

City of  
**FRESNO** REPORT TO THE CITY COUNCIL

December 9, 2008

**FROM:** SCOTT L. JOHNSON, Director  
Economic Development Department

**BY:** GEORGE E. SMITH, Interim Assistant Director  
Economic Development Department

AGENDA ITEM NO. 1M  
COUNCIL MEETING 12/9/08  
APPROVED BY

DEPARTMENT DIRECTOR  
CITY MANAGER

**SUBJECT:** APPROVE THE AGREEMENT BETWEEN THE CITY OF FRESNO AND CEN CAL BUSINESS FINANCE GROUP FOR THE ADMINISTRATION OF THE CITY OF FRESNO REVOLVING LOAN FUND FOR A PERIOD OF TEN YEARS.

**KEY RESULTS AREA:** Economic Development

**RECOMMENDATIONS**

Staff recommends that Council approve the agreement.

Presented to City Council  
Date 12/9/08  
Disposition Approved

**EXECUTIVE SUMMARY**

On January 21, 1999 The City of Fresno entered into an agreement with Fresno Certified Development Corporation, now known as Cen Cal Business Finance Group, to administer the City of Fresno Revolving Loan Fund (RLF). That original agreement will expire on January 21, 2009.

A Request for Proposal (RFP) was developed in order to identify and select the most qualified organization to administer the RLF for the next 10 years. One proposal was received, from the current service provider, Cen Cal Business Finance Group.

The proposal received from Cen Cal was completely satisfactory, and would continue the administration of the RLF on the same terms as the current agreement. Therefore, the Economic Development Department recommends that Council approve a new 10-year agreement with Cen Cal Business Finance Group to administer the City of Fresno Revolving Loan Fund.

**KEY OBJECTIVE BALANCE**

All three key objectives are addressed. Customer Satisfaction: businesses and citizens will benefit from the continued availability of funding. Employee Satisfaction: employees will benefit from the healthier communities sustained by economic growth. Financial Management: the City will benefit from a stronger economy, lower unemployment, and a broadened tax base.

**BACKGROUND**

In 1980, the U. S. Department of Commerce, Economic Development Administration, approved a grant to the City of Fresno to establish a revolving loan fund (RLF).

On January 21, 1999 The City of Fresno entered into an agreement with Fresno Certified Development Corporation, now known as Cen Cal Business Finance Group, to administer the City of Fresno Revolving Loan Fund (RLF). That original agreement will expire on January 21, 2009.

During the summer of 2008, the Economic Development Department worked with the Purchasing Division of the General Services Department, and the City Attorney's Office, to develop a Request for Proposal (RFP) in order to identify and select the most qualified organization to administer the RLF for the next 10 years. Based on staff's knowledge of organizations qualified to provide these very specialized services, the RFP was sent to four organizations. In addition, the RFP was advertised (per City policy), and placed on the City's web site.

In response to the RFP, one proposal was received. That proposal was from the current service provider, Cen Cal Business Finance Group. Cen Cal's proposal was completely satisfactory, and will continue the administration of the RLF on the same terms as the current agreement. Because of the nature of the RLF, there is not a specific dollar amount of compensation paid to Cen Cal. Instead Cen Cal is permitted to retain a portion of the income generated by the RLF. That portion is set by the program requirements of the U S Department of Commerce. Based on experience with the current agreement, the total compensation would be approximately \$160,000 over the 10-year term of the agreement. That amount could be higher or lower depending on factors including outstanding loan balances, interest rates, and loan losses.

In addition to administering the City's RLF successfully for the last 10 years, Cen Cal administers a number of other similar loan programs. Therefore, the Economic Development Department recommends that Council approve a new 10-year agreement with Cen Cal Business Finance Group to administer the City of Fresno Revolving Loan Fund.

#### **FISCAL IMPACT**

Funding for this agreement was included in the Department's FY 2009 budget, so there will be no need for additional appropriations.

Attachment:  
Original agreements

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12/9/08

AGREEMENT FOR ADMINISTRATION OF  
CITY OF FRESNO REVOLVING LOAN FUND

THIS AGREEMENT is made and entered into effective the 21st day of January, 2009 ("Effective Date"), by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as the "CITY"), and CEN CAL BUSINESS FINANCE GROUP, a California non-profit organization (hereinafter referred to as the "ADMINISTRATOR").

RECITALS

- A. In 1980 the U.S. Department of Commerce – Economic Development Administration ("EDA") approved a Grant (the "Grant") to CITY to establish a revolving loan fund program ("RLF").
- B. The CITY is obligated to administer the Grant in compliance with the (i) Grant Award; (ii) Revolving Loan Fund Financial Assistance Award Standard Terms and Conditions, dated October 9, 2007, as may be amended; and (iii) Revolving Loan Fund Program Administrative Plan ("Plan"), dated effective January 2, 2008, as may be amended (collectively called the "Program Requirements").
- C. RLF Grant funds may only be lent to businesses that meet Program Requirements, and any guidelines that the CITY has established, and the ADMINISTRATOR may establish under this Agreement that are consistent with the Program Requirements.
- D. The Program Requirements permit the CITY to engage the services of another organization to perform certain duties and responsibilities under the RLF Grant.
- E. ADMINISTRATOR is engaged in the business of furnishing technical and expert services as an administrator of loan programs and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement.
- F. ADMINISTRATOR has submitted a proposal to the CITY under cover letter dated November 3, 2008, in response to the CITY's soliciting Request for Proposals ("RFP") for the administration of the RLF, under RFP No. 9027.
- G. The EDA wants to continue the RLF with the CITY, and the CITY wants to engage ADMINISTRATOR as an independent contractor to administer the RLF for the CITY.
- H. ADMINISTRATOR acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19.
- I. This Agreement will be administered for CITY by its Economic Development Department Director (hereinafter referred to as "Director") or his/her designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

1. Condition Precedent to the Effectiveness. This Agreement will not become effective until the CITY and ADMINISTRATOR have met any conditions imposed by the EDA to permit ADMINISTRATOR to draw against the RLF Grant fund for making loans and paying administrative expenses including, without limitation, making any modifications to this Agreement necessary to comply with Program Requirements.

2. The Services. CITY engages ADMINISTRATOR to provide the services set forth in **Exhibit A** and to market and administer the RLF that (i) strictly complies with the Program Requirements, current copies of which have been delivered to ADMINISTRATOR, and (ii) complies with the CITY's guidelines set forth herein, to the extent practicable and consistent with the Program Requirements (collectively, the "Services"). As of the Effective Date, the balance available in the RLF Grant is \$659,996.00. ADMINISTRATOR shall maintain a local office and use local underwriting and approval.

3. Compensation. ADMINISTRATOR's compensation for the Services is payable from and limited to the RLF income it generates through granting and collecting loans. ADMINISTRATOR will retain its compensation from the RLF income strictly as permitted under the Program Requirements for administration expenses. Income generated under the RLF may include, to the extent permitted under Program Requirements, loan packaging, fee income, interest income, and loan servicing income. CITY will not compensate ADMINISTRATOR for Services in any other manner. CITY will not pay any additional compensation to ADMINISTRATOR, and will not reimburse it for any administrative, marketing or other costs associated with its Services. Subject to the limitations above, any compensation for administration expenses will be limited to the following fees at the following rates:

(i)	Application Fees	\$ 25.00
(ii)	Packaging Fees *	\$ 500.00
(iii)	Loan Origination Fee**	1.5%
(iv)	Servicing Fees	\$ - 0 -
(vi)	Other Fees ***	

\*The application fee is in addition to packaging fees.

\*\*Represents percentage of respective amount of loan.

\*\*\*Any public filing fees will be at the then current rate.

Minimum interest rate charge per EDA guidelines is 4%.

4. Term of Agreement; Suspension and Termination.

(a) The term of this Agreement shall be 10 years beginning on the Effective Date, subject to any earlier termination in accordance with this Agreement.

(b) The CITY may terminate this Agreement without cause by giving the other party 60 days prior written notice. Upon written notice to the ADMINISTRATOR, CITY may suspend new lending activity by ADMINISTRATOR pending ADMINISTRATOR's taking corrective actions as specified by the Director. Either party may terminate this Agreement with cause after giving the other party prior written notice and at least 30 days to cure the default. Upon expiration or early termination of this Agreement by CITY without cause, ADMINISTRATOR shall aid the CITY in continuing, uninterruptedly, the requirements of this Agreement, by continuing to perform on a temporary basis, when specifically requested to do so in writing by the Director, for a specified term not to exceed twelve months.

(c) On expiration or termination of this Agreement, any uncollected principal and interest loan funds, any undisbursed RLF Grant funds, and any undisbursed revolving borrowing base, subject to Program Requirements, will be paid or assigned to the CITY. Unless modified by mutual agreement of the parties, on expiration or termination of the Agreement, ADMINISTRATOR will return all documents to CITY or, at the CITY's request, to the CITY's new RLF administrator. ADMINISTRATOR will cooperate with CITY and any new RLF administrator to coordinate transfer of documents, payments, and servicing data including, without limitation, all computer files.

(d) If ADMINISTRATOR fails to perform any obligation under this Agreement, and does not cure the failure within 30 calendar days after CITY gives written notice of it, the failure will be a material breach of this Agreement. The CITY may after that immediately terminate this Agreement, and exercise any right, remedy or privilege available to it under this Agreement, at law or in equity.

5. Assurances and Force Majeure.

(a) ADMINISTRATOR shall provide CITY with adequate written assurances of future performance, upon Director's request, in the event ADMINISTRATOR fails to comply with any terms or conditions of this Agreement.

(b) ADMINISTRATOR shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of ADMINISTRATOR and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. ADMINISTRATOR shall notify Director in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Director of the cessation of such occurrence. ADMINISTRATOR shall have no claim for damages against CITY for any such cause of delay, but shall be entitled to an extension of time necessary to complete performance as determined by the Director. The decision of the Director as to the number of additional days, if any, to be allowed for completion on account of such occurrence will be given in writing to ADMINISTRATOR.

6. Compliance with all Laws and Regulations. ADMINISTRATOR will perform the Services in compliance with the Program Requirements, and all applicable laws, ordinances, regulations, and guidelines, as existing, and after this amended, whether federal, state, regional, or by local administrative or regulatory agencies.

7. Books and Records. ADMINISTRATOR will maintain segregated accounts, books, and records for the RLF, and will not combine any accounts, books, or records with those for loans it administers for any other program or entity, or its general books, accounts and records. ADMINISTRATOR will maintain the records for at least 4 years after this Agreement terminates, or 4 years after each loan matures or is paid, whichever is later. In the event ADMINISTRATOR is making loans to a borrower under both the RLF and another program, copies of all application documents including, without limitation, loan applications and financial statements, shall be included in the RLF file. Copies of all updated financial statements prepared during the servicing period shall also be included in the RLF file. This section shall survive expiration or termination of this Agreement.

8. Audits and Reports. ADMINISTRATOR will comply and be solely responsible for complying with reporting and audits required by EDA and its program requirements. ADMINISTRATOR will prepare reports and audits semiannually, or as otherwise required by EDA and Program Requirements and forward to the CITY. The CITY is responsible to the EDA for the compliance and reporting requirements. The CITY and the EDA may audit ADMINISTRATOR's books and records for the RLF anytime during this Agreement and at least 4 years after this Agreement terminates or 4 years after each loan matures or is paid, whichever is later. Upon CITY's request, ADMINISTRATOR shall immediately make available and give CITY staff access to ADMINISTRATOR's RLF Grant program books, records, loan files, financial statements, and computer or other electronic records. CITY will conduct any audits during normal business hours. Audits performed by outside Certified Public Accountants will be at the expense of the requesting party. ADMINISTRATOR will cooperate with CITY by providing information needed to satisfy CITY's single audit requirements. Any monies determined to be owed CITY's RLF or the EDA shall be paid promptly by ADMINISTRATOR along with any interest charge approved in accordance with the Program Requirements. This section shall survive expiration or termination of this Agreement.

9. Indemnification.

(a) To the furthest extent allowed by law, ADMINISTRATOR shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and authorized volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of ADMINISTRATOR, its principals, officers, employees, agents or authorized volunteers in the performance of this Agreement.

(b) ADMINISTRATOR shall protect and hold CITY and EDA harmless from and against all liabilities that may arise as a result of providing an award to assist (directly or indirectly) in site preparation or construction as well as renovation or repair of any facility or site. This applies to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of borrower or any of its predecessors on the property.

(c) If the ADMINISTRATOR subcontracts all or any portion of the Services to be performed under this Agreement, the ADMINISTRATOR shall require each subcontractor to indemnify, hold harmless and defend the CITY and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of preceding paragraph (a) and CITY and EDA in accordance with the terms of preceding paragraph (b).

(d) This section 9 shall survive the termination or expiration of this Agreement.

10. Insurance.

(a) Throughout the life of this Agreement, ADMINISTRATOR shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** or as may be authorized in writing by CITY's Risk Manager or his/her designee at any time and in his/her sole discretion.

(b) If at any time during the life of the Agreement, ADMINISTRATOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all Services and work under this Agreement shall be discontinued immediately, and all compensation due or becoming due to ADMINISTRATOR shall accrue to the CITY's account until CITY receives notice and evidence that ADMINISTRATOR has restored the required insurance to full force and effect and has paid the premiums therefore for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve ADMINISTRATOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by ADMINISTRATOR shall not be deemed to release or diminish the liability of ADMINISTRATOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by ADMINISTRATOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of ADMINISTRATOR, its principals, officers, agents, employees, persons under the supervision of ADMINISTRATOR, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) Upon request of CITY, ADMINISTRATOR shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

(e) If ADMINISTRATOR should subcontract all or any portion of the Services to be performed under this Agreement, ADMINISTRATOR shall require each subcontractor to provide insurance protection in favor of CITY and each of its officers, officials, employees, agents and authorized volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with ADMINISTRATOR and CITY prior to the commencement of any Services by the subcontractor.

11. Fidelity Bond or Crime Insurance. Throughout the life of this Agreement, ADMINISTRATOR will either pay for and maintain in full force and effect (i) a Fidelity Bond from a Treasury Listed corporate surety, admitted by the California Insurance Commissioner to do business in the State of California, in the amount of \$880,000, naming the CITY and EDA as obligees thereunder; or (ii) a policy of Commercial Crime insurance in accordance with section 10, above, which shall include coverage for employee theft, with limits of liability of not less than \$880,000 (the policy shall contain a Blanket Client Property – Off Premises Endorsement and Joint Loss Payee Endorsement in favor of the CITY).

12. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY's execution of this Agreement, ADMINISTRATOR shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, ADMINISTRATOR shall have the obligation and

duty to immediately notify CITY in writing of any change to the information provided by ADMINISTRATOR in such statement.

(b) ADMINISTRATOR shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, 13 C.F.R. § 302.17, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of CITY, ADMINISTRATOR shall provide at its sole cost and expense a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, ADMINISTRATOR and the respective subcontractor(s) are in full compliance with all laws and regulations. ADMINISTRATOR shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, ADMINISTRATOR shall immediately notify CITY of these facts in writing.

(c) In performing the work or Services to be provided hereunder, ADMINISTRATOR shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) ADMINISTRATOR represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither ADMINISTRATOR, nor any of ADMINISTRATOR's subcontractors performing any Services, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with the RLF unless fully disclosed to and approved by the City Manager, in advance and in writing. ADMINISTRATOR and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with the RLF unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, ADMINISTRATOR shall remain responsible for complying with paragraph (b), above.

(f) If ADMINISTRATOR should subcontract all or any portion of the work to be performed or Services to be provided under this Agreement, ADMINISTRATOR shall include the provisions of this section in each subcontract and require its subcontractors to comply therewith.

(g) This section 12 shall survive expiration or termination of this Agreement.

13. Further Grant Applications and Responses. ADMINISTRATOR, with support from the CITY, will solicit, apply and respond appropriately to future EDA grant possibilities in support of this RLF. RLF funds and or income will not be utilized to cover related expenses for the solicitation of future grant funds.

14. ADMINISTRATOR Representations and Warranties. ADMINISTRATOR represents and warrants that the factual statements set forth in its proposal to the CITY under the RFP are true and, during the terms of this Agreement, ADMINISTRATOR will notify the CITY of any changes that may affect ADMINITRATOR or its ability to carry out its obligations under this Agreement.

15. Independent Contractor.

(a) In the furnishing of the Services, ADMINISTRATOR is acting solely as an independent contractor. Neither ADMINISTRATOR, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which ADMINISTRATOR shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that ADMINISTRATOR is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between ADMINISTRATOR and CITY. ADMINISTRATOR shall have no authority to bind CITY absent CITY's express written consent. Except to the extent otherwise provided in this Agreement, ADMINISTRATOR shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, ADMINISTRATOR and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. ADMINISTRATOR shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, ADMINISTRATOR shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of ADMINISTRATOR's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, ADMINISTRATOR may be providing services to others unrelated to CITY or to this Agreement.

16. Nondiscrimination. To the extent required by controlling federal, state and local law, ADMINISTRATOR shall not employ discriminatory practices in the provision of Services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, ADMINISTRATOR agrees as follows:

- (i) ADMINISTRATOR will comply with all applicable laws and regulations providing that no person shall, on the ground of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to

discrimination under any program or activity made possible by or resulting from this Agreement.

- (ii) ADMINISTRATOR will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. ADMINISTRATOR shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to ADMINISTRATOR's employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTRATOR agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.
- (iii) ADMINISTRATOR will, in all solicitations or advertisements for employees placed by or on behalf of ADMINISTRATOR in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.
- (iv) ADMINISTRATOR will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of ADMINISTRATOR's commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

17. Recycling Program. In the event ADMINISTRATOR maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, ADMINISTRATOR at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY's Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY's Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact CITY's Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.

- (iii) Cooperate with and demonstrate to the satisfaction of CITY's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

18. General Terms.

(a) City Authorized Signature. Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or his/her designee.

(b) Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as ADMINISTRATOR represents to CITY that ADMINISTRATOR is skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the Services, CITY relies upon the skill of ADMINISTRATOR to do and perform such Services in a skillful manner and ADMINISTRATOR agrees to thus perform the Services. Therefore, any acceptance of such Services by CITY shall not operate as a release of ADMINISTRATOR from said professional standards.

(c) Notices. Any notice, request, demand, consent, approval or other communication (the "Notice") required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile provided the machine prints a dated and time confirmation and the noticing party provides a hard copy by mail, or sent by United States registered or certified mail with postage prepaid, return receipt requested, addressed to the party to which the Notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written Notice. Unless otherwise specified, a Notice will be deemed given when received if sent return receipt requested or the date of receipt is otherwise verifiable, but if delivery is not accepted or verifiable, then delivery will be deemed on the earlier of the date that delivery is refused or 48 hours after Notice is sent.

(d) Binding. Subject to paragraph (e), below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

(e) Assignment. This Agreement is personal to ADMINISTRATOR and there shall be no assignment, sale or subcontracting by ADMINISTRATOR of its rights or obligations under this Agreement without the prior written approval of the Director or his/her designee. Any attempted assignment, sale or subcontracting by ADMINISTRATOR, its successors or assigns, shall be null and void unless approved in writing by the Director or his/her designee. ADMINISTRATOR shall not subcontract to any federal agency, instrumentality, bureau or employee without the prior approval of the EDA.

(f) Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

(g) Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

(h) Headings. The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.

(i) Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

(j) Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.

(k) Attorney's Fees. If any arbitration, proceeding, controversy, claim, dispute or litigation occurs between the parties or by EDA to enforce or interpret any of the provisions of this Agreement or the Program Requirements, the nonprevailing party will pay to the prevailing party all costs and expenses including, without limitation, reasonable attorneys' fees, incurred therein. Attorneys' fees will include, without limitation, fees incurred in-house, during a trial of the action, and because of an appeal from any judgment entered in the litigation or proceeding.

(l) Precedence of Documents. ADMINISTRATOR will, in all respects, perform the Services and carry out the terms of this Agreement according to the Program Requirements. The priority or precedence of authority in interpreting and carrying out this Agreement will be as follows: (i) the law and regulations specifically applicable to the RLF Grant program, (ii) the Program Requirements issued by the EDA, (iii) the guidelines and requirements established by the CITY (including, without limitation, the Plan), and then (iv) the procedures established by ADMINISTRATOR.

(m) Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

(n) No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

(o) Time is of the Essence. Time is of the essence of every provision herein contained.

(p) Independent Advice. Each party's counsel has reviewed this Agreement and contributed to its drafting, or each party has been given a chance for its counsel to review and contribute to the drafting. No party has received, from the other, any accounting, tax, legal and other advice. Each party has relied solely upon the advice of its own accounting, tax, legal and other advisors.

(q) Further Assurances. The parties will sign all further documents and take any further steps necessary to carry out the intent and purpose of this Agreement.

(r) Extent of Agreement. The exhibits, and the Program Requirements referenced in this Agreement are by the references incorporated into and made a part of this Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement is the entire Agreement between the parties hereto with respect to the administration of the CITY's EDA RLF and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may not be modified, amended or otherwise changed in any manner except by a writing signed by an authorized representative of the party against whom enforcement is sought.

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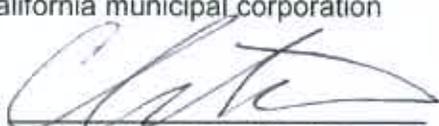
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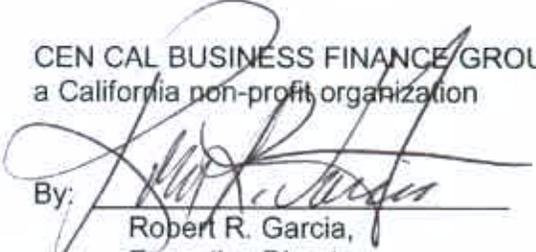
IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,  
a California municipal corporation

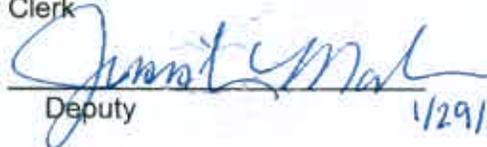
By:   
Scott Johnson, Director  
Economic Development Department

*Craig Schaton*

CEN CAL BUSINESS FINANCE GROUP,  
a California non-profit organization

By:   
Robert R. Garcia,  
Executive Director

ATTEST:  
REBECCA E. KLISCH  
City Clerk

By:   
Deputy 1/29/09

APPROVED AS TO FORM:  
JAMES C. SANCHEZ  
City Attorney

By:  12/8/08  
Nancy A. Algier Date  
Senior Deputy

Addresses:

CITY:  
City of Fresno  
Attention: Director,  
Economic Development Department  
2600 Fresno Street  
Fresno, CA 93721-3608  
Phone: (559) 621-8355  
FAX: (559) 488-1078

ADMINISTRATOR:  
Cen Cal Business Finance Group  
Attention: Robert R. Garcia, Executive  
Director  
5094 North Fruit, Suite 103  
Fresno, CA 93711  
Phone: (559) 227-1158  
FAX: (559) 227-7926

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

## Exhibit A

**SCOPE OF SERVICES**  
**Agreement between City of Fresno ("City")**  
**and Cen Cal Business Finance Group ("Administrator")**  
Administration of City of Fresno Revolving Loan Fund  
PROJECT TITLE

Administrator shall perform the following services:

1. Administer the City of Fresno Revolving Loan Fund ("RLF") in compliance with the EDA Revolving Loan Fund Financial Assistance Award Standard Terms & Conditions, dated October 9, 2007 (the "Terms and Conditions"); and the RLF Administrative Plan, dated December 16, 2004 and effective January 2, 2008 (the "Plan") (copies attached). The foregoing, along with the City's 1980 Grant Award ("Grant") from the U.S. Department of Commerce – Economic Development Administration ("EDA") shall collectively be referred to herein as the "Program Requirements."
2. Service new loans and the existing portfolio of loans under the RLF program. This includes, but is not limited to, processing, tracking, and accounting for payments; releasing collateral and satisfying liens when the loans are paid off; and pursuing appropriate collection efforts.
3. Marketing the loan program. This will be done independently, and in collaboration with economic development organizations, including the City of Fresno.
4. Assisting potential borrowers, providing technical assistance, providing appropriate referrals to other economic development organizations, accepting loan applications, underwriting the request in accordance with the Plan, and in accordance with federal and State of California laws and regulations ("Laws & Regs").
5. Approving loans, conditionally approving loans, or declining loans, as appropriate, in accordance with the Plan, Laws & Regs (including, without limitation, "Prudent Lending Practices" as defined in 13 C.F.R. § 307.8), and generally accepted underwriting principles.
6. Prepare loan documents, perfect all liens, close all loans, and disburse funds.
7. Maintain all documents and records in a safe and secure facility.
8. Prepare required reports, correctly, and within required time limits. Currently, this includes two semi-annual reports (Financial status and Federal Cash Transactions Reports) as of March 31<sup>st</sup> and September 30<sup>th</sup>, which are due to the City by April 10<sup>th</sup> and October 10<sup>th</sup>, respectively. This also includes all financial and audit reports required pursuant to 13 C.F.R. § 307.14 and by the EDA.
9. Work cooperatively with the City to develop any modifications to the Plan if they become necessary due to changes in laws, regulations, changes dictated by the EDA, or changes that will make administration of the program more effective. This shall also include making recommendations to City, and responding to questions

from City, about the program and for the purpose of making administration of the program more effective.

10. Operate the RLF in accordance with generally accepted accounting principles.
11. Provide City with the following written certification (dated and signed under penalty of perjury under the laws of the State of California) prior to conducting loan activities and disbursement of any RLF funds:

Cen Cal Business Finance Group certifies that standard RLF loan documents reasonably necessary for lending are in place and these documents have been reviewed by our legal counsel for adequacy and compliance with the EDA Revolving Loan Fund Financial Assistance Award Standard Terms & Conditions, dated October 9, 2007, and applicable State and local laws.

12. Submit a completed Form SF-LLL, "*Disclosure of Lobbying Activities*" in accordance with the Terms and Conditions and 31 U.S.C. § 1352, including implementing regulations found at 15 C.F.R. part 28, "*New Restrictions on Lobbying.*"
13. Submit a completed Form CD-512, "*Certifications Regarding Debarment, suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying*" in accordance with the Terms and Conditions.
14. To the extent consistent with the geographic eligibility requirements in the Program Requirements, Administrator will administer the RLF Grant to serve businesses within the incorporated limits of the City, as defined and amended by City and approved by the EDA.
15. Administrator will include, as part of its loan review process, the City's threshold loan eligibility requirements, as the City may revise the requirements from time to time, with notice to Administrator. Currently, the City's threshold requirements include the creation and retention of jobs and reasonable likelihood of business success.
16. Administrator will evaluate each loan application to decide whether the proposed borrower and proposed loan are eligible under the Program Requirements.
17. Administrator will set up, to the extent practicable and to the extent within the Program Requirements, a loan application process that includes, without limitation, each of the following:
  - (i) An Administrator loan officer will meet with each loan applicant (proposed borrower) and explain the RLF and Administrator's role in helping the applicant.
  - (ii) If the applicant and the loan proposal generally meet the City's threshold eligibility requirements and the loan criteria that Administrator establishes, Administrator will give the applicant an information checklist. The checklist will outline the format and the order in which the applicant must assemble information for the loan applicant, and will contain the specific

Program Requirements governing Administrator's grant and administration of the proposed RLF loan.

- (iii) Administrator's lending practices and procedures will incorporate commercial underwriting standards, consistent with lending practices generally accepted as prudent for public loan programs, and as outlined in the RLF Plan Guidelines. Loan documentation, terms, and conditions will comply with the Program Requirements.
- (iv) An Administrator staff loan committee will prepare the loan write-up and present it to the Administrator Loan Committee or Board of Directors ("Board") only when it is prepared to recommend approval. Staff presentations to the Loan Committee or Board will include each of the following:
  - Summary of Loan
  - Details of Loan Request
  - Analysis of the Business
  - Market Analysis
  - Financial Analysis
  - Proforma Statements
  - Management Assessment
  - Recommendation

18. Administrator will set up, to the extent practicable and to the extent consistent with the Program Requirements, the following procedures to monitor loans it grants under the RLF:

- (i) Administrator will require borrowers to provide periodic financial statements, prepared in-house by the borrower, and will require the borrower to provide CPA-prepared financial statements and tax returns at least annually to Administrator.
- (ii) Administrator will review, at least annually, each borrower's business operations to decide whether the borrower is complying with the loan agreements. This review will include, without limitation, borrower's compliance with working capital and inventory levels, draws from business operations and capital, turnover, and liquidity ratios, and borrower's maintenance of required documents, such as life and "all risk" insurance policies/binders, assignment of rents, landlord waivers, and such. Administrator will maintain a computer calendaring and tracking system to help in carrying out this obligation. Administrator will follow up compliance requirements, as needed, with each borrower by telephone and confirming letters. If Administrator identifies compliance problems, and after notice to the borrower, the borrower does not cure the compliance problem, Administrator will request a special meeting with the borrower (generally at Administrator offices).
- (iii) In the event Administrator is making loans to a borrower under both the RLF and another program, copies of all application documents including,

without limitation, loan applications and financial statements, shall be included in the RLF file. Copies of all updated financial statements prepared during the servicing period shall also be included in the RLF file.

19. Administrator will maintain all RLF Grant funds and all repayments of loan principal in a segregated RLF account. As borrowers repay loans, Administrator will deposit the repaid principal and RLF income into the segregated account as part of the revolving borrowing base to make additional loans, all as set forth in the Program Requirements.

## Exhibit B

**INSURANCE REQUIREMENTS**  
**Agreement between City of Fresno ("City")**  
**and Cen Cal Business Finance Group ("Administrator")**  
Administration of City of Fresno Revolving Loan Fund  
PROJECT TITLE

### Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
2. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.
3. Professional Liability (Errors and Omissions) insurance appropriate to Administrator's profession.
4. Commercial Crime insurance, which shall include coverage for employee theft. (In lieu of Commercial Crime insurance, a Fidelity Bond may be provided in accordance with the Agreement.)

### Minimum Limits of Insurance

Administrator shall maintain limits of liability of not less than:

1. General Liability:
  - \$1,000,000 per occurrence for bodily injury and property damage
  - \$1,000,000 per occurrence for personal and advertising injury
  - \$2,000,000 aggregate for products and completed operations
  - \$2,000,000 general aggregate applying separately to the work performed under the Agreement
2. Employer's Liability:
  - \$1,000,000 each accident for bodily injury
  - \$1,000,000 disease each employee
  - \$1,000,000 disease policy limit
3. Professional Liability (Errors and Omissions)
  - \$1,000,000 per claim/occurrence
  - \$2,000,000 policy aggregate

4. Crime Liability:

\$880,000

### **Umbrella or Excess Insurance**

In the event Administrator purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

### **Deductibles and Self-Insured Retentions**

Administrator shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Administrator shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Administrator shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

### **Other Insurance Provisions**

The General Liability insurance policy is to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.
2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers.
3. Administrator's insurance coverage shall be primary and no contribution shall be required of City.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Administrator and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents and authorized volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The "Retro Date" must be shown, and must be before the effective date of the Agreement or the commencement of work by Administrator.
2. Insurance must be maintained and evidence of insurance must be provided for at least 5 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 5-year

discovery period. This requirement shall survive expiration or termination of the Agreement.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a "Retro Date" prior to the effective date of the Agreement, Administrator must purchase "extended reporting" coverage for a minimum of 5 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to City for review.
5. These requirements shall survive expiration or termination of the Agreement.

The Commercial Crime insurance policy shall contain a Blanket Client Property – Off Premises Endorsement and Joint Loss Payee Endorsement in favor of City.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Administrator shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Administrator shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

#### **Acceptability of Insurers**

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide; or authorized by City's Risk Manager.

#### **Verification of Coverage**

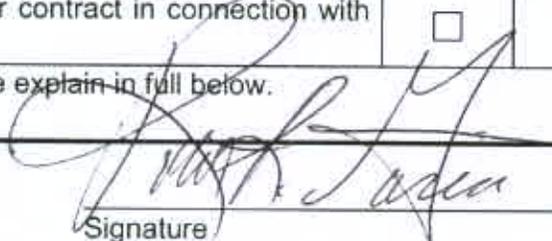
Administrator shall furnish City with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Agreement and before work commences.

**Exhibit C**

**DISCLOSURE OF CONFLICT OF INTEREST**  
Administration of City of Fresno Revolving Loan Fund  
 PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

  
 \_\_\_\_\_  
 Signature

Robert R. Garcia  
 (name)  
Cen Cal Business Finance Group  
 (company)  
5094 N. Fruit Avenue #103  
 (address)  
Fresno, CA 93711  
 (city state zip)

Additional page(s) attached.

