

Guidelines

For

Business Assistance Loan Program

Operated By

County of El Dorado

With

Community Development Block Grant
(CDBG) Funding

Adopted: March __ 2016

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List of Attachments with Support Documents

ATTACHMENT A: Sample Lender Loan Approval Memo

ATTACHMENT B: Sample Lender CDBG Business Assistance Loan Agreement

ATTACHMENT C: Lender Required Documents:

- 1) Jobs Tracking Form
- 2) Self Certification of Income Form
- 3) Loan Disbursement Schedule
- 4) Certification of No Conflict of Interest
- 5) Certification of No Job Pirating
- 6) Certification of Federal Regulatory Compliance.

ATTACHMENT D: Lender Adopted Business Loan Servicing Policies

COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) BUSINESS ASSISTANCE (BA) LOAN PROGRAM GUIDELINES

1.0 INTRODUCTION

The County of El Dorado here after call “Lender” has established a Business Assistance Loan Program, here after called “the Program”. The Program is designed to use public tax payer dollars to stimulate economic growth and improve living conditions of low / moderate income residents in Lender’s community. The Program provides low cost loans to eligible for-profit businesses. In return, businesses are required to provide documentation of public benefit (normally creating new job positions) and meeting a national objective (normally filling most of the new job positions (51%) with persons qualified as low -moderate income and living in the jurisdiction). These Program guidelines describe policies and procedures required for award of loan funds to eligible borrowers. The guidelines have been adopted via resolution by the Lender and approved by the California Department of Housing and Community Development, here after called “Department”.

2.0 BUSINESS ASSISTANCE PROGRAM OVERVIEW

2.1 PROGRAM ADMINISTRATOR

The Lender may secure the services of a qualified program administrator or use in-house staff for program administration, here after called “Administrator”. The Administrator will be charged with originating business assistance loans, documenting compliance with CDBG regulations and these Program guidelines. The contact information for the Administrator is:

El Dorado County Chief Administrative Office
Economic Development/HCED Programs
330 Fair Lane, Bldg. A
Placerville, CA 95667
Phone Number: (530) 621-5595
E: Mail Address: economic.development@edcgov.us

2.2 PROGRAM SERVICE AREA

Financing under this Program is available to all eligible businesses physically located within the jurisdictional limits of the Lender. These funds may not be used in jurisdictions that receive CDBG funds from the federal Department of Housing and Urban Development (HUD) entitlement program. This Program is subject to CDBG service area requirement of substantially benefiting residents in the service area. The business or project to be financed with the Business Loan Program must be within the unincorporated area of the County.

2.3 SOURCE OF PROGRAM FUNDS

The Program is capitalized with CDBG federal funds provided by HUD to the Department, who in turn provides the CDBG funds to the Lender through a competitive application process. As such, CDBG funds are federal money administered by the

Department so both federal and state laws and regulatory requirements must be followed.

CDBG funds may come to the Lender from two sources: 1) active grant contract agreement between the Department and Lender originating from annual competitive application process; and/or 2) CDBG program income administered under PI reuse agreement between Department and Lender. Loans are not from the El Dorado County General Fund.

3.0 CDBG PROGRAM REQUIREMENTS

3.1 ELIGIBLE LOAN APPLICANTS

CDBG funds under this Program can only be expended on the eligible activity authorized under Title I of the Housing and Community Development Act of 1974 (hereafter called "Act"), section 105(a)(17): special economic development, providing direct financial assistance to private for-profit businesses.

An eligible applicant is:

- an existing business legally operating pursuant to all local, state and federal requirements, including but not limited to any required local business license, insurance or permits.;
- an applicant with a non-operating start-up business may not have all required licenses or insurance, so these items will be made a condition of loan closing;
- a person or persons wishing to buy an existing business;
- a business leasing tenant space or owner occupied business space in the service area.
- individuals wishing to start a new business may be eligible applicants, but must provide proof that their primary residence is located in the unincorporated area of the county.
- eligible start-up business applicants must be participating in a CDBG microenterprise Technical Assistance program offered in the same service area as this program.

The loan applicant must provide documentation that the proposed project will meet CDBG eligibility criteria of national objective and public benefit per Sections 3.4 and 3.5. The loan applicant must provide documentation of meeting standard commercial underwriting criteria outlined in Section 6 of these guidelines as well as HUD CDBG mandated six underwriting standards described in Section 3.6. An eligible loan applicant must document compliance with all CDBG regulations listed in Section 3.7.

Specific ineligible loan applicants include:

- a business with an existing CDBG BA loan that has not been closed-out with the Department;
- a business operating a private "exclusive" recreational facility;
- non-profit businesses are not eligible under this program;
- a businesses or person(s) found to be on federal debarred list.

- a businesses or person(s) with unresolved state / federal or local tax liens;
- a business or person in bankruptcy process are not eligible until bankruptcy process is complete;
- a business “project” that does not create or retain permanent jobs are not eligible..

3.2 ELIGIBLE PROJECT COSTS

CDBG funds are non-discretionary and restricted to certain eligible costs. These eligible costs cover most costs associated with successful BA projects. Specifically, CDBG BA activity eligible costs are:

- operating capital and inventory;
- furniture fixtures and equipment (FF&E), with or without installation costs;
- project site improvements, new construction or rehabilitation of leased space or owned building;
- engineering and architectural plans and required permits or fees;
- purchase of manufacturing equipment (with or without installation costs);
- refinancing of existing business debt when done in conjunction with restructuring of other existing private financing debt(s);
- purchase of real property, when it provides positive cash flow for new jobs;
- relocation grants for persons displaced due to funding of the project;
- purchase of an existing business, including documented value of good will.

These eligible costs must be connected to the business’ ability to meet an eligible CDBG national objective per section 3.4 of these guidelines. Lender will only use CDBG loan funds to reimburse borrower for actual eligible / approved project costs.

3.3 INELIGIBLE PROJECT COSTS

CDBG funds are non-discretionary, limited to certain eligible costs described in Section 3.2 above and there are also a number of ineligible costs. Some ineligible costs are:

- costs incurred prior to submittal of BA loan application and environmental review completion;
- costs associated with residential housing development, i.e. on mixed use project;
- costs associated with supporting “other” businesses the applicant owns;
- costs on a funded project NOT meeting a national objective;
- personal expenses such as cars, home repairs, not directly associated with the business;
- costs of paying off credit cards (personal or business);
- costs of paying off any personal debt not directly associated with business;
- providing CDBG loan as a revolving line of credit (LOC) is not eligible;
- cash payments of any kind made directly to the assisted business owner(s) (wages or draws) from loan proceeds
- costs associated with a funded project when the owner(s) or business is found to be on federal debarred list
- public infrastructure in support of the business
- research and development costs for future production (speculative)

Once approved, loan funds cannot be shifted from one approved type of cost to another without formal written approval of Lender. If there is a substantial change in the project scope of work or underwriting, then the loan must be re-evaluated and re-approved by Lender, per state and federal regulations, prior to loan closing or disbursement of CDBG funds.

3.4 MEETING NATIONAL OBJECTIVE STANDARDS

All eligible activities funded under this program must meet a CDBG “National Objective” as described in the Act, Section 104(b)(3) and federal regulations 24 CFR Part 570.483. Detail on documenting the meeting of national objective standard for a project is contained in Department’s guidance on BA Activity Chapter Website. Projects not documented as meeting a national objective are an ineligible activity. Below is a general description of documenting how a BA project meets the national objective of benefit to low - moderate income (LMI) persons. The Lender will use Department specific guidance for ensuring each eligible project funded is documented as meeting a national objective.

BA projects normally meet a national objective standard when they create jobs and provide over half; at least fifty one percent (51%), of the new job positions to LMI qualified persons. BA projects proposing to provide most of newly created jobs to LMI persons must agree to allow the Lender, or their designated representative, to meet with each job applicant prior to hiring and complete a Department Self Certification of Income Form, see **Attachment C**. After all new hires are made, payrolls must be collected by the Lender and compared to the job applicant Income Certification forms to prove over half of all newly created job positions were provided to low-moderate income persons. This will prove the project’s job creation met the national objective of principally benefiting LMI persons and allow the Lender to close out the project with the Department and HUD. All documentation of national objective for jobs falls under Section 4.5 on confidentiality.

Some BA projects may require CDBG funding to retain jobs. In this case CDBG loan funds will assist in keeping the business from closing or to avoid terminating some staff. This type of project must document that, at the time of application, over half of existing employee positions to be eliminated are held by LMI persons. As such, the business must agree to allow the Lender or their designated representative to interview existing employees and help them complete the Department’s Self Certification of Income Form. The business must also provide financial documentation that, if not for CDBG funding, the job positions will be lost and staff laid off. The business must also document that with the investment of CDBG funds, the business will continue operations and jobs can be retained. If approved and funded, the business employees must have Self-Certification of Income completed again, prior to Lender closing out the project. By verifying that, at the time of loan application and after loan disbursements, over half of the retained positions were LMI, then the project will have LMI national objective met and it can be closed out with the Department and HUD. All documentation of national objective for jobs falls under Section 4.5 on confidentiality.

3.5 MEETING PUBLIC BENEFIT STANDARDS

All eligible project activities funded under this program must meet a minimum CDBG “Public Benefit Standard” as described in the Act, section 104(b)(17) and federal regulations; 24 CFR Part 570.483(f)(g). Public Benefit is provided by the BA loan recipient in return for use of subsidized federal funds, and provides a funding limit or “cap”. Meeting Public Benefit Standard is very different than meeting National Objective Standard and should not be confused. Lender will use detailed guidance on meeting Public Benefit Standards provided on Department’s BA Activity Chapter webpage.

For BA projects meeting national objective via jobs provided to LMI persons, the Public Benefit standard is jobs, and the maximum CDBG loan funding available is limited to \$35,000 per job. For example, from one dollar to \$35,000 in CDBG financial assistance provided by the Lender, one FTE position must be created. Part time staff may be combined to make up one FTE. One FTE consists of 1,750 staff hours. Two FTE jobs must be created for assistance between \$35,001 and \$70,000, and so on.

The Lender will require BA loan applicants to provide an estimate of public benefit generated by investment of CDBG funds into the project via the Job Tracking Form, see **Attachment C**. This proposed level of public benefit will be verified after investment of CDBG funding. The CDBG public benefit requirement will be enforced via a loan agreement that the borrower executes at loan closing. The actual level of public benefit (loan funds per job) may be greater than or less than the level proposed at the BA application stage, but in all cases must meet a minimum CDBG “Public Benefit Standard” as described in the Act, section 104(b)(17) and federal regulations; 24 CFR Part 570.483(f)(g).

Failure to meet minimum Public Benefits Standards constitutes non-compliance with BA loan requirements and is a condition of loan default. All public benefit data falls under the confidentiality Section 4.5.

CDBG public benefit requirements of the program will be disclosed by the Lender at the start of the application process. Lender will use financial underwriting to identify the need for BA loan subsidies and determine reasonable public benefit that will be generated from the project, i.e. the number of jobs created from proposed project. Projects with small amounts of public benefit may be required to bring in other sources of funding because of CDBG funding limits imposed by this standard.

3.6 MEETING SIX UNDERWRITING STANDARDS

In addition to documenting that the project meets CDBG public benefit standard, the project must also be documented as meeting six HUD underwriting standards, per federal regulation 24 CFR Part 570.483(e). These underwriting standards are required to document a minimum “due diligence” of the Lender and ensure projects are financially sound enough to meet public benefit and national objective standards, i.e. create new or retain existing job positions. The six HUD underwriting standards are general, qualitative and are supported by commercial underwriting standards in Section 6 of these guidelines. See Department BA Activity Chapter webpage for detailed guidance on compliance with each of the six HUD underwriting standards.

The Six Underwriting Standards are:

- project costs are documented as reasonable (typically, third party cost estimates);
- all sources of funding for the project are documented with final commitments;
- to the extent practicable, CDBG funds are not substituted for private (non-federal) funds;
- documentation that project is financially feasible (based on cash flow projections to support jobs and debt service, etc.);
- to the extent practicable, the return of the owner's equity investment is not unreasonable (based on level of equity and proposed CDBG loan terms);
- to the extent practicable, CDBG funds are disbursed on a pro-rata basis with other financing provided for the project.

3.7 MEETING OTHER FEDERAL REGULATORY REQUIREMENTS

Since these CDBG BA loans are from a federal funding source, there are a number of federal laws and requirements which are triggered by their use. The Lender and Administrator will require BA loan applicants to provide project information which allows them to make a determination of required project compliance. BA applicants are required to sign loan disclosures and work with Lender to ensure each project is in compliance with any of the triggered, applicable regulations listed below.

National Environmental Policy Act (NEPA): Every project funded under the Program must be reviewed under HUD NEPA regulations 24 CFR Part 58 and the Lender must sign and certify an Environmental Review Record (ERR) for each project prior to approval or disbursement of loan funds. The Lender is required to sign and certify the correct NEPA EER, per current Environmental Review Requirements *Chapter of Department's Grant Management Manual (GMM)*, along with any state review under California's Environmental Quality Act (CEQA).

The ERR level of review is based on the project's "aggregated" scope of work, which includes all proposed project funding. Any construction or equipment installation proposed will require more review work on the ERR. The ERR will be done early in application process, as soon as the project is deemed eligible and scope of work is finalized. No costs will be charged to the Borrower for this process. Applicants must sign Department certification form that no "choice limiting action" under NEPA regulations has or will take place. The form is included in **Attachment C**.

Prevailing Wage Compliance: If a project proposes to use CDBG funds to pay costs for any construction, then federal and state labor standards compliance must be documented. Davis-Bacon Act (40 USC 276a - 276a-5) and related laws are "triggered" when any CDBG funding is used to pay for any project construction costs. Lender will follow *Department guidance in current Labor Standards Chapter of the GMM* for prevailing wage compliance on funded projects.

Additional labor costs will be added to projects proposing to use CDBG to pay for new construction, rehabilitation, or equipment installation. The Administrator and Lender will work with loan applicants to ensure project compliance. The additional time and work required by prevailing wage regulations will be disclosed to the borrower as soon as

possible. Any additional costs resulting from this regulation will be incorporated into the CDBG loan approval.

Acquisition and Relocation Laws: All BA applicants proposing to use CDBG funds for purchase of real property must comply with 49 CFR Part 24 Acquisition laws. Lender will provide required Seller Disclosure for execution as part of meeting this requirement.

All BA applicants proposing projects which trigger relocation compliance i.e. result in displacement of persons per Uniform Relocation Act (URA), must work with Lender to ensure compliance with this law. Additional costs associated with relocation compliance will be disclosed to the applicant prior to CDBG loan approval and included in project loan approval.

Required Prohibition of Job Pirating Certification: All BA applicants must sign a Certification of No Job Pirating. Job pirating is prohibited per CDBG federal regulation 24CFR 570.482 (h). Job pirating is defined as using CDBG public funds to facilitate the moving of a business and associated jobs from one jurisdiction to another (business attraction). As such, CDBG federal funds cannot be used to attract / subsidize a business to move from one labor market area to another or keep a business from moving out of a labor market by making a retention argument. Lender will require all applicants to sign a non- job pirating certification, **Attachment C**. Any questions regarding possible job pirating will be submitted to the Department for final determination.

Conflict of Interest Certification: BA loan applicants will sign a Certification of No Conflict of Interest. In accordance state and federal regulations, no member of the governing body and no official, employee or agent of the local government, nor any other person who exercises policy or decision-making responsibilities (including members of the loan committee and officers, employees, and agents of the loan committee, the administrative agent, contractors and similar agencies) in connection with the planning and implementation of the CDBG BA program shall directly or indirectly be eligible for this program. Lender will require all applicants to sign a non-conflict of interest certification, **Attachment C**. Any questions regarding possible federal conflict of interest will be submitted to the Department for final determination. Any questions about state conflict of interest laws will be referred to Lender's legal council for final determination.

Required DUNs number, federal debarred verification and demographic data: All BA program applicants must obtain a DUN's number, if they do not already have one. The DUN's number is free and can be obtained on line. In addition, prior to loan approval, the Lender will document that the business being assisted and all owners and affiliated businesses are verified as NOT on the federal debarred contractors list. HUD also requires that the Department and the Lender collect certain income and demographic data from the business and any beneficiaries of CDBG funds.

4.0 LOAN PROCESSING AND APPROVAL

4.1 FAIR LENDING COMPLIANCE

The Program will be implemented in ways consistent with the Lender's commitment to fair lending laws. No person or business shall be excluded from participation in, denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part with Program funds on the basis of his or her religion or religious affiliation, age, race, color, ancestry, national origin, sex, marital status, familial status (number or ages of children), physical or mental disability, sexual orientation, or other arbitrary cause. All personal information of loan applicants will be kept confidential, per Section 4.4.

4.2 LOAN APPLICATION PROCESSING

Loan applications will be processed on a first come first served basis. The Administrator will accept loan applications and review them for initial eligibility per Section 6.1. Applicants that do not meet basic CDBG requirements of the program will be sent a letter of explanation. All BA applications received will be kept on file to document fair lending standards. Applications that meet basic eligibility requirements will be contacted for collection of additional information. The Administrator may also meet with the business owners and/ visit the site of the business or project.

Loan files will be set up as applications are received and compliance information gathered. The business will be required to provide accurate financials for past, current and future projection of the business operations. All owners will have credit checks conducted as part of loan underwriting per Section 6.0. The Administrator may provide sample financial Excel forms (balance / cash flow sheets, profit and loss, personal financial statements, and proforma) but in no instance will the Administrator's or Lender's staff generate financial numbers for an applicant. The applicant may be referred to local business support organizations to assist applicants in producing proper financial statements, develop a business plan, conduct market study or develop industry accounting practices.

Loan applicants are responsible for providing accurate and timely information to the Administrator as part of the loan process. This may include:

- disclose all business owners with twenty percent or more ownership;
- disclose all other businesses the owners have an ownership interest of twenty percent (20%) or more;
- provide current personal financial statements for each owner;
- disclose sources of collateral and security;
- provide business historic financial information, including year to date;
- disclose sources of cash for any equity investment proposed;
- provide third party documentation of eligible project costs;
- provide market study or document basis of future sales projections;
- provide management capacity documentation for ability to execute;
- provide necessary information to clear federal overlays in Section 3.7.

If the loan applicant does not provide required information and documentation to the Administrator in a timely fashion, then there will be delays in the loan approval process.

Once the Administrator has compiled a complete loan file with all the credit, financial, and underwriting information needed to show loan is eligible under these guidelines, then a loan approval memo will be drafted. The memo will be submitted to Lender for their approval. Once approved, the Administrator and Lender will submit project set up report to Department and craft loan documents for signing at closing with the Borrower.

4.3 PROGRAM LOAN APPROVAL PROCESS

The Lender's Loan Advisory Board (LAB) shall be made up of an odd number of persons. The Lender's staff will ask committee members to volunteer for this board. Committee members can be from local financial institutions, the Lender, or other interested parties who have the professional capacity to review and evaluate commercial loans. See **Attachment A** for Lender loan approval memo format.

Loan approval meetings will be scheduled by Lender staff in conjunction with Administrator staff once a loan has been underwritten and is ready for review and approval. Lender staff will be responsible for reviewing each loan application funding proposal and recommending approval or rejection for the loan. Committee members may request additional information and or attach contingencies on closing or funding of the loan. If the loan is approved, then the project can move forward with loan closing. In addition to reviewing loans for compliance with requirements outlined in these Guidelines, the LAB will also consider the following when reviewing a loan application:

- a. Projects which meet current County of El Dorado Strategic Economic Development goals including; Living Wage jobs, neighborhood revitalization, and/or targeted industries, may be prioritized for funding ahead of other applicants.
- b. The project must comply with all local, State, and federal regulations, including but not limited to the following:
 - Land use zoning;
 - Design review;
 - Building permits;
 - California Environmental Quality Act (CEQA);
 - Other regulations which may be applicable.

If Lender approval is not obtained, then the BA loan applicant may take dispute resolution actions, per Section 4.5 of these guidelines.

4.4 LOAN APPLICANT CONFIDENTIALITY

Administrator or Lender or any persons involved in the loan process for this Program will not disclose any of applicant's business or personal confidential information as part of loan review and approval process. All confidential information of businesses will only be disclosed to persons required to view the information as part of loan review and approval. All personal and business confidential information of loan applicants will be kept in a locked secured storage facility and are not available to persons outside of the program. If the Lender or Administrator or Department receives a formal public records request for a loan applicant file, then only non-confidential information, as verified by legal counsel, will be provided.

4.5 APPLICANT DISPUTE RESOLUTION/APPEALS PROCEDURE

Any business applying for assistance through this CDBG program has the right to appeal, if their application is denied. The appeal must be made in writing to the Lender. The Lender will schedule a meeting for the appeal to be heard. If the application is denied a second time, the applicant may ask to have their appeal presented to the Lender's governing body for a final decision.

4.6 EXCEPTIONS / SPECIAL CIRCUMSTANCES

Exceptions are defined as any action, which would depart from policy and procedures stated in the guidelines. The Lender or Administrator staff may initiate consideration of an exceptional/special circumstance to the policies in these guidelines as long as it does not violate CDBG federal / state requirements. For example, if the cost of rehabilitation for critical code deficiencies exceeds 100% of the after-rehabilitation value of the property, the LAB can, on a case-by-case basis, accept a partially secured loan.

A written analysis of the exception will be prepared and submitted with loan approval request. This analysis shall contain a narrative, including the staff's recommended course of action and any written or verbal information supplied by the applicant. The loan approval shall be made after review and acceptance of the exceptional/special circumstances request.

Loan payments may, on a case by case basis, be deferred for a period of time. This payment deferral determination is made by the Lender and Administrator and is subject to approval by the LAB.

4.7 LOAN CLOSING PROCESS

After Lender approval and submittal of BA Loan Certification and Project Set Up Report to Department, the Administrator and Lender will prepare for the loan closing. The Lender reserves the option to use a local Escrow Company, depending upon the project scope. The Administrator will prepare the loan closing documents; prepare title and lien searches, and UCC-1 filings, if appropriate. Lender legal counsel will review all agreements and documents, as necessary.

The Borrower will sign all the necessary documents and agreements. The Lender will request reimbursement of eligible costs from the Department after Borrower has submitted documentation of eligible expenditures and Lender has paid for those costs.

5.0 DESCRIPTION OF LOANS

5.1 DETERMINATION OF LOAN AMOUNT

Loans may range from a minimum of \$10,000 up to \$100,000. Typical loans are anticipated to be below \$100,000 per applicant. All loans must be reviewed by the State Department of Housing and Community Development's (HCD), CDBG Program prior to final approval. Requests for loans over \$100,000 will require additional approval by the Lender and HCD loan committees

Actual loan amounts will be based on the business' need for capital to conduct the proposed project's scope of work and meet public benefit standards. Most often the

amount of CDBG funding is limited based on “gap” in project financing or ability of business to support new debt or pay for required jobs from business future cash flow projections or by the amount of collateral that the business can provide as security for the CDBG debt. If there are not sufficient CDBG funds for the project, then the Administrator may assist in finding other project funding.

5.2 DETERMINATION OF LOAN TERM

The BA loan term is tied directly to project costs, CDBG funds available and what security is being pledged for the loan. If a business only wants operating capital then the term of the loan is normally five (5) years. If a business wants to pay for equipment and supplies, then the term of the loan can be extended out to 10 years. If the loan is for real property improvements and can be secured on real property, then the terms can be extended out to 20 years, for example. A loan amortization term can be longer than the loan term, so an equipment loan may have a term of ten years but an amortization term of fifteen years, which will create a lump sum payment at year ten.

For non-construction loans, principal payments may be deferred for up to twelve (12) months from the date the loan closed. For construction loans the deferment period shall coincide with the construction completion date and the start of operations for the business.

Administrator will confirm that the proper term is given based on the use of the CDBG funds and loan security / collateral being provided.

5.3 DETERMINATION OF LOAN INTEREST RATE

Loan interest shall be at a fixed rate for the life of the loan. The minimum interest rate will be three percent (3%). This rate may be increased if the investment of CDBG funds at the three percent level causes the business to have an excessive profit, return on investment (ROI).

The actual interest rate charged will be set on a case by case basis, and will be set based on a combination of the following:

- a. The need and borrower’s Return on Investment. The interest rate is set by evaluating the financial information to determine at what interest rate the project would be viable, without undue enrichment and with acceptable Return On Investment (ROI). Undue enrichment and ROI shall be determined by the loan underwriting.
- b. Amount of equity the business brings into the proposed project
- c. Ability of business to service the loan
- d. Rate of return the borrower will received with a lower interest rate
- e. Credit risk factors and management experience will also be used to determine what interest would best work for the business.

See HUD underwriting standards discussion of undue enrichment on Department’s BA Activity Chapter webpage for direction on how to set interest rate to comply with this standard. By allowing the interest rate to move and not be fixed, the Lender can best tailor the loans under this program to meet the cash flow needs of different businesses in the community and ensure public benefit and national objective standards are met.

5.4 LOAN PROCESSING FEES

The CDBG program provides administration funds to pay for all loan processing and servicing costs. No direct loan fees will be charged to the borrower. Loan funds may be used to pay for escrow fees, appraisal reports, labor standards compliance, and relocation costs, if applicable. There is no pre-payment penalty on the loans under this Program.

6.0 LOAN UNDERWRITING STANDARDS

6.1 INITIAL LOAN EVALUATION

Each project / business will be evaluated based on the how it has performed in the past and its future financial forecasts. Specifically the following questions will be asked upon receipt of a loan application.

- Is business an eligible applicant, per Section 3.1?
- Are the proposed project costs eligible, per Section 3.2 & 3.3?
- Will project meet a CDBG national objective, per Section 3.4?
- Will business meet public benefit jobs required in Section 3.5?
- Does project appear to meet six HUD underwriting standards, per Section 3.6?
- Are federal overlays triggered that will adversely impact project development?
- Are the business and all owners' credit worthy?
- Does the business and owner pay bills on time, collect on time?
- Does owner have a detailed "business plan"?
- Does owner have documented market demand for projected sales?
- Is the proposed loan of sound value and provide for the current and future needs of the business?
- Does owner have management capacity to operate the business?
- Does owner have financial accounting capacity to operate the business?
- Does owner have adequate borrowing ability or equity to operate with the new loan payments, on a sound financial basis?
- Is the owner contributing a reasonable amount of equity?
- Is the owner able to get conventional bank financing, if not, why not?
- Was the business financially viable in the past (net income covers debt)?
- Are there reasonable financial assumptions for future viability/success?
- Is there enough collateral available to secure the proposed loan?
- Is the owner's personal financial status stable?

By collecting enough initial application information to answer the above list of questions, the Administrator will have a good sense of how strong a borrower is, and how successful they will be, if assisted with a CDBG loan. Most of this information is collected on the loan application form and verified verbally at the initial consultation with the owner. By meeting the borrower and asking these questions the Administrator will know what additional information/documentation needs to be collected to provide a clear picture of how CDBG funds can be used to assist the BA loan applicant. These questions demonstrate the need for CDBG funds and business eligibility.

After the initial review, the Administrator/ application processor will collect the proper information required for loan underwriting. The required documentation is listed in the CDBG underwriting guidance document provided on Department's BA Activity Chapter webpage. At this same time, Administrator and Lender will begin regulatory compliance documentation, per Section 3.5. The amount of documentation and detailed underwriting is based on size of the loan and type of business (existing or start up) and what LMI national objective is used. Additional documentation may be required for a business with special circumstances.

6.2 PERSONAL AND BUSINESS CREDIT REQUIREMENTS

Each applicant will have third party credit reports obtained showing credit scores and payment history. All owners and their spouses with twenty percent (20%) or more interest in the business will get credit reports reviewed. For this program, credit scores of 601 and above are considered good credit. If a personal credit reporting service provides low credit scores or shows poor credit history, applicants must provide a written explanation and justification for allowing the loan to go forward.

The primary applicant business and all associated businesses of the owners (20% or more ownership) will have a Dunn and Bradstreet report reviewed as well, if it is available. If it is not available, then the Administrator will call vendors or suppliers of the business to inquire as to the business payment history. This same narrative process will be used for the business credit reports to demonstrate the good standing or poor standing of the business being evaluated, when no third party business credit report is available.

6.3 PERSONAL AND BUSINESS FINANCIAL INFORMATION

Personal financial statements will be required for each person who owns 20% or more of the business. Financial statements need to show all assets and liabilities of the person. In addition to these statements, federal tax return statements for owners and the business for the past three (3) years are needed to give a historic perspective of income.

For the business fiscal year, historic financial statements will be required. These will consist of past three (3) year's balance sheets and cash flow statements, generated from past tax returns and quarterly year- to-date statements. These statements should be put together by the person responsible for doing the bookkeeping and finance management for the business. Past tax returns will be provided to document the statements provided. Based on these statements the Lender / Administrator can develop ratios for debt service and payment history, etc.

The business will also need to provide future projected financials. These will consist of pro formas showing projected revenue and costs for the business on a monthly basis for each fiscal year for a minimum of three (3) years from application date. Start-ups may need to provide up to five (5) years of projection statements to show "break even" point of business. Two sets of pro formas need to be completed: one showing the business projections with CDBG financing; and a second set showing the business with conventional financing. This will provide evidence of the benefit / increased profit the business is receiving by using the more affordable CDBG loan. These pro formas must

also show the increased costs to the business from adding the new job positions and the CDBG debt service.

A project sources and uses form must be provided to show all funding required for completing all project activities. This form will show the owner's equity as well as private bank financing and any other investments from other sources. The sources and uses give a clear idea of what costs the CDBG loan will cover and its information must be reflected in the pro formas as described above.

Using the information in these financial statements, along with any back up documentation required, will allow the Administrator to do the project's underwriting analysis. This analysis will include both the conventional lending underwriting and HUD required underwriting. This analysis will be provided to the LAB for use in loan approval.

6.4 COLLATERAL REQUIREMENTS

All loans under this program will be collateralized using normal commercial lending standards. Collateral coverage will be assessed based on assets available as security and the level at which they are already liened. CDBG funding is typically in a subordinate position to banks and other lenders.

It is the goal of the Program to collateralized CDBG loan funds to the greatest extent possible to ensure loan repayments. No unsecured loans shall be made. Both personal and business assets will be reviewed for collateral coverage. Types of collateral may include but are not limited to:

- Secured liens on real property by Deed of Trust,
- UCC liens on machinery, equipment, or other fixtures,
- Lease assignments, as appropriate,
- Personal and corporate guarantees, as appropriate, and
- Life insurance assignment to Lender and other collateral, as appropriate.

Appraisal of assets may be required as part of determining how to obtain the best lien positions for the CDBG loan. Combined loan to value ratio on collateral for the typical CDBG loan should not exceed ninety percent (90%). Equipment and inventory secured should be properly discounted to reflect actual resale value when doing loan to value calculations.

Documentation for collateral requirements are referred to as Security Agreement(s) in the Business Assistance Loan Agreement.

6.5 BUSINESS EXPERIENCE AND MANAGEMENT CAPACITY

The BA loan applicant will provide resumes and management histories to show the experience of business owners and their management staff in successful operation of the existing business or something comparable. Existing businesses proposing to use CDBG BA funds to create jobs, must have at least an updated business plan if not a new plan.

For BA loan applicants proposing to use CDBG funds for a non-operational start-up businesses or for applicants that wish to use CDBG funds to purchase an existing business or for applicants that wish to use CDBG funds for job retention (to keep the business from closing) a comprehensive business plan will be required. The comprehensive business plan will include a detailed analysis of what management capacity is needed for the business to be successful and identify resources that the business will utilize to meet the identified capacity needs.

7.0 LOAN SERVICING

7.1 LOAN SERVICING RESPONSIBILITIES

Borrower will be provided loan servicing information from the Lender. The Lender will retain all original project files within locked storage. Original legal documents will be kept in locked, fire safe filing system for future loan servicing. Lender will provide annual income tax interest statements to the borrower for their tax purposes.

BA loan repayments will be collected by Lender's program staff, or loan servicing agent, if applicable:

County of El Dorado Chief Administrative Office
Economic Development/HCED Programs
330 Fair Lane, Bldg. A
Placerville, CA 95667
Phone Number: (530) 621-5159
E-Mail Address: economic.development@edcgov.us

Loan Payments are due on the first of each month and payments of principal and interest will be made in equal monthly installments, calculated to fully amortize the debt over the length of the loan. A five percent (5%) late penalty will be assessed for loans not paid within 10 days of the payment due date. Monthly payments are applied first to the late payment penalties and collection fees, then to interest and then to principal, in that order. The Loan Committee may approve a payment due date other than the first of the month.

All loan payments will be made directly to the Lender and deposited into current CDBG PI accounts. If payments are collected by a third party, all gross collected CDBG BA loan payments will be provided to the Lender on a monthly basis for deposit into the proper CDBG PI account.

The borrower may be required to provide the Lender / loan servicing agent with periodic financial statements of the business and proof of insurance annually. Upon reviewing the borrower's financial statements, the Lender may require the business to take actions that improve the business cash flow. Borrower may be required to meet with business development staff to assist in stabilizing or building capacity.

Borrower must disclose any sale of equipment or assets that are used as loan security by the Lender. The borrower may submit a written request to the Lender to change the

CDBG loan terms, if the business is not able to fully service CDBG debt repayments or if they wish to pre-pay the loan by making one or more larger payments.

7.2 LOAN SERVICING POLICIES

The Lender has adopted a set of loan servicing policies that outline how the Lender or the loan servicing agent, if applicable, will proceed if payments are late or no payments are received. The policies also outline how loan files will be set up and protected. A copy of these adopted loan servicing policies will be provided to each BA loan recipient at loan closing.

8.0 PROGRAM OVERSIGHT BY LENDER

8.1 OVERSIGHT OF PROGRAM ADMINISTRATOR

The Lender is ultimately the responsible entity for the CDBG BA loan program. Lender will oversee the Administrator and communicate with the loan applicants and borrowers as needed to explain CDBG compliance.

The Administrator is responsible to the Lender and loan applicants to assure that the Program is implemented in compliance with these program guidelines, and state and federal regulations. In addition, Administrator staff will ensure loan applicant projects are underwritten in a timely and responsible manner. This includes working closely with BA loan applicants to ensure they provide accurate financial statements through documenting BA project compliance for project close-out with Department and HUD. Administrator will review all loan documents with borrowers prior to loan closing.



County of El Dorado

Chief Administrative Office

Housing, Community and Economic Development Programs
330 Fair Lane
Placerville, CA 95667-4197

Larry T. Combs
Chief Administrative Officer

Phone (530) 621-5595
Fax (530) 642-0301

[DATE]

[Business Representative Name]
[Business Name]
[Business Address]
[Business City, State, Zip]

RE: County of El Dorado CDBG Business Loan Program

Dear [Business Representative Name]:

This letter documents the receipt of the [Business Name], (the Borrower's) written request for [a loan and/or grant] approval for [Project Description]. The loan was underwritten using the current Community Development Block Grant (CDBG) Business Assistance Program Guidelines.

The Borrower's request of a \$xx,000 CDBG business loan is approved.

SOURCE OF FUNDING: Funds may come to the Lender from two sources: 1) active CDBG grant contract agreement between CDBG and Lender originating from annual competitive application process; and/or 2) CDBG program income administered under PI reuse agreement between CDBG and Lender. Loans are not from the El Dorado County General Fund.

Meeting CDBG National Objective: The loan meets the national objective of expanding economic opportunities, principally for low and/or moderate-income persons (TIG).

Meeting Public Benefit Requirement: The Public Benefit (cost per job) requirement associated with Business Assistance activities and loans are applicable to business loans that meet the national objective of assistance to Low-Moderate income households as determined using the Income Calculation and Determination Guide for Federal Programs and 24 CFR 5.609 ("Part 5") definition of income and 'review of documents' method.

Borrower agrees to provide _____ jobs to employ _____ (number of full-time equivalent positions) persons whose income prior to such employment meets CDBG income guidelines for LMI persons in El Dorado county

Compliance with Program Guidelines: In comparing the loan terms and conditions to the current program guidelines, the loan meets the underwriting criteria of the guidelines.

Loan Security and Borrower Equity Investment: The County will be securing the loan by: (Specifics will be listed according to each loan requirement as determined by the County and may include, but are not limited to: 1) UCC filings on business equipment; 2) liens on business real property and vehicle(s); and 3) Personal Guarantees from owner(s). Refer to Collateral Requirements in Program Guidelines, Section 6.4)

Loan Contingencies and Special Conditions: Funding is contingent upon requirements expressed in the Business Loan Agreement.

Should you have any questions please contact Jeff McLaughlin at (530) 621-5595 or via e-mail at jeff.mclaughlin@edcgov.us

Sincerely,

Chief Administrative Officer

Cc: Board of Supervisors, District X

ATTACHMENT B

County of El Dorado
Business Assistance Loan Program

LOAN AGREEMENT

THIS AGREEMENT is made and entered into as of _____, 20____, by and between the County of El Dorado, a political subdivision of the State of California (hereafter the "Lender") and [Business Name], a _____ (hereafter the "Borrower") with reference to the following facts:

WHEREAS, Borrower has requested Lender to make a loan to Borrower pursuant to Lender's Business Assistance Loan Program, funded by Community Development Block Grant monies from the U.S. Department of Housing and Urban Development; and

WHEREAS, Lender has agreed to make the loan described in this Loan Agreement on the terms and conditions set forth in this Loan Agreement and the requirements of state and federal law; and

WHEREAS, the Borrower has read and agrees to comply with all restrictions and requirements of the loan.

NOW THEREFORE, in consideration of the covenants and agreements of the parties set forth in this Loan Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows.

1. THE LOAN

a. **LOAN/NOTE:** Subject to the terms and conditions of this Agreement, the Lender hereby agrees to lend to the Borrower, and the Borrower hereby agrees to borrow from the Lender and repay the Lender, in the aggregate principal amount of _____ AND NO/100 DOLLARS (\$XX,000.00) (Hereinafter called "Loan"). Borrower shall apply the proceeds of the Loan pursuant to the Program Requirements and for the purpose stated below.

The purpose of the Loan (hereinafter the "Project") is to _____.

The Project described shall be completed on or before _____.

The obligation of the Borrower to repay the Lender shall be evidenced by the Promissory Note (hereinafter the "Note") of the Borrower in a form satisfactory to the Lender dated the date on which the Loan is made (hereinafter known as the "Closing Date") payable to the order of the Lender for the amount of the Loan with interest on the unpaid principal and secured by collateral

as stated in the terms of the Security Agreement(s) as set forth in Section 6.4 of the Program Guidelines and Promissory Note.

b. **TERMS and REPAYMENT:** The term of the Loan shall be XX years. The Note shall be repayable in XX equal monthly installments of \$\$ per month. The first monthly installment shall be due and payable on [DATE]. A five percent (5%) late penalty will be assessed for payments not paid within 10 days of the payment due date. Monthly payments are applied first to any late payment penalties and collection fees, then to interest and then to principal, in that order. All payments will be made promptly to the Lender at the addresses specified by the Lender. Prepayment of the loan is allowable with no prepayment penalty.

c. **INTEREST RATE.** The principal amount of Loan funds advanced by Lender under the Loan shall bear interest at a rate equal to the lower of (a) [number] % per annum, or (b) the highest rate permitted by applicable law, compounded annually on the basis of a 365-day year, commencing on the date of this Loan Agreement (the "Interest Rate"). The Interest Rate on the principal amount shall be _____ percent (XX%).

d. **DISBURSEMENT OF FUNDS:** Funds for the purchase of equipment, furniture and fixtures shall be disbursed by Lender as two-party checks payable to Borrower and vender(s) only upon presentation of invoices from said vender(s), evidencing materials, services or labor provided in connection with the Project approved by the Lender. Disbursements for working capital shall only be for the eligible costs contained in the Guidelines for the Business Assistance Loan Program, which have been provided by the Lender and reviewed by Borrower, and in accordance with California Department of Housing and Community Development regulations.

2. CONDITIONS OF LENDING

The obligations of the Lender to make the Loan shall be subject to the fulfillment at the time of closing of each of the following conditions [and as conditioned by the Loan Advisory Board]:

a. **NOTE AND LOAN AGREEMENT:** The Borrower shall have executed and delivered to the Lender this Loan Agreement and the Note in a form satisfactory to the Lender and its Counsel.

b. **DEEDS OF TRUST:** The liens granted to the Lender pursuant to the terms of the Security Agreement(s) and the Note are liens on the respective property described therein, including the proceeds and products thereof.

c. **GOVERNMENTAL APPROVAL:** The Borrower shall have secured all necessary approvals or consents, if required, of governmental bodies having jurisdiction with respect to any construction contemplated in accordance with the use and proceeds of the Loan.

The Borrower shall comply with all Ordinances of the County of El Dorado throughout the development and use of the property described herein.

d. **APPROVAL OF OTHERS:** The Borrower shall have secured all necessary approvals or consents required with respect to this transaction by any mortgagor, creditor, or other party having any financial interest in the Borrower.

3. BENEFIT TO THE COMMUNITY

The underlying purpose of this Loan is to provide specific benefits to the County of El Dorado. To that end, Borrower agrees to the following:

a. **Employment of Low and Moderate Income (LMI) Persons.** Borrower shall employ _____ (number of full-time equivalent positions) persons whose income prior to such employment meets CDBG income guidelines for LMI persons in El Dorado County. These persons shall be employed on or before _____.

b. **Employment of Low and Moderate Income Persons.** Borrower shall employ _____ (number of full-time equivalent positions) additional LMI persons on or before _____.

4. EVENTS OF DEFAULT

The entire unpaid principal of the Note, and the interest then accrued thereon, shall become and be immediately due and payable upon written demand of the Lender, without any other notice or demand of any kind or any presentment or protest, if any one of the following events (hereinafter an "Event of Default") shall occur and be continuing at the time of such demand, whether voluntarily or involuntarily or, without limitation, occurring or brought about by operation of law or pursuant to or in compliance with a judgment, decree or order of any court or any order, rules, or regulations of any administrative or governmental body, provided, however, that such sum shall not be then payable if Borrower's payments have been waived or deferred, or the time for making the Borrower's payments has been extended by the Lender:

a. **NON-PAYMENT OF LOAN:** If Borrower shall fail to make payment when due of any installment of principal on the Note, or interest accrued thereon, and if the default shall remain unremedied for fifteen (15) days.

b. **NON-PAYMENT OF OTHER INDEBTEDNESS:** If Borrower shall be in default of payment when due of any installment of principal or of interest on any of the Borrower's other indebtedness, if such default shall remain unremedied for fifteen (15) days.

c. **INCORRECT OR FALSE REPRESENTATION OR WARRANTY:** If any representation or warranty contained in or made in connection with the execution and delivery of

this Loan Agreement, or in any certificate or other document furnished pursuant hereto, shall prove to have been incorrect or false when made in any material respect.

d. **DEFAULT IN COVENANTS:** If the Borrower shall materially default in the performance of any other term, condition, covenant, or agreement contained in this Loan Agreement, and such default shall continue unremedied for fifteen (15) days after either: (1) it becomes known to an executive officer of the Borrower; or (2) written notice thereof shall have been given to the Borrower by the Lender.

e. **VOLUNTARY INSOLVENCY:** If the Borrower shall become insolvent or shall cease to pay its debts as they mature or shall voluntarily file a petition seeking reorganization of, or the appointment of a receiver, trustee, or liquidator for its debts or a substantial portion of its assets, or to effect a plan or other arrangement with creditors, or shall be adjudicated bankrupt, or shall make a voluntary assignment for the benefit of creditors.

f. **INVOLUNTARY INSOLVENCY:** If an insolvency petition shall be filed against the Borrower under any bankruptcy, insolvency, or similar law or seeking the reorganization of the Borrower or the appointment of a receiver, trustee, or liquidator for the Borrower, or for a substantial part of the property of the Borrower, or a writ or warrant of attachment or similar process shall be issued against the property of the Borrower, and such petition shall not be dismissed, or such writ of warrant of attachment or similar process shall not be released or bonded, within sixty (60) days after filing of a levy.

g. **JUDGMENTS:** If any final judgment for the payment of money that is not fully covered by liability insurance shall be rendered against the Borrower, and within sixty (60) days shall not be discharged, or an appeal there from taken and execution thereon effectively stayed pending such appeal, and if such judgment be affirmed on such appeal, the same shall not be discharged within thirty (30) days.

h. **RIGHT UPON DEFAULT:** Upon default by Borrower, Lender has all remedies available to it under State law in enforcing this Agreement and Lender rights to the collateral mentioned herein including, but not limited to, the following:

1. Accelerate and declare the full unpaid balance of loan funds immediately due on the Note and commence suit for collection thereof;
2. Take possession of the collateral or render it unusable, without notice, except as required by law, provided that said self-help shall be done without breach of peace;
3. Require that Borrower assemble the collateral at an acceptable location for delivery to Lender;

4. Dispose of collateral by sale and pursuant to the law;
5. Specifically enforce the terms of the Note and related agreements;
6. Foreclose on any real property or appropriate personal property by strict foreclosure in equity;
7. Pursue any and all other remedies available under law to enforce the terms of this Agreement and Lender's rights to the real and personal property identified herein, and in collateral security documents of the Lender.

i. **SALE/REFINANCING/CHANGE OF OWNERSHIP:** The Loan shall be due and payable upon the sale of the business, sale or refinance of any real property financed with this Loan, sale or refinancing, of any real property used as collateral for this Loan, change in ownership of the business involving any guarantees of this Loan, or wherein Borrower ceases to be a majority owner of the business.

5. OTHER DOCUMENTS

Lender may require and Borrower agrees to execute such other documents as may be required by the Lender in its sole discretion in order to comply with State and Federal regulations governing (a) the loan proceeds and (b) prudent lending practices.

6. CONFLICT OF INTEREST

The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Borrower attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest under this Agreement and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Borrower relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

7. REMEDIES CUMULATIVE

No right, power, or remedy given to the County by the terms of this Agreement is intended to be exclusive of any other right, power, or remedy; and each and every such right, power, or remedy shall be cumulative and in addition to every other right, power, or remedy given to the County by the terms of any such document, ordinances of the County, or by any statute or otherwise against Borrower and any other person. Neither the failure nor any delay on the part of the County to

exercise any such rights and remedies shall operate as a waiver thereof, nor shall any single or partial exercise by the County of any such right or remedy preclude any other or further exercise of such right or remedy, or any other right or remedy.

8. ATTORNEYS FEES AND COSTS

The County shall be entitled to receive from the Borrower or any person violating the requirements of this Agreement, in addition to any remedy otherwise available under this Agreement or at law or equity, whether or not litigation is instituted, the costs of enforcing this Agreement, including, without limitation, reasonable attorneys' fees and costs and the costs of County staff time.

9. APPOINTMENT OF OTHER AGENCIES OR ORGANIZATIONS

At its sole discretion, the County may designate, appoint or contract with any other public agency, for-profit or non-profit organization to perform some or all of the County's obligations under this Agreement.

10. HOLD HARMLESS

The Borrower shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Borrowers' services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Borrower, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Borrower to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778. The provisions of this section shall survive expiration or other termination of this Agreement or any release of part or all of the Property from the burdens of this Agreement, and the provisions of this section shall remain in full force and effect.

11. NOTICE TO PARTIES

Any notice under the Loan Agreement shall be in writing, without implying the obligation to provide such notice. Any notice to be given or document to be delivered under the Loan Agreement shall be deemed to have been duly received on (a) delivery, if delivered in person or by any expedited delivery service that provides proof of delivery; (b) the 5th Business Day after mailing, if mailed by certified mail, return receipt requested, postage prepaid, addressed to Lender or Borrower at the appropriate addresses. The addresses for notices are those set forth below or such other addresses as may be hereafter specified by written notice by the parties:

IF TO LENDER:

COUNTY OF EL DORADO
Attn: CAO/HCED Programs
330 Fair Lane
Placerville, CA 95667

IF TO THE BORROWER:

(BORROWER)
(Address)
(City, State, Zip)
Attn: _____

12. EXHIBITS INCORPORATED BY REFERENCE

Borrower agrees to each of the covenants, representations, warranties, assurances, certifications and commitments contained in Exhibits A through D that are attached hereto and by this reference incorporated herein.

13. INTEGRATED AGREEMENT

This Agreement constitutes the entire Agreement between the parties and no modification hereof shall be binding unless reduced to writing and signed by the parties hereto.

14. DURATION AND AMENDMENT OF AGREEMENT

This Agreement shall remain in effect for so long as the Borrower is subject to obligations of the Agreement. This Agreement, and any section, subsection, or covenant contained herein, may be amended only upon the written consent of the County Chief Administrative Officer, or designee.

15. TAXES

Borrower certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Borrower to County and has paid in full all taxes and assessments levied by any taxing agency, federal, state, or local, against Borrower or its personal or real property. Borrower agrees that it shall not default on any obligations to County during the term of this Agreement.

16. NO THIRD PARTY BENEFICIARIES

Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this Agreement.

17. VENUE

Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

18. WAIVERS.

Any waiver by the County of any obligation or condition in this Agreement must be in writing. No waiver will be implied from any delay or failure by the County to take action on any breach or default of Borrower or to pursue any remedy allowed under this Agreement or applicable law. Any extension of time granted to Borrower to perform any obligation under this Agreement shall not operate as a waiver or release from any of its obligations under this Agreement. Consent by the County to any act or omission by Borrower shall not be construed to be consent to any other or subsequent act or omission or to waive the requirement for the County's written consent to future waivers.

19. TITLE OF PARTS AND SECTIONS

Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of the Agreement's provisions.

20. MULTIPLE ORIGINALS; COUNTERPART

This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.

21. SUCCESSORS AND ASSIGNS

This Loan Agreement shall be binding upon the Borrower, its successors, and assigns, except that the Borrower may not assign or transfer its rights and obligations without prior written consent of the Lender. This Agreement shall inure to the benefit of the Lender and, except as otherwise expressly provided in particular provisions hereof, all subsequent holders of the Note. Borrower acknowledges that Lender contemplates and may assign the Note and this Agreement and consents to such assignments.

22. SEVERABILITY

In the event any limitation, condition, restriction, covenant, or provision contained in this Agreement is to be held invalid, void or unenforceable by any court of competent jurisdiction, the remaining portions of this Agreement shall nevertheless, be and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

BORROWER:

[BUSINESS NAME]
[state of incorporation, if applicable]

Dated: _____

By: _____
[TYPE NAME]

Its [Title]

LENDER:

County of El Dorado,
a political subdivision of the State of
California

Dated: _____

By: _____
Chief Administrative Officer

BORROWER SIGNATURE MUST BE NOTARIZED

EXHIBIT A

REPRESENTATIONS AND WARRANTIES

The Borrower represents and covenants the following:

- a. **DULY ORGANIZED:** The Borrower is a CORPORATION duly organized, validly existing, and in good standing under the laws of the State of California and has the power to enter into this Agreement and to borrow hereunder.
- b. **DULY AUTHORIZED:** The making and performance by the Borrower of this Agreement, and the execution and delivery of the Note, and any Security Agreement(s) and Instruments have been duly authorized by all necessary CORPORATE actions and will not violate any law, rule regulation, order, writ, judgment, decree, determination, or award presently in effect or result in a breach of or constitute a default under any bank loan or any other agreement or instrument to which the Borrower is a party or by which it or its property may be bound or affected.
- c. **LEGALLY BINDING INSTRUMENTS:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors. The parties agree to execute such further documents and instruments as shall be necessary to carry out the terms of this Agreement, and such documents and agreements shall likewise be binding upon the parties and their successors.
- d. **NO LEGAL SUITS:** The Borrower certifies there are no legal actions, suits, or proceedings against the Borrower before any court or administrative agency, which if determined adversely to the Borrower, would have a material adverse effect on the financial condition or business of the Borrower.
- e. **NOT IN DEFAULT:** The Borrower is not in default of any obligation, covenant, or condition contained in any bond, debenture, note, or other evidence of indebtedness or any mortgage or collateral instrument securing the same.
- f. **NO ADVERSE CHANGE:** The Borrower certifies that there has been no adverse change since the date of the loan application in the financial conditions, organization, operation, business prospects, fixed properties, or personnel of the Borrower.

g. EVIDENCE OF PROJECT FUNDING: The Borrower has submitted to the Lender acceptable evidence (e.g., bank commitment letter) of financing or liquidity for the balance of the Project cost.

h. HAZARDOUS SUBSTANCES: The Borrower does not know or believe or have reason to know or believe, that hazardous substances are now, or have been, generated, stored, treated, handled, disposed of, released or otherwise located on the property under its ownership, lease or supervision.

DRAFT

EXHIBIT B

AFFIRMATIVE COVENANTS OF THE BORROWER

The Borrower agrees to comply with the following covenants from the date hereof until the Lender has been fully repaid with interest, unless the Lender shall otherwise consent in writing:

a. **PAYMENT OF THE LOAN:** To pay punctually the principal and interest on the Note according to its terms and conditions and to pay punctually any other amounts that may become due and payable to the Lender pursuant to the terms of this Agreement or Note.

b. **PAYMENT OF OTHER INDEBTEDNESS:** To pay punctually the principal and interest due on any other indebtedness now or hereafter owing by the Borrower to the Lender or any other lender.

c. **INSURANCE:** To obtain at its sole cost and keep in full force and effect during the term of this Agreement broad form property damage, hazard insurance covering fire and extended coverage in amounts at least equal to the unpaid balance of the note naming the County as a loss payee; personal injury, employers and comprehensive form liability insurance in the amount of \$1,000,000 per occurrence providing that the County, its officers, agents, and employees shall be named insured under the policy, and that the policy shall stipulate that this insurance will operate as primary insurance, and that no other insurance effected by the County or other named insured will be called upon to cover a loss covered thereunder. To obtain and provide evidence of fire and extended coverage insurance in the amount of at least the fair market value of the real property and any and all improvements which are the subject of the security described in Paragraph 1 of the Loan Agreement shall be submitted to the County within 15 days of the execution of this Agreement and prior to any disbursements, naming the County as a loss payee under such policy. Endorsements required by Lender shall be provided by Borrower and such evidence shall be acceptable to Lender in its sole discretion.

To obtain at its sole cost and keep in full force and effect during the term of this Agreement other insurance as required by the Lender

d. **CERTIFICATES OF INSURANCE:** To file with County within 15 days of the execution of this Agreement and prior to any disbursements, a certificate of insurance and an endorsement which shall provide that no cancellation, major change in coverage, or expiration will be made during the term of this Agreement, without 30 days written notice to the County prior to the effective date of such cancellation, or no change in coverage.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve Borrower from liability under Section 10 of the Loan Agreement and the hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any such damages or claims for damages.

e. **PAY ALL TAXES:** To pay and discharge all personal property taxes, assessments, and governmental charges upon it or against its properties prior to the date on which the penalties attached thereto apply, except that the Borrower shall not be required to pay such taxes, assessment, or governmental charge which is being contested in good faith and by appropriate proceedings. If so requested by Lender, Borrower will provide a bond guaranteeing payment of such taxes or assessments in any case in which Borrower contests any tax and refuses to pay under this section.

f. **PROVIDE ADDITIONAL EQUITY:** To provide additional equity funds to cover additional Project costs incurred as a result of overruns or unanticipated expenses or changes in work orders in the Project as specified in the Loan Commitment Letter.

g. **MAINTAIN EXISTENCE:** To maintain its existence, rights, privilege, and franchises within the State of California and qualify and remain qualified in each jurisdiction in which its present or future operations or its ownership of property requires such qualifications.

h. **PROVIDE FINANCIAL AND JOB INFORMATION:** To maintain adequate records and books of account, in which all of its business and financial transactions will be entered in accordance with generally accepted accounting principles.

In addition, the Borrower agrees to deliver to the Lender financial statements certified by an authorized officer of the Borrower to be true and accurate copies within sixty (60) days of the end of the year annual financial statements. The lender retains the right to request audited statements from the Borrower, to be obtained at the Borrower's expense.

The Borrower will comply with record keeping requirements. All records concerning the Project, including invoices, receipts and contracts will be kept for a period of not less than three years from the closing of the loan or completion of the Project, whichever is later. All relevant records pertaining to the Project shall be accessible and available for inspection or audit by Lender for the same period. If directed so by the Lender, Borrower shall deliver to the Lender all records, accounts, documentation and other relevant materials relating to the receipt and disbursement of loan funds.

The Borrower further agrees to provide written notice to the Lender of any public hearing or meeting before any administrative or other public agency which may in any manner affect the

chattel, personal property, real estate, personal and corporate guarantees and any other security pledged to secure the Loan.

i. **RIGHT TO INSPECTION:** To grant the Lender, until the Note has been fully repaid with interest, the right at all reasonable hours to inspect the chattel, personal property, and real estate used to secure the Loan, and to provide the Lender free access to the Borrower's premises for the purpose of such inspection.

j. **NOTICE OF DEFAULT:** To give written notice to the Lender of any event within 15 days of the event that constitutes an Event of Default under this Loan Agreement as described in Section 4 herein or that would, with notice or lapse of time or both, constitute an Event of Default under this loan.

k. **EXPENSES OF COLLECTION OR ENFORCEMENT:** To pay the Lender, if the Borrower defaults on any provision of this Agreement, in addition to any other amounts that may be due, an amount equal to the costs and expense of collection, enforcement, or correction or waiver of the default incurred by the Lender's exercise of its rights under the Note and this Agreement

l. **NULL AND VOID COVENANTS:** In the event that any provision of this Loan Agreement or any other instrument executed at closing or the application thereof to any person or circumstances shall be declared null and void, invalid, or held for any reason to be unenforceable by a Court of competent jurisdiction, the remainder of such Agreement shall nevertheless remain in full force and effect, and to this end, all covenants, conditions, and agreements described herein are deemed separate.

m. **COLLATERAL:** To maintain all collateral property or equipment in good condition and at the original site identified in the loan Security Agreement(s).

n. **HAZARDOUS SUBSTANCES:** Neither Borrower nor any tenant of space in the real property shall generate, sell, treat, store, handle dispose of or otherwise deal with hazardous material on the property. The Borrower shall comply with all applicable laws, regulations, ordinances, licenses, permits, rules and other codes pertaining to hazardous materials. The Borrower shall indemnify and hold harmless from all liability, claims, penalties, fines, losses damages and expenses of any kind, including, without limitation, clean-up costs and reasonable attorney fees and costs, incurred by Lender as a result of Borrowers breach of the provisions of this Loan Agreement, breach of the Deed of Trust, as a result of Borrower's breach of warranty regarding hazardous substances, or as a result of the presence of hazardous substances on the subject property.

EXHIBIT C

NEGATIVE COVENANTS OF THE BORROWER

The Borrower covenants and agrees that, from the date hereof until payment in full of the Note, unless the Lender shall otherwise consent in writing, the Borrower will not enter into any agreement or other commitment, the performance of which would constitute a breach of any of the covenants contained in this Loan Agreement including, but not limited to, the following covenants. Any breach of these covenants would constitute an event of Default, and the rights of default by the Lender may be executed.

- a. **ENCUMBER THE BORROWER'S ASSETS:** The Borrower will not further encumber its assets or incur indebtedness in addition to that now existing and provided for in this Loan Agreement, except indebtedness incurred in the ordinary course of business and payable within one year.
- b. **SELL THE BORROWER'S ASSETS:** The Borrower will not sell or transfer all or a substantial part of its assets except those usually sold in the ordinary course of the business.
- c. **LEASE OR SUBLEASE PROPERTY:** The Borrower will not lease or sublease all or any portion of the subject property to be acquired with the proceeds of this Loan without the prior written consent of the Lender.
- d. **CHANGE OWNERSHIP:** The principals of the Borrower will not permit, without the written permission of the Lender, any material change in the ownership structure, control, or operation of the Borrower including, but not limited to: (1) merger into or consolidation with any other person, firm, or corporation; (2) changing the nature of its business as carried on at the date hereof; (3) substantial distribution, liquidation, or other disposal of the Borrower's assets to any other party.
- e. **CHANGE THE PROJECT:** The Borrower will neither permit nor suffer to exist, without prior written Lender consent, any material change in the Project's plans and/or specifications submitted to the Lender as per the Preliminary Loan Application.

EXHIBIT D

PROJECT ASSURANCE

The Borrower hereby assures and certifies that they will comply with all local, state and federal laws, regulations, policies, guidelines, and requirements as they relate to the County of El Dorado Business Loan Program and to the legal operation of the business. Also, the Borrower assures and certifies to the County of El Dorado Business Loan Program that the Project will:

- a. Comply with Title VI of the Civil Rights Act of 1964 (P.L. 88-352) whereby no person in the United States shall on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under the County of El Dorado Business Assistance Loan Program by which the Borrower receives Federal financial assistance and will immediately take any measures necessary to effectuate this Agreement.
- b. Comply with Title VI of the Civil Rights Act of 1964 (42-USE 2000d) prohibiting employment discrimination where 1) the primary purpose of the financial assistance is to provide employment, or 2) discriminatory employment practices will result in unequal treatment of persons who are or should be benefiting from the loan-aided activities.
- c. Comply with Section 112 of the Public Law 92-65 and Title III of Public Law 94-135 whereby the Borrower assures that no person in the United States shall on the grounds of sex or age be excluded from participating in, be denied the benefits of, or otherwise be subject to discrimination in connection with any program or activity receiving federal financial assistance.
- d. Comply with the flood insurance purchase requirements, if applicable, of Section 102(a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102(a) requires, on and after March 2, 1975, no Federal officer or agency shall approve any financial assistance for acquisition or construction purposes for use in any area that has been identified by the Secretary as an area having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, unless the building or mobile home and any personal property to which such financial assistance relates is, during the anticipated economic or useful life of the Project, covered by flood insurance in an amount at least equal to its development or Project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, whichever is less: Provided, that if the financial assistance provided is in the form of a loan or an insurance or

guaranty of a loan, the amount of flood insurance required need not exceed the outstanding principal balance of the loan and need not be required beyond the term of the loan.

e. Comply with Section 106 of the National Historic Preservation Act of 1966 as amended (16 USC 47 O), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 USC 469a-1 et seq.) by a) consulting with the State's Historic Preservation Officer on the conduct of investigation, as necessary to identify properties listed in or eligible for inclusion in the National Historic Register (see 36 CFR Part 880.8) by the activity, and notifying of the existence of any such properties, and by b) complying with all requirements established by the State to avoid, eliminate or mitigate adverse effects.

f. Give the County of El Dorado, the U.S. Department of Housing and Urban Development's and the California State Department of Housing and Community Development's Community Development Block Grant program, through any authorized representative, the right to access and examine all records, books, papers, or documents related to the loan.

g. Comply with Section 2, of the Public Works and Economic Development Act which state that under the provisions of this Act new employment opportunities should be created by developing and expanding new and existing facilities and resources rather than by merely transferring jobs from one labor area to another.

h. Assure that any building or facility financed in whole or in part by any program funds provided under the County of El Dorado Business Loan Program will comply with the American with Disabilities Act (ADA) Title and be designed, constructed or altered so as to assure ready access to and use of such building or facility by the physically handicapped. This provision applies only to firms which deal directly with the general public in the normal and usual course of their business, and to facilities in which business is customarily transacted by and with members of the general public.

i. Insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the Project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the County of El Dorado Community Services Agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the Project is under consideration for listing by the EPA.

j. Comply with all requirements imposed by the Federal sponsoring agency concerning special requirements of law, program, and other administrative requirements.

k. Comply with the Davis Bacon Act, as amended (40 U.S.C. 276a-5).

ATTACHMENT C:

Lender Required Documents

- 1) Jobs Tracking Form
- 2) Self-Certification of Income Form
- 3) Loan Disbursement Schedule
- 4) Certification of No Conflict of Interest
- 5) Certification of No Job Pirating
- 6) Certification of Federal Regulatory Compliance.

CDBG Jobs Tracking Form for Completed Project

Company Name:

List all employee positions on payroll, both existing and new hires as a result of CDBG loan.

Date of Project Approval:

Date of Project Completion:

Income Self Cert. Date

	Job Position Title	New or Existing Job	Annual Hours	Annual Wages	Full/Part Time	LMI	Income Self Cert. Date
1							
2							
3							
4							
5							
6							
7							
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EXISTING JOB POSITIONS	
Total Full Time	<input style="width: 90%;" type="text"/>
Total Part Time	<input style="width: 90%;" type="text"/>
Grand Total Full Time	<input style="width: 90%;" type="text"/>

ACTUAL NEW HIRE OR RETAINED JOB POSITIONS	
Total Full Time	<input style="width: 90%;" type="text"/>
Total Part Time	<input style="width: 90%;" type="text"/>
Grand Total Full Time	<input style="width: 90%;" type="text"/>

LMJ
<input style="width: 90%;" type="text"/>
<input style="width: 90%;" type="text"/>

% LMJ
<input style="width: 90%;" type="text"/>
#DIV/0!

I hereby certify under the penalty of perjury that all the information contained in this form (including all supportive documentation) is true and correct. I understand and acknowledge that making false statement on this certification, including any documents submitted in support of it, may result in repayment of loan funds.

Signature of Jurisdiction Staff: _____

Date:

Business Assistance Project SELF-CERTIFICATION of Income for

City of / Town of / County of El Dorado CDBG Funded Activity

Page 1 to be filled out by Applicant/Employee

Status: Job Applicant Current Employee

Business Name: _____

Business Physical Address: _____, _____ (City)

Part I: Confidential Job Applicant / Employee HUD Demographic Data

(This section is voluntary.)

Ethnicity (Select One)	<input type="checkbox"/> Not Hispanic	<input type="checkbox"/> Hispanic
Race	(Select One)	
White	<input type="checkbox"/>	
Black/African American	<input type="checkbox"/>	
Asian	<input type="checkbox"/>	
American Indian/Alaskan Native	<input type="checkbox"/>	
Nat. Hawaiian/Other Pacific Isl.	<input type="checkbox"/>	
Am. Indian/Alaskan Nat. & White	<input type="checkbox"/>	
Asian & White	<input type="checkbox"/>	
Black/African American & White	<input type="checkbox"/>	
Am. Indian/Alaskan & Black/African	<input type="checkbox"/>	
Other Multi-Racial	<input type="checkbox"/>	

Part II: Confidential Job Applicant / Employee Income Certification

(Certification process may not be administered by business receiving CDBG funds.)

My total family size consists of _____ members, and the total gross annual income* for all adult members is \$_____.

*Gross annual income must include all sources of income (wages, child support, SSI, unemployment, pension, income from assets, etc., but does not include the income of live-in aids, per 24 CFR 5.403).

I certify that the information given on this form is true and accurate to the best of my knowledge. I am aware that there are penalties for willfully and knowingly giving false information on an application for Federal or State funds, which may include immediate repayment of all Federal or State funds received and/or prosecution under the law. I understand that the information on this form is subject to verification by state or federal personnel as part of compliance monitoring.

Job Applicant / Employee Signature: _____ Date: _____

Applicant / Employee Name (print): _____

Job Applicant / Employee Physical Home Address: _____, _____ (City)

CDBG Business Assistance Project Verification by

City of / Town of / County of El Dorado for CDBG Funded Activity

Page 2 to be filled out by Program Operator

Project Information:

Business Name: _____

Job Applicant / Employee Name: _____

Public Benefit Type: Job Creation Job Retention

Project funded by: Grant #: _____ - Or - PI Fiscal Year: _____

Business and Job Applicant / Employee Location Verification:

Business Physical Address: _____ In Jurisdiction Limits

Job Applicant / Employee Physical Home Address: _____ In Jurisdiction Limits

NOTE: Business must be located in Jurisdiction. **Significant number of** Job Applicants should reside in Jurisdiction (does not apply to retention).

Job Applicant / Employee Income Verification:

Effective Date of the Income Limit Chart being used: _____

- Family is: 30% or less (Extremely Low Income)
 31%-50% (Low Income)
 51%- 80% (Moderate Income)
 Over 80% of median income: **NOT ELIGIBLE AS LOW /MOD JOB**

Program Operator must:

- 1) Must complete confidential demographic data on cert. form if applicant / employee leaves blank.
- 2) Must complete business project information and business & applicant / employee location verification.
- 3) Must complete the applicant/employee income verification by:
Print the current HCD Income limits from the HCD website (NOT HUD's), and
Circle the applicable family size and annual income on HCD limit printout, and
Include the copy of the circled printout with these certification forms.

Program Operator Certification: I certify that Applicant / Employee demographic data provided is true and correct, to the best of my knowledge. I certify that, using the current HCD annual income publication compared to stated family size and gross income, the income level indicated above is true and correct. I certify that residency of the Applicant / Employee and the business address is true and correct per the requirements of 24 CFR 570.486(b) and/or (c) as applicable.

Note: This completed certification, whether Job Applicant / Employee benefited (was hired) or not, must be maintained in the Confidential Project file for review at time of monitoring. Certification of Job Creation cannot be done prior to CDBG funding approval.

Program Operator Name (print)

Job Title

Signature:

Date:

STATE OF CALIFORNIA- DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
CERTIFICATION OF NO CONFLICT OF INTEREST STATEMENT

NOTE: This form must be signed and attached to applications for the CDBG Business Assistance Loan Program pursuant to California Code of Regulations, Title 25, Section 7126 and Title 24 Code of Federal Regulations Part 570-611 (as revised on 10/14/83).

The undersigned certify that In accordance state and federal regulations, no member of the governing body and no official, employee or agent of the local government, nor any other person who exercises policy or decision-making responsibilities (including members of the loan committee and officers, employees, and agents of the loan committee, the administrative agent, contractors and similar agencies) in connection with the planning and implementation of the CDBG BA program shall directly or indirectly be eligible for this program. The County will require all applicants to sign a non- conflict of interest certification. Any questions regarding possible federal conflict of interest will be submitted to the Department for final determination. Any questions about state conflict of interest laws will be referred to Lender's legal council for final determination.

NAME (Type or Print Clearly)	SIGNATURE	DATE
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
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EXECUTED IN THE COUNTY OF _____ STATE OF CALIFORNIA

**BORROWER'S CERTIFICATION CONCERNING NO JOB PIRATING
IN CONNECTION WITH COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
ECONOMIC DEVELOPMENT (ED) FINANCING**

City / County of _____ use federal CDBG economic development funds to make loans to eligible projects. These federal funds are available from local program income funds or from grant contracts issued by the State Department of Housing and Community Development. These CDBG ED loans are not eligible if their use supports job pirating. Job pirating is not allowed under 24 CFR 570.482(f) of federal regulations. CDBG ED activities trigger this prohibition of funds as follows:

1. Statement of Job Pirating Provisions:

Use of CDBG funds, to assist directly, the relocation of any industrial or commercial plant, facility or operations, from one labor market area to another labor market area.

Yes No

If yes, what is the total number of jobs to be relocated: _____.

2. Certification of no Job Pirating:

Will a significant loss of jobs take place due to the relocation of the business operations (Definition of significant is 25 or more full time positions.).

Yes No

If yes, CDBG assistance is prohibited.

If no, business certifies that neither it nor any of its subsidiaries has plans to relocate jobs, as of the date of the CDBG loan agreement.

3. Consequences of Job Pirating Violation:

Use of CDBG funds, to assist directly, the relocation of any industrial or commercial plant, facility or operations, from one labor market area to another labor market area will result in the repayment of all CDBG funding invested in the project.

I hereby certify under the penalty of perjury that all the information contained in the CDBG request for funding (including all supporting documentation) is true and correct. I understand and acknowledge that making false statement on this certification, including any documents submitted in support of it, is a crime under federal and California state laws, which may result in criminal prosecution.

Signature of Borrower

Print Name and Title

Date

CDBG Jobs Tracking Form for Completed Project

Company Name: _____

List all employee positions on payroll, both existing and new hires as a result of CDBG loan.

Date of Project Approval: _____

Date of Project Completion: _____

Income
Self Cert.
Date

	Job Position Title	New or Existing Job	Annual Hours	Annual Wages	Full/Part Time	LMI	Income Self Cert. Date
1							
2							
3							
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EXISTING JOB POSITIONS	
Total Full Time	
Total Part Time	
Grand Total Full Time	

ACTUAL NEW HIRE OR RETAINED JOB POSITIONS	
Total Full Time	
Total Part Time	
Grand Total Full Time	

LMI

% LMJ
#DIV/0!

I hereby certify under the penalty of perjury that all the information contained in this form (including all supportive documentation) is true and correct. I understand and acknowledge that making false statement on this certification, including any documents submitted in support of it, may result in repayment of loan funds.

Signature of Jurisdiction Staff: _____

Date: _____

Business Assistance Project SELF-CERTIFICATION of Income for

City of / Town of / County of El Dorado CDBG Funded Activity

Page 1 to be filled out by Applicant/Employee

Status: Job Applicant Current Employee

Business Name: _____

Business Physical Address: _____, _____ (City)

Part I: Confidential Job Applicant / Employee HUD Demographic Data

(This section is voluntary.)

Ethnicity (Select One)	<input type="checkbox"/> Not Hispanic	<input type="checkbox"/> Hispanic
Race	(Select One)	
White	<input type="checkbox"/>	
Black/African American	<input type="checkbox"/>	
Asian	<input type="checkbox"/>	
American Indian/Alaskan Native	<input type="checkbox"/>	
Nat. Hawaiian/Other Pacific Isl.	<input type="checkbox"/>	
Am. Indian/Alaskan Nat. & White	<input type="checkbox"/>	
Asian & White	<input type="checkbox"/>	
Black/African American & White	<input type="checkbox"/>	
Am. Indian/Alaskan & Black/African	<input type="checkbox"/>	
Other Multi-Racial	<input type="checkbox"/>	

Part II: Confidential Job Applicant / Employee Income Certification

(Certification process may not be administered by business receiving CDBG funds.)

My total family size consists of _____ members, and the total gross annual income* for all adult members is \$_____.

*Gross annual income must include all sources of income (wages, child support, SSI, unemployment, pension, income from assets, etc., but does not include the income of live-in aids, per 24 CFR 5.403).

I certify that the information given on this form is true and accurate to the best of my knowledge. I am aware that there are penalties for willfully and knowingly giving false information on an application for Federal or State funds, which may include immediate repayment of all Federal or State funds received and/or prosecution under the law. I understand that the information on this form is subject to verification by state or federal personnel as part of compliance monitoring.

Job Applicant / Employee Signature: _____ Date: _____

Applicant / Employee Name (print): _____

Job Applicant / Employee Physical Home Address: _____, _____ (City)

CDBG Business Assistance Project Verification by

City of / Town of / County of El Dorado for CDBG Funded Activity

Page 2 to be filled out by Program Operator

Project Information:

Business Name: _____

Job Applicant / Employee Name: _____

Public Benefit Type: Job Creation Job Retention

Project funded by: Grant #: _____ - Or - PI Fiscal Year: _____

Business and Job Applicant / Employee Location Verification:

Business Physical Address: _____ In Jurisdiction Limits

Job Applicant / Employee Physical Home Address: _____ In Jurisdiction Limits

NOTE: Business must be located in Jurisdiction. **Significant number of** Job Applicants should reside in Jurisdiction (does not apply to retention).

Job Applicant / Employee Income Verification:

Effective Date of the Income Limit Chart being used: _____

- Family is: 30% or less (Extremely Low Income)
 31%-50% (Low Income)
 51%- 80% (Moderate Income)
 Over 80% of median income: **NOT ELIGIBLE AS LOW /MOD JOB**

Program Operator must:

- 1) Must complete confidential demographic data on cert. form if applicant / employee leaves blank.
- 2) Must complete business project information and business & applicant / employee location verification.
- 3) Must complete the applicant/employee income verification by:
Print the current HCD Income limits from the HCD website (NOT HUD's), and
Circle the applicable family size and annual income on HCD limit printout, and
Include the copy of the circled printout with these certification forms.

Program Operator Certification: I certify that Applicant / Employee demographic data provided is true and correct, to the best of my knowledge. I certify that, using the current HCD annual income publication compared to stated family size and gross income, the income level indicated above is true and correct. I certify that residency of the Applicant / Employee and the business address is true and correct per the requirements of 24 CFR 570.486(b) and/or (c) as applicable.

Note: This completed certification, whether Job Applicant / Employee benefited (was hired) or not, must be maintained in the Confidential Project file for review at time of monitoring. Certification of Job Creation cannot be done prior to CDBG funding approval.

Program Operator Name (print)

Job Title

Signature:

Date:

STATE OF CALIFORNIA- DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
CERFICATION OF NO CONFLICT OF INTEREST STATEMENT

NOTE: This form must be signed and attached to applications for the CDBG Business Assistance Loan Program pursuant to California Code of Regulations, Title 25, Section 7126 and Title 24 Code of Federal Regulations Part 570-611 (as revised on 10/14/83).

The undersigned certify that In accordance state and federal regulations, no member of the governing body and no official, employee or agent of the local government, nor any other person who exercises policy or decision-making responsibilities (including members of the loan committee and officers, employees, and agents of the loan committee, the administrative agent, contractors and similar agencies) in connection with the planning and implementation of the CDBG BA program shall directly or indirectly be eligible for this program. The County will require all applicants to sign a non- conflict of interest certification. Any questions regarding possible federal conflict of interest will be submitted to the Department for final determination. Any questions about state conflict of interest laws will be referred to Lender's legal council for final determination.

NAME (Type or Print Clearly)	SIGNATURE	DATE
_____	_____	_____
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EXECUTED IN THE COUNTY OF _____ STATE OF CALIFORNIA

**BORROWER'S CERTIFICATION CONCERNING NO JOB PIRATING
IN CONNECTION WITH COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
ECONOMIC DEVELOPMENT (ED) FINANCING**

City / County of _____ use federal CDBG economic development funds to make loans to eligible projects. These federal funds are available from local program income funds or from grant contracts issued by the State Department of Housing and Community Development. These CDBG ED loans are not eligible if their use supports job pirating. Job pirating is not allowed under 24 CFR 570.482(f) of federal regulations. CDBG ED activities trigger this prohibition of funds as follows:

1. Statement of Job Pirating Provisions:

Use of CDBG funds, to assist directly, the relocation of any industrial or commercial plant, facility or operations, from one labor market area to another labor market area.

Yes No

If yes, what is the total number of jobs to be relocated: _____.

2. Certification of no Job Pirating:

Will a significant loss of jobs take place due to the relocation of the business operations (Definition of significant is 25 or more full time positions.).

Yes No

If yes, CDBG assistance is prohibited.

If no, business certifies that neither it nor any of its subsidiaries has plans to relocate jobs, as of the date of the CDBG loan agreement.

3. Consequences of Job Pirating Violation:

Use of CDBG funds, to assist directly, the relocation of any industrial or commercial plant, facility or operations, from one labor market area to another labor market area will result in the repayment of all CDBG funding invested in the project.

I hereby certify under the penalty of perjury that all the information contained in the CDBG request for funding (including all supporting documentation) is true and correct. I understand and acknowledge that making false statement on this certification, including any documents submitted in support of it, is a crime under federal and California state laws, which may result in criminal prosecution.

Signature of Borrower

Print Name and Title

Date

**BORROWER'S CERTIFICATION OF COMPLIANCE WITH FEDERAL OVERLAYS
RELATED TO COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG)
ECONOMIC DEVELOPMENT (ED) FINANCING**

The County of El Dorado here after referred to as Responsible Entity (RE), are being requested to use federal CDBG ED funds for a project located at: _____, CA _____. The RE received a CDBG application for funding from the Business Assistance (BA) loan applicant on: _____ date.

There are three (3) significant federal overlay laws that must be adhered to as part of receiving CDBG ED BA funding: 1) federal environmental regulations; 2) federal relocation and real property acquisition laws; and 3) federal prevailing wage laws. All projects proposing to use CDBG federal funding must be documented as being in compliance with these laws.

ENVIRONMENTAL REVIEW: To be in compliance with federal environmental review law, National Environmental Policy Act (NEPA), an Environmental Review Record (ERR) must be completed and executed by the RE prior to awarding the project any CDBG funds. The ERR must also be completed prior to any additional work being done on the project after the date of application submittal, as shown above.

Any site work or legal agreements associated with the project, after the date of the CDBG application, could trigger a "choice limiting" action under NEPA regulations. Such an action will prohibit the RE from awarding CDBG funds to the project. Specific choice limiting actions to be avoided by the applicant after BA application date are: 1) signing any contracts for any work on the project; 2) signing any real property purchase agreements or leases; 3) conducting any construction / maintenance work at the site.

Loan applicant does hereby acknowledge and certify that there is and will be no choice limiting actions taking place at the site until the RE has completed an ERR for the project. Applicant agrees to disclose the existing conditions of the project and will not proceed with any development work until such time as the RE has provided written permission to do so.

1. Statement of Project's Site Control.

Full site control, i.e. fee simple interest ownership of the property or executed lease agreement, was in place prior to BA loan application submittal date.

Yes No

If no, what is proposed date will site control to be in place: _____.

2. Statement of Project's Construction Status.

Construction was started on the project prior to BA loan application submittal date stated above.

Yes No

If yes, construction must stop at the date of application, or CDBG is prohibited.

If no, business certifies NO construction contracts will be executed and no work at the site will start until RE provides written approval.

3. Consequences of Choice Limiting Action.

Any changes which trigger NEPA violation will force the RE to cancel the application.

RELOCATION AND ACQUISITION REVIEW: To be in compliance with federal acquisition and relocation law, the RE must verify that no “persons” have been displaced because of the use of CDBG funding AND that if CDBG funds are being used, in whole or in part to acquire real property, that federal laws are being complied with prior to award of funds.

Projects using CDBG funding for acquisition of real property are required to provide the seller with a proper disclosure of no use of eminent domain as part of the transaction.

Projects using CDBG funding that cause a person (resident of a housing unit, business or non-profit) to move as a direct result of the project’s activity must follow federal relocation process and provide those affected persons with permanent relocation benefits.

1. Statement of Project’s Use of Funds for Acquisition.

CDBG funds are being used to assist in purchase of real property.

Yes No

If yes, what date was seller provided Acquisition Notice? _____.

2. Statement of Project’s Relocation Compliance.

Persons were or will be displaced because of the proposed CDBG funding project activity / scope of work.

Yes No

If yes, RE must evaluate relocation benefits required for the project to move forward and disclose the costs of the relocation to the BA applicant.

If no, business certifies NO persons are displaced by the project.

3. Consequences of Non-Compliance with Relocation or Acquisition Laws.

Any miss-representations that result in these federal laws being triggered will force the RE to cancel the application.

Loan applicant does hereby acknowledge and certify that there will be no relocation of persons taking place at the site until the RE has completed its review and analysis of any required relocation benefits. Applicant agrees to disclose the existing conditions of the project and will not proceed with any property purchase or development work until such time as the RE has provided written permission to do so.

FEDERAL PREVAILING WAGE REVIEW: To be in compliance with federal prevailing wage laws (Davis Bacon and associated legislation), the RE must verify that no CDBG funds are being utilized for project construction costs. If any CDBG funds are used for construction, then RE must ensure federal prevailing wage rates will be paid by contractors. These wages will increase the project's costs.

1. Statement of Project's Use of Funds for Construction.

CDBG funds will pay for project construction costs.

Yes No

If yes, what date was RE labor standards monitoring certification submitted to the Department? _____.

If no, federal prevailing wage compliance is not required.

2. Consequences of Non-Compliance with Davis Bacon and Related Acts.

Any miss-representations that result in these federal laws being triggered can require the RE to pay wage compensation to workers doing the construction.

Loan applicant does hereby acknowledge and certify that there will be no signing of construction contracts for any work taking place at the project site until the RE has completed its review and analysis of required labor standards compliance. Applicant agrees to disclose the existing conditions of the project and will not proceed with any property development work until such time as the RE has provided written permission to do so.

I hereby certify under the penalty of perjury that all the information contained in the CDBG request for funding (including all supporting documentation) is true and correct. I understand and acknowledge that making false statement on this certification, including any documents submitted in support of it, is a crime under federal and California state laws, which may result in criminal prosecution.

Signature of Borrower(s)

Print Name and Title

Date

ATTACHMENT D

LOAN SERVICING POLICIES AND PROCEDURES FOR THE COUNTY OF EL DORADO

The County of El Dorado, hereafter called "Lender," has adopted these policies and procedures in order to preserve its financial interest in properties, whose borrowers have been assisted with public funds. The Lender will follow these policies and procedures, but each loan will be evaluated and handled on a case-by-case basis. The Lender has formulated this document to comply with state and federal regulations regarding the use of these public funds and any property restrictions, which are associated with them.

The Program Administrator for the Lender's Loan Programs is the Housing, Community and Economic Development (HCED) Program manager.

1. Loan Repayments

The Lender will collect monthly payments from those borrowers who are obligated to do so under an Installment Note, which are amortized promissory notes. The due date of the loan is the first of every month. Borrowers have a ten (10) day grace period to pay the monthly amount before late charges are incurred. After the tenth of every month a late charge of five percent (5%) of the payment amount is added to the invoice.

For Straight Notes, which are deferred payment loans; the Lender may accept voluntary payments on the loan.

Loan payments will be credited to the interest first, then to late fees and collection and enforcement costs, if applicable, and then to principal. The borrower may repay the loan balance at any time with no penalty.

2. Payment of Property Taxes and Insurance

As part of keeping the Program Loan from going into default, borrower must maintain property insurance coverage naming the Lender as additional insured. If a borrower fails to maintain the necessary insurance, the Lender may take out force-placed insurance to cover the property while the borrower puts a new insurance policy in place. All costs for providing the necessary insurance will be added to the loan balance at the instatement of borrower's new insurance.

When a property is located in a 100-year flood plain, the borrower will be required to carry the necessary flood insurance. A certificate of insurance for flood and for standard property insurance with an endorsement naming the Lender as additional insured will be required at close of escrow. The Lender will verify the insurance on an annual basis.

Property taxes must be kept current during the term of the loan. If the borrower fails to maintain payment of property taxes then the Lender may in its sole discretion pay the taxes current and add the balance of the tax payment plus any penalties to the balance of the Program Loan.

3. Required Request for Notice of Default

When the borrower's Program Loan is in second position or junior, it is the Lender's policy to prepare and record a "Request for Notice of Default" for each senior lien in front of Lender's loan. This document requires the senior lien holder listed in the notice to notify the Lender of initiation of a foreclosure action. The Lender can monitor the foreclosure process and go through the necessary analysis to determine if the Program Loan can be made whole or preserved.

4. Required Noticing and Restrictions on Any Changes of Title or Occupancy:

In all cases where there is a change in title or occupancy or use of business or personal property used as security for the loan, the borrower must notify the Lender in writing of any change. Lender and borrower will work together to ensure the property is kept in compliance with the original Program Loan terms and conditions. These types of changes are typical when borrowers do estate planning (adding a relative to title) or if a borrower dies and property is transferred to heirs or when the subject property is sold or transferred.

5. Requests for Subordinations

When a borrower wishes to refinance business or personal property used as security for the loan, the borrower must make a subordination request to the Lender. The Lender may subordinate the program, loan to hold its current position only when there is no "cash out" as part of the refinance. No cash out means that there are no additional charges on the transaction above loan and escrow closing fees. There can be no third party debt payoffs or additional encumbrance on the property above traditional refinance transaction costs. Furthermore, the refinance should lower the payments with a lower interest rate, and the total indebtedness on the property should not exceed the current market value.

Upon receiving and reviewing the proper documentation from the refinance lender, the request will be reviewed and considered for approval by the Program administrator if all Program requirements are met and the terms of the loan remain unchanged. Upon approval, the escrow company will provide the proper subordination document for execution by the Lender and record the document.

6. Process for Loan Foreclosure

Upon any condition of loan default as described in Section 4 of the Loan Agreement, the Lender make a written demand to the borrower notifying them of the default situation. If the default situation continues then the Lender may start a formal process of foreclosure.

When a senior lien holder starts a foreclosure process and the Lender is notified via a Request for Notice of Default, the Lender, who is the junior lien holder, may in its sole and absolute discretion cancel the foreclosure proceedings by "reinstating" the senior lien holder. The reinstatement amount or payoff amount must be obtained by contacting the

senior lien holder. This amount must include all delinquent payments, late charges and fees to date. Lender must confer with borrower to determine if, upon paying the senior lien holder current, the borrower can provide future payments on both the senior loan and the Lender's loan. If it is determined that the borrower will have the ability to make future payments, then the Lender may in its sole and absolute discretion cure the foreclosure and add the reinstatement amount to the balance of the loan with a Notice of Additional Advance on the existing note.

If the Lender determines, based on information on the reinstatement amount and status of borrower, that bringing the loan current will not preserve the loan, then the Program Administrator must determine if it is cost effective to protect the Lender's position by paying off the senior lien holder in total and restructure the debt such that the loan made affordable to the borrower. If the Lender does not have sufficient funds to pay the senior lien holder in full, then the Lender may choose to cure the senior lien holder and foreclose on the property. As long as there is sufficient value in the property, the Lender can afford to pay for the foreclosure process and pay off the senior lien holder and retain some or all of their investment.

If the Lender decides to reinstate, the senior lien holder may accept the amount to reinstate the loan up until five (5) days prior to the set "foreclosure sale date." This "foreclosure sale date" usually occurs about four (4) to six (6) months from the date of recording of the "Notice of Default." If the Lender fails to reinstate the senior lien holder before five (5) days prior to the foreclosure sale date, the senior lien holder would then require a full pay off of the balance, plus costs, to cancel foreclosure. If the Lender determines the reinstatement and maintenance of the property not to be cost effective and allows the senior lien holder to complete foreclosure, the Lender's lien could be eliminated due to insufficient sales proceeds.

Lender as Senior Lien holder

When the Lender is first position as a senior lien holder, active collection efforts will begin on any loan that is 31 or more days in arrears. If possible, Lender will attempt to assist the borrower in developing a plan to bring and keep the loan current. These attempts will be conveyed in an increasingly urgent manner until loan payments have reached 90 days in arrears, at which time the Lender may consider foreclosure. Lender's staff will consider the following factors before initiating foreclosure:

- 1) Can the loan be cured and can the rates and terms be adjusted to allow for affordable payments such that foreclosure is not necessary?
- 2) Can the borrower refinance with a private lender and pay off the Lender?
- 3) Can the borrower sell the property and pay off the Lender?
- 4) Does the balance warrant foreclosure? (Compare loan balance to the expense to foreclose.)

5) Will the sales price of property "as is" cover the principal balance owing, necessary advances, (maintain fire insurance, maintain or bring current delinquent property taxes, monthly landscape maintenance, periodic inspections of property to prevent vandalism, etc.) foreclosure, and marketing costs?

If the loan balance and all of the above factors have been considered, the Lender may opt to initiate foreclosure. The borrower must receive from the Lender, by certified mail, a 30-day notification of foreclosure initiation. This notification must include the exact amount of funds to be remitted to the Lender to prevent foreclosure (such as, funds to bring a delinquent Program Loan current or pay off a deferred payment loan).

At the end of 30 days, the Lender will contact a reputable foreclosure service or local title company to prepare and record foreclosure documents and make all necessary notifications to the borrower and junior lien holders. The service will advise the Lender of all required documentation to initiate foreclosure (Note and Deed of Trust usually) and funds required from the borrower to cancel foreclosure proceedings. The service will keep the Lender informed of the progress of the foreclosure proceedings.

When the process is completed, and the property has "reverted to the beneficiary" at the foreclosure sale, the Lender could sell the property, or contract with a local real estate broker to list and sell the property, and use those funds for other CDBG-eligible uses. .

7. Loan Monitoring

A complete loan file shall be maintained for each applicant and each approved loan. The file shall contain all legal documents, including loan documents, collateral documents, and insurance. The file shall also contain the day-to day administrative records of the loan, financial statements and loan report, and all documentation required for CDBG compliance. The Program Administrator shall maintain records of all borrower reporting and loan monitoring requirements.

File: At a minimum the file shall include:

- a. Note
- b. Loan Agreement, including Non-Financial Employment Plan
- c. Mortgage
- d. General Security Agreement
- e. Personal Guaranty
- f. Corporate Guaranty
- g. Subordination Agreement
- h. Hazard Insurance Policy and Assignment, and renewals
- i. Documentation of National Objective and Public Benefit (TIG, job creation)
- j. Project Sources and Uses
- k. NEPA and other Federal Overlay requirements
- l. Loan Underwriting
- m. Application form,
- n. Business financial statements and/or tax returns,

- o. Personal financial statements and/or tax returns
- p. Credit report,
- q. Resume of principals,
- r. Release of information form,
- s. Collateral review,
- t. Loan Committee Report,
- u. Disbursements (copies of all requests and actual disbursements),
- v. Current financial statements as they are collected

8. Borrower Reporting

The borrower shall provide the Administrator with the following information:

- a. Quarterly and annual profit and loss statements within 60 days of the close of the quarter;
- b. Annual balance sheet within 60 days of the close of calendar or fiscal year;
- c. Summary of any substantial changes in the business operation, at least quarterly;
- d. Annual proof of fire and liability insurance;
- e. Annual proof of all business taxes paid on a current basis;
- f. Annual copies of personal and business tax returns;
- g. Current number of employees on a quarterly basis; and
- h. Other documents which may be relevant to the financial viability of the loan.

The Program Administrator will monitor and analyze the financial reports and discuss trends and changes in financial conditions with the borrower. If at any time during the term of a loan it is discovered that a business is willfully out of compliance with any of the conditions of the loan, the Administrator shall meet and make arrangements with the borrowers to come into compliance. If the borrower refuses to meet or arrangements cannot be mutually agreed upon which will make the loan in compliance, then the entire outstanding loan balances shall become due and payable within ninety (90) days of the discovery and written notification by the Administrator of noncompliance. Loans will also become due and payable if the business receiving the loan moves outside the county. Negotiating arrangements may be made on a case by case basis after review by the County's Chief Administrative Officer, or designee.

9. Quarterly Reports

A quarterly program income (PI) report for each loan and the loan portfolio as a whole shall be prepared within fifteen (15) days of the end of each quarter. The monthly receipts of the Lender on each loan will serve as the basis for this report. The Program Administrator shall be responsible for preparation of this report. The report will be used by the Administrator and County to monitor the loans and identify problems. The report shall contain a quarterly summary of the beginning loan balances, principal and interest recaptured during the quarter, disbursements made during the quarter. The quarterly report shall also include the last payment date and loan balance. Delinquent loans shall be identified and a narrative summary of actions to date to collect delinquent loans shall be included in the Loan Status Report:

10. Annual Reports.

Annually, or more often as needed or requested the Program Administrator shall provide a summary of the Borrower Reporting requirements outlined in this policy. This status report for each project includes the dates for receipt of financial statements, employment information, review dates, insurance renewal, and other key dates.

11. Employment Report

Quarterly, during the hiring/expansion period of each loan, the Program Administrator shall provide a report on each project detailing the jobs created/retained, and those hired that meet the targeted income group criteria. The hiring/expansion phase of the loan typically is the first 24 months, but will be specified in the Loan Agreement.