or other private sources, including new cash investments made by the owners and stockholders of the business.

Section 5.10 Hiring of Displaced Workers

Firms that receive SBRLF assistance will be encouraged to work with the local Workforce Development Board (WDB), the County Office for Employment Training (OET), and the County Department of Social Services to link displaced workers with jobs created through SBRLF assistance. Firms receiving assistance in the amount of \$150,000 or more will generally be required to enter into a first source hiring agreement with the WDB, OET and/or Department of Social Services.

Section 5.11 Key Factors to Determine When Deviations will be Employed

In general, deviations from these policies will be considered only if they significantly improve the likelihood of the loan being brought current, or minimize potential loss to the SBRLF. The County retains the authority to determine when a deviation should be considered. The P.A. shall exercise due diligence when recommending that the County consider a deviation from these policies.

Section 6 Loan Committee

Section 6.1 Loan Committee Composition

SBRLF Loan Committee composition will be based on the County's relationship with the P.A. and the P.A.'s existing capacity. If the P.A. has a standing business loan committee that represents the ethnic and geographic diversity of Monterey County, and it includes individuals with banking and lending operations experience and experience in evaluating credit requests, then the County may approve the P.A.'s loan committee to act as the SBRLF Loan Committee, provided that a County Representative is also appointed to the SBRLF Loan Committee. In these circumstances, the County's award of contract to the P.A. will specifically delegate SBRLF Loan Committee authority to the P.A.'s loan committee and designate it as such.

If the P.A. does not have a standing loan committee, or the P.A. has a loan committee that is not representative of the ethnic and geographic diversity of Monterey County, then the Monterey County Board of Supervisors will appoint a five (5) member SBRLF Loan Committee. A majority of the members of the SBRLF Loan Committee must be experienced in banking and lending operations and experienced in evaluating credit requests, similar to those assisted by this fund.

Section 6.2 Role of Loan Committee

The Loan Committee shall be responsible for approving all SBRLF loan requests and SBRLF loan modifications.

A quorum of the Loan Committee must be present to take action. A quorum is defined as 50% of members plus one member. At least one member within this number must have lending experience in order to constitute a quorum.

Neither the Loan Committee, the MCEDD, nor the MCEDC may initiate any legal actions without obtaining approval of the Monterey County Board of Supervisors. The Monterey County Board of Supervisors is the only body authorized to initiate legal action on behalf of the County.

Section 6.3 Loan Committee Policy

All members of the SBRLF Loan Committee will receive a copy of this Administrative Manual and are required to use it to determine whether a credit request meets the requirements of the SBRLF program.

The SBRLF Loan Committee and the P.A.'s Board of Directors will adhere to the Conflict of Interest requirements contained in these guidelines. All meetings of the SBRLF Loan Committee shall be conducted in accord with the Brown Act, California Government Code section 54950-54963.

Members of the SBRLF Loan Committee and Board of Directors must recuse themselves from deliberation process for loan approval where they have a professional, financial, familial or other personal interest in the transaction. This duty to recuse would not normally apply to a banking relationship that is limited to ordinary checking and/or savings accounts.

PART II OPERATIONAL PROCEDURES

Section 1 Loan application and review

Section 1.1 Standard Loan Application Requirements

At a minimum, the P.A. shall collect, for each SBRLF loan application, the following information, as required by 13 CFR § 307.15(2):

- Identifying information of the business including:
 - Principal or corporate address
 - Principal owners and officers and their residence addresses
 - Data Universal Numbering System (DUNS) number
- Verification that the business and its principal owners are not shown in the U.S. General Services Administration System for Award Management (SAM.gov [formerly the Excluded Parties List System {EPLS}]) as ineligible to receive federal contracts or grants.
- A brief history of the business
- Business management resume for the borrower
- Credit reports for the business and any individuals guaranteeing the SBRLF loan
- Two (2) years of business tax returns (if loan is to an operating business)
- Business debt amortization schedule
- Business organization documents, i.e. articles of incorporation, bylaws, certificate of good standing, fictitious name statements, partnership agreements, etc.
- Personal financial statements for anyone who owns twenty percent (20%) more of the business operation
- Three (3) years of personal tax returns for all borrowers completing the personal financial statements
- Interim business financial statement, dated within ninety (90) days of the loan application
- Year-end business balance sheet and income statements
- Financial projections for the next three (3) years
- Project description, including how SBRLF loan proceeds will be used and description of additional sources of funding
- Copies of any permits or licenses associated with the opening and/or operation of the business
- Copy of any proposed contracts, i.e. purchase contract, if the SBRLF loan will be used to buy a business
- Signed bank turn-down letter or other documentation demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed.
Other documentation for this item may include:
 - Credit offers for shorter terms than are available through the SBRLF;
 - Credit offers with interest rates more than five percent (5%) greater than the interest rate available through the SBRLF;
 - Credit offers that are insufficient to implement the entire business project, as proposed.

- The P.A. will use the Business Loan Checklist to ensure all required documents are submitted.
- The P.A. may request additional documentation to complete a loan application as needed.

Use of Credit Reports

- The P.A. is responsible for obtaining and reviewing credit reports for all loan applicants. In general, a negative credit history is not a basis for denying an SBRLF loan request, but it will be considered when evaluating loan approvals and collateral requirements.

Section 1.2 Use of Appraisal Reports

The P.A. shall verify the value of pledged collateral through a market analysis, appraisal, or other objective means that are deemed appropriate for the particular project. Appraisals must be performed by qualified personnel and should include a review of prior uses of the property to determine the potential for environmental contamination left from these earlier uses.

Section 1.3 Loan Write-Up

The Loan Write-Up is the document upon which credit decisions will be based and shall be generated by the P.A. The Loan Write-Up must contain sufficient information for the Loan Committee to determine the credit worthiness of applicants and to determine if a loan furthers the overall SBRLF portfolio goals described in Section 4.5 of this Administrative Manual.

At a minimum, the P.A. shall ensure that the Loan Write-Up includes the following:

- A summary of how the proposed project meets the objectives of the County's business development strategy and impacts the overall SBRLF portfolio, (i.e. number of jobs created or retained, cost per job, private leverage, etc.)
- The specific SBRLF loan program that will be used to fund the loan, if it is approved
- Evidence that the SBRLF is not being used in-lieu of available private sector financing. The primary support for this will be a statement of justification, prepared and signed by the P.A. The secondary support may be a decline letter from a bank or a letter stating that a bank is unable to loan the full amount requested.
- An overview of the business to receive the SBRLF loan, including history and management
- A description of any required licenses and permits and whether or not the applicant business has applied for or received the license/permit
- Any environmental issues identified during the permitting process should be addressed in this section
- Products or services the applicant business will provide
- Marketing strategy of the applicant business and market conditions
- Project financing, including a complete description of all sources and amounts of financing in addition to the SBRLF program
- How the project addresses the SBRLF objectives listed in Section 4 of this Plan
- An analysis of the borrower's ability to repay the loan and meet other financial obligations
- Collateral recommendations presented in a table format that lists each lender, the collateral assigned to that lender's loan, and the value of the assigned collateral. The UCC-1 Financing Statement filing position and collateral value should be listed below each lender.

- Business assets that are being used to secure a loan, including an estimate of the market value and estimated liquidation value of the assets.
- If business assets will be shared as collateral among the lenders (e.g. SBRLF and SBA loans), the assets must be individually listed with their market and resale values appearing below the financing source they will secure.
- Loan terms, including the interest rate, scheduled payment amount, and all loan covenants
- Balance of the SBRLF, both before and after the requested loan(s), if made.

Section 1.4 Loan Review

The P.A. will review loan applications for completeness, SBRLF program compliance, and regulatory compliance. This will include:

- A review of completed environmental review documents to ensure that the project meets federal and local environmental regulations.
- Acceptance of loan application by a staff representative of the P.A.
- Detailed review and final written recommendation to Loan Committee by the P.A., based on loan criteria, strength of business, principals' business and management experience, and all other factors identified in this Manual.
- An analysis of the loan's impact on the overall SBRLF loan portfolio.

The P.A. shall not recommend an SBRLF loan for approval unless it determines that there is a reasonable assurance of repayment and the applicant meets SBRLF program requirements. The P.A.'s recommendation shall include the loan terms and conditions.

Section 1.5 Loan Closing and Disbursement

Upon SBRLF Loan Committee approval, the P.A. will:

- Prepare loan-closing documents, with attorney review by the P.A.'s counsel, as necessary
- Request Uniform Commercial Codes (UCC) searches for existing liens
- Request a preliminary title search, if appropriate
- Disburse loan proceeds according to SBRLF Loan Committee instructions or terms of the loan
- Complete any remaining legal, regulatory or other housekeeping matters

The P.A. shall use all due diligence to ensure that approved loans are closed within thirty (30) days of approval. The P.A. is responsible for ensuring that the form of loan agreements, promissory notes, personal guarantees, and associated loan documents utilized in making an SBRLF loan comply with all applicable state and federal legal requirements.

Section 1.6 Loan Closing Documentation Requirements

Prior to disbursing any loan, the P.A. is responsible for ensuring that all necessary security instruments and related documents are filed and copies placed in the borrower's file. These security instruments and/or agreements may include, but are not limited to:

- | | |
|---|--|
| • Loan Agreement | • Deed of Trust |
| • Promissory Note | • Policy of Title Insurance |
| • Personal Guaranty | • Landlord's Consent |
| • Recorded UCC-1 Financing statements, UCC Search | • Agreement of prior lien holder, as appropriate |

The P.A. shall obtain evidence that the borrower has applied for, or obtained, all insurance required as a condition of the loan. A cancelled check for the first premium payment will be sufficient evidence that the borrower has met this requirement for obtaining the required insurance.

Because SBRLF loans will frequently provide gap financing for other programs, it may be necessary for collateral to be pledged to the various participating programs. In these cases, the P.A. shall provide an Intercreditor Agreement that details how the assets that collateralize each loan are allocated, and the rights and duties of each lien holder. The P.A. shall prepare and record separate UCC-1 Financing Statements that specifically list the assets that will secure each loan.

Section 1.7 Loan Disbursement Requirements

The P.A. shall make all disbursements in accordance with the SBRLF Loan Committee conditions. These may include, but are not limited to:

- Making direct payment to vendors for equipment purchased with SBRLF loan funds
- Phased disbursement of SBRLF loan funds intended to be used as working capital
- Procuring evidence that contracts with vendors have been executed and require pre-payment

The P.A. is authorized to disburse loans from the appropriate SBRLF account in accordance with the loan conditions approved by the Loan Committee. All loan disbursement checks require two (2) signatures by authorized P.A. staff.

Section 1.8 Loan File Closing and Documentation

The County will maintain the original SBRLF grant files, copies of all SBRLF reports to EDA, and SBRLF correspondence. In addition, the County will also maintain records of all Loan Write-ups provided by the P.A., and the County's written responses to the P.A. regarding applicant eligibility.

The P.A. will maintain all original loan files during the term of the loan. The loan files will include at a minimum:

- Loan application, any supporting documentation, and a copy of the Loan Committee's terms of approval
- Executed, original, loan documents
- A copy of the loan committee meeting minutes at which the loan was approved
- Loan correspondence

The P.A. must keep the following documents in a fireproof safe:

- Original loan agreements and promissory notes
- Collateral security agreements, i.e. recorded UCC-1 Financing Statements, deeds of trust, automobile title, evidence of insurance coverage, etc.
- Updated personal and/or business financial documents, e.g., tax returns, etc.
- Any documentation required by the Loan Committee as a condition of the loan

Section 1.9 Appeal of Loan Committee Action

The SBRLF loan applicant must file an appeal within thirty (30) days from the date of the letter notifying the applicant of the SBRLF Loan Committee's decision. The time limit may be extended by the County on a case-by-case basis, for good cause.

Applicants may appeal decisions made by the SBRLF Loan Committee to the Director of Economic Development. Appeals to the Director of the Economic Development Department must be in writing. Appeals will only be considered where there exists a legitimate interpretation issue over the program guidelines or when it is unclear whether the spirit and intent of this Manual cover a given applicant's business circumstance. Appeals that do not clearly state the basis for appeal or that are defamatory or specious may be denied consideration. After consideration, the Director of the Economic Development Department may decide to deny the appeal and let the SBRLF Loan Committee's action stand, or to direct the SBRLF Loan Committee to reconsider the application. The Director of Economic Development shall issue the appeal determination within thirty (30) days of receipt of the appeal. The decision of the Director of Economic Development is final.

Section 2 Administration of the SBRLF

Section 2.1 General Administrative Guidelines

The Monterey County SBRLF will be managed in accordance with all applicable laws, regulations, and guidelines that apply to any source of grant funding, or program income derived from grants, that capitalized the SBRLF. In all cases where multiple grant sources have different requirements regarding a specific topic, the County will apply the more restrictive requirements. These requirements include evaluating environmental impacts and determining applicability of Davis-Bacon wage requirements (13 CFR § 305) for all projects.

Section 2.2 Roles and Responsibilities

The County will contract with a Program Administrator (P.A.) to handle the day-to-day operation of the SBRLF, including: marketing, preparing Loan Write-ups, presenting credit requests to the SBRLF Loan Committee, loan documentation, loan payment processing, loan disbursements, delinquent loan collections, and all other tasks specified in this Administrative Manual.

The County will use a competitive Request for Proposals process to select the firm that will provide these services. The County will issue a RFP at least every three years. The firm selected to administer the County's SBRLF programs must meet all County requirements for insurance including employee dishonesty, automobile liability and general liability coverage. Currently, the County requires contractors to provide evidence of General Liability and Automobile Liability insurance of \$1,000,000, to include endorsement documents naming the County of Monterey as an additional insured, and to state that the contractor's insurance is "primary" and the County of Monterey's insurance is "non-contributory".

General Responsibilities of the Program Administrator

In general, the Program Administrator is responsible for the day-to-day operations of the SBRLF including:

- Marketing
- Working with applicants to complete loan applications

- Preparing Loan Write-ups and presenting them to the SBRLF Loan Committee
- Preparing loan documents for approved loans
- Recording all security instruments, e.g., UCC-1 Financing Statements, Deeds of Trust
- Taking all steps necessary to maintain the legal enforceability of security instruments, e.g., renewal of UCC-1 Financing Statements every 5 years or as otherwise required by law.
- Disbursing loans to borrowers in accordance with SBRLF Loan Committee direction.
- Preparing and sending monthly invoices to borrowers.
- Receiving and posting payments
- Preparing monthly account reconciliations and drafting required grant reports.
- Working with delinquent borrowers on collections for the first ninety (90) days
- Assisting the County, and such vendors as it may retain to perform collections work on delinquent loans, on collections of delinquent loans
- Providing monthly reports of portfolio activity

The P.A.'s specific duties and how they will be carried out will be enumerated in the County's contract with the P.A. The County's contract with the P.A. shall incorporate this Administrative Manual by reference.

Responsibilities of County

In general, the County is responsible for:

- Ensuring that all grant requirements are met and operating as EDA's point of contact on issues related to management of the SBRLF;
- General oversight of the program;
- Competitive selection of the P.A.;
- Marketing the availability of the SBRLF through its business outreach and retention program;
- Participating as a voting member of the P.A.'s Loan Committee whenever action is being taken on a loan proposed for funding through the SBRLF, or, convening an SBRLF Loan Committee as provided in this Administrative Manual;
- Providing final approval for all foreclosure actions or other collections litigation, such approvals to issue only by the County Board of Supervisors.
- Preparing and submitting all reports required by the original grant agencies.

The County will work with the P.A. to market the Small Business Revolving Loan Fund. The P.A. will promote the program using a variety of means. For example, the P.A. shall notify the media, with the borrower prior consent, that the borrower's business received an SBRLF loan and is having a grand opening or similar public celebration. Second, the P.A. will meet with area bankers and the Small Business Development Center's counselors to make them aware of the loan program and encourage them to recommend it to their clients when appropriate. Third, P.A. staff will make public appearances to inform local chambers of commerce, downtown business groups, and other business development organizations of the availability and extent of the SBRLF program. The County will actively promote the SBRLF to businesses through its business outreach and retention program and other community activities.

The County and P.A. will make specific efforts to inform the minority community of the SBRLF program. The primary method will be through the U.S. Commerce Department's Minority Business Development Center serving Monterey County. County and P.A. outreach to minority communities will be coordinated with Spanish language television, radio, and print media.

The P.A. is responsible for publishing, at least once annually, a public notice in local newspapers of broad circulation, and through the distribution of flyers, that there are SBRLF funds available for lending. The P.A. must pay for the cost of this advertising out of available SBRLF Income.

Technical Assistance

The P.A. will provide direct technical assistance to applicants, as well as coordinate the provision of technical assistance to applicants, from a variety of programs including the Small Business Administration, Service Core of Retired Executives, and the Small Business Development Center located at CSU Monterey Bay. These organizations are available for consultation on available financing, business plan development, marketing and other key business topics. The P.A. will also make referrals to other agencies as deemed appropriate.

Section 2.3 Reporting Requirements

As an SBRLF Recipient, the County will complete and submit a semi-annual report (Form ED-209, or any successor form) in electronic format, unless EDA approves an electronic Time Extension request via RLFMS. County will do so in accordance with the following deadlines and legal requirements:

- Semi-annual reports are due October 31 for the period ending September 30th and April 30th for the period ending March 31st.
- If reports are > sixty (60) days late, the SBRLF grant may be suspended;
- If reports are > ninety (90) days late, EDA may begin termination for cause, unless a grantee, here the County, has already requested a termination for convenience or the Regional Director has approved an extension request;
- If the County, as a recipient, uses fifty percent (50%) or more of RLF income (or >\$100K) for administrative expenses during the reporting period, it will submit an Income and Expense Statement (ED-209I, or any successor form).

As an SBRLF Recipient, the County will certify, as part of the semi-annual report to EDA, that the SBRLF is operating in accordance with the applicable SBRLF Plan.

Section 2.4 Records and Retention

The County will comply with requirements for SBRLF records and retention, found at 13 CFR § 307.13 and reprinted here:

(a) *Closed Loan files and related documents.*

The RLF Recipient shall maintain Closed Loan files and all related documents, books of account, computer data files and other records over the term of the Closed Loan and for a three-(3) year period from the date of final disposition of such Closed Loan. The date of final disposition of a Closed Loan is the date:

(1) Principal, interest, fees, penalties and all other costs associated with the Closed Loan have been paid in full; or

(2) Final settlement or discharge and cessation of collection efforts of any unpaid amounts associated with the RLF loan.

(b) *Administrative records.*

RLF Recipients must at all times:

(1) Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs.

(2) Retain records of administrative expenses incurred for activities and equipment relating to the operation of the RLF for three (3) years from the actual submission date of the last semi-annual report that covers the Reporting Period in which such costs were claimed.

(3) Make available for inspection retained records, including those retained for longer than the required period.

The record retention periods described in this section are minimum periods and such prescription does not limit any other record retention requirement of law or agreement. In no event will EDA question claimed administrative costs that are more than three (3) years old, unless fraud is at issue.

Section 3 Loan Servicing

Section 3.1 Loan Payment & Posting Procedures

The P.A. is responsible for ensuring that borrowers meet their repayment obligations. The P.A. will take the following steps to ensure that borrowers are aware of their obligations:

- Prepare and mail monthly invoices to all borrowers. The invoice will indicate the amount and date that the next payment is due and late penalties that will be assessed if the payment is received after the due date.
- Borrowers are allowed a five-day grace period between the payment due date and the date late penalties will be applied.
- The P.A. may provide borrowers a coupon book instead of sending borrowers monthly invoices, but the P.A. must be vigilant to ensure that borrowers are reminded of late or missed payments within five (5) days of a missed payment due date.
- Posting payments to the borrower's account on the day the payment was received and adjusting the outstanding principal balance accordingly.
- The P.A. will deposit all loan payments into bank accounts owned by the County within seventy-two (72) hours of receiving the payment.

It shall be the policy of the County of Monterey to maximize SBRLF program income from all loan repayments. Therefore, all loan payments shall be applied as follows:

- Late Fees
- Accrued Interest
- Principal

In the event that a borrower becomes delinquent or goes into default, the County policy shall be to maximize recovery of accrued interest and outstanding principal. To accomplish this goal, the County will consider workout plans with delinquent borrowers on a case-by-case basis. Work out plans must be realistic and enable the borrower to comply with the plan. The County will consider options to enable the borrower to bring loan repayment current in the following order:

- Capitalization of all accrued interest and late fees, and extending the term of the loan.

- This option requires a borrower to execute a new loan agreement and promissory note.
- Capitalization of all accrued interest and late fees, and extending the term of the loan, and modification of repayment terms so that future payments are applied in the following order: to principal, late fees, and accrued interest.
 - This option requires the borrower to execute a new loan agreement and promissory note.
- Capitalization of all accrued interest and late fees as a new, separate loan that is amortized over the term of the original loan at zero percent (0%) interest.
 - This option requires the borrower to execute a new loan agreement and promissory note.
- Incrementally forgive late fees and accrued interest.

Section 3.2 Loan Monitoring Procedures

The P.A. shall check monthly ledgers to verify that borrowers are continuing to make the required loan payments. The P.A. shall also engage in active loan monitoring, which requires periodic review of the original loan conditions; ensuring that collateral continues to be secured; and ensuring that UCC-1 Financing Statements are renewed every 5 years or as required by law. The P.A. shall visit the borrower's business location and shall meet with the borrower or borrowers at least annually, as close to the loan anniversary date as possible. At each business location visit and borrower meeting, the P.A. shall:

Collect the following documents:

- Quarterly DE-6 filings (the California payroll tax report that lists earnings and taxes by employee SSN)
- Annual business and personal financial statements
- Current Accounts Payable and Accounts Receivable documentation
- Business and personal tax returns
 - Inspect any business equipment or other items serving as collateral for the SBRLF loan
 - Inspect any business equipment or other project that was purchased from loan proceeds

Depending on the credit risk of the business and the use of funds, the P.A. may require the borrower to submit monthly, quarterly or semi-annual financial statements.

The PA is shall establish a "tickler" system to ensure it collects all documents from borrowers in a timely manner and that all UCC-1 Financing Statements, insurance certificates, and other security instruments and agreements are current and in force.

The County will meet with the P.A.'s lending staff quarterly to review and discuss outstanding loans. The P.A. shall bring to these meetings current documentation of outstanding SBRLF loans and repayment status; the P.A. shall also bring to these meetings documentation of its annual business location visits/borrower meetings and the outcomes of those visits/meetings.

At these meetings, the County and the P.A. will identify borrowers that may be experiencing difficulty with loan repayment and will develop an intervention strategy to prevent the loan from defaulting. These meetings will focus on loans that have missed at least one payment, or that have a history of late loan payments. The County and the P.A. will share information about the reason for

the missed or late payment(s). The P.A. shall implement the intervention strategy agreed upon in order to avoid default by identified borrowers.

Section 3.3 Delinquency, Default, Write-Off & Bankruptcy Procedures

Section 3.3.1 General Policy

In general, SBRLF loan payments are delinquent when payment is not received in the full amount on or before the end of business of the day payment is due. The precise terms of SBRLF loan payment shall be stated in the loan agreement and promissory note which evidence the loan. As described above, the P.A. shall take all regular and customary steps to collect on delinquent loans. The P.A. may retain legal counsel, at its sole expense, to draft demand letters to the borrower. The P.A. may not, however, file any legal action in the courts, nor direct its counsel to file any legal action in the courts, as the decision of whether to initiate legal actions on behalf of the County may only be made by the Board of Supervisors.

The P.A. will submit a monthly report to the County on all loans that are delinquent and what action has been taken to remedy the delinquency. The P.A. will be responsible for initiating the appropriate collection actions regarding loans that are ten (10) or more days delinquent, as described below.

Twenty Days Delinquent

When an SBRLF borrower is twenty (20) days late with a payment, the P.A. shall assess a late fee of five percent (5%) of the payment amount and send a written notice of delinquency to the borrower, indicating the past due status of their loan. This notice shall issue within 10 (ten) days of the missed payment due date, and shall advise the borrower that the 5% late fee will be imposed if payment is not made by the twentieth day after it was due.

Within seven (7) working days of sending a written notice of delinquency to the borrower, the P.A. will personally meet with the borrower to discuss the loan re-payment problem and possible remedies. The P.A. shall ascertain the borrower's ability to repay and secure, if possible, the borrower's plans for bringing the loan current. The P.A. shall confirm the results of the personal meeting, including borrower's representations regarding loan repayment, to the borrower in writing, within 24 hours of the meeting. The P.A. shall report, in writing, the results of the personal meeting to the County within 3 (three) days thereafter, including providing the County with a copy of the written confirmation it sent to the borrower. The P.A. will also refer the borrower to the Small Business Development Center for counseling if appropriate.

If the borrower is unresponsive or unwilling to work with the P.A. to bring the loan current, and if the borrower refuses to personally meet with the P.A. concerning the delinquency, the P.A. shall document the borrower's lack of cooperation with call and correspondence logs. The P.A. shall provide the County with copies of call and correspondence logs compiled on delinquent borrowers on the tenth (10th) day of each month.

Thirty Days Delinquent

When an SBRLF borrower is thirty (30) days late with a payment, the P.A. shall personally meet with the borrower at least monthly, and more often if circumstances warrant, to review the borrower's financial status and work with the borrower to bring the loan current. The P.A. shall

confirm the results of each personal meeting, including the borrower's representations regarding loan repayment, to the borrower in writing, within 24 hours of each meeting. The P.A. shall report, in writing, the results of each personal meeting to the County within three (3) days thereafter, including providing the County with a copy of the written confirmation it sent to the borrower. In its written report(s) to the County, the P.A. shall recommend further steps to be taken to bring the loan current to the County.

Ninety Days Delinquent

When an SBRLF borrower is ninety (90) days late with a payment, the County and the P.A. shall meet to discuss options for either bringing the loan current or initiating collections activities. In preparation for this meeting the P.A. and County shall compile summaries of all contacts either organization has had with the borrower since the first missed payment including dates, the name of the business representative spoken to, any agreements that were reached and any representations that were made by the borrower regarding loan repayment. This summary must include information on each meeting held between the P.A. and borrower that occurred after a borrower first became thirty days late with a payment.

The P.A. may recommend restructuring repayment if the borrower suffered temporary disruption to the business that made servicing the SBRLF loan impossible, the disruption has resolved, and the borrower is likely to be able to resume loan repayment. The P.A. should document what the event was, what the borrower has done to recover from the disruption, and a recommendation of how the loan should be restructured.

If the P.A. and/or County have been unsuccessful in working with the borrower to either bring the loan current or restructure the loan by the ninety-first (91st) day after the last payment was due, the Director of the Economic Development Department shall declare the loan to be in default and subject to the collections policy described below.

Section 3.3.2 Referral of Defaulted Loans to Outside Collections Agency

The County's overriding consideration when deciding whether or not a defaulted loan is referred to a collections agency is to protect the SBRLF assets and, to the greatest extent possible, recover outstanding principal, accrued interest and late fees so that they may be loaned to future borrowers.

The County's authority to refer loans in default to an outside collections agency is found in California Government Code Section 26220. This section of the Government Code gives the County Board of Supervisors broad discretion to refer County debt to professional collections agencies "under any terms and conditions that the board may prescribe." This section of this Administrative Manual establishes the terms and conditions under which delinquent SBRLF loans are to be referred to a collections agency so long as the policy guidelines set forth below are strictly observed.

The Director of the Economic Development Department may declare a delinquent SBRLF loan in default, and may refer that loan to a collections agency retained by the County, without seeking additional, individual approvals from the Board of Supervisors. Neither the Director of the Economic Development Department, the P.A., nor any outside collections agency, may initiate any legal action to obtain a judgment against a delinquent or defaulted SBRLF borrower. Any such lawsuit must be individually and directly authorized by the Board of Supervisors.

The Director of the Economic Development Department is authorized to refer defaulted SBRLF loans to a collections agency ninety-one (91) days after a borrower misses a regular payment when the following conditions have been satisfied:

1. The borrower has been unresponsive or unwilling to work with the P.A. to bring the loan current or to restructure the debt, as documented by call and correspondence logs maintained by the P.A.;
2. The borrower is still operating the business funded by the loan but has been unresponsive to or unwilling to work with the P.A. to bring the loan current or to restructure the debt;
3. The borrower is no longer operating the business that the loan was intended to support;
4. The borrower has not filed for bankruptcy court protection;

The Director of the Economic Development Department is also authorized to refer an SBRLF loan to a collections agency:

1. Ninety-one (91) days after a loan become delinquent and if the P.A. has not presented a loan restructuring proposal, agreed to by the borrower, to the SBRLF Loan Committee for consideration; or,
2. If the borrower has not satisfied all the requirements of a restructured loan, e.g. catch-up payments or securitization of the loan by providing additional collateral, within thirty (30) days of the SBRLF Loan Committee approving the loan restructuring described above.

The Director of Economic Development is not authorized to send defaulted loans to a collections agency if:

1. The borrower is still operating the business funded by the loan and is working with the P.A. to restructure the loan and present a proposal to the SBRLF Loan Committee
2. The borrower is working with the P.A. to restructure the loan and to present the loan restructuring proposal to the SBRLF Loan Committee within ninety (90) days of the loan becoming delinquent; or
3. The borrower has sought the protection of the bankruptcy court.

Section 3.3.3 Collections Requiring Legal Action

If the P.A. and a professional debt collection agency retained by County to assist with the collection of delinquent SBRLF loans exhaust all collection options that do not require the initiation of legal proceedings, the Director of the Economic Development Department shall make a recommendation to the Board of Supervisors as to whether to (1) initiate legal action to collect the unpaid SBRLF loan amounts due or (2) write off the unpaid SBRLF loan amounts due as uncollectible debt. Recommendations to initiate litigation shall be brought before the Board of Supervisors for decision in closed session, pursuant to established County practice. If the Board authorizes litigation, the Director of the Economic Development Department shall take steps to bring the authorized lawsuit with the assistance of either County Counsel, or outside retained counsel with expertise in collections, as resources permit. If the Board indicates loan write off as uncollectible debt is preferable, the Director of the Economic Development Department shall take steps to place decision on write off on a Board of Supervisors' public meeting agenda as soon as practicable.

Section 3.3.4 Bankruptcy

On occasion a SBRLF borrower may seek bankruptcy court protection. Typically notice of a bankruptcy filing is delivered to the P.A. as the County's representative. The P.A. is responsible for:

- Filing any and all claims with the Bankruptcy Court necessary to secure the SBRLF's claim within the time period proscribed by the Court;
- Following up with any additional requests for information from the Court or Trustee;
- Representing the SBRLF at Court hearings when required; and,
- Providing the County with copies of bankruptcy filings within twenty-four (24) hours of receipt.

The P.A. is not authorized to negotiate settlements without County approval and participation.

In the event that a borrower files for Chapter 11 bankruptcy relief the County and P.A. must carefully read the bankruptcy reorganization plan so that they understand how the Reorganization Plan will address late fees and interest accrued prior to the borrower filing for bankruptcy protection. To the extent possible, the County and P.A. should advocate to the Bankruptcy Court that late fees and accrued interest be paid through the Reorganization Plan before the Plan is confirmed by the Court.

Section 3.3.5 Write-off Procedures

There are two situations where a loan will be considered for write-off:

- When the P.A. and representatives from the County's Economic Development Department have met, reviewed the loan history, and the Director of the Economic Development Department concludes that collection is unlikely.
- When a borrower has been discharged from bankruptcy.

When a loan is to be considered for write-off, the P.A. shall refer the loan the County, in writing, for follow up review and action. The referral shall include: a discussion of what steps have been taken to collect and/or restructure the debt and the status of all collateral, including when any UCC-1 Financing Statements are due to expire. The MCEDD will review the loan's history to make a determination regarding the write-off of a delinquent SBRLF loan.

For write-off of delinquent SBRLF loans of up to the Small Claims Court jurisdictional amount of \$5,000.00, or such limit as may then apply to Small Claims Court, the Director of the Economic Development Department is authorized to recommend write off the defaulted SBRLF loan to the CAO. The CAO may, in turn, write off the claim as authorized by Monterey County Code section 5.16.030.A.3.

All other delinquent SBRLF loans which the Director of the Economic Development Department deems appropriate for write off shall be brought to the Board of Supervisors in closed session, for decision. The Director of the Economic Development Department may seek additional guidance from the Office of the County Counsel to determine if a loan should be written-off.

When a borrower declares bankruptcy and notice is provided to the P.A., the P.A. shall provide the County with a copy of all bankruptcy filings it received within 24 hours of receipt. Thereafter, the P.A., on behalf of the County, will ensure that all required filings are made to ensure the

maximum recovery possible. MCEDD will provide timely notice and documentation of bankruptcy proceedings to the Office of the County Counsel to ensure that it is afforded a timely opportunity to supervise, or participate in the P.A.'s filing of Court papers or claims in bankruptcy proceedings, as may be appropriate. A loan will not be written-off until the bankruptcy trustee has distributed all payments required under the repayment plan.

MCEDD will notify the P.A. within five (5) business days of the decision to write-off an SBRLF loan.

Section 4 Effective Utilization of Revolving Loan Funds

Section 4.1 Capital Utilization Standard.

The County shall comply with the following Capital Utilization requirements.

During the "Revolving Phase" (defined at 13 C.F.R. § 307.8 as the stage of the SBRLF's business lending activities that commences immediately after all grant funds have been disbursed to the Recipient), the Recipient must manage its repayment and lending schedules to provide that at all times at least seventy-five (75) percent of the RLF Capital is loaned or committed. RLF Income earned during a reporting period is not included as RLF Capital when calculating the capital utilization percentage. The following exceptions apply:

A Recipient that anticipates making large loans relative to the size of its RLF Capital base may propose an RLF Plan that provides for maintaining a capital utilization percentage greater than twenty-five (25) percent; and,

EDA may require a Recipient with an RLF Capital base in excess of \$4 million to adopt a Plan that maintains a proportionately higher percentage of its funds loaned.

In the event that EDA sets a higher capital utilization rate, the Recipient shall have ninety (90) days to amend its RLF Plan accordingly.

When the percentage of loaned RLF Capital falls below the applicable capital utilization percentage, the dollar amount of the RLF funds equivalent to the difference between the actual percentages of RLF Capital loaned out and the applicable capital utilization percentage is referred to as "excess funds." (See 13 C.F.R. § 307.16(c).)

Section 4.2 Sequestration of Excess Funds

The County shall comply with the following Sequestration requirements.

Sequestration Required. If the Recipient fails to satisfy the applicable capital utilization percentage requirement for two (2) consecutive reporting intervals, EDA will require the Recipient to deposit the excess funds in an interest-bearing account separate from the EDA funds account. If EDA requires sequestration, the Recipient must submit to EDA:

- A letter certifying that a separate, interest-bearing account has been established for the purpose of sequestering excess funds; specifying the applicable EDA award number(s), the amount deposited, the account number, and the name, address and telephone number of the

bank; and certifying that the Recipient will remit quarterly any interest payments to EDA; and

- A copy of the deposit receipt evidencing that a separate, interest-bearing account was set up for the amount certified in the letter.
- This documentation is required regardless of whether the Recipient is establishing the account for the first time or depositing additional grant funds. The Recipient must obtain EDA's written authorization to withdraw any sequestered funds. (See 13 C.F.R. § 307.16(c)(2)(i).)

The County may request a time extension to delay sequestration of funds, if loan applications are pending SBRLF Loan Committee approval after the due date of reports (refer to 13 CRF 307.16 for more information).

Section 4.3 Sequestration Not Required

The County shall comply with the following Sequestration requirements.

EDA will not require sequestration of excess funds if:

- The amount to be sequestered is less than \$5,000.00; or
- The Recipient provides written documentation of extenuating circumstances precipitating the excess cash situation, as well as a written plan, signed by the Recipient's authorized representative, describing specific actions the Recipient will take to achieve compliance within the following six (6) months, and the Grants Officer signs and approves this plan. Six-month compliance extensions are solely at the Grant Officer's discretion.

Section 5 Monitoring of High Loan Defaults (13 CFR § 307.16)

The County shall comply with the following Monitoring requirements:

EDA will monitor the RLF Recipient's loan default rate to ensure proper protection of the Federal Share of the RLF property, and may request information from the RLF Recipient as necessary to determine whether it is collecting loan repayments and complying with the financial obligations under the RLF Grant. If the RLF Recipient fails to provide the information requested, and to take steps to protect the Federal Share, the RLF Recipient may be subject to enforcement action under 13 CFR § 307.21 and the terms and conditions of the Grant.

Section 6 Priority of Payments on Defaulted RLF Loans

The County shall comply with the following Priority of Payment and SBRLF income requirements:

When the P.A. receives payment on a SBRLF loan that has been declared in default, and the SBRLF loan is not subject to liquidation pursuant to 13 C.F.R. § 307.20, such payments shall be applied in the following order of priority (See 13 C.F.R. § 307.12(c)):

- First, towards any costs of collection;
- Second, towards outstanding penalties and fees;
- Third, towards any accrued interest to the extent due and payable; and
- Fourth, towards any outstanding principal balance.

The posting of payments in this manner is not consistent with the lending industry common practice, which customarily applies payments to accrued fees and interest first. Applying payments in this manner reduces the amount of fee and interest income that is ultimately earned on the SBRLF loan; however, it maximizes the preservation of the SBRLF capital pool.

The Recipient is expected to add SBRLF Income to the SBRLF Capital base where practicable. To determine the appropriate amount of SBRLF Income to return to the SBRLF Capital base, SBRLF recipients must consider the costs necessary to operate the SBRLF program, the availability of other monetary resources, the portfolio risk level and projected capital erosions from loan losses and inflation, the community's (or region's) commitment to the SBRLF, and the anticipated demand for SBRLF loans.

Section 7 Oversight

The Monterey County MCEDD will provide general oversight of the P.A. At a minimum, the County will perform the following oversight activities to ensure that the program operates in accordance with the grant terms and conditions:

- Serve on the P.A.'s Loan Committee when actions affecting SBRLF loans are under consideration.
- Act on loans that are more than one hundred and twenty (120) days delinquent, up to and including litigation, if appropriate.
- Review the P.A.'s monthly financial reports.
- Review and transmit all required grant reports to appropriate grant agency.

Section 8 Monitoring

The County will monitor the loan portfolio to ensure that it is in compliance with the terms of the grant. The primary method that the County will use to monitor the portfolio is the loan cover sheet that the P.A. uses to transmit loan packages to the County. This form includes a summary of how the proposed loan will affect the overall portfolio. This includes the projected cost per job, leverage ratios, and ratios showing the activities, purchases, and similar for which loan funds are used. This information will allow the County to quickly assess the overall portfolio and compliance with the grant terms and RLF objectives.

In addition to the portfolio snapshot that County staff will review when considering a loan application, the P.A. will be contractually bound to adhere to all grant agency requirements. The contract with the P.A. will specifically incorporate the EDA Revolving Loan Fund Guidelines, Standard Terms and Conditions, and Audit Standards, and this Administrative Manual. If necessary, the County will amend the agreement to incorporate any policy or administrative manuals promulgated by granting agencies in the future. The County will provide updated copies of all grant agency documents and policies to the P.A. within thirty (30) days of receipt.

Section 9 Environmental Review

The P.A., with the assistance of the County, shall assess the significance of all environmental impacts of activities to be financed for compliance with the National Environmental Policy Act of 1969 (NEPA) and other Federal environmental mandates, as per the Assurances (SF-424D as revised) executed with the Economic Development Administration, and the California

Environmental Quality Act (CEQA). No activity shall be financed which would result in a significant adverse environmental impact unless the impact is to be mitigated to the point of insignificance. When necessary to ensure compliance, any required mitigation shall be made part of the loan conditions.

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

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

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

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

Construction or rehabilitation projects must comply with the California Environmental Quality Act (CEQA), Public Resources Code Section 21000, et. seq. as amended, as well as Davis Bacon wage requirements and requirements found at 13 CFR § 302.13 and 42 USC section 3212.

Projects located within the boundaries of Fort Ord must meet the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Community Environmental Response Facilitation Act of 1992 (CERFLA), before receiving SBRLF assistance.

All SBRLF loan applicants must:

- Complete an environmental/hazardous waste questionnaire.
- Cooperate with the County, P.A. or other party to conduct environmental review and complete the Environmental Review Record.
- If deemed necessary by the P.A. or appropriate regulatory agency, permit a Phase I or Phase II Environmental Site Assessment.
- Obtain all required permits and licenses and submit those with the loan request.

- Agree to comply with any and all mitigation measures identified in the environmental review as a condition of assistance.

The County will not commit SBRLF funds before completion of the environmental review process. Upon completion of environmental review, SBRLF loans may be committed, conditioned on compliance with specified environmental mitigation measures or the completion of a tiered review⁵.

In general, the environmental review must include a determination of the level of review appropriate to the activity to be financed by the SBRLF loan, completion of a review at that level, documentation of findings, discussion of alternatives, discussion of mitigation measures if required, publication of findings, and related discussion.

The P.A. shall be responsible for ensuring that the environmental review is completed by a qualified firm or person if not the P.A. itself. The P.A. will submit all required documents to the County with instructions for publication, review, or filing. The P.A. will retain copies of all documentation related to the environmental review.

Depending on the level of review required, the type of assistance being requested, and the capacity of the applicant, the County may request the applicant to bear all or part of the costs of environmental review.

Section 10 Segregation of Funds

The County has established separate, interest earning, bank accounts for each program and funding source. The use of separate accounts allows the County to segregate the different funds and ensure that they are used for the purposes that they were awarded. If the County receives additional grants, from any source, to recapitalize the SBRLF pool, it will establish additional accounts.

Section 11 Conflict of Interest

The County shall operate the SBRLF consistent with General Terms and Conditions of all EDA assistance found at 13 CFR § 300.3 (“Interested Party”). SBRLF Recipients must also adhere to the following special conflicts-of-interests rules applicable to SBRLF loans set out in 13 CFR § 302.17(c):

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

⁵ The National Environmental Policy Act (NEPA) allows for the broad study of environmental issues that may be encountered when developing a project. In these situations, when a large area is studied before specific development locations have been identified, NEPA allows for a tiered review. The tiered review takes the broad findings and focuses them down to the specific development location.

Because the County anticipates using SBRLF loans to move businesses into established buildings it is not anticipated that any SBRLF loans will trigger this level of review under NEPA.

Section 12 Employee Dishonesty

The County will maintain a minimum \$1,000,000 policy for employee dishonesty and crime insurance coverage. The County will evaluate the adequacy of this policy in the event that grant capitalization, from all sources, exceeds \$3,000,000.

Section 13 Treatment of Proprietary Information

Because the County is subject to federal and state public disclosure laws, the County, members of the SBRLF Loan Committee, and the P.A. are unable to make assurances of confidentiality to borrowers regarding their financial or proprietary information. Such information will be disclosed, or will be shielded, in accordance with applicable laws.

Section 14 Equal Opportunity/Affirmative Action Policy

The SBRLF will be administered in a manner that complies with the equal opportunity and affirmative action requirements of the EDA program and the County's equal opportunity, affirmative action and Minority Business Enterprise/Women Business Enterprise goals.

Section 15 County's Counsel Review of all Contracts and Legal Forms.

Before execution, all contracts or forms of agreement that may bind the County will be reviewed by County Counsel. Any contract or other form of agreement not reviewed and approved by County Counsel shall not be binding on the County.

Section 16 General Requirements and Responsibilities

The SBRLF will be managed in accordance with the most current US Department of Commerce, Economic Development Administration RLF Standard Terms and Conditions, as amended from time to time, and as specified in applicable EDA statutes, regulations, and policies.

Appendix A – EDD Forms DE6 and DE34



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

**REVOLVING LOAN FUND
FINANCIAL ASSISTANCE AWARD
STANDARD TERMS AND CONDITIONS**

May 1, 2013

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

PREFACE..... 1

GENERAL REQUIREMENTS AND RESPONSIBILITIES 2

 A. Purpose..... 2

 B. Authority..... 2

 1. Definitions..... 2

 2. Recipient as Trustee..... 3

 3. Grantor Authority to Change Policies..... 3

 4. Variances..... 3

 C. Financial Requirements..... 4

 1. Financial Reports..... 4

 2. Award Payments..... 4

 3. Loan Closings and Disbursements..... 6

 4. Cost Sharing Requirement..... 6

 5. Budget Changes and Transfer of Funds among Categories..... 8

 6. Indirect Costs and Facilities and Administrative Costs..... 8

 7. Incurring Costs or Obligating Federal Funds beyond the Award and Date..... 10

 8. Tax Refunds..... 11

 9. Additional Funding..... 11

 D. Programmatic Requirements..... 11

 1. Project Progress Reports..... 11

 2. Unsatisfactory Performance..... 11

 3. Reporting Programmatic Changes..... 11

 4. Time-Schedule Extensions..... 11

 5. Other Federal Awards with Similar Programmatic Activities..... 12

 6. Non-Compliance with Award Provisions..... 12

 7. *Prohibition against Assignment by the Recipient*..... 14

 8. Disclaimer Provisions..... 14

 9. Payment of Attorneys’ and Consultants’ Fees..... 15

 E. Non-Discrimination Requirements..... 15

 F. OMB Circular A-133 Audit Requirements..... 15

 1. Requirement to have an A-133 Audit Performed..... 15

 2. Requirement to Instruct Auditor..... 15

- 3. Classification as a Major Program..... 16
- 4. Requirement to Submit Audit to Federal Audit Clearinghouse. 16
- 5. Findings Related to the RLF Program..... 17
- G. Audit Resolution Process. 17
- H. Payment of Debts. 18
 - 1. Payment of Debts Owed the Federal Government. 18
 - 2. Late Payment Charges..... 18
 - 3. Barring Delinquent Federal Debtors from Obtaining Federal Loans, Loan Guaranties or Loan Insurance. 19
 - 4. Effect of Judgment Lien on Eligibility for Federal Grants, Loans or Programs. 19
- I. Government-wide Debarment and Suspension (Non-Procurement). 19
- J. Drug-Free Workplace. 19
- K. Lobbying Restrictions..... 19
 - 1. Statutory Provisions..... 19
 - 2. Disclosure of Lobbying Activities..... 20
 - 3. Special Provisions relating to Indian Tribes..... 20
- L. Freedom of Information Act (FOIA) and Privacy Act Requests..... 20
- M. Codes of Conduct and Sub-Award, Contract and Subcontract Provisions. 20
 - 1. Code of Conduct for Recipients. 20
 - 2. Applicability of Award Provisions to Sub-recipients..... 20
 - 3. Competition and Codes of Conduct for Sub-Awards..... 21
 - 4. Applicability of Provisions to Sub-Awards, Contracts and Subcontracts..... 22
 - 5. Small Business, Minority Business Enterprises and Women’s Business Enterprises.23
 - 6. Sub-award and/or Contract to a Federal Agency..... 23
 - 7. Other Federal Requirements Applicable to Sub-awards, Contracts or Subcontracts. 23
- N. Property Management. 24
 - 1. Recipient as Trustee and Successor Recipients..... 24
 - 2. Use of Proceeds upon Sale, Collection or Liquidation of RLF Loans. 24
 - 3. Sale or Securitization of Loans to Raise New Funds. 24
 - 4. Termination of RLF Award..... 24
- O. Environmental Requirements. 25
 - 1. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4327). 25
 - 2. National Historic Preservation Act (16 U.S.C. § 470 *et seq.*) 26
 - 3. Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands, May 24, 1977)..... 26

4.	Clean Air Act, (42 U.S.C. § 7401 <i>et seq.</i>), Federal Water Pollution Control Act (33 U.S.C. § 1251 <i>et seq.</i>) (Clean Water Act) and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”).....	26
5.	The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 <i>et seq.</i>).....	26
6.	The Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 <i>et seq.</i>).....	27
7.	The Coastal Zone Management Act, as amended (16 U.S.C. § 1451 <i>et seq.</i>).....	27
8.	The Coastal Barriers Resources Act (16 U.S.C. § 3501 <i>et seq.</i>).....	27
9.	The Wild and Scenic Rivers Act, as amended (16 U.S.C. § 1271 <i>et seq.</i>).....	27
10.	The Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f <i>et seq.</i>).....	27
11.	The Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901 <i>et seq.</i>).....	27
12.	The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 <i>et seq.</i>) and the Community Environmental Response Facilitation Act (41 U.S.C. § 11001 <i>et seq.</i>).....	27
13.	Executive Order 12898 (“ <i>Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations</i> ”)-	27
P.	Miscellaneous Requirements.....	28
1.	Criminal and Prohibited Activities.....	28
2.	Foreign Travel.....	28
3.	American-Made Equipment and Products.....	29
4.	Intellectual Property Rights.....	29
5.	Increasing Seat Belt Use in the United States.....	31
6.	Research Involving Human Subjects.....	31
7.	Federal Employee Expenses.....	32
8.	Minority-Serving Institutions (MSIs) Initiative.....	32
9.	Research Misconduct.....	33
10.	Publications, Videos and Acknowledgment of Sponsorship.....	33
11.	Care and Use of Live Vertebrate Animals.....	34
12.	Homeland Security Presidential Directive 12.....	34
13.	Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.....	35
14.	The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, and the implementing regulations at 2 C.F.R. part 175	36
15.	The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 USC § 6101 Note).....	38

16. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown	44
RLF RECIPIENTS’ MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS.....	45
A. Revolving Loan Fund (RLF) Plan Requirements.....	45
1. Format and Content.....	45
2. Evaluation of RLF Plans.....	45
3. RLF Plan Modifications.....	46
B. Modifications of Lending Areas and Consolidation of RLF Awards.....	46
C. Prudent Lending Practices.....	46
1. Accounting Principles.....	47
2. Pre-Disbursement and Loan and Accounting System Requirements.....	47
3. Interest Rates.....	48
4. Private Leveraging.....	48
D. Conflicts-of-Interest Rules.....	48
E. Effective Utilization of Revolving Loan Funds.....	50
1. Capital Utilization Standard.....	50
2. Sequestration of Excess Funds.....	50
3. Remittance of Interest on Sequestered Funds.....	51
4. Persistent Noncompliance.....	52
F. Financial Accountability in the Administration of an RLF.....	52
1. General Requirements for RLF Income.....	52
2. Compliance Guidance.....	52
3. Priority of Payments on Defaulted RLF Loans.....	53
4. Default Rates.....	53
G. Records and Retention.....	54
1. Closed Loan Files and Related Documents.....	54
2. Administrative Records.....	54
H. RLF Semi-Annual Report and Income and Expense Statement.....	55
1. Frequency of Reports.....	55
2. RLF Plan Certification.....	55
3. RLF Income and Expense Statement.....	55
4. Government Performance and Results Act Reporting.....	55
LENDING RESTRICTIONS AND BORROWER REQUIREMENTS	56
A. Uses of Capital.....	56
1. Restrictions on Use of RLF Capital.....	56

2.	Credit Not Otherwise Available.	56
B.	Pre-Loan Requirements for RLF Recipients and RLF Borrowers.....	57
1.	Environmental Impact.	57
2.	Protection of RLF Assets.....	57
3.	Hold Harmless Provision.....	57
4.	Non-Discrimination Requirements.....	57
5.	Wage Rate Requirements of the Davis-Bacon Act.	59
	APPENDIX.....	60

PREFACE

This financial assistance award (Award), executed by the Economic Development Administration (EDA) and the recipient (Recipient), and any properly executed amendment hereto together with the EDA-approved project budget and scope of work, these revolving loan fund (RLF) standard terms and conditions, special award conditions, and all applicable Federal statutory and regulatory requirements as incorporated by reference (e.g., all applicable statutes, regulations, Executive Orders, Office of Management and Budget (OMB) Circulars), constitute the complete requirements, hereinafter referred to as the “Terms and Conditions,” applicable to this EDA investment.

The Recipient and any sub-recipient must, in addition to the assurances made as part of the application for investment assistance, comply and require each of its borrowers, contractors and subcontractors employed in the completion of the project to comply with the applicable Terms and Conditions of this Award.

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in the Terms and Conditions specified in this award will be resolved according to the following order of precedence: public laws, regulations and applicable notices published in the *Federal Register*, Executive Orders, OMB Circulars, EDA’s RLF standard terms and conditions, and special award conditions. A special award condition may take precedence on a case-by-case basis over a standard term or condition when warranted by specific project circumstances. Generally, these RLF standard terms and conditions provide the basic requirements for RLF awards; however, the specific facts of the grant award may allow for variances.

Some of the terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes or regulations published in the *Federal Register* or the *Code of Federal Regulations* (C.F.R.), Executive Orders, OMB Circulars or the assurances (Forms SF-424B and SF-424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, Executive Order or OMB Circular.

PART I

GENERAL REQUIREMENTS AND RESPONSIBILITIES

A. Purpose.

The Economic Development Administration's (EDA) grants to capitalize or recapitalize revolving loan funds (RLFs) are most commonly used for business lending, but also may be established for public infrastructure lending or other authorized purposes involving lending. Generally, under EDA's RLF program, an RLF is capitalized with a combination of EDA grant funds and non Federal matching funds. The requirements set forth in these RLF Standard Terms and Conditions are applicable to RLFs that provide business lending to private borrowers. If the Recipient intends to use the RLF funds to make loans to public entities, EDA will include a special award condition in the Award to accommodate non-business lending activity.

B. Authority.

EDA was established under the Public Works and Economic Development Act of 1965, as amended (42 U.S.C. § 3121 *et seq.*) (PWEDA). The regulations implementing PWEDA are published at 13 C.F.R. chapter III. The Department or EDA may issue changes from time to time to the regulations and other requirements and policies that apply to the Award. Such changes may upon occasion increase administrative or programmatic flexibility in administering the Award. The implementation of any such regulatory, administrative or programmatic change in administering the Award must have prior EDA written approval. *See also* part I, sections B.3. and B.4. of these RLF Standard Terms and Conditions.

These RLF Standard Terms and Conditions apply to new RLFs and to the future actions of all RLFs funded prior to the effective date of this document.

1. Definitions.

Whenever used in these RLF Standard Terms and Conditions, the following words and phrases shall have the following meanings:

- a. "Award" or "DOC Award" refers to the grant (awarded on Form CD-450 or other predecessor or successor form) of EDA funds to an eligible Recipient;
- b. "Closed Loan" is any loan for which all required documentation has been received, reviewed and executed by an RLF Recipient.
- c. "Department" or "DOC" refers to the U.S. Department of Commerce;
- d. "Government" or "Federal government" refers to EDA;
- e. "Grants Officer," unless otherwise indicated by a special award condition in this Award, refers to the Regional Director in the appropriate Regional Office who is responsible for all administrative aspects of this Award and is authorized to award, amend, suspend, and terminate EDA investment assistance;
- f. "Project Officer" refers to the EDA staff in the appropriate Regional Office who is responsible for programmatic and technical aspects of this Award;
- g. "Project" refers to the activity for which an EDA grant is awarded;
- h. "Recipient" refers to a grantee awarded an RLF Award;
- i. "Regional Office" refers to an EDA regional office;

- j. “RLF” refers to a revolving loan fund; and
- k. “RLF Standard Terms and Conditions” refers to this document, as may be amended from time to time, and which is made part of an Award.

Capitalized terms used but not otherwise defined in these RLF Standard Terms and Conditions have the meanings ascribed to them in EDA’s regulations at 13 C.F.R. §§ 300.3, 302.20, 307.8 and 314.1.

2. Recipient as Trustee.

The Recipient (or RLF operator) holds the grant funds in trust to serve the purpose of the Economic Adjustment Assistance Program (pursuant to 42 U.S.C. § 3149) for which this Award was made. The Recipient’s obligation to the Federal government continues as long as the Federal assets continue to exist. The Federal assets may include cash, receivables, Personal Property, and Real Property (each as defined in 13 C.F.R. § 314.1) and notes or other financial instruments developed through the use of the grant funds. If EDA determines that the Recipient fails to meet its obligation under this Award, the agency may assert its equitable reversionary interest, or the Federal Interest (defined in 13 C.F.R. § 314.2), in the RLF assets. However, EDA’s non-assertion of its Federal Interest does not constitute a waiver thereof. See part I, section O.1. of these RLF Standard Terms and Conditions.

3. Grantor Authority to Change Policies.

EDA, as the Federal agency charged with implementing the Economic Adjustment Assistance Program under PWEDA (42 U.S.C. § 3149), is obligated to promulgate policies and procedures to ensure that the Recipient:

- a. Complies with Federal requirements;
- b. Safeguards the public’s interest in the grant assets; and
- c. Promotes effective use of the funds in accomplishing the purpose(s) for which they were granted.

Pursuant to this obligation, EDA requires the Recipient to comply with any changes that may occur to EDA’s regulations, policies, or the Terms and Conditions of this Award. Such changes apply to actions taken by any Recipient, existing and prospective, after the effective date of the change. Loans made by the Recipient prior to the effective date of the change are not affected unless so required by law.

4. Variances.

EDA’s policy is to administer RLF grants uniformly, but there may be situations that warrant a variance. To accommodate these situations and to encourage innovative and creative ways of addressing economic adjustment problems, EDA may approve variances to the requirements contained in 13 C.F.R. part 307, subpart B, (*Special Requirements for Revolving Loan Funds and Use of Grant Funds*), provided they:

- a. Are consistent with the goals of the Economic Adjustment Assistance Program under PWEDA (42 U.S.C. § 3149) and with an EDA-approved RLF Plan;

- b. Are necessary and reasonable for the effective implementation of the RLF;
- c. Are economically and financially sound; and
- d. Do not conflict with applicable legal requirements, including Federal, State and local law.

(See 13 C.F.R. § 307.22.)

C. Financial Requirements.

1. Financial Reports.

Unless otherwise authorized by a special award condition, all financial reports shall be submitted electronically to the Project Officer, who will review this information with the Grants Officer. The Grants Officer will approve as appropriate. In cases where electronic reports are unable to be submitted, EDA may authorize paper submissions. See 15 C.F.R. §§ 14.52(a)(2) or 24.41(a)(4), as applicable.

Federal Financial Report. The Recipient must submit a “*Federal Financial Report*” (Form SF-425) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period and are required until the grant is fully disbursed (this is defined as the grant award period outlined on the Form CD-450 or CD-451). The Recipient must submit a final Form SF 425 within 90 calendar days after the grant has been fully disbursed. Instructions for completing and submitting Form SF-425 will be discussed during the project kick-off meeting. Recipients may contact the EDA Project Officer with questions on how to complete or submit the report; however, recipients must pose such questions sufficiently in advance of a deadline to allow for timely submission of required reports.

2. Award Payments.

- a. *Method of Payment.* The Grants Officer determines the appropriate method of payment, retaining the right to determine whether Recipients are authorized to receive advance or reimbursement payments as outlined in the applicable special award conditions governing the Award. Payments will be made through electronic funds transfers directly to the Recipient’s bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996, as amended. The Award number must be included on all payment-related correspondence, information and forms.
- b. *EDA’s Right to Change Method of Payment.* In cases where Advance payments are authorized, they shall be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner and any applicable interest must be promptly returned to EDA. If a recipient demonstrates an unwillingness or inability to establish procedures that will minimize the time elapsing between the transfer of funds and disbursement or if the recipient otherwise fails to continue to qualify for the advance method of

payment, the Grants Officer may change the method of payment to reimbursement only.

- c. *Department of Treasury's Automated Standard Application for Payment System.* Unless otherwise provided for in the Terms and Conditions, payments under this Award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers, in accordance with the requirements of the Debt Collection Improvement Act of 1996, as amended. In order to receive payments under ASAP, the Recipient is required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows it to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP: (i) ASAP account number – the award number found on the cover sheet of the Award; (ii) Agency Location Code (ALC) – 13200001; and (iii) Region Code. Additionally, all Recipients will be required to submit an ASAP Enrollment Form to the applicable Project Officer prior to accessing funds via ASAP. All Awards paid under the ASAP system will contain a special award condition, clause, or provision describing additional enrollment requirements and any controls or withdrawal limits set in the ASAP system.
- d. *Interest-bearing Account.* All grant funds disbursed by EDA to reimburse the Recipient for loan obligations already incurred must be held in an interest-bearing account (EDA funds account) by the Recipient until disbursed to the borrower. (See 13 C.F.R. § 307.11(d).) This applies to funds received through disbursement (whether an advance or a reimbursement) and all RLF Capital. Interest from this account should be treated as RLF Income in accordance with the definition of RLF Income at 13 C.F.R. § 307.8 and the requirements of 13 C.F.R. § 307.12.
- e. *Initial Disbursement Request.* For the initial disbursement only, the Recipient must complete and submit Form SF-3881, “ACH Vendor/Miscellaneous Payment Enrollment Form,” and the ASAP Enrollment Form, along with Form SF 270 “Request for Advance or Reimbursement,” to the Project Officer, who will review these forms with the Grants Officer and approve as appropriate.
- f. *Timing of Request for Disbursements.* The Recipient must request disbursements from EDA only at the time and in the amount immediately needed to close a loan or disburse RLF funds to a borrower. The Recipient must disburse RLF funds to the borrower within 30 days of receipt of the grant funds. Any grant funds not disbursed within the 30 day period shall be refunded to EDA pursuant to 13 C.F.R. § 307.11(e).
- g. *Amount of Disbursement.* As each new loan is made, the Recipient may request a disbursement of grant funds only for the difference, if any, between the RLF Capital (defined in 13 C.F.R. § 307.8) and the amount of the new RLF loan, less

an amount, if any, of the Local Share required to be disbursed concurrent with the grant funds. However, RLF Income held to reimburse eligible administrative expenses need not be disbursed in order to draw additional grant funds. (See 13 C.F.R. § 307.11(c).)

- h. *Interim Payment Requests.* All requests for interim disbursement shall be submitted using Form SF-270. When authorized, advances shall be approved for periods to cover only expenses anticipated over the next 30 days.

3. Loan Closings and Disbursements.

- a. RLF loan activity must be sufficient to draw down grant funds in accordance with the schedule prescribed in this Award for loan closings and disbursements to eligible RLF borrowers. The schedule usually requires the Recipient to lend the entire initial amount of the RLF Capital base within 3 years of the Award. (See 13 C.F.R. § 307.16(a)(1).)
- b. If the Recipient fails to meet the prescribed lending schedule for loan closings and disbursements, EDA may de-obligate the non-disbursed balance of the Award. EDA may allow an exception to the extent the Recipient has Closed Loans:
 - (i) That were approved prior to the scheduled deadline and will commence and complete disbursements within 45 days of the deadline; or
 - (ii) For which disbursement obligations have commenced (but are not yet completed) prior to the deadline.

EDA also may allow an exception where it has approved a lending schedule extension, or allow a no-cost time amendment extension if authorized in writing by the Grants Officer to ensure key program goals are met and funds are disbursed before the grant is closed. (See 13 C.F.R. §§ 307.8 and 307.16(a)(2).)

- c. If grant funds are requested and the RLF loan disbursement is subsequently delayed beyond 30 days, the Recipient must notify the Grants Officer and return such non-disbursed funds to EDA. The non-disbursed grant funds must be returned to the Government for credit to the Recipient's account. Returned grant funds will be available to the Recipient for future draw downs. When returning prematurely drawn grant funds, the Recipient must clearly identify on the face of the check or in the written notification to the Grants Officer "EDA," the grant award number, the words "Premature Draw," and a brief description of the reason for returning the grant funds. (See 13 C.F.R. § 307.11(e).)

4. Cost Sharing Requirement.

For the purposes of this Award, the Federal share is the EDA portion of the project, while the non-Federal share is the Matching Share of the approved project. The Recipient must show that the non-Federal Matching Share is committed to the Project, available as

needed and not conditioned or encumbered in any way that precludes its use consistent with the requirements of EDA investment assistance. *See* 13 C.F.R. § 301.5.

Awards that include a Federal and non-Federal share incorporate an estimated budget consisting of shared allowable costs. If actual allowable costs are less than the total approved estimated budget, the Federal share and Matching Share shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved estimated budget, the Federal share shall not exceed the total Federal dollar amount authorized by this Award.

As approved in the Award, the Matching Share may be used only for lending purposes or for eligible and reasonable administrative costs. The Matching Share must be paid out either in proportion to the grant funds or at a faster rate than the grant funds. *See* 13 C.F.R. § 307.11(f)(1). The Matching Share must be available when needed for lending and must be under the control of the Recipient for use in accordance with the terms of the Award.

- a. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the Recipient must meet its cost share commitment over the Award period. The Recipient must create and maintain sufficient records justifying all non-Federal sharing requirements to facilitate questions and audits.
- b. Upon repayment of loans, cash Matching Share is treated the same as EDA funds. Repayments of principal must be placed in the RLF for re-lending, and interest earned on outstanding loan principal and accounts holding RLF funds must be used either for re-lending or for eligible and reasonable administrative costs associated with the RLF's operations. *See* 13 C.F.R. § 307.12 and the definition of "RLF Income" in 13 C.F.R. § 307.8.
- c. As approved in the RLF Award, In-Kind Contributions may satisfy Matching Share requirements when specifically authorized in the Terms and Conditions of the Award, and may be used to provide technical assistance to borrowers or for eligible RLF administrative costs. (*See* 13 C.F.R. § 307.17(d).)

When an RLF has a combination of In-Kind Contributions and cash Matching Share, the non-Federal cash together with the Federal cash constitute the funds available for making loans and will be disbursed proportionately as needed for loan closing, provided that the last 20 percent of the Federal Share may not be disbursed until all cash Local Share has been expended. The full amount of the cash Matching Share shall remain for use in the RLF. (*See* 13 C.F.R. § 307.11(f)(2).)

5. Budget Changes and Transfer of Funds among Categories.

- a. Requests for budget changes to the approved budget in accordance with the provision provided below must be submitted through the Project Officer, who will review the requests and submit them to the Grants Officer. The Grants Officer will make the final determination on such requests and notify the Recipient in writing.

Transfers of funds by the Recipient among direct cost categories are permitted for an Award in which the Federal share of the Project is \$100,000 or less. For an Award in which the Federal share of the Project exceeds \$100,000, transfers of funds must be approved in writing by the Grants Officer when the cumulative amount of such transfers exceeds 10 percent of the current total Federal and non-Federal funds authorized by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same criterion applies to the cumulative amount of transfer of funds among projects, functions, joint ventures, consortia, activities, and annual costs when budgeted separately within an Award. Transfers will not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the Recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, this does not prohibit the Recipient from requesting the Grants Officer's approval for revisions to the budget. (*See* 15 C.F.R. §§ 14.25(f) or 24.30(c), as applicable for specific requirements concerning budget revisions and transfer of funds between budget categories.)

- b. The Recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

6. Indirect Costs and Facilities and Administrative Costs.

- a. Indirect costs, or facilities and administrative (F&A) costs for educational institutions, are only allowable charges under this Award as permitted under the line item approved budget.
- b. Indirect costs are not allowed in the disbursement phase of the Project; however, such Indirect costs may be allowed after full disbursement of EDA grant funds, during the revolving phase of the RLF Award as an eligible administrative expense as outlined in the applicable Special Award Conditions. Recipients are encouraged to review part I, section C.5.c. for details about prohibition of transferring direct costs to the indirect cost line item or vice versa.

- c. Excess indirect costs may not be used to offset unallowable direct costs.
- d. OMB established the cognizant agency concept, under which a single agency represents all others in dealing with Recipients in common areas. The cognizant agency reviews and approves Recipients' indirect cost rates. Approved rates must be accepted by other agencies, unless specific program regulations restrict the recovery of indirect costs. If indirect costs are permitted and the Recipient would like indirect costs in its budget, but 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 cost principles and the following subparagraphs:
 - (i) State and Local Governments: Department of Health and Human Services (HHS) serves as the cognizant agency for all States and most cities. For certain State agencies, cities and counties, OMB published a list of cognizant Federal agency assignments on January 6, 1986 (51 FR 552). The cognizant agency for governmental units or agencies not specifically identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. See Subsection D.1.b. of Appendix E to 2 C.F.R. Part 225 (OMB Circular A-87);
 - (ii) Indian Tribes: Department of the Interior serves as the cognizant agency for all Indian tribal governments. See Subsection D.1.c. of Appendix E to 2 C.F.R. Part 225 (OMB Circular A-87);
 - (iii) Educational Institutions: Department of Health and Human Services or the Department of Defense's Office of Naval Research serves as the cognizant agency for educational institutions as determined in accordance with Subsection G.11. of Appendix A to 2 C.F.R. Part 220 (OMB Circular A-21);
 - (iv) Non-Profit Organizations: Cognizant agency is determined by calculating which Federal agency provides the largest dollar amount of awards to the non-profit organization in accordance with Subsection E.2. of Appendix A to 2 C.F.R. Part 230 (OMB Circular A-122); and

For those organizations for which DOC is cognizant or has oversight, DOC or its designee will either negotiate a fixed rate with carry-forward provisions for the Recipient or, in some instances, will limit its review to evaluating the procedures described in the Recipient's cost allocation plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

- e. Within 90 days of the award start date, the Recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The Recipient shall provide the Grants Officer with a copy of the transmittal letter:

Office of Acquisition Management
U.S. Department of Commerce
1401 Constitution Avenue, NW, HCHB Room 6054
Washington, D.C. 20230

- f. The Recipient can use the fixed rate proposed in the indirect cost plan until such time as the Department provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carry-forward provision used in calculating next year's rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant Federal agency within 6 months after the close of each of the Recipients' fiscal years.
- g. When the Department is not the oversight or cognizant Federal agency, the Recipient shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.
- h. If the Recipient fails to submit the required documentation to the Department within 90 days of the award start date, the Grants Officer may amend the Award to preclude the recovery of any indirect costs under the Award. If the Department, oversight or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the Recipient's delay in submitting the documentation, an extension of the 90 day due date may be approved by the Grants Officer.
- i. The maximum dollar amount of allocable indirect costs for which the Department will reimburse the Recipient shall be the lesser of:
 - (i) The line item amount for the Federal Share of indirect costs contained in the approved budget of the Award; or
 - (ii) The Federal Share of the total allocable indirect costs of the Award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

7. Incurring Costs or Obligor Federal Funds beyond the Award and Date. RLF Awards have a specified period of performance with a specified grant end date, as outlined on the Award document (Form CD-450 or CD-451) and applicable RLF Special Award Conditions. While the RLF Capital base will continue in existence as long as loans are outstanding and repayments to the RLF are made available to make new loans, obligations or further expenses of Federal funds may not occur beyond the grant end date. In all cases, an extension of the grant end date requires written approval of the Grants

Officer and the execution of an Award amendment (Form CD-451). *See also* 15 C.F.R. §§ 14.25(e)(2) or 24.30(d)(2), as applicable.

8. Tax Refunds.

Refunds of Federal Insurance Contributions Act (FICA) or Federal Unemployment Tax Act (FUTA) taxes received by the Recipient during or after the Project period must be refunded or credited to Department where the benefits were financed with Federal funds under the Award. The Recipient agrees to notify the Grants Officer immediately upon receipt of these refunds. The Recipient further agrees to refund portions of FICA and FUTA taxes determined to belong to the Federal Government, including refunds received after the expiration of this Award.

9. Additional Funding.

The Department has no obligation to provide any additional prospective funding in connection with an Award. Any amendment of this Award to increase funding or to extend the period of performance is at the sole discretion of the Department.

D. Programmatic Requirements.

1. Project Progress Reports.

See part I, section C and section D, and part II, section H. of these RLF Standard Terms and Conditions for specific RLF reporting requirements.

2. Unsatisfactory Performance.

Failure to perform the work in accordance with the Terms and Conditions of this Award may result in designation of the Recipient as a “high-risk” grantee and assignment of special award conditions or other further action as specified in part I, section D.6. of these RLF Standard Terms and Conditions. (*See* 15 C.F.R. §§ 14.14 or 24.12, as applicable.).

3. Reporting Programmatic Changes.

- a. The Recipient must request prior approval for all programmatic changes from the Grants Officer in accordance with 15 C.F.R. §§ 14.25 or 24.30, as applicable. Requests should be submitted to the Project Officer, who will review requests and submit them to the Grants Officer for final determination, as applicable.
- b. Any changes made to the Project without EDA’s approval are made at the Recipient’s risk of non-payment of costs, suspension, termination or other EDA action with respect to the Award. (*See* 13 C.F.R. § 302.7(b).)

4. Time-Schedule Extensions.

- a. Unless otherwise authorized in 15 C.F.R. §§ 14.25(e)(2) or 24.30, as applicable, or in a special award condition, any extension of the Project period must be authorized in writing by the Grants Officer. A verbal or written assurance of funding from other than the Grants Officer, including Regional Office staff other

than the Grants Officer, does not constitute authority to obligate funds for programmatic activities beyond the expiration date.

- b. The Recipient is responsible for contacting EDA as soon as conditions become known that may materially affect its ability to meet the prescribed lending schedule. The Recipient must submit a written request to the Grants Officer for continued use of grant funds beyond a missed deadline for disbursement of RLF funds. The Recipient must provide good reason for the delay by demonstrating that:
 - (i) The delay was unforeseen or beyond the control of the Recipient;
 - (ii) The financial need for the RLF still exists;
 - (iii) The current and planned use and the anticipated benefits of the RLF will remain consistent with the current CEDS and the RLF Plan; and
 - (iv) The achievement of a new proposed lending schedule is reasonable.

The Recipient also must provide an explanation as to why further delays may or may not be anticipated. (*See* 13 C.F.R. § 307.16(b)(1).)

- c. EDA reserves the right to withhold disbursements while the Recipient is not in compliance with the time schedule. EDA reserves the right to suspend or terminate an Award if the Recipient fails to exercise reasonable diligence to accomplish the Project as intended.
- d. EDA is under no obligation to grant a time extension, and in the event an extension is denied, EDA may de-obligate all or part of the unused grant funds and may terminate the grant. (*See* 13 C.F.R. § 307.16(b)(2).)

5. Other Federal Awards with Similar Programmatic Activities.

The Recipient shall immediately provide written notification to the Project Officer and the Grants Officer in the event that, subsequent to receipt of the Award, other Federal financial assistance is received to support or fund any portion of the project scope of work in the Award. The Department will not pay for costs that are funded by other Federal sources.

6. Non-Compliance with Award Provisions.

Failure to comply with any or all of the Terms and Conditions of this Award may have a negative impact on the Recipient's ability to receive future funding from the Department and may be considered grounds for any or all of the following actions: (a) changing the method of payment from advance to reimbursement only; (b) establishment of an account receivable; (c) withholding payments under any Department Award(s) to the Recipient; (d) the imposition of additional special award conditions; (e) suspension of any active Department Awards; or (f) termination of any active Department Awards.

- a. *Unauthorized Use.* Except as provided in 13 C.F.R. §§ 314.3 (regarding the authorized use of property) or 314.10 (regarding the release of EDA's interest in

certain property), or as otherwise authorized by EDA, the Recipient must compensate the Federal government for the Federal Share whenever any property acquired or improved in whole or in part with EDA investment assistance is disposed of, encumbered, or no longer used for the purpose of the Project. The requirements set forth in 15 C.F.R. parts 14 or 24, as applicable, including any supplements or amendments thereto, shall apply. (See 13 C.F.R. § 314.4.)

b. *Suspension and Termination.* EDA may suspend or terminate this Award for cause, including but not limited to failure to:

- (i) Operate the RLF in accordance with the RLF Plan, the RLF Award or EDA's statutory and regulatory requirements;
- (ii) Obtain prior EDA approval for material changes to the RLF Plan, including provisions for administering the RLF;
- (iii) Submit timely progress, financial and audit reports as required by the Terms and Conditions of the Award and 13 C.F.R. § 307.14; and
- (iv) Comply with the conflicts-of-interest provisions set forth in 13 C.F.R. § 302.17.

(See 13 C.F.R. § 307.21(a).)

c. *Suspension of Award.* The Grants Officer may suspend an RLF Award when he or she determines that circumstances warrant temporarily stopping all activities under the Award, including making payments to the Recipient, pending the Recipient taking corrective actions as specified by the Grants Officer. Upon suspension, the Recipient will be prohibited from engaging in new lending activity, although normal loan servicing and collection efforts will continue. In addition, the Recipient may be subject to restrictions on the use of RLF Income and specific actions to protect the RLF assets as may be required. The Grants Officer will promptly notify the Recipient in writing via certified mail of the determination to suspend the Award, the reason(s) for the suspension and what the Recipient can do to remedy the situation. If immediate action is not necessary to protect EDA's interest, the Grants Officer may notify the Recipient that unless the Recipient submits information within 30 days of that notice establishing compliance with the requested remedial actions, EDA will proceed with the suspension of the Award. However, the Grants Officer has the discretion to suspend the grant immediately if he or she determines that the Recipient has not taken or will not take corrective action, or that continued operation of the Award would place the RLF assets at risk.. Additionally, in the event that the Recipient fails to take specified corrective actions, the Grants Officer may, after considering the best interests of the Federal government, take more severe enforcement action, including termination of the Award. When applicable, suspension of an Award may result in a no-cost extension of the project period to compensate for work that was not done on the Project during the suspension.

- d. *Termination for Cause Action.* The Grants Officer may terminate an RLF Award for material non-compliance. Material non-compliance includes but is not limited to violation of the Terms and Conditions of the Award; failure to perform Award activities in a satisfactory manner; improper management or use of award funds; or fraud, waste, abuse, mismanagement or criminal activity. The Recipient will be notified of the termination action in writing using the same requirements provided for suspension of an Award in paragraph (c) above if the suspension did not precede the termination action. (See also 15 C.F.R. §§ 14.61 or 24.43, as applicable.)
- e. *Termination for Convenience Action.* The Recipient may request at any time termination for convenience of this Award in whole or in part. Termination is undertaken without prejudice to the Recipient when it is agreed upon by both parties that the purpose of this Award would not be served by further expenditure of grant funds. The Grants Officer and the Recipient must agree in writing to the conditions of the termination for convenience. If EDA has disallowed a portion of the Award, EDA will allow the Recipient to continue RLF operations only if the RLF has sufficient funds to permit effective operation. Any unused portion of the Federal Share of the RLF Capital base must be returned to EDA. (See also 15 C.F.R. §§ 14.61 or 24.44, as applicable, and part I, section O.4. of these RLF Standard Terms and Conditions.)
- f. *Right to Recover.* Whenever EDA terminates an Award for cause or disallows a portion of the Award, it has the right to recover residual funds and assets of the RLF Award in accordance with 13 C.F.R. § 307.20(d). Upon termination, distribution of proceeds will be distributed in the following order of priority:
 - (i) First, for any third party liquidation costs;
 - (ii) Second, for the payment of EDA's Federal Share; and
 - (iii) Third, if any proceeds remain, to the Recipient.

7. *Prohibition against Assignment by the Recipient.*

The Recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express prior written approval of the Grants Officer.

8. *Disclaimer Provisions.*

- a. The United States expressly disclaims any and all responsibility or liability to the Recipient or third persons for the actions of the Recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Award or any other losses resulting in any way from the performance of this Award or any sub-award or subcontract under this Award.

- b. The Recipient's acceptance of this Award does not in any way constitute an agency relationship between the United States and the Recipient.

9. Payment of Attorneys' and Consultants' Fees.

Grant funds must not be used directly or indirectly to reimburse any attorneys' or consultants' fees incurred in connection with obtaining investment assistance under PWEDA. (*See* 13 C.F.R. § 302.10.)

E. Non-Discrimination Requirements.

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Recipient must act in accordance with EDA's requirements set out in 13 C.F.R. § 302.20 and in part III, section B.4. of these RLF Standard Terms and Conditions.

F. OMB Circular A-133 Audit Requirements.

1. Requirement to have an A-133 Audit Performed.

A Recipient that expends Federal awards of \$500,000 or more in a fiscal year (see section F.3. below) must have a program-specific or single audit performed for that year in accordance with the provisions of OMB Circular A-133, "*Audits of States, Local Governments, and Non-Profit Organizations*," issued pursuant to the Single Audit Act of 1984 (Pub. L. No. 98-502), as amended by the Single Audit Act Amendments of 1996 (Pub. L. No. 104-156). A Recipient that has expended Federal awards through only EDA's RLF program may elect to have a program-specific audit performed. All other Recipients must have a single audit performed. The Circular can be accessed at http://www.whitehouse.gov/sites/default/files/omb/assets/a133/a133_revised_2007.pdf.

On Form SF-SAC (OMB Control No. 0348-0057, or any successor form), the Recipient must indicate whether it is submitting data for a single audit or a program-specific audit.

2. Requirement to Instruct Auditor.

RLF Recipients must direct auditors to use the applicable *Compliance Supplement* (Appendix B to OMB Circular A-133) when conducting audits of an RLF. The *Compliance Supplement* is available from the Government Printing Office, Superintendent of Documents, Washington, D.C. 20402-9325 or online at http://www.whitehouse.gov/omb/circulars_default (note that a new *Compliance Supplement* is released annually). To ensure that an audit is properly performed, the Recipient is obligated under OMB Circular A-133 to prepare appropriate financial statements, including the schedule of expenditures of Federal awards (SEFA), in accordance with § ____.310 of the Circular.

The Recipient must instruct the auditor to consider the following when determining Project dollars expended in the fiscal year:

- a. Balance of RLF principal loans outstanding at the end of the fiscal year, plus

- b. Cash and investment balance in the RLF at the end of the fiscal year, plus
- c. Administrative expenses paid out of RLF Income during the fiscal year.

The calculation of Federal award dollars expended is as follows:

[(Balance of RLF loans outstanding at the end of the fiscal year) plus (total cash on hand at the end of the fiscal year, including any sequestered funds) *plus* (administrative expenses paid out of RLF Income during the fiscal year)] *multiplied* by [sum of all EDA dollars/total project dollars from all of Recipient's RLF Awards].

3. Classification as a Major Program.

For purposes of this Award, the Recipient must instruct its auditor to consider the Federal Share of the RLF Capital base when making a determination regarding the RLF's classification as a major program. Therefore, the RLF Capital base must be listed correctly on the Recipient's SEFA. If EDA subsequently determines that the RLF program was erroneously excluded from the Recipient's list of major programs, the Recipient shall have six months to submit a corrected audit to the Federal Audit Clearinghouse. Failure to do so may result in termination of the RLF Award.

4. Requirement to Submit Audit to Federal Audit Clearinghouse.

A Recipient expending Federal awards of \$500,000 or more in a fiscal year and therefore, having a single or program-specific audit for that year conducted in accordance with OMB Circular A-133, must submit a copy of the single or program-specific audit (including Form SF-SAC) to the Bureau of the Census, designated by OMB as a central clearinghouse, at the following address:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, IN 47132

The Federal Audit Clearinghouse operates on behalf of OMB to disseminate audit information to Federal Agencies and to the public, and to help auditors and auditees minimize the reporting burden of complying with Circular A-133 requirements. For more information, access the website at <http://harvester.census.gov/fac/>.

The audit will be considered "on time" if it is received by the Federal Audit Clearinghouse no later than 30 days after the Recipient receives the auditor's report or nine months after the end of the Recipient's fiscal year. The Federal Audit Clearinghouse also offers an online entry system for submission of Form SF-SAC at <http://harvester.census.gov/fac/collect/ddeindex.html>.

Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the

program, the auditor will follow the requirements for a program-specific audit as described in OMB Circular A-133 § .235. The recipient may include a line item in the budget for the cost of the audit. A copy of the program-specific audit shall be submitted to the Grants Officer as specified in the award terms, and to the OIG at the following address:

Office of Inspector General
U.S. Department of Commerce
Atlanta Regional Office of Audits
401 West Peachtree Street, N.W., Suite 2742
Atlanta, GA 30308

5. Findings Related to the RLF Program.

A Recipient that files a program-specific or single audit with findings related to the RLF program will be required to develop a corrective action plan in cooperation with EDA. Failure to achieve corrective action milestones may result in termination of the RLF Award.

G. Audit Resolution Process.

1. An audit of the Award may result in the disallowance of costs incurred by the Recipient and the establishment of a debt (account receivable) due to EDA. For this reason, the Recipient should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.
2. In accordance with the *Federal Register* notice dated January 27, 1989 (54 Fed. Reg. 4053), a Recipient whose Award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
 - a. Unless the OIG determines otherwise, the Recipient has 30 days from the date of the transmittal of the “Draft Audit Report” to submit written comments and documentary evidence.
 - b. The Recipient has 30 days from the date of the transmittal of the “Final Audit Report” to submit written comments and documentary evidence. There shall be no extension of this deadline.
 - c. EDA shall review the documentary evidence submitted by the Recipient and shall notify the Recipient of the results in an “Audit Resolution Determination Letter.” The Recipient has 30 days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There shall be no extension of this deadline. The appeal is the last opportunity for the Recipient to submit written comments and documentary evidence that dispute the validity of the Audit Resolution Determination Letter.

- d. An appeal of the Audit Resolution Determination Letter does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on such debt. If the Audit Resolution Determination Letter is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
- e. The Department shall review the Recipient's appeal and notify the Recipient of the results in an "Appeal Determination Letter." After the opportunity to appeal has expired or after the appeal determination has been rendered, the Department will not accept any further documentary evidence from the Recipient. No other administrative appeals are available in the Department.

H. Payment of Debts.

1. Payment of Debts Owed the Federal Government.

The Recipient shall promptly pay any debts determined to be owed the Federal government. In accordance with 15 C.F.R. § 19.1, delinquent debt is a debt that has not been paid by the date specified in the agency's initial written demand for payment or applicable agreement or instrument (including a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. In accordance with 15 C.F.R. § 19.5 and 31 U.S.C. § 3717, failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Commerce entities will transfer any Commerce debt that is more than 180 days delinquent to the Financial Management Service for debt collection services, a process known as "cross-servicing," pursuant 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12 and 15 C.F.R. § 19.9, and may result in DOC taking further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions." Funds for payment of a debt must not come from other Federally-sponsored programs. Verification that other Federal funds have not been used for payment of a debt will be made, e.g., during on-site visits and audits.

2. Late Payment Charges.

- a. Interest shall be charged on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act (*see* 31 U.S.C. § 3701 et seq. for the entire Debt Collection Act), as amended. The minimum annual interest rate to be assessed is the Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at <http://www.fms.treas.gov/cvfr/index.html>. The CVFR is published by the Department of the Treasury in the Federal Register (<http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR>) and in the Treasury Financial Manual Bulletin. The assessed rate shall remain fixed for the duration of the indebtedness.

- b. Penalties shall accrue at a rate of not more than 6 percent per year or such other higher rate as authorized by law.
- c. Administrative charges, that is, the costs of processing and handling a delinquent debt, shall be determined by the Commerce entity collecting the debt, as directed by the Office of the Deputy Chief Financial Officer.

3. Barring Delinquent Federal Debtors from Obtaining Federal Loans, Loan Guaranties or Loan Insurance.

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

4. Effect of Judgment Lien on Eligibility for Federal Grants, Loans or Programs.

Pursuant to 28 U.S.C. § 3201(e), unless waived by the Department, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall be ineligible to receive any grant or loan which is made, insured, guaranteed or financed directly or indirectly by the United States, or to receive funds directly from the Federal government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

I. Government-wide Debarment and Suspension (Non-Procurement).

The Recipient shall comply with the provisions of subpart C of 2 C.F.R. part 1326, "*Non-Procurement Debarment and Suspension*" (71 FR 76573, December 21, 2006), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal non-procurement transactions either through primary or lower-tier covered transactions, and which set forth the responsibilities of Recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

J. Drug-Free Workplace.

The Recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Pub. L. No. 100-690, Title V, sec. 5153, as amended by Pub. L. No. 105-85, Div. A, Title VIII, sec. 809, as codified at 41 U.S.C. § 8102), and the Department's implementing regulations at 15 C.F.R. part 29, "*Government-wide Requirements for Drug-Free Workplace (Financial Assistance)*," which require the Recipient to take steps to provide a drug-free workplace.

K. Lobbying Restrictions.

1. Statutory Provisions.

The Recipient shall comply with the provisions of 31 U.S.C. § 1352, and the Department's implementing regulations found at 15 C.F.R. part 28, "*New Restrictions on Lobbying*." These provisions prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the U.S. government in connection with an Award, and require the disclosure of the use of non-Federal funds for lobbying.

2. Disclosure of Lobbying Activities.

Any Recipient receiving in excess of \$100,000 in Federal funding shall submit a completed Form SF-LLL, “*Disclosure of Lobbying Activities*,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously submitted. The Recipient must submit the Form SF-LLL, including any received from sub-recipients, contractors, and subcontractors, to the Grants Officer.

3. Special Provisions relating to Indian Tribes.

As set out in 31 U.S.C. § 1352, there are special provisions applicable to Indian Tribes, tribal organizations, or other Indian organizations eligible to receive Federal contracts, grants, loans, or cooperative agreements. In accordance with Departmental policy, EDA recognizes Tribal Employment Rights Ordinances (“TEROs”), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, firing, and the payment of a TERO fee generally are allowable provisions under Federal awards granted to American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is “necessary and reasonable for proper and efficient performance and administration” of an Award, as provided under the applicable cost principles set out in 2 C.F.R. part 225.

L. Freedom of Information Act (FOIA) and Privacy Act Requests.

The rules and procedures regarding public access to records or documents held by EDA are set out at 15 C.F.R. part 4.

M. Codes of Conduct and Sub-Award, Contract and Subcontract Provisions.

1. Code of Conduct for Recipients.

Pursuant to the certification in Form SF-424B, “Assurances – Non-Construction Programs,” paragraph 3, the Recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict-of-interest, or personal gain in the administration of this Award. See also part I, section N of these RLF Standard Terms and Conditions.

2. Applicability of Award Provisions to Sub-recipients.

- a. The Recipient shall require all sub-recipients, including lower-tier sub-recipients, to comply with the provisions of this Award, including applicable cost principles, and administrative and audit requirements, and all associated terms and conditions. Different cost principles apply to for-profit contractors, non-profit organizations, educational institutions and units of government. Care must be

exercised, therefore, in applying the correct cost principles depending on what type of entity the sub-recipient or contractor may be.

- b. The Recipient is responsible for sub-recipient monitoring, including the following:
 - (i) Award Identification - At the time of the award, identifying to the sub-recipient the Federal award information (e.g., Catalog of Federal Domestic Assistance (CFDA) title and number, grant award number, name of the granting Federal agency) and applicable compliance requirements.
 - (ii) During-the-Award Monitoring - Monitoring the sub-recipient's use of Federal awards through reporting, on-site visits, regular contact, or other means to provide reasonable assurance that the sub-recipient administers the Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
 - (iii) Sub-recipient Audits - Ensuring that any sub-recipient expending Federal awards of \$500,000 or more during the sub-recipient's fiscal year has met the audit requirements of OMB Circular A-133, and that the required single or program-specific audit is completed within nine months of the end of the sub-recipient's audit period. In addition, the Recipient is required to issue a management decision on audit findings within six months after receipt of the sub-recipient's audit report, and ensure that the sub-recipient takes timely and appropriate corrective action on all audit findings. In cases of continued inability or unwillingness of a sub-recipient to complete and submit the required OMB Circular A 133 audit, the Recipient shall take appropriate action using sanctions. (See part I, section F. of these RLF Standard Terms and Conditions.)

3. Competition and Codes of Conduct for Sub-Awards.

- a. *Competition.* All sub-awards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The Recipient must be alert to organizational conflicts-of-interest as well as other practices among sub-recipients that may restrict or eliminate competition. In order to ensure objective sub-recipient performance and eliminate unfair competitive advantage, sub-recipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such sub-awards.
- b. *Written Standards of Conduct.* The Recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of sub-awards. The written standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by any Interested Party (as defined in 13 C.F.R. § 300.3). No Interested Party shall participate in the selection, award, or administration of a sub-award supported by Federal funds if a real or apparent conflict of interest would be involved. A

conflict-of-interest generally exists when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party's personal or financial interests. A conflict-of-interest also may exist where there is an appearance that an Interested Party's objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable to render impartial assistance, services or advice to the Recipient, a participant in the Project or to the Federal government. (See 13 C.F.R. § 302.17(a) and part II, section D. of these RLF Standard Terms and Conditions.)

4. Applicability of Provisions to Sub-Awards, Contracts and Subcontracts.

- a. The Recipient shall include the following notice in any request for applications or bids:

Applicants/bidders for a lower-tier covered transaction (except for goods and services under \$25,000 not requiring the consent of a DOC official) are subject to 2 C.F.R. part 1326, subpart C, "Non-procurement Debarment and Suspension." In addition, applicants/bidders for a lower-tier covered transaction (for a sub-award, contract, or subcontract) greater than \$100,000 of Federal funds at any tier are subject to 15 C.F.R. part 28, "New Restrictions on Lobbying." Applicants/bidders should familiarize themselves with these provisions, including the certification requirements. Therefore, applications for a lower-tier covered transaction must include and complete without modification Form CD-512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions and Lobbying."

- b. The Recipient shall include a statement in all lower-tier covered transactions (for a sub-award, contract or subcontract), that the award is subject to subpart C of 2 C.F.R. part 1326, "Non-procurement Debarment and Suspension."
- c. The Recipient shall include a statement in all lower-tier covered transactions (for a sub-award, contract or subcontract) exceeding \$100,000 in Federal funds, that the sub-award, contract or subcontract is subject to 31 U.S.C. § 1352 and to the Department's implementing regulations found at 15 C.F.R. part 28, "New Restrictions on Lobbying." The Recipient shall further require the sub-recipient, contractor or subcontractor to submit a completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. Form SF-LLL shall be submitted from tier to tier until received by the Recipient. The Recipient must submit all disclosure forms received, including those that report lobbying

activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

5. Small Business, Minority Business Enterprises and Women's Business Enterprises.

The Department encourages Recipients to utilize small businesses, minority business enterprises, and women's business enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist Recipients in matching qualified minority owned enterprises with contract opportunities. For further information visit MBDA's website at <http://www.mbda.gov>. If you do not have access to the Internet, you may contact MBDA via mail at the following address:

U.S. Department of Commerce
Minority Business Development Agency
Office of Business Development
1401 Constitution Avenue, NW
Washington, D.C., 20230

6. Sub-award and/or Contract to a Federal Agency.

- a. The Recipient, sub-recipient, contractor or subcontractor shall not sub-grant or sub-contract any part of the approved Project to any agency or employee of the Department or other Federal bureau, agency or instrumentality, without the prior written approval of the Grants Officer.
- b. Requests for approval of such action must be submitted to the Federal Program Officer who shall review and make a recommendation to the Grants Officer. The Grants Officer must forward all requests to the Federal Assistance Law Division in the Office of the Department of Commerce Assistant General Counsel for Finance and Litigation for review prior to making the final determination. The Grants Officer will notify the Recipient in writing of the final determination.

7. Other Federal Requirements Applicable to Sub-awards, Contracts or Subcontracts.

Recipients are responsible for ensuring, prior to awarding sub-awards, contracts or subcontracts, that prospective borrowers, consultants or contractors are aware of and comply with EDA's statutory and regulatory requirements regarding activities carried out with RLF loans. Recipients must develop loan agreements that include applicable Federal requirements and adopt procedures diligently to correct instances of non-compliance, including the calling of loans if necessary. Loan documents and sub-award, contract or subcontract documents and procedures must protect and hold the Federal government harmless from and against all liabilities that may arise as a result of providing an award to assist (directly or indirectly) in site preparation or construction as well as the renovation or repair of any facility or site. This applies to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the Recipient or any of its predecessors on the property.

In administering the RLF, the Recipient must adopt procedures to comply and ensure that potential borrowers, consultants, or contractors comply with all laws and regulations applicable under this Award. (See also 13 C.F.R. §§ 302.6 and 302.13.)

N. Property Management.

With respect to any property acquired or improved in whole or in part with EDA investment assistance under an Award, the Recipient shall comply with the uniform administrative requirements set forth in 15 C.F.R. §§ 14.30 – 14.37 and 15 C.F.R. §§ 24.31-24.34, and EDA’s requirements at 13 C.F.R. part 314. Property acquired or improved in whole or in part by the Recipient under an Award may consist of real property or personal property, including intangible property such as money, notes and security interests. Any inventory listings stipulated under the applicable uniform administrative requirements must be submitted to the Project Officer, who will review and submit them to the Grants Officer for approval on Form CD-281, “Report of Government Property in Possession of Contractor.”

1. Recipient as Trustee and Successor Recipients.

When the Recipient fails in its fiduciary responsibilities or is unable or unwilling to perform as trustee of the grant funds, EDA may suspend or terminate this Award. In addition, EDA may transfer this Award to an eligible successor with jurisdiction over the Project area to administer it. If EDA transfers this Award, the Recipient remains responsible for complying with the Terms and Conditions of this Award for the period in which it is the Recipient, and any Successor Recipient holds the Project property with the same responsibilities as the Recipient under this Award. (See 13 C.F.R. § 314.2(a) and 314.3(d).)

2. Use of Proceeds upon Sale, Collection or Liquidation of RLF Loans.

In the event of a sale, collection, or liquidation of any RLF loan, any proceeds (minus late payment penalties, accrued interest and reasonable amounts associated with the cost of collection), up to the amount of the outstanding loan principal, must be returned to the RLF for re-lending. Any net proceeds from a loan sale, collection or liquidation above the outstanding loan principal is considered RLF Income and must either be added to the RLF Capital base for lending or used to cover eligible and reasonable costs for administering the RLF in accordance with the rules for use of RLF Income. The net transaction proceeds must be used to make additional loans as part of the RLF grant. (See 13 C.F.R. § 307.12(a).)

3. Sale or Securitization of Loans to Raise New Funds.

With EDA’s consent, a Recipient may enter into a Sale or a Securitization of all or a portion of its RLF loan portfolio, provided the requirements set out in 13 C.F.R. § 307.19 are satisfied. The Recipient must use all proceeds from any Sale or Securitization (net of reasonable transaction costs) to make additional RLF loans.

4. Termination of RLF Award.

EDA may approve a request from the Recipient to terminate this Award. The Recipient must compensate the Government for the Federal Share of the RLF property, including

the current value of all outstanding RLF loans. However, with EDA's prior approval, upon a showing of compelling circumstances, the Recipient may use for other economic development activities a portion of RLF property that EDA determines is attributable to RLF Income, provided that the amount of such RLF Income (or program income) does not exceed the Federal Share. (*See* 13 C.F.R. § 307.21(b).)

When EDA approves the termination of an RLF grant, EDA may assign or transfer assets of the RLF to an RLF Third Party (defined in 13 C.F.R. § 307.8) for liquidation. The RLF Third Party may be an Eligible Applicant (as defined in 13 C.F.R. § 300.3) or a for-profit organization not otherwise eligible for EDA investment assistance. EDA will have sole discretion in choosing the RLF Third Party, may enter into an agreement with the RLF Third Party to liquidate the assets of one or more RLFs or Recipients, and may allow the RLF Third Party to retain a portion of the RLF assets as reasonable compensation for services rendered in the liquidation. (*See* 13 C.F.R. § 307.20(c).) The proceeds resulting from any liquidation upon termination shall be distributed in accordance with 13 C.F.R. § 307.20(d). *See also* part I, section D.6 and part I, section O.4 of these RLF Standard Terms and Conditions.

O. Environmental Requirements.

Environmental impacts must be considered by Federal decision-makers in their decisions whether or not to (1) approve a proposal for Federal assistance; (2) approve the proposal with mitigation; or (3) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate a planning process with an early consideration of potential environmental impacts that Project(s) funded with Federal assistance may have on the environment. The Recipient and any sub-recipients must comply with all environmental standards, to include those proscribed under the following statutes and Executive Orders, and shall identify to the awarding agency any impact the Award may have on the environment. In some cases, the Grants Officer can withhold award funds under a special award condition requiring the Recipient to submit additional environmental compliance information sufficient to enable the Department to make an assessment on any impacts that a Project may have on the environment. *See also* part III, section B.1. of these RLF Standard Terms and Conditions.

1. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4327).

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality's (CEQ) implementing regulations (40 C.F.R. parts 1500-1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements. Recipients of Federal assistance are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency to comply with NEPA. Recipients also may be requested to assist the Department in drafting an environmental assessment, if the Department determines an assessment is required. In the event that any additional information is required during the project period in order to assess any impacts that a project may have on the environment, funds can be withheld by the Grants Officer under a special award condition requiring the

Recipient to submit such additional environmental compliance information sufficient to enable the Department to make the requisite assessment.

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

Section 106 of the National Historic Preservation Act (NHPA) (16 U.S.C. § 470f) and the Advisory Council on Historic Preservation implementing regulations (36 C.F.R. Part 800) require that Federal agencies take into account the effects of their undertakings on historic properties. Recipients of Federal funding are required to identify to the awarding agency any effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Recipients may also be requested to assist the Department in consulting with State or Tribal Historic Preservation Officers or other applicable interested parties necessary to identify, assess and resolve adverse effects to historic properties. Until such time as the appropriate NHPA consultations and documentation is complete, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to fully comply with the requirement of the NHPA. In the event that any additional information is required during the project period in order to assess any impacts that a project may have on historic properties, funds can be withheld by the Grants Officer under a special award condition requiring the Recipient to submit such additional information sufficient to enable the Department to make the requisite assessment.

3. Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands, May 24, 1977).

Recipients must identify proposed actions in federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.

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

Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. § 7401 *et seq.*), Clean Water Act (33 U.S.C. § 1251 *et seq.*) and Executive Order 11738, and shall not use a facility on the Environmental Protection Agency’s (EPA) List of Violating Facilities (this list is incorporated into the Excluded Parties List System located at <https://www.sam.gov/portal/public/SAM/>) in performing any Award that is nonexempt under 2 C.F.R. § 1532, and shall notify the Federal Project Officer in writing if it intends to use a facility that is on EPA’s List of Violating Facilities or knows that the facility has been recommended to be placed on the List.

5. The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 *et seq.*).

Flood insurance, when available, is required for federally-assisted construction or acquisition in flood-prone areas.

6. The Endangered Species Act of 1973, as amended (16 U.S.C. § 1531 *et seq.*).
Recipients must identify any impact or activities which may involve a threatened or endangered species. Federal agencies have the responsibility to ensure that no adverse effects to the protected species or habitat occur from actions under Federal assistance awards and conduct the required reviews under the Endangered Species Act, as applicable.

7. The Coastal Zone Management Act, as amended (16 U.S.C. § 1451 *et seq.*).
Funded Projects must be consistent with a coastal State's approved management program for the coastal zone.

8. The Coastal Barriers Resources Act (16 U.S.C. § 3501 *et seq.*).
Only in certain circumstances can Federal funding be provided for actions within a Coastal Barrier System.

9. The Wild and Scenic Rivers Act, as amended (16 U.S.C. § 1271 *et seq.*).
This Act applies to Awards that may affect existing or proposed components of the National Wild and Scenic Rivers system.

10. The Safe Drinking Water Act of 1974, as amended (42 U.S.C. § 300f *et seq.*).
This Act precludes Federal assistance for any project that EPA determines may contaminate a sole source aquifer so as to threaten public health.

11. The Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901 *et seq.*).
This Act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that Recipients of Federal funds give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

12. The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 *et seq.*) and the Community Environmental Response Facilitation Act (41 U.S.C. § 11001 *et seq.*).
These requirements address responsibilities of hazardous substance releases, threatened releases and environmental cleanup. There is also a requirement to impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards to state and local emergency responders.

13. Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations”)-
This Order requires Federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies and activities on low income and minority populations.

P. Miscellaneous Requirements.

1. Criminal and Prohibited Activities.

- a. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal government for money (including grants, loans or other benefits).
- b. The False Claims Amendment Act and the False Statements Act (18 U.S.C. §§ 287 and 1001) provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
- c. The Civil False Claims Act (31 U.S.C. § 3729 et seq.) provides that suits under this Act can be brought by the Government, or a person on behalf of the Federal government, for false claims under Federal assistance programs.
- d. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally-supported Project from enticing an employee working on the Project from giving up a part of his compensation under an employment contract. The Copeland “Anti-Kickback” Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

2. Foreign Travel.

- a. The Recipient shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 –10.143.
- b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency’s mission.
- c. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral “Open Skies Agreements” (U.S. Government Procured Transportation) that allow Federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple “Open Skies

Agreements” currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website <http://www.gsa.gov/portal/content/103191>. Information on the three Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State’s website <http://www.state.gov/e/eeb/tra/>.

- d. If a foreign air carrier is anticipated to be used, the Recipient must receive prior approval from the Grants Officer. When requesting such approval, the Recipient must provide a justification in accordance with the guidance provided in 41 C.F.R. § 301-10.142, which requires the Recipient to provide a “certification” to the Grants Officer with the following: name; dates of travel; the origin and destination of travel; a detailed itinerary of travel, the name of the air carrier and flight number for each leg of the trip; and a statement explaining why the Recipient meets one of the exceptions to the applicable regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the Recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the Recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the Recipient not being reimbursed for any transportation costs for which the Recipient improperly used a foreign air carrier.

3. American-Made Equipment and Products.

Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.

4. Intellectual Property Rights.

- a. *Inventions.* The rights to any invention made by a Recipient under a DOC Award are determined by the Bayh-Dole Act, as amended (Pub. L. No. 96-517), and codified in 35 U.S.C. § 200 et seq., except as otherwise required by law. The specific rights and responsibilities are described in more detail in 37 C.F.R. part 401, and in the particular, in the standard patent rights clause in 37 C.F.R. § 401.14, which is hereby incorporated by reference into this Award.

(i) Ownership.

- (a) *Recipient.* The Recipient has the right to elect to retain title to any invention it or its employees make (conceived or first reduced to practice). A Recipient that is a non-profit organization, which includes a university or other institution of higher learning, may not assign to a third party its rights to such an invention without the permission of DOC unless that assignment is to a patent management organization (i.e., a university’s Research Foundation). The Recipient’s

ownership rights are subject to the Federal government's nonexclusive, nontransferable, irrevocable, paid-up license and other rights.

- (b) *Department*. If the Recipient elects not to retain title, fails to disclose the invention to the agency within the required time limits, or does not file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the Recipient. DOC owns any invention made solely by its employees, but may license the Recipient in accordance with the procedures in 37 C.F.R. part 404.
 - (c) *Inventor/Employee*. If neither the Recipient nor the Department is interested in owning an invention by a Recipient employee, the Recipient, with the written concurrence of the Department's Patent Counsel, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 C.F.R. § 401.9.
 - (d) *Joint Inventions*. Inventions made jointly by a Recipient and a Department employee will be owned jointly by the Recipient and DOC. However, the Department may transfer its rights to the Recipient as authorized by 35 U.S.C. § 202(e) and 37 C.F.R. § 401.10 if the Recipient is willing to patent and license the invention in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one Recipient and Department employee). The agreement will be prepared by DOC and may include other provisions, such as a royalty free license to the Federal government and certain other entities. The provision at 35 U.S.C. § 202(e) also authorizes the Recipient to transfer its rights to the Government, which can agree to share royalties similarly as described above.
- (ii) *Responsibilities --iEdison*. The Recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The Recipient is expected to comply with all the requirements of the standard patent rights clause and 37 C.F.R. part 401. Recipients of DOC Awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Recipients may obtain a waiver of this electronic submission requirement by providing DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

- b. *Patent Notification Procedures.* Pursuant to Executive Order 12889, the Department is required to notify the owner of any valid patent covering technology whenever the Department or its 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 Grants Officer.

This notice does not necessarily mean that the Government authorizes and consents to any copyright or patent infringement occurring under the financial assistance.

- c. *Data, Databases and Software.* The rights to any work produced or purchased under a DOC Award are determined by 15 C.F.R. § 24.34 for State and Local Governments, and 15 C.F.R. § 14.36, for Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations. Such works may include data, databases or software. The Recipient owns any work produced or purchased under a DOC Award subject to the Department's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Government purposes.
- d. *Copyright.* The Recipient may copyright any work produced under a DOC Award subject to the Department's royalty-free non-exclusive and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Federal government purposes. Works jointly authored by the Department and Recipient employees may be copyrighted but only the part authored by the Recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in the United States. If the contributions of the authors cannot be separated, the copyright status of the joint work is questionable. On occasion, DOC may require the Recipient to transfer to DOC its copyright in a particular work for government purposes or when DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.

5. Increasing Seat Belt Use in the United States.

Pursuant to Executive Order 13043, Recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally-owned vehicles.

6. Research Involving Human Subjects.

- a. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. part 27, Protection of Human Subjects. No research involving

human subjects is permitted under this Award unless expressly authorized by special award condition, or otherwise authorized in writing by the Grants Officer.

- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (i) data through intervention or interaction with the individual, or (ii) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- c. The Department's regulations at 15 C.F.R. part 27 require that Recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in carrying out the purpose(s) of this Award, the Recipient shall submit appropriate documentation to the Program Officer for approval. This documentation may include:
 - (i) Documentation establishing approval of the Project by an institutional review board (IRB) approved for government-wide use under Department of Health and Human Services guidelines (*See* 15 C.F.R. § 27.103);
 - (ii) Documentation to support an exemption for the Project under 15 C.F.R. § 27.101(b);
 - (iii) Documentation to support deferral for an exemption or IRB review under 15 C.F.R. § 27.118;
 - (iv) Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken, conducted, or costs incurred or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred or charged to the Project for protocol or instrument development related to human subjects research.

7. Federal Employee Expenses.

Federal agencies are generally barred from accepting funds from a Recipient to pay transportation, travel, or other expenses for any Federal employee. Use of Award funds (Federal or non-Federal) or the Recipient's provision of in-kind goods or services, for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from Recipients or applicants regardless of the source.

8. Minority-Serving Institutions (MSIs) Initiative.

Pursuant to Executive Order 13555 ("White House Initiative on Educational Excellence for Hispanics"), 13270 ("Tribal Colleges and Universities"), and 13532 ("Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities"), the Department is strongly committed to broadening the participation of

minority-serving institutions (MSIs) in its financial assistance programs. The Department's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. The Department encourages all applicants and Recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

9. Research Misconduct.

The Department of Commerce adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 Fed. Reg. 76260 (2000)). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipient organizations that conduct extramural research funded by the Department must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipient organizations also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and possible suspension or debarment. The Department requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the OIG of such allegation. Once the Recipient organization has investigated the allegation, it will submit its findings to the Grants Officer. The DOC may accept the Recipient's findings or proceed with its own investigation. The Grants Officer shall inform the Recipient of the Department's final determination.

10. Publications, Videos and Acknowledgment of Sponsorship.

- a. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording and reporting results of Federally funded projects, e.g. scientific research, and expanding access to Federally funded projects.
- b. Recipients must submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to the EDA Project Officer.
- c. When releasing information related to a funded project, Recipients must include a statement that the project or effort undertaken was or is sponsored by DOC.
- d. Recipients are responsible for assuring that every publication of material based on, developed under, or produced under a DOC financial assistance award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer:

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

11. Care and Use of Live Vertebrate Animals.

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

12. Homeland Security Presidential Directive 12.

If the performance of a grant award requires recipient organization personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term “routine access” is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services’ (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual has lawful immigration status and is eligible for employment within the US. Any items or services delivered under a financial assistance award shall comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12, “Policy for a Common Identification Standard for Federal Employees and Contractors”, FIPS PUB 201, and OMB Memorandum M-05-24. The Recipient shall ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The Recipient shall insert the following term in all subawards and contracts when the subaward Recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

- a. *The subrecipient or contractor shall comply with DOC personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all*

employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.

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

13. Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.

- a. This clause applies to the extent that this Award involves access to export-controlled items.
- b. In performing this Award, the Recipient may gain access to items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The Recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and reexports provisions. The Recipient shall establish and maintain effective export compliance procedures at DOC and non-DOC facilities throughout performance of the financial assistance award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual and electronic access to export-controlled items, including by foreign nationals.
- c. *Definitions.*
- (i) *Export-controlled items.* Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application.
- (ii) *Deemed Export/Reexport.* The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R. § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses from the Department may be required for deemed exports or reexports.

- d. The Recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this Award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable Federal laws, Executive Orders or regulations, including the EAR.
- e. As applicable, Recipient personnel and associates at Department sites will be informed of any procedures to identify and protect export-controlled items.
- f. To the extent the recipient wishes to provide foreign nationals with access to export-controlled items, the recipient shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.
- g. Nothing in the terms of this Award is intended to change, supersede or waive the requirements of applicable Federal laws, Executive Orders or regulations.
- h. The Recipient shall include this clause, including this paragraph (f), in all lower-tier transactions (sub-awards, contracts, and subcontracts) under this Award that may involve access to export-controlled information technology.

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

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the Recipient or subrecipient engages in certain activities related to trafficking in persons. The Department of Commerce hereby incorporates the following award term required by 2 C.F.R. § 175.15(b). See <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf>.

Award Term from 2 C.F.R. § 175.15(b): Trafficking in persons.

- a. Provisions applicable to a Recipient that is a private entity.
 - 1 You as the Recipient, your employees, subrecipients under this award, and subrecipients' employees may not—
 - (i) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - (ii) Procure a commercial sex act during the period of time that the award is in effect; or
 - (iii) Use forced labor in the performance of the award or subawards under the award.
 - 2 We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity

- (i) Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - (ii) Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by DOC at 2 C.F.R. part 1326, “Nonprocurement Debarment and Suspension.”
- b. Provision applicable to a Recipient other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—
 - 1 Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 - 2 Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
 - (i) Associated with performance under this award; or
 - (ii) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by DOC at 2 C.F.R. part 1326, “Nonprocurement Debarment and Suspension.”
- c. Provisions applicable to any Recipient.
 - 1 You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - 2 Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - (i) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and
 - (ii) Is in addition to all other remedies for noncompliance that are available to us under this award.

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

d. Definitions. For purposes of this award term:

- 1 Employee means either:
 - (i) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - (ii) Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- 2 Forced labor means: labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- 3 Private entity:
 - (i) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 § CFR 175.25;
 - (ii) Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR §§ 175.25(b); and (B) A for-profit organization.
- 4 “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

15. The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282, 31 USC § 6101 Note)

- a. *Searchable Website Requirements.* The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at www.USASpending.gov. Recipients and subrecipients must include the following required data elements in their application:
 - (i) Name of entity receiving award;
 - (ii) Award amount;

- (iii) Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;
- (iv) Location of entity, primary location of performance (City/State/Congressional District/Country; and
- (v) Unique identifier of entity.

- b. *Subaward and Executive Compensation Data Reporting Requirements.* Prime grant Recipients awarded a new Federal grant greater than or equal to \$25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The prime Recipient is required to file a FFATA subaward report by the end of the month following the month in which the prime Recipient awards any sub-grant greater than or equal to \$25,000. See Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (see 31 U.S.C. § 6101 note). The reporting requirements are located in Appendix A of 2 C.F.R. part 170 and are available on GPO's FDsys website: <http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf>.

Award Term from Appendix A of 2 C.F.R. Part 170:

- a. Reporting of first-tier subawards.
1. **Applicability.** Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e. of this award term).
 2. **Where and when to report.**
 - (i) You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrc.gov>.
 - (ii) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
 3. **What to report.** You must report the information about each obligating action that the submission instructions posted at <http://www.fsrc.gov> specify.
- b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - (i) the total Federal funding authorized to date under this award is \$25,000 or more;
 - (ii) in the preceding fiscal year, you received—
 - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (iii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
 - (i) As part of your registration profile at <http://www.ccr.gov>.
 - (ii) By the end of the month following the month in which this award is made, and annually thereafter.

- c. Reporting of Total Compensation of Subrecipient Executives.
 1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - (i) in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

- (ii) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
- 2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
 - (i) To the recipient.
 - (ii) By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.
- d. Exemptions. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.
- e. Definitions. For purposes of this award term:
 - 1. Entity means all of the following, as defined in 2 CFR part 25:
 - (i) A Governmental organization, which is a State, local government, or Indian tribe;
 - (ii) A foreign public entity;
 - (iii) A domestic or foreign nonprofit organization;
 - (iv) A domestic or foreign for-profit organization;
 - (v) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
 - 2. Executive means officers, managing partners, or any other employees in management positions.
 - 3. Subaward:
 - (i) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - (ii) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __.210 of the attachment to OMB

Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

- (iii) A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

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

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

- (i) Salary and bonus.
- (ii) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
- (iii) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (iv) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (v) Above-market earnings on deferred compensation which is not tax-qualified.
- (vi) Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

c. *Central Contractor Registration (CCR) and Universal Identifier requirements.*

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

2. Requirement for Data Universal Numbering System (DUNS) Numbers. If you are authorized to make subawards under this award, you:
 - (i) Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
 - (ii) May not make a subaward to an entity unless the entity has provided its DUNS number to you.

3. Definitions for purposes of this award term:
 - (i) Central Contractor Registration (CCR) means the Federal repository into which an entity must provide information required for the conduct of business as a Recipient. Additional information about registration procedures may be found at the System for Award Management Internet site (currently at <https://www.sam.gov/portal/public/SAM/>).
 - (ii) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
 - (iii) Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:
 - (1) A Governmental organization, which is a State, local government, or Indian Tribe;
 - (2) A foreign public entity;
 - (3) A domestic or foreign nonprofit organization;
 - (4) A domestic or foreign for-profit organization; and
 - (5) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
 - (iv) Subaward:
 - (1) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the Recipient award to an eligible subrecipient.
 - (2) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. .210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - (3) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
 - (v) Subrecipient means an entity that:
 - (1) Receives a subaward from you under this award; and

- (2) Is accountable to you for the use of the Federal funds provided by the subaward.

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

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

- a. Unless there is an actual rescission of funds for specific grant obligations, Recipients of Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Recipients are advised that ongoing activities by Federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.
- b. All award actions will be delayed during a government shutdown; if it appears that a Recipient's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise Recipients that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, Recipients whose ability to withdraw funds is subject to prior agency approval, which in general are Recipients that have been designated high risk, Recipients of construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Recipients should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.
- c. The ASAP system should remain operational during a government shutdown. Recipients that do not require any grant office or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown and advanced funds held for more than 30 days will have to be returned with interest.

PART II

RLF RECIPIENTS' MANAGEMENT AND ADMINISTRATIVE REQUIREMENTS

Part II of these RLF Standard Terms and Conditions sets out the Recipient's duties to administer and manage this Award.

A. Revolving Loan Fund (RLF) Plan Requirements.

The Recipient must develop and manage its RLF in accordance with a RLF Plan as described in this section and in 13 C.F.R. § 307.9, and submit the RLF Plan (or Plan) to EDA for approval. The RLF Plan must serve as the Recipient's internal operating tool and set out administrative procedures for operating the RLF consistent with "Prudent Lending Practices," as defined in 13 C.F.R. § 307.8.

1. Format and Content.

The required content and recommended format for the RLF Plan is as follows:

- a. The title page of the Plan should show the Recipient organization's name and the date the Plan was adopted.
- b. Part I of the Plan titled Revolving Loan Fund Strategy must summarize (i) the Comprehensive Economic Development Strategy (CEDS) for the region in which the RLF Project is located and (ii) business development objectives, and describe the RLF's financing strategy, policy and portfolio standards. Organization of the material and the level of detail provided in Part I may be varied to improve the narrative flow, provided the substantive content is adequately covered.
- c. Part II of the Plan titled Operational Procedures must serve as the internal operating manual for the Recipient. In administering the RLF, the Recipient must adopt procedures to comply, and ensure that potential borrowers comply, with applicable laws and regulations including but not limited to 13 C.F.R. part 307.

2. Evaluation of RLF Plans.

EDA will use the following criteria to evaluate RLF Plans. The Plan must:

- a. Be consistent with the CEDS or EDA-approved strategy for the Region;
- b. Be consistent with EDA's conflict of interest rules;
- c. Identify the strategic purpose of the RLF and the considerations influencing the selection of its financing strategy and lending criteria, including:
 - (i) An analysis of the local capital market and the financing needs of the targeted businesses; and
 - (ii) Financing policies and portfolio standards which are consistent with EDA's policies and requirements;

- d. Demonstrate an adequate understanding of commercial loan portfolio management procedures, including loan processing, underwriting, closing, disbursement, collection, monitoring, and foreclosure. It also must provide sufficient administrative procedures to prevent conflicts-of-interest and to ensure accountability, safeguarding of RLF assets and compliance with Federal and local laws. (*See* 13 C.F.R. § 307.9(b).)

3. RLF Plan Modifications.

RLF Operators must develop an RLF Plan, and this Plan must be updated once every 5 years thereafter. Economic development often requires the implementation of new approaches to help stimulate stagnant economies. EDA reserves the right to request changes to a RLF Plan at any time to incorporate new approaches or areas of focus. Such changes may be required for the RLF to remain supportive of updates made to a Regional CEDS. Modification of the RLF Plan also may be necessary to ensure effective use of the RLF as a strategic financing tool. A Recipient must request and obtain EDA approval prior to any modifications of the Plan. (*See* 13 C.F.R. § 307.9(c).)

B. Modifications of Lending Areas and Consolidation of RLF Awards.

The Recipient must make loans to implement and assist economic activity only within its EDA-approved lending area, as set forth and defined in the RLF Award and the RLF Plan. The Recipient may request permission from EDA to consolidate (or merge) eligible RLF Awards in accordance with required documentation and procedures. Any request to add an additional lending area or to consolidate two or more EDA-funded RLF Awards must satisfy the following requirements:

1. A Recipient may add an additional lending area to its existing lending area to create a new lending area only with EDA's prior written approval and subject to the conditions set out in 13 C.F.R. § 307.18(a).
2. A Recipient with more than one EDA-funded RLF Award may consolidate two or more EDA-funded RLFs into one surviving RLF with EDA's prior written approval, provided the conditions set out in 13 C.F.R. § 307.18(b)(1) are satisfied.
3. Two or more Recipients may consolidate their EDA-funded RLFs into one surviving RLF with EDA's prior written approval, provided the conditions set out in 13 C.F.R. § 307.18(b)(2) are satisfied.

C. Prudent Lending Practices.

The Recipient is expected to administer the RLF in accordance with "Prudent Lending Practices," defined in 13 C.F.R. § 307.8 as "generally accepted underwriting and lending practices for public loan programs, based on sound judgment to protect Federal and lender interests." Prudent Lending Practices cover loan processing, documentation, loan approval, servicing, administrative procedures, collateral protection, collections, and recovery actions. Prudent lending practices include compliance with local laws and filing requirements to perfect and maintain a security interest in RLF collateral.

1. Accounting Principles.

- a. RLFs must operate in accordance with generally accepted accounting principles (“GAAP”), as outlined in OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations, and the related Compliance Supplement.
- b. In accordance with GAAP, a loan loss reserve may be recorded in the RLF Recipient’s financial statements to show the fair market value of an RLF’s loan portfolio, provided this loan loss reserve is non-funded and represents non-cash entries. (*See* 13 C.F.R. § 307.15(a)(2))

2. Pre-Disbursement and Loan and Accounting System Requirements.

- a. Prior to any disbursement of EDA funds, the Recipient must provide to EDA:
 - (i) Evidence of fidelity bond coverage for persons authorized to handle funds under this Award in an amount sufficient to protect the interests of EDA and the RLF. EDA has determined the amount of cash at risk for which fidelity insurance should be obtained is the amount of cash readily available to the RLF Recipient, which is generally the greater of 25 percent of the RLF Capital base, or the maximum loan amount identified in the Recipient’s EDA approved RLF Plan. Note that such insurance coverage must exist at all times during the duration of the RLF’s operation; and
 - (ii) Certification in accordance with 13 C.F.R. § 307.15(b)(1) that the Recipient’s accounting system is adequate to identify, safeguard and account for all RLF Capital (as defined as Prudent Lending Practices in 13 C.F.R. § 307.8), outstanding RLF loans and other RLF operations. This certification must occur within 60 days prior to the initial disbursement of EDA funds under this Award. (*See* 13 C.F.R. §§ 307.15(b)(1) and 307.11(a).)
- b. Prior to the disbursement of any EDA grant funds, the RLF Recipient shall certify that standard RLF loan documents reasonably necessary or advisable for lending are in place and that these documents have been reviewed by its legal counsel for adequacy and compliance with the terms and conditions of the Award, applicable State and local laws, and the approved RLF Plan. The standard loan documents must include, and be retained and available to EDA and/or an auditor, and at a minimum must include the following:
 - (i) Loan application;
 - (ii) Loan agreement;

- (iii) Board of Directors' meeting minutes approving the RLF loan;
- (iv) Promissory note;
- (v) Security agreement(s);
- (vi) Deed of trust or mortgage (as applicable);
- (vii) Agreement of prior lien holder (as applicable); and
- (viii) Signed bank turn-down letter demonstrating that credit is not otherwise available on terms and conditions that permit the completion or successful operation of the activity to be financed. EDA will permit the RLF Recipient to accept alternate documentation only if such documentation is allowed in the Recipient's EDA-approved RLF Plan.

(See 13 C.F.R. § 307.15(b)(2).)

3. Interest Rates.

An RLF Recipient can make loans to eligible borrowers at interest rates and under conditions determined by the RLF Recipient to be appropriate in achieving the goals of the RLF. The minimum interest rate an RLF Recipient may charge is four (4) percentage points below the lesser of the current money center prime rate quoted in the Wall Street Journal, or the maximum interest rate allowed under State law. In no event shall the interest rate be less than the lower of four (4) percent or 75 percent of the prime interest rate listed in the Wall Street Journal. However, should the prime interest rate listed in the Wall Street Journal exceed fourteen (14) percent, the minimum RLF interest rate is not required to be raised above ten (10) percent if doing so compromises the ability of the RLF Recipient to implement its financing strategy. (See 13 C.F.R. § 307.15(c).)

4. Private Leveraging.

RLF loans must leverage private investment of at least two dollars for every one dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, private investment must be made within 12 months prior to or after approval of an RLF loan closing, as part of the same business development project, and may include:

- (i) Capital invested by the borrower or others;
- (ii) Financing from private entities; or
- (iii) The non-guaranteed portion and ninety (90) percent of the guaranteed portions of U.S. Small Business Administration's 7(A) loans and 504 debenture loans.

Private investments shall not include accrued equity in a borrower's assets. (See 13 C.F.R. § 307.15(d).)

D. Conflicts-of-Interest Rules.

1. An "Interested Party" is defined in 13 C.F.R. § 300.3 as "any officer, employee or member of the board of directors or other governing board of the Recipient, including any other parties that advise, approve, recommend or otherwise participate in the

business decisions of the Recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders.” An Interested Party also includes the Interested Party’s “Immediate Family” (defined in 13 C.F.R. § 300.3 as a person’s spouse, parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person) and other persons directly connected to the Interested Party by law or through a business organization. In addition, “Immediate Family” includes a person’s “significant other” or partner in a domestic relationship with an “Interested Party.”

The Recipient must establish safeguards to prohibit an Interested Party from using their position for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or of personal gain. (See 13 C.F.R. § 302.17(a) and (b), 15 C.F.R. §§ 14.42 and 24.36(b)(3), and Forms SF-424B (*Assurances – Non-Construction Projects*) and SF-424D (*Assurances – Construction Projects*)). The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.

2. An Interested Party must not receive any direct or indirect, financial or personal benefits in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a sub-award. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It also could result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field. (See 13 C.F.R. § 302.17(b).)
3. In addition to the rules set forth in 13 C.F.R. § 302.17(a) and (b), the Recipient must adhere to these special conflicts-of-interest rules set out in 13 C.F.R. § 302.17(c):
 - a. An Interested Party of a Recipient of an RLF Award shall not receive, directly or indirectly, any personal or financial benefits resulting from the disbursement of RLF loans.
 - b. A Recipient shall not lend RLF funds to an Interested Party.
 - c. Former board members of a Recipient and members of his or her Immediate Family shall not receive a loan from the RLF for a period of 2 years from the date that the board member last served on the RLF’s board of directors.

(See also part I, section N of these RLF Standard Terms and Conditions.)

E. Effective Utilization of Revolving Loan Funds.

1. Capital Utilization Standard.

- a. During the “Revolving Phase” (defined at 13 C.F.R. § 307.8 as the stage of the RLF’s business lending activities that commences immediately after all grant funds have been disbursed to the Recipient), the RLF Recipient must manage their repayment and lending schedules to provide that at all times at least 75 percent of the RLF Capital is loaned or committed. The following exceptions apply:
 - (i) A Recipient that anticipates making large loans relative to the size of its RLF Capital base may propose a RLF Plan that provides for maintaining a capital utilization standard greater than twenty-five percent; and
 - (ii) EDA may require a Recipient with an RLF Capital base in excess of \$4 million to adopt a Plan that maintains a proportionately higher percentage of its funds loaned.

In the event that EDA sets a higher capital utilization rate, the Recipient shall have 90 calendar days to submit the RLF Plan to EDA for approval.

- b. When the percentage of loaned RLF Capital falls below the applicable capital utilization standard, the dollar amount of the RLF funds equivalent to the difference between the actual percentage of RLF Capital loaned out and the applicable capital utilization standard is referred to as “excess funds.” (*See* 13 C.F.R. § 307.16(c)(2).)

2. Sequestration of Excess Funds.

- a. *Sequestration Required.* If the RLF Recipient fails to satisfy the applicable capital utilization standard for 2 consecutive Reporting Periods, EDA may require the Recipient to deposit excess funds in an interest-bearing account. The portion of interest earned on the account holding excess funds attributable to the Federal Share (as defined in 13 C.F.R. § 314.5) of the RLF grant shall be remitted to the U.S. Treasury. If EDA requires sequestration, the Recipient must submit to EDA:
 - (i) A letter certifying that an account has been set up for the purposes of sequestering excess funds; specifying the applicable EDA award number(s), the amount deposited, the account number, and the name, address and telephone number of the bank; and certifying that the Recipient will remit quarterly any interest payments to EDA; and
 - (ii) A copy of the deposit receipt evidencing that a separate, interest-bearing account was set up for the amount certified in the letter.

This documentation is required regardless of whether the Recipient is establishing the account for the first time or depositing additional grant funds. The RLF Recipient must obtain EDA's written authorization to withdraw any sequestered funds. EDA will permit the release of sequestered funds only on an as-needed basis, provided that the RLF's cash on hand is insufficient to cover a loan. To expedite the release of sequestered funds, EDA may approve this release via electronic mail received from an RLF Recipient officer or agent, (*See* 13 C.F.R. § 307.16(c)(2)(i).)

b. *Sequestration Not Required.* EDA will not require sequestration of excess funds if:

- (i) The amount to be sequestered is less than \$5,000.00; or
- (ii) The Recipient requests an extension up to six months by providing written documentation of the extenuating circumstances precipitating the excess cash situation, as well as a written plan, signed by the Recipient's authorized representative, describing specific actions the Recipient will take to achieve compliance within the next six months, and the Grants Officer signs and approves this plan. Six-month compliance extensions are solely at the Grant Officer's discretion.

3. Remittance of Interest on Sequestered Funds.

The portion of the interest earned on the account holding sequestered funds that is attributable to the EDA share of the Award must be remitted semi-annually to EDA within 30 days of the end of each semi-annual Reporting Period to the following address:

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

Remitted funds must be submitted in accordance with the directions outlined in the Special Award Conditions. Checks must be made out to the "Economic Development Administration" and must contain the applicable Grant Award number in a prominent location. Additionally, a brief memorandum accompanying the check must include:

- a. A statement that the payment being remitted to EDA represents interest earned on EDA's portion of sequestered funds; and
- b. A calculation showing how EDA's share of the interest was determined.
- c. The Recipient must submit a copy of this memorandum and evidence of interest payment remittance (a copy of the check, wire transfer or direct deposit of funds) to their Project Officer, who will share this information with the Grants Officer.

4. Persistent Noncompliance.

Generally, EDA will allow the Recipient a reasonable period of time to lend excess funds and achieve the applicable capital utilization standard. However, if the RLF Recipient fails to achieve the applicable capital utilization standard after a reasonable period of time, as determined by EDA, it may be subject to sanctions such as suspension or termination. (*See* 13 C.F.R. § 307.16(c)(2)(ii).)

F. Financial Accountability in the Administration of an RLF.

The Recipient is responsible for the administrative costs associated with operating the RLF. Any future funding to recapitalize an RLF is dependent upon the successful management of the RLF from both a program and financial perspective, as well as future Congressional appropriations to support the program. As grant funds are disbursed for loans and the RLF begins to generate income from lending activities, such income (referred to as “RLF Income” and defined in 13 C.F.R. § 307.8), as distinguished from interest payments remitted to EDA pursuant to 13 C.F.R. § 307.16(c)(2)(i), may be used to cover eligible, reasonable and documented administrative costs necessary to administer the RLF, unless otherwise provided for in the Award or approved in writing by EDA. A Recipient may use RLF Income only to capitalize the RLF for financing activities and to cover eligible and reasonable administrative expenses.

1. General Requirements for RLF Income.

RLF Income must be placed into the RLF Capital base for the purpose of making loans or paying for eligible and reasonable administrative costs associated with the RLF’s operations. RLF Income may fund reasonable administrative costs, provided:

- a. The RLF Income and the administrative costs are incurred in the same six-month Reporting Period;
- b. RLF Income that is not used for administrative costs during the six-month Reporting Period is made available for lending activities;
- c. RLF Income shall not be withdrawn from the RLF Capital base in a subsequent reporting period for any purpose other than lending without the prior written consent of EDA; and
- d. The RLF Recipient completes an RLF Income and Expense Statement as required under 13 C.F.R. § 307.14(c).

(*See* 13 C.F.R. § 307.12(a).)

2. Compliance Guidance.

When charging costs against RLF Income, the Recipient must comply with applicable Federal costs principles and audit requirements as found in:

- a. 2 C.F.R. part 225 (“Cost principles for state, local and Indian tribal governments (OMB Circular A-87)”);
- b. C.F.R. part 230 (“Cost principles for non-profit organizations (OMB Circular A-122)” - institutions of higher education, hospitals or organizations, named in OMB Circular A-122, are not subject to this Circular);
- c. 2 C.F.R. part 220 (“Cost principles for educational institutions (OMB Circular A-21)”); and
- d. OMB Circular A-133 (and the related Compliance Supplement) for Single Audit Act requirements for States, local Governments and Non-Profit Organizations.

(See 13 C.F.R. § 307.12(b).)

3. Priority of Payments on Defaulted RLF Loans.

When a Recipient receives proceeds on a defaulted RLF loan that is not subject to liquidation pursuant to 13 C.F.R. § 307.20, such proceeds shall be applied in the following order of priority:

- a. First, towards any costs of collection;
- b. Second, towards outstanding penalties and fees;
- c. Third, towards any accrued interest to the extent due and payable; and
- d. Fourth, towards any outstanding principal balance.

(See 13 C.F.R. § 307.12(c).)

The Recipient is expected to add RLF Income to the RLF Capital base where practicable. To determine the appropriate amount of RLF Income to return to the RLF Capital base, RLF operators must consider the costs necessary to operate the 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 region’s) commitment to the RLF and the anticipated demand for RLF loans.

4. Default Rates.

If an RLF loan’s default rate exceeds 20 percent, EDA may request additional information from the Recipient, including but not limited to:

- a. A narrative, signed by the Chair of the RLF administrative board, outlining actions taken to address the non-performing portion of the RLF loan portfolio;

- b. Detailed information for each non-performing loan (e.g., borrower's name, loan closing date, outstanding loan balance, number of days delinquent, collateral, actions taken to collect loan payments, the percentage of the loan likely to be collected, dollar amount expected to be collected, expected date of collection, current status);
- c. An EDA-approved corrective action plan; and
- d. An amended RLF Plan consistent with the EDA-approved corrective action plan.

Failure to submit an acceptable corrective action plan within 120 days of receiving EDA's request, failure to comply with an EDA-approved corrective action plan, or failure to allow EDA to conduct an on-site visit upon request may result in termination of the Award.

G. Records and Retention.

1. Closed Loan Files and Related Documents.

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

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

(See 13 C.F.R. § 307.13(a))

2. Administrative Records.

The Recipient must at all times:

- a. Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF Income expended for eligible RLF administrative costs.
- b. Retain records of administrative costs incurred for activities and equipment relating to the operation of the RLF for three years from the actual submission date of the last semi-annual or annual report that covers the period that such costs were claimed, or for five years from the date the costs were claimed, whichever is more.

- c. Make available for inspection any retained records, including those retained for longer than the required period. See record retention and access requirements set out at 15 C.F.R. §§ 14.53 or 24.42, as applicable.

(See 13 C.F.R. § 307.13(b))

H. RLF Semi-Annual Report and Income and Expense Statement.

1. Frequency of Reports.

All Recipients, including those receiving Recapitalization Grants (defined in 13 C.F.R. § 307.8) for existing RLFs, must submit semi-annual reports on Form ED-209 (or any successor form).

2. RLF Plan Certification.

The Recipient must certify as part of its semi-annual report to EDA that the RLF is operating in accordance with the applicable RLF Plan. The Recipient also must describe (and propose pursuant to 13 C.F.R. § 307.9) any modifications to the RLF Plan to ensure effective use of the RLF as a strategic financing tool. (See 13 C.F.R. § 307.14(b).)

3. RLF Income and Expense Statement.

A Recipient using either 50 percent or more (or more than \$100,000) of RLF Income for administrative costs in the twelve-month reporting period must submit a completed Income and Expense Statement on Form ED-209I (or any successor form) annually to the appropriate Regional Office within 90 days of the end of the fiscal year. A Recipient using less than 50 percent and less than \$100,000 of RLF Income for administrative costs in the twelve-month reporting period must prepare and retain for four years a completed Income and Expense Statement for the applicable fiscal year, which shall be made available to EDA upon request. (See 13 C.F.R. § 307.14(c).)

Failure to submit semi-annual reports or the Income and Expense Statement in a timely manner may result in termination of the Award.

4. Government Performance and Results Act Reporting.

In addition, EDA may require the Recipient to report on Project performance beyond the Project Closeout date for Government Performance and Results Act (GPRA) purposes. Required data shall be provided on a standardized form provided by EDA. Data used by the Recipient in preparing reports shall be accurate and from independent sources whenever possible. See 13 C.F.R. § 302.16.

PART III LENDING RESTRICTIONS AND BORROWER REQUIREMENTS

A. Uses of Capital.

The Recipient must use RLF Capital for the purpose of making loans that are consistent with an approved RLF Plan or such other purposes approved by EDA. To ensure that grant funds are used as intended, each loan agreement must clearly state the purpose of each loan. (*See* 13 C.F.R. § 307.17(a).)

1. Restrictions on Use of RLF Capital.

RLF Capital shall not be used to:

- a. Acquire an equity position in a private business;
- b. Subsidize interest payments on an existing loan;
- c. Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;
- d. Enable borrowers to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objectives of the RLF;
- e. Provide RLF loans to a borrower for the purpose of investing in interest-bearing accounts, certificates of deposit or any investments unrelated to the RLF;
- f. Refinance existing debt, unless:
 - (i) The Recipient sufficiently documents in the loan documentation a "sound economic justification" for the refinancing (e.g., the refinancing will support additional capital investment intended to increase business activities). For this purpose, reducing the risk of loss to an existing lender(s) or lowering the cost of financing to a borrower will not, without other indicia, constitute a sound economic justification; or
 - (ii) RLF Capital will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF Capital may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF's costs plus a reasonable portion of the outstanding RLF loan within 18 months following the date of refinancing.

(*See* 13 C.F.R. § 307.17(b).)

2. Credit Not Otherwise Available.

The Recipient must determine and clearly demonstrate in the loan documentation for each RLF loan that credit is not otherwise available on terms and conditions that permit

the completion or successful operation of the activity to be financed. (*See* 13 C.F.R. § 307.17(c).)

B. Pre-Loan Requirements for RLF Recipients and RLF Borrowers.

1. Environmental Impact.

The Recipient must adopt procedures to review the impacts of prospective loan proposals on the physical environment. The RLF Plan must provide for compliance with applicable environmental laws and regulations, including but not limited to 13 C.F.R. parts 302 and 314. The Recipient also must adopt procedures to comply, and ensure that potential borrowers comply, with applicable environmental laws and regulations. (*See* 13 C.F.R. § 307.10(a) and part I, section P. of these RLF Standard Terms and Conditions.)

2. Protection of RLF Assets.

The Recipient must ensure that prospective borrowers, consultants or contractors are aware of and comply with the Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. RLF loan agreements must include applicable Federal requirements to ensure compliance, and the Recipient must adopt procedures to diligently correct instances of non-compliance, including loan call stipulations. (*See* 13 C.F.R. § 307.10(b).)

3. Hold Harmless Provision.

All RLF loan documents and procedures must protect and hold the Federal government harmless from and against all liabilities that the Federal government may incur as a result of providing an Award to assist (directly or indirectly) in site preparation or construction, as well as the direct or indirect renovation or repair of any facility or site. These protections apply to the extent that the Federal government may become potentially liable as a result of ground water, surface, soil or other natural or man-made conditions on the property caused by operations of the Recipient or any of its borrowers, predecessors or successors. (*See* 13 C.F.R. § 307.10(c).)

4. Non-Discrimination Requirements.

The Recipient agrees to comply with the following statutory provisions:

- a. Section 601 of title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d et seq.) (proscribing discrimination on the basis of race, color, or national origin under programs receiving Federal financial assistance), and the Department's implementing regulations found at 15 C.F.R. part 8;
- b. 42 U.S.C. § 3123 (proscribing discrimination on the basis of sex in investment assistance provided under PWEDA) and 42 U.S.C. § 6709 (proscribing discrimination on the basis of sex under the Local Public Works Program), and the Department's implementing regulations found at 15 C.F.R. §§ 8.7 - 8.15;

- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) (proscribing discrimination on the basis of disabilities), and the Department's implementing regulations found at 15 C.F.R. part 8b;

Revised ADA Standards for Accessible Design for Construction Awards: The U.S. Department of Justice has issued revised regulations implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286). The revised regulations adopted new enforceable accessibility standards called the "2010 ADA Standards for Accessible Design" (2010 Standards). The 2010 Standards are an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS). DOC deems compliance with the 2010 Standards to be an acceptable means of complying with the Section 504 accessibility requirements for new construction and alteration projects under 15 C.F.R. § 8b.18(c), as follows:

- 1 Public Recipients subject to Title II of the ADA may use either the 2010 Standards or UFAS where the physical construction or alternations commence on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 35.151(c)(2)); and
- 2 Private Recipients subject to Title III of the ADA may use either the 2010 Standards or UFAS if the date when the last application for a building permit or permit extension is certified to be complete by a State, county, or local government (or, in those jurisdictions where the government does not certify completion of applications, if the date when the last application for a building permit or permit extension is received by the State, county, or local government) is on or after September 15, 2010 and before March 15, 2012, or if no permit is required, if the start of physical construction or alterations occurs on or after September 15, 2010 and before March 15, 2012 (see 28 C.F.R. § 36.406(a)(2)).

In all cases, once a recipient selects an applicable ADA accessibility standard (i.e., the 2010 Standards or UFAS), that standard must be applied to the entire facility.

As of March 15, 2012, all new construction and alteration projects must comply with the 2010 Standards.

- d. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 et seq.) (proscribing discrimination on the basis of age), and the Department's implementing regulations found at 15 C.F.R. part 20; and
- e. Other Federal statutes, regulations and Executive Orders, as applicable. See also part I, section E. of these RLF Standard Terms and Conditions.

- f. Parts II and III of Executive Order (E.O.) 11246, “Equal Employment Opportunity,” (30 FR 12319, 1965), as amended by E.O. 11375 (32 FR 14303, 1967) and E.O. 12086 (43 FR 46501, 1978), requiring Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that E.O. and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b), 1991).
- g. Executive Order 13166 (August 11, 2000), “Improving Access to Services for Persons With Limited English Proficiency,” requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them, and DOC policy guidance issued on March 24, 2003 (68 FR 14180) to Federal financial assistance recipients on the Title VI prohibition against national origin discrimination affecting LEP persons.

5. Wage Rate Requirements of the Davis-Bacon Act.

In accordance with section 602 of PWEDA (42 U.S.C. § 3212), all laborers and mechanics employed by contractors or subcontractors on construction-related Projects receiving investment assistance under PWEDA shall be paid wages not less than those prevailing on similar construction in the locality, as determined by the U.S. Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, *United States Code*. (See 13 C.F.R. § 302.13.) Therefore, the Recipient and any borrower, contractor or subcontractor must comply with Davis-Bacon prevailing wage rates where RLF funds under this Award are used for construction work financed in whole or in part with such RLF funds.

APPENDIX

THE FOLLOWING REFERENCE MATERIALS ARE AVAILABLE FROM EDA:

13 C.F.R. chapter III (EDA's regulations)

15 C.F.R. part 14, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations*

15 C.F.R. part 24, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*

OMB Circular A-133, *Audits of States, Local Governments and Nonprofit Organizations, and the related Compliance Supplement*

OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*

2 C.F.R. part 220 (codifying OMB Circular A-21, *Cost Principles for Educational Institutions*)

2 C.F.R. part 225 (codifying OMB Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*)

2 C.F.R. part 230 (codifying OMB Circular A-122, *Cost Principles for Nonprofit Organizations*)

2 C.F.R. part 1326, *Non-Procurement Debarment and Suspension*

15 C.F.R. part 4, *Disclosure of Government Information*

15 C.F.R. part 27, *Protection of Human Subjects*

15 C.F.R. part 28, *New Restrictions on Lobbying*

15 C.F.R. part 29, *Government-wide Requirements for Drug-Free Workplace (Financial Assistance)*

48 C.F.R. part 31, *Contract Cost Principles and Procedures*

THE FOLLOWING FORMS ARE AVAILABLE FROM EDA:

Form SF-425 – Federal Financial Report

Form SF-270 - Request for Advance or Reimbursement (with Instructions)

Form ED-209I - RLF Income and Expense Statement (with Instructions)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/2/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Pacific Diversified Insurance Services 15005 Concord Circle Suite 110 Morgan Hill CA 95037 License#: 0K07568 CALICOA-12	CONTACT NAME: PHONE (A/C. No. Ext): 408-842-2131 FAX (A/C. No.): 408-842-0867 E-MAIL ADDRESS:													
	<table border="1"> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A : Nonprofits Insurance Alliance of California</td> <td></td> </tr> <tr> <td>INSURER B : Oak River Insurance Company</td> <td>34630</td> </tr> <tr> <td>INSURER C : Houston Casualty Company</td> <td>42374</td> </tr> <tr> <td>INSURER D :</td> <td></td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Nonprofits Insurance Alliance of California		INSURER B : Oak River Insurance Company	34630	INSURER C : Houston Casualty Company	42374	INSURER D :		INSURER E :		INSURER F :
INSURER(S) AFFORDING COVERAGE	NAIC #													
INSURER A : Nonprofits Insurance Alliance of California														
INSURER B : Oak River Insurance Company	34630													
INSURER C : Houston Casualty Company	42374													
INSURER D :														
INSURER E :														
INSURER F :														

COVERAGES **CERTIFICATE NUMBER:** 321648325 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:	Y	Y	2022-68322	2/22/2022	2/22/2023	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000
							MED EXP (Any one person)	\$ 15,000
							PERSONAL & ADV INJURY	\$
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
								\$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS			2022-68322	2/22/2022	2/22/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ 1,000,000
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
								\$
A	<input type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			2022-68322-UMB	2/22/2022	2/22/2023	EACH OCCURRENCE	\$ 1,000,000
							AGGREGATE	\$ 1,000,000
								\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input checked="" type="checkbox"/> N	N/A	CAWC351506	2/22/2022	2/22/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER	
							E.L. EACH ACCIDENT	\$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	\$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	\$ 1,000,000
C	E&O			H722-119114	2/22/2022	2/22/2023	Each Claim	2,000,000
							Aggregate	2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
County of Monterey, its officials, agents and employees are included as additional insured as respects general liability per policy form CG2010 1219. Waiver of subrogation wording applies as respects general liability per policy form NIAC-E26 1117.

CERTIFICATE HOLDER	CANCELLATION
County of Monterey Attn: Contracts/Purchasing Dept 168 W. Alisal Street, 3rd Floor Salinas CA 93901	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

POLICY NUMBER: 2022-68322

Named Insured: California Coastal Rural Development Corporation

COMMERCIAL GENERAL LIABILITY

CG 20 10 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Any person or organization that you are required to add as an additional insured on this policy, under a written contract or agreement currently in effect, or becoming effective during the term of this policy. The additional insured status will not be afforded with respect to liability arising out of or related to your activities as a real estate manager for that person or organization.	All insured premises and operations.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or



A Head for Insurance. A Heart for Nonprofits.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS (WAIVER OF SUBROGATION)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
SOCIAL SERVICE PROFESSIONAL LIABILITY COVERAGE FORM

SCHEDULE

Name of Person or Organization:

Where you are so required in a written contract or agreement currently in effect or becoming effective during the term of this policy, we waive any right of recovery we may have against that person or organization, who may be named in the schedule above, because of payments we make for injury or damage.

S

M S

M

S

erkshire athaway omestate Insurance ompany
pecial isks Insurance ompany
ontinental ivide Insurance ompany
ypress Insurance ompany
ak iver Insurance ompany
edwood ire and asualty Insurance ompany

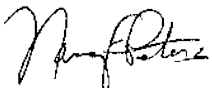
P.O. Box 881236, San Francisco, CA 94188

In itness hereof we have caused this policy to be e ecuted and attested and if re uired by state law this policy shall not be valid unless countersigned by our authori ed representative



resident
erkshire athaway omestate Insurance ompany
pecial isks Insurance ompany
ontinental ivide Insurance ompany
edwood ire and asualty Insurance ompany

resident
ypress Insurance ompany
ak iver Insurance ompany



ecretary

Privacy Policy

Berkshire Hathaway Homestate Companies
Oak River Insurance Company
PO Box 881236
San Francisco, CA 94188
Phone: (888) 495-8949 Fax (866) 288-4613

Definitions

“consumer” is a person who seeks or obtains products or services from us for personal family or household needs. Only a natural person may be a consumer.

“ personal information” is information about a consumer that is not publicly available.

Information We Collect

We collect personal information from:

- People who apply for insurance from us;
- People who visit our website;
- People we insure;
- People involved in claims under our policies;
- The consumer’s transactions with us our affiliates our agents or others;
- Consumer reporting agencies or insurance support organizations; and
- Other third parties including state motor vehicle departments.

Information we collect from an insurance-support organization may be kept by them. They may disclose it to others.

Information We Disclose

We do not disclose personal information, except as required or allowed by law. Sometimes we are allowed to disclose personal information without consent.

Examples of such disclosures include:

- To a person who performs administrative, business, professional, or insurance functions for us;
- To confirm eligibility for insurance benefits or payments;
- To detect or prevent crime or fraud;
- To insurers or agents that need it to perform an insurance function;
- To insurers or agents so we can perform an insurance function;
- To medical providers to confirm insurance coverage;
- To insurance regulators;
- To law enforcement;
- In response to subpoenas, search warrants or other court orders;
- For actuarial or research studies;
- In connection with a sale of our business;
- To an affiliate who is auditing us;
- To a peer review group looking at the services or conduct of a medical provider;
- To a public agency that may have paid health benefits for a consumer;
- To a certificate holder or policy owner who wants to know the status of an insurance transaction;
- To a person with a legal interest in a policy issued by us;
- To rate advisory organizations;
- To guaranty funds;
- To rating agencies;
- To our lawyers, accountants and auditors;
- To a group policy owner to report claims experience;
- To a group policy owner to conduct an audit; or
- As otherwise required or allowed by law.

Information Security

- We authorize our workers, agents, outside vendors and others to access personal information only when they have a business reason to do so. We have physical, electronic, and procedural safeguards to protect personal information from unauthorized access.

Right to Review & Correct Personal Information

- A consumer who lives in AZ, CA, CT, GA, IL, MA, ME, MT, NC, NJ, OH, OR, VA may review personal information we have gathered about the consumer. The consumer may send a letter to: Chief Privacy Officer, P.O. Box 881236, San Francisco, CA 94188.
- The letter should include name, address, phone number, policy number and describe the records that the consumer wants to review. Upon receipt of this request, we will review our records and inform the consumer if we have the information sought and if it is reasonably locatable and retrievable. If it is, the consumer may review the information in person or request that we mail them a copy. We will disclose to the consumer who else received the information in the past two years or who would normally have received it in the past two years. We may charge the consumer a fee.
- The consumer may ask us to fix mistakes in our records. If we agree, we will correct our files. Upon request, we will send revised information to a person who received information from us in the past 2 years. If we disagree, the consumer may file a short statement of dispute. The statement will be included with information we share in the future. Upon request, we will send the statement to a person who received information from us in the past 2 years.

Medical Record Rights

- A consumer who lives in MT may ask for a record of medical record information we have disclosed. The consumer may send a letter to: Chief Privacy Officer, P.O. Box 881236, San Francisco, CA 94188.

Changes to Policy

- We may change this policy at any time. We will provide advance notice of changes if required by law.

California Consumer Privacy Act Notice

This California Consumer Privacy Act Notice of the Berkshire Hathaway Homestate Companies (collectively, “we,” “us,” or “our”) applies solely to individuals who reside in the State of California (“consumers” or “you”). We adopt this notice to comply with the California Consumer Privacy Act of 2018 (“CCPA”). Any terms defined in the CCPA have the same meaning when used in this notice.

Information We Collect

“Personal information” means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular consumer or household. Personal information does not include publicly available information.

We may collect the following categories of your personal information:

- Personal identifiers: a real name, alias, postal address, unique personal identifier, online identifier, Internet Protocol address, email address, account name, social security number, driver's license number, passport number, or other similar identifiers.
- Personal information under Cal. Civ. Code § 1798.80(e): a name, signature, social security number, physical characteristics or description, address, telephone number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, debit card number, or any other financial information, medical information, or health insurance information.
- Characteristics of protected classifications under Federal and California law: race, color, ancestry, national origin, religion, gender (including pregnancy, childbirth, or related medical conditions), disability, age (40 and older), genetic information, marital status, sexual orientation, gender identity and gender expression, AIDS/HIV status, medical conditions, political activities or affiliations, military or veteran status, and status as a victim of domestic violence, assault, or stalking.
- Commercial information: records of personal property, products or services purchased, obtained, or considered, or other purchasing or consuming histories or tendencies.
- Biometric information: physiological, biological or behavioral characteristics that can be used, singly or in combination with each other or with other identifying data, to establish individual identity. Biometric information includes, but is not limited to, imagery of the iris, retina, fingerprint, face, hand, palm, vein patterns, and voice recordings, from which an identifier template, such as a faceprint, a minutiae template, or a voiceprint, can be extracted, and keystroke patterns or rhythms, gait patterns or rhythms, and sleep, health, or exercise data that contain identifying information.
- Internet or other electronic network activity information: browsing history, search history, information regarding interaction with a website, application, or advertisement, and other similar information.
- Geolocation data: physical location.
- Sensory data: audio, electronic, visual, thermal, olfactory, or similar information.
- Professional or employment-related information: job history or other employment information.
- Education information: non-public education information as defined in 20 U.S.C. § 1232g, 34 C.F.R. Part 99, such as transcripts, grades, class schedules, financial aid, or other records, files, documents or materials containing non-public information directly related to a student and maintained by an educational agency or institution.
- Inferences drawn from other categories of personal information: to create a profile about a consumer reflecting the consumer's preferences, characteristics, psychological trends, predispositions, behavior, attitudes, intelligence, abilities, and aptitudes.

We collect each category of personal information about consumers for the following business or commercial purposes:

- To facilitate the transaction of insurance and the investigation of associated claims;
- Auditing related to a current interaction with the consumer and concurrent transactions;
- Detecting security incidents, protecting against malicious, deceptive, fraudulent, or illegal activity, and prosecuting those responsible for that activity;
- Debugging to identify and repair errors that impair existing intended functionality;
- Undisclosed short-term, transient use;
- Performing services on behalf of the business or service provider;
- Undertaking internal research for technological development and demonstration;
- Undertaking activities to verify or maintain the quality or safety of a service;
- To confirm eligibility for insurance benefits or payments;
- To detect or prevent crime or fraud;
- In response to subpoenas, search warrants or other court orders;
- For actuarial or research studies;
- In connection with a sale of our business;
- In connection with employment or application for employment;
- In connection with your provision of services to us;
- As otherwise required by law.

We will provide you notice and obtain your explicit consent if we collect additional categories of personal information or use the personal information we previously collected for materially different purposes.

For questions or concerns about our privacy policies or practices, please contact us at (800) 488-2930 or privacy@bhhc.com. If you have a disability, you may contact us to access this notice in an alternative format.

For more information on your rights under the CCPA or to view our full privacy policy, please visit our website at www.bhhc.com.



BHHC WORKERS COMPENSATION DIVISION
REPRESENTING FINANCIAL STRENGTH & INTEGRITY

Policyholder Registration Instructions

To access your account and billing information, and other online BHHC resources, go to our website at BHHC.com, and click on the white login box in the upper right-hand corner of the screen, and enter your username (full email address) and password. New, first-time users without a login and password should choose the "New User" link at the bottom of the box and follow the subsequent registration instructions.

If you have a monthly reporting billing cycle (MPR), you must enter your payroll information on the Policyholder Portal. If applicable, a link on the Portal homepage will appear.

If you have any additional questions, please contact the BHHC Customer Care Center at (888) 495-8949.

Oak River Insurance Company

NCCI# 15458

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

This information page with "Policy Provisions" completes the below numbered

Insured's Name and Mailing Address - ITEM 1

California Coastal Rural Development Corporation
221 Main St #301
Salinas, CA 93901

Policy No. CAWC351506**Renewal Or Rewrite Of No. CAWC245682****Agent: CAH07053**

PACIFIC DIVERSIFIED INSURANCE SERVICES
15005 Conford Cir Ste 110
Morgan Hill, CA 95037

Other Workplaces, not shown above:

SEE LOCATION SCHEDULE ATTACHED

Issue Date: 02/15/2022

Servicing Office: San Francisco

Bureau I.D. No. 1558157

Federal Employer I.D. No. 940-27-6025

Effective - ITEM2: From: 02/22/2022 To: 02/22/2023 at 12:01 A.M. Standard Time at the insured's mailing address

Form of Business: Individual Partnership Corporation Joint Venture Non-Profit
Organization

Coverage - ITEM3:

A. Workers compensation Insurance: Part One of the policy applies to the Workers compensation Law of the states listed here.

CA

B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in item 3A. The limits of our liability under Part Two are:

Bodily Injury by Accident	\$1,000,000 Each Accident
Bodily Injury by Disease	\$1,000,000 Policy Limit
Bodily Injury by Disease	\$1,000,000 Each Employee

C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here:
All States Except: ND, OH, WA, WY

D. This policy includes these endorsements and schedules: See Schedule Attached

Premium - ITEM4: The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All information required below is subject to verification and change by audit.

Classification	Code No.	Premium Basis Total Estimated Annual Remuneration	Rates Per \$100 of Remuneration	Estimated Annual Premium
----------------	----------	---	---------------------------------	--------------------------

See Schedule Attached

Premium Adjustment Period: Annual

Total Estimated Annual Premium:

\$ 3,982

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**EXTENSION OF INFORMATION PAGE**

Policy Information Page Schedule

Item 4

Insured Name: California Coastal Rural Development Corporation

Effective Date: 02/22/2022

Expiration Date: 02/22/2023

Policy Number: CAWC351506

Classification	Code No.	Premium Basis Total Estimated Annual Remuneration	Rate Per \$100 Remuneration	Estimated Annual Premium
State California				
Effective: 02/22/2022-02/22/2023				
Salespersons-outside	8742	445,747	.61	2,719
Clerical Office Employees N.O.C.	8810	528,452	.40	2,114
Risk Adjustment				-951
Tot Est Standard Premium 02/22/2022-02/22/2023				3,882
Minimum Premium \$1,000				
Tot Est Standard Premium for California				3,882

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**EXTENSION OF INFORMATION PAGE**

Policy Information Page Schedule

Item 4

Insured Name: California Coastal Rural Development Corporation

Effective Date: 02/22/2022

Expiration Date: 02/22/2023

Policy Number: CAWC351506

Policy Totals

Total Estimated Premium for California	3,882
Expense Constant	100
Total Estimated Annual Premium	3,982
CA CA Workers Compensation Administration Revolving Fund 02/22/2022-02/22/2023 1.9277%	77
CA CA Workers Compensation Fraud Account Assessment 02/22/2022-02/22/2023 0.4856%	19
CA CIGA Surcharge	0
CA CA Subsequent Injuries Benefits Trust Fund Assessment 02/22/2022-02/22/2023 1.7451%	69
CA CA Uninsured Employers Benefits Trust Fund Assessment 02/22/2022-02/22/2023 0.1455%	6
CA CA Occupational Safety and Health Fund Assessment 02/22/2022-02/22/2023 0.9177%	37
CA CA Labor Enforcement and Compliance Fund 02/22/2022-02/22/2023 0.7102%	28
Total Estimated Cost for CAWC351506	4,218

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**PremPayTable**

Premium Payment Table

Insured Name: California Coastal Rural Development Corporation
Effective Date: 02/22/2022
Expiration Date: 02/22/2023 Policy No. CAWC351506

Policy Term	Due Date	Premium
02/22/2022 - 02/22/2023	03/08/2022	\$1,032.40
02/22/2022 - 02/22/2023	04/13/2022	\$1,061.87
02/22/2022 - 02/22/2023	06/13/2022	\$1,061.87
02/22/2022 - 02/22/2023	08/15/2022	\$1,061.86
		<hr/> \$4,218.00

Berkshire Hathaway Homestate Companies

Oak River Insurance Company

Dear Policyholder:

Oak River Insurance Company makes available to all policyholders Loss Control consultation services per Section 339.4, Article 6 of the Labor Code. Policyholders may request these services at no additional charge. We may conduct loss control visits for other purposes such as obtaining underwriting information.

Loss Control Services may include:

- Provision of training materials and training of employees and supervisors.
- Noise surveys.
- Assistance in developing safety meeting topics.
- Information on OSHA regulations.
- Major accident investigation.
- Hazard identification surveys; safety inspections.
- Assistance in development of safety incentive plans and return to work programs.
- Assistance in evaluating and complying with Title 8 Section 3203 which requires all California employers to establish and implement an effective Injury and Illness Prevention Program.

When appropriate, a Loss Control representative will schedule periodic visits to your facilities. If you are interested in scheduling a Loss Control visit, or would like more information, please contact your broker or Oak River Insurance Company

Workers Compensation insurance policyholders may register comment about the insurer's Loss Control consultation services in writing to:

State of California
Department of Industrial Relations
Division of Occupational Safety & Health
P.O. Box 420603
San Francisco, CA 94142

**ENDORSEMENT AGREEMENT LIMITING AND RESTRICTING THIS INSURANCE
Employee Insured by General Employer Excluded**

The insurance under this policy is limited as follows: It is AGREED that, anything in this policy to the contrary notwithstanding, this policy DOES NOT INSURE:

**NO LIABILITY FOR EMPLOYEE
INSURED BY GENERAL
EMPLOYER**

Any liability you may have as the special employer of an employee who is not on your payroll at the time of injury, based upon your representation that: (1) you have entered into a valid and enforceable agreement pursuant to Labor Code Section 3602(d) with the employee's general employer under which the general employer agrees to secure the payment of compensation for such employee and (2) the general employer has obtained workers' compensation coverage for the employee.

This policy will be deemed unlimited to the extent that any of the following requirements are not met: (1) the employer actually obtains coverage for the excluded liability and (2) such coverage remains in effect for the term of this policy.

Nothing in this endorsement shall be held to vary, alter, waive or extend any of the terms, conditions, agreements, or limitations of this policy other than as above stated. Nothing elsewhere in this policy shall be held to vary, alter, waive or limit the terms, conditions, agreements or limitations in this endorsement.

It is further agreed that "remuneration" when used as a premium basis for such insurance as is afforded by this policy shall not include the remuneration of any person excluded from coverage in accordance with the foregoing.

FAILURE TO SECURE THE PAYMENT OF FULL COMPENSATION BENEFITS FOR ALL EMPLOYEES AS REQUIRED BY LABOR CODE SECTION 3700 IS A VIOLATION OF LAW AND MAY SUBJECT THE EMPLOYER TO THE IMPOSITION OF A WORK STOP ORDER, LARGE FINES AND OTHER SUBSTANTIAL PENALTIES (Labor Code Section 3710.1, et seq.).

By signature below, you affirm that, with respect to any employee who is also the employee of a general employer, (1) you have entered into a valid and enforceable agreement pursuant to Labor Code Section 3602(d) with the employee's general employer under which the general employer agrees to secure the payment of compensation for such employee and (2) the general employer has obtained workers' compensation coverage for the employee.

Countersigned By _____

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 02/22/2022
Insured

Policy No.: CAWC351506

Endorsement No.:
Premium \$

Insurance Company Oak River Insurance Company

Countersigned by _____

Claim Kits by State

BHHC has created convenient, downloadable claims kits by state that are available on our website at bhhc.com. We have stopped mailing paper copies of claims kits in favor of these files that you can view or print at your convenience.

Commonly Asked Questions

Do I need a user ID and password for your website to get this information?

No, you are not required to log in to access these claim kits.

What if we conduct business in multiple states? Are claims kits for all states available?

Yes, claims kits are available for all 46 states that are not state-run for Workers Compensation and USL&H.

How difficult is the process? Can you give me a step-by-step guide?

- 1 Go to the bhhc.com homepage. Scroll down to the footer and click on "Claim Center" under "Workers Compensation".



- 2 Click on "Claim Kits by State" under "Claim Center" on the sidebar.



- 3 Select your state to view the entire Claim Kit online. The Claim Kit includes the required state-specific forms and posting notices.



Please contact the BHHC Customer Call Center at 888-495-8949 if you have any questions regarding this online capability.



PO Box 881236, San Francisco, CA 94188
(888) 495-8949
bhhc.com

Important Alert for Policy #CAWC351506

Please read this important advance notice which outlines our policy for handling Workers Compensation premium for subcontractors. If you have any questions or do not understand any portion of the explanation, we suggest you contact your agent immediately because the cost of your coverage may be affected at final audit time.*

Premium Charge for Subcontractors

If you hire subcontractors who do not have their own Workers Compensation insurance, your premium calculation will be modified to include any amounts paid for their labor. This additional premium is addressed in Part Five C 2 of your policy and compensates us for the risk that one or more of these subcontractors (or one of the subcontractor's employees) will file a claim for benefits under your coverage.

Although subcontractors may appear to be independent businesses, claims filed by them (or their employees) are common after an injury. Under Workers Compensation law, the legal definition of "employee" is much broader than the common understanding of that term. In addition, many states make you – as the contractor – automatically responsible for certain expenses due to work-related injuries to your independent subcontractors or their employees. Regardless of the state law, Berkshire Hathaway Homestate Companies must pay legal fees under Part One of your policy to defend these claims and must also pay Workers Compensation benefits in many cases.

For these reasons and in accordance with Part Five C 2 of your policy, we will charge appropriate additional premium unless the subcontractors have their own in-force Workers Compensation coverage during your entire policy period, and you are able to provide acceptable proof of this coverage to us prior to completion of your final audit. Evidence of general liability insurance, pre-determinations or statements of independent contractor status, hold harmless agreements, etc. are not acceptable substitutes, and no exceptions will be made for sole proprietors or others on the grounds that such parties are not required to purchase (or cannot purchase) Workers Compensation insurance. The risk of a claim against your policy from an uninsured subcontractor is the same, regardless of his or her reason for having no coverage. Furthermore, these additional charges will be imposed when applicable, even if exceptions have been granted to you by us or by another carrier in the past.

Please realize that premium may be charged for subcontractors hired by uninsured entities owned or controlled by you. Premium will be charged if the Rating Bureau rules in your state require the related entity to be combined in a single policy with the company we are insuring.

Ultimately, we believe this policy is in the best interests of all parties, and we hope that this advance notification will prevent any misunderstandings at a later date. As always, we thank you for selecting Berkshire Hathaway Homestate Companies, and we look forward to serving you during the upcoming policy year.

***Note: A "subcontractor" is a person or organization paid to assist you in providing a product or service to your customer or client (and not just to you). Workers Compensation laws in most states presume that such vendors are "employees" who, therefore, often file claims seeking benefits.**

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION
A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

**PART ONE
WORKERS COMPENSATION INSURANCE**
A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other

(Ed. 1-15)

insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. **Payments You Must Make**

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. **Recovery From Others**

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. **Statutory Provisions**

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the

workers compensation law that apply to:

- a. benefits payable by this insurance;
- b. special taxes, payments into security or other special funds, and assessments payable by us under that law.

6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO

EMPLOYERS LIABILITY INSURANCE

A. **How This Insurance Applies**

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. **We Will Pay**

We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against

such third party as a result of injury to your employee;

2. For care and loss of services; and
3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. Because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. Punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. Bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. Bodily injury intentionally caused or aggravated by you;
6. Bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. Bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sections 901 et seq.), the Nonappropriated Fund Instrumentalities Act (5 U.S.C. Sections 8171 et seq.), the Outer Continental Shelf Lands Act (43 U.S.C. Sections 1331 et seq.), the Defense Base Act (42 U.S.C. Sections 1651-1654), the Federal Mine Safety and Health Act (30 U.S.C. Sections 801 et seq. and 901-944), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;

9. Bodily injury to any person in work subject to the Federal Employers' Liability Act (45 U.S.C. Sections 51 et seq.), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. Bodily injury to a master or member of the crew of any vessel, and does not cover punitive damages related to your duty or obligation to provide transportation, wages, maintenance, and cure under any applicable maritime law;
11. Fines or penalties imposed for violation of federal or state law; and
12. Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Sections 1801 et seq.) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgment as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

WC 00 00 00 C**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**

(Ed. 1-15)

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. **Bodily Injury by Accident.** The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. **Bodily Injury by Disease.** The limit shown for "bodily injury by disease—policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease—each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and

2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

**PART THREE
OTHER STATES INSURANCE**

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

**PART FOUR
YOUR DUTIES IF INJURY OCCURS**

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal

papers related to the injury, claim, proceeding or suit.

4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE—PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

(Ed. 1-15)

PART SIX—CONDITIONS**A. Inspection**

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancellation notice.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**WC 00 04 21 E****(Ed. 01-2021)****Catastrophe (Other Than Certified Acts of Terrorism) Premium Endorsement**

This endorsement is notification that your insurance carrier is charging premium to cover the losses that may occur in the event of a Catastrophe (Other Than Certified Acts of Terrorism) as that term is defined below. Your policy provides coverage for workers compensation losses caused by a Catastrophe (Other Than Certified Acts of Terrorism). This premium charge does not provide funding for Certified Acts of Terrorism contemplated under the Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement (WC 00 04 22 C), attached to this policy.

For purposes of this endorsement, the following definitions apply:

- **Catastrophe (Other Than Certified Acts of Terrorism):** Any single event, resulting from an Earthquake, Noncertified Act of Terrorism, or Catastrophic Industrial Accident, which results in aggregate workers compensation losses in excess of \$50 million.
- **Earthquake:** The shaking and vibration at the surface of the earth resulting from underground movement along a fault plane or from volcanic activity.
- **Noncertified Act of Terrorism:** An event that is not certified as an Act of Terrorism by the Secretary of the Treasury pursuant to the Terrorism Risk Insurance Act of 2002 (as amended) but that meets all of the following criteria:
 - a. It is an act that is violent or dangerous to human life, property, or infrastructure;
 - b. The act results in damage within the United States, or outside of the United States in the case of the premises of United States missions or air carriers or vessels as those terms are defined in the Terrorism Risk Insurance Act of 2002 (as amended); and
 - c. It is an act that has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- **Catastrophic Industrial Accident:** A chemical release, large explosion, or small blast that is localized in nature and affects workers in a small perimeter the size of a building.

The premium charge for the coverage your policy provides for workers compensation losses caused by a Catastrophe (Other Than Certified Acts of Terrorism) is shown in Item 4 of the Information Page or in the Schedule below.

Schedule

State	Rate	Premium
--------------	-------------	----------------

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 02/22/2022

Policy No.: CAWC351506

Endorsement No.:

Insured:

Premium \$

Insurance Company: Oak River Insurance Company

Countersigned by _____

WC 00 04 21 E

(Ed. 01-2021)

Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement

This endorsement addresses the requirements of the Terrorism Risk Insurance Act of 2002 as amended and extended by the Terrorism Risk Insurance Program Reauthorization Act of 2019. It serves to notify you of certain limitations under the Act, and that your insurance carrier is charging premium for losses that may occur in the event of an Act of Terrorism.

Your policy provides coverage for workers compensation losses caused by Acts of Terrorism, including workers compensation benefit obligations dictated by state law. Coverage for such losses is still subject to all terms, definitions, exclusions, and conditions in your policy, and any applicable federal and/or state laws, rules, or regulations.

Definitions

The definitions provided in this endorsement are based on and have the same meaning as the definitions in the Act. If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments thereto, including any amendments resulting from the Terrorism Risk Insurance Program Reauthorization Act of 2019.

"Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States as meeting all of the following requirements:

- a. The act is an act of terrorism.
- b. The act is violent or dangerous to human life, property, or infrastructure.
- c. The act resulted in damage within the United States, or outside of the United States in the case of the premises of United States missions or certain air carriers or vessels.
- d. The act has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured Loss" means any loss resulting from an act of terrorism (and, except for Pennsylvania, including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at the premises of United States missions or to certain air carriers or vessels.

"Insurer Deductible" means, for the period beginning on January 1, 2021, and ending on December 31, 2027, an amount equal to 20% of our direct earned premiums during the immediately preceding calendar year.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**WC 00 04 22 C****(Ed. 01-2021)****Limitation of Liability**

The Act limits our liability to you under this policy. If aggregate Insured Losses exceed \$100,000,000,000 in a calendar year and if we have met our Insurer Deductible, we are not liable for the payment of any portion of the amount of Insured Losses that exceeds \$100,000,000,000; and for aggregate Insured Losses up to \$100,000,000,000, we will pay only a pro rata share of such Insured Losses as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured Losses would be partially reimbursed by the United States Government. If the aggregate industry Insured Losses occurring in any calendar year exceed \$200,000,000, the United States Government would pay 80% of our Insured Losses that exceed our Insurer Deductible
2. Notwithstanding item 1 above, the United States Government will not make any payment under the Act for any portion of Insured Losses that exceed \$100,000,000,000.
3. The premium charge for the coverage your policy provides for Insured Losses is included in the amount shown in Item 4 of the Information Page or in the Schedule below.

State	Schedule Rate	Premium
-------	------------------	---------

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 02/22/2022

Policy No.: CAWC351506

Endorsement No.:

Insured:

Premium

Insurance Company: Oak River Insurance Company

Countersigned by _____

WC 00 04 22 C

(Ed. 01-2021)

EMPLOYERS' LIABILITY COVERAGE AMENDATORY ENDORSEMENT - CALIFORNIA

The insurance afforded by Part Two (Employers' Liability Insurance) by reason of designation of California in item 3 of the information page is subject to the following provisions:

A. **"How This Insurance Applies,"** is amended to read as follows:

A. How This Insurance Applies

This employers' liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury means a physical injury, including resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in California.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

C. The "Exclusions" section is modified as follows (all other exclusions in the "Exclusions" section remain as is):

1. Exclusion 1 is amended to read as follows:
 1. liability assumed under a contract.
2. Exclusion 2 is deleted.
3. Exclusion 7 is amended to read as follows:
 7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, termination of employment, or any personnel practices, policies, acts or omissions.
4. The following exclusions are added:
 1. bodily injury to any member of the flying crew of any aircraft.
 2. bodily injury to an employee when you are deprived of statutory or common law defenses or are subject to penalty because of your failure to secure your obligations under the workers' compensation law(s) applicable to you or otherwise fail to comply with that law.
 3. liability arising from California Labor Code Section 2810.3 which relates to labor contracting.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 02/22/2022

Policy No.: CAWC351506

Endorsement No.:

Insured:

Premium \$

Insurance Company: Oak River Insurance Company

Countersigned by _____

S M S M S S

03 02
(d. 0)

S S M S S S M

his endorsement applies only to work sub ect to the ongshore and arbor orkers ompensation ct
ection .

he policy definition of workers compensation law does not include the ongshore and arbor orkers ompensation
ct or any amendment to that ct.

he insurance provided by art wo mployers iability Insurance of the policy does not cover bodily in ury to any
person in work sub ect to the ongshore and arbor orkers ompensation ct or any amendment to that law.

his endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(he information below is re ired only when this endorsement is iss ed s bse ent to preparation of the policy.)

ndorsement ffective 02/22/2022

olicy o. CAWC351506

ndorsement o.

Insured

remium

Insurance ompany Oak River Insurance Company

ountersigned by _____

03 02

d.

OPTIONAL PREMIUM INCREASE ENDORSEMENT- CALIFORNIA

You must provide us, or our authorized representative, access to records necessary to perform a payroll verification audit. If you fail to provide access within 90 days after expiration of the policy, you are liable to pay a total premium equal to 3 times our current estimate of the annual premium for your policy. In addition, if you fail to provide access after our third request within a 90 day or longer period, you are also liable for our costs in attempting to perform the audit unless you provide a compelling business reason for your failure.

We will contact you to schedule appointments during normal business hours.

We will notify you of your failure to provide access by mailing a certified, return-receipt document stating the increased premium and the total amount of our costs incurred in our attempt(s) to perform an audit. In addition to any other obligations under this contract, 30 days after you receive the notification, you will be obligated to pay the total premium and costs referenced above. If, thereafter, you provide access to your records within three years after the policy expires, or within another mutually agreed upon time, and we succeed in performing the audit to our satisfaction, we will revise your total premium and the costs due to reflect the results of the audit.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 02/22/2022

Policy No.: CAWC351506

Endorsement No.:

Insured:

Premium \$

Insurance Company: Oak River Insurance Company

Countersigned by _____

S M M M S S S

S , S S S S S . If the employer named in Item of the Information age is a sole proprietor a husband and wife or a partnership in which the general partners are husband and wife the insurance under this policy is limited as follows

It is agreed that anything in this policy to the contrary notwithstanding this olicy bodily in ury sustained by any of the following relatives of the employer and spouse or of either if at the time of in ury such relative

resides in the household of the employer and spouse or of either or is a child under the age of twelve years

unless such relative is specifically covered by name in Item of the Information age or an endorsement is attached to this policy.

S spouse child by birth or adoption stepchild grandchild son in law daughter in law parent S stepparent parent in law grandparent brother sister stepbrother stepsister half brother half sister brother in law sister in law uncle aunt nephew niece.

private residence employees of ns red

It is further agreed that this olicy bodily in ury sustained by an employee who is covered for workers' compensation benefits of a policy also affording comprehensive personal liability insurance which has been issued to this insured.

It is further agreed that "remuneration" when used as premium basis for insurance as is afforded by the policy by reason of the designation of alifornia in Item of the Information age shall not include the remuneration of any person e cluded from coverage in accordance with the foregoing.

Sole roprietor ot ns red

If the employer named in Item of the Information age is an individual employer whether as an individual or sole proprietor by any means the employer is not insured as an employee by this policy anything in this policy to the contrary notwithstanding.

S

If the employer named in Item of the Information age is a partnership this policy applies to the general partners as employees unless they are specifically e cluded by an endorsement issued to form a part of this policy.

he premium basis for this policy includes the entire remuneration of each covered general partner sub ect to the minimum and ma imum remuneration as established by the alifornia orkers' ompensation Insurance ating ureau.

S S

If the employer named in Item of the Information age is a private corporation whose officers and directors are the sole shareholders this policy applies to all such officers and directors as employees unless they are specifically e cluded by an endorsement issued to form a part of this policy.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

03 0 (Ed. 1-07)

The premium basis for this policy includes the entire remuneration of each covered officer or director subject to the minimum and maximum remuneration as established by the California Workers' Compensation Insurance Rating Bureau.

M M S

This policy shall not operate as an election by the insured to insure under certain employees who are excluded by the workers' compensation law of the state of California unless such employees are engaged in operations specifically described in the Information pages.

This policy does not apply under certain provisions with respect to any employee employment not described in the declarations unless the policy applies under certain provisions with respect to such employee.

Section 3.0, et seq. S S 3 00 S M S M S S M S S S (abor ode)

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement effective 02/22/2022 Policy no. CAWC351506 Endorsement no. Insured Insurance company Oak River Insurance Company Premium

Countersigned by _____

POLICYHOLDER NOTICE

California Workers' Compensation Insurance Rating Laws

Pursuant to Section 11752.8 of the California Insurance Code, we are providing you with an explanation of the California workers' compensation rating laws.

1. We establish our own rates for workers' compensation. Our rates, rating plans, and related information are filed with the insurance commissioner and are open for public inspection.
2. The insurance commissioner can disapprove our rates, rating plans, or classifications only if he or she has determined after public hearing that our rates might jeopardize our ability to pay claims or might create a monopoly in the market. A monopoly is defined by law as a market where one insurer writes 20% or more of that part of the California workers' compensation insurance that is not written by the State Compensation Insurance Fund. If the insurance commissioner disapproves our rates, rating plans, or classifications, he or she may order an increase in the rates applicable to outstanding policies.
3. Rating organizations may develop pure premium rates that are subject to the insurance commissioner's approval. A pure premium rate reflects the anticipated cost and expenses of claims per \$100 of payroll for a given classification. Pure premium rates are advisory only, as we are not required to use the pure premium rates developed by any rating organization in establishing our own rates.
4. We must adhere to a single, uniform experience rating plan. If you are eligible for experience rating under the plan, we will be required to adjust your premium to reflect your claim history. A better claim history generally results in a lower experience rating modification; more claims, or more expensive claims, generally result in a higher experience rating modification. The uniform experience rating plan, which is developed by the insurance rating organization designated by the insurance commissioner, is subject to approval by the insurance commissioner.
5. A standard classification system, developed by the insurance rating organization designated by the insurance commissioner, is subject to approval by the insurance commissioner. The standard classification system is a method of recognizing and separating policyholders into industry or occupational groups according to their similarities and/or differences. We can adopt and apply the standard classification system or develop and apply our own classification system, provided we can report the payroll, expenses, and other costs of claims in a way that is consistent with the uniform statistical plan or the standard classification system.
6. Our rates and classifications may not violate the Unruh Civil Rights Act or be unfairly discriminatory.
7. We will provide an appeal process for you to appeal the way we rate your insurance policy. The process requires us to respond to your written appeal within 30 days. If you are not satisfied with the result of your appeal, you may appeal our decision to the insurance commissioner.

CALIFORNIA WORKERS' COMPENSATION INSURANCE NOTICE OF NONRENEWAL

Section 11664 of the California Insurance Code requires us, in most instances, to provide you with a notice of nonrenewal. Except as specified in paragraphs 1 through 6 below, if we elect to nonrenew your policy, we are required to deliver or mail to you a written notice stating the reason or reasons for the nonrenewal of the policy. The notice is required to be sent to you no earlier than 120 days before the end of the policy period and no later than 30 days before the end of the policy period. If we fail to provide you the required notice, we are required to continue the coverage under the policy with no change in the premium rate until 60 days after we provide you with the required notice.

We are not required to provide you with a notice of nonrenewal in any of the following situations:

1. Your policy was transferred or renewed without a change in its terms or conditions or the rate on which the premium is based to another insurer or other insurers who are members of the same insurance group as us.
2. The policy was extended for 90 days or less and the required notice was given prior to the extension.
3. You obtained replacement coverage or agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage.
4. The policy is for a period of no more than 60 days and you were notified at the time of issuance that it may not be renewed.
5. You requested a change in the terms or conditions or risks covered by the policy within 60 days prior to the end of the policy period.
6. We made a written offer to you to renew the policy at a premium rate increase of less than 25 percent.
 - (A) If the premium rate in your governing classification is to be increased 25 percent or greater and we intend to renew the policy, we shall provide a written notice of a renewal offer not less than 30 days prior to the policy renewal date. The governing classification shall be determined by the rules and regulations established in accordance with California Insurance Code Section 11750.3(c).
 - (B) For purposes of this Notice, "premium rate" means the cost of insurance per unit of exposure prior to the application of individual risk variations based on loss or expense considerations such as scheduled rating and experience rating.

This notice does not change the policy to which it is attached.

POLICYHOLDER NOTICE

CALIFORNIA INSURANCE GUARANTEE ASSOCIATION (CIGA) SURCHARGE

Companies writing property and casualty insurance business in California are required to participate in the California Insurance Guarantee Association. If a company becomes insolvent, the California Insurance Guarantee Association settles the unpaid claims and assesses each insurance company for its fair share.

California law requires all companies to surcharge policies to recover these assessments. If your policy is surcharged, "CA Surcharge" or "CA Surcharge (CIGA Surcharge)" with an amount will be displayed on your premium notice.

This notice does not change the policy to which it is attached.

EXTENSION OF INFORMATION PAGE

Schedule of Named Insured

ITEM 1

POLICY NO. CAWC351506

Named Insured

FEIN

EXTENSION OF INFORMATION PAGE

Schedule of Locations

ITEM 1

POLICY NO. CAWC351506

- 2 2625 S. Miller Street , Santa Maria, CA 93455 (02/22/2022 - 02/22/2023)
- 3 430 E Carillo St , Santa Barbara, CA 93101 (02/22/2022 - 02/22/2023)
- 4 106 Lincoln Ave , Salinas, CA 93901-2637 (02/22/2022 - 02/22/2023)

EXTENSION OF INFORMATION PAGE

Schedule of Forms

ITEM 3D

POLICY NO. CAWC351506

	<u>Form Numbers</u>	<u>Applicable States</u>
INT0114	Privacy Policy	All
M-5970	California Consumer Privacy Act Notice	All
PolRegInst	Policyholder Registration Instructions	All
WC990312	Information Page (Dec Page)	All
WC990313	Policy Info Page (Class Schedule)	All
PremPayTable	Prem Pay Table	All
WCLossControlNo	Loss Control Availability	All
WC040317B	L&R-Employee Insrd by Gen Employer Excl	All
INT0478A	Electronic Claims Kit Notification	All
INT0480	Premium Charge for Subcontractors	All
WC000000C	WC and Emp Liability Ins. Policy	All
WC000421E	Catastrophe Premium Endorsement	All
WC000422C	Terr Risk Ins Prog Reauthorization Act	All
WC040360B	CA Empl. Liab. Coverage Amendatory Endst	All
WC990302	Longshore & Harbor WC Act	All
WC040421	CA Optional Premium Endorsement	All
WC990301A	EndstLimiting and Restricting	All
PN049902B	CA Policyholder Notice - WC Rating Law s	All
PN049904	CA Ins. Guarantee Assoc.(ciga) Surcharge	All
WC040002	CA Ext Of Info Page-Sch Of Named Insured	All
WC040003	CA Ext Of Info Page-Sch Of Locations	All
WC040004	CA Ext Of Info Page-Schedule Of Forms	All
WC040301D	Policy Amendatory Endorsement-California	All
WC040310	CA Duty To Defend	All
WC040336A	L&R- Jointly Conducted Operations Excl	All
WC040604	CA COVID-19 Reporting Requirement Endst	All
WC990407A	Premium Discount Endorsement	All
WC990607E	CA Cancellation Endst	All
WC990608	Premium Endorsement	All
PN049901I	CA Your Right To Rating And Divdend Info	All

POLICY AMENDATORY ENDORSEMENT—CALIFORNIA

It is agreed that, anything in the policy to the contrary notwithstanding, such insurance as is afforded by this policy by reason of the designation of California in Item 3 of the Information Page is subject to the following provisions:

1. **Minors Illegally Employed – Not Insured.** This policy does not cover liability for additional compensation imposed on you under Section 4557, Division IV, Labor Code of the State of California, by reason of injury to an employee under sixteen years of age and illegally employed at the time of injury.
2. **Punitive or Exemplary Damages – Uninsurable.** This policy does not cover punitive or exemplary damages where insurance of liability therefor is prohibited by law or contrary to public policy.
3. **Increase in Indemnity Payment – Reimbursement.** You are obligated to reimburse us for the amount of increase in indemnity payments made pursuant to Subdivision (d) of Section 4650 of the California Labor Code, if the late indemnity payment which gives rise to the increase in the amount of payment is due less than seven (7) days after we receive the completed claim form from you. You are obligated to reimburse us for any increase in indemnity payments not covered under this policy and will reimburse us for any increase in indemnity payment not covered under the policy when the aggregate total amount of the reimbursement payments paid in a policy year exceeds one hundred dollars (\$100).

If we notify you in writing, within 30 days of the payment, that you are obligated to reimburse us, we will bill you for the amount of increase in indemnity payment and collect it no later than the final audit. You will have 60 days, following notice of the obligation to reimburse, to appeal the decision of the insurer to the Department of Insurance.

4. **Application of Policy.** Part One, "Workers Compensation Insurance", A, "How This Insurance Applies", is amended to read as follows:

This workers compensation insurance applies to bodily injury by accident or disease, including death resulting therefrom. Bodily injury by accident must occur during the policy period. Bodily injury by disease must be caused or aggravated by the conditions of your employment. Your employee's exposure to those conditions causing or aggravating such bodily injury by disease must occur during the policy period.

5. **Rate Changes.** The premium and rates with respect to the insurance provided by this policy by reason of the designation of California in Item 3 of the Information Page are subject to change if ordered by the Insurance Commissioner of the State of California pursuant to Section 11737 of the California Insurance Code.
6. **Long Term Policy.** If this policy is written for a period longer than one year, all the provisions of this policy shall apply separately to each consecutive twelve-month period or, if the first or last consecutive period is less than twelve months, to such period of less than twelve months, in the same manner as if a separate policy had been written for each consecutive period.
7. **Statutory Provision.** Your employee has a first lien upon any amount which becomes owing to you by us on account of this policy, and in the case of your legal incapacity or inability to receive the money and pay it to the claimant, we will pay it directly to the claimant.
8. Part Five, "Premium", E, "Final Premium", is amended to read as follows:

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

- a. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
- b. If you cancel, final premium may be more than pro rata; it will be based on the time this policy was in force, and may be increased by our short-rate cancellation table and procedure. Final premium will not be less than the pro rata share of the minimum premium.

It is further agreed that this policy, including all endorsements forming a part thereof, constitutes the entire contract of insurance. No condition, provision, agreement, or understanding not set forth in this policy or such endorsements shall affect such contract or any rights, duties, or privileges arising therefrom.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

**WC 04 03 01 D
(Ed. 02-18)**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective:

Policy No.:

Endorsement No.:

Insured:

Insurance Company:

Countersigned By _____

S M S M S S

0 03 0
(d. 0)

The insurance afforded by Article Section **11111**, is hereby deleted and replaced with the following

We have the right and duty to defend at our expense any claim or proceeding against you before the California workers' compensation appeals board or its equivalent in any other state and any appeal of a decision therefrom for the benefits payable by this workers' compensation insurance. We have the right to investigate and settle these claims or proceedings.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. Nothing contained in this section shall amend, modify, restrict or otherwise alter any obligations or conditions under Article Two employer's liability Insurance of the policy.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement effective 02/22/2022

Policy no. CAWC351506

Endorsement no.

Insured

Premium

Insurance company Oak River Insurance Company

Countersigned by _____

0 03 0

d.

**ENDORSEMENT AGREEMENT LIMITING AND RESTRICTING THIS INSURANCE
Jointly Conducted Operations Exclusion**

The insurance under this policy is limited as follows: It is AGREED that, anything in this policy to the contrary notwithstanding, this policy DOES NOT INSURE:

**THIS POLICY DOES
NOT INSURE
LIABILITY FROM
JOINTLY
CONDUCTED
OPERATIONS**

Any liability which the employer named in Item 1 of the Information Page may have arising out of operations conducted jointly by the named employer with any other person, firm or corporation, except as specifically set forth in Item 1 of the Information Page or by endorsement attached to this policy.

Nothing in this endorsement shall be held to vary, alter, waive or extend any of the terms, conditions, agreements, or limitations of this policy other than as above stated. Nothing elsewhere in this policy shall be held to vary, alter, waive or limit the terms, conditions, agreements, or limitations of this endorsement.

FAILURE TO SECURE THE PAYMENT OF FULL COMPENSATION BENEFITS FOR ALL EMPLOYEES AS REQUIRED BY LABOR CODE SECTION 3700 IS A VIOLATION OF LAW AND MAY SUBJECT THE EMPLOYER TO THE IMPOSITION OF A WORK STOP ORDER, LARGE FINES AND OTHER SUBSTANTIAL PENALTIES (Labor Code Section 3710.1, et seq.).

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 02/22/2022
Insured:

Policy No.: CAWC351506

Endorsement No.:
Premium:

Insurance Company:
Oak River Insurance Company

Countersigned by _____

COVID-19 REPORTING REQUIREMENT ENDORSEMENT – CALIFORNIA

In addition to the requirements under Part 4, "Your Duties if Injury Occurs" of your policy, if you have five or more employees and an employee that is not described in California Labor Code section 3212.87 tests positive for COVID-19, you are required to report the following information as provided below.

Reporting COVID-19 Positive Tests from July 6, 2020 to September 17, 2020

Pursuant to California Labor Code Section 3212.88(k)(2), if you are aware of an employee testing positive for COVID-19 on or after July 6, 2020 and prior to September 17, 2020, you must report to your claims administrator in writing via electronic mail or facsimile within 30 business days of September 17, 2020, all of the following:

- (1) An employee has tested positive. For purposes of this reporting, do not provide any personally identifiable information regarding the employee who tested positive for COVID-19 unless the employee asserts the infection is work related or has filed a claim form pursuant to California Labor Code Section 5401.
- (2) The date that the employee tests positive, which is the date the specimen was collected for testing.
- (3) The specific address or addresses of the employee's specific place of employment during the 14-day period preceding the date of the employee's positive test.
- (4) The highest number of employees who reported to work at each of the employee's specific places of employment on any given work day between July 6, 2020 and September 17, 2020.

Reporting COVID-19 Positive Tests from September 17, 2020 to January 1, 2023

Pursuant to California Labor Code Section 3212.88(i), when you know, or reasonably should know, that an employee has tested positive for COVID-19 between September 17, 2020 and January 1, 2023, you must report to your claims administrator in writing via electronic mail or facsimile within 3 business days all of the following:

- (1) An employee has tested positive. For purposes of this reporting, do not provide any personally identifiable information regarding the employee who tested positive for COVID-19 unless the employee asserts the infection is work related or has filed a claim form pursuant to California Labor Code Section 5401.
- (2) The date that the employee tests positive, which is the date the specimen was collected for testing.
- (3) The specific address or addresses of the employee's specific place of employment during the 14-day period preceding the date of the employee's positive test.
- (4) The highest number of employees who reported to work at the employee's specific place of employment in the 45-day period preceding the last day the employee worked at each specific place of employment.

Labor Code Section 3212.88(j) states that the intentional submission of false or misleading information or the failure to report the above information as required may subject you to a civil penalty in the amount of up to \$10,000 to be assessed by the Labor Commissioner.

For the purposes of these reporting requirements, California Labor Code Section 3212.88(m) provides the following:

- (1) "COVID-19" means the 2019 novel coronavirus disease.
- (2) "Test" or "testing" means a PCR (Polymerase Chain Reaction) test approved for use or approved for emergency use by the United States Food and Drug Administration to detect the presence of viral RNA. "Test" or "testing" does not include serologic testing, also known as antibody testing. "Test" or "testing" may include any other viral culture test approved for use or approved for emergency use by the United States Food and Drug Administration to detect the presence of viral RNA which has the same or higher sensitivity and specificity as the PCR Test.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 04 06 04

(Ed. 09-20)

- (3) "A specific place of employment" means the building, store, facility, or agricultural field where an employee performs work at the employer's direction. "A specific place of employment" does not include the employee's home or residence, unless the employee provides home health care services to another individual at the employee's home or residence.

For up-to-date guidance on claims reporting related to COVID-19 and relevant legislation, please view our website at bhccovid19.com. There you will find insights and tools to clarify new efforts that may be required of you due to SB1159 and other legislation. For additional questions, please contact Customer Care at 800-661-6029 or clientservices@bhhc.com.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 02/22/2022

Policy No. CAWC351506

Endorsement No.

Insured

Insurance Company Oak River Insurance Company

Countersigned
By

PREMIUM DISCOUNT ENDORSEMENT

The premium for this policy and the policies, if any, listed in Item 3 of the Schedule may be eligible for a discount. This endorsement shows your estimated discount in Items 1 or 2 of the Schedule. The final calculation of premium discount will be determined by our manuals and your premium basis as determined by audit. Premium subject to retrospective rating is not subject to premium discount.

SCHEDULE

ESTIMATED ELIGIBLE PREMIUM \$ 3,882

1. STATE CA

Premium Discount Table (In Percent)

Standard Premium		Discount		Standard Premium		Discount			
\$	1	- \$	25,384	0%	\$	85,185	- \$	91,999	2.5%
\$	25,385	- \$	26,189	0.1%	\$	92,000	- \$	99,999	2.6%
\$	26,190	- \$	27,048	0.2%	\$	100,000	- \$	107,999	2.7%
\$	27,049	- \$	27,965	0.3%	\$	108,000	- \$	117,390	2.8%
\$	27,966	- \$	28,946	0.4%	\$	117,391	- \$	128,570	2.9%
\$	28,947	- \$	29,999	0.5%	\$	128,571	- \$	142,104	3%
\$	30,000	- \$	31,131	0.6%	\$	142,105	- \$	158,823	3.1%
\$	31,132	- \$	32,352	0.7%	\$	158,824	- \$	179,999	3.2%
\$	32,353	- \$	33,672	0.8%	\$	180,000	- \$	205,262	3.3%
\$	33,673	- \$	35,105	0.9%	\$	205,263	- \$	229,411	3.4%
\$	35,106	- \$	36,666	1%	\$	229,412	- \$	259,999	3.5%
\$	36,667	- \$	38,371	1.1%	\$	260,000	- \$	299,999	3.6%
\$	38,372	- \$	40,243	1.2%	\$	300,000	- \$	339,999	3.7%
\$	40,244	- \$	42,307	1.3%	\$	340,000	- \$	392,307	3.8%
\$	42,308	- \$	44,594	1.4%	\$	392,308	- \$	463,635	3.9%
\$	44,595	- \$	47,142	1.5%	\$	463,636	- \$	539,999	4%
\$	47,143	- \$	49,999	1.6%	\$	540,000	- \$	623,076	4.1%
\$	50,000	- \$	52,856	1.7%	\$	623,077	- \$	736,363	4.2%
\$	52,857	- \$	56,060	1.8%	\$	736,364	- \$	899,999	4.3%
\$	56,061	- \$	59,676	1.9%	\$	900,000	- \$	1,999,999	4.4%
\$	59,677	- \$	63,792	2%	\$	1,100,000	- \$	1,344,443	4.5%
\$	63,793	- \$	68,518	2.1%	\$	1,344,444	- \$	1,728,570	4.6%
\$	68,519	- \$	73,999	2.2%	\$	1,728,571	- \$	2,419,999	4.7%
\$	74,000	- \$	79,309	2.3%	\$	2,420,000	- \$	4,033,332	4.8%
\$	79,310	- \$	85,184	2.4%	\$	4,033,333	- \$	12,099,999	4.9%

2. AVERAGE PERCENTAGE DISCOUNT:

3. OTHER POLICIES:

4. If there are no entries in Items 1, 2 and 3, of the Schedule see the Premium Discount Endorsement attached to your policy number

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 02/22/2022

Policy No.: CAWC351506

Endorsement No.:

Insured:

Premium \$

Insurance Company: Oak River Insurance Company

Countersigned by _____

CALIFORNIA CANCELLATION ENDORSEMENT

This endorsement applies only to the insurance provided by the policy because California is shown in Item 3.A. of the Information Page.

The cancellation condition in Part Six (Conditions) of the policy is replaced by these conditions:

Cancellation:

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy for one or more of the following reasons:
 - a. Non-payment of premium;
 - b. Failure to report payroll;
 - c. Non-payment of deductible billing;
 - d. Failure to permit us to audit payroll as required by the terms of this policy or of a previous policy issued by us;
 - e. Failure to pay any additional premium resulting from an audit of payroll required by the terms of this policy or any previous policy issued by us;
 - f. Material misrepresentation made by you or your agent;
 - g. Failure to cooperate with us in the investigation of a claim;
 - h. Material failure to comply with Federal or State safety orders;
 - i. Material failure to comply with written recommendations of our designated loss control representatives;
 - j. The occurrence of a material change in the ownership of your business;
 - k. The occurrence of any change in your business or operations that materially increases the hazard for frequency or severity of loss;
 - l. The occurrence of any change in your business or operation that requires additional or different classification for premium calculation;
 - m. The occurrence of any change in your business or operation which contemplates an activity excluded by our reinsurance treaties.
3. If we cancel your policy for any of the reasons listed in (a) through (g), we will give you 10 days advance written notice, stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to provide notice. If we cancel your policy for any of the reasons listed in Items (h) through (m), we will give you 30 days advance written notice; however, we agree that in the event of cancellation and reissuance of a policy effective upon a material change in ownership or operations, notice will not be provided.
4. If we mail the notice to you, the stated periods of notice and your right to remedy the condition will be extended by 5 days if the place of mailing and your mailing address is within California, 10 days if the place of mailing or your mailing address is outside of California and 20 days if the place of mailing or your mailing address is outside of the United States.
5. The policy period will end on the day and hour stated in the cancellation notice.
6. A short rate penalty applies if you cancel this policy or if we cancel due to non-payment of premium, failure to report payroll, or non-payment of deductible billing. First, the standard premium, defined as the base premium (computed in accordance with Part 1, Section 2, Subsection 2 of the WCIRB's California Basic Underwriting Manual) adjusted for the experience modification factor and all other pricing factors except for premium discount and expense constant, will be multiplied by the quotient of the number of days for which the policy was written divided by the number of days the policy remained in force to produce the full standard premium. Second, the extended number of days will be determined by dividing the number of days the policy was in force by the number of days for which the policy was written and multiplying the quotient by 365 days. When the policy is written for a one-year period, the extended number of days will equal the number of days the policy remained in force. Third, the short rate percentage corresponding to the extended number of days will be obtained from the short rate cancellation table. Fourth, the short rate premium will be equal to the product of the full standard premium times the short rate percentage. The short rate table below will be used in computing the short rate premium. In no event will the final earned premium be less than the policy minimum premium.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 99 06 07 E
(Ed. 01-22)**Short Rate Table**

Extended Number of Days	Percent of Full Policy Premium	Extended Number of Days	Percent of Full Policy Premium	Extended Number of Days	Percent of Full Policy Premium
1	5%	95-98	37%	219-223	69%
2	6%	99-102	38%	224-228	70%
3-4	7%	103-105	39%	229-232	71%
5-6	8%	106-109	40%	233-237	72%
7-8	9%	110-113	41%	238-241	73%
9-10	10%	114-116	42%	242-246	(8 mos.) 74%
11-12	11%	117-120	43%	247-250	75%
13-14	12%	121-124	(4 mos.) 44%	251-255	76%
15-16	13%	125-127	45%	256-260	77%
17-18	14%	128-131	46%	261-264	78%
19-20	15%	132-135	47%	265-269	79%
21-22	16%	136-138	48%	270-273	(9 mos.) 80%
23-25	17%	139-142	49%	274-278	81%
26-29	18%	143-146	50%	279-282	82%
30-32	(1 mo.) 19%	147-149	51%	283-287	83%
33-36	20%	150-153	(5 mos.) 52%	288-291	84%
37-40	21%	154-156	53%	292-296	85%
41-43	22%	157-160	54%	297-301	86%
44-47	23%	161-164	55%	302-305	(10 mos.) 87%
48-51	24%	165-167	56%	306-310	88%
52-54	25%	168-171	57%	311-314	89%
55-58	26%	172-175	58%	315-319	90%
59-62	(2 mos.) 27%	176-178	59%	321-323	91%
63-65	28%	179-182	(6 mos.) 60%	324-328	92%
66-69	29%	183-187	61%	329-332	93%
70-73	30%	188-191	62%	333-337	(11 mos.) 94%
74-76	31%	192-196	63%	338-342	95%
77-80	32%	197-200	64%	343-346	96%
81-83	33%	201-205	65%	347-351	97%
84-87	34%	206-209	66%	352-355	98%
88-91	(3 mos.) 35%	210-214	(7 mos.) 67%	356-360	99%
92-94	36%	215-218	68%	361-365	(12 mos.) 100%

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 02/22/2022

Policy No.: CAWC351506

Endorsement No.:

Insured:

Premium \$

Insurance Company: Oak River Insurance Company

Countersigned by _____

PREMIUM

It is agreed that the policy is amended to read:

PART FIVE - PREMIUM**D. Premium Payments**

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

Minimum Premium means the minimum cost to be paid for this policy of insurance. The Minimum Premium must be paid prior to the inception date of the policy of insurance and the Minimum Premium is deemed fully earned at the inception of the policy period and non-refundable.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel (except due to non-payment of premium), final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the Minimum Premium
2. If you cancel (or we cancel due to non-payment of premium), the premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short rate cancellation table and procedure. Final premium will not be less than the Minimum Premium.

If legal action is required to collect the Final Audit premium due and owing under this policy of insurance, you agree that the legal action shall be properly filed in the Superior Court of the State of California, County of San Francisco, California and consent to jurisdiction in that court. The prevailing party to such action to collect said premium shall be entitled to reasonable costs and attorney fees, as well as interest if applicable.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective: 02/22/2022

Policy No.: CAWC351506

Endorsement No.:

Insured:

Premium \$

Insurance Company: Oak River Insurance Company

Countersigned by _____

**POLICYHOLDER NOTICE
YOUR RIGHT TO RATING AND DIVIDEND INFORMATION**

I. Information Available to You

A. Information Available from Us - Oak River Insurance Company

- (1) General questions regarding your policy should be directed to:

**Oak River Insurance Company
P.O. Box 881236, San Francisco, CA 94188
Phone : 888-495-8949
Fax : 866-228-4613
Email : customercare@bhhc.com
Website : www.bhhc.com**

- (2) **Dividend Calculation.** If this is a participating policy (a policy on which a dividend may be paid), upon payment or non-payment of a dividend, we shall provide a written explanation to you that sets forth the basis of the dividend calculation. The explanation will be in clear, understandable language and will express the dividend as a dollar amount and as a percentage of the earned premium for the policy year on which the dividend is calculated.
- (3) **Claims Information.** Pursuant to Sections 3761 and 3762 of the California Labor Code, you are entitled to receive information in our claim files that affects your premium. Copies of documents will be supplied at your expense during reasonable business hours.

For claims covered under this policy, we will estimate the ultimate cost of unsettled claims for statistical purposes eighteen months after the policy becomes effective and will report those estimates to the Workers' Compensation Insurance Rating Bureau of California (WCIRB) no later than twenty months after the policy becomes effective. The cost of any settled claims will also be reported at that time. At twelve-month intervals thereafter, we will update and report to the WCIRB the estimated cost of any unsettled claims and the actual final cost of any claims settled in the interim. The amounts we report will be used by the WCIRB to compute your experience modification if you are eligible for experience rating.

B. Information Available from the Workers' Compensation Insurance Rating Bureau of California

- (1) The WCIRB is a licensed rating organization and the California Insurance Commissioner's designated statistical agent. As such, the WCIRB is responsible for administering the *California Workers' Compensation Uniform Statistical Reporting Plan-1995* (USRP) and the *California Workers' Compensation Experience Rating Plan-1995* (ERP). WCIRB contact information is: WCIRB, 1901 Harrison Street, 17th Floor, Oakland, CA 94612, Attn: Customer Service; 888.229.2472 (phone); 415.778.7272 (fax); and customerservice@wcirb.com (email). The regulations contained in the USRP and ERP are available for public viewing through the WCIRB's website at wcirb.com.
- (2) **Policyholder Information.** Pursuant to California Insurance Code (CIC) Section 11752.6, upon written request, you are entitled to information relating to loss experience, claims, classification assignments, and policy contracts as well as rating plans, rating systems, manual rules, or other information impacting your premium that is maintained in the records of the WCIRB. Complaints and Requests for Action requesting policyholder information should be forwarded to: WCIRB, 1901 Harrison Street, 17th Floor, Oakland, CA 94612, Attn: Custodian of Records. The Custodian of Records can be reached at 415.777.0777 (phone) and 415.778.7272 (fax).
- (3) **Experience Rating Form.** Each experience rated risk may receive a single copy of its current Experience Rating Form/Worksheet free of charge by completing a Policyholder Experience Rating Worksheet Request Form on the WCIRB's website at wcirb.com/ratesheet. The Experience Rating Form/Worksheet will include a Loss-Free Rating, which is the experience modification that would have been calculated if \$0 (zero) actual losses were incurred during the experience period. This hypothetical rating calculation is provided for informational purposes only.

II. Dispute Process

You may dispute our actions or the actions of the WCIRB pursuant to CIC Sections 11737 and 11753.1.

A. Our Dispute Resolution Process.

If you are aggrieved by our decision adopting a change in a classification assignment that results in increased premium, or by the application of our rating system to your workers' compensation insurance, you may dispute these matters with us. If you are dissatisfied with the outcome of the initial dispute with us, you may send us a written Complaint and Request for Action as outlined below.

You may send us a written Complaint and Request for Action requesting that we reconsider a change in a classification assignment that results in an increased premium and/or requesting that we review the manner in which our rating system has been applied in connection with the insurance afforded or offered you. Written Complaints and Requests for Action should be forwarded to: **Oak River Insurance Company, P.O. Box 881236, San Francisco, CA 94188 Phone: (888) 495-8949 Fax: (866) 228-4613**

After you send your Complaint and Request for Action, we have 30 days to send you a written notice indicating whether or not your written request will be reviewed. If we agree to review your request, we must conduct the review and issue a decision granting or rejecting your request within 60 days after sending you the written notice granting review. If we decline to review your request, if you are dissatisfied with the decision upon review, or if we fail to grant or reject your request or issue a decision upon review, you may appeal to the Insurance Commissioner as described in paragraph II.C., below.

- B. Disputing the Actions of the WCIRB.** If you have been aggrieved by any decision, action, or omission to act of the WCIRB, you may request, in writing, that the WCIRB reconsider its decision, action, or omission to act. You may also request, in writing, that the WCIRB review the manner in which its rating system has been applied in connection with the insurance afforded or offered you. For requests related to classification disputes, the reporting of experience, or coverage issues, your initial request for review must be received by the WCIRB within 12 months after the expiration date of the policy to which the request for review pertains, except if the request involves the application of the Revision of Losses rule. For requests related to your experience modification, your initial request for review must be received by the WCIRB within 6 months after the issuance, or 12 months after the expiration date, of the experience modification to which the request for review pertains, whichever is later, except if the request for review involves the application of the Revision of Losses rule. If the request involves the Revision of Losses rule, the time to state your appeal may be longer. (See Section VI, Rule 7 of the ERP).

You may commence the review process by sending the WCIRB a written Inquiry. Written Inquiries should be sent to: **WCIRB, 1901 Harrison Street, 17th Floor, Oakland, CA 94612, Attn: Customer Service. Customer Service can be reached at 888.229.2472 (phone), 415.778.7272 (fax) and customerservice@wcirb.com (email).**

If you are dissatisfied with the WCIRB's decision upon an Inquiry, or if the WCIRB fails to respond within 90 days after receipt of the Inquiry, you may pursue the subject of the Inquiry by sending the WCIRB a written Complaint and Request for Action. After you send your Complaint and Request for Action, the WCIRB has 30 days to send you written notice indicating whether or not your written request will be reviewed. If the WCIRB agrees to review your request, it must conduct the review and issue a decision granting or rejecting your request within 60 days after sending you the written notice granting review. If the WCIRB declines to review your request, if you are dissatisfied with the decision upon review, or if the WCIRB fails to grant or reject your request or issue a decision upon review, you may appeal to the Insurance Commissioner as described in paragraph II.C., below. Written Complaints and Requests for Action should be forwarded to: **WCIRB, 1901 Harrison Street, 17th Floor, Oakland, CA 94612, Attn: Complaints and Reconsideration. The WCIRB's contact information is 888.229.2472 (phone), 415.371.5204 (fax) and customerservice@wcirb.com (email).**

C. California Department of Insurance - Appeals to the Insurance Commissioner. After you follow the appropriate dispute resolution process described above, if (1) we or the WCIRB decline to review your request, (2) you are dissatisfied with the decision upon review, or (3) we or the WCIRB fail to grant or reject your request or issue a decision upon review, you may appeal to the Insurance Commissioner pursuant to CIC Sections 11737, 11752.6, 11753.1 and Title 10, California Code of Regulations, Section 2509.40 et seq. You must file your appeal within 30 days after we or the WCIRB send you the notice rejecting review of your Complaint and Request for Action or the decision upon your Complaint and Request for Action. If no written decision regarding your Complaint and Request for Action is sent, your appeal must be filed within 120 days after you sent your Complaint and Request for Action to us or to the WCIRB. The filing address for all appeals to the Insurance Commissioner is:

Administrative Hearing Bureau
California Department of Insurance
1901 Harrison Street, 3rd Floor Mailroom
Oakland, CA 94612
415.538.4243

You have the right to a hearing before the Insurance Commissioner, and our action, or the action of the WCIRB, may be affirmed, modified or reversed.

III. Resources Available to You in Obtaining Information and Pursuing Disputes

- A. Policyholder Ombudsman.** Pursuant to California Insurance Code Section 11752.6, a policyholder ombudsman is available at the WCIRB to assist you in obtaining and evaluating the rating, policy, and claims information referenced in I.A. and I.B., above. The ombudsman may advise you on any dispute with us, the WCIRB, or on an appeal to the Insurance Commissioner pursuant to Section 11737 of the Insurance Code. The address of the policyholder ombudsman is WCIRB, 1901 Harrison Street, 17th Floor, Oakland, CA 94612, Attn: Policyholder Ombudsman. The policyholder ombudsman can be reached at 415.778.7159 (phone), 415.371.5288 (fax) and ombudsman@wcirb.com (email).

- B. California Department of Insurance - Information and Assistance.** Information and assistance on policy questions can be obtained from the Department of Insurance Consumer HOTLINE, 800.927.HELP (4357) or insurance.ca.gov. For questions and correspondence regarding appeals to the Administrative Hearing Bureau, see the contact information in paragraph II.C.

This notice does not change the policy to which it is attached.

SEPARATOR PAGE



CAL COASTAL

A SMALL BUSINESS LENDER

August 3, 2022

Attn: Jaime Ayala
Management Analyst II
Deputy Purchasing Agent
Contracts/Purchasing Office
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901

**RE: INSURANCE REQUIREMENTS – NON-OWNED AUTOS LETTER
RFP #10863 - Tentative Contract for the Administration of Monterey
County's Small Business Revolving Loan Fund Program (SBRLF)**

To whom it may concern:

In response to providing an automotive liability policy for the above referenced contract, California Coastal Rural Development Corporation (Cal Coastal) does not own any automobiles. Should Cal Coastal acquire any vehicles for the duration of this contract, Cal Coastal will: (1) purchase any owned or all owned automobile insurance; (2) shall be primary, and any insurance carried shall be excess and noncontributory.

If you have any questions, please feel free to contact me at 831-676-2030 or at lee_takikawa@calcoastal.org

Sincerely,

Lee T. Takikawa
President & CEO



CAL COASTAL

A SMALL BUSINESS LENDER

August 3, 2022

Attn: Jaime Ayala
Management Analyst II
Deputy Purchasing Agent
Contracts/Purchasing Office
County of Monterey
168 West Alisal Street, 3rd Floor
Salinas, CA 93901

**RE: INSURANCE REQUIREMENTS – FIDELITY BOND LETTER
RFP #10863 - Tentative Contract for the Administration of Monterey County's
Small Business Revolving Loan Fund Program (SBRLF)**

To whom it may concern:

In response to providing a \$2,600,000 fidelity bond insurance policy for the above referenced contract, California Coastal Rural Development Corporation (Cal Coastal) cannot meet that requirement as explained in our RFP proposal. Cal Coastal has been a Contractor for the County's SBRLF for over 21 years. Cal Coastal has not been required to obtain fidelity bond insurance in the \$2.6 million amount. Previously, the County approved a reduction to an amount of \$200,000, which is the maximum amount of our current Fidelity Bond Insurance coverage.

Therefore, we respectfully ask the County for a reduction of the fidelity bond insurance requirement to the amount of \$200,000. Currently, there are two separate revolving loan fund (RLF) bank accounts associated with the SBRLF as follows: 1) The "old" RLF bank account, which consists of "revolved" loans, with funds from loan repayments of the older/existing portfolio; and 2) The "new" RLF bank account was capitalized from a \$1.6 million non-competitive CARES Act grant from EDA (U.S. Dept. of Commerce) of which \$1,510,000 of this grant has/will be utilized to fund processed and approved new loans within this separate loan portfolio. As such, there will be limited idle funds sitting in these two bank accounts. Any idle funds will be made available to be relented to the next eligible small business applicant located in the County. This is a similar rationale that was previously presented to the County and is still applicable today.

If you have any questions, please feel free to contact me at 831-676-2030 or email at lee_takikawa@calcoastal.org

Sincerely,

Lee T. Takikawa
President & CEO



Revised Definition of Spouse Endorsement

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.	
Policyholder	CALIFORNIA COASTAL RURAL DEVELOPMENT CORPORATION
Policy No.	CCP 4962884-01
Effective Date:	03/29/2021

It is hereby understood and agreed that the following changes are made and incorporated into the Policy/Certificate:

PURPOSE: California law provides that registered domestic partners have the same rights, protections, and benefits, and are subject to the same responsibilities, obligations, and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common law, or any other provisions or sources of law, as are granted to and imposed upon spouses. Existing law requires, where necessary to implement the rights of registered domestic partners, gender-specific terms referring to spouses to be construed to include domestic partners.

DEFINITIONS, TERMS, CONDITIONS AND PROVISIONS:

The definitions, terms, conditions or any other provisions of the policy, contract, certificate and/or riders and endorsements to which this mandatory endorsement is attached are hereby amended and superseded as follows:

Spouse includes a Registered Domestic Partner.

Except for the above, this endorsement does not vary, alter, waive, or extend any of the terms of the **Policy/Certificate** to which it is attached.

Endorsement No. [0]

Insurance Company FIDELITY AND DEPOSIT COMPANY OF MARYLAND

_____ Date: _____

Countersigned by

POLICYWRITING INDEX

ACCOUNT NUMBER	POLICY NUMBER	PREVIOUS POLICY NUMBER	EFFECTIVE DATE - EXPIRATION DATE
8314241099	CCP 4962884-01	CCP 4962884-00	03-29-2021 02-22-2023

COMPUTER PRODUCED FORMS

U-GU-1223-B CA		09-16 REVISED DEFINITION OF SPOUSE ENDORSEMENT
U-GU-873-ACW	ADL	06-11 DISCLOSURE STATEMENT
U-GU-874-ACW	ADL	06-11 DISCLOSURE STATEMENT
U-GU-D-365-A		03-94 POLICY COMMON DECLARATIONS
U-GU-619-A CW		10-02 SCHEDULE OF FORMS AND ENDORSEMENTS
U-GU-319-F		01-09 IMPORTANT NOTICE - IN WITNESS CLAUSE
U-GU-1191-A CW		03-15 SANCTIONS EXCLUSION ENDORSEMENT
CR DS 02		08-13 COMMERCIAL CRIME POLICY DECLARATIONS
CR 00 22		11-15 COMMERCIAL CRIME POLICY (DISCOVERY FORM)
CR 03 10		08-17 CALIFORNIA CHANGES-PREMIUM
CR 20 20		10-10 CALCULATION OF PREMIUM
CR 02 49		09-12 CALIFORNIA CHANGES

Disclosure Statement



It is our pleasure to present the enclosed policy to you
for presentation to your customer.

INSTRUCTION TO AGENT OR BROKER:

WE REQUIRE THAT YOU TRANSMIT THE ATTACHED/ENCLOSED DISCLOSURE STATEMENT TO THE CUSTOMER
WITH THE POLICY.

Once again, thank you for your interest, and we look forward to meeting your needs and those of your customers.

Disclosure Statement



NOTICE OF DISCLOSURE FOR AGENT & BROKER COMPENSATION

If you want to learn more about the compensation Zurich pays agents and brokers visit:

<http://www.zurichproducercompensation.com>

or call the following toll-free number: (866) 903-1192.

This Notice is provided on behalf of Zurich American Insurance Company
and its underwriting subsidiaries.



COMMON POLICY DECLARATIONS

Policy Number CCP 4962884-01 Renewal of Number CCP 4962884-00

Named Insured and Mailing Address

CALIFORNIA COASTAL RURAL
DEVELOPMENT CORPORATION
221 SOUTH MAIN STREET, SUITE 3
SALINAS CA 93901-2754

Producer and Mailing Address

SURETY PLACEMENT SERVICES LLC
8283 N HAYDEN RD STE 258
SCOTTSDALE AZ 85258-2455

Producer Code 43080-782

Policy Period: Coverage begins 03-29-2021 at 12:01 A.M.; Coverage ends 02-22-2023 at 12:01 A.M.

The name insured is Individual Partnership Corporation
 Other: 501C3 SMALL BUSINESS LENDER

This insurance is provided by one or more of the stock insurance companies which are members of the Zurich-American Insurance Group. The company that provides coverage is designated on each Coverage Part Common Declarations. The company or companies providing this insurance may be referred to in this policy as "The Company", we, us, or our. The address of the companies of the Zurich-American Insurance Group are provided on the next page.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE(S):

CRIME AND FIDELITY COVERAGE

PREMIUM \$ 1,444.00

issued by FIDELITY AND DEPOSIT COMPANY OF MARYLAND

THIS PREMIUM MAY BE SUBJECT TO AUDIT.

This premium does not include Taxes and Surcharges.

TOTAL \$ 1,444.00

Taxes and Surcharges

TOTAL

Form(s) and Endorsement(s) made a part of this policy at time of issue are listed on the **SCHEDULE of FORMS and ENDORSEMENTS.**

Countersigned this _____ day of _____

Authorized Representative

THIS DECLARATION TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART DECLARATIONS, COVERAGE PART FORM(S), FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

Policy Number
CCP 4962884-01

SCHEDULE OF FORMS AND ENDORSEMENTS

Fidelity And Deposit Company Of Maryland

Named Insured CALIFORNIA COASTAL RURAL

Effective Date: 03-29-21
12:01 A.M., Standard Time

Agent Name SURETY PLACEMENT SERVICES LLC

Agent No. 43080-782

COMMON POLICY FORMS AND ENDORSEMENTS

U-GU-1223-B CA	09-16	REVISED DEFINITION OF SPOUSE ENDORSEMENT
U-GU-D-365-A	03-94	POLICY COMMON DECLARATIONS
U-GU-619-A CW	10-02	SCHEDULE OF FORMS AND ENDORSEMENTS
U-GU-319-F	01-09	IMPORTANT NOTICE - IN WITNESS CLAUSE
U-GU-1191-A CW	03-15	SANCTIONS EXCLUSION ENDORSEMENT

CRIME FORMS AND ENDORSEMENTS

CR DS 02	08-13	COMMERCIAL CRIME POLICY DECLARATIONS
CR 00 22	11-15	COMMERCIAL CRIME POLICY (DISCOVERY FORM)
CR 03 10	08-17	CALIFORNIA CHANGES-PREMIUM
CR 20 20	10-10	CALCULATION OF PREMIUM
CR 02 49	09-12	CALIFORNIA CHANGES



Important Notice – In Witness Clause

In return for the payment of premium, and subject to the terms of this policy, coverage is provided as stated in this policy.

IN WITNESS WHEREOF, this Company has executed and attested these presents and, where required by law, has caused this policy to be countersigned by its duly Authorized Representative(s).

A handwritten signature in black ink that reads 'Mark G. Knipfe'.

President

A handwritten signature in black ink that reads 'Laura J. Kargacz'.

Corporate Secretary

QUESTIONS ABOUT YOUR INSURANCE? Your agent or broker is best equipped to provide information about your insurance. Should you require additional information or assistance in resolving a complaint, call or write to the following (please have your policy or claim number ready):

Zurich in North America
Customer Inquiry Center
1299 Zurich Way
Schaumburg, Illinois 60196-1056
1-800-382-2150 (Business Hours: 8am - 4pm [CT])
Email: info.source@zurichna.com



SANCTIONS EXCLUSION ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

The following exclusion is added to the policy to which it is attached and supersedes any existing sanctions language in the policy, whether included in an Exclusion Section or otherwise:

SANCTIONS EXCLUSION

Notwithstanding any other terms under this policy, we shall not provide coverage nor will we make any payments or provide any service or benefit to any insured, beneficiary, or third party who may have any rights under this policy to the extent that such cover, payment, service, benefit, or any business or activity of the insured would violate any applicable trade or economic sanctions law or regulation.

The term policy may be comprised of common policy terms and conditions, the declarations, notices, schedule, coverage parts, insuring agreement, application, enrollment form, and endorsements or riders, if any, for each coverage provided. Policy may also be referred to as contract or agreement.

We may be referred to as insurer, underwriter, we, us, and our, or as otherwise defined in the policy, and shall mean the company providing the coverage.

Insured may be referred to as policyholder, named insured, covered person, additional insured or claimant, or as otherwise defined in the policy, and shall mean the party, person or entity having defined rights under the policy.

These definitions may be found in various parts of the policy and any applicable riders or endorsements.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED

COMMERCIAL CRIME POLICY DECLARATIONS

In return for the payment of the premium, and subject to all the terms and conditions of this Policy, we agree with you to provide the insurance as stated in this Policy.

Coverage Is Written:

Primary

 Excess

 Coindemnity

 Concurrent

Company Name Area:	FIDELITY AND DEPOSIT COMPANY OF MARYLAND		
Producer Name Area:	SURETY PLACEMENT SERVICES LLC		
Named Insured:	CALIFORNIA COASTAL RURAL		
	(Also list any Employee Benefit Plan(s) included as Insureds)		
Mailing Address:	221 SOUTH MAIN STREET, SUITE 300	CA	93901-2754
	SALINAS		
	Policy Period		
From:	03-29-2021		
To:	02-22-2023 12:01 AM at your mailing address shown above.		

Insuring Agreements	Limit Of Insurance Per Occurrence	Deductible Amount Per Occurrence
1. Employee Theft	\$ 200,000	\$ 2,000
2. Forgery Or Alteration	NOT COVERED	
3. Inside The Premises – Theft Of Money And Securities	NOT COVERED	
4. Inside The Premises – Robbery Or Safe Burglary Of Other Property	NOT COVERED	
5. Outside The Premises	NOT COVERED	
6. Computer And Funds Transfer Fraud	NOT COVERED	
7. Money Orders And Counterfeit Money	NOT COVERED	

Coverage is provided only if an amount is shown opposite an Insuring Agreement. If the amount is left blank or "Not Covered" is inserted, such Insuring Agreement and any other reference thereto in this Policy are deleted.

If Added By Endorsement:		
Insuring Agreement	Limit Of Insurance Per Occurrence	Deductible Amount Per Occurrence

Endorsements Forming Part Of This Policy When Issued:
SEE SCHEDULE OF FORMS AND ENDORSEMENTS

Cancellation Of Prior Insurance Issued By Us:
By acceptance of this Policy, you give us notice cancelling prior Policy Numbers
;
the cancellation to be effective at the time this Policy becomes effective.

Countersignature Of Authorized Representative

Name:
Title:
Signature:
Date:

COMMERCIAL CRIME POLICY (DISCOVERY FORM)

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is or is not covered.

Throughout this Policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. Definitions.

A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place at any time which is "discovered" by you during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition E.1.j.:

1. Employee Theft

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from "theft" committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, "theft" shall also include forgery.

2. Forgery Or Alteration

a. We will pay for loss resulting directly from "forgery" or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:

- (1) Made or drawn by or drawn upon you; or
- (2) Made or drawn by one acting as your agent;

or that are purported to have been so made or drawn.

For the purposes of this Insuring Agreement, a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original it replaced.

- b. If you are sued for refusing to pay any instrument covered in Paragraph 2.a., on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur and pay in that defense. The amount that we will pay for such legal expenses is in addition to the Limit of Insurance applicable to this Insuring Agreement.

3. Inside The Premises – Theft Of Money And Securities

We will pay for:

- a. Loss of "money" and "securities" inside the "premises" or "financial institution premises":
 - (1) Resulting directly from "theft" committed by a person present inside such "premises" or "financial institution premises"; or
 - (2) Resulting directly from disappearance or destruction.
- b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "theft" of "money" and "securities", if you are the owner of the "premises" or are liable for damage to it.
- c. Loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the "premises" resulting directly from an actual or attempted "theft" of, or unlawful entry into, those containers.

4. Inside The Premises – Robbery Or Safe Burglary Of Other Property

We will pay for:

- a. Loss of or damage to "other property":
 - (1) Inside the "premises" resulting directly from an actual or attempted "robbery" of a "custodian"; or
 - (2) Inside the "premises" in a safe or vault resulting directly from an actual or attempted "safe burglary".

- b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "robbery" or "safe burglary" of "other property", if you are the owner of the "premises" or are liable for damage to it.
- c. Loss of or damage to a locked safe or vault located inside the "premises" resulting directly from an actual or attempted "robbery" or "safe burglary".

5. Outside The Premises

We will pay for:

- a. Loss of "money" and "securities" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from "theft", disappearance or destruction.
- b. Loss of or damage to "other property" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from an actual or attempted "robbery".

6. Computer And Funds Transfer Fraud

a. We will pay for:

- (1) Loss resulting directly from a fraudulent:
 - (a) Entry of "electronic data" or "computer program" into; or
 - (b) Change of "electronic data" or "computer program" within;
any "computer system" owned, leased or operated by you, provided the fraudulent entry or fraudulent change causes, with regard to Paragraphs **6.a.(1)(a)** and **6.a.(1)(b)**:
 - (i) "Money", "securities" or "other property" to be transferred, paid or delivered; or
 - (ii) Your account at a "financial institution" to be debited or deleted.
- (2) Loss resulting directly from a "fraudulent instruction" directing a "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that account.

- b. As used in Paragraph **6.a.(1)**, fraudulent entry or fraudulent change of "electronic data" or "computer program" shall include such entry or change made by an "employee" acting, in good faith, upon a "fraudulent instruction" received from a computer software contractor who has a written agreement with you to design, implement or service "computer programs" for a "computer system" covered under this Insuring Agreement.

7. Money Orders And Counterfeit Money

We will pay for loss resulting directly from your having, in good faith, accepted in exchange for merchandise, "money" or services:

- a. Money orders issued by any post office, express company or "financial institution" that are not paid upon presentation; or
- b. "Counterfeit money" that is acquired during the regular course of business.

B. Limit Of Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Declarations.

If any loss is covered under more than one Insuring Agreement or coverage, the most we will pay for such loss shall not exceed the largest Limit of Insurance available under any one of those Insuring Agreements or coverages.

C. Deductible

We will not pay for loss resulting directly from an "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

D. Exclusions

1. This Policy does not cover:

a. Acts Committed By You, Your Partners Or Your Members

Loss resulting from "theft" or any other dishonest act committed by:

- (1) You; or
- (2) Any of your partners or "members";
whether acting alone or in collusion with other persons.

b. Acts Committed By Your Employees Learned Of By You Prior To The Policy Period

Loss caused by an "employee" if the "employee" had also committed "theft" or any other dishonest act prior to the effective date of this Policy and you or any of your partners, "members", "managers", officers, directors or trustees, not in collusion with the "employee", learned of such "theft" or dishonest act prior to the Policy Period shown in the Declarations.

c. Acts Committed By Your Employees, Managers, Directors, Trustees Or Representatives

Loss resulting from "theft" or any other dishonest act committed by any of your "employees", "managers", directors, trustees or authorized representatives:

- (1) Whether acting alone or in collusion with other persons; or
- (2) While performing services for you or otherwise;

except when covered under Insuring Agreement **A.1**.

d. Confidential Or Personal Information

Loss resulting from:

- (1) The disclosure or use of another person's or organization's confidential or personal information; or
- (2) The disclosure of your confidential or personal information. However, this Paragraph **1.d.(2)** does not apply to loss otherwise covered under this Policy that results directly from the use of your confidential or personal information.

For the purposes of this exclusion, confidential or personal information includes, but is not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

e. Data Security Breach

Fees, costs, fines, penalties and other expenses incurred by you which are related to the access to or disclosure of another person's or organization's confidential or personal information including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

f. Governmental Action

Loss resulting from seizure or destruction of property by order of governmental authority.

g. Indirect Loss

Loss that is an indirect result of an "occurrence" covered by this Policy including, but not limited to, loss resulting from:

- (1) Your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property";
- (2) Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this Policy; or
- (3) Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this Policy.

h. Legal Fees, Costs And Expenses

Fees, costs and expenses incurred by you which are related to any legal action, except when covered under Insuring Agreement **A.2**.

i. Nuclear Hazard

Loss or damage resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

j. Pollution

Loss or damage caused by or resulting from pollution. Pollution means the discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

k. Virtual Currency

Loss involving virtual currency of any kind, by whatever name known, whether actual or fictitious including, but not limited to, digital currency, crypto currency or any other type of electronic currency.

l. War And Military Action

Loss or damage resulting from:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

2. Insuring Agreement A.1. does not cover:**a. Inventory Shortages**

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed.

b. Trading

Loss resulting from trading, whether in your name or in a genuine or fictitious account.

c. Warehouse Receipts

Loss resulting from the fraudulent or dishonest signing, issuing, cancelling or failing to cancel, a warehouse receipt or any papers connected with it.

3. Insuring Agreements A.3., A.4. and A.5. do not cover:**a. Accounting Or Arithmetical Errors Or Omissions**

Loss resulting from accounting or arithmetical errors or omissions.

b. Exchanges Or Purchases

Loss resulting from the giving or surrendering of property in any exchange or purchase.

c. Fire

Loss or damage resulting from fire, however caused, except:

- (1) Loss of or damage to "money" and "securities"; and
- (2) Loss from damage to a safe or vault.

d. Money Operated Devices

Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

e. Motor Vehicles Or Equipment And Accessories

Loss of or damage to motor vehicles, trailers or semitrailers or equipment and accessories attached to them.

f. Transfer Or Surrender Of Property

- (1) Loss of or damage to property after it has been transferred or surrendered to a person or place outside the "premises" or "financial institution premises":
 - (a) On the basis of unauthorized instructions; or
 - (b) As a result of a threat including, but not limited to:
 - (i) A threat to do bodily harm to any person;
 - (ii) A threat to do damage to any property;
 - (iii) A threat to introduce a denial of service attack into any "computer system";
 - (iv) A threat to introduce a virus or other malicious instruction into any "computer system" which is designed to damage, destroy or corrupt "electronic data" or "computer programs" stored within the "computer system";
 - (v) A threat to contaminate, pollute or render substandard your products or goods; or
 - (vi) A threat to disseminate, divulge or utilize:
 - i. Your confidential information;
 - ii. Confidential or personal information of another person or organization; or
 - iii. Weaknesses in the source code within any "computer system".

(2) However, this exclusion does not apply under Insuring Agreement **A.5.** to loss of "money", "securities" or "other property" while outside the "premises" in the care and custody of a "messenger" if you:

- (a) Had no knowledge of any threat at the time the conveyance began; or
- (b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

g. Vandalism

Loss from damage to the "premises" or its exterior, or to any safe, vault, cash register, cash box, cash drawer or "other property" by vandalism or malicious mischief.

h. Voluntary Parting Of Title To Or Possession Of Property

Loss resulting from your, or anyone else acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

4. Insuring Agreement A.6. does not cover:

a. Authorized Access

Loss resulting from a fraudulent:

- (1) Entry of "electronic data" or "computer program" into; or
- (2) Change of "electronic data" or "computer program" within;

any "computer system" owned, leased or operated by you by a person or organization with authorized access to that "computer system", except when covered under Insuring Agreement **A.6.b.**

b. Credit Card Transactions

Loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value or other cards or the information contained on such cards.

c. Exchanges Or Purchases

Loss resulting from the giving or surrendering of property in any exchange or purchase.

d. Fraudulent Instructions

Loss resulting from an "employee" or "financial institution" acting upon any instruction to:

- (1) Transfer, pay or deliver "money", "securities" or "other property"; or

(2) Debit or delete your account;

which instruction proves to be fraudulent, except when covered under Insuring Agreement **A.6.a.(2)** or **A.6.b.**

e. Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

E. Conditions

1. Conditions Applicable To All Insuring Agreements

a. Additional Premises Or Employees

If, while this Policy is in force, you establish any additional "premises" or hire additional "employees", other than through consolidation or merger with, or purchase or acquisition of assets or liabilities of, another entity, such "premises" and "employees" shall automatically be covered under this Policy. Notice to us of an increase in the number of "premises" or "employees" is not required, and no additional premium will be charged for the remainder of the Policy Period shown in the Declarations.

b. Cancellation Of Policy

- (1) The first Named Insured shown in the Declarations may cancel this Policy by mailing or delivering to us advance written notice of cancellation.
- (2) We may cancel this Policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - (a) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - (b) 30 days before the effective date of cancellation if we cancel for any other reason.
- (3) We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
- (4) Notice of cancellation will state the effective date of cancellation. The Policy Period will end on that date.

- (5) If this Policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- (6) If notice is mailed, proof of mailing will be sufficient proof of notice.

c. Changes

This Policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this Policy with our consent. This Policy's terms can be amended or waived only by endorsement issued by us and made a part of this Policy.

d. Concealment, Misrepresentation Or Fraud

This Policy is void in any case of fraud by you as it relates to this Policy at any time. It is also void if you or any other Insured, at any time, intentionally conceals or misrepresents a material fact concerning:

- (1) This Policy;
- (2) The property covered under this Policy;
- (3) Your interest in the property covered under this Policy; or
- (4) A claim under this Policy.

e. Consolidation – Merger Or Acquisition

If you consolidate or merge with, or purchase or acquire the assets or liabilities of, another entity:

- (1) You must give us written notice as soon as possible and obtain our written consent to extend the coverage provided by this Policy to such consolidated or merged entity or such purchased or acquired assets or liabilities. We may condition our consent by requiring payment of an additional premium; but

- (2) For the first 90 days after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities, the coverage provided by this Policy shall apply to such consolidated or merged entity or such purchased or acquired assets or liabilities, provided that all "occurrences" causing or contributing to a loss involving such consolidation, merger or purchase or acquisition of assets or liabilities, must take place after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities.

f. Cooperation

You must cooperate with us in all matters pertaining to this Policy as stated in its terms and conditions.

g. Duties In The Event Of Loss

After you "discover" a loss or a situation that may result in loss of or damage to "money", "securities" or "other property", you must:

- (1) Notify us as soon as possible. If you have reason to believe that any loss (except for loss covered under Insuring Agreement **A.1.** or **A.2.**) involves a violation of law, you must also notify the local law enforcement authorities;
- (2) Give us a detailed, sworn proof of loss within 120 days;
- (3) Cooperate with us in the investigation and settlement of any claim;
- (4) Produce for our examination all pertinent records;
- (5) Submit to examination under oath at our request and give us a signed statement of your answers; and
- (6) Secure all of your rights of recovery against any person or organization responsible for the loss and do nothing to impair those rights.

h. Employee Benefit Plans

The "employee benefit plans" shown in the Declarations (hereafter referred to as Plan) are included as Insureds under Insuring Agreement **A.1.**, subject to the following:

- (1) If any Plan is insured jointly with any other entity under this Policy, you or the Plan Administrator is responsible for selecting a Limit of Insurance for Insuring Agreement **A.1.** that is sufficient to provide a Limit of Insurance for each Plan that is at least equal to that required under ERISA as if each Plan were separately insured.

- (2) With respect to loss sustained or "discovered" by any such Plan, Insuring Agreement **A.1.** is replaced by the following:

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from fraudulent or dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

- (3) If the first Named Insured is an entity other than a Plan, any payment we make for loss sustained by any Plan will be made to the Plan sustaining the loss.

- (4) If two or more Plans are insured under this Policy, any payment we make for loss:

- (a) Sustained by two or more Plans; or
 (b) Of commingled "money", "securities" or "other property" of two or more Plans;

resulting directly from an "occurrence", will be made to each Plan sustaining loss in the proportion that the Limit of Insurance required under ERISA for each Plan bears to the total of those limits.

- (5) The Deductible Amount applicable to Insuring Agreement **A.1.** does not apply to loss sustained by any Plan.

i. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this Policy at any time during the Policy Period shown in the Declarations and up to three years afterward.

j. Extended Period To Discover Loss

We will pay for loss that you sustained prior to the effective date of cancellation of this Policy, which is "discovered" by you:

- (1) No later than 60 days from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by you, whether from us or another insurer, replacing in whole or in part the coverage afforded under this Policy, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
- (2) No later than one year from the date of that cancellation with regard to any "employee benefit plan".

k. Inspections And Surveys

- (1) We have the right to:
- (a) Make inspections and surveys at any time;
- (b) Give you reports on the conditions we find; and
- (c) Recommend changes.
- (2) We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
- (a) Are safe or healthful; or
- (b) Comply with laws, regulations, codes or standards.

- (3) Paragraphs **k.(1)** and **k.(2)** apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

l. Joint Insured

- (1) If more than one Insured is named in the Declarations, the first Named Insured will act for itself and for every other Insured for all purposes of this Policy. If the first Named Insured ceases to be covered, then the next Named Insured will become the first Named Insured.

- (2) If any Insured, or partner, "member", "manager", officer, director or trustee of that Insured has knowledge of any information relevant to this Policy, that knowledge is considered knowledge of every Insured.
- (3) An "employee" of any Insured is considered to be an "employee" of every Insured.
- (4) If this Policy or any of its coverages are cancelled as to any Insured, loss sustained by that Insured is covered only if it is "discovered" by you:
 - (a) No later than 60 days from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by that Insured, whether from us or another insurer, replacing in whole or in part the coverage afforded under this Policy, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
 - (b) No later than one year from the date of that cancellation with regard to any "employee benefit plan".
- (5) We will not pay more for loss sustained by more than one Insured than the amount we would pay if all such loss had been sustained by one Insured.
- (6) Payment by us to the first Named Insured for loss sustained by any Insured, or payment by us to any "employee benefit plan" for loss sustained by that Plan, shall fully release us on account of such loss.

m. Legal Action Against Us

You may not bring any legal action against us involving loss:

- (1) Unless you have complied with all the terms of this Policy;
- (2) Until 90 days after you have filed proof of loss with us; and
- (3) Unless brought within two years from the date you "discovered" the loss.

If any limitation in this condition is prohibited by law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

n. Liberalization

If we adopt any revision that would broaden the coverage under this Policy without additional premium within 45 days prior to or during the Policy Period shown in the Declarations, the broadened coverage will immediately apply to this Policy.

o. Other Insurance

If other valid and collectible insurance is available to you for loss covered under this Policy, our obligations are limited as follows:

(1) Primary Insurance

When this Policy is written as primary insurance, and:

- (a) You have other insurance subject to the same terms and conditions as this Policy, we will pay our share of the covered loss. Our share is the proportion that the applicable Limit Of Insurance shown in the Declarations bears to the total limit of all insurance covering the same loss.
- (b) You have other insurance covering the same loss other than that described in Paragraph **o.(1)(a)**, we will only pay for the amount of loss that exceeds:
 - (i) The Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not; or
 - (ii) The Deductible Amount shown in the Declarations;

whichever is greater. Our payment for loss is subject to the terms and conditions of this Policy.

(2) Excess Insurance

- (a) When this Policy is written excess over other insurance, we will only pay for the amount of loss that exceeds the Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not. Our payment for loss is subject to the terms and conditions of this Policy.
- (b) However, if loss covered under this Policy is subject to a deductible, we will reduce the Deductible Amount shown in the Declarations by the sum total of all such other insurance plus any Deductible Amount applicable to that other insurance.

p. Ownership Of Property; Interests Covered

The property covered under this Policy is limited to property:

- (1) That you own or lease;
- (2) That is held by you in any capacity; or
- (3) For which you are legally liable, provided you were liable for the property prior to the time the loss was sustained.

However, this Policy is for your benefit only. It provides no rights or benefits to any other person or organization. Any claim for loss that is covered under this Policy must be presented by you.

q. Policy Bridge – Discovery Replacing Loss Sustained

- (1) If this Policy replaces insurance that provided you with an extended period of time after cancellation in which to discover loss and which did not terminate at the time this Policy became effective:
 - (a) We will not pay for any loss that occurred during the policy period of that prior insurance which is discovered by you during such extended period to discover loss, unless the amount of loss exceeds the Limit of Insurance and Deductible Amount of that prior insurance. In that case, we will pay for the excess loss subject to the terms and conditions of this Policy.
 - (b) However, any payment we make for the excess loss will not be greater than the difference between the Limit of Insurance and Deductible Amount of that prior insurance and the Limit Of Insurance shown in the Declarations. We will not apply the Deductible Amount shown in the Declarations to this excess loss.
- (2) **Other Insurance** Condition **E.1.o.** does not apply to this condition.

r. Premiums

The first Named Insured shown in the Declarations:

- (1) Is responsible for the payment of all premiums; and
- (2) Will be the payee for any return premiums we pay.

s. Records

You must keep records of all property covered under this Policy so we can verify the amount of any loss.

t. Recoveries

- (1) Any recoveries, whether effected before or after any payment under this Policy, whether made by us or by you, shall be applied net of the expense of such recovery:
 - (a) First, to you in satisfaction of your covered loss in excess of the amount paid under this Policy;
 - (b) Second, to us in satisfaction of amounts paid in settlement of your claim;
 - (c) Third, to you in satisfaction of any Deductible Amount; and
 - (d) Fourth, to you in satisfaction of any loss not covered under this Policy.
- (2) Recoveries do not include any recovery:
 - (a) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
 - (b) Of original "securities" after duplicates of them have been issued.

u. Territory

This Policy covers loss that you sustain resulting directly from an "occurrence" taking place within the United States of America (including its territories and possessions), Puerto Rico and Canada.

v. Transfer Of Your Rights And Duties Under This Policy

- (1) Your rights and duties under this Policy may not be transferred without our written consent except in the case of death of an individual Named Insured.
- (2) If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

w. Transfer Of Your Rights Of Recovery Against Others To Us

You must transfer to us all your rights of recovery against any person or organization for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.

x. Valuation – Settlement

The value of any loss for purposes of coverage under this Policy shall be determined as follows:

(1) Money

Loss of "money" but only up to and including its face value. We will, at your option, pay for loss of "money" issued by any country other than the United States of America:

- (a) At face value in the "money" issued by that country; or
- (b) In the United States of America dollar equivalent, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "discovered".

(2) Securities

Loss of "securities" but only up to and including their value at the close of business on the day the loss was "discovered". We may, at our option:

- (a) Pay the market value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities"; or
- (b) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:
 - (i) Market value of the "securities" at the close of business on the day the loss was "discovered"; or
 - (ii) Limit of Insurance applicable to the "securities".

(3) Property Other Than Money And Securities

(a) Loss of or damage to "other property" or loss from damage to the "premises" or its exterior for the replacement cost of the property without deduction for depreciation. However, we will not pay more than the least of the following:

- (i) The Limit of Insurance applicable to the lost or damaged property;
- (ii) The cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose; or
- (iii) The amount you actually spend that is necessary to repair or replace the lost or damaged property.

(b) We will not pay on a replacement cost basis for any loss or damage to property covered under Paragraph **x.(3)(a)**:

- (i) Until the lost or damaged property is actually repaired or replaced; and
- (ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

If the lost or damaged property is not repaired or replaced, we will pay on an actual cash value basis.

- (c) We will, at your option, pay for loss or damage to such property:
 - (i) In the "money" of the country in which the loss or damage was sustained; or
 - (ii) In the United States of America dollar equivalent of the "money" of the country in which the loss or damage was sustained, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "discovered".
- (d) Any property that we pay for or replace becomes our property.

2. Conditions Applicable To Insuring Agreement A.1.

a. Termination As To Any Employee

This Insuring Agreement terminates as to any "employee":

- (1) As soon as:
 - (a) You; or
 - (b) Any of your partners, "members", "managers", officers, directors or trustees not in collusion with the "employee";

learn of "theft" or any other dishonest act committed by the "employee" whether before or after becoming employed by you; or

- (2) On the date specified in a notice mailed to the first Named Insured. That date will be at least 30 days after the date of mailing.

We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

b. Territory

We will pay for loss caused by any "employee" while temporarily outside the territory specified in Territory Condition **E.1.u.** for a period of not more than 90 consecutive days.

3. Conditions Applicable To Insuring Agreement A.2.

a. Deductible Amount

The Deductible Amount does not apply to legal expenses paid under Insuring Agreement **A.2.**

b. Electronic And Mechanical Signatures

We will treat signatures that are produced or reproduced electronically, mechanically or by other means the same as handwritten signatures.

c. Proof Of Loss

You must include with your proof of loss any instrument involved in that loss or, if that is not possible, an affidavit setting forth the amount and cause of loss.

d. Territory

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition **E.1.u.** does not apply to Insuring Agreement **A.2.**

4. Conditions Applicable To Insuring Agreements A.4. And A.5.

a. Armored Motor Vehicle Companies

Under Insuring Agreement **A.5.**, we will only pay for the amount of loss you cannot recover:

- (1) Under your contract with the armored motor vehicle company; and
- (2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

b. Special Limit Of Insurance For Specified Property

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to:

- (1) Precious metals, precious or semiprecious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles; or
- (2) Manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

5. Conditions Applicable To Insuring Agreement A.6.

a. Special Limit Of Insurance For Specified Property

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

b. Territory

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition **E.1.u.** does not apply to Insuring Agreement **A.6.**

F. Definitions

1. "Computer program" means a set of related electronic instructions, which direct the operation and function of a computer or devices connected to it, which enable the computer or devices to receive, process, store or send "electronic data".
2. "Computer system" means:
 - a. Computers, including Personal Digital Assistants (PDAs) and other transportable or handheld devices, electronic storage devices and related peripheral components;

- b.** Systems and applications software; and
 - c.** Related communications networks;
by which "electronic data" is collected, transmitted, processed, stored or retrieved.
- 3.** "Counterfeit money" means an imitation of "money" which is intended to deceive and to be taken as genuine.
- 4.** "Custodian" means you, or any of your partners or "members", or any "employee" while having care and custody of property inside the "premises", excluding any person while acting as a "watchperson" or janitor.
- 5.** "Discover" or "discovered" means the time when you first become aware of facts which would cause a reasonable person to assume that a loss of a type covered by this Policy has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.
- "Discover" or "discovered" also means the time when you first receive notice of an actual or potential claim in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a loss under this Policy.
- 6.** "Electronic data" means information, facts, images or sounds stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software) on data storage devices, including hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- 7.** "Employee":
- a.** Means:
 - (1)** Any natural person:
 - (a)** While in your service and for the first 30 days immediately after termination of service, unless such termination is due to "theft" or any other dishonest act committed by the "employee";
 - (b)** Whom you compensate directly by salary, wages or commissions; and
 - (c)** Whom you have the right to direct and control while performing services for you;
 - (2)** Any natural person who is furnished temporarily to you:
 - (a)** To substitute for a permanent "employee", as defined in Paragraph **7.a.(1)**, who is on leave; or
 - (b)** To meet seasonal or short-term workload conditions;
while that person is subject to your direction and control and performing services for you;
 - (3)** Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary "employee" as defined in Paragraph **7.a.(2)**;
 - (4)** Any natural person who is:
 - (a)** A trustee, officer, employee, administrator or manager, except an administrator or manager who is an independent contractor, of any "employee benefit plan"; or
 - (b)** Your director or trustee while that person is engaged in handling "money", "securities" or "other property" of any "employee benefit plan";
 - (5)** Any natural person who is a former "employee", partner, "member", "manager", director or trustee retained by you as a consultant while performing services for you;
 - (6)** Any natural person who is a guest student or intern pursuing studies or duties;
 - (7)** Any natural person employed by an entity merged or consolidated with you prior to the effective date of this Policy; and
 - (8)** Any natural person who is your "manager", director or trustee while:
 - (a)** Performing acts within the scope of the usual duties of an "employee"; or
 - (b)** Acting as a member of any committee duly elected or appointed by resolution of your board of directors or board of trustees to perform specific, as distinguished from general, directorial acts on your behalf.

- b.** Does not mean:
Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in Paragraph **7.a.**
- 8.** "Employee benefit plan" means any welfare or pension benefit plan shown in the Declarations that you sponsor and that is subject to the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments thereto.
- 9.** "Financial institution" means:
- a.** With regard to Insuring Agreement **A.3.:**
- (1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution; or
- (2) An insurance company.
- b.** With regard to Insuring Agreement **A.6.:**
- (1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution;
- (2) An insurance company; or
- (3) A stock brokerage firm or investment company.
- c.** Other than Insuring Agreements **A.3.** and **A.6.,** any financial institution.
- 10.** "Financial institution premises" means the interior of that portion of any building occupied by a "financial institution" as defined in Paragraph **F.9.a.**
- 11.** "Forgery" means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.
- 12.** "Fraudulent instruction" means:
- a.** With regard to Insuring Agreement **A.6.a.(2):**
- (1) A computer, telefacsimile, telephone or other electronic instruction directing a "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that "transfer account", which instruction purports to have been issued by you, but which in fact was fraudulently issued by someone else without your knowledge or consent; or
- (2) A written instruction (other than those covered under Insuring Agreement **A.2.**) issued to a "financial institution" directing the "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that "transfer account", through an electronic funds transfer system at specified times or under specified conditions, which instruction purports to have been issued by you, but which in fact was issued, forged or altered by someone else without your knowledge or consent.
- b.** With regard to Insuring Agreement **A.6.b.:**
- A computer, telefacsimile, telephone or other electronic, written or voice instruction directing an "employee" to enter or change "electronic data" or "computer programs" within a "computer system" covered under the Insuring Agreement, which instruction in fact was fraudulently issued by your computer software contractor.
- 13.** "Manager" means a natural person serving in a directorial capacity for a limited liability company.
- 14.** "Member" means an owner of a limited liability company represented by its membership interest who, if a natural person, may also serve as a "manager".
- 15.** "Messenger" means you, or your relative, or any of your partners or "members", or any "employee" while having care and custody of property outside the "premises".
- 16.** "Money" means:
- a.** Currency, coins and bank notes in current use and having a face value;
- b.** Traveler's checks and money orders held for sale to the public; and
- c.** In addition, includes:
- (1) Under Insuring Agreements **A.1.** and **A.2.,** deposits in your account at any "financial institution"; and
- (2) Under Insuring Agreement **A.6.,** deposits in your account at a "financial institution" as defined in Paragraph **F.9.b.**
- 17.** "Occurrence" means:
- a.** Under Insuring Agreement **A.1.:**
- (1) An individual act;
- (2) The combined total of all separate acts whether or not related; or

- (3) A series of acts whether or not related; committed by an "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, before such Policy Period or both.
- b. Under Insuring Agreement **A.2.:**
- (1) An individual act;
- (2) The combined total of all separate acts whether or not related; or
- (3) A series of acts whether or not related; committed by a person acting alone or in collusion with other persons, involving one or more instruments, during the Policy Period shown in the Declarations, before such Policy Period or both.
- c. Under all other Insuring Agreements:
- (1) An individual act or event;
- (2) The combined total of all separate acts or events whether or not related; or
- (3) A series of acts or events whether or not related; committed by a person acting alone or in collusion with other persons, or not committed by any person, during the Policy Period shown in the Declarations, before such Policy Period or both.
18. "Other property" means any tangible property other than "money" and "securities" that has intrinsic value. "Other property" does not include "computer programs", "electronic data" or any property specifically excluded under this Policy.
19. "Premises" means the interior of that portion of any building you occupy in conducting your business.
20. "Robbery" means the unlawful taking of property from the care and custody of a person by one who has:
- a. Caused or threatened to cause that person bodily harm; or
- b. Committed an obviously unlawful act witnessed by that person.
21. "Safe burglary" means the unlawful taking of:
- a. Property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
- b. A safe or vault from inside the "premises".
22. "Securities" means negotiable and nonnegotiable instruments or contracts representing either "money" or property and includes:
- a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
- b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you; but does not include "money".
23. "Theft" means the unlawful taking of property to the deprivation of the Insured.
24. "Transfer account" means an account maintained by you at a "financial institution" from which you can initiate the transfer, payment or delivery of "money" or "securities":
- a. By means of computer, telefacsimile, telephone or other electronic instructions; or
- b. By means of written instructions (other than those covered under Insuring Agreement **A.2.**) establishing the conditions under which such transfers are to be initiated by such "financial institution" through an electronic funds transfer system.
25. "Watchperson" means any person you retain specifically to have care and custody of property inside the "premises" and who has no other duties.

POLICY NUMBER: CCP 4962884-01

**CRIME AND FIDELITY
CR 03 10 08 17**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALIFORNIA CHANGES – PREMIUM

This endorsement modifies insurance provided under the following:

- COMMERCIAL CRIME COVERAGE FORM
- COMMERCIAL CRIME POLICY
- EMPLOYEE THEFT AND FORGERY POLICY
- GOVERNMENT CRIME COVERAGE FORM
- GOVERNMENT CRIME POLICY
- GOVERNMENT EMPLOYEE THEFT AND FORGERY POLICY
- KIDNAP/RANSOM AND EXTORTION COVERAGE FORM
- KIDNAP/RANSOM AND EXTORTION POLICY

SCHEDULE

Policy Period		Premium
From: 03-29-2021	To: 02-22-2023	\$ 1,444.00
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

To comply with the ruling of the Commissioner of Insurance of the state of California and the opinion of the Attorney General of that state requiring that the premium for all policies be endorsed thereon, the premium charged for the attached policy for the policy period is shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALCULATION OF PREMIUM

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME POLICY
EMPLOYEE THEFT AND FORGERY POLICY
GOVERNMENT CRIME POLICY
GOVERNMENT EMPLOYEE THEFT AND FORGERY POLICY
KIDNAP/RANSOM AND EXTORTION POLICY

The following is added:

The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALIFORNIA CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME POLICY
EMPLOYEE THEFT AND FORGERY POLICY
GOVERNMENT CRIME POLICY
GOVERNMENT EMPLOYEE THEFT AND FORGERY POLICY
KIDNAP/RANSOM AND EXTORTION POLICY

Paragraphs **A.** and **B.** apply only to the Commercial Crime Policy, Government Crime Policy and Kidnap/Ransom And Extortion Policy.

A. Paragraphs **(2)** and **(3)** of the **Cancellation Of Policy** Condition are replaced by the following:

(2) All Policies In Effect For 60 Days Or Less

If this policy has been in effect for 60 days or less, and is not a renewal of a policy we have previously issued, we may cancel this policy by mailing or delivering to the first Named Insured, at the mailing address shown in the policy, and to the producer of record, advance written notice of cancellation, stating the reason for cancellation, at least:

- (a)** 10 days before the effective date of cancellation if we cancel for:
 - (i)** Nonpayment of premium; or
 - (ii)** Discovery of fraud by:
 - i.** Any insured or his or her representative in obtaining this policy; or
 - ii.** You or your representative in pursuing a claim under this policy.
- (b)** 30 days before the effective date of cancellation if we cancel for any other reason.

(3) All Policies In Effect For More Than 60 Days

- (a)** If this policy has been in effect for more than 60 days, or is a renewal of a policy we issued, we may cancel this policy only upon the occurrence, after the effective date of the policy, of one or more of the following:
 - (i)** Nonpayment of premium, including payment due on a prior policy we issued and due during the current policy term covering the same risks.
 - (ii)** Discovery of fraud or material misrepresentation by:
 - i.** Any insured or his or her representative in obtaining this policy; or
 - ii.** You or your representative in pursuing a claim under this policy.
 - (iii)** A judgment by a court or an administrative tribunal that you have violated a California or Federal law, having as one of its necessary elements an act which materially increases any of the risks insured against.

- (iv) Discovery of willful or grossly negligent acts or omissions, or of any violations of state laws or regulations establishing safety standards, by you or your representative, which materially increase any of the risks insured against.
 - (v) Failure by you or your representative to implement reasonable loss control requirements, agreed to by you as a condition of policy issuance, or which were conditions precedent to our use of a particular rate or rating plan, if that failure materially increases any of the risks insured against.
 - (vi) A determination by the Commissioner of Insurance that the:
 - i. Loss of, or changes in, our reinsurance covering all or part of the risk would threaten our financial integrity or solvency; or
 - ii. Continuation of the policy coverage would:
 - i Place us in violation of California law or the laws of the state where we are domiciled; or
 - ii Threaten our solvency.
 - (vii) A change by you or your representative in the activities or property of the commercial or industrial enterprise, which results in a materially added, increased or changed risk, unless the added, increased or changed risk is included in the policy.
- (b) We will mail or deliver advance written notice of cancellation, stating the reason for cancellation, to the first Named Insured, at the mailing address shown in the policy, and to the producer of record, at least:
- (i) 10 days before the effective date of cancellation if we cancel for nonpayment of premium or discovery of fraud; or
 - (ii) 30 days before the effective date of cancellation if we cancel for any other reason listed in Paragraph **(3)(a)**.
- B.** The following is added and supersedes any other provision to the contrary:
- Nonrenewal**
1. Subject to the provisions of Paragraph **B.2.**, if we elect not to renew this policy, we will mail or deliver written notice, stating the reason for nonrenewal, to the first Named Insured shown in the Declarations, and to the producer of record, at least 60 days, but not more than 120 days, before the expiration or anniversary date.

We will mail or deliver our notice to the first Named Insured, and to the producer of record, at the mailing address shown in the policy.
 2. We are not required to send notice of nonrenewal in the following situations:
 - a. If the transfer or renewal of a policy, without any changes in terms, conditions or rates, is between us and a member of our insurance group.
 - b. If the policy has been extended for 90 days or less, provided that notice has been given in accordance with Paragraph **B.1**.
 - c. If you have obtained replacement coverage, or if the first Named Insured has agreed, in writing, within 60 days of the termination of the policy, to obtain that coverage.
 - d. If the policy is for a period of no more than 60 days and you are notified at the time of issuance that it will not be renewed.
 - e. If the first Named Insured requests a change in the terms or conditions or risks covered by the policy within 60 days of the end of the policy period.
 - f. If we have made a written offer to the first Named Insured, in accordance with the time frames shown in Paragraph **B.1.**, to renew the policy under changed terms or conditions or at an increased premium rate, when the increase exceeds 25%.

- C. Under the Commercial Crime Policy, Government Crime Policy and Employee Theft And Forgery Policy, the following is added to the **Valuation – Settlement** Condition:

Actual cash value is calculated as the amount it would cost to repair or replace covered property, at the time of loss or damage, with material of like kind and quality, subject to a deduction for deterioration, depreciation and obsolescence. Actual cash value applies to valuation of covered property, regardless of whether that property has sustained partial or total loss or damage.

The actual cash value of the lost or damaged property may be significantly less than its replacement cost.

TAXABLE YEAR

CALIFORNIA FORM

2017 Withholding Exemption Certificate**590****The payee completes this form and submits it to the withholding agent. The withholding agent keeps this form with their records.****Withholding Agent Information**

Name

Monterey County, a political Subdivision of the State of California

Payee Information

Name

California Coastal Rural Development Corporation

 SSN or ITIN FEIN CA Corp no. CA SOS file no.

9 4 - 0 2 7 6 0 2 5

Address (apt./ste., room, PO box, or PMB no.)

221 Main Street, Suite 301

City (If you have a foreign address, see instructions.)

Salinas

State ZIP code

CA 9 3 9 0 1 2 7 5 4

Exemption Reason**Check only one box.**

By checking the appropriate box below, the payee certifies the reason for the exemption from the California income tax withholding requirements on payment(s) made to the entity or individual.

 Individuals — Certification of Residency:

I am a resident of California and I reside at the address shown above. If I become a nonresident at any time, I will promptly notify the withholding agent. See instructions for General Information D, Definitions.

 Corporations:

The corporation has a permanent place of business in California at the address shown above or is qualified through the California Secretary of State (SOS) to do business in California. The corporation will file a California tax return. If this corporation ceases to have a permanent place of business in California or ceases to do any of the above, I will promptly notify the withholding agent. See instructions for General Information D, Definitions.

 Partnerships or Limited Liability Companies (LLCs):

The partnership or LLC has a permanent place of business in California at the address shown above or is registered with the California SOS, and is subject to the laws of California. The partnership or LLC will file a California tax return. If the partnership or LLC ceases to do any of the above, I will promptly inform the withholding agent. For withholding purposes, a limited liability partnership (LLP) is treated like any other partnership.

 Tax-Exempt Entities:The entity is exempt from tax under California Revenue and Taxation Code (R&TC) Section 23701 _____ (insert letter) or Internal Revenue Code Section 501(c) 3 (insert number). If this entity ceases to be exempt from tax, I will promptly notify the withholding agent. Individuals cannot be tax-exempt entities. **Insurance Companies, Individual Retirement Arrangements (IRAs), or Qualified Pension/Profit-Sharing Plans:**

The entity is an insurance company, IRA, or a federally qualified pension or profit-sharing plan.

 California Trusts:

At least one trustee and one noncontingent beneficiary of the above-named trust is a California resident. The trust will file a California fiduciary tax return. If the trustee or noncontingent beneficiary becomes a nonresident at any time, I will promptly notify the withholding agent.

 Estates — Certification of Residency of Deceased Person:

I am the executor of the above-named person's estate or trust. The decedent was a California resident at the time of death. The estate will file a California fiduciary tax return.

 Nonmilitary Spouse of a Military Servicemember:

I am a nonmilitary spouse of a military servicemember and I meet the Military Spouse Residency Relief Act (MSRRA) requirements. See instructions for General Information E, MSRRA.

CERTIFICATE OF PAYEE: Payee must complete and sign below.To learn about your privacy rights, how we may use your information, and the consequences for not providing the requested information, go to ftb.ca.gov and search for **privacy notice**. To request this notice by mail, call 800.852.5711.

Under penalties of perjury, I declare that I have examined the information on this form, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. I further declare under penalties of perjury that if the facts upon which this form are based change, I will promptly notify the withholding agent.

Type or print payee's name and title Lee T. Takikawa, President & CEO

Telephone (831) 6762030

Payee's signature ▶



Date 08/01/2022



A Head for Insurance. A Heart for Nonprofits.

NONPROFITS INSURANCE ALLIANCE OF CALIFORNIA (NIAC)

www.insurancefornonprofits.org

COMMERCIAL UMBRELLA POLICY DECLARATIONS

PRODUCER: Acrisure of California, LLC
15005 Concord Circle, Suite 110
Morgan Hill, CA 95037-5417
POLICY NUMBER: 2022-68322-UMB

Item 1 NAME OF INSURED AND MAILING ADDRESS:
California Coastal Rural Development Corporation
221 Main St., Ste. 300
Salinas, CA 93901

Item 2 POLICY PERIOD: FROM 2/22/2022 TO 2/22/2023
AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE
BUSINESS DESCRIPTION: Providing financing to small businesses and farmers

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE COVERAGE AS STATED IN THIS POLICY.

Item 3 THE ANNUAL AND MINIMUM PREMIUM DUE AT INCEPTION: \$1,960

Item 4 LIMITS OF INSURANCE:
a. Occurrence / Accident / Injury / Claim Limits (where applicable): 1,000,000
i) Each Occurrence - Commercial General Liability and Products-Completed Operations Liability
ii) Each Accident - Business Auto Liability
iii) Each Injury - Liquor Liability
iv) Each Claim - Employee Benefits Liability
b. Each Claim - Directors and Officers Liability 1,000,000
c. Each Claim - Improper Sexual Conduct and Physical Abuse Liability Excluded
d. Each Claim - Social Service Professional Liability Excluded

Aggregate limits:

e. Commercial General Liability, Business Auto Liability, Products- Completed Operations Liability, Liquor Liability, and Employee Benefits Liability Aggregate (where applicable): 1,000,000
f. Directors and Officers Liability Aggregate 1,000,000
g. Improper Sexual Conduct and Physical Abuse Liability Aggregate Excluded
h. Social Service Professional Liability Aggregate Excluded

Item 5 RETROACTIVE DATES - SEE SCHEDULE OF UNDERLYING INSURANCE

FORMS AND ENDORSEMENTS ATTACHED TO THIS POLICY AT INCEPTION (NUMBER AND EDITION DATE):
CU 21 33 01 15, NIAC-E003 UMB 08 20, NIAC-E140 UMB 08 20, NIAC-E180 UMB 01 21, NIAC-E253 UMB 08 21, NIAC-E42 UMB 09 19, SCHEDULE A 01 80, UMB 231 06 16, UMB 232 06 16, UMB-100 05 21, UMB166 12 88, UMB62 05 13

COUNTERSIGNED: 2/21/2022 BY [Signature]
(AUTHORIZED REPRESENTATIVE)

THESE DECLARATIONS, THE ATTACHED SCHEDULE OF UNDERLYING INSURANCE, TOGETHER WITH THE ATTACHED SCHEDULE OF FORMS AND ENDORSEMENTS, AND ANY FORMS AND ENDORSEMENTS WE MAY LATER ATTACH TO REFLECT CHANGES, MAKE UP AND COMPLETE THE ABOVE NUMBERED POLICY.
Notice: This risk pooling contract is issued by a pooling arrangement authorized by California Corporations Code Section 5005.1. The pooling arrangement is not subject to all of the insurance laws of the State of California and is not subject to regulation by the Insurance Commissioner. Insurance guaranty funds are not available to pay claims in the event the risk pool becomes insolvent.



A Head for Insurance. A Heart for Nonprofits.

**NONPROFITS INSURANCE ALLIANCE
OF CALIFORNIA (NIAC)**

www.insurancefornonprofits.org

SCHEDULE A - SCHEDULE OF UNDERLYING INSURANCE
--

POLICY NUMBER: 2022-68322-UMB

CONTROL NUMBER: 68322

NAME OF INSURED: California Coastal Rural Development Corporation

TYPE OF POLICY	APPLICABLE LIMITS	INSURER POLICY #	APPLICABLE PERIOD
(A) Automobile Liability Business Auto	Bodily Injury and Property Damage Combined Single Limit \$1,000,000 Uninsured/Underinsured Motorist N/A	NIAC 2022-68322	02/22/2022 to 02/22/2023
(Does not include: Terrorism Coverage - Certified Acts)			
(B) Commercial General Liability	Each Occurrence Limit \$1,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations Aggregate Limi Personal & Advertising Injury Limit \$1,000,000 Damage to Premises Rented to You N/A (any one premises)	NIAC 2022-68322	02/22/2022 to 02/22/2023
(Does not include: Terrorism Coverage - Certified Acts)			
(C) Social Service Professional Liability	Each Occurrence Limit N/A Aggregate Limit N/A		
(D) Standard Workers Compensation & Employers Liability	Coverage B - Employers Liability Bodily Injury by Accident \$500,000 Bodily Injury by Disease \$500,000 Bodily Injury by Disease \$500,000	Oak River Insurance Company TBD Each Accident Each Employee Policy Limit	02/22/2022 to 02/22/2022
(Does not include: Terrorism Coverage - Certified Acts)			
(E) Improper Sexual Conduct and Physical Abuse	Each Occurrence Limit N/A General Aggregate Limit N/A		
(F) Directors' And Officers'	Each Wrongful Act Limit \$1,000,000 Aggregate Limit \$1,000,000	NIAC 2022-68322-DO	02/22/2022 to 02/22/2023
(Does not include: Terrorism Coverage - Certified Acts)			
(G) Liquor Liability	Each Common Cause Limit \$1,000,000 Aggregate Limit \$1,000,000	NIAC 2022-68322	02/22/2022 to 02/22/2023
(Does not include: Terrorism Coverage - Certified Acts)			
(H) Employee Benefits Liability	Each Employee \$1,000,000 Aggregate Limit \$2,000,000	NIAC 2022-68322	02/22/2022 to 02/22/2023
(Does not include: Terrorism Coverage - Certified Acts)			



INDEX OF FORMS ATTACHED TO THE POLICY

POLICY NUMBER: 2022-68322-UMB-NPO

NAME OF INSURED: California Coastal Rural Development Corporation

Page 1

UMBRELLA FORMS AND ENDORSEMENTS

FORM NUMBER/EDITION DATE

Exclusion of Terrorism	CU 21 33 01 15
Member Criteria	NIAC-E003 UMB 08 2
Claims Made & Prior Acts Exclusion	NIAC-E140 UMB 08 2
Communicable Disease - Exclusion	NIAC-E180 UMB 01 2
Workers' Compensation - Exclusion	NIAC-E253 UMB 08 2
Nuclear, Chemical and Biological Hazard Exclusion	NIAC-E42 UMB 09 19
Schedule A - Schedule of Underlying Insurance	SCHEDULE A 01 80
Privacy Liability and Cyber Coverage Exclusion	UMB 231 06 16
Medical Payments Exclusion	UMB 232 06 16
Commercial Umbrella Policy	UMB-100 05 21
Unimpaired Aggregate Limits Endorsement (Non-Concurrency)	UMB166 12 88
Employers' Liability Following Form Endorsement	UMB62 05 13



A Head for Insurance. A Heart for Nonprofits.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CLAIMS-MADE AND PRIOR ACTS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA POLICY

This insurance is amended to include the following:

1. If any "Underlying Insurance" provides Social Service Professional Liability and/or Improper Sexual Conduct and Physical Abuse Liability coverage on a Claims-Made basis, this insurance does not apply to "Damages" because of a "Professional Service", "Improper Sexual Conduct" or "Physical Abuse" which is committed prior to the "Retroactive Date" identified within the Claims-Made "Underlying Insurance".
2. Subject to provision 1. above; this insurance does not apply to "Damages" because of a "Wrongful Act", a "Professional Service", or an offense which constitutes "Personal and Advertising Injury" which is committed before the inception date of this policy, or "Injury", "Bodily Injury" or "Property Damage" which is sustained before the inception date of this policy. However, provision 2. of this exclusion does not apply to Directors and Officers coverage if included as "Underlying Insurance" to this policy.



COMMERCIAL UMBRELLA POLICY

THIS POLICY PROVIDES COVERAGE ON A CLAIMS-MADE BASIS IF THE UNDERLYING INSURANCE PROVIDES CLAIMS-MADE COVERAGE. IF COVERAGE WITHIN THIS POLICY IS PROVIDED ON A CLAIMS-MADE BASIS, IT APPLIES ONLY TO CLAIMS MADE AGAINST AN INSURED AND REPORTED TO US DURING THIS POLICY'S PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY. IF COVERAGE WITHIN THIS POLICY IS PROVIDED ON A CLAIMS-MADE BASIS, THIS COVERAGE APPLIES ONLY TO DAMAGES ARISING FROM AN ACT, ERROR OR OMISSION COMMITTED ON OR AFTER THE RETROACTIVE DATE SHOWN IN THE DECLARATIONS OF THE UNDERLYING CLAIMS-MADE POLICY(S) BUT PRIOR TO THE END OF THIS POLICY'S PERIOD, NOT INCLUDING AN EXTENDED REPORTING PERIOD. PLEASE READ THIS POLICY CAREFULLY TO DETERMINE YOUR RIGHTS AND OBLIGATIONS.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company issuing this policy.

Other words and phrases that appear in quotation marks have special meanings found in Section 6 - DEFINITIONS.

SECTION 1. INSURING AGREEMENT

A. Excess Liability Insurance (Following Form)

We will pay on behalf of an insured those sums in excess of the amount payable under the terms of any "Underlying Insurance" as stated in the "Schedule of Underlying Insurance" that an insured becomes legally obligated to pay as damages to which this insurance applies. This Excess Liability Insurance is excess insurance and follows the "Underlying Insurance" except as otherwise stated in this policy. This Excess Liability Insurance is subject to the same terms, conditions, warranties, agreements, exclusions, endorsements and definitions contained in the "Underlying Insurance" except as otherwise provided in this policy; provided, however, in no event will this insurance apply unless the "Underlying Insurance" applies or would apply but for the exhaustion of the applicable Limit of Liability in the "Underlying Insurance."

B. Extended Reporting

1. Extended Reporting Periods

If the "Underlying Insurance" provides coverage on a claims-made basis and this policy provides coverage on a claims-made basis, then we will provide an Automatic Extended Reporting Period as described in subparagraph 2 below and, if you purchase it, an Optional Extended Reporting Period as described in subparagraph 3 below, IF,

- a. this insurance is cancelled or not renewed for any reason other than non-payment of premium; or
- b. we renew or replace this insurance with other insurance that:
 - i. has a Retroactive Date later than the Retroactive Date shown in the Declarations of this policy; or
 - ii. does NOT apply to damage on a claims-made basis.

If the "Underlying Insurance" does not provide an Extended Reporting Period then we will not offer and will not provide an Extended Reporting Period.

2. Automatic Extended Reporting Period

If the "Underlying Insurance" provides coverage on a claims-made basis then an Automatic Extended Reporting Period, equal in length to the Automatic Extended Reporting Period provided in the applicable "Underlying Insurance," is automatically provided, except when this insurance is cancelled or not renewed because of non-

payment of premium. The Automatic Extended Reporting Period does NOT apply to a claim that is covered under any subsequent insurance you purchase, or that would be covered, but for exhaustion of the amount of insurance otherwise applicable to such claim.

3. Optional Extended Reporting Period

- a. If the "Underlying Insurance" provides coverage on a claims-made basis then an Optional Extended Reporting Period is available only by an endorsement and for an additional charge. The Optional Extended Reporting Period starts at the end of this policy, either by cancellation or expiration, and will be equal in length to the Optional Extended Reporting Period you purchase as to the applicable "Underlying Insurance." A "claim" first made during this Optional Extended Reporting Period will be deemed to have been made during the policy period of this policy, and will be subject to the Limits of Liability set forth in SECTION 2 - LIMITS OF LIABILITY.
- b. The Named Insured listed in the Declarations to this policy must give us a written request for the Optional Extended Reporting Period, together with payment of the appropriate premium, within 30 days after the cancellation or non-renewal of this policy. This additional premium shall be fully earned at the inception of the Optional Extended Reporting Period.
- c. We will determine the additional premium for the Optional Extended Reporting Period in accordance with our rates.
- d. The Optional Extended Reporting Period is excess over any other insurance available under a policy or policies in force after the Optional Extended Reporting Period starts.

4. How Optional Extended Reporting Period Applies

- a. The Optional Extended Reporting Period applies only to damages arising from acts, errors or omissions committed before the end of this policy period, but not before the Retroactive Date shown in the Declarations, and not including an Extended Reporting Period. The Optional Extended Reporting Period does NOT:
 - i. extend this policy's period or change the scope of coverage provided;
 - ii. reinstate or increase the Limits of Liability applicable to any "claim" or "suit" to which this insurance applies.

5. Notification of us of a Claim or Suit

Notification of a "claim" or "suit" must be in accordance with Duties In The Event Of A Claim Or Suit as stated in Provision F.2. of SECTION 5 - CONDITIONS of this policy. Any insured's failure to comply with the Duties In The Event Of A Claim Or Suit as stated in SECTION 5 - CONDITIONS of this policy will void the Optional Extended Reporting Period coverage under this policy, and we will promptly refund any additional premium you paid for the Optional Extended Reporting Period .

SECTION 2. LIMITS OF LIABILITY

- A. The Limits of Liability shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 1. persons and organizations who are insureds under this policy;
 2. coverages provided under this policy;
 3. "claims" made and/or "suits" brought against any or all insureds; or
 4. persons or organizations making a "claim" or bringing a "suit".
- B. The General Aggregate as stated in Item 4.e. of the Declarations to this policy is the most we will pay for all damages to which this policy applies for Commercial General Liability, Business Auto Liability, Products-Completed Operations Liability, Liquor Liability and Employee Benefits Liability.
- C. The Directors and Officers Liability Aggregate as stated in Item 4.f. of the Declarations to this policy is the most we will pay for all damages to which this policy applies for Directors and Officers Liability.

- D. The Improper Sexual Conduct and Physical Abuse Aggregate as stated in Item 4.g. of the Declarations to this policy is the most we will pay for all damages to which this policy applies for Improper Sexual Conduct and Physical Abuse Liability.
- E. The Social Service Professional Liability Aggregate as stated in Item 4.h. of the Declarations to this policy is the most we will pay for all damages to which this policy applies for Social Service Professional Liability.
- F. If the Limit of Liability of the "Scheduled Underlying Policy" as stated in the "Schedule of Underlying Insurance" has been exhausted by payments made on behalf of any insured by the "Underlying Insurer," this policy shall apply in the same manner as the applicable "Underlying Insurance," subject to all the terms and conditions of such "Underlying Insurance" and the terms and conditions of this policy. If the Limit of Liability of the "Underlying Insurance" as stated in the "Schedule of Underlying Insurance" has been reduced by payments made on behalf of any insured by the "Underlying Insurer," this policy will drop down to become immediately excess of the reduced limit of the "Underlying Insurance."
- G. The Limits of Insurance of the "Scheduled Underlying Policy" will be reduced or exhausted only by payments made on behalf of an insured for injury or damage to which this insurance would apply, but for the amount of such injury or damage.
- H. The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations to this policy, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limit of Insurance. Any Extended Reporting Period will not increase the applicable Limit of Insurance.

SECTION 3. DEFENSE PROVISIONS

- A. We will have the same defense obligations under this policy as are in the applicable "Underlying Insurance" when the applicable Limits of Liability of the "Underlying Insurance," plus the applicable limits of any other applicable insurance, have been exhausted by payments made on behalf of an insured.
 - 1. If the "Underlying Insurance" includes payments of "defense expenses" as part of its Limits of Liability, then when excess of such "Underlying Insurance," our payment of any "defense expenses" is within the applicable Limits of Liability of this policy and each payment we make for such "defense expenses" reduces the available Limits of Liability by the amount of the payment.
 - 2. If the "Underlying Insurance" does not include payments of "defense expenses" as part of its Limits of Liability, but instead indicates that the payment of "defense expenses" will not reduce the Limits of Liability, then when excess of such "Underlying Insurance," our payment of "defense expenses" will not reduce the available Limits of Liability.
 - 3. The "defense expenses" extended by this policy will be subject to the same provisions as the "defense expenses" extended by the "Underlying Insurance."
- B. We will not defend any "suit" or "claim" after we have exhausted the applicable Limit of Liability as stated in the Declarations. If we are prevented by law from carrying out this paragraph, we will NOT pay any "defense expenses" incurred without our written consent.
- C. In all circumstances for which paragraph A above is not applicable, we will NOT be obligated to assume charges or pay expenses for the investigation, settlement or defense of any "claim" made, or "suit" brought, or proceedings instituted against any insured. We will, however, have the right in our sole discretion to participate in the defense and trial of any "claim", "claims", "suits" or proceedings which may involve the coverage extended by this policy. If we avail ourselves of this right, we will do so at our expense.

SECTION 4. EXCLUSIONS OR SUBLIMITS

- A. Each and every exclusion within the “Underlying Insurance” is incorporated by reference to this policy, with the same force and effect as though expressly set forth within this policy. As an example only, if the “Underlying Insurance” includes an exclusion for improper sexual misconduct and physical abuse, that exclusion in its entirety is incorporated within this policy as though fully set forth herein.
- B. Notwithstanding Provision A within Section 1, the coverage identified in the Declarations to this policy is the only coverage extended by this policy. If an “Underlying Insurance” includes exclusions with exceptions and specified sub-limits, this policy will not provide coverage in excess of the specified sub-limit, unless a separate sub-limit is identified specifically within the Declarations to this policy. If an “Underlying Insurance” includes Additional Coverages with specified limits, this policy will not provide coverage in excess of the specified Additional Coverage, unless a limit for that Additional Coverage is specifically identified within the Declarations to this policy. If an “Underlying Insurance” includes an extension of a specified coverage with a limit specific to that coverage, this policy will not provide coverage excess to that specified coverage unless a separate limit is specifically identified within the Declarations to this policy.

SECTION 5. CONDITIONS

A. Appeals

We can appeal a judgment against any insured under this policy if:

- 1. the judgment is for more than the remaining Limits of Liability under the “Underlying Insurance”; and
- 2. the insured or the “Underlying Insurer” do not appeal it.

If we appeal the judgment, we will pay the costs of that appeal and any interest on those costs. Those payments will be in addition to the Limits of Liability of this policy, unless the “Underlying Insurance” includes payment of expenses incurred in an appeal as part of its Limit of Liability, in which case the costs of the appeal and any interest on those costs will decrease the applicable Limit of Liability.

B. Audit of Books and Records

We may audit your books and records at any time during the term of this insurance or within three years after its expiration or termination.

C. Financial Impairment

Bankruptcy, insolvency, rehabilitation, receivership, liquidation, or other financial impairment of any insured or any insurer providing “Underlying Insurance” as stated in the “Schedule of Underlying Insurance,” shall neither relieve nor increase any of our obligations under this policy. In the event there is a diminished recovery or no recovery available to any insured as a result of such financial impairment of any insurer providing “Underlying Insurance,” the coverage under this policy shall apply only in excess of the Limits of Liability stated in the “Schedule of Underlying Insurance.” Under no circumstances will we be required to drop down and replace the underlying Limits of Liability or assume any other obligations of a financially impaired insurer or an insured.

D. Cancellation

You may cancel this policy at any time by sending us a written request or by returning the policy stating the date of cancellation.

- 1. We may cancel this policy at any time by sending to you a notice of cancellation 30 days (10 days in the event of non-payment of premium) in advance of the cancellation date. Our notice of cancellation will be mailed to your last known address shown in the Declarations to this policy and will indicate the date on which coverage is terminated.
- 2. If cancellation is at your request, return premium will be computed at 90% of pro rata. If we cancel, return premium will be computed pro rata. If this policy insures more than one Named Insured, cancellation may be affected by the first Named Insured in the Declarations to this policy for the account of all Named

Insureds. Notice of cancellation by us to such first Named Insured will be deemed notice to all insureds and payment of any return premium to such first Named Insured will be for the account of all insureds.

3. In the event that provisions of this condition conflict with any state law or regulation governing the cancellation/nonrenewal of this policy, then such law or regulation shall prevail and this policy is amended to conform with such law or regulation.

E. Changes

Notice to any agent or knowledge possessed by any agent or by any other person will not affect a waiver or a change in any part of this policy. This policy can only be changed by a written endorsement that becomes part of this policy. The endorsement must be signed by one of our authorized representatives.

F. Duties in the Event of a Claim or Suit

1. You must see to it that we are notified as soon as practicable of an accident, occurrence, offense or event that may result in a "claim" or "suit." To the extent possible and subject to the requirements of Section 1 above, notice should include:
 - a. how, when and where the activities which form the basis of any potential "claim" or "suit" took place;
 - b. the names and addresses of any injured persons and witnesses; and
 - c. the nature and location of any injury or damage arising out of the activities which form the basis for any potential "claim" or "suit."
2. If a "claim" is made or "suit" is brought against any insured, you must:
 - a. immediately record the specifics of the "claim" or "suit" and the date received;
 - b. notify us as soon as practicable and immediately provide to us written notice of the "claim" or "suit;" and
 - c. if the "Underlying Insurance" is on a claims-made form, you must provide written notice to us in conformance with the applicable claims-made temporal conditions included within the "Underlying Insurance."
3. You and any other involved insured must:
 - a. immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "suit";
 - b. authorize us to obtain records and other information;
 - c. cooperate with us in the investigation, settlement or defense of the "claim" or "suit"; and
 - d. assist us, upon our request, in the enforcement of any right against any person or organization, which may be liable to the insured because of injury or damage to which this insurance may also apply.
4. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

G. Maintenance of Scheduled Underlying Insurance

While this policy is in effect you agree to maintain the "Underlying Insurance" listed in the "Schedule of Underlying Insurance" in full force. This means that:

1. the "Scheduled Underlying Policy" or "Scheduled Underlying Policies" may not be cancelled or not renewed by either you or the "Underlying Insurer" without notifying us;
2. renewals or replacements will not be more restrictive in coverage than the "Underlying Insurance" listed in the "Schedule of Underlying Insurance";
3. the terms, conditions and endorsements of the "Underlying Scheduled Insurance" will not materially change;

4. the risk of uncollectibility (in whole or in part) of the "Underlying Scheduled Insurance" limit as listed in the "Schedule of Underlying Insurance," or replacements thereof, whether because of financial impairment or insolvency of an "Underlying Insurer" or for any other reason, is expressly retained by you and is not in any way or under any circumstances insured or assumed by us; and
5. limits of "Underlying Insurance" will not change except for any reduction in the aggregate limit or Limits of Insurance by payment of claims hereunder.
Your failure and/or the failure of the "Underlying Insurer" to comply with this condition will not invalidate this policy, but in the event of such failure, we will only be liable to the same extent as if there had been compliance with this condition.

H. Other Insurance

If other insurance applies to a "claim" or "suit" covered by this policy, the insurance under this policy is excess of such other insurance and we will not make any payments until the other insurance has been used up. This condition shall not apply if the other insurance is specifically written to be excess over this policy. Except to the extent stated in this policy, this insurance is not subject to the terms, conditions, or limitations of any other insurance except for "Underlying Insurance."

I. Transfer of Rights of Recovery Against Others to us

If any insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. Each insured must do nothing to impair these rights or the transfer thereof to us. Each insured must cooperate with us and, at our request, assist us in the pursuit and enforcement of those rights. If there is any money recovered, we will disburse that money, as follows:

1. first, we will be repaid to the extent of our actual payment; and
2. second, if any money remains, the insured or any "Underlying Insurer" will be repaid to the extent of their actual payment.

If any expenses are incurred to recover money, we will share the expenses with the insured or any "Underlying Insurer" in proportion to the amount that each is repaid. If our recovery attempt is not successful, we will bear all of the recovery expenses.

J. Premium

The premium for this policy as stated in the Declarations is a flat premium and is subject to a minimum and deposit premium, if applicable. The premium is not subject to adjustment unless:

1. a rate is shown in the Declarations; or
2. an endorsement or endorsements are attached to this policy changing the Limit of Liability, adding or changing the "Underlying Insurance", changing the policy period, or because of an Extended Reporting Period.

If a flat premium is charged, and a minimum premium is shown in the Declarations, then that minimum premium is fully earned as of the inception of this policy.

K. Representations

By accepting this policy, you agree that:

1. the statements in the Application for this policy and Declarations to this policy are accurate and complete;
2. those statements are based upon representations you made to us; and
3. we have issued this policy in reliance upon your representations in the Application for this policy and its Declarations.

L. Titles of Paragraphs

The titles of the varied Sections, Paragraphs, and Subparagraphs of this policy and endorsements attached to this policy, if any, are inserted solely for convenience or reference and are not to be deemed in any way to limit or affect the provisions to which they relate.

M. Transfer of Rights and Duties

Your rights and duties under this insurance may not be transferred without our written consent, except in the event of the death of an individual insured and then only to that individual's representative.

N. When Loss is Payable

This policy will not apply until an insured, or an insured's "Underlying Insurer," is obligated to pay the amount of the "Underlying Insurance" for damages which are also covered by this policy. When the amount of loss has finally been determined, we will promptly pay on behalf of the insured the amount of the damages which comes within the terms of this policy.

SECTION 6. DEFINITIONS

Except for the terms appearing in quotes within this policy, the terms within this policy have the same meaning as set forth in the applicable "Underlying Insurance." With respect to the terms appearing in quotes within this policy, the definitions below will apply.

- A. "Claim" or "Claims" means any demand, including a "suit," against an insured for damages to which this policy applies are alleged.
- B. "Defense expenses" means the fees, costs and/or expenses which an "Underlying Insurer" has an obligation to pay in the defense of a "claim," "claims" or "suit" pursuant to the terms and conditions of the "Underlying Insurance."
- C. "Schedule of Underlying Insurance" means the Schedule of Underlying Insurance included within the Declarations to this policy.
- D. "Scheduled Underlying Policy" or "Scheduled Underlying Policies" means the identified policy or policies within the "Schedule of Underlying Insurance."
- E. "Suit" means a civil proceeding in which damages to which this policy applies are alleged, including, without limitation:
 - 1. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
 - 2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.
- F. "Underlying Insurance" means the policy or policies within the "Schedule of Underlying Insurance" applicable or potentially applicable to the "claim" or "suit."
- G. "Underlying Insurer" or "Underlying Insurers" means the entity or entities that issued the "Underlying Insurance."



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMUNICABLE DISEASE - EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA POLICY

Notwithstanding any coverage extended within the Schedule of Underlying Insurance, the Commercial Umbrella Policy to which this endorsement is attached does not apply to, and we shall have no duty to defend any, "claim", "suit", "damages" or "injury" which arises out of:

1. The actual or alleged transmission of a "communicable disease"; and/or
2. An act, error or omission by or on behalf of any "insured" or "Member" in:
 - a. The supervision, hiring, employment, training or monitoring of any person who transmits, is infected with, and/or alleged to be infected with a "communicable disease"; and/or
 - b. Testing for a "communicable disease"; and/or
 - c. The actual or alleged failure to prevent the spread of a "communicable disease"; and/or
 - d. The actual or alleged failure to report a "communicable disease" to the authorities, including but not limited to the reporting or failure to report any person who is infected with or is alleged to be infected with a "communicable disease", and/or any place where there is or is alleged to be a presence or spread of a "communicable disease".

"Communicable disease" as used in this endorsement shall mean any contagious disease, illness or syndrome which is or has been transmitted to a person or place by bacteria, virus, fungi, protozoa, a toxic agent or any combination of these.

All other terms and conditions of the Commercial Umbrella Liability Policy to which this endorsement is attached remain unchanged

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYERS' LIABILITY FOLLOWING FORM ENDORSEMENT

This insurance does not apply to any liability for bodily injury, sickness, disease, disability or shock including death at any time resulting therefrom, and, if arising out of the foregoing, mental anguish or mental injury, sustained by:

1. An employee of the insured arising out of and in the course of employment by the insured; or
2. The spouse, child, parent, brother or sister of that employee as a consequence of (1) above;

unless such liability is covered by valid and collectible underlying insurance as listed in the Schedule of Underlying Insurance for the full limit shown and then only for such liability for which coverage is afforded under the underlying insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA COVERAGE PART

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part or underlying insurance to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part or underlying insurance.

2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

C. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MEDICAL PAYMENTS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA POLICY

This insurance does not apply to **COVERAGE C MEDICAL PAYMENTS** provided in any underlying Commercial General Liability Coverage Form or to any medical expenses for which **COVERAGE C MEDICAL PAYMENTS** are paid or payable.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MEMBER CRITERIA

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA POLICY

A named insured of the Nonprofits Insurance Alliance of California (NIAC) must meet at least the following criteria:

1. is organized chiefly to provide or fund health or human services, but does not include a hospital;
2. is incorporated in California or qualified to do business in California and is an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a), or any corresponding sections of any future federal tax code. Any member which receives a final determination that it no longer qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future tax code, shall immediately notify the corporation of such determination and the effective date of such determination.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR, CHEMICAL AND BIOLOGICAL HAZARD EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA POLICY

This insurance does not apply to any liability, loss, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with the use or release, or threat thereof, of any nuclear weapon or device or chemical or biological agent, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIVACY LIABILITY AND CYBER COVERAGE EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA POLICY

A. This insurance does not apply to any of the following:

1. "Identity theft".
2. "Loss of electronic data."
3. The disclosure, loss or use of "protected health information".

For purposes of the liability coverages excluded by this endorsement, the following **Definitions** apply:

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

"Identity theft" means fraudulent appropriation and use of a person's identification or personal information, including both "electronic data" as well as information contained in printed or written format.

"Loss of electronic data" means:

1. Damage to, loss of, loss of use of, corruption of, inability to access or inability to manipulate "electronic data;" and
2. "Identity theft."

"Protected health information" means any information, whether oral or recorded in any form or medium:

- (i) That relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual;
- (ii) That identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify that individual; and
- (iii) as defined within the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §1320d-1320d-8 ("HIPAA") or other similar federal, state or local laws or statutes.

B. This insurance also does not apply to any of the following first party coverages in the PRIVACY LIABILITY AND CYBER COVERAGE ENDORSEMENT:

1. Security Event Costs and Expenses
2. Cyber Extortion
3. Crisis Management and Reward Expenses

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**UNIMPAIRED AGGREGATE LIMITS ENDORSEMENT
(NON-CONCURRENCY)**

It is agreed that the underlying aggregate limits, where applicable, as shown in the Schedule of Underlying Insurance, shall be unimpaired at the effective date of this policy and for the purpose of the insurance provided by this policy, only occurrences taking place during the term of this policy shall be considered in determining the extent of any exhaustion of the underlying aggregate limits.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WORKERS' COMPENSATION - EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA POLICY

Notwithstanding any coverage extended within an "Underlying Insurance", the insurance extended within the Commercial Umbrella policy to which this endorsement is attached does not apply to, and we shall have no duty to defend, any "claim", "claims", "suit", or damages which arises out of:

- (1) Workers' Compensation benefits extended by statute which are subject to a Workers' Compensation policy (including but not limited to a Workers' Compensation and Employer's Liability Policy) issued to you; or
- (2) Any benefits that you are required to pay or provide under the Workers' Compensation law pursuant to which this policy shall be construed.

All other terms and conditions of the Commercial Umbrella Policy to which this endorsement is attached remain unchanged.



DIRECTORS & OFFICERS LIABILITY POLICY DECLARATIONS

Item 1. Named Member: California Coastal Rural Development Corporation
Address: 221 Main St., Ste. 300 Salinas, CA 93901

Item 2. Policy Number: 2022-68322-DO-NPO
Policy Period: 02/22/2022 to 02/22/2023 (12:01 A.M. Standard time at the address stated in Item 1.)

Item 3. Limit of Liability: \$ 1,000,000 Each Wrongful Act
\$ 1,000,000 Annual Aggregate

Item 4. Deductible: \$25,000.00

Item 5. Premium: \$ 4,315 (premium does not include Terrorism Coverage - Certified Acts)

Item 6. Applicable policy form(s) and Endorsement(s) effective at inception:
CG 21 73 01 15, NIAC EDO11 12 17, NIAC-DODEC-NPO, NIAC-DOET 02 17, NIAC-DOPWAR 03 14,
NIAC-E003 DO 08 20, NIAC-E069 DO 02 19, NIAC-E180 DO 01 21, NIAC-E258 DO 08 21, NIAC-E282 DO 12 21,
NIAC-E42 DO 09 19, NIAC-E58 02 12, NIAC-EDO1 08 91, NIAC-EDO17 05 20, NIAC-EDO34 01 02,
NIAC-EDO4 03 94, NIAC-EDO7 02 11

Producer: 01835
Acrisure of California, LLC
15005 Concord Circle, Suite 110
Morgan Hill, CA 95037-5417

Notice: This risk pooling contract is issued by a pooling arrangement authorized by California Corporations Code Section 5005.1. The pooling arrangement is not subject to all of the insurance laws of the State of California and is not subject to regulation by the Insurance Commissioner. Insurance guaranty funds are not available to pay claims in the event the risk pool becomes insolvent.

Handwritten signature of Pamela C. R.

Authorized Company Representative
President, NIAC



NONPROFITS INSURANCE ALLIANCE
OF CALIFORNIA (NIAC)

www.insurancefornonprofits.org

DATE: February 21, 2022
TO: California Coastal Rural Development Corporation (68322)
FR: NIAC
RE: Avoiding Wrongful Termination Lawsuits

You have recently purchased Directors and Officers coverage with the Nonprofits Insurance Alliance of California (NIAC). Employee-related lawsuits are the most common claim filed against nonprofit D&O insurance policies. Many of these lawsuits can be avoided by obtaining good advice before you terminate an employee. To assist you, NIAC provides FREE pre-termination consultations. Just contact our Employment Risk Managers at 800-359-6422 and they will assist you to ensure that you take the appropriate actions to protect your organization.

Another service that NIAC provides to D&O policyholders is a highly subsidized subscription to the Thompson Handbook Builder. Annual subscription cost is \$99 (\$300 savings).

You may find these additional facts about employment-related matters of interest:

- Well over 90% of the claims made against directors and officers of 501(c)(3) nonprofits are employment related. These commonly involve allegations of wrongful terminations, discrimination, or harassment.
- The primary reason nonprofits find themselves in employment-related lawsuits is failing to follow, to the letter, personnel policies which are in compliance with law. In particular, if your personnel policies provide for any special considerations before terminations, such as grievance, probationary period, or written or verbal warnings, and you do not follow these policies to the letter, but instead fire immediately in anger, chances are good that you could find yourself in a lawsuit.
- During our review of personnel policies of those nonprofits with D&O coverage, we most commonly find policies out-of-compliance with current law regarding pregnancy leave, provision for payment of overtime, and applicable classes protected from discrimination such as sexual orientation, political affiliation, veteran status and others.

For everyone's benefit we hope your organization does not find itself in a difficult termination situation. However, if you do, please do not hesitate to contact our Employment Risk Managers before you take action so that together we can help minimize your exposure to expensive and time-consuming lawsuits.

P.S. A knowledgeable, committed board of directors is the strongest protector of a charitable organization's accountability to the law, its clients, its donors and the public. Are you looking for a communications and information management solution for your board of directors? BOARDnetWORK was created by NIAC for its members. This FREE easy to use, web-based resource will help streamline the process of keeping your board organized and running smoothly.

View short demo at www.boardnetwork.org. For more information, call our Director of Loss Control at 831-621-6076



INDEX OF FORMS ATTACHED TO THE POLICY

POLICY NUMBER: 2022-68322-DO

NAME OF INSURED: California Coastal Rural Development Corporation

Page: 1

DIRECTORS AND OFFICERS FORMS AND ENDORSEMENTS	FORM NUMBER / EDITION DATE
Exclusion of Certified Acts of Terrorism	CG 21 73 01 15
Limited Defense Costs - California Labor Code Section 132a	NIAC EDO11 12 17
Directors & Officers Liability Policy Declarations	NIAC-DODEC-NPO
Nonprofit Organization Directors' and Officers' Liability Policy	NIAC-DOET 02 17
Prior Wrongful Acts with Retro Date	NIAC-DOPWAR 03 14
Member Criteria	NIAC-E003 DO 08 20
Fiscal Sponsor Limitation	NIAC-E069 DO 02 19
Communicable Disease - Exclusion	NIAC-E180 DO 01 21
Anti-Stacking Condition	NIAC-E258 DO 08 21
Cyber Incident - Exclusion	NIAC-E282 DO 12 21
Nuclear, Chemical and Biological Hazard Exclusion	NIAC-E42 DO 09 19
Liberalization - D&O	NIAC-E58 02 12
Nuclear Energy Liability Exclusion Endorsement (Broad Form)	NIAC-EDO1 08 91
ISC and Sexual Harassment Amendment	NIAC-EDO17 05 20
Mold, Fungus Exclusion	NIAC-EDO34 01 02
Blood Testing Exclusion	NIAC-EDO4 03 94
Non-Imputation	NIAC-EDO7 02 11

This list of forms is not part of the actual policy, but is for your information only.
Please refer to the policy(s) for actual limits, coverages and exclusions.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**PRIOR WRONGFUL ACTS ENDORSEMENT
WITH RETROACTIVE DATE**

This endorsement modifies insurance provided under the following:

DIRECTORS AND OFFICERS LIABILITY POLICY

Subject to the terms and conditions of this policy, coverage is amended to include "Wrongful Acts" committed on or after the Retro Date and before the policy inception date, and first reported to the Company during the policy period.

This insurance does not apply to "Wrongful Acts" that any "Member" knew or should have known prior to this policy's inception date would lead to a "Claim" or suit.

If there is other insurance available to the "Member" for "Damages" which are covered by this endorsement, including but not limited to a duty to defend the "Member" by that other insurance, the coverage provided by this endorsement is excess to that other insurance.

This coverage endorsement will not serve to increase the Company's limit of insurance. The limit noted in Item 3 of the Declarations is the most the Company will pay for the sum of all settlements and judgments under this policy.

If the Directors and Officers Liability Policy is canceled or not renewed, this Prior Wrongful Acts Endorsement shall terminate as of the same effective date of such cancellation or non-renewal.

Upon termination of the Prior Wrongful Acts Endorsement, and in consideration of an additional premium charge of 35% of the full annual premium, an Extended Reporting Period Endorsement is available. If either the Company or the "Member" cancels or declines to renew this policy, then pursuant to the Extended Reporting Period, the "Member" shall have a period of one year following the effective date of such cancellation or non-renewal in which to give written notice to the Company of "Claims" first made against the "Member" during the Extended Reporting Period and arising out of "Wrongful Acts" committed prior to the policy inception date.

A written request for the Extended Reporting Period, together with payment of the appropriate premium, must be made within thirty (30) days after the cancellation or non-renewal of the policy. This additional premium shall be fully earned at the inception of the Extended Reporting Period. The Extended Reporting Period Endorsement is not cancelable.

At the Company's option, this right to purchase the Extended Reporting Period may not apply if: (a) this policy is canceled by the Company for non-payment of premium; or (b) this policy is succeeded immediately with no gap in coverage by another policy.

Retro Date: 03/25/2003



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ANTI-STACKING CONDITION

This endorsement modifies insurance provided under the following:

- DIRECTORS AND OFFICERS LIABILITY COVERAGE FORM
 - DIRECTORS AND OFFICERS LIABILITY COVERAGE FORM - EXCLUDES EMPLOYMENT PRACTICES LIABILITY
-

Condition L. Other Insurance, Section 2 is replaced in its entirety by the following:

- 2. a. Subject to section b. below, no coverage shall be afforded by this policy if coverage for the "Claim", "Claims" or suit is afforded under any other policy issued by us to the "Organization".
- b. If two or more Directors and Officers Liability Coverage Forms written by us apply to a "Claim", "Claims" or suits for "Damages" resulting from a "Wrongful Act", it is our intent that the policies do not provide any duplication or overlap of coverage for the same "Claim", "Claims" or suit; and the combined maximum Limit of Liability under all such policies shall not exceed the highest applicable Limit of Liability under any one policy identified within the Declarations Page, regardless of the number of "Members", claimants, "Claims" or suits.

Any "Claim" or suit which includes multiple claimants and/or plaintiffs and which arises out of a series of continuous or interrelated "Wrongful Acts" will be considered as arising out of one "Wrongful Act", which is deemed to have been committed on the date of the first such "Wrongful Act", without regard to the status of the respective claimant, claimants, plaintiff and/or plaintiffs at the time of that "Wrongful Act".



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION — BLOOD TESTING

This endorsement modifies insurance provided under the following:

DIRECTORS AND OFFICERS LIABILITY COVERAGE PART

This insurance does not apply to "wrongful acts" or "personal injury" arising out of:

1. The rendering or failure to render services in connection with the making of a blood donation or drawing of blood or testing of blood;
2. An error, omission, defect or deficiency in any test performed or an evaluation, a consultation or advice given by or on behalf of any insured; or
3. The reporting of or reliance upon any such test, evaluation, consultation or advice;
4. Any blood product handled, transported, or distributed by you, or reliance upon any representation or warranty made at any time with respect to blood products;
5. The liability of any insured for acts or omissions of a doctor of medicine, technician, phlebotomist, or nurse with respect to any item listed in 1. through 4. above; or
6. The liability of any insured for the negligent hiring and/or supervision of any employee, volunteer, independent contractor, or agent of the insured with respect to any item listed in 1. through 4. above.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMUNICABLE DISEASE - EXCLUSION

This endorsement modifies insurance provided under the following:

DIRECTORS AND OFFICERS LIABILITY POLICY

This insurance does not apply to, and we shall have no duty to defend, any "claim" or "claims" arising out of:

1. The actual or alleged transmission of a "communicable disease"; and/or
2. An act, error or omission by or on behalf of any "Member" in:
 - a. The supervision, hiring, employment, training or monitoring of any person who transmits, is infected with, and/or alleged to be infected with a "communicable disease"; and/or
 - b. Testing for a "communicable disease"; and/or
 - c. The actual or alleged failure to prevent the spread of a "communicable disease"; and/or
 - d. The actual or alleged failure to report a "communicable disease" to the authorities, including but not limited to the reporting or failure to report any person who is infected with or is alleged to be infected with a "communicable disease", and/or any place where there is or is alleged to be a presence or spread of a "communicable disease".

"Communicable Disease" as used in this endorsement shall mean any contagious disease, illness or syndrome which is or has been transmitted to a person or place by bacteria, virus, fungi, protozoa, a toxic agent or any combination of these.

All other terms and conditions of the Coverage Form to which this endorsement is attached remain unchanged.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CYBER INCIDENT - EXCLUSION

This endorsement modifies insurance provided under the following:

DIRECTORS AND OFFICERS LIABILITY COVERAGE FORM

This insurance does not apply to, and we shall have no duty to defend, any "claim" or suit for "damages" arising out of the:

1. Unauthorized access to or use of any "computer or computer system";
2. Malicious code, virus or any other harmful code that is directed at, enacted upon or introduced into any "computer or computer system" and is designed to access, alter, corrupt, damage, delete, destroy, disrupt, encrypt, exploit, use or prevent or restrict access to or the use of any part of any "computer or computer system" or otherwise disrupt its normal functioning or operation;
3. Denial of service attack which disrupts, prevents or restricts access to or use of any "computer or computer system", or otherwise disrupts the normal functioning or operation of a "computer or computer system"; or
4. Publication, in any manner, of material which is caused, directly or indirectly, by the unauthorized access to or use of any "computer or computer system".

For purposes of this endorsement "computer or computer system" is defined to mean: "an individual device or set of integrated devices that input, output, process and store data and information utilizing programmable electronic products designed to accept data, perform prescribed operations and display the results of those operations, including but not limited to mainframes, desktop and laptop computers, tablets and smart phones."

All other terms and conditions of the Coverage Form to which this endorsement is attached remain unchanged.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITED DEFENSE COSTS – CALIFORNIA LABOR CODE SECTION 132a

This endorsement modifies insurance provided under the following:

NONPROFIT ORGANIZATION DIRECTORS AND OFFICERS LIABILITY POLICY

Exclusion V is added to the NIAC DOET as follows:

V. Liability for payment, other than "Defense Costs," of any "Claim" or "Claims" seeking remedies under California Labor Code Section 132a. As afforded under this provision, coverage for "Defense Costs" is subject to an annual aggregate limit of \$50,000. The coverage extended by this provision is subject to a deductible of either \$5,000 or the amount stated in item 4 of the Declarations of the policy to which this endorsement is attached, whichever is greater.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
EMPLOYEE BENEFITS LIABILITY COVERAGE
IMPROPER SEXUAL CONDUCT AND PHYSICAL ABUSE LIABILITY COVERAGE PART
DIRECTORS AND OFFICERS LIABILITY POLICY

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.

2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to such Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

c. The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for injury or damage that is otherwise excluded under this Coverage Part.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FISCAL SPONSOR LIMITATION OF COVERAGE

This endorsement modifies insurance provided under the following:

DIRECTORS AND OFFICERS LIABILITY COVERAGE FORM

This insurance does not apply to “damages” arising out of a Member’s status as a “fiscal sponsor” until:

- a. The first Named Member in the Declarations page enters into a “fiscal sponsor agreement” arising out of or in connection with the First Named Member’s status as a “fiscal sponsor” for that person, entity or organization; and
- b. The first Named Member in the Declarations page provides any underwriting information and pays any additional premium required by the Company.

This insurance does not apply to “damages” that occur before the first Named Member in the Declarations page to this policy enters into the “fiscal sponsor agreement” which is applicable to the claim or “suit” in which the “damages” are asserted.

If there is other insurance available to any party pursuant to a “fiscal sponsor agreement” for “damages” which are covered by this endorsement, including but not limited to a duty to defend the first Member identified in the Declarations by that other insurance, the coverage provided by this endorsement is excess to that other insurance.

“Fiscal sponsor” is defined to mean the status of first Named Member in the Declarations page to this policy as the entity or organization which offers its legal and tax-exempt status to another person, entity or organization pursuant to a “fiscal sponsor agreement”; who participates in the operations of that person, entity or organization by receiving assets and incurring liabilities for the mutual benefit of pursuing charitable goals; and in consideration for the benefit of that person, entity or organization has assumed responsibility to manage programs, events, revenue, grants, contributions, contracts and/or insurance programs.

“Fiscal sponsor agreement” is defined as a written contract or agreement by the first Named Member in the Declarations page to this policy with a person, entity and/or organization in which the first Named Member agrees to serve as a “fiscal sponsor” for such person, entity or organization.



A Head for Insurance. A Heart for Nonprofits.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IMPROPER SEXUAL CONDUCT AND SEXUAL HARASSMENT

This endorsement modifies insurance provided under the following:

DIRECTORS AND OFFICERS LIABILITY COVERAGE PART

Exclusion Q within **5. EXCLUSIONS** of the Directors and Officers Liability Policy is removed and replaced with the following:

- Q. "Claim" or "Claims", regardless of legal form or theory, which arises from or is in any way related to "improper sexual conduct", whether actual or threatened. This exclusion shall not apply to any "Claim" or "Claims" of "sexual harassment" brought by an employee of the "Organization", or a past or present volunteer of the "Organization" or a past or present business invitee, solely in his or her capacity as such.

The following definitions are included within **4. DEFINITIONS**.

- L. "Improper sexual conduct" means actual, attempted or alleged unlawful sexual conduct by one person or two or more persons acting in concert as prohibited by federal or state law, including but not limited to sexual abuse, sexual molestation, sexual assault, sexual battery, sexual exploitation or sexual injury.
- M. "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, or verbal, visual or physical conduct of a sexual nature when such conduct:
 - a. is linked implicitly or explicitly with a decision affecting the employment of the past or present employee, the volunteer status of the past or present volunteer or the business invitee status of the past or present business invitee of the insured;
 - b. interferes with the job performance of an employee, volunteer or business invitee of the insured, or
 - c. creates an intimidating, hostile or offensive working environment for an employee, volunteer or business invitee of the insured.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIBERALIZATION

This endorsement modifies insurance provided under the following:

DIRECTORS AND OFFICERS LIABILITY POLICY

The following is added to the conditions section:

If we revise this coverage form or its endorsements during this policy period to provide more coverage without an additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MEMBER CRITERIA

This endorsement modifies insurance provided under the following:

DIRECTORS AND OFFICERS LIABILITY POLICY

A named insured of the Nonprofits Insurance Alliance of California (NIAC) must meet at least the following criteria:

1. is organized chiefly to provide or fund health or human services, but does not include a hospital;
2. is incorporated in California or qualified to do business in California and is an organization described in section 501(c)(3) of the Internal Revenue Code and exempt from tax under section 501(a), or any corresponding sections of any future federal tax code. Any member which receives a final determination that it no longer qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future tax code, shall immediately notify the corporation of such determination and the effective date of such determination.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**MOLD, FUNGUS OR MICROBIAL CONTAMINATION
EXCLUSION**

This endorsement modifies insurance provided under the following:

DIRECTORS AND OFFICERS LIABILITY COVERAGE PART

It is agreed that this policy does not apply to any claim, suit or cause of action for damages resulting from a "Wrongful Act" which damages arise out of or are contributed to by mold, fungus, or "microbial contamination." This exclusion applies to, but is not limited to, any loss, cost or expense arising out of any:

- a. Request, demand or order that any "Member" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of mold, fungus or "microbial contamination"; or
- b. Claim or suit by or on behalf of a governmental agency or entity for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of mold, fungus or "microbial contamination."

We shall have no duty or obligation to provide or pay for the investigation or defense of any loss, cost, expense, claim, or suit excluded under any provision set forth above.

"Microbial contamination" means any contamination, either airborne or surface, which arises out of or is related to the presence of mold, fungus, or spores, including, without limitation, Penicillium, Aspergillus, or Stachybotrys chartarum.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR, CHEMICAL AND BIOLOGICAL HAZARD EXCLUSION

This endorsement modifies insurance provided under the following:

DIRECTORS AND OFFICERS LIABILITY POLICY

This insurance does not apply to any liability, loss, cost or expense of whatsoever nature directly or indirectly caused by, contributed to by, resulting from, arising out of or in connection with the use or release, or threat thereof, of any nuclear weapon or device or chemical or biological agent, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NON-IMPUTATION ENDORSEMENT

This endorsement modifies insurance provided under the following:

DIRECTORS & OFFICERS LIABILITY POLICY (INCLUDES EMPLOYMENT PRACTICES LIABILITY)

With respect to the Exclusions J, N and O in subsection (5.) Exclusions, no fact pertaining to or knowledge possessed by any Member shall be imputed to any other Member to determine if coverage is available.



NONPROFITS INSURANCE ALLIANCE OF CALIFORNIA

NONPROFIT ORGANIZATION DIRECTORS AND OFFICERS LIABILITY POLICY (INCLUDES EMPLOYMENT PRACTICES LIABILITY)

In consideration of the payment of the premium, and in reliance upon the statements made to the Nonprofits Insurance Alliance of California, (herein called the Company) by application forming a part hereof and its attachments and the material incorporated therein, the Company agrees as follows:

1. INSURING AGREEMENT

This policy shall, subject to the limit of liability set forth in Item 3 of the Declarations, pay on behalf of the "Member" all sums which the "Member" shall become legally obligated to pay as "Damages" for "Claims" resulting from any "Wrongful Act" of the "Member" or of any other person for whose "Wrongful Act" the "Member" is legally responsible, but only if such "Wrongful Act" is committed during the policy period.

2. EXTENSIONS

A. Estates & Legal Representatives

Subject otherwise to all the terms and conditions of this policy, coverage hereunder shall extend to "Claims" for the "Wrongful Acts" of the "Members" who are deceased or against the estates, heirs or legal representatives of such "Members".

B. Existing Subsidiaries

To be covered under the terms and conditions of this policy, "Subsidiaries" existing at the time of policy inception must be designated in Item 1 of the Declarations.

C. Newly Created or Acquired Subsidiaries

1. If any "Subsidiary" which qualifies as a tax-exempt organization under the provision of Internal Revenue Code section 501(c)(3) is created or acquired by the "Member" after the inception of this policy, such "Subsidiary" shall be included under the terms and conditions of this policy subject to:

- a. the giving of written notice of such creation or acquisition to the Company as soon as practicable, but in no event more than 120 days following such creation or acquisition, and
- b. the giving of any underwriting information and the payment of any additional premium required by the Company.

2. If any "Subsidiary" which does not qualify as a tax-exempt organization under the provisions of the Internal Revenue Code section 501(c)(3) is created or acquired by the "Member" after the inception of this policy, such "Subsidiary" shall not be included under the terms and conditions of this policy until the "Member" has:

- a. given written notice of such creation or acquisition together with any underwriting information which may be required; and
- b. received written approval from the Company and paid any additional premium required.

D. Consolidation or Merger

In the event that the "Member" is acquired by merger, or consolidates with, or is merged into or acquired by any other organization after the inception of this policy, immediate written notice thereof shall be given to the Company together with such information as the Company may require. The "Member" shall pay any additional premium required by the Company.

3. DUTY TO DEFEND

"Defense Costs" are in addition to the applicable Limits of Liability set forth in Item 3 of the Declarations, and the payment by the Company of "Defense Costs" does not reduce such applicable Limits of Liability.

The Company shall have the right and duty to defend any "Claim" against the "Member" arising from a "Wrongful Act", subject to the terms and provisions of this policy. Our right and duty to defend end when we have used up the applicable limit of liability in the payment of settlements and judgments. We may at our discretion investigate any allegation of a "Wrongful Act" and settle any "Claim" that may result. The "Member" shall give the Company such information and cooperation as it may reasonably require.

The "Member" shall not admit liability for nor settle any "Claim" or suit or incur any "Defense Costs" without the Company's prior written consent. The Company shall not be liable hereunder with respect to any settlements or "Defense Costs" to which it has not consented in writing prior to any settlement or incurring such "Defense Costs".

4. DEFINITIONS

- A. "Administration" means giving information to employees about an "Employee Benefit Program," interpreting an "Employee Benefit Program," and handling of records or enrolling of employees in an "Employee Benefit Program."
- B. "Bodily Injury" means bodily injury, sickness, disease or death including emotional distress or mental anguish sustained by a person.
- C. "Claim" or "Claims" means any demand or any judicial or administrative suit or proceeding against any "Member", including any appeal therefrom, which seeks monetary "Damages". It is understood that:
 - 1. The "Claim" or "Claims" must result from a "Wrongful Act" that is committed during the policy period.
 - 2. Multiple demands, suits or proceedings arising out of the same "Wrongful Act" shall be deemed to be a single "Claim".
- D. "Damages" means a monetary judgment, including claimant's attorney fees or expert witness fees awarded pursuant to a contract, a statute or law. "Damages" does not include taxes and matters deemed uninsurable.
- E. "Defense Costs" means reasonable and necessary fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond), incurred by the Company or by the "Member" with the prior written consent of the Company, and resulting solely from the investigation, adjustment, defense and appeal of any

“Claim” against the “Member”, but excluding salaries of any “Member” and excluding loss of earnings by any “Member.” “Defense Costs do not include claimant’s attorney fees or expert witness fees awarded pursuant to a contract, a statute or law.”

F. “Employee Benefit Program” means:

1. group life insurance, group accident or health insurance, investment or savings plan, pension plan;
2. unemployment insurance, social security, workers’ compensation, disability benefit; and
3. any other similar plan.

G. “Member” means the “Organization” and any natural person who was, is, or becomes duly elected as a director or trustee, or duly elected or appointed officer, employee, committee member, volunteer, intern or student-in-training of the “Organization”, solely in his or her capacities as such. “Member” also means the spouse of a director, trustee, officer, employee, committee member, volunteer, intern or student-in-training for a claim arising solely out of his or her status as the spouse of a member: provided, however, that no coverage shall be afforded for any claim based on the “Wrongful Act” of the spouse.

H. “Organization” means the entity(ies) designated in Item 1 of the Declarations.

I. “Pollutants” is any substance identified on a list of hazardous substances issued by the United States Environmental Protection Agency or a state, county, municipality or locality counterpart thereof. Such lists shall include but are not limited to solids, liquids, gaseous or thermal irritants or contaminants, infectious or otherwise including smoke, vapor, soot, acid rain, fumes, acids, alkalis, chemicals and waste. Waste includes (but is not limited to) material to be recycled, reconditioned or reclaimed. “Pollutants” shall also mean any unlisted substance exhibiting characteristics of ignitability, corrosivity, reactivity or toxicity to a degree which would cause it to be so listed if the subject were to be addressed by the Environmental Protection Agency or state, county, municipality or locality counterpart thereof.

J. “Subsidiary” means any entity more than 50% owned by the “Organization”, or more than 50% owned by one or more of the “Subsidiaries”.

K. “Wrongful Act” means any breach of duty, error, neglect, omission or act committed during the policy period and solely in the course of the activities of the “Organization”, including but not limited to:

1. false arrest, wrongful detention or imprisonment, or malicious prosecution;
2. libel, slander, defamation of character, or invasion of privacy;
3. wrongful entry, eviction or other invasion of the right of privacy;
4. infringement of copyright or trademark or unauthorized use of title;
5. plagiarism or misappropriation of ideas;
6. “Claim” or “Claims”, arising from employment practices relating to a past, present or prospective employee of the “Organization”, including, but not limited to, any actual or alleged wrongful termination, either actual or constructive; wrongful failure to employ or promote; wrongful discipline; alleged sexual harassment arising out of the employment relationship; alleged unlawful discrimination as defined by Title VII and/or the Unruh Civil Rights Act, or similar state law, whether direct, indirect, intentional or unintentional; or a

failure to provide adequate employee policies and procedures.

7. "Claims" of sexual harassment brought by past or present volunteers of the "Organization," solely in their capacity as such;
8. Breach of responsibilities, obligations or duties imposed on a fiduciary. However, any actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security Act of 1974, amendments thereto or any similar provisions of Federal, State or local statutory law or common law are subject to a \$250,000 sublimit. This sublimit includes loss and expense combined.
9. "Claims" of harassment, sexual or otherwise, or discrimination, brought by a third party business invitee of the "Organization."

All "Damages" for "Claims" resulting from the same "Wrongful Act" or a series of continuous or interrelated "Wrongful Acts" will be considered as arising out of one "Wrongful Act" which shall be deemed to have been committed on the date of the first such "Wrongful Act".

5. EXCLUSIONS

This policy does not apply to any:

- A. "Claim" or "Claims" where all or part of such "Claim" or "Claims" is, directly or indirectly, based upon, attributable to, arising out of, resulting from or in any manner related to, or in consequence of:
 1. the actual, alleged or threatened discharge, dispersal, release or escape of "Pollutants", or
 2. any "Claim" or expense arising out of any direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize "Pollutants", or arising out of the "Member's" voluntary decision to do so.
- B. "Claim" or "Claims" arising out of, based upon, attributable to, or in any way involving, directly or indirectly, any actual or alleged "Bodily Injury," sickness, disease or death of any person or damage to or destruction of any tangible property, including the loss of use thereof;
- C. actual or alleged act, error or omission in the "Administration" of any "Employee Benefit Program;"
- D. actual or alleged liability of others assumed by the "Member" under any contract or agreement, expressed or implied, written or oral;
- E. liability for payment, other than "Defense Costs", in connection with any "Claim" or "Claims" made against any "Member" which may arise from an actual or alleged breach of contractual obligation of the "Member" and are made by a party to or third party beneficiary of the contract or agreement which gives rise to such obligation. As afforded under this provision, coverage for "Defense Costs" arising out of an alleged breach of contract or "Claim" or "Claims" seeking monetary "Damages" pursuant to statute, are subject to per contract and annual aggregate limits of \$250,000. This exclusion shall not apply to any "Claim" or "Claims" based upon any actual or alleged contract of employment, except for a "Claim" or "Claims" seeking monetary "Damages" pursuant to statute;
- F. fines, penalties, sanctions, punitive or exemplary "Damages", the multiplied portion of multiplied "Damages", taxes, insurance plan benefits, accommodation costs, wage and hour laws amounts, future wages, non-pecuniary relief or liability arising from matters which may be deemed uninsurable under the law pursuant to which this policy shall be construed;
- G. actual or alleged act or omission by the directors, trustees, officers, employees, committee members or volunteers in their capacities or by reason of their status as directors, trustees, officers, employees, committee members or volunteers of any entity other than the "Organization";

- H. actual or alleged "Wrongful Act" that is committed prior to or after the policy period;
- I. costs of providing reasonable accommodation under the Americans with Disabilities Act or similar federal, state or local laws, including but not limited to, construction or modification of facilities;
- J. "Claim" or "Claims" based upon or attributable to any "Member" having gained any personal profit or advantage to which he or she was not legally entitled regardless of whether or not (1) a judgment or other final adjudication adverse to such "Member" establishes that such "Member" in fact gained such personal profit or other advantage to which he was not entitled, or (2) the "Member" has entered into a settlement agreement to repay such unentitled personal profit or advantage;
- K. "Claim" or "Claims" brought about or contributed to by the fraud or dishonesty of any "Member";
- L. "Claim" or "Claims" brought by, maintained by, or on behalf of the "Organization." However, this exclusion shall not apply to "Claim" or "Claims" brought on behalf of the "Organization" by an Attorney General;
- M. "Claim" or "Claims" based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving the rendering or failure to render professional services in connection with the "Member's" business as a provider of professional services, including but not limited to:
 - 1. providing medical, surgical, chiropractic, dental, phlebotomy, acupuncture, psychiatric or nursing treatment, diagnosis or services, including the furnishing of food or beverage in connection therewith;
 - 2. furnishing or dispensing drugs or medical, dental or surgical supplies or appliances;
 - 3. providing veterinary services;
 - 4. providing legal services;
 - 5. offering any advice in connection with any of the above.
- N. "Claim" or "Claims" alleging personal injury arising out of the willful violation of a penal statute or ordinance committed by or with the knowledge or consent of any "Member";
- O. "Claim" or "Claims" alleging personal injury arising out of a publication or utterance concerning any organization or business enterprise or its products or services made by or at the direction of any "Member" with knowledge of the falsity thereof;
- P. "Claim" or "Claims" based on, arising out of, directly, or indirectly resulting from the printing of periodicals, advertising matter, or any and all jobs taken by any "Member" to be printed for a third party, when the periodical, advertising matter, or other printing is not a regular part of any "Member's" own publication;
- Q. "Claim" or "Claims", regardless of legal form or theory, which arises from or is any way related to improper sexual conduct, including, but not limited to, sexual abuse or molestation whether actual or threatened;
- R. "Claim" or "Claims", regardless of legal form or theory, which arises from or is any way related to any form of physical abuse, including but not limited to, assault, including assault with a deadly weapon or with force likely to produce bodily injury, battery or unreasonable physical restraint or constraint by anyone of any person;

- S. "Claim" or "Claims", regardless of legal form or theory, which arises out of the failure to report an incident of improper sexual conduct or physical abuse to the proper authorities, or the withholding of pertinent information concerning same from such authorities;
- T. costs of complying with equitable relief, including but not limited to, injunctions, restraining orders or restitution;
- U. liability for payment, other than "Defense Costs," of any "Claim" or "Claims" under federal, state or local wage and hour or similar laws. As afforded under this provision, coverage for "Defense Costs" is subject to an annual aggregate limit of \$250,000.

6. CONDITIONS

A. Representations

It is represented that the particulars and statements contained in the application are true and are the basis of this policy and are to be considered as incorporated in and constituting part of the policy. However, this policy shall not be voided or rescinded and coverage shall not be excluded as a result of any untrue statement in the application, except as to those persons making such statement or persons having knowledge of its untruth.

B. Territory

Coverage shall extend to any "Claim" or "Claims" made anywhere in the world against a "Member" for the "Wrongful Act" of such "Member", wherever committed, attempted or allegedly committed or attempted.

C. Deductible

The company shall only be liable for that amount payable hereunder in settlement or satisfaction of "Claims" or judgments arising from any "Claim" which is in excess of the deductible amount stated in Item 4 of the Declarations. A single deductible shall apply to all amounts payable hereunder arising from all "Claims" alleging the same "Wrongful Act." The deductible will apply to both "Damages" as well as "Defense Costs" and fees.

D. Limits of Liability

The limit is subject to the deductible, and unless otherwise specified elsewhere in this policy, the limit of liability as noted in Item 3 of the Declarations is the most we will pay for the sum of all settlements and judgments under this policy.

E. Cooperation

The "Member" shall cooperate with the Company in any investigation, settlement or defense of a "Claim". The "Member's" cooperation shall include but not be limited to:

1. promptly sending the Company copies of any demands, notices, summonses and legal papers received in connection with a "Claim" or "Claims";
2. authorizing the Company to obtain records and other information;
3. assisting the Company in the enforcement of any right against any person or organization which may be liable to the "Member", and
4. attending hearings, trials, and depositions and securing and giving evidence and obtaining the attendance of witnesses.

F. Notice of Claim and Reporting Provisions

1. If the "Member":
 - a. receives written or oral notice from any party that it is the intention of such party to hold the "Member" responsible for a "Wrongful Act"; or
 - b. becomes aware of any circumstances which may subsequently give rise to a "Claim" being made against it for a "Wrongful Act";

The "Member" shall give written notice promptly to the Company. The "Claim" must result from a "Wrongful Act" that is committed during the policy period.

2. The "Member" shall, as a condition precedent to its rights under this policy, promptly give the Company written notice of any actual or potential "Claim" and shall give the Company such information and cooperation as it may reasonably require.
3. All correspondence relating to notice of a "Claim" or "Claims" or of circumstances which may result in a "Claim" or "Claims" should be directed to: NIAC, P.O. Box 8507, Santa Cruz, CA. 95061.

G. Changes

The terms of this policy shall not be waived or changed, except by written endorsement issued to form a part of this policy.

H. Non-renewal

If the Company decides not to renew this coverage, it will mail or deliver to the first Named Insured written notice of the non-renewal not less than 60 days before the expiration date of the policy. The Company will mail or deliver its notice to the first Named Insured's last mailing address shown in the policy. If notice is mailed, proof of mailing will be sufficient proof of notice.

I. Cancellation

1. The "Member" may cancel this policy by mailing or delivering to the Company advance written notice of cancellation.
2. The Company may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if the Company cancels for non-payment of premium; or
 - b. 30 days before the effective date of cancellation if the Company cancels for any other reason.
3. The Company will mail or deliver its notice to the first Named Insured's last mailing address shown in the policy.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is canceled, the Company will send the first Named Insured any premium refund determined on a pro rata basis. The cancellation will be effective even if the Company has not made or offered a refund.

6. If notice is mailed, proof of mailing will be sufficient proof of notice.

J. Subrogation

In the event of any payment under this policy, the Company shall be subrogated to the extent of such payment to all the "Member's" rights of recovery therefore, and the "Member" shall execute all papers required and shall do everything that may be necessary to secure such rights including the execution of such documents necessary to enable the Company effectively to bring suit in the name of the "Member".

K. Assignment

This policy and any and all rights hereunder are not assignable without the written consent of the Company.

L. Other Insurance

1. The insurance afforded by this policy is primary insurance, except when stated to apply in excess of or contingent upon the absence of other insurance. When this insurance is primary and the "Member" has other insurance which is stated to be applicable to the loss on an excess or contingent basis, the amount of the Company's liability under this policy shall not be reduced by the existence of such other insurance.

When both this insurance and other insurance apply to the loss on the same basis, whether primary, excess or contingent, the Company shall not be liable under this policy for a greater proportion of the loss than that stated on the applicable contribution provision below.

a. Contribution by Equal Shares. If all of such other valid and collectible insurance provides for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than would be payable if each insurer contributes an equal share until the share of each insurer equals the lowest applicable limit of liability under any one policy or the full amount of the loss is paid, and with respect to any amount of loss not so paid the remaining insurers then continue to contribute equal shares of the remaining amount of the loss until each such has paid its limit in full or the full amount of the loss is paid.

b. Contribution by Limits. If any of such other insurance does not provide for contribution by equal shares, the Company shall not be liable for a greater proportion of such loss than the applicable limit of liability under this policy for such loss bears to the total applicable limit of liability of all valid and collectible insurance against such loss.

2. No coverage shall be afforded by this policy if coverage for the "Claim"(s) is afforded under any other policy issued by the Nonprofits Insurance Alliance of California to the "Member" named in Item 1 of the Declarations.

M. Notice and Authority

It is agreed that the "Organization" first named in Item 1 of the Declarations shall act on behalf of the "Member" and all natural persons afforded coverage under this policy with respect to:

1. the giving and receiving of any return premiums that may become due under this policy;
2. the receipt and acceptance of any endorsements issued to form a part of this policy.

N. Action Against Company

No action shall lie against the Company unless, as a condition precedent thereto, there shall have been full compliance with all of the terms of this policy, nor until the amount of the "Member's" obligation to pay shall have been finally determined either by judgment against the "Member" after actual trial or by written agreement of the "Member", the claimant and the Company.

O. Conformance To Statute

Terms of this policy which are in conflict with any statute are hereby amended to cover only those provisions and coverages as apply and conform to such statutes.

P. Jurisdiction

This policy, to the extent permitted by applicable law, shall be construed in accordance with the law of California.

Q. Arbitration

In consideration of the premium charged, it is hereby understood and agreed that this policy shall be deemed to have been executed in the State of California and any interpretation of the policy relating to the construction, validity and performance of the policy shall be made in accordance with the laws of the State of California.

It is further understood and agreed that all disputes which may arise under or in connection with this policy, including any determination of the amount of loss, shall be submitted to the American Arbitration Association under and in accordance with its then prevailing commercial arbitration rules. Unless otherwise agreed by the parties or ordered by a court of competent jurisdiction, the arbitration will be held in San Francisco, California, U.S.A. The award rendered by the arbitrator(s) shall be final and binding upon the parties and judgment thereon may be entered in any court having jurisdiction thereof.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(Broad Form)**

In consideration of the premium charged, it is hereby understood and agreed that this policy does not apply to any claim or claims;

- A. alleging, arising out of, based upon, attributable to, or in any way involving, directly or indirectly the hazardous properties of nuclear material, including but not limited to:
 - 1. nuclear material located at any nuclear facility owned by, or operated by or on behalf of, the Member or discharged or dispersed therefrom; or
 - 2. nuclear material contained in spent fuel or waste which was or is at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of the Member; or
 - 3. the furnishing by the Member of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; or
 - 4. claims for damages to the Member or its Members which alleges, arises from, is based upon, is attributed to or in any way involves, directly or indirectly, the hazardous properties of nuclear material.

- B.
 - 1. which is insured under a nuclear energy liability policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability underwriters or Nuclear Insurance Association of Canada or would be insured under any such policy but for its termination upon exhaustion of its Limit of Liability; or
 - 2. with respect to which (a) any person or Member is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Member or any insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor,

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,

(c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or devices is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235.

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste, and includes the site on which any of the foregoing is located all operations conducted on such site and all-premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in self-supporting chain reaction or to contain a critical mass of fissionable material.