

**HURRICANE MATTHEW CDBG-DR SMALL
BUSINESS RECOVERY ASSISTANCE PROGRAM**

Standard Operating Procedures

**Rural Economic Development Division
North Carolina Department of Commerce**

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HURRICANE MATTHEW CDBG-DR SMALL BUSINESS RECOVERY ASSISTANCE PROGRAM

Standard Operating Procedures Version Control

Version Number	Date Revised	Description of Revisions
1.0		Original – Effective October 17, 2017
1.1	30 MAR 2018	Processes updated to match Information and Procedures Guide
1.2	10 JAN 2019	Administrative references updated to match Information and Procedures Guide
1.3	28 FEB 2019	Processes and references updated to match Information and Procedures Guide

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HURRICANE MATTHEW CDBG-DR SMALL BUSINESS RECOVERY ASSISTANCE PROGRAM Standard Operating Procedures (SOP)

1.0 Document Purpose and Structure

This document establishes the procedures by which the Rural Economic Development Division of the North Carolina Department of Commerce will implement the Hurricane Matthew CDBG-DR Small Business Recovery Assistance program. The majority of policies and operating procedures for the program define the requirements of and operating procedures for the subrecipients executing this program. These policies and operating procedures are published in the Small Business Recovery Assistance Program Information and Procedures Guide, the companion to this SOP. This SOP will identify program requirements and procedures. Descriptions and supporting detail will be incorporated into the SOP by reference to the Information and Procedures Guide when present in the Guide.

2.0 Program Overview

Program background and requirements are found in the Information and Procedures Guide within the topics listed:

- 1.0 The Program
- 2.0 National Objectives
- 3.0 HUD Performance Measures
- 4.0 Eligible Program Participants
- 5.0 Grantee Selection Criteria and Funding Priorities
- 6.0 Grant Parameters
- 7.0 Compliance Requirements
- 8.0 Award
- 9.0 SBRA Acceptance Certification Requirements
- 10.0 State CDBG Program Regulations
- 11.0 Drawdown Plan
- 12.0 Program Implementation
- 13.0 Program Closeout

3.0 Program Establishment

To establish the program, six steps must be carried out. They are:

1. Design the program.
2. Publish a Notification of Funds Available (**Example - Exhibit 1**)
3. Evaluate proposals
4. Select and notify awardees of acceptance certification and compliance requirements
5. Receive acceptances from awardees, including required certifications
6. Execute a grant agreement with each awardee (agreement created by Department of Commerce General Counsel) [**Example - Exhibit 2**]

Program design shall establish the parameters of the program, including

1. National Objectives
2. Performance measures
3. Eligible program participants and programs
4. Grantee selection criteria and funding priorities
5. Program timeframe

Current program design elements are found in Sections 2.0 – 6.0 of the Guide.

Program compliance requirements are provided in Section 7.0 of the Information and Procedures Guide (the Guide). Program acceptance certification requirements are provided in Section 9.0 of the Guide. Provided to awardees together, the Guide and the Grant Agreement should identify all certification and compliance requirements for grantees.

4.0 Program Implementation and Operation

Initiate program implementation once grant agreements are fully executed. Do so by conducting a kickoff meeting in which all aspects of operating the program are reviewed with each grantee, and acknowledgement of understanding is received from each. A kickoff meeting may be conducted individually with each grantee, or in a collective meeting with some or all grantees present.

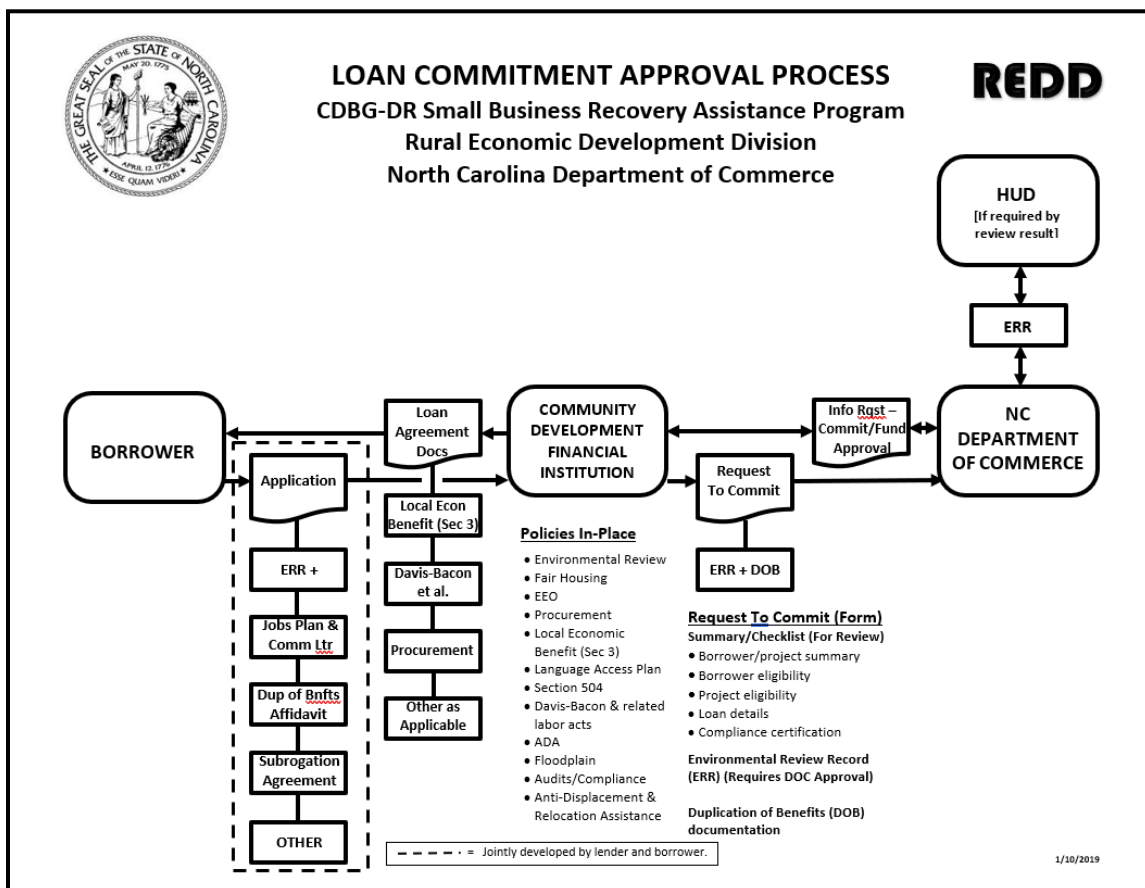
The individual components of program implementation are listed and defined in Section 12.0 of the Guide. It is the responsibility of the DOC program manager to positively confirm grantee awareness and understanding of these components, including the obligation to effectively implement. During the period of program operation, the program manager shall regularly review the performance of each awardee, providing technical assistance where warranted, and perform formal monitoring of and follow up with each grantee.

The components of program implementation as identified and described in Section 12.0 of the guide shall include:

1. Delegation of responsibilities to grantee
2. Confirmation of underwriting standard
3. Confirmation of award conditions with grantees
4. Establishment of the lending approval process
5. Establish of duplication of benefits (DOB) procedure
6. Completion and submission of environmental analyses
7. Establishment of the reimbursement-to-grantee process
8. Loan monitoring
9. Loan forgiveness
10. Program closeout

5.0 Loan Commitment Approval Process

An overview of the loan commitment approval process is found beginning in Section 12.4 of the Guide. Its process flow is reproduced below:



The lending approval process is the means by which a program lender receives approval from DOC to commit funds to a potential loan without any additional conditions remaining to be met before loan funds are disbursed. This is the process whereby the lender receives from DOC approval to unconditionally commit funds to a loan without further reviews or approvals. Additional detail is provided in Section 12.4 through 12.6 of the Guide. DOC approval of a specific loan commitment request requires the following:

1. Submission by the lender to DOC the completed:
 - a. Lender Request to Commit Funds form
 - b. Required DOB documentation
 - i. Statement of Total Need
 - ii. Duplication of Benefits Affidavit
 - iii. Duplication of Benefits Certification
 - iv. NC CDBG-DR Consent to Release Information
 - c. Appropriate NC CDBG Environmental Review Record with checklists
2. Review by DOC for approval, referral for additional/revised information, or rejection:
 - a. Initial screening of a Request for Lender Commitment of Funds document package
 - i. The lender shall submit each request of funds commitment directly to the SBRAP program manager.
 - ii. The program manager shall review the document package for completeness and acceptability of the information provided, including maps for the environmental review. If corrections or additions are required, the program manager shall coordinate with the lender to have actions required taken and the package resubmitted to the program manager.
 - iii. On receipt of a corrected document package, the program manager will confirm the corrections or additions and submit the request to the CDBG compliance specialist
 - b. Environmental Review Record (ERR) Approval Process
 - i. The requirements for preparation, review, and ERR approval are the same as for the ongoing State CDBG program. The NC State environmental assessment procedures, forms, and approval criteria should be requested from the NC CDBG group and applied.
 - ii. ERR review is conducted by the DOC compliance specialist, applying the same review procedure used for the State CDBG environmental review.
 - iii. If corrections or additional information in the ERR is needed, it should be referred to the lender through the SBRAP program manager, reversing the path when being returned after correction or update.
 - iv. If the ERR is rejected by the compliance specialist and review of the issues causing rejection by the program manager with the submitting lender determine that the issues cannot be overcome, the loan approval request

- documentation package will be returned to the lender without action, with notification of rejection and the reason.
- v. If the ERR is approved by the compliance specialist, that will be documented by the compliance specialist attaching the completed ERR review checklist on top of the ERR and noting approval by signing the checklist as appropriate.
 - vi. Once approved, the ERR and the rest of the request for approval document set is passed to the CDBG Program Director for final review and approval.
- c. Final review and approval to commit funds to a loan
- i. The CDBG Program Director shall make a final review of all documents in the request document set, resolving any questions with the compliance specialist and program manager.
 - ii. Upon determination that the request to commit funds has met all program requirements, the CDBG Program Director shall sign both the ERR checklist/approval page and the submitted Lender Request to Commit Funds form on the appropriate line at the bottom of the second page.
 - iii. Once the request is approved and all required signatures are placed on the document set, the set shall be returned to the program manager.
 - iv. Receiving the approved request, the program manager will notify the lender by email that its request has been approved. The lender will now be free to close and fund this loan as appropriate.

6.0 Underlying Processes

Several processes are fundamental to execution of program lending, as suggested in the flow diagram presented in Section 5.0. The duplication of benefits procedure, approval, monitoring, and loan forgiveness are among the most important.

Delegation of Responsibility to the Lender

To ensure the integrity of the lending process, delegation of all responsibility except approval of the ERR has been made to the lender. This is described in Section 12.6 of the Guide, and restated below:

“The grantee shall be responsible for primary compliance with and approval of regulatory, underwriting, and program requirements of the SBRA Program, except for approval of the environmental analysis prepared for each loan awarded. The environmental analysis, provided via an Environmental Review Report (ERR) with appropriate checklists, will be prepared and submitted by the grantee for approval by the North Carolina Department of Commerce or HUD, as appropriate. Approval of the ERR will be required before approval can be given to the grantee to commit funds to the related loan.”

Duplication of Benefits Procedure

The specific procedures to meet the requirements of the Stafford Act to prevent duplication of benefits are found in the Guide in Exhibit E-2:

- Duplication of Benefits (DOB) Procedure for Program Lenders (CDFI's)
- Department of Commerce Duplication of Benefits Procedure (DOB) [For execution by the DOC staff]

An overview of the process to be followed is found at Section 12.5 of the Guide. Summarized, process responsibilities are split between the lender and DOC. Following the two sets of procedures listed above, the lender is responsible for gathering the information required to perform the duplication of benefits analysis, and providing that information on the specified forms to DOC. At DOC, the program manager is responsible for determining if any assistance a borrower received is a duplicate benefit and adjusting the need appropriately. Once this is completed, using the "Determination of Maximum NC CDBG-DR SBRAP Available Loan Amount" form the program manager will determine the maximum available SBRAP loan amount for the loan in question, based on Net Need after adjustment for duplicative assistance and a loan cap, if one is in place. The referenced form officially documents the determination. Procedural details may be found in the two procedures referenced above.

Providing Information to Request Approval to Commit Funds to a Loan

The lender carries out the process of determining borrower eligibility, activity eligibility, underwriting, and eventually, closing the loan. The lender will create and retain the documentation supporting this process. Although these functions have been delegated to the lender, DOC requires that a summary of the loan be provided when requesting approval to fund. This summary is provided on the "Lender Request to Commit Funds" form. This form is found in the Guide as Exhibit E-1, along with a definition of what is to be entered in each field of the form by the lender. Information captured on this form includes:

1. Date/Loan ID [lender's]/Desired Commitment Date
2. National Objective being addressed
3. Lender identification and contact information
4. Borrower identification and type of business
5. Amount of loan requested
6. Qualifying physical or economic damage description
7. Recovery activities to be funded
8. Table of total need/recovery funds received/unmet need
9. Borrower jobs plan commitment (Retention/Addition) if present.
10. Certification of eligibility checkboxes
11. Certification of compliance checkboxes
12. Lender certification that information provided is accurate and true.

13. Department of Commerce approval of the request, confirming ERR approval.

Grantee Monitoring of Loans Before, During, After Closing and Funding

Section 12.8 of the Guide identifies the program's standard and required tasks for monitoring a loan through all stages.

Loan Forgiveness Execution

Loan forgiveness, when present in the program, shall be carried out by the lender, applying program procedures for doing so. This is specified in Section 12.9 of the Guide. Simply put, for a loan meeting the Urgent Need national objective, the lender shall update its underwriting of the loan once a year, and if it deems the borrower a going concern, one-third of the loan shall be forgiven. For a loan meeting the LMI-Jobs national objective through an enforceable jobs retained/jobs added commitment, each year the commitment is met, one-third of the loan shall be forgiven. The lender includes this mechanism as part of its loan agreement. The lender is responsible for making the forgiveness eligibility assessment, and for executing forgiveness by loan as appropriate. Implementing detail is provided in the Guide.

End of Document

This is the end of this document. Note that the Small Business Recovery Assistance Information and Procedures Guide, 28 FEB 19 edition is incorporated as part of this document.



EXHIBIT 1

North Carolina
Department of Commerce
Rural Economic Development Division

2017-2018
Hurricane Matthew Disaster Recovery
Small Business Economic Recovery
Proposal Package

MEMORANDUM FOR: All interested Small Business Development Organizations, Nonprofit Small Business Lending Intermediaries (including Community Development Financial Institutions or CDFIs), Local Governmental Entities, and formal partnerships organized among such entities.

FROM: The North Carolina Department of Commerce, Rural Economic Development Division

SUBJECT: Notice of Funding Availability (NOFA) for the Community Development Block Grant Disaster Recovery Small Business Recovery Assistance

Background

The North Carolina Department of Commerce (Commerce) is pleased to announce the availability of approximately \$10,000,000.00 in federal Community Development Block Grant (CDBG) Program Disaster Recovery funds for small businesses located in areas impacted by Hurricane Matthew, especially the four most impacted counties: Robeson, Cumberland, Edgecombe, and Wayne. The funding has been allocated to the State of North Carolina (State) by the U.S. Department of Housing and Urban Development (HUD) pursuant to the Housing and Community Development Act of 1974, as amended. The Department of Housing and Urban Development (HUD) appropriated \$198,553,000 in Community Development Block Grant Disaster Recovery (CDBG-DR) funding to the State of North Carolina, using the best available data to identify and calculate unmet needs for disaster relief, long-term recovery, restoration of infrastructure, and housing and economic revitalization. In addition, 80% of the total funds, or \$158,842,400, will go to the most impacted areas.

Small Business Recovery Needs and Program Purpose

According to the North Carolina Department of Emergency Management, Hurricane Matthew caused non-residential property damage in 42 North Carolina counties in October 2016. In total, 19,603 non-residential buildings were damaged, resulting in \$753 million worth of damage. Following the storm, 8,796 businesses requested applications for recovery loans from the US Small Business Administration (SBA). Of these, 1,054 applied for SBA Business Disaster Loans. As of February 26, 2017, SBA had approved only 348 (33% approval rate) of the applications for \$23.4 million of financing. In comparison to Hurricane Floyd in 1999, 6,203 businesses applied for SBA Business Disaster Loans, about 65% of which were approved for \$188 million in financing. In response, the Governors' Hurricane Recovery Office has requested that \$10,000,000.00 of CDBG-DR funds be allocated to support small businesses in hurricane-affected areas. The North Carolina Department of Commerce will administer these funds given the Department's extensive experience supporting small businesses with resources and technical assistance, and its relationships with key partners including SBA Small Business and Technology Development Centers and Community Development Financial Institutions.

The Small Business Recovery Assistance will offer grants to lending entities to provide a 50/50 grant and credit products to small businesses in flood-affected areas, helping to improve the availability and accessibility of commercial credit in hurricane affected areas and economically impacted communities. Grants will be made to grantee organizations to fund very low interest revolving loan programs and grants that will serve as ongoing sources of funding to further address unmet small businesses lending needs in flood-affected areas.

Eligible Applicants and Eligible Programs

All interested Small Business Development Organizations, Nonprofit Small Business Lending Intermediaries (including Community Development Financial Institutions or CDFIs), Local Governmental Entities, and formal partnerships organized among such entities.

Eligible programs include small business lending programs that expand access to small business credit within flood-affected areas, especially the most impacted areas: Robeson, Cumberland, Edgecombe, and Wayne counties.

Eligible Activities

All small business program activities must adhere to the applicable criteria as set forth by the NC Business Recovery Program and CDBG National Objectives. All program activities must meet an applicable CDBG National Objective. All the activities funded through the Program are required to meet either Low and Moderate Income (LMI) or Urgent Need National Objectives. Preliminary Letters of Interest will first be evaluated to determine eligibility under the LMI National Objective requirements in accordance with HUD standards. If the applicant does not meet the definition of meeting the LMI National Objective, eligibility for assistance is determined through meeting Urgent Need National Objective. Grantees under the LMI and Urgent Needs National Objectives must be able to document how funds responded to the disaster-related impact. The State oversees eligibility determinations and makes the final decisions on eligibility in instances where existing policies are not yet defined. Eligible activities include:

- Financing for payment of interior and exterior repairs and property improvements to owner and renter occupied commercial properties (including permits, engineering and architectural costs). These improvements may include ADA accessibility improvements.
- Financing for furniture, fixtures, and equipment (FF&E). Also, purchase and installation of equipment.
- Using grant or loan financing to pay for working capital or to pay for marketing costs, operating expenses, and inventory.
- Funds for relocation of any displaced persons due to CDBG project development are also eligible under this program.

Grantee Selection Criteria and Program Funding Priorities

NC Commerce will select applications through a competitive application process that will rank lender experience, small business need, deployment speed, and loss expectations among other items to determine up to three small business lending programs that can be deployed within flood-affected areas. Successful applicants will have standard, uniform underwriting procedures, a proven track record of small business lending, local experience in the flood-affected area, and experience managing federal grant programs.

In addition, funding priority will be given to programs that target at least five of nine of the following criteria / outcomes:

- Expand access to small business credit within flood-affected areas, especially the most impacted areas: Robeson, Cumberland, Edgecombe, and Wayne counties.
- Comply with all federal and state CDBG compliance and reporting guidelines for business lending.
- Be able to identify and quantify a specific geographic, sector, or structural capital need that would not be funded but for this infusion of grant capital into the applicant lender.
- Be able to identify and quantify a well-defined pipeline of existing small businesses that would not be funded but for this infusion of grant capital into the applicant lender.
- Low to moderate projected portfolio default risk, allowing funds to be deployed multiple times.
- Projected average commercial loan size is below \$100,000, maximum loan amounts of \$150,000.
- Deploy the majority of granted funds into small businesses by March 31, 2018.
- Deploy granted funds in a way that enables small businesses to restart, improve or expand an existing business in a the most impacted areas: Robeson, Cumberland, Edgecombe, and Wayne counties.
- The program will drive economic activity as part a community resiliency plan or a part of a community or economic development plan.

Grant Parameters

- Grants up to \$5 million to any single participating grantee/lender.
- Projects requesting maximum grant amounts must meet most of the program priorities and have significant economic impact in the hurricane-affected community.

- Any commitment to provide grant capital through this NOFA will expire 8 months from the date of the final award letter.
- Grant funds can be received upon small business loan commitment.
- Monthly reporting will include financial statements, portfolio performance and covenant compliance.
- Monthly reporting also will include a narrative update focused on use of funds and progress toward meeting the identified purpose.
- Nonprofit commercial lending intermediaries may use 5% of total grant award for grant administrative cost, and an additional 5% for service delivery costs upon redeployment of funds.

Application and Funding Distribution Timeline

- By August 1, 2017: The Department of Commerce announces the program through a Notice of Funding Availability (NOFA) on the Commerce website.
- By August 14, 2017: Interested parties should complete the Preliminary Letters of Interest and Supplemental Forms outlining proposed activities, estimated expenses, and expected outcomes, of the program. The proposal form is included below and found at <http://www.nccommerce.com/rd/state-cdbg>.
- By August 21, 2017: Commerce will review Preliminary Letters of Interest, conducting diligence calls and site-visits with lenders under consideration.
- By August 21, 2017: Commerce will invite full applications from top-rated Preliminary Proposals of Interest.
- By August 28, 2017: Commerce will announce successful awardees via the Commerce site
- By September 4, 2017: Commerce will issue contract documents to the grantee entities
- Upon receipt of signed contract documents from potential grantees, the Department of Commerce will then establish time for start-up visit.

As outlined above, grant proposals should be submitted no later than August 14, 2017 and addressed to:

Iris Payne, CDBP Program Director
 North Carolina Department of Commerce, Rural Economic Development Division
 Email: iris.payne@nccommerce.com
 301 N. Wilmington Street (For Overnight Delivery Services)
 4346 Mail Service Center (For US Postal Service)
 Raleigh, NC 27699

EXHIBIT 2

STATE OF NORTH CAROLINA
COMMUNITY DEVELOPMENT BLOCK GRANT
AGREEMENT
(SMALL BUSINESS RECOVERY ASSISTANCE PROGRAM)

CBDG-DR PROJECT NUMBER: **XX-X-XXXX**

GRANTOR: NC DEPARTMENT OF COMMERCE (“Commerce” or “CDBG-DR”), an agency of the State of North Carolina (“State”)

CONTRACT ADMINISTRATOR: **Rural Economic Development Division (“REDD”)**

North Carolina Department of Commerce
301 N. Wilmington Street
4346 Mail Service Center
Raleigh, NC 27699-4346
Phone: (919) 814-4600
Email: ipayne@nccommerce.com

GRANT SUBRECIPIENT: Town of Farmville, a North Carolina Local Government Unit [*county*], or a North Carolina Municipal Corporation [*town or city*] (“Subrecipient”)

CONTRACT EFFECTIVE DATE: **Date of Last Signature** (the “Effective Date”)

CONTRACT EXPIRATION DATE: **July 30, 2022** (the “Expiration Date”)

PARTIAL COMMITMENT DATE: **June 30, 2018**

LOAN COMMITMENT DATE: **January 1, 2019**

LOAN PAYMENT DATE: **June 30, 2019**

FINAL REIMBURSEMENT DATE: **July 30, 2022**

GRANT AMOUNT: as specified in the Award Letter (the “Grant”)

AWARD DATE: **September 6, 2017** (the “Award Date”)

THIS AGREEMENT (the “Agreement”), is made and entered into as of the Effective Date by and between Commerce and the Subrecipient, (collectively the “Parties”).

WITNESSETH:

WHEREAS, Subrecipient has submitted to Commerce an application requesting a grant of monies (hereinafter the “Project Application”) to engage in small business lending to help satisfy the unmet disaster recovery needs of small business in flood affected areas, as more particularly described on Exhibit C (the “Project”).

WHEREAS, the Subrecipient is a qualified subrecipient for Community Development Block Grant (CDBG) assistance under Title I of the Housing and Community Development Act of 1974, (P.L. 93-383), as amended.

WHEREAS, the Project shall be carried out for the purposes and in accordance to the schedule set out in the Notice of Intent to Fund letter, and pursuant to the budget and terms set forth in Exhibit A based on the Subrecipient’s application.

WHEREAS, the Parties desire to enter into this Agreement and intend to be bound by its terms.

NOW, THEREFORE, for and in consideration of the Grant, the mutual promises each to the other made, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually agree as follows:

Article I. GENERAL TERMS AND CONDITIONS OF AGREEMENT

Section 1.01 Grant Documents. The documents described below are hereinafter collectively referred to as the “Grant Documents.” In the case of conflict between any of these documents, each shall have priority over all others in the order listed below. Upon execution and delivery of this Agreement, it and the other Grant Documents and items required hereunder will constitute a valid and binding agreement between the Parties, enforceable in accordance with the terms thereof. The Agreement constitutes the entire agreement between the Parties, superseding all prior oral and written statements or agreements.

The Grant Documents consist of:

- a. This Agreement
- b. Exhibit A – Award Letter and Revised Term Sheet
- c. Exhibit B – Program Guidelines
- d. Exhibit C – Project Application
- e. Exhibit D – Project Schedule
- f. Exhibit E – Project Budget
- g. Exhibit F – Funding Approval Conditions

Upon execution and delivery of the Agreement, and once Commerce has encumbered the grant, and the Subrecipient has received its counterpart original of the Agreement, fully executed and with all dates inserted where indicated on the cover sheet of the Agreement, then the Agreement will constitute a valid and binding agreement between the Parties, enforceable with the terms thereof.

Section 1.02 Purpose. The purpose of the Grant is for the “XXXXX” project as described in Exhibit C (the “Project”). The Grant will meet the National Objectives of Urgent Needs and Low-Moderate Income Job creation and retention by facilitating loans by the Subrecipient to small businesses in flood affected areas (“the Loan Recipients”). If in its sole discretion, Commerce determines that the goals of the SBRA Program are met by proceeding under a single National Objective, Commerce may so modify the program requirements.

Section 1.03 Contract and Reimbursement Period. The Subrecipient shall commit a minimum of fifty percent (50%) of non-administrative Grant funds by the Partial Commitment Date and provide documentation to Commerce of the commitments. The Subrecipient shall commit one hundred percent (100%) of non-administrative Grant funds by the Loan Commitment Date and provide documentation to Commerce of the commitments. All requests for reimbursement of funds for project activities other than continuing administrative costs must be made by the Loan Payment Date. Commerce’s commitment to disburse Grant funds under this Agreement for non-administrative costs shall cease on the Loan Payment Date. Commerce’s commitment to disburse grant funds for remaining administrative costs shall cease on the Final Reimbursement Date.

It is the responsibility of the Subrecipient to ensure that the Project is completed by the Expiration Date and that all reimbursements to be drawn down have been submitted to Commerce by the Final Reimbursement Date. After the Expiration Date, any Grant monies remaining under this Agreement will no longer be available to the Subrecipient except to pay proper drawdowns for funds committed by the Expiration Date. After the Loan Payment Date, any Grant monies other than a pro rata portion of administrative funds will no longer be available to the Subrecipient. **The burden is on the Subrecipient to request any extensions under the Agreement if the Subrecipient anticipates that the Project funds will not be committed by the Expiration Date or Commitment Dates as applicable.** Any requests for extensions must be made in a writing addressed to Commerce, explaining why an extension is needed and proposing the requested new date. Commerce must receive this request at least 60 days before the affected date. Commerce, within its sole discretion, may or may not approve the extension, based on Project performance and other contributing factors. **The Commerce is not responsible for notifying the Subrecipient of any approaching deadlines.**

No funds may be obligated or expended in any project activity except the administration activity until the Subrecipient provides Commerce with documentation of registration in the Central Contractor Registration (CCR) system. The CCR system may be accessed online at www.sam.gov.

Section 1.04 Grant Withdrawal for Failure to Enter into Small Business Loan Commitments.

If the Subrecipient shall fail to meet its respective minimum commitments by either of the Partial Commitment Date or the Loan Commitment Date, Commerce may reduce the overall Grant by an amount in its discretion, and will inform the Subrecipient of any reduction in writing. This Grant Award shall be withdrawn if award conditions required for release of funds are not completed by the Loan Payment Date, unless Commerce in its sole discretion finds that the Subrecipient has good cause for failure. If Commerce finds good cause for Subrecipient’s

failure, Commerce must set a date by which Subrecipient must take action or forfeit the grant. If the Grant Award is reduced for any reason, any Administrative funds shall be reduced pro rata.

Section 1.05 Notice; Contract Administrators. All notices, requests or other communications permitted or required to be made by the Subrecipient under this Agreement or the other Grant Documents shall be given to the respective Contract Administrator. Notice shall be in writing, signed by the party giving such notice. Notice shall be deemed given three (3) business days following the date when deposited in the mail, postage prepaid, registered or certified mail, return receipt requested.

Article II. COVENANTS AND DUTIES

Section 2.01 Commerce's Duties. Subject to the appropriation, allocation, and availability to Commerce of funds for the Project, Commerce hereby agrees to pay the Grant funds to the Subrecipient in accordance with the payment procedures set forth herein. The obligations of Commerce to pay any amounts under this Agreement are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant become unavailable, the Subrecipient agrees that Commerce has the right to terminate this Agreement by giving written notice specifying the Termination Date of the Agreement, which Commerce shall determine in its sole discretion. Upon such termination, the State shall have no responsibility to make additional Grant payments. Further, upon such termination, the Subrecipient shall not expend any Grant funds without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.

Section 2.02 Subrecipient's Duties. The Subrecipient shall carry out the Project pursuant to the terms of this Contract and all applicable federal and State laws, executive orders, rules, notices, policies and regulations. Financial offerings funded under this Agreement shall be made consistent with the provisions of this Agreement. Commerce may, in its sole discretion, amend the conditions placed on the financial offerings that may be funded under this agreement. Any such change must be in writing. In addition to the requirements outlined in Exhibit A and Exhibit B, the Subrecipient shall ensure all contracts and subcontracts contain appropriate provisions to also meet applicable CDBG program requirements, including, but not limited to, the following:

- (a) Title I of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 et seq).
- (b) The CDBG program requirements, laws, rules, regulations and requirements, as may be amended, including those set forth in 24 C.F.R., Part 570 and 04 NCAC 19L.
- (c) Environmental Review Procedures for the CDBG Program and the CDBG regulations contained in 24 CFR Part 58 and as further outlined in Exhibit B.
- (d) Conflict of Interest provisions, including but not limited to those found at N.C. Gen. Stat. § 14-234, 04 NCAC 19L.0914, 24 C.F.R. § 85.36, 24 C.F.R. § 570.489 (g) and (h), and 24 C.F.R. § 570.611. Certain limited exceptions to the conflict of interest rules listed in 24 C.F.R. § 570.489 may be granted in writing by Department of Housing and Urban Development (“HUD”) and/or Commerce upon written request and the provision of information specified in 24 C.F.R. § 570.489(h)(ii)(4).

Section 2.03 Labor Standards. In addition to the requirements outlined in Exhibit B, Subrecipient shall follow all applicable laws, rules and regulations concerning the payment of wages, contract work hours, safety, health standards, and equal opportunity for CDBG-DR programs, including but not limited to the rules set forth in 04 NCAC 19L.1006, 24 C.F.R. § 570.603 and the following (as may be applicable to CDBG-DR projects):

- (a) **Davis-Bacon Act** (40 U.S.C.A. 276a). Among other provisions, this act requires that prevailing local wage levels be paid to laborers and mechanics employed on certain construction work assisted with CDBG funds.
- (b) **Contract Work Hours and Safety Standards Act** (40 U.S.C.A. 327 through 333). Under this act, among other provisions, laborers and mechanics employed by contractors and subcontractors on construction work assisted with CDBG funds must receive overtime compensation at a rate not less than one and one-half the basic rate of pay for all hours worked in excess of forty hours in any workweek. Violators shall be liable for the unpaid wages and in addition for liquidated damages computed in respect to each laborer or mechanic employed in violation of the act.
- (c) **Fair Labor Standards Act** (29 U.S.C. 201 et seq.), requiring among other things that covered employees be paid at least the minimum prescribed wage, and also that they be paid one and one-half times their basic wage rate for all hours worked in excess of the prescribed work-week.
- (d) **Federal anti-kickback laws** (18 U.S.C. 874 and 40 U.S.C. 276), which, among other things, outlaws and prescribes criminal penalties for "kickbacks" of wages in federally financed or assisted construction activities. Weekly statements of compliance and weekly payrolls must be provided by all contractors and subcontractors.

Section 2.04 Architectural Barriers. Per 04 NCAC 19L.1007, 24 C.F.R. §§ 570.487 and 570.614 and other applicable law, all applicable buildings or facilities designed, constructed or altered with CDBG Grant funds shall be made accessible and useable to the physically handicapped as may be required by applicable laws, rules, regulations or requirements. Additionally, Recipient must comply with the following (as may be applicable to CDBG projects):

- (a) **Architectural Barriers Act of 1968** (P .L. 90-480). This act requires Recipient to ensure that certain buildings constructed or altered with CDBG funds are readily accessible to the physically handicapped.
- (b) **Minimum Guidelines and Requirements for Accessible Design** 36 C.F.R. Part 1190.
- (c) **Americans with Disabilities Act** ["ADA"] and the ADA Accessibility Guidelines for Buildings and Facilities or the Uniform Federal Accessibility Standards.
- (d) **North Carolina Building Code, Volume I, Chapter II-X**. These provisions describe minimum standards Recipient must meet in constructing or altering building and facilities, to make them accessible to and useable by the physically handicapped.

Section 2.05 Floodplain. In addition to the requirements outlined in Exhibit B, if the project occurs in the following floodplain zones:

- (a) **If the project occurs in a Coastal High Hazard Area (V Zone) or a floodway**, federal assistance may not be used at this location if the project is a critical action pursuant to 24 CFR 55.1(c) and 55 Subpart B except as provided therein. For projects allowed under 24 CFR 55.1(c) and 55 Subpart B, the eight-step process shall be followed pursuant to 24 CFR 55.20.
- (b) **If the project occurs in a 100-year floodplain (A Zone)**, the 8-Step Process is required as provided for in 40 CFR 55.20 or as reduced to the **5-Step Process** pursuant to 40 CFR 55.12(a), unless an exception is applicable pursuant to 40 CFR 55.12(b).
- (c) **If the project occurs in a 500-year floodplain (B Zone or shaded X Zone)**, the 8-Step Process is required for critical actions as provided for in 40 CFR 55.20 or as reduced to the **5-Step Process** pursuant to 40 CFR 55.12(a), unless an exception is applicable pursuant to 40 CFR 55.12(b).

Section 2.06 Sub-Subrecipient Agreements. Subrecipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any contract made to effectuate this Agreement, including loan contracts. Subrecipient shall ensure compliance with all applicable laws, rules, regulations and requirements for all expenditures of Grant funds, including (without limitation) and Grant funds sub-granted or loaned by Subrecipient.

Section 2.07 Supplemental Conditions. Subrecipient shall include Grantee's Supplemental Conditions in any contract entered into under this Agreement.

Section 2.08 Contract and Subcontract Provisions. Subrecipient will include the provisions of Exhibit B, from this Agreement in every subsequent agreement, contract, subcontract, or purchase order, specifically or by reference, so that such provisions will be binding upon each of its own Loan Recipients, contractors, or subcontractors.

Section 2.09 "Section 3" Provisions. The Subrecipient will take appropriate action pursuant to the subsequent agreement upon finding that any Loan Recipient, contractor or subcontractor is in violation of regulations issued by the grantor agency. The Subrecipient will not contract with any entity where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR 135 and will not let any agreement be awarded unless the entity has first provided it with a preliminary statement of ability to comply with the requirements of these regulations. The Subrecipient further agrees to comply with these "Section 3"

requirements and to include the following language in all agreements executed under this Agreement:

“The work to be performed under this Agreement is a project assisted under a program providing direct Federal financial assistance from HUD and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701). Section 3 requires that to the greatest extent feasible opportunities for training and employment be given to low- and very low-income residents of the project area, and that contracts for work in connection with the project be awarded to business concerns that provide economic opportunities for low- and very low-income persons residing in the metropolitan area in which the project is located.”

Section 2.10 Lobbying Provisions. The Subrecipient hereby certifies the following and that it will require that the following language shall be included in the agreements for all subawards at all tiers (including loan contracts, subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all agreement parties shall certify and disclose accordingly:

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

Section 2.11 Reporting Requirements. The Subrecipient shall submit progress reports monthly in the format prescribed by Commerce and shall continue to make such reports until all closeout requirements under this Agreement are met. Report forms shall be provided by Commerce, subject to any future modifications as necessary to meet programmatic requirements, in the sole discretion of Commerce.

Section 2.12 Site Access. The Subrecipient and any Loan Recipient shall permit representatives of Commerce to visit any premises of the Subrecipient to examine Project activities of the Subrecipient or any Loan Recipient pursuant to the Grant, including but not limited to Project funded property improvements, fixtures, equipment and materials, loan documents, books and records in any way related to the Grant or the Project. The Subrecipient shall secure this right to Commerce in any agreement entered into pursuant to the Project.

Section 2.13 Recordkeeping Requirements. Subrecipient will maintain any and all records and comply with all responsibilities as required under CDBG-DR recordkeeping, including, but not limited to, 19 NCAC 19L.0911 (“Recordkeeping”), 24 C.F.R. 570.490 (“Recordkeeping Requirements”), 24 C.F.R. § 570.506 (“Records to be maintained”), and 24 C.F.R. § 85.42 (“Retention and Access Requirements for Records”) as may be modified by HUD as well as records to document compliance with CDBG-DR requirements. Subrecipient agrees to comply

with any additional record-keeping requirements now or hereinafter set forth by Commerce, HUD or any other federal or state entity.

Section 2.14 Project Audits. In addition to the provisions of Exhibit B Subrecipient agrees that the State, HUD, and the Comptroller General of the United States or any of their authorized representatives have the right to audit the books and records of the Subrecipient pertaining to this Agreement both during performance and for five (5) years after the completion or termination of this Agreement and all loan contracts or until all audit exceptions, if any, have been resolved, whichever is longer. The Subrecipient shall retain complete accounting records, including original invoices, payrolls, contracts, or other documents clearly showing the nature of all costs incurred under this Agreement, for that same period of time. The Subrecipient agrees to make available at all reasonable times to the auditing agency all underwriting documents, and accurate books and records of all expenditures for costs applicable to this Agreement which will facilitate the audit of the Subrecipient's records.

Subrecipients expending at least \$750,000 in one fiscal year are required to have an audit conducted in accordance with OMB Circular A-133, except when Recipient elects to have a program-specific audit conducted.

Section 2.15 Access to Records. The Subrecipient shall provide any duly authorized representative of Commerce, the State of North Carolina, The North Carolina State Auditor, the North Carolina Office of State Budget and Management, HUD, and the Comptroller General, the Inspector General and other authorized parties at all reasonable times access to and the right to inspect, copy, monitor, and examine all of the books, papers, records, and other documents relating to the grant for a period of five years following the completion of all closeout procedures. All original files shall be maintained at the Subrecipient's offices for access purposes.

Section 2.16 Release of Personal Financial and Identifying Information. To ensure and document compliance with CDBG income requirements as well as other matters, Subrecipient shall obtain and retain personal, income-related, financial, tax and/or related information from companies, individuals and families that are benefitting from Grant or Program funds. Additionally, Subrecipient is obligated to provide access to any and all information relating to the Program to Commerce, HUD or other appropriate federal or state monitoring entity, upon Commerce's request. This obligation includes, but is not limited to, the personal, financial and identifying information of individuals assisted by the Program. As such, Subrecipient shall obtain any releases or waivers from all individuals or entities necessary to ensure that this information can be properly and legally provided to appropriate federal and state entities, including Commerce and HUD, without issue or objection by the individual or entity.

Article III. REPRESENTATIONS AND WARRANTIES

Section 3.01 Subrecipient's Representations and Warranties. In order to induce Commerce to enter into this Agreement and to make the Grant as herein provided, the Subrecipient after reasonable inquiry makes the following representations, warranties and covenants, which shall remain in effect after the execution and delivery of this Agreement and any other documents required hereunder, any inspection or examinations at any time made by or on behalf of Commerce, and the completion of the Project by the Subrecipient:

- (a) **No Actions.** There are no actions, suits, or proceedings pending, or to the knowledge of the Subrecipient, threatened, against or affecting the Subrecipient before any court, arbitrator, or governmental or administrative body or agency which might affect the Subrecipient's ability to observe and perform its obligations under this Agreement.
- (b) **Validity of Grant Documents.** Upon execution and delivery of items required hereunder, this Agreement and the other grant documents and items required hereunder will be valid and binding agreements, enforceable in accordance with the terms thereof. If, at any time the Subrecipient becomes aware of any facts, information, statements, occurrences or events that render any of the representations or warranties contained herein materially untrue, misleading or incomplete, the Company shall immediately notify Commerce in writing of such facts, information, statements, occurrences or events.
- (c) **False or Misleading Information.** Recipient is advised that providing false, fictitious or misleading information with respect to CDBG funds may result in criminal, civil, or administrative prosecution under 18 U.S.C. § 1001, 18 U.S.C. § 1343, 31 U.S.C. § 3729, 31 U.S.C. § 3801, or another applicable statute. Recipient shall promptly refer to Commerce and HUD's Office of the Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving CDBG funds.
- (d) **Compliance with Laws.** Subrecipient shall comply with all federal, state and local laws and regulations that are applicable to performance of the Project. The Subrecipient agrees to ensure Project participants, including but not limited to Loan Recipients, shall comply in the same manner.

Section 3.02 Compliance by Others. The Subrecipient shall be responsible for compliance with the terms of this Agreement, and shall require and be responsible for the same compliance of its Sub-Subrecipients, including but not limited to its Loan Recipients, to which funds or obligations are transferred, delegated or assigned pursuant to this Agreement. Delegation by the Subrecipient of any duty or obligation hereunder does not relieve the Subrecipient of any duty or obligation created hereunder. Failure by such Sub-Subrecipient to comply with the terms of this Agreement shall be deemed failure by the Subrecipient to comply with the terms of this Agreement.

Section 3.03 Signature Warranty. Each individual signing below warrants that he or she is duly authorized to sign this Contract for the respective party, and to bind said party to the terms and conditions of this Agreement.

Article IV. REIMBURSEMENT, TERMINATION AND DEFAULT

Section 4.01 Reimbursement in the Discretion of Commerce. In the event that the Subrecipient, Loan Recipient, or any other recipient of funds under this Agreement fails to meet any of the requirements outlined in this Agreement, including, but not limited to failure to meet the Low-Moderate Income Job creation and retention National Objective as outlined in Exhibits A and B, Commerce may, in its sole discretion, require repayment from the Subrecipient of up to the full amount of the Grant.

Section 4.02 Termination by Mutual Consent. The Parties may terminate this Contract by mutual written consent with 60 days prior written notice to the Parties, or as otherwise provided by law.

Section 4.03 Events of Default. The happening of any of the following, after the expiration of any applicable cure period without the cure thereof, shall constitute an event of default ("Event(s) of Default") by the Subrecipient of its obligations to Commerce, and shall entitle Commerce to exercise all rights and remedies under this Agreement and as otherwise available at law or equity:

- (a) **Default in Performance.** The default by the Subrecipient or a subsequent Loan Recipient in the observance or performance of any of the terms, conditions or covenants of this Agreement.
- (b) **Misrepresentation.** If any representation or warranty made by the Subrecipient in connection with the Grant or any information, certificate, statement or report heretofore or hereafter made shall be untrue or misleading in any material respect at the time made.
- (c) **Abandonment of the Project.** If Subrecipient abandons or otherwise ceases to continue to make reasonable progress towards completion of the Project.

Section 4.04 Commerce's Additional Rights and Remedies. In addition to the other remedies set forth in this Agreement, if an Event of Default shall occur, Commerce shall have the following rights and remedies, all of which are exercisable at Commerce's sole discretion, and are cumulative, concurrent and independent rights:

- (a) **Project Termination.** If an Event of Default occurs, Commerce may, at its discretion suspend, reduce and/or terminate all obligations of Commerce hereunder.
- (b) **Additional Remedies.** If an Event of Default occurs, Commerce shall have the power and authority, consistent with its statutory authority: (a) to prevent any impairment of the Project by any acts which may be unlawful or in violation of this Agreement or any other item or document required hereunder; (b) to compel specific performance of any of Subrecipient's obligations under this Agreement; (c) to obtain return of all Grant Funds, including equipment if applicable; and (d) to seek damages from any appropriate person or entity. Commerce shall be under no obligation to complete the Project.

Section 4.05 Nonwaiver. No delay, forbearance, waiver, or omission of Commerce to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Commerce may be exercised from time to time and as often as may be deemed expedient by Commerce.

Article V. MISCELLANEOUS TERMS AND CONDITIONS

Section 5.01 Deobligation of Unused Funds. When project costs are less than the grant award amount, excess award funds shall be deobligated back to Commerce. Administration funds shall be deobligated in proportion to the amount of program funds being deobligated to Commerce.

Section 5.02 Complaints and Grievance procedures for Compliance Plans. Subrecipient must address complaints to the North Carolina Department of Commerce.

Section 5.03 Modification. This Agreement may be rescinded, modified or amended only by written agreement executed by all parties hereto.

Section 5.04 Benefit. This Agreement is made and entered into for the sole protection and benefit of Commerce, the State and the Subrecipient, and their respective successors and assigns, subject always to the provisions of the Agreement. Except as herein specifically provided otherwise, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Commerce, the State and the Subrecipient and their respective successors and assigns. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any other third person, other than as expressly provided in this Agreement. It is the express intention the Parties and their respective successors and assigns that any such person or entity, other than the State, Commerce, and the Subrecipient, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.

Section 5.05 Further Assurance. In connection with and after the disbursement of Grant funds under this Agreement, upon the reasonable request of Commerce, the Subrecipient shall execute, acknowledge and deliver or cause to be delivered all such further documents and assurances, and comply with any other requests as may be reasonably required by Commerce or otherwise appropriate to carry out and effectuate the Grant as contemplated by this Agreement.

Section 5.06 Independent Status of the Parties. The Parties are independent entities and neither this Agreement nor any provision of it or any of the Grant Documents shall be deemed to create a partnership or joint venture between the Parties. Further, neither the Agreement nor any of the Grant Documents shall in any way be interpreted or construed as making the Subrecipient, its agents or employees, agents or representatives of Commerce. The Subrecipient is and shall be an independent contractor in the performance of this Agreement and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. In no event shall Commerce be liable for debts or claims accruing or arising against the Subrecipient. The Subrecipient represents that it has, or shall secure at its own expense, all personnel required in the performance of this Contract. Such employees shall not be employees of, nor have any individual contractual relationship with, Commerce.

Section 5.07 Indemnity. The Subrecipient agrees, to the fullest extent permitted by law, to release, defend, protect, indemnify and hold harmless the State, Commerce, its employees and agents against claims, losses, liabilities, damages, and costs, including reasonable attorney fees, which result from or arise out of: (a) damages or injuries to persons or property caused by the negligent acts or omissions of Subrecipient, its employees, or agents in use or management of the Project or Property; (b) use or presence of any hazardous substance, waste or other regulated material in, under or on the Property; and (c) for any claims, whether brought in contract, tort, or otherwise, arising out of this Agreement. The obligations under this paragraph are independent of all other rights or obligations set forth herein. This indemnity shall survive the disbursement of the Grant funds, as well as any termination of this Agreement.

Section 5.08 Close-outs. The Subrecipient's obligation to the Grantee shall not end until all close-out requirements are completed. Close-out activities and requirements are subject to (1) 04 NCAC 19L.0913, (2) 2 CFR 200.343 and 2 CFR 200.344, as applicable; (3) 24 CFR 570.502 and 570.509, as applicable, 24 CFR Part 570 except where waivers and alternative requirements were granted to grantees in Notices published in the *Federal Register*, and (4) relevant State and HUD Notices. Activities during this close-out period shall include, but are not limited to: making final payments, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the Grantee), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including Program Income.

Section 5.09 Binding Effect, Contract Not Assignable. The terms hereof shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the parties

hereto; provided, however, that the Subrecipient may not assign this Agreement or any of its rights, interests, duties or obligations hereunder or any Grant proceeds or other moneys to be advanced hereunder in whole or in part unless expressly allowed under this Agreement, without the prior written consent of Commerce, which may be withheld for any reason and that any such assignment (whether voluntary or by operation of law) without said consent shall be void.

Section 5.10 Savings Clause. Invalidation of any one or more of the provisions of this Agreement, or portion thereof, shall in no way affect any of the other provisions hereof and portions thereof which shall remain in full force and effect.

Section 5.11 Additional Remedies. Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Agreement.

Section 5.12 Survival. Where any representations, warranties, covenants, indemnities or other provisions contained in this Agreement by its context or otherwise, evidences the intent of the parties that such provisions should survive the termination of this Agreement or any Closing, the provisions shall survive any termination or Closing.

Section 5.13 Incorporation of Exhibits. All exhibits attached to this Contract are fully incorporated as if set forth herein.

Section 5.14 Entire Contract. This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference.

Section 5.15 Headings. The headings of the various sections of this Agreement have been inserted for convenience only and shall not modify, define, limit or expand the express provisions of this Agreement.

Section 5.16 Time of the Essence. Time is of the essence in the performance of this Agreement.

IN WITNESS WHEREOF, the Subrecipient and Commerce have executed this Agreement in two originals as of the Effective Date. One original shall be retained by each Party. If there is any controversy among the documents, the document on file in the Commerce's office shall control.

SUBRECIPIENT

Signature: _____

Printed Name: _____

Title: _____

Date: _____

NORTH CAROLINA DEPARTMENT OF COMMERCE

Signature: _____ [SEAL]

Printed Name: George Sherrill

Title: Chief of Staff for the North Carolina Department of Commerce

Date: _____

EXHIBIT D

Project Schedule:

1. **Partial Commitment Date:** *June 30, 2018* Commit in writing and submit to Commerce certification by this date for a minimum of fifty percent (50%) of funding in Exhibit A minus any Administrative costs. Failure to commit loan funds by this date will result in withdrawal of any remaining grant funds, unless Commerce in its sole discretion has found the Subrecipient had good cause for such failure and Commerce has set a date by which the Subrecipient must take action. Any funds not obligated by the Loan Commitment Date will be deobligated and no longer available to the Subrecipient.
2. **Loan Commitment Date:** *January 1, 2019* Commit in writing and submit to Commerce certification by this date for all loan funds for the full amount of funding in Exhibit A minus any Administrative costs. Failure to commit loan funds by this date will result in withdrawal of any remaining grant funds, unless Commerce in its sole discretion has found the Subrecipient had good cause for such failure and Commerce has set a date by which the Subrecipient must take action. Any funds not obligated by the Loan Commitment Date will be deobligated and no longer available to the Subrecipient.
3. **Loan Payment Date:** *June 30, 2019.* The Subrecipient must have entered into Loan Contracts for obligated funds by this date and Commerce must receive the all payment requests for loan funds by this date. Commerce will not accept or process for payment any request for payment received after this date, other than ongoing Administrative costs. Commerce may in it's sole discretion extend this date upon written request of the Subrecipient. Commerce will not reimburse the Subrecipient for loan applications received after the Loan Commitment Date.
4. **Contract Expiration Date:** *July 30, 2022.* Complete the Project Scope of Work and submit final reports as required under this Agreement and any additional reports as required by Commerce by this date. Commerce will not reimburse the Subrecipient for Project funds dispersed after this date.
5. **Final Reimbursement Date:** *July 30, 2022.* Commerce must receive the Final Request for Payment for the Project by this date. Commerce will not accept or process for payment any request for payment received after this date. Commerce will not reimburse the Subrecipient for costs incurred after the Contract Expiration Date.

EXHIBIT E

PROJECT BUDGET, DISTRIBUTION OF FUNDS, AND REFUNDS

1. Project Budget

- a. To obtain payment, the Subrecipient must submit itemized documentation substantiating direct costs incurred in the implementing the project and that a minimum of one to one matching funds for loan dollars are provided by the Subrecipient. Each grant dollar used towards deferred, forgivable or low-interest loans must be leveraged one-to-one with new loan capital, either the Subrecipient's own or third-party lender capital. This requirement must be met per transaction, not portfolio wide.

2. Disbursement of Grant Funds.

- a. No funds may be obligated or expended in any project activity except for the administration activity in the project until the recipient has complied with the Environmental Review Procedures for the CDBG Program and the CDBG environmental regulations contained in 24 CFR Part 58.
- b. No funds may be obligated or expended in any project activity except the administration activity until the recipient has submitted either a copy of the contract awarded for administration of this grant or a statement signed by the authorized representative stating that the contract will be administered internally.
- c. Request for Release of Funds.
 - i. Any release of funds request, other than administrative costs, must be accompanied by the Loan Recipient's Small Business Loan Application and any supporting materials as requested by Commerce. Commerce may, in its sole discretion, request additional documentation before approving any release of funds. Commerce will approve each request individually and the Subrecipient must receive the written approval of Commerce before entering into any Loan Contract.
- d. Requests for Reimbursement. Disbursement of Grant funds for the Project shall be made by no less than monthly reimbursement of Subrecipient's expenditures on the Project as set forth in Exhibits A and B. To obtain reimbursement, the Subrecipient shall submit to Commerce the following documentation:
 - i. A completed and signed Payment Request form, accompanied by appropriate itemized documentation supporting all expenses claimed and that clearly identifies each expenditure of grant funds for which reimbursement is claimed along with verification of matching Subrecipient loan funds as necessary. The supporting documentation must be organized in a manner that clearly relates the expenses shown in the supporting documentation to the line items shown in the Payment Request.
 - ii. Any request for reimbursement that does not clearly identify each expenditure and relate each expenditure to the line items shown on the request will not be processed, and will be returned to the Subrecipient for correction and re-

submittal. **The Subrecipient shall identify any sales tax for which reimbursement has been or will be obtained from the State Department of Revenue, and such monies shall not be reimbursed.**

- e. Reimbursement Based on Progress. The Subrecipient agrees to proceed with diligence to accomplish the Project according to the schedule set out in the Agreement and shall show appropriate progress prior to each reimbursement. Reimbursement may be withheld or delayed if Subrecipient fails to make progress on the Project satisfactory to Commerce. Amounts withheld shall be reimbursed with subsequent reimbursements in the event that Subrecipient is able to demonstrate an ability to resume satisfactory progress toward completion of the Project.
 - f. No Excess Costs. The Commerce agrees to pay or reimburse the Subrecipient only for costs actually incurred by the Subrecipient that do not exceed the funds budgeted for the Project shown on Exhibits A and C.
3. Costs of Project Administration. The Commerce agrees to reimburse the Subrecipient for Administrative costs consisting only of costs of labor for administrative work conducted exclusively on this Project. In no circumstance shall Administrative costs exceed five percent (5%) of the total grant funds. The Subrecipient's requests for such reimbursement shall be made under the Project Administration line item of the reimbursement form and shall conform with the following:
- a. Costs allowable under the Project Administration line item shall be only costs of labor needed to comply with the general conditions of the Agreement (e.g., progress reports, the environmental review, compliance activities, payment requests, preparing the project final report, revisions to the Agreement). Allowable Project Administration labor costs may include any of the following: (a) pay to the Subrecipient's payroll employees, plus the Subrecipient's cost of paying benefits on such pay (usually employees' pay times an audited or auditable benefits multiplier); (b) pay to contract employees of the Subrecipient (e.g., temporary office support), payable at the Subrecipient's actual cost, without application of a benefits multiplier; and/or (c) cost of professional services labor contracted by the Subrecipient (e.g., engineering firm or consultant), payable at the Subrecipient's actual cost for that labor.
 - b. Costs of any other work described in the Project Scope of Work in Exhibit A are not allowable under the Project Administration line item.
 - c. No more than ten (10%) of the Project Administration line item shall be reimbursed prior to the start of execution of a loan contract with a Loan Recipient. Five percent (5%) of the Project Administration line item shall be withheld until all loans are closed out and all reports are submitted to Commerce.
4. Period for Incurring Reimbursable Expenditures. The Commerce will reimburse the Subrecipient only for allowable Project expenditures that are incurred by the Subrecipient or the Subrecipient's consultants, contractors, or vendors during the period between the Award Date and the Expiration Date of the Agreement. The Commerce will not reimburse the Subrecipient for Project expenditures that are not incurred during this period.
5. **Program Income, Refunds, Reversion of Unexpended Funds, and Reduction of the Grant based on Qualified Loans Made less than Budgeted Cost.**

- a.** Program Income. All Program Income shall be returned to Commerce upon accrual to be spent eligible activities only. Program income is generally defined as gross income received by the Subrecipient directly generated from CDBG funds, though a more specific definition can be found at 24 C.F.R. § 570.500.
- b.** Refunds. The Subrecipient shall repay to Commerce any compensation it has received that exceeds the payment to which it is entitled herein, including any interest earned on funds reimbursed pursuant to the Agreement. The Subrecipient shall repay to Commerce administration funds in proportion to the program funds being repaid.
- c.** Reversion of Unexpended Funds. Any unexpended Grant monies shall revert to the CDBG-DR upon termination of the Agreement. The Subrecipient shall repay to Commerce administration funds in proportion to the program funds being repaid.
- d.** Reduction of the Grant based on loans made less than projected loan amounts. Commerce may reduce the Grant amount if the Subrecipient expects actual Loan Recipient loans to be less than budgeted.
- e.** Reimbursement to Commerce for Improper Expenditures. In the sole discretion of Commerce, Subrecipient will reimburse Commerce for any amount of Grant assistance improperly expended, either deliberately or non-deliberately, by any person or entity. Additionally, a contract for administrative services should include a clause holding the administrator organization responsible for reimbursement to the Recipient for any improperly expended grant funds that had to be returned to Commerce.

END OF DOCUMENT

**Refer to NC CDBG-DR Small Business Recovery
Assistance Program Information and Procedures Guide
for additional procedures.**

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