

City of Lomita
Job Creation and Business Incentive Program

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I. PROGRAM DESCRIPTION

A. Mission Statement

The City of Lomita (City) Job Creation and Business Incentive Program (Program) is designed to promote job creation for low to moderate income persons, provide incentives for attracting new businesses, and assist in the expansion of existing businesses through the use of U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant (CDBG) funded loans. These goals are structured to promote the City as a positive venue for quality business, promote business expansion, and to overall enhance local economic growth.

B. Program Summary

The Program is designed to assist new and existing businesses through the provision of financial assistance. Financial assistance is in the form of a forgivable loan that is predicated on the creation of new jobs for low-income persons. Maximum assistance under the program is \$35,000. Special exceptions may be made up to \$70,000 through a recommendation by the Application Review Committee to the City Council. One permanent full-time equivalent position for low-income persons is required per \$35,000 loaned or portion there-of above \$35,000.

C. Program Administration

The City Manager will serve as the Program Manager with other City staff and consultants (as necessary) supporting Program implementation. The City has created a Loan Review Committee (LRC or RC) to evaluate applications to the program. The LRC will be comprised of the Program Manager, Assistant City Manager, Community and Economic Development Director, and Administrative Analyst, and other outside consultants as necessary. The LRC will meet as needed to review the applications and prepare a recommendation to the City Council to either approve or deny the application based upon the requirements within these Guidelines. The LRC will have the discretion to also approve or decline requests for payment deferrals, substitution or release of collateral, subordination, and waiver or release of covenants/amendments to loan documents. LRC is responsible for compliance with all HUD and CDBG requirements as they relate to implementation of the Program.

Program funding determinations will be made by the City Council, based on information supplied to the LRC and its recommendation.

D. Source of Funds

Program activities are funded from the City's allocation of Community Development Block Grant (CDBG) funds. The City of Lomita receives CDBG funds from the U.S. Department of Housing and Urban Development (HUD) The City is providing funds for the use of a successful applicant (Participant) within the scope of HUD requirements. In the performance of this Program, the City and Participant shall adhere and comply with all applicable HUD, CDBG, and local requirements. In the event of any conflict between the

Program parameters outlined in these Program Guidelines and federal requirements, the provisions of the federal requirements shall prevail.

E. Program Guidelines Changes And Modifications

Minor changes to these Program Guidelines involving administrative procedures or accommodations to adapt to regulatory changes may be performed with the approval of the Program Manager, or designee. All other changes require the approval of the Community Development Advisory Board.

II. **ELIGIBILITY CRITERIA AND FUNDING GOALS**

A. Funding Goals

The LRC will evaluate applications to ensure that project's align with the following goals of the program and present these findings to the City Council for determination:

- a. The new use would fulfill an unmet need within the community.
- b. Create additional low-income jobs within the City.
- c. Encourage additional foot traffic and social activity within the proposed business location.
- d. Diversify the City's sales tax base.

B. Eligible Applicants

Eligible applicants are owners of businesses that are physically located within the City of Lomita's Downtown Commercial zone, which are either:

- a. New sales tax generating businesses; or
- b. Existing sales tax generating businesses which are expanding their gross floor area by 20% or more as determined by square footage.

The existing or proposed business must be a permitted or conditionally permitted use within the zone. All required entitlements must be approved prior to applying to the Program.

The qualifications and identity of Participants in this program are of particular concern to the City. It is because of those qualifications and identity that the City may enter into a Loan Agreement with Participant. No voluntary or involuntary successor in interest of Participant shall acquire any rights or powers under this Program except as expressly set forth within executed Program documents. A change in ownership shall be subject to the approval of City, but such approval shall not be unreasonably withheld. Participant shall not assign all or any part of any Agreements or Notes under this Program without the prior written approval of City, which approval shall not be unreasonably withheld.

City Council Members, and any employee, official or agent of the City who exercises any policy or program decision-making function in connection with the Jobs Creation and Business Incentive Program are ineligible for assistance under the Program. This policy extends for a period of one (1) year beyond an individual's disassociation with the City of Lomita in such capacity.

Funding preference will be given to first-time Applicants. After the initial approval and granting of the maximum amount of funds available (\$35,000-\$70,000), a period of five (5) years shall elapse between the date of the Program award and any subsequent application. The interim period shall apply to:

- a. The business owned at the time of the first application, whether the owner is the original owner or a subsequent owner.
- b. Any additional business in which the owner/partner/member/officer of the original business has a proprietary and/or financial interest.

Exceptions to the five-year interim period would include cases of involuntary relocation through no fault of the business, or other emergencies outside the control of the business owner(s). Program exceptions are subject to LRC approval.

C. Eligible Costs

Program funding can be used for the following types of activities:

- a. Interior and/or exterior physical improvements and construction.
- b. Purchase of business equipment or fixtures permanently affixed to the property.
- c. Soft Costs such as (but not limited to): escrow costs (title, recordation, etc.), hazardous materials testing removal or abatement, architecture or engineering plans, and interior design fees.

D. Additional Requirements

Recipients must abide by the following requirements:

- a. Federal Register Part II; Code of Federal Regulations Title 24, Housing and Urban Development and Title 42, Public Health, and OMB Regulations .
- b. Asbestos Compliance Per NESHAP (40 CFR Part 61), Cal OSHA Rule 1529, and South Coast AQMD Rule 1403. All applicable asbestos related regulations per Federal, State and local requirements must be adhered to.
- c. Lead-based Paint Compliance. Per 24 CFR 35, Cal OSHA Rule 1532.1, and 40 CFR Part 745. All applicable lead-based paint regulations and requirements must be adhered to.
- d. Environmental Review Commercial/Industrial Rehabilitation: Per 24 CFR Part 58, the National Environmental Policy Act (NEPA) of 1969 – Environmental Review Procedures for Entities Assuming HUD Environmental Responsibilities must be complied with.
- e. Prevailing Wage Labor Compliance. Federal Prevailing Wage requirements of the Davis-Bacon and Related Acts (DBRA) and the Federal Labor Standards Provisions (FLSP) apply to construction projects.
- f. Additional requirements, including reporting requirements, may be communicated prior to executing a loan agreement.

III. JOB CREATION

A. Employment Requirement

Participants in this program agree to employ one new permanent full-time equivalent position, for low-income persons, per \$35,000 loaned. The position must remain in effect for one year after the initial start in employment. After the one year employment period, funds loaned and any accumulated interest will be forgiven, provided that all other terms and conditions of the Loan Agreement are met.

The Participant is obligated under the signed Agreement that the required number of positions created (one per \$35,000) will be new positions, and not the replacement of any positions existing prior to participation in the program. At application submittal, the Participant is required to provide the LRC with documentation of the current number of employees employed at the project location. This documentation will be the benchmark in which compliance with the terms of the employment Agreement have been met.

B. Employment Terms

If a Program loan is awarded, it will be based upon the creation of a new employment position for low-income persons. Income levels are based on the most current data set from the Los Angeles County Area Income Limits Documentation System and adjusted for household size.

Program Staff will determine if income eligibility requirements are met of perspective Program Participant's new employee. The perspective employee must be willing to submit documentation of income and household size for verification. Any subsequent employees hired after funding, must still be income verified by Program Staff. It is a requirement of the Participant to provide this information to LRC. Non-compliance with this requirement could result in the termination of the Program.

The following additional policies apply for new employment positions:

- a. Multiple part-time positions may be converted to full-time equivalents (i.e., two new part-time positions each working 20 hours per week would be considered 1 full-time equivalent).
- b. Only permanent positions count—temporary jobs may not be included.
- c. All permanent jobs created by the activity must be counted even if the activity has multiple sources of funding.
- d. Jobs indirectly created by an assisted activity (i.e., trickle-down jobs) may not be counted.

C. Program Participation Period and Employment Start Date

The required period of time for program compliance and loan forgiveness is one year (Participation Period), as determined by the following:

- a. In cases where the business is a new business, the Participation period will begin on the business opening date or the date of the first Program eligible job created, whichever is later.
- b. If Program funds are used for the rehabilitation of an existing business, the notice of

completion date will begin the Participation Period, or the date of the first Program eligible job created, whichever is later.

D. Full-Time Equivalent (FTE) Defined

For the purposes of this program, Full-Time Equivalent (FTE) is defined as forty (40) hours of paid full-time work in a seven-day period.

IV. PROGRAM FUNDING TERMS AND CONDITIONS

A. Funding Availability

The Program is funded on a fiscal year basis, which ends on June 30, of the following year. All Program funding is limited to funding availability.

B. Loan Conditions, Rates and Terms

The maximum loan amount obtainable under the Program is \$70,000, which shall be used in accordance with the provisions of a signed Program Loan Agreement between the City and the Participants in conformance with Program requirements. The Program loan shall be evidenced by a promissory note, signed by all business owners. The Program loan will accrue interest at the rate of 1% per annum simple interest, and does not require monthly payments. There is no pre-payment penalty and the Participants may repay the loan at any time within the Program year.

At the conclusion of the Participation Period, Participant shall be entitled to a full credit of any principal and interest due on the Program Loan, provided that they have complied with all Program requirements and are in conformance with the Program Loan Agreement.

The City will generally follow the rules of the Small Business Administration as to qualification of guarantors:

- a. Active Management with any ownership equity in borrower must guaranty
- b. Shareholders/owners of 20% or more equity in borrower must guaranty regardless of active involvement in management

Guarantees may be secured or unsecured as determined by the LRC. While collateral is not a mandatory requirement, it is intended that any available collateral from the borrower and/or guarantor(s) will be required, as well as a first lien position on any assets purchased with any Program loan funds. Junior liens on real property will be required at the discretion of the LRC. However, it will be the policy that all collateral required for loan approval will be of material value. Caution will be used whenever taking a junior lien position on collateral where there is a substantial senior lien. It shall be at the discretion of the LRC whether to waive a collateral position when available.

Titled motor vehicles, when taken as collateral, must show the City as mortgagee/lienholder on the certificate of title, and held in safekeeping by the LRC.

In all cases, a UCC-1 and security agreement will be taken against all business assets acquired with Program funding.

The Program loan, accrued interest, and any other amounts due under the Program Loan Agreement is due upon the earlier of:

- a. The Participant should cease business at the site. The term "cease business" shall mean when the site is no longer used as the principal place of business for Participant's business. Participant shall give City written notice not less than thirty (30) days prior to cessation of business. If Participant should cease business at the site, Participant shall pay to the City, in cash, within fifteen (15) days of the Participant's receipt of written notification from the City of the balance due on the Note; or
- b. The sale, conveyance, transfer, hypothecation of the security, or any part thereof, or any interest therein, or divestment of title or any interest therein in any manner or way, whether voluntarily or involuntarily, without the prior written consent of the City being first had and obtained; or
- c. Failure to adhere to the provisions of the Program Loan Agreement or Program requirements; or
- d. Failure to perform any obligation under the Deed of Trust securing the Note, or any other Deed of Trust encumbering the security.

The Program Loan is not assumable except under the limited circumstances listed below, which are subject to LRC review and approval. The following allowable assumptions shall not be construed as a transfer under the provisions of this Program, provided that all obligations of the Loan Agreement and promissory note are assumed in writing by the transferee and approval is received from the LRC prior to any proposed changes:

- e. The transfer of the business or business property to the surviving spouse by devise, descent or operation of the law, on the death of an owner;
- f. A transfer where the spouse becomes an owner of the business or business property;
- g. A transfer resulting from a decree of dissolution of marriage, legal separation or from an incidental property settlement agreement by which the spouse becomes an owner of the business or business property;
- h. A transfer of a business owner's interest to an existing co-owner.

C. Sale of Business During Program Term

Any business receiving Program funding shall disclose the information and details of the loan upon sale or transfer of the business to any subsequent owner.

In the case of sale of a participating business during the one year Program term, in order to avoid loan default the new buyer must provide a complete application and written agreement to the City affirming assumption of all conditions of the grant for the remainder of the term.

D. Loan Subordination

If an existing loan is being refinanced and Program loan subordination is requested, then the refinance cannot increase the amount of the then outstanding debt against the property except to cover the usual and customary fees related to the refinance. All subordination requests are subject to LRC review and approval.

E. Loan Default

Should the Participant not meet the obligations as required in the Loan Agreement, loaned funds plus any interest and other costs will be due to the City. The City will pursue any and all remedies allowed by regulation or law until a resolution is attained. The following occurrences shall warrant LRC investigation and potential follow up action:

- a. Delinquent payment- whenever the terms of the Promissory Note are not being met in a timely manner (delinquent by more than 30 days);
- b. Violation of the Program Loan Agreement
- c. Receipt of a bankruptcy notice;
- d. Filing of a "Notice of Default" by another lienholder on real property;
- e. Legal Service, such as Writs of Attachment, Tax Liens, Subpoenas for records;
- f. Death of a debtor or guarantor;
- g. Notice of significant legal action against borrower/guarantor;
- h. Returned mail from borrower's address by Post Office;
- i. A "Skip Trace" inquiry from another creditor.

Unpaid loan demands will be moved to a non-accrual status at the 90-day delinquency point unless otherwise directed by the Program Manager, or designee. Rewriting the entire Note in an effort to provide relief to the borrower should be considered after a detailed analysis of the financial condition of the borrower and their prospects for timely payment. The LRC will review and provide a determination regarding the acceptability of any re-structured Program Loan.

F. Pro-rated Credit for Partial Compliance

If a participating business fails to meet the one-year employment requirement a pro-rated credit may be applied for those quarters which were completed and in full compliance with the Agreement. Credit will give for completed three-month terms at a rate of 25% of the program amount. Quarters (three month periods) with only partial compliance will not receive credit.

G. Termination of Agreement Due to Lack of Employment

If the required employment position has not been created within six months of funding, or if for three consecutive months the required position has remained vacant, the Loan Agreement will be terminated and the loan balance and any accumulated interest will be due and payable.

H. Reporting Requirement

During the Participation Period, the Participant is responsible for providing a quarterly report to the LRC to determine compliance with Program requirements. The documentation shall include the following for each required employment position: employee name, job title, hours worked per week, the hourly rate for participating employees, plus any other documentation as determined by the LRC to ensure employment requirements are met. The Quarterly Report shall be filed within two weeks of the last day of the quarter. LRC will provide a calendar for reference of reporting due dates. In addition, the Participant is required to submit the state quarterly DE-6 filing.

V. APPLICATION

A. Application

Applications for participation in the Program may be obtained from the City's Community Development Department. Applications will be accepted continuously on a first-come first-served basis. An appointment is required with Program Staff to submit the application.

All of the following documentation must be submitted at time of application:

- a. Completed Application Form
- b. Internal Revenue Service Tax Return Verification Form
- c. Copy of Applicant(s) valid government-issued photo identification
- d. Listing of available collateral, including any to be purchased with loan proceeds
- e. Month-to-month projections covering any interim period until year end plus one full fiscal year including the assumptions that the projections were based upon
- f. Resume for each business owner/manager
- g. Current personal financial statement for each business owner
- h. Previous and Current business data and history
- i. Complete Business Plan
- j. Proof of Fictitious Business Filing
- k. Articles of Incorporation, or, Partnership Agreement, Limited Liability Company
- l. Articles of Organization
- m. Fiscal year end business financial statements for prior three years (if available)
- n. Interim business financial statement within 60 days of application date
- o. Business federal tax returns for the prior three years to include all supporting schedules and statements (if available)
- p. Copy of current/proposed lease on business premises (including assessor's parcel number) indicating a minimum lease agreement term of five (5) years; or in the case of an agreement with term set to end within the subsequent year, written commitment to extend said agreement
- q. Personal federal tax returns for the prior three years to include all supporting schedules and statements, for each business owner

Participant may be required to submit additional documentation, as requested by LRC, in instances where additional application clarification is required.

Financial information provided by Applicants and credit information is not considered public information and is available only to LRC for use in the funding determination process.

Application approval is subject to funding availability. Staff's eligibility determination is not a commitment of funds. Funds shall only be committed upon the approval by the City Council, full execution of the Loan Agreement, signing of the promissory note, and the recordation of the Deed of Trust, if real property is used as collateral. Disbursement of Program funds where real property is not used as collateral is subject to the verification of filing of the UCC-1 for business assets.

B. Application Review Process

1. Application Pre-qualification and Evaluation - Each application filed will be dated and processed in the order received. Staff will review applications for completeness and verify Applicant eligibility. Staff will advise Applicants of any deficiencies within incomplete applications, and indicate corrective measures required. Staff shall notify all ineligible Applicants of their status by written correspondence.
2. Applicant Evaluation and Staff Review - Upon completion of an application review, and prior to consideration by the LRC, Staff shall schedule an appointment with each qualified Applicant to review program requirements, hiring goals, loan security requirements, procurement requirements, loan conditions, and reporting and documentation requirements. Based on the Applicant's concurrence with Program requirements, Staff shall prepare an LRC Funding Request Summary that will summarize critical Applicant, business, and program information.
3. LRC Review - The LRC shall convene and provide a determination regarding the eligibility of the Applicant. The LRC shall present applications to the City Council for evaluation.
4. City Council – City Council shall determine the amount of funds to be conditionally awarded to the project, and any other conditions of approval or denial. Any determination of the City Council decision is final.
5. Award Disbursement - Participants will receive awarded loan funds in the form of reimbursement check(s) from the City within 30 days of receipt of invoices or quotes for approved project expenditures. Other award disbursement arrangements can be made subject to approval by the LRC.

VI. **Loan Analysis and Review**

A. Application Criteria

Loan applications will be analyzed based upon the following criteria, specified by the U.S. Department of Housing and Urban Development, Office of Community Planning and Development, and the Small Business Administration:

- a. Ability to Pay- Ability to repay in case of default or termination of business.
- b. Balance Sheet Analysis - Balance sheet must be sound before any loan is approved.
- c. Earnings History - Historical earnings and cash flow records, from verifiable sources as determined by the LRC, to ensure sufficient likelihood of repayment of the requested credit amount, and to provide the owner(s) with a reasonable level of personal income to satisfy personal obligations. Typically, a borrower will have been profitable during the most recently completed year and will maintain a minimum cash flow coverage ratio of 1:1 (defined as earnings before debt service, interest and taxes divided by debt service), with sufficient collateral. The ratio would be 2:1 without collateral. If partial collateral is pledged, the ratio may be prorated downward as deemed reasonable by the LRC.
- d. Collateral- Collateral, when available in any form, may be requested by the LRC. Collateral will be pledged commensurate with the amount of requested credit, as well as a security interest in newly purchased assets, or those purchased with loan funds. If the project cannot repay the loan from cash flow, the City will collect payment by liquidating the asset and satisfying the specific lien securing the property. A letter of

- credit or bond may be accepted in lieu of collateral. All collateral taken as security for any credit extended must be insured appropriately as determined by the LRC. Evidence of that coverage must be provided as appropriate for the collateral insured. The lapse of any insurance constitutes a default on the Loan Agreement, and must be remedied immediately by the Participant. Additionally, in instances where real estate is utilized as security, a PIRT of short form title policy shall be required.
- e. Commitment - Personal and corporate guarantees may be required. The borrower should sign personally for the loan, and should be prepared to take out a minimum salary until the business is established.
 - f. Management experience - The management team must have experience in all areas of running the business: sales, finance, operations, personnel, etc. The management team includes the principals, directors, senior management and consultants. The management team should have direct experience in these areas or have comparable business skills which can be transferred.
 - g. Business Plan - The business plan will help identify worthy ventures. For new businesses, the monthly cash flow statement for the first year is especially critical.
 - h. Character - The owners and management should have favorable credit histories, a reputation for treating customers fairly, no bankruptcy in the past five years, and a clean criminal record. Good character will be determined by credit reports, payment history with verified vendors, personal interviews, or other means as deemed necessary by Staff.
 - i. Niche - It is difficult for a small firm to compete with much larger companies on price. The entrepreneur must be committed to customer service; or the business must serve a market niche or offer a unique product or service.

All of the above criteria are important, and the absence of any one may be sufficient cause for the LRC to recommend denial of the loan request.

B. Undesirable Conditions

Utilizing the guidelines developed by the Small Business Administration and the Department of Housing and Urban Development, the following are undesirable conditions in the absence of mitigating circumstances, as deemed acceptable by the LRC:

- a. Applications for funding that would substantially reduce the amount of nonfederal support for the activity available in other recognized, reasonable loan programs available in the target areas
- b. Requests for credit to repay existing creditors
- c. Funds used to repay debt to Applicant owner(s), partners, or stockholders
- d. Requests for funding for businesses which do not meet the criteria specified in Section VIII A through C
- e. Non-profit organizations, as designated by Charter/Bylaws, unless designated as approved Community Based Development Organizations (CBDO)
- f. Lack of profitable operations, as demonstrated by sources acceptable to the LRC
- g. Loans to restricted membership or discriminatory groups/organizations
- h. Loans to uses with complete access restrictions based on age, gender, or handicap
- i. Lack of sufficient equity, or highly leveraged situations as determined by the LRC
- j. Personal or business bankruptcy or prior business failure without sufficient documented information that details mitigating circumstances which are acceptable to the LRC

- k. Poor personal or business credit as evidenced by many derogatory items including public record items, tax liens, judgments, or excessive existing credit as determined by the LRC
- l. Felony convictions, dishonorable discharge or "Bad Conduct" discharge from military service (each situation will be independently evaluated)
- m. A business engaged in any unlawful activity