



CITY OF FLAGSTAFF

ECONOMIC DEVELOPMENT ADMINISTRATION

REVOLVING LOAN FUND ADMINISTRATIVE PLAN

GRANT # 07-39-02823

CFDA #11.307

XX/XX/2014

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INTRODUCTION

In 2007 the Federal Economic Development Administration (EDA) approved Grant No. 07-39-02823 to the Northern Arizona Council of Governments (NACOG) to establish a revolving loan fund to promote economic development in northern Arizona.

The Revolving Loan Fund is used make loans to businesses consistent with an approved Comprehensive Economic Development Strategy (CEDS). Upon repayment, the funds become available for new loans.

In 2012 the City of Flagstaff approached NACOG and expressed an interest in assuming responsibility for operation of the Revolving Loan Fund. Both the City and NACOG realize the value of this program to northern Arizona.

In 2014 the EDA approved transfer of the Grant to the City of Flagstaff and this Plan.

This Plan outlines how the City of Flagstaff Revolving Loan Fund shall be operated consistent with the Grant, the EDA Revolving Loan Fund Financial Assistance Award Standard Terms and Conditions (published October 9, 2007), applicable federal laws and regulations, and CEDS.

This Plan will be updated from time to time to comply with any changes that may occur to EDA's regulations, policies or the terms and conditions of the Grant. In addition, an updated Plan shall be submitted every five (5) years to EDA, pursuant to 13 C.F.R. § 307.9(c)(1).

The City of Flagstaff Revolving Loan Fund (RLF) as approved in this Plan shall be used to provide target industry businesses in northern Arizona with fixed asset financing (land, equipment, and buildings), inventory, and working capital loans. The RLF serves northern Arizona, specifically Apache, Coconino, Navajo, and Yavapai Counties. These four counties comprise the regional area known as the NACOG Economic Development District (EDD).

The City of Flagstaff as successor to the original Grant recipient (Recipient) is responsible for operating the Revolving Loan Fund consistent with this Plan, but may contract out operational functions to a qualified lender selected through a competitive process.

NAVIGATING THIS DOCUMENT

The Plan is structured pursuant to 13 C.F.R. § 307.9 as follows:

Part I –This part provides a summary of the Comprehensive Economic Development Strategy (CEDS)/Economic Adjustment Strategy for the four-county region which

comprises the Economic Development District. The CEDS describes the region, the challenges, and related courses of action to improve the economic conditions therein. The CEDS also serves as the rationale for the revolving loan fund.

Part I also presents the Business Development Objectives of the RLF. Included in the objectives are the financing strategy, policy, and portfolio standards developed to link the CEDS to localized conditions.

Part II – This part serves as an operational manual for the City of Flagstaff to administer the RLF consistent with Prudent Lending Practices as defined by 13 C.F.R. § 307.8 and EDA's conflict of interest rules set out in 13 C.F.R. § 302.17. The organizational structure, the relationship with a financial institution, and standard terms and conditions are contained in this part as well.

PART I: THE REVOLVING LOAN FUND STRATEGY

SUMMARY of the COMPREHENSIVE ECONOMIC DEVELOPMENT STRATEGY

This is a summary of the Comprehensive Economic Development Strategy (CEDS) for the EDD. The EDD is a regional area in northern Arizona served by NACOG and the RLF. The EDD is a four county region covering over 47,786 square miles. The area is approximately the size of the state of Pennsylvania and comprises 40% of Arizona's land area. The area is connected by Interstate 40, Interstate 17, numerous state highways and the Burlington Northern Santa Fe Railroad. The geography, the people and their economies vary greatly within the EDD. The area encompasses vast ponderosa pine forests, deserts, and the Grand Canyon National Park. The City of Flagstaff is the largest municipality within the EDD, with a population of 66,000 residents. The Navajo Nation reservation covers a large area within the EDD. A map of the EDD is attached hereto as **Exhibit A**.

The Comprehensive Economic Development Strategy was updated by NACOG in 2009 for 2010-2015. The CEDS describes the economic challenges in the region and proposes means for meeting those same challenges. Elements that complement the CEDS Plan of Action, Target Industries, and Goals and Objectives, are the RLF Priorities, and Financing Strategies. The CEDS is also complemented annually by a Goals and Priorities list allowing for strategic and timely modifications to changing conditions.

The CEDS Plan of Action focuses on specific industries for business development and/or retention efforts. Those target industries are the following:

- Healthcare/Biotechnology
- Software and Systems Design/Engineering/Development
- Aviation Related Businesses
- Transportation/Logistics
- Research and Testing
- Medical Device Manufacturers
- Renewable/Clean Technology
- Workforce Development/Education
- Agriculture
- Tourism/Entertainment/Destination Experience

The CEDS also provides an overarching direction for actions which includes future programs and efforts, that may support those industries. Those proposed actions to support the target industries are the following:

- Promote economic development and opportunity;
- Foster effective transportation access;

- Enhance and protect the environment;
- Maximize effective development and use of the workforce consistent with any applicable state or local workforce investment strategy;
- Promote the use of technology in economic development, including access to high-speed telecommunications;
- Balance resources through sound management of physical development; and
- Obtain and utilize adequate funds and other resources.

BUSINESS DEVELOPMENT OBJECTIVES OF THE REVOLVING LOAN FUND CONSISTENT WITH THE APPROVED CEDS

The **Financing Strategy** is to make loans between \$25,000 and \$75,000 to businesses within the EDD consistent with the CEDS as follows:

Target Industries of the RLF are the following:

- Healthcare/Biotechnology
- Software and Systems Design/Engineering/Development
- Aviation Related Businesses
- Transportation/Logistics
- Research and Testing
- Medical Device Manufacturers
- Renewable/Clean Technology
- Workforce Development/Education
- Agriculture
- Tourism/Entertainment/Destination Experience

By making available this RLF funding to the target industries in a manner that meets the goals and objectives listed above, the program will directly achieve the following:

Goals

- Enhancement of capital availability
- Entrepreneurial and small business revitalization
- Improvement of educational and training capabilities
- Promotion of collaborative partnerships among public and private entities
- Optimization of the economic potential of the NACOG EDD
- Maximum leveraging of private investment and public resources

Objectives

- Promote resident ownership of businesses in the EDD
- Expand access to business assistance and resources for property acquisition
- Foster entrepreneurial efforts
- Retain existing businesses
- Create high quality jobs for residents
- Attract businesses offering high quality employment opportunities which match the regional residents' occupational and skills profile
- Promote public/private partnerships between the City, non-profit organizations and businesses

- Promote investment on the part of private investors, banks and the City
- Provide financial assistance for commercial rehabilitation and upgrading

ANALYSIS OF THE LOCAL CAPITAL MARKET AND FINANCING NEEDS OF THE TARGETED BUSINESSES

Financing Needs

There is a demand for financing options for fixed asset financing (land, equipment, and buildings), inventory, and working capital loans. Access to capital has become a focal point for economic development practitioners as it is identified as a primary limitation on economic development for all sectors of the regional economy. Low-cost financing can also be a significant incentive for businesses to expand and/or relocate in vacant or under-utilized sites, thus achieving the dual goals of business attraction, expansion, redevelopment, and blight elimination.

Other funding challenges include:

Lack of Long-Term Financing at Reasonable Rates – Small local businesses lack sufficient access to long and intermediate term debt and equity. Traditionally, their major source of debt financing has been commercial banks. Moreover, banks tend to charge higher interest rates to small business borrowers in distressed areas because of higher risk(s).

Lack of Startup Capital – Reluctance on the part of commercial banks to make business startup loans or expansion loans to businesses with limited equity positions.

Conservative Lending Policies – Bankers tend to be more conservative in evaluating business loans, particularly real estate loans, in small communities and distressed areas because of perceived high collateral risk. The market for business real estate in small communities is thin and, in the event of foreclosure, the collateral may be more costly to dispose of. This conservatism results in higher equity requirements for business loan applicants.

Reluctance of Lenders to Make Small Loans – Historically, Arizona lenders have revealed a reluctance to consider small loans, such as SBA guaranteed loans of less than \$100,000. Perceptions are such that the potential profits from small loans are not sufficient to cover the costs of evaluating and administering the loan. These costs are often higher for the small borrowers who keep inadequate financial records or who have a poor understanding of financial concepts.

Centralized Decision Making – Many private/public combination loans require final loan approval from a centralized bank office, usually in the Tucson or Phoenix metropolitan areas. The internal decision-making process often results in delays in obtaining approval for loans in rural Arizona which can, in some cases, jeopardize the project.

Relocation of Capital from Rural to Urban Centers – Consistent with the national trend, commercial bank deposits in rural Arizona are exported to the urban centers for lending in urban or metropolitan areas.

Lack of Capital for Minority Businesses – The identified distressed areas is a largely minority population that lack the capital for business development.

EXISTING BUSINESS ASSISTANCE PROGRAMS

Numerous business assistance programs exist within the region. Northern Arizona Business Capital Fund (www.nazfunds.org) provides lending opportunity to businesses seeking loans between \$500 and \$25,000. Participants in the fund include the Economic Collaborative of Northern Arizona (ECoNA), Northern Arizona Center for Entrepreneurship and Technology (NACET), the City of Flagstaff, and the Greater Flagstaff Chamber of Commerce. The City of Flagstaff intends to use the RLF funds to complement this program by making available loans between \$25,000 to \$75,000 with exceptions on a case by case basis.

The Arizona Commerce Authority (ACA) oversees numerous programs that are applicable to all in the state. The ACA website (www.azcommerce.com) has their most current program. Currently there are grants, tax credits, incentives for job creation, job training programs, as well as innovation and export programs among others.

Each county participates in the Workforce Investment Act which promotes the development of workforce through various programs. Apache and Navajo counties participate in a joint workforce investment board (www.navajocountyaz.gov/wia/), Yavapai County (www.yavapaiworkforce.org/) and Coconino County (coconino.az.gov/index.aspx?NID=1280) run their own respective workforce investment boards.

Municipalities in the region have combinations of chambers of commerce, business/industry incubators and/or accelerators, public and/or private economic development organizations all which provide business assistance or advocacy. Some programs that may be offered include market trend analysis; consumer based demographic analysis, site selection, workforce development, internship placement, design review assistance, or incentives.

The City of Flagstaff is home to NACET, the Northern Arizona Center for Entrepreneurship and Technology. NACET is a facility that provides office space and assistance to technology start-up companies, and is often referred to as a “business incubator.” The City of Flagstaff recently received a federal grant to construct Innovation Mesa, which is a 28,000 square foot facility which will be completed in late spring/early summer 2015. This facility will provide office space and assistance to businesses consistent with NACET and CEDS criteria. Northern Arizona University and City are also contributing financing for the project. Northern Arizona University also has a program to assist new technologies to find commercial viability. These programs provide assistance to businesses at all stages prior to viable and sustainable practices.

REVOLVING LOAN FUND LENDING PRIORITIES

The RLF Lending Priorities were developed in consideration of the current CEDS, Business Development Objectives, and the Analysis of the Local Capital Market and Financing Needs of Targeted Businesses.

Business Creation – The RLF Plan is designed with significant flexibility in the terms, rates, and structure of the RLF loans for the purpose of providing incentives to induce investment in areas with high unemployment and large number of displaced workers due to declining sectors of the local economy.

Labor Intensive Industries – Insofar as possible, RLF funds will be used to finance projects that create the greatest number of jobs per RLF dollar.

High Technology Businesses – These industries are important to the State's economy and a major strategy for the 21st Century is to encourage the expansion and/or location of these businesses and their suppliers to nonmetropolitan areas.

Tourism Related Businesses – Tourism is the second largest sector of the State's economy and the largest in some of the nine counties. RLF funds may be used to finance related services and recreational and cultural businesses.

Existing Firms – RLF funds will be used to provide working capital and fixed asset loans for those businesses that are too new or too undercapitalized to qualify for existing loans, but are very important to the local economy.

New Businesses – Most small businesses in rural Arizona and particularly those owned by minorities are concentrated in retail trade and service industries. RLF funds will be used to encourage the establishment and development of these businesses.

Natural Resource Based – The RLF will emphasize those firms that utilize the area's natural resources and process them to final stages within the area.

Community Investment – The RLF will emphasize loans to businesses that invest in the community by generating property tax revenues and investing in improvements that will yield overall tax support to the local area.

FINANCING POLICIES

Loan Size – The preferred loan size ranges from \$25,000 to \$75,000 with smaller amounts available on a case by case basis.

Interest Rates – Interest rates on loans will comply with both federal RLF and Arizona law requirements. Pursuant to A.R.S. § 44-1201.A interest on any loan, indebtedness or other obligation shall be at the rate of 10% per annum, unless a different rate is contracted for in writing. Pursuant to federal regulations, interest rates on loans will be fixed. The standard RLF interest rate on RLF loans will be equivalent to the prime interest rate quoted in the *Wall Street Journal* plus 2% at the time of loan approval by the Loan Administration Board (LAB).

According to 13 CFR 307.15, the only exception for the above policy is if the prime interest rate listed in the *Wall Street Journal* exceeds 14%, the minimum RLF interest rate is not required to be raised above 10% if doing so compromises the ability of the RLF borrower to implement its financing strategy. The interest rate in this case shall not be less than the lower of four percent (4%) or 75% of the prime interest rate.

Interest will be returned to the RLF and may be used either for re-lending or for eligible and reasonable administrative costs associated with RLF operations. 13 C.F.R. § 307.8.

Application Fees – There will be a \$250 fee for each application. The application afee will be credited towards the Loan Fee if a loan is issued, otherwise the application fee will be refunded.

Loan Fees – Loan fees for administering the Loan will be 1% of the Loan amount. Loan fees are not refundable and are used to pay for loan administration costs. Loan fees will retained by the City of Flagstaff as administrator of the RLF and may be used to pay any contractor retained for administration purposes.

Payment Terms – Payments will be made monthly; however, customized payment structures may be extended to borrowers depending upon their individual cash flow needs. In the case of multiple disbursement loans for equipment or tenant improvements, there may be an interest-only period until the loan is fully disbursed, generally not more than 180 days. Temporarily reduced or deferred payments may be considered as options in structuring a workout plan.

Loan Terms – The standard loan terms will be two to five years fully amortized, depending on loan amount. In general, loan terms will not exceed the average useful life of the asset(s) being financed. The loan term will be the lesser of the average useful life of the asset being financed or five years. Smaller loans will generally have shorter terms.

Private Leveraging – RLF will leverage private investment of at least two dollars for each RLF dollar loaned based on the portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leverage, private investment must be made within twelve (12) months prior to approval of an RLF loan, as part of the same business development project, and may include:

- Capital invested by the borrower or others
- Financing from private entities
- The non-guaranteed portion and 90% of the guaranteed portions of the U.S. Small Business Administration's 7(A) loans and 504 debenture loans.

Private investments will not include accrued equity beyond the current twelve-month period in a borrower's assets.

Equity/Borrower Investment General Requirement – The RLF will require all borrowers to provide new owner equity in the form of owner assets and/or private financing for its business. The borrower's new investment shall be at least 10% of the requested loan amount for existing businesses and startup businesses. New equity shall not consist of goodwill or other intangible value and may not be an existing owner asset.

Existing equity or existing investment into the business within the last 12 months prior to the application indicates a reasonable level of commitment to the business and economic development; therefore, consideration will be given to existing equity in determining new equity required as a result of the project being financed.

Collateral – Collateral pledged for each loan will depend upon the loan amount, the overall risk of the credit, and the availability of personal and business assets to be pledged as collateral. In general, the market value of pledged collateral shall equal or exceed the loan. The value of pledged collateral will be verified through a market analysis, appraisal, or other means consistent with Prudent Lending Practices with costs for the valuation to be borne by the borrower. Lender must engage the appraiser. Collateralized security may include, but not be limited to, interest in machinery and equipment, furniture and fixtures, building, property, inventory and receivables.

Security in Personal Assets and Personal Guarantees – Personal guarantees will be required of all principals with 20% or more interest in the borrower's business. Security

in the personal assets of principals who owns 10% or more interest in the borrower's firm may be required as additional collateral. Such security can include property outside the business, including, but not limited to real estate of principals.

The City of Flagstaff (Recipient) will secure loans by recording UCC-1 filings with the Arizona Secretary of State to secure equipment, fixtures, furniture, receivables, and inventory. Loans will be secured by collateral to the maximum extent possible to ensure an adequate secondary source of repayment. Generally, collateral pledged through UCC-1 filings for RLF loans shall not be pledged to other lenders or for other obligations of a business.

Security in Real Property - Loans will also be secured by recording a promissory note and/or deed of trust with the county recorder in any county wherein the borrower business owns real property and/or transacts business. The promissory will have priority status based upon date of recording and may not be subordinated to subsequent creditor liens.

Loan Summary (Credit Memo) – Each application will be reviewed for standard underwriting criteria. A credit memorandum will be signed by the project manager and presented to the LAB. Generally the credit memo will address the following: location in the Target Area, management ability, and market feasibility, primary source of repayment, secondary source of repayment, leverage, environmental issues, job creation, credit history and the project's economic impact. All credit memos will include an analysis on the non-substitution documentation to verify that funds are not replacing private or commercial financing. Credit memorandums will also address other program requirements, such as the ratio of funds loaned to jobs created.

FINANCING RESTRICTIONS

RLF Funds (as defined in 13 C.F.R. § 307.8) 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 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.

- 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. (See 13 C.F.R. § 307.17)
- Refinance existing debt, unless:
 - 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.

RLF Funds will finance the purchase of the rights of a prior lien holder during a foreclosure action which is necessary to preclude a significant loss on an RLF loan. RLF Funds may be used for this purpose only if there is a high probability of receiving compensation from the sale of assets sufficient to cover an RLF’s costs plus a reasonable portion of the outstanding RLF loan within eighteen (18) months following the date of refinancing. (See 13 C.F.R. § 307.17(b).)

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).)

PORTFOLIO STANDARDS

Private Investment Leveraging Ratio

As specified in the EDA Terms and Conditions, the portfolio shall maintain a private leverage ratio of 2:1, or two dollars of private dollars or funds to every one dollar in EDA funding. See Financing Policies regarding Private Leveraging, above. Every project shall have a new job creation or jobs saved component.

LOAN SELECTION CRITERIA

Each loan applicant must demonstrate that financing is not otherwise available due to terms or conditions that would permit completion and/or the successful operation or accomplishment of the project activities to be financed. The primary evidence for this will be the analysis provided in the credit memo supported by outside documentation, for example, bank decline letters.

Loan applications will be considered for processing, if:

- Project fits with target industry clusters;

- Staff can demonstrate credit worthiness based upon the financing policies of this plan;
- The project is consistent with the business development strategy;
- The loan will meet program goals to provide improved access to capital, to assist with business expansion, and to facilitate the creation of long-term private sector employment within the four Arizona counties of Apache, Coconino, Navajo, and Yavapai. Priority will be given to those projects that provide the highest economic benefit.

PERFORMANCE ASSESSMENT PROCESS

The portfolio will be monitored semi-annually for the periods ending March 31 and September 30 along with the Financial Status Report unless otherwise specified in the Grant, and reported to EDA. Trends will be analyzed to determine if any modifications to the Plan and/or portfolio are required. This will be accomplished by utilizing the current database software that is utilized to generate the EDA report.

The EDA Administrative Plan will be reviewed annually as part of the annual certification. Changes will be made to the plan as deemed appropriate to ensure the plan is consistent with the area's current economic development strategy and that the RLF is being operated in accordance with policies and procedures contained in the approved plan.

PART II: OPERATIONAL PROCEDURES

ORGANIZATIONAL STRUCTURE

The City's Economic Development Office is responsible for the implementation and administration of the RLF. A Program Manager, under the general direction of the City's Economic Vitality Director, is responsible for developing, completing, coordinating, and overseeing the servicing of the loans generated by the RLF. The Program Manager will use the City competitive procurement process to identify a private lending institution knowledgeable in current lending issues and practices to underwrite, administer, and service the loans. Reporting will comply with Title 13 of Code of Federal Regulations Section 307.

LOAN ADMINISTRATION BOARD

A Loan Administrative Board (LAB) will be comprised of City of Flagstaff BR&E Manager, City Grants Manager, Economic Vitality Director, and two representatives of the partnering lending institution. The LAB will schedule meetings quarterly, or "as needed", and will agree to review transactions requiring quick action on an "as needed" basis. Organizational and operational matters, including loan decisions, will be made by a majority vote of the members of the LAB present when a quorum is met. A quorum will exist whenever at least half of appointed members are in attendance. However, at least one LAB member with financing experience (similar to the type of loans to be made) must be present for each loan decision. No loan will be committed, no major loan modification or waiver agreed to, no loan foreclosure action initiated without formal prior review and comment of the LAB. The LAB will make the final determination on the pricing and other terms of all loans from the RLF.

LOAN MARKETING PROCEDURES

Program Manager will work to publicize the RLF and identify eligible applicants within the EDD, and will:

- Contact businesses through commercial and industrial brokers;
- Market the RLF through commercial banks that serve the Target Area;
- Publish at least one article per year in a local newspaper or periodical noting the availability of the RLF, its intent and how to access it;
- Market the RLF through direct marketing and through business associations;
- Market the RLF through communications with EDD Indian communities;
- Post information on the NACOG website about the RLF;

NON-DISCRIMINATION

The RLF shall be administered in compliance with all federal, state and local laws prohibiting discrimination on the basis of a protected class status, per 13 C.F.R. § 302.20

PRUDENT LENDING PRACTICES

The RLF shall operate in accordance with generally accepted accounting principles (GAAP) as in effect in the United States and OMB Circular A-133 and the Compliance Supplement. (See 13 .C.F.R. § 307.15)

STANDARD APPLICATION REQUIREMENTS

Each potential borrower will be required to initially complete the City's standard pre-application. Staff will review the pre-application to determine if it meets the general intent and purpose of the RLF. In evaluation of applicants, staff will consider whether the project/loan:

- Meets the targeting criteria and is in one of the targeted clusters
 - Demonstrates a reasonable assurance of repayment
 - Is consistent with the portfolio job/cost ratio established for the RLF
 - Leveraging of private dollars (minimum ratio of 2:1 target for the entire RLF portfolio).
- a. Exceptions for leveraging are up to the discretion of the LAB. An example for such exception can include, but is not limited to, start-ups with a high number of projected jobs and high economic impact. With such an example, the LAB will need to weight the entire RLF portfolio to ensure that the minimum ratio of 2:1 is met.

Potential borrowers are required to submit the following documents with their application:

- If available, three (3) years of business and personal tax returns, all schedules.
- IRS Form 8831 (Request for Transcript) or IRS Form 4506 (Request for Copy) may be required.
- Three (3) years of business financial statements, to contain as a minimum, balance sheets and profit & loss statements (quarterly and/or monthly statements may be required as appropriate).
- Personal financial statement dated not more than three (3) months prior to the loan application is required for each principal with 10%

or more ownership in the applicant company, and may be required for individuals with management responsibilities.

- Business plan
- Proof of hazard and liability insurance
- If available, accounts receivable and accounts payable aging schedules, dated the same date as most recent business financial statement

Schedule of debts to include:

- original amount of debt;
- current balance outstanding;
- payment amount(s);
- interest rate;
- collateral;
- status (current/delinquent)

Financial projections, generally to include:

- description of the assumptions behind the financial projections;
- projected cash flow for a minimum of 12 months;
- projected balance sheet and income statement for a minimum of 12 months;
- other as may be necessary to adequately assess the application;
- Other application documentation as deemed necessary

Borrowers shall be approved based upon a reasonable assurance and determination of repayment ability and potential economic benefits to the community, i.e., number and quality of jobs they will create, amount of taxes generated, extent to which they expand a targeted industry cluster and relation to other businesses and services.

CREDIT REPORTS

Standard commercial and personal credit reports on all principals owning 10% or more of a business under consideration for a loan and the business will be ordered and reviewed. Adverse credit deficiencies that would cause the underwriter to question the ability and or willingness of the potential borrower to repay the loan will be deemed a valid reason for declining the request. A summary review of the results of the credit reports shall be a part of the loan write-up. Costs of credit reports shall be borne by the borrower, whether or not the loan is approved.

UNIFORM COMMERCIAL CODE (UCC) LIEN SEARCH

A UCC search shall be completed to determine any existing liens, where personal property is being taken as security (e.g. equipment, or business assets).

REAL PROPERTY TITLE SEARCH

A real estate title report will be required in those instances where real property is being taken as collateral.

APPRAISAL REPORTS

Appraisal reports or other valuation determinations will normally be obtained, where existing fixed assets and/or real properties are being used as primary collateral. Appraisals will utilize qualified appraisers having expertise appropriate to the assets being pledged. The cost of these appraisal(s) shall be borne by the borrower, whether or not the loan is approved.

STANDARD COLLATERAL REQUIREMENTS

Loans will be secured to the fullest extent possible to protect the interests of the RLF as a secondary source of repayment. The RLF will obtain a perfected interest in a borrower's assets, including outside assets of related parties, as appropriate. Loans may be secured with the following types of assets:

- Real property
- Machinery & equipment
- Inventory
- Accounts Receivable
- Stock pledges
- Patents and other intellectual properties
- Securities
- Intangibles
- Personal and/or corporate guarantees

A personal guarantee will be required of any principal individual or entity having a 20% or more ownership in the company being considered. Personal guarantees may be collateralized with liens or property.

Appropriate hazard and liability insurance shall be required, and key man life insurance shall be considered depending on the size and nature of the transaction and the health and ages of the principals. The City of Flagstaff shall be named as a Loss Payee on the appropriate insurance policies.

Trust deeds will be obtained and supported by lenders title policies in those cases where real property is pledged as collateral. Liens on all personal property will be perfected by UCC-1 filings. UCC searches will be conducted to determine encumbrances and to ensure the RLF obtains desired lien position.

STANDARD EQUITY REQUIREMENTS

All applicants may be required to provide at least 10% of the requested loan amount or more on a case by case basis.

Assets (e.g. equipment), added to a project from outside sources, may be considered part of the equity investment, provided they are lien free and are offered as collateral for repayment of the RLF loan.

LOAN WRITE-UP

Written loan presentations to the LAB will be signed by the Economic Vitality Director and will contain at a minimum the following information:

- Evidence that the Borrower is in the Target Area approved by EDA
- Recommendation: Support funding recommendation based on analysis of the business' industry, its place in that industry, financial analysis, and ability to repay
- Findings: Indicate if borrower is eligible, under criteria established in the RLF Plan and EDA Grant Agreement
- Description of business
- Background and history of business operation: Describe the history and background of the business, including a brief industry analysis
- Detailed description of the borrower; e.g, is it a corporation, partnership, sole proprietorship, list owners and their percentage of the business
- List of names and relationships of the guarantors to the owners of the business as appropriate
- Provide loan details:
 - a. Loan Request: State the amount of the request. State the recommended monthly amortization and term
 - b. Interest: Indicate the rate, specifying a fixed rate
 - c. Use of funds by category
 - d. Loan Fees: The maximum fee charged will be 1% of the commitment amount. Applicants shall be responsible for any outside costs incurred for processing, such as appraisals, environmental reports, credit reports, etc.
- Purpose: Describe in detail the purpose of the loan by category, e.g., fixed asset financing, tenant improvements, etc. Be specific about sources and uses of proceeds to complete the project. Any proposed exceptions to loan policies need to be explained.

- Credit Report: Indicate the results of the credit reports obtained on the principals, guarantors, and company.
- Financial Analysis: Indicate the source of information for the analysis. Describe the company's financial performance as reflected by its financial statements, with special emphasis on revenues and operating income, leverage, cash flow, and debt capacity. Projection should be consistent with historical performance unless there is an extraordinary event such as a new contract. Any significant changes in financial positions or performance of the company will be explained.
- Personal Financial Analysis: Write an analysis of the principal's and guarantor(s) personal financial statements. Any significant changes in financial position or performance will be explained.
- Collateral: Describe the collateral pledged for this loan, and indicate the secured position of the RLF. If property is being pledged, show the present market value and the net equity available for all properties pledged. Date of appraisal, name of appraiser and loan to value must also be included.
- Job/Cost Ratio: Divide the total loan amount by the number of jobs saved and/or created as a result of this loan.
- Public Benefit: Describe the benefit of this loan in terms of jobs retained and/or created. Indicate the value of this borrower to the community. Jobs saved are defined as jobs that would be imminently lost without RLF assistance.
- Environmental Problems: Discuss any environmental review in connection with the loan, including, any City environmental review and the results of any required Phase I or Phase II environmental study. Attach an environmental checklist or other review that is relevant to consideration of the loan. Indicate what actions the borrower must take to comply with any environmental findings or requirements.

Necessary and Appropriate – A borrower is not eligible for RLF financing if credit is otherwise available on terms and conditions that would permit completion and/or the successful operation or accomplishment of the project activities to be financed. This section describes the reason why credit is not available elsewhere and should indicate what supplemental evidence supports this representation. The second part of this section will state why this loan is an appropriate use of funds. Accompanying the loan write-up will be spread sheets completed by the LAB financial institution representative of the company's financial statements, most recent years' financial statement (if financial statements are not available, tax returns should be included), personal financial

statements of the principals, and financial projections, as specified in the standard application requirements. The City will provide a list of organizations in the EDD that provide assistance with financial statements.

PROCEDURE FOR LOAN APPROVALS

When a loan is approved, staff will draft a document stipulating the terms of approval and obtain the signature of the chairperson of the LAB. The LAB meeting minutes shall reflect this approval and be circulated to all members of the LAB. BR&E Manager shall be directed to prepare and send a commitment letter with a time expiration date signed by the Economic Vitality Director to the prospective borrower, stating the terms and conditions of the committed loan consistent with the written credit memo to the LAB, and any provisions or changes recommended by the LAB. It shall also state: *“This commitment is based on the fact that there have been no material adverse changes in the credit condition of the borrower since statements and information has been submitted to the RLF. If any such material adverse changes have taken place, this commitment is void and not in effect”.*

LOAN DECLINE-APPEAL PROCESS

The LAB will act upon recommendations for loan approval with the knowledge that the due diligence and underwriting on each loan has been completed, and upon reliance that the financial exhibits provided in the application are correct. Where a loan is denied by the LAB, an applicant may request further review by the LAB if the applicant can provide additional information that addresses the concerns of the LAB about the proposed loan. However, LAB decisions on loans are final and binding and cannot be appealed to the City Council.

LOAN CLOSING AND DISBURSEMENT PROCEDURES

General Closing Requirements

- Proof of equity, such as current bank account statements showing the needed funds on deposit, will be required for all loans requiring an equity injection;
- If existing debt is being converted to equity, or subordinated, evidence such as a subordination agreement, the original note, the conversion agreement, corporate resolutions and copies of shares issued will be required.

Where another lender is involved in the financing of a business an inter-creditor agreement setting forth the respective rights of the parties shall be required, where appropriate for the protection for the RLF.

Loan Closing Documentation Requirements

- All loans will require a promissory note and a loan agreement.
- All loan documents will be reviewed and approved by the Office of the City Attorney prior to loan closing.
- Sole proprietorships using a "doing business as/dba" will be required to provide copies of fictitious name filings.
- Partnerships will be required to provide copies of the partnership agreements and buyout agreements if applicable.
- Corporations will normally be required to provide copies of the Articles of Incorporation, by laws, certificates of good standing, and corporate resolution to borrow.
- All loans will require a security agreement where personal property secures a loan.
- Perfection of collateral will require UCC-1 filings on equipment and fixtures, inventory and receivables, recording deeds of trust on real property, and certificates of title or stock registration, as appropriate.
- UCC searches will be performed before loan board review to determine position. UCC searches may also be performed after loan closing and UCC filings to confirm that the desired lien position was actually obtained.
- Lenders title insurance will be required for all financed real property.
- Vehicle titles will show the City of Flagstaff as lien holder. If a third party owns the collateral, hypothecation and assignment agreements shall be required.
- All principals, individuals or entities with 20% or more ownership will normally be required to provide continuing guarantees, and subordination agreements, as appropriate.
- Inter-creditor Agreement, if necessary, to preclude prior lien holder from increasing debt, and/or to delineate collateral and responsibilities of lenders.
- Prior to closing, the borrower will present the required hazard and liability insurance policies, and any other insurance coverage such as key life insurance, as required.
- Lease assignments will be taken as appropriate.

The Loan Agreement shall contain covenants that shall require the borrower to comply with federal statutory and regulatory requirements that apply to activities carried out with RLF loans. The Loan Agreement shall contain a provision to protect and hold the federal government harmless from and against all liabilities that the government may

incur as a result of providing an award to assist (directly or indirectly) in 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 RLF Recipient or any of its predecessors on the property. The Loan Agreement shall also include a list of the federal requirements that apply to RLF Borrowers as provided in Part III.B. of the *U.S. Department of Commerce Economic Development Administration Revolving Loan Fund Standard Terms and Conditions of October 9, 2007*, as may be amended.

Loan Disbursement Requirements

- The borrower will certify in the loan agreement that the funds are to be used for the purposes intended as specified in the loan application. A positive covenant shall be included in the loan agreement stating the purpose of the loan. A breach of this covenant shall be deemed an event of default and the loan may be called.
- If the proceeds are for the purchase of equipment, fixtures, or vehicles, the borrower must show original invoices before the check will be created payable to the vendor or jointly to the vendor and business.

In instances where construction is in progress, a building control account will be established as necessary to avoid mechanics liens.

Loan Payment and Collection Procedures

The financial representative will follow all standard operating procedures and practices consistent with their lending institution. Upon request, the BR&E Manager and loan servicer will provide monthly reports of disbursements, receipts of interest and principal and any past due accounts. Timely notification of any payment due and not paid will be provided.

Loan Monitoring Procedures

- Annual financial statements (defined to include a balance sheet and profit and loss statement, compiled by an independent accountant or certified by the chief financial officer and president) may be required on all loans. RLF staff shall monitor these and other dated requirements such as insurance renewals, and UCC renewals. If documents are not received on a timely basis as stipulated by the Loan Agreement, designated staff will be responsible for correcting the deficiency. Provisions will be made in the Loan Agreement that audited statements may be required. Loan covenants may be required.

- BR&E Manager and Loan Servicing staff will be required to visit each borrower quarterly for the first 12 months and determine whether the business is on schedule with its business plan.
- Staff will then schedule quarterly visits with each borrower, as needed. Each visit will be documented by memorandum, and will contain a summary of the progress the business is making from a marketing and financial perspective, as well as an assessment of the business' future. This report shall be provided to the LAB.

Once a year, jobs saved/created data will be compiled by BR&E Manager and Loan Servicing staff and supplied to the EDA as part of the required semi-annual reports. All jobs will be reported in full time equivalents. All required loan documentation and special provisions will be monitored.

LATE PAYMENT FOLLOW-UP PROCEDURES

Late fees (which will be incorporated in the body of the Promissory note) shall be 5% of the payment outstanding and begin accruing on the next calendar day after the payment is due. If the loan is past due more than 15 business days, late fees shall commence.

- Upon being advised that a payment was not made, RLF staff will contact the borrower promptly to determine the problem, if any exists.
- The loan servicer will send a written notice of delinquent payment five (5) working days after due date with notification of late penalty, and will notify the RLF staff in writing.
- RLF staff will send a second written notice 30 days after the due date.
- RLF staff will send a third written notice 60 days after the due date.
- RLF staff will send a fourth written notice 90 days after the due date.
- During the first 30 days of delinquency, written and oral communication, as well as site visits by RLF staff will be utilized to resolve the delinquency.
- If, after 90 days a delinquency still exists and the loan has not been renegotiated or brought current, the loan will generally be determined to be in default and recovery of the security will commence.

- Any renegotiation of loan terms to remedy a default must be approved by the LAB.
- If at any time during this 90-day period, the BR&E Manager believes that the borrower cannot or will not bring the loan current, with LAB approval, RLF staff can declare the loan in default and begin recovery against collateral, if deemed appropriate.

COLLECTION PROCEDURES

The RLF staff will work to exercise all rights and privileges of a lender in order to collect the proceeds on delinquent loans. To ensure that the delinquent loan is collected in an appropriate, efficient, and timely manner, staff will:

- Prepare a plan of action with guidance by the LAB for collecting the loan and taking action against the collateral.
- Make sure all required loan documentation is in order.
- Consult with the City Attorney on all default notices and collection efforts and to insure that no laws or regulations will be violated by the collection effort and that all legally required actions are taken.
- Contact all other co-lenders as appropriate.
- List defaulted or chronically delinquent loans with credit bureaus.
- Notify the guarantors of the default and put them on notice that they are expected to make payment, in full, upon demand.
- Begin collection procedures and/or asset liquidation process.

WRITE-OFF POLICY AND PROCEDURES

Loans with an outstanding balance that have been placed in default and remain outstanding after 180 days will generally be written off. However, collection efforts will continue until determined not to be cost effective or prospects for recovery no longer exist. A reasonable loss through defaults will be considered without establishing a loan loss reserve. All write-offs must be directed to the City's Management Services Division for approval by the City Council.

CONFLICT OF INTEREST

No officer, employee, or member of the City Council, LAB or other City board or commission that advises, approves, recommends or otherwise participates in decisions concerning loans or the use of RLF funds, or person related to the officer, another employee, or any member of the City Council, LAB or other City board or commission by immediate family, law, or business arrangement, may receive any benefits resulting from the use of RLF loan or grant funds.

In addition, the City may not lend RLF funds to an employee of the City or any member of the City Council, the LAB or other City board or commission, or his or her immediate

family. Former board members 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 that board member last served on the RLF's board of directors. Immediate family is defined as domestic partner or significant other, parents, grandparents, siblings, children and grandchildren, but does not include more distant relatives, including cousins, unless they live in the same household. (See 13 C.F.R. § 302.17)

Exception: A benefit or loan may be conferred if the officer, employee, LAB member, City Council member or other board or commission member affected first discloses to the City on the public record the proposed or potential benefit and receives the City Attorney's written determination that the benefit involved is not so substantial as to reflect adversely upon or affect the integrity of the RLF's decision process or of the services of the officer, employee, or member of the City Council, LAB or other City board or commission. LAB members are responsible for disclosing any possible conflict of interest that may exist with respect to a particular action of the LAB.

An officer, employee, or member of the City Council, LAB or other board or commission shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for him or herself or for another person, from any person or organization seeking to obtain a loan or any portion of the RLF funds. Former LAB members and/or officers are ineligible to apply for or receive loan or grant funds for a period of one year from the date of termination of his/her services.

Loan board members that have other professional relationships (i.e., a banker with loan to borrower) with a prospective borrower cannot be present for deliberations, but may respond to questions from other members of the LAB, to avoid the appearance of a conflict of interest. All LAB members will be required to comply with local and state conflict of interest policies and filing requirements. Please refer to 13 CFR 300.3 "Interested Parties and 302.17 "Conflicts of Interests"

ENVIRONMENTAL REVIEWS

The City will conduct an environmental review as needed in accordance with the intent of the National Environmental Policy Act (NEPA) of 1969, as amended (P.L. 91-190), and as implemented by the "Regulations" of the President's Council on Environmental Quality (40 CFR, Parts 1500-1508) at a cost borne by borrower. The borrower will be required to comply with applicable laws and statutes, including, but not limited to the following:

- The National Environmental Policy Act of 1969 (42 U.S.C. 4321-4327)
- The Clean Air Act, Clean Water Act and Executive Order 11738
- The Flood Disaster Protection Act of 1973, (42 U.S.C. 402 et seq.)

- The Coastal Zone Management Act of 1972, P.L. 92-583, as amended (16 U.S.C. 1451, et seq.)
 - Executive Order 11988, Floodplain Management (May 24, 1977), and regulations and guidelines issued by the Economic Development Administration
 - Executive Order 11990, Protection of Wetlands (May 24, 1977)
 - The Endangered Species Act of 1973, as amended (16 U.S.C. 1531, et. seq.)
 - The Safe Drinking Water Act of 1974, as amended (42 U.S.C. 300f-300j-0)
 - The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271, et. seq.)
 - The Resource Conservation and Recovery Act of 1976, as amended (41 U.S.C. 690l)
 - The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), P.L. 96-510, as amended, by Superfund Amendments and Reauthorization Act of 1986 (SARA), and the Community Environmental Response Facilitation Act of 1992, as amended (41 U.S.C. 9601, et. seq.)
 - Environmental Justice in Minority Populations and Low Income Populations (Executive Order 12898, February 11, 1994)
 - The National Historic Preservation Act P.L. 89-665 (16 U.S.C. 470, et seq.), (36 CFR Part 800)
 - Coastal Barriers Resources Act (16 U.S.C. 3501, et seq.)
 - All state and local environmental review requirements with all applicable federal, state and local standards. The RLF will ensure that potential borrowers' environmental submittal is reviewed.
- a. A site inspection of the property by a qualified inspector will be conducted, as well as an environmental audit, as appropriate.
 - b. Loans that will lead to alteration of the physical environment (i.e. construction) will require compliance with the California Environmental Quality Act (CEQA), PRC Section 21000, et. seq.
 - c. A determination will be made whether a Phase I or Phase II environmental assessment is warranted for hazardous waste, given the size of the loan versus whether an unsecured position in a contaminated property is an acceptable risk for the RLF,
 - d. A mechanism to mitigate adverse impacts.

The LAB will disapprove any loan project that would adversely (without mitigation) impact flood plains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable nature resources. The RLF will utilize the services of qualified personnel to review environmental questionnaires for compliance with the above. Environmental review under CEQA will generally be carried out as a part of the City's issuance of permits for a project. However, in cases where City permits do not require environmental review, RLF staff may require independent environmental study or investigations to assure compliance with all local, state and federal environmental laws and regulations. Cost for environmental studies or investigation will be borne by borrower.

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

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

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

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

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

groundwater samples, and a Phase III site remediation involving mitigation of applicable contaminants. In cases where there are unresolved site contamination issues, the RLF Administrator shall work with the loan applicant and the appropriate state environmental agency office to resolve these outstanding issues.

ADDITIONAL LOAN RESTRICTIONS

- Criminal and Prohibited Activities
 - a. Program Fraud Civil Remedies Act (31 U.S.C. 3801-3812)
 - b. Criminal False Claims Act and the False Statements Act (18 U.S.C. 287 and 1001)
 - c. Civil False Claims Act (31 U.S.C. 3729)
 - d. Copeland “Anti-Kickback” Act (18 U.S.C. 874 and 40 U.S.C. 276c)
- Foreign Travel
 - e. Fly America Act (49 U.S.C. 40118)
- American-Made Equipment and Products. Applicants are encouraged to the greatest extent practicable, to purchase American-made equipment and products with funding provided.
- Intellectual Property Rights.
 - f. Inventions. The Intellectual property rights to any invention made by the City or Applicant under the Department of Commerce 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.
 - g. Patent Notification Procedures. Pursuant to Executive Order 12889.
 - h. Data, Databases and Software. The rights to any work produced or purchased are determined by 15 C.F.R 14.36 or 24.36, as applicable.
- Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, applicants are encouraged to enforce on-the job seat belt policies and programs when operating company-owned, rented or personally-owned vehicles.
- Research Involving Human Subjects. 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 program unless

expressly authorized in writing by the City of Flagstaff and the Department of Commerce.

- Minority Serving Institutions (MSIs) Initiative. Pursuant to Executive Orders 13256 (President's Board of Advisors on Historically Black Colleges and Universities), 13230 (President's Advisory Commission on Educational Excellence for Hispanic Americans), and 13270 (Tribal Colleges and Universities, we strongly recommended to include meaningful participation of MSIs.
- Research Misconduct. Scientific or research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. The City will investigate any allegations and provide a report to the Department of Commerce
- Publications, Videos and Acknowledgement of Sponsorship. City will ensure that every publication of material (including Internet sites and videos) based on or developed. Except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer: "This [report/video] was prepared by [City of Flagstaff] 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."
- Care and Use of Live Vertebrate Animals. 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 Mammals 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.).
- Homeland Security Presidential Directive – 12, FIPS PUB 201, and OMB Memorandum M-05-24.
- Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations.
-

PROCEDURES FOR LOAN FILES AND LOAN CLOSING DOCUMENTATION

- All original primary loan documents will be maintained in the Loan/Collateral file, which will be stored in a secure location by the

City Clerk. This file will contain the original note(s), loan agreement, collateral perfection documents (UCC-1 filings, deeds of trust, etc.), all other original legal documents, and will include the document checklist signed by the BR&E Manager conducting the closing. All files will be filed and recorded as specified by the EDA Terms and Conditions, Part II, Section G.

- Each individual borrower will have a loan file consisting of two items:
 - a. Credit File - contains copies of the appropriate legal documents needed to monitor the loan, as well as the original credit memo to the LAB, financial statements and tax returns, credit reports, personal financial statements, a copy of the commitment letter, proof of insurance, site visit memorandum, job reports, and any other correspondence relating to the relationship between the borrower and the RLF. A chronological record shall be maintained recording all significant events by date with a brief description.
 - b. Application File: The application file shall be established to contain the original application, business plan, financials, business plan evaluation, and any other documentation provided to evaluate the application. Every effort will be made to maintain confidentiality of applicant records/applications. There will be a public file which will can be reviewed by the public and a private file that will include all documentation including, but not limited to, application, credit memorandum, third party evaluations and non-confidential reports and UCC-1 filings.
- Record Retention: Loan files and related documents and records must be retained for the life of the loan and for a seven-year period from the date of final disposition of the loan. The City will maintain four different kinds of file records:
 1. An application file
 2. A loan file
 3. A declination file
 4. A closed loan file.

This will ensure that we have records of all decisions made by the LAB for public review.

- The date of final disposition of the loan is defined as the date of:

- a. Full payment of the principal, interest, fees, penalties, and other costs associated with the loan
 - b. Final settlement or write-off of any unpaid amounts associated with the loan
- Administrative records: The BR&E Manager must:
 - c. Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF income expended for eligible RLF administrative costs.
 - d. Retain records of administrative costs incurred for activities and equipment relating to the operation of the RLF for five years from the date the costs were claimed.
 - Make any retained records, even those retained for longer than the period described, available for inspection. The record retention periods, described in Chapter III, Part 316, Sec. 308.13, are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement.

Procedures for Complying with EPA Reporting Requirements

(Please refer to 13 CFR - Effective Utilization of Revolving Loan Funds)

CAPITAL UTILIZATION STANDARD

Pursuant to 13 C.F.R. § 307.16:

- During the Revolving Loan Phase, the City of Flagstaff must manage their repayment and lending schedules to provide that at all times at least seventy- five (75%) percent of their RLF capital is loaned or committed.
 - When the percentage of loaned RLF capital falls below the application capital utilization percentage, the dollar amount of the RLF funds equivalent to the difference between the actual percentage of RLF capital loaned and the applicable capital utilization percentage is referred to as "excess funds."
- a. Sequestration of excess funds. If the City of Flagstaff fails to satisfy the applicable utilization percentage requirements for two (2) consecutive Reporting Periods, EDA may require the City 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 §314.5 of the same chapter) of the

RLF Grant shall be remitted to the U.S. Treasury. The City must obtain EDA's written authorization to withdraw any sequestered funds.

- b. Persistent non-compliance. The City will generally be allowed a reasonable period of time to lend excess funds and achieve the applicable capital utilization percentage. However, if the City fails to achieve the applicable capital utilization percentage after a reasonable period of time, as determined by EDA, it may be subject to sanctions such as suspension or termination.

LOAN DEFAULT RATES

- EDA shall monitor the City's loan default rate to ensure proper protection of the Federal Share (as defined in §314.5 of the same chapter) of the RLF property, and request information from the City as necessary to determine whether it is collecting loan repayments and complying with the financial obligations under the RLF Grant. Such information may include:
 - a. A written analysis of the City's portfolio, which shall consider the Recipient's business plan, loan and collateral policies, loan services and collection policies and procedures, the rate of growth of the RLF capital base, and detailed information on any loan in default; and a corrective action plan subject to EDA's approval, which shall include specific actions the RLF recipient must take to reduce the loan default rate; and (ii) A quarterly status report indicating the City's progress on achieving the milestones outlined in the corrective action plan.
- Failure to provide the information requested and to take steps to protect the Federal Share may subject the City to enforcement action under §307.21 and the terms and conditions of this Grant.

A collection account has been established and maintained in coordination with the City Attorney and the City's Management Services Division in accordance with City regulations governing collections.

GRANTEE CONTROL PROCEDURES

RLF staff shall, periodically review the loan files to determine if they are consistent, complete and correct. All accounts, books, records and loan files shall be reviewed and audited in accordance with City Auditor standards, and Federal Administrative and Audit Standards.

PLAN AMENDMENT PROCEDURES

Any changes to this Administrative Plan must be approved by the LAB and shall be submitted to the EDA in writing for approval consistent with requirements of the EDA.

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Exhibit A

Economic Development District Map

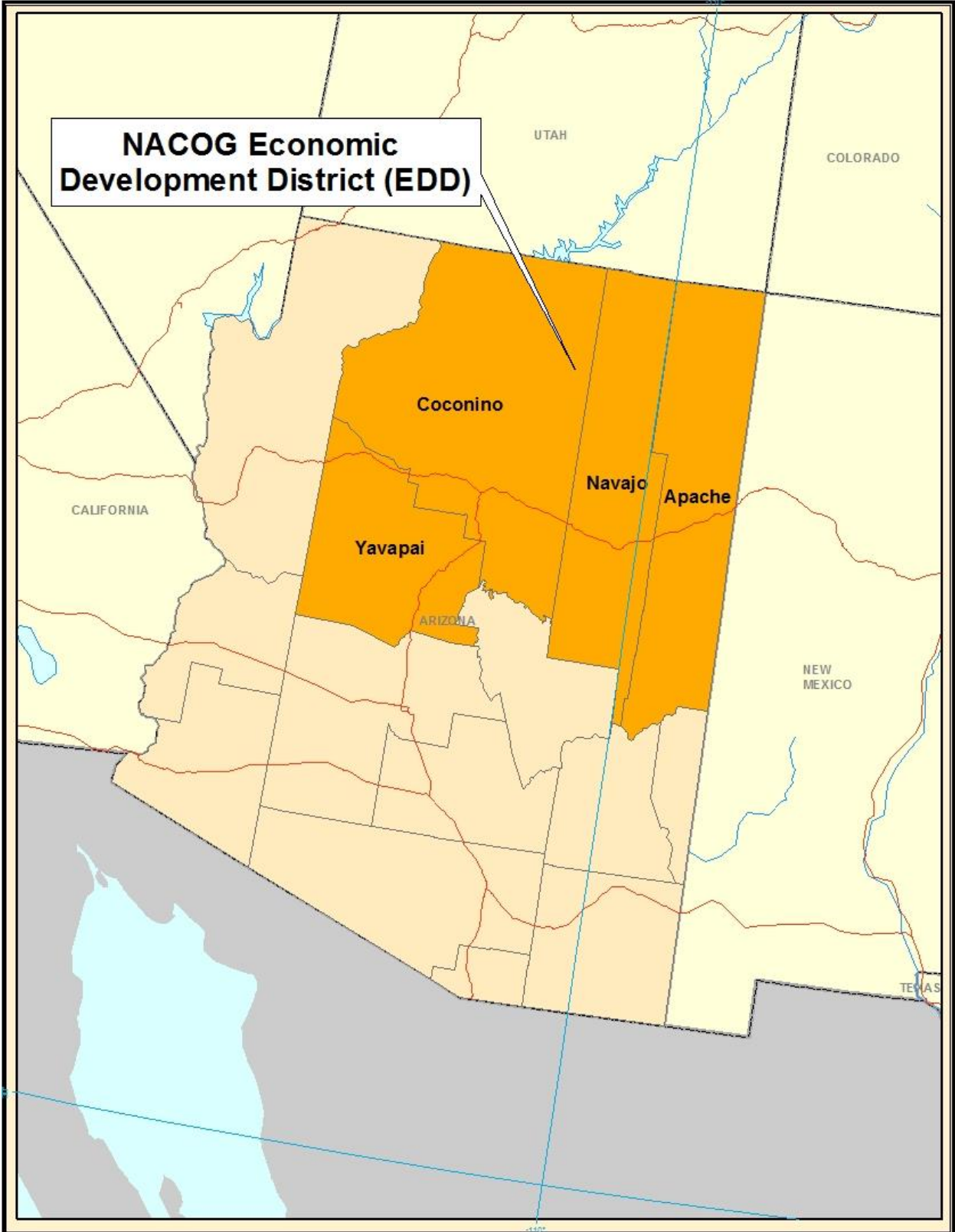


Exhibit B

Process Flowchart

Business submits application through Northern Arizona Business Capital Fund website (www.nazfunds.org). Participating agencies are the City of Flagstaff, the Economic Collaborative of Northern Arizona (ECoNA), Northern Arizona Center for Entrepreneurship and Technology (NACET), the Greater Flagstaff Chamber of Commerce, and Sustainable Economic Development Initiative (SEDI)

Application Review Committee reviews incoming application to determine the best agency to address the needs of the business



Applications generally between \$25,000 and \$75,000 may be directed to the Loan Administrative Board (LAB) which collaboratively manages the City of Flagstaff funds provided by the EDA as revolving loan fund monies

LOAN ADMINISTRATIVE BOARD

The LAB is comprised of three City of Flagstaff staff and two representatives of a lending institution to be determined through a competitive bid process. City of Flagstaff staff on the LAB are the following: Economic Vitality Director, Grants Manager, and Business Retention and Expansion Manager. If the application meets the requirements as written in the administrative plan, the LAB will forward the application with approval to the lending institution that will service the loan. Lending institution and applicant will execute loan paperwork

Loan is authorized

Exhibit C

EDA Contracting Provision for Construction Projects

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



**EDA CONTRACTING PROVISIONS
FOR CONSTRUCTION PROJECTS**

These EDA Contracting Provisions for Construction Projects (EDA Contracting Provisions) are intended for use by recipients receiving federal assistance from the U. S. Department of Commerce - Economic Development Administration (EDA). They contain provisions specific to EDA and other federal provisions not normally found in non-federal contract documents. The requirements contained herein must be incorporated into all construction contracts and subcontracts funded wholly or in part with federal assistance from EDA.

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1. **DEFINITIONS**

Agreement – The written instrument that is evidence of the agreement between the Owner and the Contractor overseeing the Work.

Architect/Engineer - The person or other entity engaged by the Recipient to perform architectural, engineering, design, and other services related to the work as provided for in the contract.

Contract – The entire and integrated written agreement between the Owner and the Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

Contract Documents – Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents.

Contractor – The individual or entity with whom the Owner has entered into the Agreement.

Drawings or Plans – That part of the Contract Documents prepared or approved by the Architect/Engineer that graphically shows the scope, extent, and character of the Work to be performed by the Contractor.

EDA - The United States of America acting through the Economic Development Administration of the U.S. Department of Commerce or any other person designated to act on its behalf. EDA has agreed to provide financial assistance to the Owner, which includes assistance in financing the Work to be performed under this Contract. Notwithstanding EDA's role, nothing in this Contract shall be construed to create any contractual relationship between the Contractor and EDA.

Owner – The individual or entity with whom the Contractor has entered into the Agreement and for whom the Work is to be performed.

Project – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.

Recipient - An entity receiving Federal financial assistance from EDA, including any EDA-approved successor to the entity.

Specifications – That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.

Subcontractor – An individual or entity having direct contract with the Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.

Work – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

2. **APPLICABILITY**

The Project to which the construction work covered by this Contract pertains is being assisted by the United States of America through federal assistance provided by the U.S. Department of Commerce - Economic Development Administration (EDA). Neither EDA, nor any of its departments, entities, or employees is a party to this Contract. The following EDA Contracting Provisions are included in this Contract and all subcontracts or related instruments pursuant to the provisions applicable to such federal assistance from EDA.

3. **FEDERALLY REQUIRED CONTRACT PROVISIONS**

(a) Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate (Contracts more than the simplified acquisition threshold - currently fixed at \$100,000. *See* 41 U.S.C. 403(11)).

(b) Termination for cause and for convenience by the Recipient including the manner by which it will be effected and the basis for settlement (all contracts in excess of \$10,000).

(c) Compliance with Executive Order 11246 of September 24, 1965, *Equal Employment Opportunity*, as amended by Executive Order 11375 of October 13, 1967 and as supplemented by Department of Labor regulations at 41 C.F.R. chapter 60 (applicable to all construction contracts awarded in excess of \$10,000 by recipients of federal assistance and their contractors or subrecipients).

(d) Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as supplemented by Department of Labor regulations at 29 C.F.R. part 3 (all contracts and subgrants for construction or repair).

(e) Compliance with the Davis-Bacon Act (40 U.S.C. § 3145) as supplemented by Department of Labor regulations at 29 C.F.R. part 5 (construction contracts in excess of \$2,000 awarded by Recipients and subrecipients).

(f) Compliance with sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330) as supplemented by Department of Labor regulations at 29 C.F.R. part 5. (construction contracts awarded by Recipients and subrecipients in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers)

(g) EDA requirements and regulations pertaining to reporting.

(h) EDA requirements and regulations pertaining to patent rights with respect to any discovery or invention which arises or is developed in the course of or under such contract.

(i) EDA requirements and regulations pertaining to copyrights and rights in data.

(j) Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. § 7606), section 508 of the Clean Water Act (33 U.S.C. § 1368), 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*, and Environmental Protection Agency regulations at 48 C.F.R. part 15 (applicable to contracts, subcontracts, and subgrants of amounts in excess of \$ 100,000).

4. **REQUIRED PROVISIONS DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion of correction.

5. **INSPECTION BY EDA REPRESENTATIVES**

The authorized representatives and agents of EDA shall be permitted to inspect all work, materials, payrolls, personnel records, invoices of materials, and other relevant data and records.

6. **EXAMINATION AND RETENTION OF CONTRACTOR'S RECORDS**

(a) The Owner, EDA, or the Comptroller General of the United States, or any of their duly authorized representatives shall, generally until three years after final payment under this contract, have access to and the right to examine any of the Contractor's directly pertinent books, documents, papers, or other records involving transactions related to this contract for the purpose of making audit, examination, excerpts, and transcriptions.

(b) The Contractor agrees to include in first-tier subcontracts under this contract a clause substantially the same as paragraph (a) above. "Subcontract," as used in this clause, excludes purchase orders that do not exceed \$10,000.

(c) The periods of access and examination in paragraphs (a) and (b) above for records relating to (1) appeals under the disputes clause of this contract, (2) litigation or settlement of claims arising from the performance of this contract, or (3) costs and expenses of this contract to which the Owner, EDA, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigation, claims, or exceptions.

7. **CONSTRUCTION SCHEDULE AND PERIODIC ESTIMATES**

Immediately after execution and delivery of the contract, and before the first partial payment is made, the Contractor shall deliver to the Owner an estimated construction progress schedule in a form satisfactory to the Owner, showing the proposed dates of commencement and completion of each of the various subdivisions of work required under the Contract Documents and the anticipated amount of each monthly payment that will become due to the Contractor in accordance with the progress schedule. The Contractor also shall furnish the Owner (a) a detailed estimate giving a complete breakdown of the contract price and (b) periodic itemized estimates of work done for the purpose of making partial payments thereon. The costs employed in making up any of these schedules will be used only to determine the basis of partial payments and will not be considered as fixing a basis for additions to or deductions from the contract price.

8. **CONTRACTOR'S TITLE TO MATERIAL**

No materials, supplies, or equipment for the work shall be purchased by the Contractor or by any subcontractor that is subject to any chattel mortgage or under a conditional sale contract or other agreement by which an interest is retained by the seller. The Contractor warrants and guarantees that he/she has good title to all work, materials, and equipment used by him/her in the Work, free and clear of all liens, claims, or encumbrances.

9. **INSPECTION AND TESTING OF MATERIALS**

All materials and equipment used in the completion of the Work shall be subject to adequate inspection and testing in accordance with accepted standards. The laboratory or inspection agency shall be selected by the Owner. Materials of construction, particularly those upon which the strength and durability of any structure may depend, shall be subject to inspection and testing to establish conformance with specifications and suitability for intended uses.

10. **"OR EQUAL" CLAUSE**

Whenever a material, article, or piece of equipment is identified in the Contract Documents by reference to manufacturers' or vendors' names, trade names, catalogue numbers, etc., it is intended merely to establish a standard. Any material, article, or equipment of other manufacturers and vendors that will perform adequately the duties imposed by the general design will be considered equally acceptable provided the material, article, or equipment so proposed is, in the opinion of the Architect/Engineer, of equal substance and function. However, such substitution material, article, or equipment shall not be purchased or installed by the Contractor without the Architect/Engineer's written approval.

11. **PATENT FEES AND ROYALTIES**

(a) Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device that is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in

the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by the Owner in the Contract Documents.

(b) To the fullest extent permitted by Laws and Regulations, the Contractor shall indemnify and hold harmless the Owner and the Architect/Engineer, and the officers, directors, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

12. CLAIMS FOR EXTRA COSTS

No claims for extra work or cost shall be allowed unless the same was done in pursuance of a written order from the Architect/Engineer approved by the Owner.

13. CONTRACTORS AND SUBCONTRACTORS INSURANCE

(a) The Contractor shall not commence work under this Contract until the Contractor has obtained all insurance reasonably required by the Owner, nor shall the Contractor allow any subcontractor to commence work on his/her subcontract until the insurance required of the subcontractor has been so obtained and approved.

(b) Types of insurance normally required are:

- (1) Workmen's Compensation
- (2) Contractor's Public Liability and Property Damage
- (3) Contractor's Vehicle Liability
- (4) Subcontractors Public Liability, Property Damage and Vehicle Liability
- (5) Builder's Risk (Fire and Extended Coverage)

(c) **Scope of Insurance and Special Hazards:** The insurance obtained, which is described above, shall provide adequate protection for the Contractor and his/her subcontractors, respectively, against damage claims that may arise from operations under this contract, whether such operations be by the insured or by anyone directly or indirectly employed by him/her and also against any of the special hazards that may be encountered in the performance of this Contract.

(d) **Proof of Carriage of Insurance:** The Contractor shall furnish the Owner with certificates showing the type, amount, class of operations covered, effective dates, and dates of expiration of applicable insurance policies.

14. **CONTRACT SECURITY BONDS**

(a) If the amount of this Contract exceeds \$100,000, the Contractor shall furnish a performance bond in an amount at least equal to one hundred percent (100%) of the Contract price as security for the faithful performance of this Contract and also a payment bond in an amount equal to one hundred percent (100%) of the Contract price or in a penal sum not less than that prescribed by State, Territorial, or local law, as security for the payment of all persons performing labor on the Work under this Contract and furnishing materials in connection with this Contract. The performance bond and the payment bond may be in one or in separate instruments in accordance with local law. Before final acceptance, each bond must be approved by EDA. If the amount of this Contract does not exceed \$100,000, the Owner shall specify the amount of the payment and performance bonds.

(b) All bonds shall be in the form prescribed by the Contract Documents except as otherwise provided in applicable laws or regulations, and shall be executed by such sureties as are named in the current list of *Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies* as published in Treasury Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act. Surety companies executing the bonds must also be authorized to transact business in the state where the Work is located.

15. **LABOR STANDARDS - DAVIS-BACON AND RELATED ACTS**
(as required by section 601 of PWEDA)

(a) **Minimum Wages**

(1) All laborers and mechanics employed or working upon the site of the Work in the construction or development of the Project will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act at 29 C.F.R. part 3, the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor, which is attached hereto and made a part hereof, regardless of any contractual relationship that may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. § 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 C.F.R. § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the

rate specified for each classification for the time actually worked therein, provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates determined under 29 C.F.R. § 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(2) (i) Any class of laborers or mechanics to be employed under the Contract, but not listed in the wage determination, shall be classified in conformance with the wage determination. EDA shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(A) The work to be performed by the classification requested is not performed by a classification in the wage determination;

(B) The classification is utilized in the area by the construction industry; and

(C) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and EDA or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by EDA or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. 20210.

(iii) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and EDA or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), EDA or its designee shall refer the questions, including the views of all interested parties and the recommendation of EDA or its designee, to the Administrator for determination.

(iv) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(2)(ii) or (iii) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(3) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(4) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(b) Withholding

EDA or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the Contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper employed or working on the site of the Work in the construction or development of the Project, all or part of the wages required by the Contract, EDA or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. EDA or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or subcontractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

(c) Payrolls and basic records

(1) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the Work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the Work in the construction or development of the Project. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b) (2) (B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. § 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, the plan or program is financially responsible, and the plan or program has been communicated in writing to the laborers or mechanics affected, and provide records that show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of

apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(2) (i) For each week in which Contract work is performed, the Contractor shall submit a copy of all payrolls to the Owner for transmission to EDA or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. part 5.5(a)(3)(i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose. It may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, D.C. 20402; or downloaded from the U.S. Department of Labor's website at www.dol.gov/esa/forms/whd/index.htm. The prime Contractor is responsible for the submission of copies of payrolls by all subcontractors

(ii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the Contract and shall certify the following:

(A) That the payroll for the payroll period contains the information required to be maintained under 29 C.F.R. § 5.5(a)(3)(i) and that such information is correct and complete;

(B) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the Contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 C.F.R. part 3;

(C) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the Contract.

(iii) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 14(c)(ii) of this section.

(iv) The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of Title 18 and section 231 of Title 31 of the U.S. Code.

(3) The Contractor or subcontractor shall make the records required under paragraph 14(c)(1) of this section available for inspection, copying, or transcription by authorized representatives of EDA or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them

available, EDA or its designee may, after written notice to the Contractor or Owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. part 5.12.

(d) Apprentices and Trainees.

(1) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a Project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(2) **Trainees.** Except as provided in 29 C.F.R. § 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program that has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and

Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman's hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(3) **Equal employment opportunity.** The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, *Equal Employment Opportunity*, as amended, and 29 C.F.R. part 30.

(e) **Compliance with Copeland Anti-Kickback Act Requirements.** The Contractor shall comply with the Copeland Anti-Kickback Act (18 U.S.C. § 874 and 40 U.S.C. § 276(c)) as supplemented by Department of Labor regulations (29 C.F.R. part 3, "Contractors and Subcontractors on Public Buildings or Public Works Financed in Whole or in Part by Loans or Grants of the United States"). The Act provides that the Contractor and any subcontractors shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public facilities, to give up any part of the compensation to which they are otherwise entitled. The Owner shall report all suspected or reported violations to EDA.

(f) **Subcontracts.** The Contractor and any subcontractors will insert in any subcontracts the clauses contained in 29 C.F.R. §§ 5.5(a)(1) through (10) and such other clauses as EDA or its designee may require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 C.F.R. part 5.5.

(g) **Contract termination; debarment.** The breach of the contract clauses in 29 C.F.R. part 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a subcontractor as provided in 29 C.F.R. § 5.12.

(h) **Compliance with Davis-Bacon and Related Act Requirements.** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this contract.

(i) **Disputes concerning labor standards.** Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and EDA or its designee, the U.S. Department of Labor, or the employees or their representatives.

(j) **Certification of Eligibility.**

(1) By entering into this Contract, the Contractor certifies that neither it nor any person or firm that has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

(2) No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. § 5.12(a)(1).

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

16. **LABOR STANDARDS - CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

As used in this paragraph, the terms “laborers” and “mechanics” include watchmen and guards.

(a) **Overtime requirements.** No Contractor or subcontractor contracting for any part of the Contract work, which may require or involve the employment of laborers or mechanics, shall require or permit any such laborer or mechanic in any workweek in which that person is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(b) **Violation; liability for unpaid wages, liquidated damages.** In the event of any violation of the clause set forth in paragraph (a) of this section, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a) of this section, in the sum of \$10 for each calendar day on which such individual was required or

permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a) of this section.

(c) **Withholding for unpaid wages and liquidated damages.** EDA or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any monies payable on account of work performed by the Contractor or subcontractor under any such Contract or any other federal contract with the same prime Contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b) of this section.

(d) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (a) through (c) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a) through (c) of this section.

17. **EQUAL EMPLOYMENT OPPORTUNITY**

(a) The Recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. chapter 60, which is paid for in whole or in part with funds obtained from EDA, the following equal opportunity clause:

During the performance of this contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training including apprenticeship. The Contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers representatives of the Contractor's

commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965 and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and pursuant to rules, regulations, and orders of the Secretary of Labor and will permit access to its books, records, and accounts by the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulations or order of the Secretary of Labor, or as otherwise provided by law.

(7) The Contractor will include the portion of the sentence immediately preceding paragraph 17(a) (1) and the provisions of paragraphs 17(a)(1) through (6) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as EDA or the Secretary of Labor may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event the Contractor becomes involved in or is threatened with litigation with or by a subcontractor or vendor as a result of such direction by EDA or the Secretary of Labor, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(8) The Recipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally-assisted construction work. Provided, however, that if the Recipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality, or subdivision of such government that does not participate in work on or under the Contract.

(9) The Recipient agrees that it will assist and cooperate actively with EDA and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish EDA and the Secretary of Labor such information as they may

require for the supervision of such compliance, and that it will otherwise assist EDA in the discharge of the EDA's primary responsibility for securing compliance.

(10) The Recipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by EDA or the Secretary of Labor pursuant to Part II, Subpart D of the Executive order. In addition, the Recipient agrees that if it fails or refuses to comply with these undertakings, EDA may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this EDA financial assistance; refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

(b) Exemptions to Above Equal Opportunity Clause (41 C.F.R. chapter 60):

(1) Contracts and subcontracts not exceeding \$10,000 (other than Government bills of lading) are exempt. The amount of the Contract, rather than the amount of the federal financial assistance, shall govern in determining the applicability of this exemption.

(2) Except in the case of subcontractors for the performance of construction work at the site of construction, the clause shall not be required to be inserted in subcontracts below the second tier.

(3) Contracts and subcontracts not exceeding \$10,000 for standard commercial supplies or raw materials are exempt.

18. **CONTRACTING WITH SMALL, MINORITY AND WOMEN'S BUSINESSES**

(a) If the Contractor intends to let any subcontracts for a portion of the work, the Contractor shall take affirmative steps to assure that small, minority and women's businesses are used when possible as sources of supplies, equipment, construction, and services.

(b) Affirmative steps shall consist of:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Ensuring that small and minority businesses and women's business enterprises are solicited whenever they are potential sources;

- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- (4) Establishing delivery schedules, where the requirements of the contract permit, which encourage participation by small and minority businesses and women's business enterprises;
- (5) Using the services and assistance of the U.S. Small Business Administration, the Minority Business Development Agency of the U.S. Department of Commerce, and State and local governmental small business agencies;
- (6) Requiring each party to a subcontract to take the affirmative steps of this section; and
- (7) The Contractor is encouraged to procure goods and services from labor surplus area firms.

19. **HEALTH, SAFETY, AND ACCIDENT PREVENTION**

(a) In performing this contract, the Contractor shall:

- (1) Ensure that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to their health and/or safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation;
- (2) Protect the lives, health, and safety of other persons;
- (3) Prevent damage to property, materials, supplies, and equipment; and,
- (4) Avoid work interruptions.

(b) For these purposes, the Contractor shall:

- (1) Comply with regulations and standards issued by the Secretary of Labor at 29 C.F.R. part 1926. Failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act (40 U.S.C. § 3701 – 3708); and
- (2) Include the terms of this clause in every subcontract so that such terms will be binding on each subcontractor.

(c) The Contractor shall maintain an accurate record of exposure data on all accidents incident to work performed under this Contract resulting in death, traumatic injury, occupational disease, or damage to property, materials, supplies, or equipment, and shall report this data in the manner prescribed by 29 C.F.R. part 1904.

(d) The Owner shall notify the Contractor of any noncompliance with these requirements and of the corrective action required. This notice, when delivered to the Contractor or the Contractor's representative at the site of the Work, shall be deemed sufficient notice of the noncompliance and corrective action required. After receiving the notice, the Contractor shall immediately take corrective action. If the Contractor fails or refuses to take corrective action promptly, the Owner may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. The Contractor shall not base any claim or request for equitable adjustment for additional time or money on any stop order issued under these circumstances.

(e) The Contractor shall be responsible for its subcontractors' compliance with the provisions of this clause. The Contractor shall take such action with respect to any subcontract as EDA, or the Secretary of Labor shall direct as a means of enforcing such provisions.

20. **CONFLICT OF INTEREST AND OTHER PROHIBITED INTERESTS**

(a) No official of the Owner who is authorized in such capacity and on behalf of the Owner to negotiate, make, accept, or approve, or to take part in negotiating, making, accepting, or approving any architectural, engineering, inspection, construction or material supply contract or any subcontract in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part hereof.

(b) No officer, employee, architect, attorney, engineer, or inspector of or for the Owner who is authorized in such capacity and on behalf of the Owner to exercise any legislative, executive, supervisory or other similar functions in connection with the construction of the Project, shall become directly or indirectly interested personally in this Contract or in any part thereof, any material supply contract, subcontract, insurance contract, or any other contract pertaining to the Project.

(c) The Contractor may not knowingly contract with a supplier or manufacturer if the individual or entity who prepared the Contract Documents has a corporate or financial affiliation with the supplier or manufacturer.

(d) The Owner's officers, employees, or agents shall not engage in the award or administration of this Contract if a conflict of interest, real or apparent, may be involved. Such a conflict may arise when: (i) the employee, officer or agent; (ii) any member of their immediate family; (iii) their partner or (iv) an organization that employs, or is about to employ, any of the above, has a financial interest in the Contractor. The Owner's officers, employees, or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from the Contractor or subcontractors.

(e) If the Owner finds after a notice and hearing that the Contractor, or any of the Contractor's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts, or otherwise) to any official, employee, or agent of the Owner or EDA in an attempt to secure this Contract or favorable treatment in awarding, amending, or making any determinations related to the performance of this Contract, the Owner may, by written notice to the Contractor, terminate this Contract. The Owner may also pursue other rights and remedies that the law or this Contract

provides. However, the existence of the facts on which the Owner bases such findings shall be an issue and may be reviewed in proceedings under the dispute resolution provisions of this Contract.

(f) In the event this Contract is terminated as provided in paragraph (e) of this section, the Owner may pursue the same remedies against the Contractor as it could pursue in the event of a breach of this Contract by the Contractor. As a penalty, in addition to any other damages to which it may be entitled by law, the Owner may pursue exemplary damages in an amount (as determined by the Owner) which shall not be less than three nor more than ten times the costs the Contractor incurs in providing any such gratuities to any such officer or employee.

21. **RESTRICTIONS ON LOBBYING**

(a) This Contract, or subcontract is subject to section 319 of Public Law 101-121, which added section 1352, regarding lobbying restrictions, to chapter 13 of title 31 of the United States Code. The new section is explained in the common rule, 15 C.F.R. part 28 (55 FR 6736-6748, February 26, 1990). Each bidder under this Contract or subcontract is generally prohibited from using federal funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with this EDA Award.

(b) **Contract Clause Threshold:** This Contract Clause regarding lobbying must be included in each bid for a contract or subcontract exceeding \$100,000 of federal funds at any tier under the EDA Award.

(c) **Certification and Disclosure:** Each bidder of a contract or subcontract exceeding \$100,000 of federal funds at any tier under the federal Award must file Form CD-512, *Certification Regarding Lobbying*, and, if applicable, Standard Form-LLL, *Disclosure of Lobbying Activities*, regarding the use of any nonfederal funds for lobbying. Certifications shall be retained by the Contractor or subcontractor at the next higher tier. All disclosure forms, however, shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.

(d) **Continuing Disclosure Requirement:** Each Contractor or subcontractor that is subject to the Certification and Disclosure provision of this Contract Clause is required to file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person. Disclosure forms shall be forwarded from tier to tier until received by the Recipient of the EDA Award, who shall forward all disclosure forms to EDA.

(e) **Indian Tribes, Tribal Organizations, or Other Indian Organizations:** Indian tribes, tribal organizations, or any other Indian organizations, including Alaskan Native organizations, are excluded from the above lobbying restrictions and reporting requirements, but only with respect to expenditures that are by such tribes or organizations for lobbying activities permitted by other federal law. An Indian tribe or organization that is seeking an exclusion from Certification and Disclosure requirements must provide EDA with the citation of the provision or provisions of federal law upon which it relies to conduct lobbying activities that would otherwise

be subject to the prohibitions in and to the Certification and Disclosure requirements of section 319 of Public Law No. 101-121, preferably through an attorney's opinion. Note, also, that a non-Indian subrecipient, contractor, or subcontractor under an award to an Indian tribe, for example, is subject to the restrictions and reporting requirements.

22. **HISTORICAL AND ARCHAEOLOGICAL DATA PRESERVATION**

The Contractor agrees to facilitate the preservation and enhancement of structures and objects of historical, architectural or archaeological significance and when such items are found and/or unearthed during the course of project construction. Any excavation by the Contractor that uncovers an historical or archaeological artifact shall be immediately reported to the Owner and a representative of EDA. Construction shall be temporarily halted pending the notification process and further directions issued by EDA after consultation with the State Historic Preservation Officer (SHPO) for recovery of the items. *See* the National Historic Preservation Act of 1966 (80 Stat 915, 16 U.S.C. § 470) and Executive Order No. 11593 of May 31, 1971.

23. **CLEAN AIR AND WATER**

Applicable to Contracts in Excess of \$100,000

(a) **Definition.** “Facility” means any building, plant, installation, structure, mine, vessel, or other floating craft, location, or site of operations, owned, leased, or supervised by the Contractor or any subcontractor, used in the performance of the Contract or any subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the Administrator, or a designee, of the United States Environmental Protection Agency (EPA) determines that independent facilities are collocated in one geographical area.

(b) In compliance with regulations issued by the EPA, 2 C.F.R. part 1532, pursuant to the Clean Air Act, as amended (42 U.S.C. § 7401 *et seq.*); the Federal Water Pollution Control Act, as amended (33 U.S.C. § 1251 *et seq.*); and Executive Order 11738, the Contractor agrees to:

- (1) Not utilize any facility in the performance of this contract or any subcontract which is listed on the EPA List of Violating Facilities pursuant to 2 C.F.R. part 1532 for the duration of time that the facility remains on the list;
- (2) Promptly notify the Owner if a facility the Contractor intends to use in the performance of this contract is on the EPA List of Violating Facilities or the Contractor knows that it has been recommended to be placed on the List;
- (3) Comply with all requirements of the Clean Air Act and the Federal Water Pollution Control Act, including the requirements of section 114 of the Clean Air Act and section 308 of the Federal Water Pollution Control Act, and all applicable clean air and clean water standards; and

(4) Include or cause to be included the provisions of this clause in every subcontract and take such action as EDA may direct as a means of enforcing such provisions.

24. **USE OF LEAD-BASED PAINTS ON RESIDENTIAL STRUCTURES**

(a) If the work under this Contract involves construction or rehabilitation of residential structures, the Contractor shall comply with the Lead-based Paint Poisoning Prevention Act (42 U.S.C. § 4831). The Contractor shall assure that paint used on the Project on applicable surfaces does not contain lead in excess of the percentages set forth in Paragraphs (a) and (b) of this section. In determining compliance with these standards, the lead content of the paint shall be measured on the basis of the total nonvolatile content of the paint or on the basis of an equivalent measure of lead in the dried film of paint already applied.

(1) For paint manufactured after June 22, 1977, paint may not contain lead in excess of 6 one-hundredths of 1 percent (.0006) lead by weight.

(2) For paint manufactured on or before June 22, 1977, paint may not contain lead in excess of five-tenths of 1 percent lead by weight.

(b) As a condition to receiving assistance under PWEDA, recipients shall assure that the restriction against the use of lead-based paint is included in all contracts and subcontracts involving the use of federal funds.

(c) **Definitions**

(1) “Applicable surfaces” are those exterior surfaces which are readily accessible to children under seven years of age.

(2) “Residential structures” means houses, apartments, or other structures intended for human habitation, including institutional structures where persons reside, which are accessible to children under seven years of age, such as day care centers, intermediate and extended care facilities, and certain community facilities.

25. **ENERGY EFFICIENCY**

The Contractor shall comply with all standards and policies relating to energy efficiency which are contained in the energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public L. No. 94-163) for the State in which the Work under the Contract is performed.

26. **ENVIRONMENTAL REQUIREMENTS**

When constructing a Project involving trenching and/or other related earth excavations, the Contractor shall comply with the following environmental constraints:

(1) **Wetlands.** When disposing of excess, spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert wetlands.

(2) **Floodplains.** When disposing of excess, spoil, or other construction materials on public or private property, the Contractor shall not fill in or otherwise convert 100 year floodplain areas delineated on the latest Federal Emergency Management Agency (FEMA) Floodplain Maps, or other appropriate maps, i.e., alluvial soils on Natural Resource Conservation Service (NRCS) Soil Survey Maps.

(4) **Endangered Species.** The Contractor shall comply with the Endangered Species Act, which provides for the protection of endangered and/or threatened species and critical habitat. Should any evidence of the presence of endangered and/or threatened species or their critical habitat be brought to the attention of the Contractor, the Contractor will immediately report this evidence to the Owner and a representative of EDA. Construction shall be temporarily halted pending the notification process and further directions issued by EDA after consultation with the U.S. Fish and Wildlife Service.

27. **DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSIONS**

As required by Executive Order 12549, *Debarment and Suspension*, and implemented at 2 C.F.R. part 1326, for prospective participants in lower tier covered transactions (except subcontracts for goods or services under the \$25,000 small purchase threshold unless the subrecipient will have a critical influence on or substantive control over the award), as defined at 2 C.F.R. part 1326.

(1) By entering into this Contract, and by further executing Form CD-512, the Contractor and subcontractors certify, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract by any federal department or agency.

(2) Where the Contractor or subcontractors are unable to certify to any of the statements in this certification, the Contractor or subcontractors shall attach an explanation to this bid.

See also 15 C.F.R. §§ 14.13 or 24.35, as applicable.

28. **EDA PROJECT SIGN**

The Contractor shall supply, erect, and maintain in good condition a Project sign according to the specifications provided by EDA. To the extent practical, the sign should be a free standing sign. Project signs shall not be located on public highway rights-of-way. Location and height of signs will be coordinated with the local agency responsible for highway or street safety in the Project area, if any possibility exists for obstructing vehicular traffic line of sight. Whenever the EDA site sign specifications conflict with State law or local ordinances, the EDA Regional Director will permit such conflicting specifications to be modified so as to comply with State law or local ordinance.

**NOTICE OF REQUIREMENTS FOR AFFIRMATIVE ACTION
TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY
(EXECUTIVE ORDER 11246 AND 41 CFR PART 60-4)**

The following Notice shall be included in, and shall be a part of all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of \$10,000.

The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.

The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

Timetables	Goals for minority participation for each trade	Goals for female participation for each trade
	%	6.9%

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is:

State of _____

County of _____

City of _____

CERTIFICATION REGARDING LOBBYING

Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 28, "New Restrictions on Lobbying." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Commerce determines to award the covered transaction, grant, or cooperative agreement.

LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000 or a loan or loan guarantee over \$150,000 as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

In any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure occurring on or before October 23, 1996, and of not less than \$11,000 and not more than \$110,000 for each such failure occurring after October 23, 1996.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification.

NAME OF APPLICANT	AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

(Use Company Letterhead)

**STATEMENT
OF SIGNATURE AUTHORITY**

CITY OF FLAGSTAFF, (Project Name, Number)

This is to certify that _____ (name) _____, _____ (title) _____ has signature authority for all issues relating to preparation, certification and distribution of employee payrolls as official documents under Federal guidelines included in the Davis-Bacon and Related Acts, representing _____ (company name) _____.

This authority covers written documents which may include the following information: employee identification; duration and time worked; wages; taxes; mandatory and elective deductions; fringe benefit plans; or cash paid in lieu of benefit plan participation.

This statement of authority shall remain valid for the duration of this project contingent upon this person's employment with _____ (company) _____ unless alternate or additional authority is granted for this purpose.

(Must be Issued by an Officer or Principal of Company)

(Printed Name) _____, (Title) _____

Signature: _____ Date: _____

STATEMENT AND ACKNOWLEDGMENT

OMB No.: **9000-0014**
Expires: **4/30/2008**

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat, (VIR), Regulatory and Federal Assistance Division, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0014), Washington, DC 20503.

PART I - STATEMENT OF PRIME CONTRACTOR

1. PRIME CONTRACT NO.		2. DATE SUBCONTRACT AWARDED		3. SUBCONTRACT NUMBER	
4. PRIME CONTRACTOR				5. SUBCONTRACTOR	
a. NAME			a. NAME		
b. STREET ADDRESS			b. STREET ADDRESS		
c. CITY		d. STATE	e. ZIP CODE	c. CITY	

6. The prime contract does, does not contain the clause entitled "Contract Work Hours and Safety Standards Act -- Overtime Compensation."

7. The prime contractor states that under the contract shown in Item 1, a subcontract was awarded on the date shown in Item 2 to the subcontractor identified in item 5 by the following firm:

a. NAME OF AWARDING FIRM

b. DESCRIPTION OF WORK BY SUBCONTRACTOR

8. PROJECT		9. LOCATION	
10a. NAME OF PERSON SIGNING		11. BY (Signature)	
10b. TITLE OF PERSON SIGNING		12. DATE SIGNED	

PART II - ACKNOWLEDGMENT OF SUBCONTRACTOR

13. The subcontractor acknowledges that the following clauses of the contract shown in Item 1 are included in this subcontract:

- | | |
|--|---|
| Contract Work Hours and Safety Standards Act - Overtime Compensation - (If included in prime contract see Block 6) | Davis-Bacon Act |
| Payrolls and Basic Records | Apprentices and Trainees |
| Withholding of Funds | Compliance with Copeland Act Requirements |
| Disputes Concerning Labor Standards | Subcontracts (Labor Standards) |
| Compliance with Davis-Bacon and Related Act Regulations | Contract Termination - Debarment |
| | Certification of Eligibility |

14. NAME(S) OF ANY INTERMEDIATE SUBCONTRACTORS, IF ANY

A		C	
B		D	
15a. NAME OF PERSON SIGNING		16. BY (Signature)	
15b. TITLE OF PERSON SIGNING		17. DATE SIGNED	

**REQUEST FOR AUTHORIZATION OF
ADDITIONAL CLASSIFICATION AND RATE**

CHECK APPROPRIATE BOX
 SERVICE CONTRACT
 CONSTRUCTION CONTRACT

OMB Number: **9000-0089**
 Expiration Date: **7/31/2014**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVP), Office of Acquisition Policy, GSA, Washington, DC 20405; and to the Office of Management and Budget, Paperwork Reduction Project (9000-0089), Washington, DC 20503.

INSTRUCTIONS: THE CONTRACTOR SHALL COMPLETE ITEMS 3 THROUGH 16, KEEP A PENDING COPY, AND SUBMIT THE REQUEST, IN QUADRUPPLICATE, TO THE CONTRACTING OFFICER.

1. TO: ADMINISTRATOR, Employment Standards Administration WAGE AND HOUR DIVISION U.S. DEPARTMENT OF LABOR WASHINGTON, D.C. 20210	2. FROM: (REPORTING OFFICE)
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3. CONTRACTOR	4. DATE OF REQUEST
----------------------	---------------------------

5. CONTRACT NUMBER	6. DATE BID OPENED (SEALED BIDDING)	7. DATE OF AWARD	8. DATE CONTRACT WORK STARTED	9. DATE OPTION EXERCISED (If APPLICABLE) (SCA ONLY)
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10. SUBCONTRACTOR (IF ANY)

11. PROJECT AND DESCRIPTION OF WORK (ATTACH ADDITIONAL SHEET IF NEEDED)

12. LOCATION (CITY, COUNTY AND STATE)

13. IN ORDER TO COMPLETE THE WORK PROVIDED FOR UNDER THE ABOVE CONTRACT, IT IS NECESSARY TO ESTABLISH THE FOLLOWING RATE(S) FOR THE INDICATED CLASSIFICATION(S) NOT INCLUDED IN THE DEPARTMENT OF LABOR DETERMINATION

NUMBER: _____ DATED: _____

a. LIST IN ORDER: PROPOSED CLASSIFICATION TITLE(S); JOB DESCRIPTION(S); DUTIES; AND RATIONALE FOR PROPOSED CLASSIFICATIONS (SCA ONLY) <small>(Use reverse or attach additional sheets, if necessary)</small>	b. WAGE RATE(S)	c. FRINGE BENEFITS PAYMENTS

14. SIGNATURE AND TITLE OF SUBCONTRACTOR REPRESENTATIVE (IF ANY)	15. SIGNATURE AND TITLE OF PRIME CONTRACTOR REPRESENTATIVE
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16. SIGNATURE OF EMPLOYEE OR REPRESENTATIVE	TITLE	CHECK APPROPRIATE BOX-REFERENCING BLOCK 13. <input type="checkbox"/> AGREE <input type="checkbox"/> DISAGREE
--	--------------	---

TO BE COMPLETED BY CONTRACTING OFFICER (CHECK AS APPROPRIATE - SEE FAR 22.1019 (SCA) OR FAR 22.406-3 (DBA))

- THE INTERESTED PARTIES AGREE AND THE CONTRACTING OFFICER RECOMMENDS APPROVAL BY THE WAGE AND HOUR DIVISION. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.
- THE INTERESTED PARTIES CANNOT AGREE ON THE PROPOSED CLASSIFICATION AND WAGE RATE. A DETERMINATION OF THE QUESTION BY THE WAGE AND HOUR DIVISION IS THEREFORE REQUESTED. AVAILABLE INFORMATION AND RECOMMENDATIONS ARE ATTACHED.

(Send copies 1, 2, and 3 to Department of Labor)

SIGNATURE OF CONTRACTING OFFICER OR REPRESENTATIVE	TITLE AND COMMERCIAL TELEPHONE NO.	DATE SUBMITTED
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PAYROLL

(For Contractor's Optional Use; See Instructions at www.dol.gov/whd/forms/wh347instr.htm)



Rev. Dec. 2008

Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

OMB No.: 1235-0008
Expires: 01/31/2015

NAME OF CONTRACTOR		OR SUBCONTRACTOR			ADDRESS																	
PAYROLL NO.		FOR WEEK ENDING			PROJECT AND LOCATION				PROJECT OR CONTRACT NO.													
(1) NAME AND INDIVIDUAL IDENTIFYING NUMBER (e.g., LAST FOUR DIGITS OF SOCIAL SECURITY NUMBER) OF WORKER	(2) NO. OF WITHHOLDING EXEMPTIONS	(3) WORK CLASSIFICATION	OT	OR	ST	(4) DAY AND DATE							(5) TOTAL HOURS	(6) RATE OF PAY	(7) GROSS AMOUNT EARNED	(8) DEDUCTIONS				(9) NET WAGES PAID FOR WEEK		
						HOURS WORKED EACH DAY	FICA	WITH-HOLDING TAX	OTHER	TOTAL DEDUCTIONS												
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While completion of Form WH-347 is optional, it is mandatory for covered contractors and subcontractors performing work on Federally financed or assisted construction contracts to respond to the information collection contained in 29 C.F.R. §§ 3.3, 5.5(a). The Copeland Act (40 U.S.C. § 3145) contractors and subcontractors performing work on Federally financed or assisted construction contracts to "furnish weekly a statement with respect to the wages paid each employee during the preceding week." U.S. Department of Labor (DOL) regulations at 29 C.F.R. § 5.5(a)(3)(ii) require contractors to submit weekly a copy of all payrolls to the Federal agency contracting for or financing the construction project, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. DOL and federal contracting agencies receiving this information review the information to determine that employees have received legally required wages and fringe benefits.

Public Burden Statement

We estimate that it will take an average of 55 minutes to complete this collection, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding these estimates or any other aspect of this collection, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S3502, 200 Constitution Avenue, N.W. Washington, D.C. 20210

Date _____

I, _____
(Name of Signatory Party) (Title)

do hereby state:

(1) That I pay or supervise the payment of the persons employed by

_____ on the
(Contractor or Subcontractor)

_____;
(Building or Work)

_____ day of _____, _____, and ending the _____ day of _____, _____,
all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said

_____ from the full
(Contractor or Subcontractor)

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 C.F.R. Subtitle A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 63 Stat. 108, 72 Stat. 967; 76 Stat. 357; 40 U.S.C. § 3145), and described below:

(2) That any payrolls otherwise under this contract required to be submitted for the above period are correct and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract; that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, or if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That:

(a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

— in addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in section 4(c) below.

(b) WHERE FRINGE BENEFITS ARE PAID IN CASH

— Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in section 4(c) below.

(c) EXCEPTIONS

EXCEPTION (CRAFT)	EXPLANATION

REMARKS:

NAME AND TITLE	SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31 OF THE UNITED STATES CODE.

Job Safety and Health

It's the law!



Occupational Safety
and Health Administration
U.S. Department of Labor

EMPLOYEES:

- You have the right to notify your employer or OSHA about workplace hazards. You may ask OSHA to keep your name confidential.
- You have the right to request an OSHA inspection if you believe that there are unsafe and unhealthful conditions in your workplace. You or your representative may participate in that inspection.
- You can file a complaint with OSHA within 30 days of retaliation or discrimination by your employer for making safety and health complaints or for exercising your rights under the *OSH Act*.
- You have the right to see OSHA citations issued to your employer. Your employer must post the citations at or near the place of the alleged violations.
- Your employer must correct workplace hazards by the date indicated on the citation and must certify that these hazards have been reduced or eliminated.
- You have the right to copies of your medical records and records of your exposures to toxic and harmful substances or conditions.
- Your employer must post this notice in your workplace.
- You must comply with all occupational safety and health standards issued under the *OSH Act* that apply to your own actions and conduct on the job.

EMPLOYERS:

- You must furnish your employees a place of employment free from recognized hazards.
- You must comply with the occupational safety and health standards issued under the *OSH Act*.

**This free poster available from OSHA –
The Best Resource for Safety and Health**



Free assistance in identifying and correcting hazards or complying with standards is available to employers, without citation or penalty, through OSHA-supported consultation programs in each state.

1-800-321-OSHA
www.osha.gov

OSHA 3165-12-06R

Equal Employment Opportunity is **THE LAW**

Private Employers, State and Local Governments, Educational Institutions, Employment Agencies and Labor Organizations

Applicants to and employees of most private employers, state and local governments, educational institutions, employment agencies and labor organizations are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Title VII of the Civil Rights Act of 1964, as amended, protects applicants and employees from discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment, on the basis of race, color, religion, sex (including pregnancy), or national origin. Religious discrimination includes failing to reasonably accommodate an employee's religious practices where the accommodation does not impose undue hardship.

DISABILITY

Title I and Title V of the Americans with Disabilities Act of 1990, as amended, protect qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship.

AGE

The Age Discrimination in Employment Act of 1967, as amended, protects applicants and employees 40 years of age or older from discrimination based on age in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment.

SEX (WAGES)

In addition to sex discrimination prohibited by Title VII of the Civil Rights Act, as amended, the Equal Pay Act of 1963, as amended, prohibits sex discrimination in the payment of wages to women and men performing substantially equal work, in jobs that require equal skill, effort, and responsibility, under similar working conditions, in the same establishment.

GENETICS

Title II of the Genetic Information Nondiscrimination Act of 2008 protects applicants and employees from discrimination based on genetic information in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. GINA also restricts employers' acquisition of genetic information and strictly limits disclosure of genetic information. Genetic information includes information about genetic tests of applicants, employees, or their family members; the manifestation of diseases or disorders in family members (family medical history); and requests for or receipt of genetic services by applicants, employees, or their family members.

RETALIATION

All of these Federal laws prohibit covered entities from retaliating against a person who files a charge of discrimination, participates in a discrimination proceeding, or otherwise opposes an unlawful employment practice.

WHAT TO DO IF YOU BELIEVE DISCRIMINATION HAS OCCURRED

There are strict time limits for filing charges of employment discrimination. To preserve the ability of EEOC to act on your behalf and to protect your right to file a private lawsuit, should you ultimately need to, you should contact EEOC promptly when discrimination is suspected:

The U.S. Equal Employment Opportunity Commission (EEOC), 1-800-669-4000 (toll-free) or 1-800-669-6820 (toll-free TTY number for individuals with hearing impairments). EEOC field office information is available at www.eeoc.gov or in most telephone directories in the U.S. Government or Federal Government section. Additional information about EEOC, including information about charge filing, is available at www.eeoc.gov.

Employers Holding Federal Contracts or Subcontracts

Applicants to and employees of companies with a Federal government contract or subcontract are protected under Federal law from discrimination on the following bases:

RACE, COLOR, RELIGION, SEX, NATIONAL ORIGIN

Executive Order 11246, as amended, prohibits job discrimination on the basis of race, color, religion, sex or national origin, and requires affirmative action to ensure equality of opportunity in all aspects of employment.

INDIVIDUALS WITH DISABILITIES

Section 503 of the Rehabilitation Act of 1973, as amended, protects qualified individuals from discrimination on the basis of disability in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment. Disability discrimination includes not making reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, barring undue hardship. Section 503 also requires that Federal contractors take affirmative action to employ and advance in employment qualified individuals with disabilities at all levels of employment, including the executive level.

DISABLED, RECENTLY SEPARATED, OTHER PROTECTED, AND ARMED FORCES SERVICE MEDAL VETERANS

The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, 38 U.S.C. 4212, prohibits job discrimination and requires affirmative action to employ and advance in employment disabled veterans, recently separated veterans (within

three years of discharge or release from active duty), other protected veterans (veterans who served during a war or in a campaign or expedition for which a campaign badge has been authorized), and Armed Forces service medal veterans (veterans who, while on active duty, participated in a U.S. military operation for which an Armed Forces service medal was awarded).

RETALIATION

Retaliation is prohibited against a person who files a complaint of discrimination, participates in an OFCCP proceeding, or otherwise opposes discrimination under these Federal laws.

Any person who believes a contractor has violated its nondiscrimination or affirmative action obligations under the authorities above should contact immediately:

The Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 1-800-397-6251 (toll-free) or (202) 693-1337 (TTY). OFCCP may also be contacted by e-mail at OFCCP-Public@dol.gov, or by calling an OFCCP regional or district office, listed in most telephone directories under U.S. Government, Department of Labor.

Programs or Activities Receiving Federal Financial Assistance

RACE, COLOR, NATIONAL ORIGIN, SEX

In addition to the protections of Title VII of the Civil Rights Act of 1964, as amended, Title VI of the Civil Rights Act of 1964, as amended, prohibits discrimination on the basis of race, color or national origin in programs or activities receiving Federal financial assistance. Employment discrimination is covered by Title VI if the primary objective of the financial assistance is provision of employment, or where employment discrimination causes or may cause discrimination in providing services under such programs. Title IX of the Education Amendments of 1972 prohibits employment discrimination on the basis of sex in educational programs or activities which receive Federal financial assistance.

INDIVIDUALS WITH DISABILITIES

Section 504 of the Rehabilitation Act of 1973, as amended, prohibits employment discrimination on the basis of disability in any program or activity which receives Federal financial assistance. Discrimination is prohibited in all aspects of employment against persons with disabilities who, with or without reasonable accommodation, can perform the essential functions of the job.

If you believe you have been discriminated against in a program of any institution which receives Federal financial assistance, you should immediately contact the Federal agency providing such assistance.