

# **MONTROSE ECONOMIC DEVELOPMENT AUTHORITY REVOLVING LOAN PROGRAM –ADOPTED DECEMBER 2009**

## **1. PURPOSE**

The overall goal for the Montrose Economic Development Authority's (EDA's) Revolving Loan Program is to stimulate Montrose's economy by providing low interest loans to small and medium sized businesses. Revolving loan funds are to be used for business start-ups, expansion, and business retention where jobs are created or retained. This may be accomplished by one or more of the following means:

- a. Creation of new jobs or retention of existing jobs;
- b. Increase in the tax base;
- c. The project can demonstrate that investment of public dollars induces private funds;
- d. The project can demonstrate an excessive public infrastructure or improvement cost beyond the means of the affected community and private participants in the project;
- e. The project provides higher wage levels to the community or will add value to current workforce skills;
- f. Whether assistance is necessary to retain existing business; and
- g. Whether assistance is necessary to attract out-of-state business.

The grant or loan cannot be made based solely on a finding that the conditions in clause f.) or g.) exist. A finding must be made that a condition in clause a.), b.), c.), d.), or e.) also exists.

## **2. ADMINISTRATION**

The Montrose EDA and City Council are the policymaking and loan approval bodies for the Revolving Loan Program. The EDA is responsible for revising guidelines and recommending loan approval to the City Council. The City Council is responsible for authorizing loan. EDA staff and their assigns will be responsible for day to day administration, working with applicants on proposed projects, collecting data, performing pre-loan analysis, overseeing loan processing, preparing agreements and monitoring projects progress.

## **3. ELIGIBLE APPLICANTS**

Eligible applicants include most industrial businesses, commercial businesses and technological service businesses.

## **4. ELIGIBLE LOAN ACTIVITIES**

- a. Loan funds may be used for acquisition of land and/or buildings(s), rehabilitation of building(s), reconstruction, new construction, site improvements, utilities or infrastructure, and purchase of industrial equipment in connection with starting a new business or expanding an existing business.
- b. Land and building must be privately owned, taxable property and proposed for commercial and/or industrial activities.
- c. If building(s) are being purchased or rehabilitated with funds from the Revolving Loan Fund any/all building code violations must be remedied. The project must comply with the Montrose City Code including standards relating to land use.

Revolving loan fund assistance can be for no more than 20% of the cost of the project.

## **5. INELIGIBLE ACTIVITIES**

Loan assistance may not be used for the following:

- a. Operation or expansion of a casino.
- b. For a project related to a sports facility. A sports facility means a building that has a professional sports team as a principal tenant.
- c. General promotion of the community.
- d. Professional sports teams.
- e. Privately owned recreational facilities that serve a predominantly higher income clientele where the benefit to users clearly outweighs the benefit of jobs created or retained.
- f. Acquisition of land for which a specific use has not been identified (i.e. land banking)
- g. Assistance to a for-profit business that is, or its owner is, the subject of unresolved findings of noncompliance related to previous CDBG assistance.

## **6. APPROVAL CRITERIA**

The loan shall be based on the following criteria:

- a. A gap in project financing is demonstrated.
- b. The business must locate, remodel or expand within the corporate limits of the City of Montrose.
- c. The project will result in the creation or retention of existing jobs, with one job per \$15,000 borrowed.
- d. The project can demonstrate that the investment of public dollars induces private funds.
- e. Job/wage goals must be consistent with the City of Montrose Business Subsidy policy.
- f. The capacity of the borrower to repay shall be analyzed along with the applicant's character, capital, the proposed collateral and the economic conditions.

## **7. SECONDARY LOAN ACTIVITIES**

Loans may not be used for refinancing existing indebtedness or projects begun prior to loan application.

## **8. LOAN TERMS/CONDITIONS**

Financial assistance from the Revolving Loan Program is designed to make projects economically feasible. Loan terms and conditions are determined by the information submitted in the loan application. The following are the loan conditions:

- a. Loan Amount – Maximum loan amount is 80% of the available revolving loan fund balance but shall at no time exceed the gap demonstrated in project funding.
- b. Interest Rate – The interest rate shall be set at the time of issuance and dependent upon qualifications.

- c. Term – Machinery/equipment: up to seven years. Land/buildings: up to 15 years. Terms for other purposes will be flexible.
- d. Equity – Each applicant must supply a minimum of 5% of the total project cost as cash and/or fixed assets.
- e. Security – The business owner will be required to provide personal guarantees for the loan amount. Collateral for the loan shall be based on the following discounted values:
  - i. Commercial property – 75%
  - ii. Equipment – 65%
  - iii. Titled vehicles – 75%
- f. Project Initiation – All loan funds must be expended within six (6) months from the date of the loan approval. An applicant may request a six (6) month extension.
- g. Loan Fees – A processing fee of 1% of the total loan amount is payable at closing. Loans may be prepaid without penalty or additional charge.

The Revolving Loan Program is intended to be flexible and assistance is customized to meet the particular needs of individual projects. Exceptions to this loan policy may be made by a majority vote of the EDA. Exceptions to state and federal policies associated with this program shall not be granted.

#### **9. REQUIRED LOAN DOCUMENTATION**

The following must be submitted prior to approval of a loan:

- a. A signed, written application stating the purpose of the request, the source of repayment, the loan amount, the term and collateral.
- b. Recent financial statements including all other loans.
- c. A recent balance sheet.
- d. The last two years profit and loss statements.
- e. Cash flow projections for three years for new business start ups
- f. A credit bureau report less than six months old.
- g. Valuation of the collateral and or a sales contract.
- h. A copy of a lease agreement or purchase agreement illustrating the business location in Montrose.

#### **10. CONTRACTUAL DOCUMENTS**

The legal obligation to repay the loan is based on the EDA's contractual loan documents. This includes but is not limited to:

- a. The promissory note or formal evidence of debt.
- b. Mortgages or other formal evidence of security interest.
- c. Guarantees where applicable

## **11. APPLICATION PROCESS**

The City of Montrose shall process and administer each loan in a manner which is usual and customary with regard to other loans under similar circumstances. The basic steps for securing a loan are as follows:

- a. Applicant meets with Montrose EDA staff to discuss proposed project and loan program guidelines. If project meets program objectives and other eligibility items, then applicant completes the attached application which includes:
  - i. A statement describing nature of business and proposed plans;
  - ii. Project description – purpose of loan and expected benefits. Itemize and provide cost estimate for building improvements and/or equipment;
  - iii. Sources/Uses Performa for the project;
  - iv. Complied profit and loss statement for the past two (2) years (if applicable);
  - v. Personal financial statement(s) (for use in connection with applicant's equity requirement);
  - vi. Any other pertinent data
- b. A sub-committee comprised of the Montrose City Administrator, two members of the EDA and the EDA staff shall review the application to determine whether or not it is complete. The applicant may be requested to attend the Finance Subcommittee meeting. If the application is determined to be complete, the subcommittee shall formulate a recommendation to the full EDA concerning the fiscal impact (if any) on the City and the appropriateness of the amount of assistance requested. The applicant may be requested to attend the EDA meeting.
- c. The Montrose EDA will review the application and make a recommendation to the City Council. Upon approval, a Development Agreement and all other necessary documents in connection with the loan will be prepared by the Montrose EDA staff and shall be executed by the City. The City/EDA may work with a conventional lender to review the creditworthiness of the applicant and the loan application.
- d. Prior to issuance of a loan, a title certificate signed by an approved attorney or a title policy issued by a reputable title insurance company that satisfies the secondary market requirements must be obtained for property securing the loan.
- e. Applicants shall submit a copy of the invoice for the loan related improvement to the City. Loan payments shall be made directly to the contractor or vendor completing the work or supplying the product, following certification or inspection of the approved project by the City in accordance with the building code and other city regulations.

## **12. TIMETABLE**

Applications may be submitted at any time and are generally acted upon within 30 days.

**13. STATE AND FEDERAL REQUIREMENTS**

In addition to the requirements noted above, the following state and federal requirements apply to the Montrose loan funds.

**A. NATIONAL OBJECTIVE**

The project must meet at least one of two national objectives. These objectives are: Benefit to Low and Moderate Income (LMI) or Prevention or Elimination of Slums or Blight.

**Low and Moderate Income Benefit**

**Job Creation**

The LMI activity is one which creates or retains permanent jobs, at least 51% of which, on a full time equivalent (FTE) basis, are either "held by" LMI persons or considered to be "available to" LMI persons.

Jobs "held by" LMI persons: A job is considered to be "held by" a LMI person if the person is, at the time their employment commences, a member of a family whose income falls at or below the applicable Section 8 program income limits. The family's entire income must be counted. The annual salary or hourly wage of the job that the person fills is irrelevant.

Jobs "available to LMI persons are jobs that are not held (filled) by LMI persons if the following criteria applies to the position:

- a.) The job does not require special skills that can only be acquired with substantial (one year or more) training or work experience and education beyond high school is not a prerequisite to fill such jobs, unless the business agrees to hire unqualified persons and train them and
- b.) The company agrees to take actions to ensure that LMI persons receive "first consideration" for filling such jobs.

Principles involved in providing "first consideration":

- a.) The business must use a hiring practice that under usual circumstances would result in over 51 % of LMI persons interviewed for applicable jobs being hired,
- b.) The business must seriously consider a sufficient number of LMI job applicants to give reasonable opportunity to fill the position with such a person, and
- c.) The distance from residence and availability of transportation to the job site must be reasonable before a particular LMI person may be considered a serious applicant for the job.

Special Rules for retained jobs:

In order to consider jobs retained as a result of this assistance, there must be clear and objective evidence that permanent jobs will be lost without such assistance. For these purposes, "clear and objective" evidence that jobs will be lost would include:

- a.) Evidence that the business has issued a notice to affected employees or made a public announcement to that effect, or
- b.) Analysis of relevant financial records which clearly and convincingly shows that the business is likely to have to cut back employment in the near future without the planned intervention.

To meet the LMI standard, 51% or more of the retained jobs must be either:

- a.) Known to be held by LMI persons at the time this assistance is provided and/or

- b.) Jobs not known to be held by LMI persons, but which can be reasonable expected to “turn over” to LMI persons within 2 years. (This would involve the grant recipient or business taking actions to ensure that such a job, upon turnover, will be either taken by or made available to a LMI person in a manner similar to that pertaining to a newly created job, as discussed above.)

**Slums/Blight** An economic development project, such as commercial rehab, which aid in the prevention or elimination of slums or blight in a designated area may qualify under the Slum/Blight National Objective. To qualify, the economic development activity must take place in an area that:

- a.) Has been designated by the city as meeting a definition of a slum, blighted, deteriorated or deteriorating area under state or local law; and
- b.) Has a substantial number of deteriorated or deteriorating buildings, or the public improvements are in a general state of deterioration.

The assisted activity must address the conditions that contributed to the deterioration of the delineated area.

The city must maintain documentation on the boundaries of the area and the condition which qualified the area when it was designated under state or local law.

## **B. OTHER FEDERAL REQUIREMENTS**

The RLF policies and procedures must comply with the following Federal laws, executive orders and regulations:

### **1. FAIR HOUSING AND EQUAL ACCESS**

- a. Title VI of the Civil Rights Act of 1964, as Amended (42 U.S.C. 2000d et seq.) (24 CFR Part 1) No person may be excluded from participation in, denied the benefits of, or subjected to discrimination under any program or activity receiving Federal financial assistance on the basis of race, color or national origin.
- b. The Fair Housing Act (42 U.S.C. 3601-3620) (24 CFR Part 100-115) Prohibits discrimination in the sale or rental of housing, the financing of housing or the provision of brokerage services against any person on the basis of race, color, religion, sex, national origin, handicap or familial status. Furthermore, section 104 (b) (2) of the Act requires that each grantee certify to the secretary of HUD that it is affirmatively furthering fair housing. The certification specifically requires grantees to conduct a fair housing analysis, develop a fair housing plan, take appropriate actions to overcome the effects of any impediments identified and maintain records on the analysis, plan and actions in this regard.
- c. Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259) (24 CFR Part 107) Prohibits discrimination against individuals on the basis of race, color, religion, sex or national origin in the sale, rental, leasing or other disposition of residential property, or in the use or occupancy of housing assisted with Federal funds.
- d. Age Discrimination Act of 1975, As Amended (42 U.S.C. 6101) (24 CFR Part 146) Prohibits age discrimination in programs receiving Federal financial assistance.

e. Section 109 of Title I of the Housing and Community Development Act of 1974 Requires that no person shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded with CDBG funds on the basis of race, color, religion, national origin or sex.

f. Americans with Disabilities Act (ADA) (42 U.S.C. 12131; 47 U.S.C. 155, 201, 218, and 225) Provided comprehensive civil rights to individuals with disabilities in the areas of employment, public accommodations, state and local government services and telecommunications. The Act also states that discrimination includes the failure to design and construct facilities that are accessible to and usable by persons with disabilities and requires the removal of architectural and communication barriers that are structural in nature in existing facilities.

g. Section 504 of the Rehabilitation Act of 1973 Prohibits discrimination in Federally assisted programs on the basis of handicap. It imposes requirements to ensure that qualified individuals with handicaps have access to programs and activities that receive Federal funds.

h. Architectural Barriers Act of 1968 (942 U.S.C. 4151-4157) Requires certain Federally funded buildings and other facilities to be designed, constructed or altered in accordance with standards that ensure accessibility to, and use by, physically handicapped people.

## 2. EQUAL OPPORTUNITY

a. Equal Employment Opportunity, Executive Order 11246, as amended.. (41 CFR part 60) Prohibits discrimination against any employee or applicant for employment because of race, color, religion, sex or national origin. Provisions to effectuate this prohibition must be included in all construction contracts exceeding \$10,000.

b. Section 3 of the Housing and Urban Development Act of 1968 Requires that, to the greatest extent feasible, opportunities for training and employment arising from CDBG will be provided to low-income persons residing in the program service area. Also, to the greatest extent feasible, contracts for work (all types) to be performed in connection with CDBG will be awarded to business concerns that are located in or owned by persons residing in the program service area.

c. Minority/Women's Business Enterprise (Executive Orders 11625, 12432, 12138) (24 CFR 85.36(e)). City must prescribe procedures for a minority outreach program to ensure the inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in all contracts.

## 3. LABOR REQUIREMENTS

All contracts for construction and installation of equipment must comply with the following:

a. Davis-Bacon and Related Acts (40 USC 276 (A)-7) Ensures that mechanics and laborers employed in construction work under Federally assisted contracts are paid wages and fringe benefits equal to those that prevail in the locality where the work is performed.

b. Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) Provides that mechanics and laborers employed on Federally assisted construction jobs are paid time and one-half for work in excess of 40 hours per week, and provides for the payment of liquidated damages where violations occur. It also addresses safe and healthy working conditions.

c. Copeland (Anti-Kickback) Act (40 USC 276c) Governs the deductions from paychecks that are allowable. Makes it a criminal offense to induce anyone employed on a Federally assisted project to relinquish any compensation to which he/she is entitled, and requires all contractors to submit weekly payrolls and statements of compliance.

d. Fair Housing Standards Act of 1938, As Amended (29 USC 201, et.seq.) Establishes the basic minimum wage for all work and requires the payment of overtime at the rate of at least time and one-half. It also requires the payment of wages for the entire time that an employee is required or permitted to work, and establishes child labor standards.

In accordance with 24 CFR Part 5, CDBG funds may not be used to directly or indirectly employ, award contracts to or otherwise engage the services of any contractor or subrecipient during any period of debarment, suspension or placement of ineligibility status. Grantees should check all contractors, subcontractors, lower tier contractors and subrecipients against the Federal publication that lists debarred, suspended and ineligible contractors. See internet site at <http://www.arnet.gov/epl/>.

#### 4. PROCUREMENT

The procurement standards of 24 CFR 85.36 apply.

#### 5. CONFLICT-OF-INTEREST

For the procurement of property and services, the conflict-of-interest provisions at 24 CFR 85.36 and 24 CFR 84.42 apply. This requires the city to maintain written standards governing the performance of their employees engaged in awarding and administering contracts. At a minimum, these standards must:

- a. Require that no employee, officer, agent of the city or its sub-recipient shall participate in the selection, award or administration of a contract supported by CDBG if a conflict-of-interest, either real or apparent, would be involved;
- b. Require that grantee or sub-recipient employees, officers and agents not accept gratuities, favors or anything of monetary value from contractors potential contractors or parties to subagreements; and
- c. Stipulate provisions for penalties, sanctions or other disciplinary actions for violations of standards.

A conflict would arise when any of the following has a financial or other interest in a firm selected for award:

- a. An employee, agent or officer of the grantee or sub-recipient;
- b. Any member of an employee's, agent's or officer's immediate family;
- c. An employee's, agent's or officer's partner; or

- d. An organization that employs or is about to employ an employee, agent or officer of the grantee or sub-recipient.

In cases not covered by the above, the CDBG regulations at 24 CFR 570.611 governing conflict-of-interest apply. These provisions cover employees, agents, consultants, officers and elected or appointed officials of the city or sub-recipient. The regulations state that no person covered who exercises or has exercised any functions or responsibilities with respect to CDBG activities or who is in a position to participate in decisions or gain inside information:

- a. May obtain a financial interest or benefit from a CDBG activity;
- b. Have an interest in any contract, subcontract or agreement for themselves or for persons with business or family ties.

This requirement applies to covered persons during their tenure and for one year after leaving the city or sub-recipient entity.

Upon written request, exceptions to these provisions may be granted by HUD on a case-by-case basis only after the city has:

- a. Disclosed the full nature of the conflict and submitted proof that the disclosure has been made public, and
- b. Provided a legal opinion from the city stating that there would be no violation of state or local law if the exception were granted.

## 6. ENVIRONMENTAL REVIEW

The city is responsible for undertaking environmental reviews in accordance with the Environmental Manual. The ER must be completed before funds are committed.

## 7. FLOOD INSURANCE

Section 202 of the Flood Disaster Protection Act of 1973 (42 USC 4106) Requires that CDBG funds shall not be provided to an area that has been identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards unless:

- a. The community is participating in the National Flood Insurance Program, or it has been less than a year since the community was designated as having special flood hazards; and
- b. Flood insurance is obtained.

8. DISPLACEMENT, RELOCATION, ACQUISITION AND REPLACEMENT OF HOUSING Projects involving acquisition, rehabilitation or demolition may be subject to the provisions of the Uniform Relocation Act.

## **C. STATE REQUIREMENTS**

### 1. MINNESOTA INVESTMENT FUND (MS.116J.8731)

Wage Goals - Businesses receiving RLF assistance must pay each employee total compensation, including benefits not mandated by law, that on an annualized basis is equal to at least 110% of the federal poverty level for a family

of four, which as of 2009 was \$11.66 per hour. The federal poverty level changes annually.

Retail Businesses - Per the Minnesota Investment Fund statute, retail businesses are not eligible for assistance, however, federal Community Development Block Grant law does not prohibit assistance to retail operations. State rules governing both the federal and state funds state that where there is an inconsistency between federal and state law, federal law controls to the extent necessary to eliminate the conflict.

2. MUNICIPAL RIGHTS, POWERS, DUTIES (MS 471.87-471.88)

An officer of the city may not have a personal financial interest or personally benefit financially from the business to be assisted.

3. BUSINESS SUBSIDY LAW (MS 116J.993-116J.995)

For all projects, where the assistance exceeds \$25,000 from the RLF, the city must establish wage level and job creation goals which is to be met by the business receiving the assistance. If the business fails to meet the wage and job goals, it must repay the assistance.

4. FIRST SOURCE AGREEMENT (MS 268.66)

A business that receives grants or loans in an amount **greater than** \$200,000 must agree to list any vacant or new positions with the job services of the Department of Employment and Economic Development.

5. SURETY DEPOSITS REQUIRED FOR CONSTRUCTION CONTRACTS (MS 290.9705) When a contract exceeds \$100,000 and a non-Minnesota construction contractor has been hired to perform the work, the city must do one of the following:

- a. Deposit with the Department of Revenue, 8% of every payment made to the contractor; or
- b. Have in its possession a Waiver of Withholding from the Department of Revenue.

6. GOVERNMENT DATA PRACTICES (MS 13)

Information contained in the application for assistance will become a matter of public record with the exception of those items protected under the Minnesota Government Data Practices Act.