

RESOLUTION NO.: R-2021-120

Authorizing the City to request de-federalization of the RLF from EDA and to use such Award funds for the continuation of a RLF

WHEREAS, the City of Columbia, South Carolina (“the City”) entered into agreements for Title IX Revolving Loan Funds (“RLF”) with the United States Department of Commerce, Economic Development Administration (“EDA”) as of May 28, 1985; June 9, 1987; and March 24, 1995; and

WHEREAS, EDA, pursuant to its authority under the Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. § 3121 et seq.), awarded to the City one or more grants to capitalize a RLF bearing EDA award numbers 04-39-03312, 04-39-03312-01, and 04-39-03312-02 (“the Award”); and

WHEREAS, EDA retains a federal interest in the Award and the City is submitting a written request that EDA release its federal interest in the Award consistent with the requirements of the Reinvigorating Lending for the Future Act (Pub. L. 116-192), and

WHEREAS, the City is requesting the de-federalization of the RLF from EDA to reduce the reporting burden and requirements for the City’s RLF; and

WHEREAS, the current value of the RLF capital base as of June 30, 2021 is \$2,469,393.71, the federal investment rate is 62.0%, and the federal share of the RLF capital base is \$1,642,624.10 (“Award Funds”); and

WHEREAS, EDA has determined that 1) more than seven years have passed since the final EDA disbursement of funds to the City under the Award, 2) the City has complied with the terms and conditions of the Award, and 3) the City proposes to use the Award Funds to carry out the economic development purposes of PWEDA; and

WHEREAS, EDA agrees to release its federal interest in the Award and the City agrees herein to use Award Funds for the continuation of a RLF.

BE IT RESOLVED, by the Mayor and City Council of the City of Columbia, South Carolina this 7th day of December, 2021, that the City is authorized to request de-federalization of the RLF from EDA and to use such Award Funds for the continuation of a RLF and does hereby authorize and direct the City Manager to take any additional actions necessary to effectuate the purpose of this Resolution concerning the EDA RLF, including the execution of any and all documents necessary to implement the intent of this Resolution, including amendments, agreements, certifications, and correspondences required to request de-federalization of the EDA RLF for convenience.


Requested by:

ACM Gentry _____


Approved by:

 _____
City Manager

Approved as to form:

 _____
City Attorney

Introduced: 12/7/2021
Final Reading: 12/7/2021

 _____
Mayor

ATTEST:

 _____
City Clerk



**UNITED STATES DEPARTMENT OF COMMERCE
Economic Development Administration
Atlanta Regional Office
401 W. Peachtree St., NW, Suite 1820
Atlanta, Georgia 30308**

January 27, 2021

Ms. Melissa Lindler
Columbia, City of
1401 Main Street, 4th Floor
Columbia, SC 29201

Re: Invitation to request release of EDA's federal interest in EDA Revolving Loan Fund award

Dear Ms. Lindler:

The recently enacted Reinvigorating Lending for the Future Act (the Act) authorizes EDA to release its federal interest in certain Revolving Loan Fund (RLF) awards that have operated satisfactorily for seven years beyond disbursement of grant funds. By authorizing EDA to release its federal interest in certain RLF awards, the Act will reduce RLF recipient administrative burden and allow RLF award funds to be used for broader economic development purposes.

To request that EDA release its federal interest in an RLF award, you must submit to EDA a written request for release that includes the information below. If you seek a release of EDA's federal interest for more than one RLF award, this information must be submitted separately for each RLF award.

1. Your organization's name and contact information;
2. Identifying information for the RLF award, including the award number, date of award, federal investment rate, and evidence that final disbursement occurred more than seven years ago (if available);
3. Value of the RLF award (including the capital base and any available administrative income);
4. Proposed use of RLF award funds for one or more activities that continue to carry out the economic development purposes of the Public Works and Economic Development Act (PWEDA), which may include continued operation of the RLF; and
5. Certification by your organization that it has complied with the terms and conditions of the RLF award.

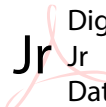
Additionally, you must provide the following supplemental materials:

6. Resolution or letter from your organization's Board of Directors, or agency leadership if your organization is a public entity or otherwise does not have a Board of Directors, supporting the request to release EDA's federal interest and committing to using the RLF for one or more activities that continue to carry out the economic development purposes of PWEDA in compliance with on-going restrictions required by the Act as articulated in the release agreement;
7. Final RLF Financial Report (Form ED-209) for the RLF award; and
8. Most recent Single Audit for your organization, if available. If a recent Single Audit is not available, the most recent audit or audited financial statements for your organization, if available.

EDA will review and evaluate requests for release of EDA's federal interest in an RLF award, and EDA may request additional information. If EDA determines that your RLF award is eligible for release of EDA's federal interest, the next step would be for EDA and your organization to execute an agreement to release EDA's federal interest in the RLF award. A sample release agreement is attached for your reference, although the exact terms of the agreement may vary based on the individual circumstances of your RLF award. Please review the terms of the agreement, including the requirement that any RLF award funds be used for one or more activities that continue to carry out the economic development purposes of PWEDA. Your request letter will be included as an attachment to the agreement.

EDA plans to hold a webinar to share information about the release of EDA's federal interest in certain RLF awards. EDA will notify you of the event when scheduled. In the meantime, if you have any questions regarding this letter, please contact Karen Temple Lynch, EDA RLF Administrator, via email at klynch@eda.gov

Sincerely,

H. Philip Paradice, Jr.  Digitally signed by H. Philip Paradice,
Jr
Date: 2021.01.27 13:27:40 -05'00'

H. Philip Paradice, Jr.
Regional Director
Atlanta Regional Office

**AGREEMENT TO RELEASE THE EDA FEDERAL INTEREST IN A
REVOLVING LOAN FUND AWARD**

(This is a draft document based on a template provided by EDA – the official agreement will be issued by EDA upon their approval of request)

THIS AGREEMENT is between the United States Department of Commerce, Economic Development Administration (EDA) and the City of Columbia, South Carolina (Recipient).

WHEREAS, EDA, pursuant to its authority under the Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. § 3121 *et seq.*), awarded to Recipient one or more grants to capitalize a Revolving Loan Fund (RLF) bearing EDA award number(s) 04-39-03312, 04-39-03312-01, and 04-39-03312-02 (the Award).

WHEREAS, EDA retains a federal interest in the Award and Recipient has submitted a written request that EDA release its federal interest in the Award consistent with the requirements of the Reinvigorating Lending for the Future Act (Pub. L. 116-192), attached hereto as Appendix A (the Request).

WHEREAS, EDA and Recipient agree that the value of the RLF capital base as of June 30, 2021 was \$2,469,393.71, the federal investment rate is 62.0%, and the federal share of the RLF capital base is \$1,642,624.10 (the Award Funds).

WHEREAS, EDA has determined that 1) more than seven years have passed since the final EDA disbursement to Recipient of funds under the Award, 2) Recipient has complied with the terms and conditions of the Award, and 3) Recipient proposes to use the Award Funds for one or more activities that continue to carry out the economic development purposes of PWEDA.

WHEREAS, EDA agrees herein to release its federal interest in the Award and Recipient agrees herein to use Award Funds for one or more activities that continue to carry out the economic development purposes of PWEDA.

NOW THEREFORE, EDA and Recipient agree as follows:

1. EDA's Release. EDA agrees to release its federal interest in the Award. EDA's reversionary interest in the Award will cease to exist as of the effective date of this agreement.
 - a. Recipient's use of Award Funds no longer needs to comply with, among other things, the following authorities:
 - i. OMB regulations at 2 CFR part 200, including the Compliance Supplement at Appendix XI.

- ii. EDA regulations at 13 CFR chapter III, including the RLF-specific regulations at part 307, subpart B (including the requirement at 13 CFR § 307.14 to submit Form ED-209 RLF Financial Report to EDA).
 - iii. The terms and conditions attached to the Award, including the Department of Commerce's Standard Terms & Conditions, the EDA RLF Standard Terms & Conditions, and any Special or Specific Award Conditions.
 - iv. The EDA-approved RLF plan or any related document governing administration of the Award.
 - b. This release of the EDA federal interest in the Award does not extend to or include a release of any other entity's interest in the RLF capital base, including another federal agency's interest in the RLF capital base. More specifically, if Community Development Block Grant funds from the U.S. Department of Housing and Urban Development (HUD) or funds from the U.S. Department of Agriculture (USDA) were used as local share under the Award, this release of the EDA federal interest does not extend to or include a release of any HUD or USDA federal interest in the RLF capital base. If Recipient seeks a release of another entity's interest in the RLF capital base, including another federal agency's interest in the RLF capital base, Recipient must negotiate such a release with the other entity and EDA will not participate in that negotiation.
- 2. Recipient's Use of Award Funds. Recipient agrees to use Award Funds for one or more activities that continue to carry out the economic development purposes of PWEDA.
 - a. Recipient shall not use Award Funds to construct schools, community centers, municipal buildings, or otherwise use Award Funds to carry out activities outside of the economic development purposes of PWEDA, nor shall Recipient use Award Funds to pay general costs of government.
 - b. Recipient shall not transfer Award Funds to a natural person, for-profit entity, or other entity ineligible for award under sections 3(4) and 209 of PWEDA (42 U.S.C. § 3122(4) and § 3149). For the sake of clarity, Award Funds may be used to contract with for-profit entities for goods and services for one or more activities that continue to carry out the economic development purposes of PWEDA and to operate an RLF that makes loans to for-profit organizations.
 - c. Award Funds must be used in a manner consistent with EDA's non-relocation policy. Specifically, Recipient shall not use Award Funds to induce the relocation of existing jobs within the U.S. that are located outside of a jurisdiction to within that jurisdiction in competition with other U.S. jurisdictions for those same jobs.
 - d. Award Funds must be used in accordance with section 602 of PWEDA (42 U.S.C. § 3212). Specifically, Recipient shall ensure that all laborers and mechanics employed by contractors or subcontractors on projects assisted by Award Funds shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor as provided by section 602 of PWEDA or as it may be amended in the future.

- e. Recipient shall use Award Funds in accordance with applicable federal, state, and local law, including applicable non-discrimination law. Recipient may not use Award Funds for any purpose that would be prohibited by the Establishment Clause of the U.S. Constitution if the Award Funds were expended directly by the Federal Government.
 - f. Recipient is not required by the terms of this Agreement to seek EDA approval or permission to use Award Funds for one or more activities that continue to carry out the economic development purposes of PWEDA but that differ from the activities described in the Request, attached hereto as Appendix A.
 - g. Recipient shall provide timely and accurate responses to EDA inquiries regarding Recipient's use of the Award Funds. Following the release of EDA's federal interest, EDA remains interested in working with Recipient to promote Recipient's RLF or other activities that continue to carry out the economic development purposes of PWEDA.
3. Enforcement. In the event that EDA determines that Award Funds have been used in a manner inconsistent with this agreement, EDA may require Recipient to return the misspent portion of the Award Funds to the Federal Government, which may include the establishment of a debt with the U.S. Department of the Treasury.
 4. Indemnification. To the extent permitted by law, Recipient agrees to indemnify and hold the Federal Government harmless from and against all liabilities that the Federal Government may incur as a result of releasing EDA's federal interest in the Award.
 5. Governing Law; Severability. This Agreement is governed by applicable federal law, if any, and if there is no applicable federal law by state law. The terms of this Agreement do not limit the rights EDA, its designees, successors, or assigns are entitled to under applicable federal or state law. In the event that any provision or clause of this Agreement conflicts with applicable law, such conflict shall not affect other provisions of this Agreement that can be given effect without the conflicting provision, and to this end the provisions of this Agreement are declared to be severable.
 6. Entire Agreement. This Agreement contains the entire understanding of EDA and Recipient with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral or written, with respect to such matters.
 7. Authority. Recipient represents that (a) it has the power and authority to execute and perform this Agreement, (b) the execution and performance of this Agreement by Recipient have been duly authorized by all necessary corporate or other actions, (c) Recipient has duly and validly executed this Agreement, and (d) this Agreement is a legal, valid and binding obligation, enforceable against Recipient.

[Remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, EDA and Recipient have caused this Agreement to be duly executed by their respective officers as of the date indicated.

**DEPARTMENT OF COMMERCE,
ECONOMIC DEVELOPMENT
ADMINISTRATION**

**CITY OF COLUMBIA,
SOUTH CAROLINA**

By: _____
H. Philip Paradice, Jr.
Director
Atlanta Regional Office

By: *Teresa B. Wilson* _____
Ms. Teresa Wilson
City Manager

Date

Date