



CITY OF MUSKEGO REVOLVING LOAN FUND PROGRAM POLICIES AND PROCEDURES MANUAL

Adopted May 30, 2003

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Community Development Authority and the WI Dept. of Commerce
AMENDED by the Common Council as approved by the Community
Development Authority and the Wisconsin Economic Development
Corporation (WEDC)**

Prepared by the City of Muskego
Planning Department
P.O. Box 749
W182 S 8200 Racine Avenue
Muskego, Wisconsin 53150

FOREWORD

The Wisconsin Community Development Block Grant (CDBG) Program, administered by the Wisconsin Economic Development Corporation (WEDC) with funding provided by U.S. Department of Housing and Urban Development, provides local units of government with monies to stimulate economic development. CDBG funds are granted to local governments that, in turn, use the monies to provide loans to new and expanding businesses. Businesses, in return for use of the public funds, provide private investment towards the assisted activity and create job opportunities, principally for the benefit of low- and moderate-income persons.

Repaid CDBG loans are used by the community to capitalize a local revolving loan fund (RLF) program. With the RLF, additional loans are made to businesses that are expanding or locating in the community and willing to create jobs. When successfully administered, the RLF can provide a viable source of financing that fills the "gap" between the monies that are available through the private sector and the amount needed to complete a project. In making a RLF loan to a business, communities act like a "bank" and accept responsibilities comparable to a commercial lender.

This manual contains the RLF policies and procedures adopted by the City of Muskego Common Council to govern the use of CDBG funds that have been received by the City.

For assistance and guidance in accessing these funds, please contact the Director of Planning at (262) 679-4136.

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SECTION 1: GENERAL PROVISIONS

1.1 PURPOSE

The policies and procedures that are contained within this manual present the criteria that govern the economic development loans that are made through the City of Muskego Revolving Loan Fund (RLF) program.

1.2 OBJECTIVES

Economic development loans made through the RLF program are intended to meet the following objectives:

- 1.2.01 To encourage the creation and retention of permanent jobs that provide a wage appropriate to the skills and experience of the local labor force. A minimum of 51-percent (51%) of the jobs created and/or retained shall be made available to low-income and moderate-income persons.
- 1.2.02 To encourage the leveraging of new private investment in the City in the form of fixed asset and working capital investments.
- 1.2.03 To perpetuate a positive and proactive business climate that encourages the retention and expansion of existing businesses and helps to attract desirable new businesses.
- 1.2.04 To lend monies at interest rates and loan maturities that encourages business development and facilitates reinvestment in the City, while providing for the re-capitalization and growth of the RLF.

1.3 AMENDMENTS

The Community Development Authority of the City of Muskego (herein "CDA") may from time to time amend the policies and procedures contained within this RLF manual and such amendments are subject to prior written approval by the WEDC.

SECTION 2: ADMINISTRATION

2.1 LOAN REVIEW

- 2.1.01 The CDA will review all RLF loan requests and forward funding recommendations to the Common Council. Loan requests that receive CDA approval shall be forwarded to the Common Council, which shall make all final funding decisions relative to RLF loans.
- 2.1.02 The Common Council shall have the authority to make policy recommendations to the CDA for the administration of the RLF program.
- 2.1.03 The Director of Planning, or designee, (hereinafter "City Staff") shall be responsible for marketing the RLF program to local businesses, explaining the RLF program, and providing written information to prospective applicants.
- 2.1.04 The City Treasurer shall be responsible for collecting monthly payments from loan recipients.
- 2.1.05 The Southeastern Wisconsin Regional Planning Commission (hereinafter "SEWRPC") staff, or other approved designee, shall be responsible for the day-to-day administration of the RLF program, including assisting applicants in completing applications, processing requests for financing, and, where necessary and appropriate, counseling and guiding loan applicants to other technical and financial resources when the loan applicant has needs that cannot be met through the RLF program. Reviewing staff shall periodically review financial statements and loan amortization schedules for RLF loan recipients and review and approve documentation of business expenditures financed with RLF proceeds.
- 2.1.06 The City Finance Department shall maintain RLF accounting records that are segregated from other City accounts and report as required to the Wisconsin Department of Administration regarding the use of RLF funds. The City Finance Director is responsible for the maintenance of all City financial records relating to the RLF program.
- 2.1.07 The City Attorney, or designee, shall prepare all loan agreements, review all promissory notes and mortgage or lien instruments, record RLF security instruments, and counsel City and reviewing staff on default matters.

2.2 MEETINGS

The CDA shall meet as outlined in By-Laws and Rules of Procedure to review completed loan applications.

2.3 RECORDS

Written records shall be maintained in appropriate files located in a secure place with limited

access by authorized personnel. The City Attorney, or designee, shall be consulted with regard to compliance with State Open Records Laws and City Records Policies.

2.4 LOAN FEES

On an annual basis, up to fifteen-percent (15%) of the RLF program income will be made available for personnel costs and other RLF administrative expenses incurred in the maintenance of the RLF program. In addition, the following fees shall be assessed to all loan recipients:

- 2.4.01 Loan Application Fee: The City shall require a loan application fee of one-percent (0.5%) of the RLF loan amount, with a \$50 minimum and an \$500 maximum. All loan application fees shall be identified as program income and deposited in the RLF account prior to being used to finance administrative costs associated with the program.

- 2.4.02 Loan Origination Fees: The City shall require a loan origination fee of \$150 or 0.5% of the RLF loan amount, whichever is greater. In addition, the City shall require the applicant to pay 50 percent of the legal fees and costs incurred by the City for the RLF loan closing. The fees may be added to the principal amount of the loan and paid with RLF funds. All loan origination fees, including attorney's fees, shall be identified as program income and deposited in the RLF account. These funds will then be used to pay for administrative costs associated with the RLF program.

SECTION 3: ELIGIBILITY CONSIDERATIONS

3.1 ELIGIBLE AREA

The area served by the RLF program shall be within the corporate limits of the City of Muskego.

3.2 ELIGIBLE APPLICANTS

3.2.01 Applications may be submitted by the authorized representatives of any business wishing to establish a new operation or expand an existing operation in the City.

3.2.02 Applicants shall not be disqualified based on age, race, religion, color, handicap, sex, physical condition, development disability as defined in s.51.01(5), sexual orientation, or national origin.

3.2.03 No member of the governing body, loan review board, or any other official, employee, or agent of the Community who exercises decision-making functions or responsibilities in connection with the implementation of this program is eligible for financial assistance under this program.

3.2.04 No program loans will be made which are in conflict with Section 946.13 of the Wisconsin Statutes (Private Interest in Public Contract Prohibited).

3.3 INELIGIBLE APPLICANTS

3.3.01 No member of the CDA, the Common Council, or any other official, employee, or agent of the City who exercises decision-making functions or responsibilities in connection with the implementation of the RLF program is eligible for financial assistance under this program. In addition, no RLF loans shall be made which are in conflict with Section 946.13 of the Wisconsin Statutes (Private Interest in Public Contract Prohibited).

3.3.02 RLF loans shall not be available for the following businesses:

3.3.02.1 Speculative investment companies;

3.3.02.2 Real estate investment companies;

3.3.02.3 Lending institutions;

3.3.02.4 Gambling operations;

3.3.02.5 Non-public recreation facilities; or

3.3.02.6 Businesses not serving the interests of the City.

3.4 ELIGIBLE ACTIVITIES

RLF loans shall be provided to eligible applicants for the following activities:

- 3.4.01 The acquisition of land and buildings;
- 3.4.02 The acquisition of furniture, fixtures, and equipment;
- 3.4.03 Site preparation; the construction and reconstruction of buildings; the rehabilitation of buildings, including leasehold improvements and façade renovation for commercial and industrial buildings; and the installation of fixed equipment;
- 3.4.04 Clearance, demolition, and the removal of structures;
- 3.4.05 Working capital (inventory and direct labor costs only); and
- 3.4.06 Buyouts by purchase of assets or stock.
- 3.4.07 The payment of assessments for sewer, water, street, and other public utilities if the provision of the facilities will directly create or retain jobs.

3.5 INELIGIBLE ACTIVITIES

RLF loans shall not be available for the following activities:

- 3.5.01 Refinancing or consolidating existing debt;
- 3.5.02 Reimbursement for expenditures prior to loan approval;
- 3.5.03 Specialized equipment that is not essential to the business operation;
- 3.5.04 Residential building construction and reconstruction (unless such reconstruction is intended to convert the building to a business use);
- 3.5.05 Routine maintenance;
- 3.5.06 Professional services such as feasibility and marketing studies, accounting, management services, and other similar services; or
- 3.5.07 Other activities that the CDA may identify as inappropriate for the RLF program.

3.6 MINIMUM REQUIREMENTS

To be eligible for funding, a proposed project shall meet all of the following minimum requirements:

- 3.6.01 Private Funds Leveraged. One dollar of private sector investment shall be provided for each dollar of RLF investment (50%). Private sector investment is defined as financing from a private lending institution, public sector business loan programs other than the CDBG program, or new equity that is injected into

the business as a part of the expansion project.

3.6.02 Cost Per Job. A minimum of one Full Time Equivalent (FTE) job shall be created and/or retained for each \$20,000 of RLF funds requested.

3.6.03 Financial Feasibility and Business Viability. The applicant shall demonstrate that the proposed project is viable and that the business has the economic ability to repay the funds.

3.6.04 Low- and Moderate-Income (LMI) Benefit.

Each project must demonstrate that it meets the CDBG-ED national objective of benefiting low to moderate income persons as defined by CDBG regulations.

The project shall create jobs, at least 51% of the jobs will be held by or Made Available to LMI Persons.

“LMI Persons” means persons with household income less than eighty (80) percent of the median household income by family size in the County where the Project is located.

“Made Available to LMI Persons” means the Borrower will document that at least 51% LMI Persons were hired or Received First Consideration by interviewing at least 51% LMI Persons for created positions that do not require special skills or education beyond high school.

“Received First Consideration” means the Borrower must document and use a hiring practice that results in at least 51% LMI Persons interviewed for created positions and demonstrate that under usual circumstances this hiring practice will result in at least 51% LMI persons being hired. Part of the Borrower’s hiring practice must include the posting of available positions with the local Job Service Office or Workforce Development Boards.

The following documentation evidencing compliance must be collected:

A listing of all job titles which were planned to be held by or made available to low to moderate income persons, a commitment to hire or make at least 51% of jobs available to low to moderate income persons, a written plan for how such persons were given first consideration for jobs including what hiring process was used, a list of the low to moderate income persons interviewed for particular positions, including the size and annual income of the person’s family prior to interviewing for the position.

3.6.05 Compliance with Applicable Laws. Applicants shall comply with all applicable local, State, and Federal laws and codes.

3.6.06 Project Completion. All projects shall be completed, all funds expended, and all jobs created and/or retained within 24 months from the date of the RLF loan approval. All jobs shall be maintained for a minimum of 12 months.

3.6.07 Federal Anti-Piracy. The borrower must certify that it does not have immediate plans to relocate jobs in violation of CDBG Anti-Piracy regulations. The following language will be included in all agreements with the borrower.

“The Borrower certifies it is and will maintain compliance with CDBG Anti-Piracy regulations as stated in 24 CFR 570.482(h). Violation of this regulation will constitute an Event of Default.”

SECTION 4: TERMS AND CONDITIONS

4.1 TERMS AND CONDITIONS

Loan terms and conditions shall be structured on the basis of need and ability to repay. Minimum standards include the following:

4.1.01 Loan Amount. The amount of funds available for any single business enterprise shall range from a minimum of \$20,000 to a maximum of \$100,000. Requests for loan amounts less than \$20,000 or in excess of \$100,000 may be negotiated on a case-by-case basis. Loan amounts are subject to the availability of program funds.

4.1.02 Interest Rate. The interest rate on each loan shall be determined on a case-by-case basis by the CDA, subject to approval by the Common Council. Rate shall range from 50% of the prime rate as published in the Midwest Edition of the *Wall Street Journal* or 4 percent, whichever is less (Note: The range in interest rates is subject to change and is reviewed annually by the Muskego Community Development Authority). The interest rate shall be fixed for the term of the RLF loan.

4.1.03 Loan Term. Standard terms for RLF loans shall be as follows:

4.1.03.1 Machinery, equipment, and fixtures—2 to 10 years,

4.1.03.2 Buildings and land—5 to 10 years, and

4.1.03.3 Working capital—1 to 7 years.

Amortization periods that exceed the loan term may be provided where appropriate. The specific term and amortization period for an individual borrower shall be based on the useful life of the asset, as well as the terms offered by the private sector financial institution participating in the project. The Common Council, upon recommendation by the CDA, retains the right to adjust individual loan terms in order to facilitate a successful RLF project.

4.1.04 Repayment. Deferral of principal payments may be provided for a maximum period of one year from the date of the first disbursement of RLF funds. Interest-only payments during this period shall be required.

4.1.05 Prepayment. There shall be no prepayment penalties.

4.1.06 Collateral. Collateral requirements shall be determined on an individual basis by the Common Council and may include:

4.1.06.1 Mortgages on land and buildings;

4.1.06.2 Liens on equipment,

- 4.1.06.3 Accounts receivable, and inventory;
- 4.1.06.4 Guarantees from, or liens on the assets of, affiliated businesses; assignments of leases and rents; and
- 4.1.06.5 Assignments of key-person life insurance naming the City as a beneficiary.

This collateral may be subordinated to private sector financial institutions participating in the RLF project, if required.

Unlimited personal guarantees from the principals of the business who have twenty-percent (20%) ownership or more shall be required, except for publicly held companies. Limited personal guarantees for the owners of the business who have less than twenty-percent (20%) ownership may be required, where appropriate. In addition, junior mortgages on personal residences may be required on projects with limited collateral.

- 4.1.07 Insurance Requirements. Businesses receiving loans for fixed assets shall be required to obtain property-casualty insurance for the appraised value of the property being financed, businesses receiving construction loans shall be required to have builder's risk insurance for the amount of the debt financing attendant to the project, and businesses purchasing real estate shall be required to have title insurance for the amount of RLF real estate financing attendant to the project. The City shall be listed as an additional insured on all property-casualty and builder's risk insurance policies.
- 4.1.08 Equity Requirements. The RLF program may require an equity injection for each RLF loan, when appropriate. Consideration will be given for individuals that have made substantial equity commitments to the applicant business, as well as to individuals who do not have sufficient financial resources to contribute to the RLF project.

SECTION 5: APPLICATION PROCEDURES

5.1 INITIAL CONTACT

Prior to submitting an application, all RLF applicants must discuss the program with SEWRPC staff, who will provide assistance, as is reasonably necessary, in completing an RLF application. All financial information shall be kept in a secured place with limited access by authorized personnel only, subject to the State and City Open Records Laws.

5.2 TIMING

Applications may be submitted at any time during the calendar year.

5.3 PRIORITY

Applications shall be reviewed in the order received and based on readiness for the proposed project to proceed. In those instances where the number of requests for RLF funds exceeds available funding, RLF applications shall be prioritized based upon the date of receipt of all requested application materials, the number of jobs to be created and/or retained, and the amount of private sector leverage that is included in the project. When feasible, the amount of funds contributed to each project will be reduced in order to facilitate as many loan requests as possible.

5.4 LOAN APPLICATION

Applicants shall submit an application using forms available from SEWRPC staff that includes the following:

5.4.01 A completed RLF application (see Attachment A).

5.4.02 A written business plan that includes the following:

5.4.02.1 A brief history of the existing or proposed business, including when it started or is to start, type of operation, legal structure, management, markets, and products.

5.4.02.2 A brief statement of why applicants believe they can be successful in business and how this is a viable business versus other similar businesses.

5.4.02.3 A marketing plan, including a list of key customers and clients.

5.4.02.4 A personal resume for each principal associated with the business, including: number of years of experience in the business, educational background, and role in the proposed or existing business.

5.4.02.5 Financial statements for the past three years and a current interim

financial statement, including balance sheets and income statements that are compiled by an independent accountant in accordance with generally accepted accounting principles, including all footnote disclosures.

- 5.4.02.6 Aging of accounts receivable and accounts payable corresponding with latest available financial statements.
- 5.4.02.7 A description of how the business plans to use the requested funds.
- 5.4.02.8 Letters of commitment from all financial institutions or other sources of funds for the debt financing that are included in the project. These commitments shall be obtained prior to, or concurrently with, the approval of the RLF loan by the CDA.
- 5.4.02.9 Financial projections for the first three years of the project, including balance sheets and income statements that are prepared by an independent accountant in accordance with generally accepted accounting principles and include a discussion of all significant assumptions. In addition, start-up businesses shall provide quarterly financial projections for the first two years of the project.
- 5.4.02.10 Personal financial statements for the principals of the business.
- 5.4.02.11 Cost estimates for equipment purchases, land and building acquisition, and building construction and renovation.
- 5.4.02.12 A lease or pre-lease agreement for rental property or an offer to purchase for real estate that is included in the project.
- 5.4.02.13 Documentation that the project is in compliance with local and State building codes and zoning regulations and other applicable ordinances.
- 5.4.02.14 Other documentation that may be required to support the RLF projects.

5.5 REVIEW PROCESS

Specific steps in the review process include the following:

- 5.5.01 Project Application. Assigned reviewing staff shall review the application for completeness and verify that the proposed project meets the minimum requirements provided in Section 3.6. If the application is not complete, Assigned reviewing staff will inform the applicant of the deficiencies. A complete application, as determined by assigned reviewing staff, must be received no less than 15 days prior to a scheduled Community Development Authority meeting in order to be available for discussion for that CDA meeting.

After assigned reviewing staff collects and verifies all documentation provided

by the applicant(s), and upon assigned reviewing staff notification of receipt of the complete application, the CDA will promptly schedule a meeting (possibly including a closed session if needed) to evaluate the loan application.

The City of Muskego Revolving Loan Fund (RLF) program retains a finite amount of funding at any given point in time. Muskego's Community Development Authority (CDA) is responsible to assure these funds are used in such a manner as to optimize business stimulation / preservation goals per available RLF dollar. As a result, the CDA reserves the right to modify the criteria used to approve, amend, or deny loan applications based on the current interests of the City of Muskego.

- 5.5.02 Initial Review. The CDA shall meet to review an application within 45 days of the receipt of a completed application, as documented in Section 5.4. A recommendation for funding shall be forwarded to the Common Council for a final funding determination.
- 5.5.03 Notice of Award. Upon acceptance by the Common Council, assigned reviewing staff shall contact the business to review and explain the loan terms and to schedule a closing to execute the necessary loan documents.
- 5.5.04 Rejection of Award. If the application is not approved, assigned reviewing staff shall notify the applicant in writing of the reasons for the rejection and offer to meet with the applicant to explore ways to strengthen the loan request or to identify alternative funding sources.

5.6 CDA CONSIDERATIONS

Below is a list of some of the criteria the CDA and Common Council may consider in the review of a loan at a public meeting in open or closed session. Further eligibility requirements are found in Section 3 of this manual. No one particular item will unduly advance or disqualify your application. The CDA looks at the full picture when choosing its RLF recipients.

- 5.6.01 Amount of the loan request.
- 5.6.02 Number of jobs to be created compared to the loan amount requested.
- 5.6.03 Number of jobs being made available to low-income and moderate-income persons.
- 5.6.04 Eligibility of activities the loan is requested for. See Section 3.
- 5.6.05 Personal financial information (Note: Submission of personal financial information may require the CDA go into closed session to keep this information private and available only to the City and assigned reviewing staff. When reviewing any RLF loan application, the potential for going into closed session will be noted on that evening's CDA agenda so as not to postpone your application process. Providing for the possibility of a closed session on

the agenda does not guarantee a closed session will be necessary.).

- 5.6.06 Application completeness.
- 5.6.07 If sufficient time was allowed for the Authority or Council to review the application.
- 5.6.08 Necessity of requested loan.
- 5.6.09 Adequate loan securitization by pursuable collateral.

5.7 MUSKEGO COMMON COUNCIL REVIEW

The CDA will forward its recommendation(s) regarding each RLF loan application to the Muskego Common Council for further review. Unless specifically requested, only the CDA recommendation, not the full application file, will be forwarded. The Common Council has the final authority to approve or deny all RLF applications, and will communicate its decision directly to assigned reviewing staff.

If the Common Council issues loan approval, assigned reviewing staff will follow all applicable steps through loan closing to assure the traditional banking loans and the RLF close as approved.

SECTION 6: DISTRIBUTION OF FUNDS

6.1 LOAN PROCEDURES

The following documentation shall be in place prior to releasing funds, or provided at the appropriate time during the term of the loan.

- 6.1.01 Loan Approval. Upon a receipt of a positive recommendation from the CDA, the Common Council shall review and approve a complete application, as documented in Section 5.4, for each eligible applicant.
- 6.1.02 Loan Agreement. The City Attorney, or designee, shall prepare a loan agreement that shall be executed by the Mayor and City Clerk, as well as the authorized representatives of the business. A loan closing must take place within 120 days from approval of a loan by the Common Council or re-approval by the CDA and Council is required.
- 6.1.03 Promissory Note. A promissory note shall be prepared by the City Attorney, or designee, and signed by the authorized representatives of the business at the time of loan closing. The note shall be dated, reference the agreement between the City and the business, and specify the amount and terms of the loan funds to be delivered.
- 6.1.04 Security. All documents that are provided as security for RLF loans shall be prepared by the City Attorney, or designee, and executed at the time of the loan closing. The City Attorney, or designee, shall record all security instruments, as needed, and place copies in the project file, as applicable, to include:
 - 6.1.04.1 Mortgages,
 - 6.1.04.2 Security agreements,
 - 6.1.04.3 UCC searches and filings,
 - 6.1.04.4 Title insurance commitments and policies,
 - 6.1.04.5 Assignments of life insurance,
 - 6.1.04.6 Assignments of leases and rents,
 - 6.1.04.7 Property-casualty insurance binders,
 - 6.1.04.8 Corporate guarantees,
 - 6.1.04.9 Personal guarantees, and
 - 6.1.04.10 Other documentation as may be appropriate.

- 6.1.05 Amortization Schedule. An amortization schedule shall be prepared by assigned reviewing staff and forwarded to the loan recipient after all loan proceeds are fully disbursed.
- 6.1.06 Evidence of Program Expenditures. Documentation shall be provided by the applicant to evidence RLF program expenditures prior to the release of funds. Documentation includes invoices or receipts for materials and supplies, final bills of sale, letters from lenders, and canceled checks. All documentation shall be reviewed and approved by assigned reviewing staff. Assigned reviewing staff shall also verify the installation of all fixed equipment.
- 6.1.07 Other Documentation. Documentation shall be provided by the applicant to evidence that all required permits, licenses, and registrations have been obtained prior to the release of RLF funds. As appropriate or necessary, the borrower may also be asked to provide the following documentation:
 - 6.1.07.1 A certificate of good standing from the Wisconsin Department of Financial Institutions,
 - 6.1.07.2 Articles of incorporation and by-laws,
 - 6.1.07.3 A resolution or agreement to borrow funds,
 - 6.1.07.4 Current financial statements,
 - 6.1.07.5 Evidence of having secured other funds necessary for the project, and
 - 6.1.07.6 An environmental analysis for real estate loans, if justified.

SECTION 7: POST APPROVAL REQUIREMENTS

7.1 OBLIGATION OF LOAN RECIPIENT

In addition to the terms and conditions of the loan, all borrowers shall agree to comply with the following:

- 7.1.01 The creation and/or retention of the agreed upon number of jobs within 24 months of the date of the execution of the loan agreement with the City. All jobs created and/or retained shall be maintained for a minimum of 12 months.
- 7.1.02 Not to discriminate on the basis of age, race, religion, color, handicap, sex, physical condition, development disability as defined in s.51.01(5), sexual orientation, or national origin in any employment or construction activity related to the use of RLF monies.
- 7.1.03 To use RLF monies only to pay the cost of services and materials necessary to complete the RLF project or activity.
- 7.1.04 To permit inspections by persons authorized by the City of all projects and properties assisted with loan funds. Related project materials shall also be open to inspections that include, but may not be limited to, contracts, materials, equipment, payrolls, and conditions of employment. The borrower shall comply with requests for inspection.
- 7.1.05 To maintain records on the project that are necessary for the City to determine if the performance of the business complies with the terms of the loan agreement. Files shall be maintained as long as the loan is active or for at least three years after completion of the work for which the loan has been obtained, whichever is longer.
- 7.1.06 To submit the following documentation during the outstanding term of the RLF loan:
 - 7.1.06.1 Semi-annual financial statements verified by the borrower within 45 days of the end of each calendar quarter,
 - 7.1.06.2 Annual financial statements compiled by an independent accountant in accordance with generally accepted accounting principles within 120 days of the end of each fiscal year,
 - 7.1.06.3 Signed copies of corporate federal income tax returns within 30 days following their due dates, and
 - 7.1.06.4 Annual progress reports.
- 7.1.07 To maintain property-casualty insurance for the property financed with RLF monies for the term of the RLF loan. The City shall be listed as an additional

insured on the policy. In addition, key-person life insurance coverage naming the City as a beneficiary, with a declining balance equal to the outstanding loan balance may be used where appropriate.

- 7.1.08 To abide by all Federal laws, when applicable. These include, but may not be limited to: the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Davis-Bacon Act (as amended), the Contract Work Hours and Safety Standards Act, the Copeland "Anti-Kickback" Act, and all regulations pursuant to these Acts.
- 7.1.09 To collect the attached self-certification forms from every applicant for each job created by CDBG funds.

7.2 DOCUMENT RETENTION

Assuming the loan closes successfully, assigned reviewing staff must retain all documentation pertaining to this loan, until such time as the loan is:

- 7.2.01 Paid off in full: In this case, after three years, assigned reviewing staff may destroy all loan documents EXCEPT the loan application form.
- 7.2.02 Forty-five days delinquent: In this circumstance, upon notification from the City of the default, assigned reviewing staff must forward a copy of the file, including all application and loan closing documentation, to the CDA for discussion and consideration, which may include steps to legally perfect its RLF loan security claims to minimize any losses to the City of Muskego's Revolving Loan Fund program.
- 7.2.03 Delinquent loan reinstatement: The CDA must return the complete loan file to assigned reviewing staff, who will then retain the file based on the requirements of 7.2.01.

SECTION 8: PERFORMANCE MONITORING

8.1 PRIVATE LEVERAGE COMMITMENTS

SEWRPC staff shall monitor the use of the funds and expenditure of private leverage commitments. Documentation shall include invoices or receipts for materials and supplies, letters from lenders, final bills of sale, and canceled checks.

8.2 JOB CREATION AND RETENTION

The Administrator shall monitor the borrower's progress in meeting agreed upon job creation or retention goals. Job creation must be documented using payroll records. Before-project and after-project payroll records should be provided by the borrower to document job creation. Failure of the business to provide the targeted number of jobs may be a condition for default unless the business can show it made a good faith effort to create the targeted number jobs but did not succeed due to reasons beyond its control. In all hires the borrower must meet the LMI requirement. In addition, to ensure compliance with the LMI requirements, employers must collect the attached self-certification forms from every applicant for each job created by CDBG funds.

8.2.01 For each FTE job that is not created and/or retained and for each Low-Moderate Income (LMI) job that is not created and/or retained during the required time period, the following penalties shall apply:

8.2.01.1 If the Department, in its reasonable discretion, determines that the Borrower has failed to comply with its obligations under Section 7, then for each Full-Time Position that the Borrower fails to keep, create and fill, or maintain, whichever the case may be, the Borrower shall pay the Municipality upon demand a penalty of One Thousand Dollars (USD\$1,000.00) for each Full-Time Position.

8.2.01.2 If the Department, in its reasonable discretion, determines that the Borrower has failed to comply with its obligations under Section 7, then for each FTE job that the Borrower has not Made Available to LMI Persons, the Borrower shall pay the Municipality a penalty of One Thousand Dollars (USD\$1,000.00).

8.2.02 In no event shall the loan recipient be assessed a penalty under both 8.2.02.1 and 8.2.02.2 above for the same job which it has failed to create and/or retain. Job penalties may be paid in one lump sum or added to the principal of the RLF loan and amortized over the loan term.

8.3 DEFAULT

In the event the business is in default on any of the terms and conditions of the loan agreement, the promissory note, or any other loan document, other than the failure to

make a payment of principal or interest when due or to create and/or retain the agreed upon number of jobs, all sums due and owing to the City, including the full unpaid principal balance and all unpaid accrued interest, shall, at the option of the City, become immediately due and payable. To exercise this option, the City Attorney shall provide a written notice to the business that specifies the following:

- 8.3.01 The default;
- 8.3.02 The action required to cure the default; and
- 8.3.03 A date, not less than 60 days from the date of the notice, by which the default shall be cured to avoid foreclosure or other collective action.

If the borrower fails to make any payment of principal or interest when due under the promissory note, and the default continues for 30 days, all sums due and owing to the City, including the full unpaid principal balance and all unpaid accrued interest shall, at the option of the City, become immediately due and payable, without notice or demand. The failure to create or retain the agreed upon number of jobs is not a default, but is subject to the provisions of Section 8.2 hereof.

In the event of the occurrence of a default, other than a default under Section 8.2 hereof, and the City exercises its option to accelerate the promissory note, then interest after the date of default shall be computed at a market rate to be established at the time the loan agreement is executed.

SECTION 9: USE OF LOAN REPAYMENTS AND REPORTING

9.1 RLF PROGRAM

Repaid RLF monies shall be deposited in the RLF account and used in a manner consistent with the RLF manual. A separate record for each loan shall be kept to account for all funds loaned. The RLF account shall be audited on an annual basis and City and SEWRPC staff shall provide progress reports as required to the WEDC regarding the use of RLF program income. Reports shall be submitted on forms prescribed by the Department.

SECTION 10: LOAN SERVICING

10.1 MONITORING

Assigned review shall monitor each loan to ensure compliance with the loan terms and conditions and to monitor the financial health of the business to ensure continued repayment of the loan. The monitoring shall also ensure that all record-keeping requirements are met particularly with regard to job creation and the expenditure of matching funds.

A loan servicing file shall be established and maintained for each loan recipient that includes all written correspondence; a record of important telephone conversations; a list of applicable loan covenants; certificates of insurance for builder's risk, property-casualty, and life insurance, as applicable; and documentation for job creation and retention including low- and moderate-income benefit.

10.2 RECORD-KEEPING

A loan servicing file shall be established and maintained for each loan recipient that includes the following:

10.2.01 Loan Application File. The loan application file shall include a copy of the RLF application, business financial statements, personal financial statements, business plan documents, and other supporting loan information submitted to the City, including all applicable correspondence. In addition, the file shall contain a copy of the loan application summary with recommended actions regarding the application, and a copy of the minutes for the public meetings held to take action on the loan request.

10.2.02 Loan Closing File. The loan closing file shall include all loan closing documents, including the note and other security instruments; closing statement; title insurance commitment and policy, if applicable; certificates of insurance for builder's risk, property-casualty, and life insurance, as applicable; and documentation for job creation and retention including documentation that jobs were made available to LMI persons. This file shall be placed in a locked, fireproof vault. SEWRPC staff shall be involved in helping create and complete this file to ensure complete loan documentation. Copies of the loan closing documents and an amortization schedule shall be provided to the loan recipient.

10.2.03 Financial Management File. RLF financial management records shall be maintained that include the following registers:

10.2.03.1 RLF Register: A record of all deposits and disbursements to and from the RLF, including funds used for RLF administration.

10.2.03.2 CDBG Loan Repayment Register: A record of all repayments made by each business that has received a loan from the CDBG program, as well as the balance of repayments from all CDBG loans.

- 10.2.03.3 RLF Loan Repayment Register: A record of all repayments made by each business that has received a loan from the RLF, as well as the balance of repayments from all RLF loans.
- 10.2.03.4 Collection Register: A register for each loan that contains the business name, loan date, loan amount, terms, and date repayment begins.
- 10.2.03.5 "Tickler File" System. A tickler file system shall be established and maintained to ensure that loan repayments, financial information, the loan agreement, UCC updates, and other documentation requirements are tracked and obtained as required. The system will include the following monthly-coded index files:
 - 10.2.03.5.1 Expiration dates for property-casualty and life insurance policies,
 - 10.2.03.5.2 Due dates for all financial statements,
 - 10.2.03.5.3 Expiration dates for UCC Financing Statements, the reminder to update being at least 45 days prior to the expiration of the UCC filing on hand,
 - 10.2.03.5.4 Scheduled dates of annual loan performance and covenant reviews,
 - 10.2.03.5.5 Dates for site visits,
 - 10.2.03.5.6 Due dates for property tax payments and dates by which the community expects to hear from the borrower regarding confirmation of payment of taxes,
 - 10.2.03.5.7 Review dates for job monitoring, and
 - 10.2.03.5.8 Dates on which loan recipients will be notified of scheduled changes in the loan amortization scheduled per loan agreements.
- 10.2.03.6 Financial Statement File. The financial statement file shall include the business' periodic financial statements as required by the loan covenants with a statement indicating that SEWRPC staff reviewed the data.
- 10.2.04 Progress Report File. During the outstanding term of the RLF loan, loan recipients shall be required to submit semi-annual progress reports with financial statements that will be stored in this file.
- 10.2.05 Field Visit File. SEWRPC staff shall make periodic field visits to verify information in the progress report and financial statements. A summary of each site visit will be placed in the permanent file, including any information that can assist in assessing the overall condition and risk of the loan.

- 10.2.06 Repayment-Monitoring File. The repayment-monitoring file shall include the loan amortization schedule and status of payments on the RLF loan. Observations regarding concerns or problems shall be reported to the City and notations placed in the tickler file to remind SEWRPC staff of the need to provide continued monitoring.
- 10.2.07 Loan Review File. All loans shall be reviewed on an annual basis, and at such other times as may be deemed necessary by the City. The review shall follow receipt of the fiscal year-end financial statements, the year-end progress reports, and site visits. A report on the loan review will be placed in the file and address the following: timeliness of monthly payments, condition of collateral securing the loan and status of security documents, overall financial condition of the business, the presence of material liens or lawsuits, and violations of loan covenants and suggested corrective actions.

ATTACHMENT A
City of Muskego Revolving Loan Fund Application

1. Business Name: _____
 Address: _____

 Contact Person: _____
 Telephone No.: _____

2. Brief Project Description: _____

3. <u>Source and Use of Funds</u>	<u>RLF Financing</u>	<u>Debt Financing</u>	<u>Seller Financing</u>	<u>Owner's Equity</u>	<u>TOTAL</u>
a) Real Estate Purchase	_____	_____	_____	_____	_____
b) Building Construction	_____	_____	_____	_____	_____
c) Building Renovation	_____	_____	_____	_____	_____
d) Equipment	_____	_____	_____	_____	_____
e) Working Capital	_____	_____	_____	_____	_____
f) Closing Costs	_____	_____	_____	_____	_____
TOTAL PROJECT COSTS	_____	_____	_____	_____	_____

4. RLF Assistance Requested:
 a) Loan Amount _____
 b) Interest Rate (percent) _____
 c) Loan Term (years) _____
 d) Principal Deferral (months) _____

5. Source of Private Debt Financing
 Name: _____

Address: _____

Contact Person: _____

Telephone No.: _____

6. Job Creation and Retention

	New Jobs		Retained Jobs	
	Number	Pay Range	Number	Pay Range
Full-Time Jobs	_____	_____	_____	_____
Part-Time Jobs	_____	_____	_____	_____
TOTAL JOBS	_____			

7. Date Project Will Begin: _____

I hereby certify that the information provided above and in the attached supporting documentation is to the best of my knowledge true and correct.

Signature

Date

This attachment is included for reference, and is subject to change upon the availability of updated information from the Wisconsin Department of Administration or SEWRPC.

