

ORDINANCE NO. 2018-003

AN ORDINANCE AUTHORIZING THE MAYOR OF THE CITY OF FINDLAY, OHIO, TO ENTER INTO A THREE (3) YEAR REVOLVING LOAN FUND AGREEMENT WITH THE STATE OF OHIO, DEPARTMENT OF DEVELOPMENT, EFFECTIVE JANUARY 1, 2018, EXPIRING DECEMBER 31, 2020, AND DECLARING AN EMERGENCY.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Findlay, State of Ohio, two-thirds (2/3) of all members elected thereto concurring:

SECTION 1: That the Mayor of the City of Findlay be and he is hereby authorized to sign said Revolving Loan Fund agreement with the State of Ohio, Department of Development., which shall be effective January 1, 2018, and run through December 31, 2020.

SECTION 2: That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health and safety of the inhabitants of the City of Findlay, Ohio, so that said new agreement with the State of Ohio, Department of Development will be in place by January 1, 2018,

WHEREFORE, this Ordinance shall be in full force and effect from and after its passage and approval by the Mayor.



PRESIDENT OF COUNCIL



MAYOR

PASSED: January 2, 2018

ATTEST: Devin DeVore
CLERK OF COUNCIL

APPROVED: January 2, 2018

ECONOMIC DEVELOPMENT REVOLVING LOAN FUND ADMINISTRATION AGREEMENT

This Economic Development Revolving Loan Fund Administration Agreement (the "Agreement") is made and entered into by and between the **State of Ohio, Development Services Agency**, located at 77 South High Street, P.O. Box 1001, Columbus, Ohio 43216-1001 (the "Grantor"), and **City of Findlay**, located at **318 Dorney Plz, Findlay, Ohio 45840** with F.T.I. Number: FT/346400448 (the "Grantee"), and shall be effective beginning **January 1, 2018** (the "Effective Date") and terminate **December 31, 2020** (the "Termination Date").

BACKGROUND INFORMATION

A. Grantor, through its Office of Community Development ("OCD"), administers the federal Community Development Block Grant ("CDBG") Program for the State of Ohio.

B. Grantee has been determined to be an eligible recipient of CDBG funds and Grantee has been awarded CDBG funds from the Grantor to finance eligible activities that may generate Program Income as defined herein.

C. Grantor has recognized the positive impact on community development initiatives when the use of Economic Development Program Income is locally determined. Grantor has permitted the establishment of Economic Development Revolving Loan Funds within local political subdivisions to meet the primary development goals of: 1) encouraging the expansion and stability of the economic base of the designated area of the Economic Development Revolving Loan Fund; and 2) encouraging increased employment opportunities, particularly for low- and moderate-income persons in designated areas of the Economic Development Revolving Loan Fund.

D. Grantor desires to have Grantee administer an Economic Development Revolving Loan Fund using the CDBG Program Income and Grantee desires to administer an Economic Development Revolving Loan Fund using the CDBG Program Income for the purposes stated above.

E. Grantee has adopted a Resolution or Ordinance authorizing the execution of this Agreement.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and covenants hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

STATEMENT OF THE AGREEMENT

1. **Economic Development Revolving Loan Fund Capitalization.** Grantee shall deposit any and all Economic Development Program Income into an Economic Development Revolving Loan Fund account held by the Grantee.

2. **Definitions.**

a.) Economic Development Revolving Loan Fund ("RLF") is a separate fund established for the purpose of accounting for Program Income and of carrying out the specific activities designated in OCD's RLF Policies and Procedures Manual, available on OCD's Technical Assistance website, which, in turn, generate payments to the fund ("RLF Funds") for the continued use in carrying out the same activities.

b.) Economic Development Program Income is defined as gross income received by the recipient directly generated from the use of Ohio State Administered CDBG Program funds for economic development, downtown revitalization, and microenterprise business development activities.

c.) CDBG Economic Development RLF Consolidation. Grantee shall consolidate all existing Economic Development RLF, Downtown RLF, and Microenterprise RLF accounts into an Economic Development RLF Account held by the Grantee.

3. **RLF Plan and Use of Funds.** Grantee has adopted an RLF Plan that includes the policies and procedures established by Grantor in the OCD RLF Policies and Procedures Manual. The plan must include any designated administrative agent, an established board structure, loan review criteria, and procedures for workouts, delinquencies and defaults. Grantee shall use the RLF Funds solely for the stated purposes set forth in this Agreement, OCD's RLF Policies and Procedures Manual, the Local RLF Plan, and the current Ohio Consolidated Plan.

4. **Loan and Grant Approvals.** Grantee shall submit to Grantor an RLF loan or grant approval request for each project being considered for RLF assistance. Grantee must receive Grantor's written approval prior to the commencement of the Grantee's local RLF project.
5. **National Objective Requirements.** Grantee shall ensure that all projects funded as a result of this Agreement meet the CDBG national objective of creating or retaining jobs for low-and-moderate income persons. Any projects not meeting this requirement must submit a request for waiver to Grantor. Grantor will review the request to determine if the project meets a CDBG National Objective. Written approval from Grantor must be received prior to the local RLF issuing approval for the project.
6. **Subrecipient Agreements.** Grantee shall not subgrant or subloan the Economic Development Program Income funds to any other local political jurisdiction or non-profit agency. Grantee may contract with a non-profit agency to administer the RLF Funds, but the funds are to remain with the Grantee in the Revolving Loan Fund Account. If there is a change in the designated administrative agent of the RLF Funds, it is the responsibility of the Grantee to notify OCD within fifteen (15) days of any change in status of the designated administrative agent.
7. **Accounting of RLF Funds.** RLF Funds shall be deposited and maintained in a separate fund account upon the books and records of Grantee (the "Account"). Grantee shall keep all records of the Account in a manner that is consistent with generally accepted accounting principles. All disbursements from the Account shall be for obligations incurred in the performance of this Agreement and shall be supported by contracts, invoices, vouchers, and other data, as appropriate, evidencing the necessity of such expenditure.
8. **Reporting Requirements.** Grantee shall submit RLF Status Reports to Grantor no more than thirty (30) days after notification of the RLF Status Report request. RLF Status Reports may include but are not limited to the following: program income; program activities; and program outcomes.
9. **Compliance with General CDBG Requirements.** Grantee shall comply with all applicable provisions of the statutes, rules, regulations and guidelines as passed by Congress or promulgated by the Secretary of the Department of Housing and Urban Development (HUD).
10. **Compliance with Environmental Requirements.** Grantee shall comply with the provisions of 24 CFR Part 58, Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities, for all projects funded with Economic Development Program Income. Grantee agrees to prepare environmental review records and submit Request for Release of Funds and/or Certification documentation to Grantor for all funded projects. Grantee may not initiate project work until Grantor issues a Project Specific Release of Funds Respecting Environmental Grant Conditions.
11. **Acquisition and Relocation.** Grantee shall comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and the implementing regulations set forth in 24 CFR 570.488 and 49 CFR Part 24 as they apply to the activities covered by this Agreement. Grantee shall comply with the process established under the Anti-Displacement and Relocation Plan.
12. **Term of the Agreement.** This Agreement shall begin on the Effective Date and shall terminate on the Termination Date, unless otherwise modified pursuant to Section 29 (f) herein. At least sixty (60) days prior to the Termination Date, Grantor will determine if the Grantee continues to have the capacity to administer the RLF Funds based on the performance of the Grantee and its designated administrative agent. Grantor shall promptly notify Grantee in writing of a determination questioning administrative capacity. Grantor reserves the right to determine if the State of Ohio will renew the Agreement to allow the Grantee to administer the RLF, have the Grantee close out the RLF by executing a CDBG Closeout Agreement or recapture the RLF Funds.
13. **Records, Access and Maintenance.** Grantee shall establish and maintain for at least three (3) years from the expiration of this Agreement, all direct information and such records as are reasonably related to the administration of an RLF as set forth in the OCD RLF Policies and Procedures Manual. Both parties further agree that records required by the Grantor with respect to any questioned costs, audit disallowances, litigation or dispute between the Grantor and the Grantee shall be maintained for the time needed for the resolution of said question and that in the event of early termination of this Agreement as provided in Section 20 of this Agreement, or if for any other reason the Grantor shall require a review of the records related to the RLF Funds, the Grantee shall, at its own cost and expense, segregate all such records related to the RLF Funds from its other records of operation.
14. **Inspections.** At any time during normal business hours upon three days prior written notice and as often as Grantor may deem necessary and in such a manner as not to interfere unreasonably with the normal business operations, Grantee shall make available to Grantor, and to appropriate state agencies or officials, for examination, all of its records with respect to matters covered by this Agreement including, but not limited to, records of personnel and conditions of employment and shall permit Grantor to audit, examine and make excerpts or transcripts from such records.
15. **Audits.** An audited Grantee shall submit to the Federal Audit Clearinghouse and make available for public inspection a copy of the audit, data collection form and reporting package as described in 2 CFR 200 Subpart F – Audit Requirements within the earlier of 30 days after receipt of the auditor's report(s) or nine months after the end of the audit period. In addition Grantees must notify the Grantor when their audit reporting package is submitted to the Federal Audit Clearinghouse. Notification should be sent to singleaudit@development.ohio.gov and must take place within seven (7) days following submission of the reporting package to the Federal Audit Clearinghouse. In lieu of or in addition to the notification, Grantees may electronically submit their single audit report to singleaudit@development.ohio.gov or mail one copy of the single audit report to Special Projects Coordinator, Audit Office, P. O. Box 1001, Columbus, Ohio 43216-1001.

16. **Equal Employment Opportunity.** Grantee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, disability, age, military status, or ancestry. Grantee will take affirmative action to ensure that applicants are considered for employment and that employees are treated during employment, without regard to their race, religion, color, sex, national origin, disability, age, military status, or ancestry. Grantee will, in all solicitations or advertisements for employees placed by or on behalf of Grantee, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin, disability, age, military status or ancestry. Grantee will incorporate the requirements of this paragraph in all of its respective contracts for any of the work for which the Grant Funds are expended (other than subcontracts for standard commercial supplies or raw materials), and Grantee will require all of its subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.

17. **Prevailing Wage Rates and Labor Standards.** In the commission of any Project(s) wherein federal funds are used to finance construction work as defined in the Code of Federal Regulations (CFR) Title 29, Part 5 to the extent that such activity is subject to the Davis-Bacon Act (40 United States Code (U.S.C.) 3141 to 3148, as amended), all laborers and mechanics employed by contractors or subcontractors on any such construction work assisted under this Agreement shall be paid the wages that have been determined by the U.S. Secretary of Labor to be the wages prevailing for the corresponding classes of laborers and mechanics employed on project(s) of a character similar to the contract work in the civil subdivision of the state wherein the work is to be performed. In addition, all laborers and mechanics employed by contractors or subcontractors on such construction work assisted under this Agreement shall be paid overtime compensation in accordance with the provisions of the Contract Work Hours and Safety Standards Act, 40 U.S.C. 3701 to 3708. Furthermore, Grantee shall require that all contractors and subcontractors shall comply with all regulations issued pursuant to these acts and with other applicable federal and state laws and regulations.

In the event that the construction work to be undertaken does not lie within the purview of the Davis-Bacon Act, and neither the federal government nor any of its agencies prescribes predetermined minimum wages to be paid to mechanics and laborers to be employed in the construction work to be assisted by this Project(s), Grantee will comply with the provisions of Ohio Revised Code (ORC) Sections 4115.03 to 4115.16, inclusive, as applicable, with respect to the payment of all mechanics and laborers employed in such construction work.

18. **Use of Federal Grant Funds.** Grantee acknowledges that this Agreement involves the use of federal funds and as such, is subject to audit by the agency of the United States Government granting the funds to Grantor for the purposes of performing the work and activities as listed in the Grantee's RLF project report forms and in conformance with OCD's RLF Policies and Procedures Manual, and the Local RLF Plan. Grantee shall fully reimburse Grantor for any cost of Grantee which is disallowed by said federal agency and which must be refunded thereto by Grantor.

19. **Property and Equipment Purchases.** All items purchased by Grantee are and shall remain the property of Grantee, except if Grantor exercises its right to terminate this Agreement pursuant to paragraph 20, in which case all property and equipment purchased by Grantee with any Grant Funds herein awarded shall revert to Grantor. Grantee shall provide for the security and safekeeping of all items obtained through this Agreement.

20. **Termination.**

a. Grantor may immediately terminate this Agreement by giving reasonable written notice of termination to Grantee for any of the following occurrences:

- i. Failure of Grantee to fulfill in a timely and proper manner any of its obligations under this Agreement.
- ii. Failure of Grantee to submit any report required by this Agreement that is complete and accurate.
- iii. Failure of Grantee to use the Grant Funds for the stated purposes in this Agreement.
- iv. Cancellation of the grant of funds from HUD.

b. **Early Termination:** Grantor may also terminate this Agreement if Grantee (i) defaults under another Agreement between the Grantor (ii) admits Grantee's inability to pay its debts as such debts become due, (iii) Grantee commences a voluntary bankruptcy, (iv) an involuntary bankruptcy action occurs against Grantee which remains undismissed or unstayed for 60 days, (v) Grantee fails to meet the minimum funding requirements under the Employee Retirement Income Security Act or other such employee benefits plan, or (vi) Grantor has reason to believe Grantee has ceased operations at the Project location. The events permitting early termination by Grantor shall be considered a default by Grantee and subject to the Effects of Termination under Section 21 of this Agreement.

c. Grantor reserves the right to suspend the administration of the RLF at any time for failure of the Grantee or its designated administrative agent to administer the local RLF in compliance with the OCD's RLF Policies and Procedures Manual which is not attached but incorporated herein by reference. Throughout this Agreement, Grantee and any designated administrative agent must continue to demonstrate administrative capacity in the administration of the RLF. Failure to accurately report on the RLF Funds could result in Grantor placing the RLF Funds on hold or recapturing the RLF Funds. Grantor also reserves the right to request the RLF Funds be returned to the State of Ohio upon failure to comply with the OCD RLF Policies and Procedures Manual.

21. **Effects of Termination.** Within 60 days after termination of Agreement, Grantee shall surrender all reports, documents, and other materials assembled and prepared pursuant to Agreement, which shall become the property of Grantor, unless otherwise directed by Grantor. After receiving written notice of termination, Grantee shall incur no new obligations and shall cancel as many outstanding obligations as possible. Upon compliance with this Section, Grantee shall receive compensation for all activities satisfactorily performed prior to the effective date of termination.

22. **Forbearance Not a Waiver.** No act of forbearance or failure to insist on the prompt performance by Grantee of its obligations under Agreement, either express or implied, shall be construed as a waiver by Grantor of any of its rights hereunder.

23. **Conflict of Interest.** No personnel of Grantee, contractor of Grantee or personnel of any such contractor, and no public official who exercises any functions or responsibilities in connection with the review or approval of any work completed under this Agreement, shall, prior to the completion of such work, voluntarily or involuntarily acquire any personal interest, direct or indirect, which is incompatible or in conflict with the discharge or fulfillment of his or her functions or responsibilities with respect to the completion of the work contemplated under this Agreement. Grantee shall immediately disclose in writing to Grantor any such person who, prior to or after the execution of this Agreement, acquires any personal interest, voluntarily or involuntarily. Grantee shall cause any such person who, prior to or after the execution of this Agreement, acquires any personal interest, voluntarily or involuntarily, to immediately disclose such interest to Grantor in writing. Thereafter, such person shall not participate in any action affecting the work under this Agreement unless Grantor determines that, in light of the personal interest disclosed, his or her participation in any such action would not be contrary to the public interest.

24. **Liability.** Unless Grantee is an Ohio political sub-division and can prove to Grantor that it is self-insured, Grantee shall maintain liability and property insurance to cover actionable legal claims for liability or loss which are the result of injury to or death of any person, damage to property (including property of Grantor) caused by the negligent acts or omissions, or negligent conduct of Grantee, to the extent permitted by law, in connection with the activities of this Agreement. Furthermore, each party to this Agreement agrees to be liable for the negligent acts or negligent omissions by or through itself, its employees, agents and subcontractors. Each party further agrees to defend itself and themselves and pay any judgments and costs arising out of such negligent acts or omissions, and nothing in this Agreement shall impute or transfer any such liability from one to the other.

25. **Adherence to State and Federal Laws, Regulations.**

a. **General.** Grantee shall comply with all applicable federal, state and local laws in the performance of Grantee's obligations under Agreement, the completion of the Project and the operation of the Project as long as Grantee has any obligation to Grantor under Agreement. Without limiting the generality of such obligation, Grantee shall pay or cause to be paid all unemployment compensation, insurance premiums, workers' compensation premiums, income tax withholding, social security withhold, and any and all other taxes or payroll deductions required for all employees engaged by Grantee in connection with the Project, and Grantee shall comply with all applicable environmental, zoning, planning and building laws and regulations.

b. **Ethics.** Grantee, by its signature on this document, certifies: (1) it has reviewed and understands the Ohio ethics and conflicts of interest laws including, without limitation, ORC Section 102.01 et seq., Sections 2921.01, 2921.42, 2921.421, 2921.43, and 3517.13(I) and (J), and (2) will take no action inconsistent with those laws, as any of them may be amended or supplemented from time to time. Grantee understands that failure to comply with the Ohio ethics and conflict of interest laws, is in itself, grounds for termination of Agreement and the grant of funds made pursuant to Agreement and may result in the loss of other contracts or grants with the State of Ohio.

26. **Outstanding Liabilities.** Grantee represents and warrants that it does not owe: (1) any delinquent taxes to the State of Ohio (the "State") or a political subdivision of the State; (2) any amount to the State or a state agency for the administration or enforcement of any environmental laws of the State; and (3) any other amount to the State, a state agency or a political subdivision of the State that are past due, whether or not the amounts owed are being contested in a court of law.

27. **Falsification of Information.** Grantee affirmatively covenants that it has made no false statements to Grantor in the process of obtaining this award of the Grant Funds. If Grantee has knowingly made a false statement to Grantor to obtain this award of the Grant Funds, Grantee shall be required to return all the Grant Funds immediately pursuant to ORC Section 9.66(C) (2) and shall be ineligible for any future economic development assistance from the State, any state agency or a political subdivision pursuant to ORC Section 9.66(C) (1). Any person who provides a false statement to secure economic development assistance may be guilty of falsification, a misdemeanor of the first degree, pursuant to ORC 2921.13(F)(1), which is punishable by a fine of not more than \$1,000 and/or a term of imprisonment of not more than one hundred eighty (180) days.

28. **Public Records.** Grantee acknowledges that Agreement and other records in the possession or control of Grantor regarding the Project are public records under ORC Section 149.43 and are open to public inspection unless a legal exemption applies.

29. **Miscellaneous.**

a. **Governing Law.** Agreement shall be governed by the laws of the State of Ohio as to all matters, including but not limited to matters of validity, construction, effect and performance.

- b. **Forum and Venue.** Grantee irrevocably submits to the non-exclusive jurisdiction of any federal or state court sitting in Columbus, Ohio, in any action or proceeding arising out of or related to Agreement, Grantee agrees that all claims in respect of such action or proceeding may be heard and determined in any such court, and Grantee irrevocably waives any objection it may now or hereafter have as to the venue of any such action or proceeding brought in such court or that such court is an inconvenient forum. Nothing in this Agreement shall limit the right of Grantor to bring any action or proceedings against Grantee in the courts of any other jurisdiction. Any actions or proceedings by Grantee against Grantor or the State of Ohio involving, directly or indirectly, any matter in any way arising out of or related to Agreement shall be brought only in a court in Columbus, Ohio.
- c. **Entire Agreement.** This Agreement, including its exhibits and documents incorporated into it by reference, constitutes the entire agreement and understanding of the parties with respect to its subject matter. Any prior written or verbal agreement, understanding or representation between parties or any of their respective officers, agents, or employees is superseded and no such prior agreement, understanding or representation shall be deemed to affect or modify any of the terms or conditions of Agreement.
- d. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions of this Agreement.
- e. **Notices.** All notices, consents, demands, requests and other communications which may or are required to be given hereunder shall be in writing and shall be deemed duly given if personally delivered or sent by United States mail, registered or certified, return receipt requested, postage prepaid, to the addresses set forth hereunder or to such other address as the other party hereto may designate in written notice transmitted in accordance with this provision.
- i. In the case of Grantor, to:
- Ohio Development Services Agency
Office of Community Development
77 South High Street, P.O. Box 1001
Columbus, Ohio 43216-1001
Attn: Deputy Chief
- ii. In the case of Grantee, to:
- Grantee Name: City of Findlay
- Address: 318 Dorney Plz
- City, State, Zip: Findlay, Ohio 45840
- f. **Amendments or Modifications.** Either party may at any time during the term of this Agreement request amendments or modifications, as described in the applicable State of Ohio Consolidated Plan Submission. Requests for amendment or modification of Agreement shall be in writing and shall specify the requested changes and the justification of such changes. The parties shall review the request for modification in terms of the regulations and goals relating to the Project(s). Should the parties consent to modification of the Agreement, then an amendment shall be drawn, approved, and executed in the same manner as the original agreement.
- g. **Pronouns.** The use of any gender pronoun shall be deemed to include all the other genders, and the use of any singular noun or verb shall be deemed to include the plural, and vice versa, whenever the context so requires.
- h. **Headings.** Section headings contained in Agreement are inserted for convenience only and shall not be deemed to be a part of Agreement.
- i. **Assignment.** Neither Agreement nor any rights, duties, or obligations described herein shall be assigned, subcontracted or subgranted by Grantee without the prior express written consent of Grantor.
- j. **Permissible Expenses.** If "travel expenses," as defined in Ohio Administrative Code Section 126-1-02 (the "Expense Rule"), are a cost of the Project eligible for reimbursement with Grant Funds, Grantee shall be reimbursed accordingly. Grantee agrees that it shall not be reimbursed and Grantor shall not pay any items that are deemed to be "non-reimbursable travel expenses" under the Expense Rule, whether purchased by the Grantee or Grantor or their respective employees or agents.
- k. **Binding Effect.** Each and all of the terms and conditions of this Agreement shall extend to and bind and inure to the benefit of Grantee, its successors and permitted assigns.

Survival. Any provision of this Agreement which, by its nature, is intended to survive the expiration or other termination of this Agreement shall so survive and shall benefit the parties and their respective successors and permitted assigns.

- m. Counterparts; PDF Accepted. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Copies of signatures sent by facsimile transmission or provided electronically in portable document format ("PDF") shall be deemed to be originals for purposes of execution and proof of this Agreement.

Signature: Each of the parties has caused this Economic Development Revolving Loan Fund Administration Agreement to be executed by its authorized representatives as of the dates set forth below their respective signatures effective as of the Effective Date:

GRANTEE:

GRANTOR:

City of Findlay

State of Ohio
Development Services Agency

By: Lydia Michalik
Printed Name: Lydia Michalik
Title: Mayor
Date: 1-2-18

By: _____
Printed Name: _____
Title: _____
Date: _____