

REQUEST FOR PROPOSALS (“RFP”)

RFP Number: DEV16SBI04

The Ohio Development Services Agency, Office of Strategic Business Investments requests proposals for:

Ohio Regional 166 Loan Program Administration

RFP Issued: February 8, 2016
Inquiry Period Begins: February 8, 2016
Inquiry Period Ends: February 26, 2016
Proposals Due: March 4, 2016

Submit Proposals via e-mail to:

Andy Shaw, Agency Procurement Officer
Ohio Development Services Agency
Budget & Finance Office
Procurement@development.ohio.gov

Please submit all inquiries about this RFP through the state procurement web site at www.ohio.gov/procure. Please refer to Part Three of this RFP, “General Instructions”, for instructions on submitting inquiries through the state procurement web site. All responses to inquiries submitted by applicants will be posted on the state procurement website for viewing by all prospective applicants.



Development
Services Agency

PART ONE: STRUCTURE OF THIS RFP

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- Appendix 1 – Standard Affirmation and Disclosure Form, Standard Terms and Conditions
- Standard Affirmation and Disclosure Form must be signed by an authorized official of Applicant’s organization and must be included for any proposal to be scored
- Appendix 2 – ODSA’s Standard Loan Administration and Escrow Agreements
- ODSA’s standard, or boilerplate, personal service contract document, including terms and conditions
 - This sample document is provided only for convenience and the terms and conditions contained therein are subject to change without notice

PART TWO: SERVICES REQUESTED INFORMATION

PURPOSE

The Ohio Development Services Agency, Office of Strategic Business Investments (“ODSA”) or (“Agency”), requests proposals from qualified not for profit economic development corporations or port authorities (each an “Administrator”) interested in administering the Ohio Regional 166 Loan Program (the “Program”) for ODSA and the State of Ohio (“State”). Administrators will market and administer loans to local businesses to help create development opportunities in the State.

The Agency is requesting proposals from Administrators to provide these services from the date of an executed award through December 31, 2018.

BACKGROUND

The Ohio Regional 166 Loan Program

The Program is an integral part of the State's economic development strategy and is an approximately \$60 million loan program statewide. The Program is authorized under Chapter 166 of the Ohio Revised Code and funded through the Facilities Establishment Fund. Job creation and positive economic growth are the most immediate desired results of this Program. The Program promotes economic development, business expansion, and job retention and/or job creation by providing financial assistance to entities for the reimbursement of allowable costs of Eligible Projects (defined in Program Structure section). This financial assistance takes the form of low-interest loans to businesses creating new and/or retaining existing employment opportunities at an entity's project site in the State.

Administrators wishing to respond to this RFP must be able to meet certain technical capacity requirements and operate in geographic areas of the State where the loan proceeds will generate quality loan opportunities.

To ensure uniformity and maximum effectiveness of the Program, expectations of an Administrator and escrow agent(s) are outlined in greater detail in the Program Guidelines (Exhibit 1) (“Program Guidelines”). Exhibit 3 of this RFP outlines the loan package requirements and the loan approval processes.

Note: The Agency reserves the right to reject any or all responding Administrators, to negotiate pertinent terms, and request oral presentations from some or all of the responding Administrators. See Part Three of this RFP for details.

SCOPE OF WORK

Administrators approved for this Program will:

- Prepare and provide to the Agency an implementation and marketing plan for the Program to generate potential borrower activity. The Program marketing plan shall target potential borrowers, as well as those groups or entities (such as banks, credit unions, economic development entities, etc.) that can channel loan leads to the Administrator. The Administrator shall develop and maintain marketing materials that highlight the Program's strengths and offerings to the business community in their service area. These ongoing marketing materials shall be provided to the Agency.

- Process request for funding from prospective borrowers for Eligible Projects (defined in the Program Structure section below), including advising borrowers (and the participating banks and credit unions) of the Program Guidelines, eligibility requirements, jobs commitment requirements, approval processes, forms to be completed, and likely timelines of potential loan approvals.
- With the information received from a prospective borrower, structure the loan and perform the credit underwriting of the funding request.
- Prepare a commitment letter after the Agency and the Controlling Board approve the loan to signal to the borrower that it may begin to incur eligible costs for the Eligible Project.
- Verify the Eligible Project is complete (through a project site visit and satisfactory review of supporting documentation) in accordance with the Program Guidelines.
- Notify the Escrow Agent, identified in the Escrow Agent section below, in writing to disburse the loan proceeds in accordance with the loan agreement and the Program Guidelines, and provide to the Agency (via e-mail) the Notification of the Disbursement (Exhibit 2), once the loan has been disbursed.
- Monitor its respective Program portfolio, and notify the Agency of any changes in the condition of the portfolio as they arise.
- Exercise responsibilities/duties regarding delinquent loans in accordance with the Program Guidelines.

PROPOSAL CRITERIA

A proposal will be evaluated based on the quality and completeness of the components below. These components demonstrate desired qualifications that the Agency believes are indicative of an Administrator's ability to successfully administer the Program. A proposal should, but is not required to, demonstrate the following:

- a) Internal (employee) capability to complete credit analysis, according to a set of criteria, including, but not limited to, debt service coverage ratios, current and quick ratios, loan to value ratios, debt/equity ratios, days receivable, days payable, days inventory ratios, and others that could be deemed appropriate for the analysis;
- b) An internal board or committee with knowledge of local markets to review loan transactions and provide analysis of staff work;
- c) The capacity to analyze a variety of transactions, including commercial and industrial projects;
- d) An existing portfolio of quality loan projects being serviced by the Administrator in a professional manner, demonstrating a positive track record in administering types of financing similar to this Program;
- e) A description and amount of Program fees that will be charged and collected by the Administrator. This may include initiation fees, processing fees and servicing fees. Additionally, please classify any fees paid to the Escrow Agent for their services rendered. The Administrator, in accordance with the Program Guidelines, shall also charge and collect an additional one percent (1%) processing fee from the borrower in case of loans with second collateral positions;
- f) The capacity to cover a service area of at least five (5) counties;
- g) A marketing plan that details how the Administrator will market the Program to economic development partners, business assistance centers, banks, businesses, and potential borrowers; and
- h) Identify the funding amount requested, along with a clear outline of how the requested funds will be utilized to further Program goals (generation of new loans, administration costs, others) and achieve any Administrator objectives, along with the anticipated timeline of the use the requested funds. For existing Administrators, the amount requested should only reflect additional resources beyond the current award amount. For new Administrators, the amount should reflect the funds needed to

establish a sustainable revolving loan fund. The anticipated timeline should reflect quarterly activity through December 2018.

The evaluation of the RFP will focus on the following key measures, and Administrators are strongly encouraged to indicate their expertise in each of them:

- **Technical capacity**
 - A performance evaluation and/or third party audit of the Administrator's organization, and a spreadsheet itemizing any Program loans currently on its books by company name, date approved, loan amount, rate and loan terms, security position, payback period, and outstanding principal and interest.
 - Specify which loans are in default of the loan terms (including any economic development criteria) or are delinquent, whether or not there has been a notice of default. Further, please indicate the percentage (%) of Administrator's total funds invested in commercial and industrial projects.
- **Organizational capacity**
 - A profile of Administrator's organization, including Administrator's budget, sources of operating income, cash flow, and overall performance with regard to Administrator's mission. Include Administrator's most recent audited financial statements and most recent interim financial statements.
 - Provide an organizational chart, a list of board members, and a list of loan review board/panel members.
 - A description of the geographic area currently being served by the organization. Priority will be given to those Administrators that provide service in distressed cities and counties as identified on the most recent priority investment map found on the ODSA website, at https://development.ohio.gov/reports/reports_pra.htm.
 - A description of other loan programs administered by Administrator's organization, if applicable.
 - A list of staff who will administer this Program, along with their qualifications, including resumes, capacity to manage the existing workload, and any new demands on their time as a result of this Program.
- **Administrative capacity**
 - Clear, concise, and sound administrative processes outlining the Administrator's policies and procedures for: loan intake, loan closing, performance monitoring, and collection and delinquency.
- **Economic Development Impact**
 - Include a brief description of other potential loan programs also available to borrowers in the Administrator's geographical area that could be used in conjunction with the Program funds.
 - A realistic estimate of the volume and dollar amount of Program loans which could be originated by the Administrator under this Program by calendar year-end 2016, 2017, and 2018.

PROGRAM STRUCTURE

Eligible Projects

Eligible Projects include those related to industry, commerce, distribution, or research activities (“Eligible Projects”).

Allowable Project Costs/Uses

- Land and/or building purchase -- if the project involves the purchase of an existing building, the business must occupy at least 51% of the premises;
- Machinery & equipment purchases;
- Building construction and/or renovation costs. In case of construction, the business must occupy at least 60% of the premises;
- Long-term leasehold improvements;
- Ongoing fixed asset purchases; and
- Capitalizable costs directly related to fixed-asset purchases.

Note: Refinancing and retail projects are ineligible.

Total Project Financing

The Program may finance up to 40% of an Eligible Project, with loans up to \$500,000. The Agency requires a minimum of 10% equity contribution from the borrower in the Eligible Project, however a greater equity contribution may be required based on due diligence. The remaining Eligible Project shall be funded by the borrower either directly or indirectly through third party investors and/or private lenders. ODSA will give preference to Eligible Projects with the above or a similar financing structure. Notwithstanding the foregoing, if there is no third party financing in the Eligible Project, up to 75% of the Eligible Project may be funded by Program loan proceeds with the remainder funded by the borrower’s equity contribution.

Term

Terms shall be based upon the useful life of the property financed with Program loan proceeds and should reflect the term of the bank loan in the project, if applicable. Regardless of a longer useful life, the maximum term for real estate (only) loans is up to 20 years and the maximum term for loans to acquire machinery and equipment is up to 10 years.

Interest Rate

Interest rates shall be fixed at/or below local market rates at the time the loan is presented to ODSA for approval.

Job Creation/Retention

Promoting economic development is one of the key Agency objectives, and as such, job creation and/or retention must be taken into consideration while reviewing proposed loans. Priority may be given to eligible projects with higher wage and job creation commitments in a distressed area of the State; however, a specific loan dollars/job ratio is not required. The loan agreement will outline the date (metric evaluation date) by which certain commitments, including the job commitments, have to be fulfilled.

Security & Collateral

The Agency requires a first priority mortgage and/or lien position on project costs/uses financed with the Program proceeds or an acceptable Intercreditor Agreement providing for shared proceeds. Notwithstanding the foregoing, a second collateral position may be taken as limited and set forth in the Program Guidelines, provided the borrower pays an additional 1% security fee to ODSA and the loan is further secured by sufficient credit enhancements, such as the following:

- Personal guarantees from owners with more than 20% ownership in the company;

- Corporate guarantees from related companies;
- Life insurance on key business owners and/or managers;
- Full or partial letter of credit from a recognized financial institution; and/or
- Other types of credit enhancements, if necessary.

Assets offered as collateral may be required to undergo a third party evaluation (i.e. appraisal) in accordance with Program Guidelines. Request for Program funds from any borrowers with outstanding liabilities with the Ohio EPA or Ohio Department of Taxation will not be considered until those liabilities have been resolved. Borrowers cannot transfer ownership of any entity without approval from the Agency; even in case of sale of related entities or subsidiaries not pledged as collateral. It is the borrower's responsibility to inform the Administrator and the Agency before such sale or change in ownership interest is complete. If the borrower is sold, the Program loan must be paid-off as part of the sale. However, assumption of a loan may be considered on a case-by-case basis and must be approved by ODSA.

Prepayment

The Agency imposes no pre-payment penalty.

Program Fees

An Administrator may receive such fees, as outlined below, to administer and service the Ohio regional 166 loans:

1. Initiation Fee: A loan initiation fee not to exceed One Thousand Dollars (\$1,000.00) payable by the borrower at the time of the application submission;
2. Processing Fee: A processing fee in an amount not to exceed one and one-half percent (1.5%) of the loan amount, paid by the borrower at the time of loan closing for services rendered in the processing of the loan request;
3. Servicing Fee: A monthly servicing fee in an amount not to exceed one twelfth (1/12) of one-quarter (1/4) of one (1) percent of the outstanding principal balance of the loan; and
4. Reimbursement of Costs: Reimbursement of actual and necessary costs incurred by the Administrator with respect to the processing of the request for assistance, including, but not limited to, reimbursement for payments to outside consultants and recording and filing fees.

The Administrator, in accordance with the Program Guidelines (Exhibit 1), shall also charge and collect an additional one percent (1%) processing fee from the borrower in cases of loans with second collateral positions. This fee will be collected by the Administrator and be made payable and sent to the Agency at the closing of the loan.

Administrator Compensation

The Escrow Agent shall disburse to the Administrator in consideration for its administration of its loans in the Program, an amount equal to sixty percent (60%) of the monthly payments of interest collected from borrowers for each outstanding Program loan. However, for any loan with a project site located in a county designated as part of the Appalachian Region, the Escrow Agent shall disburse to the Administrator in consideration of its administration of such loan, an amount equal to seventy-five percent (75%) of each monthly payments of interest collected from the borrower.

Escrow Agent

ODSA will serve as the Escrow Agent (“Escrow Agent”) for disbursements for this Program. Notwithstanding the foregoing, an existing Administrator under the Program may elect to continue the use of its current Third-Party Escrow Agent.

PART THREE: GENERAL INSTRUCTIONS

The following sections provide a calendar of events, details on how to respond to this RFP and how to get more information about this RFP. All responses must be complete and in the prescribed format.

CALENDAR OF EVENTS & ON-LINE INFORMATION

The schedule for this RFP is given below and is subject to change. ODSA may change this schedule at any time. If ODSA changes the schedule before the Proposal Due Date, it will do so through an announcement on the State Procurement web site area for this RFP at the following link: <http://procure.ohio.gov/proc/index.asp>. The web site announcement will be followed by an addendum to this RFP, which also will be made available through the same State Procurement web site.

It is each prospective Applicant’s responsibility to check the State Procurement web site’s question-and-answer area for this RFP for current information and the calendar of events scheduled through award of any contract.

Other than by adherence to the RFP Inquiry process, set forth below, no contact related to this RFP shall be made with ODSA until a contract award is announced. Notwithstanding this prohibition, ODSA, at its sole discretion, may request additional information as part of the review process outlined below.

Firm Dates

RFP Issued: February 8, 2016
Inquiry Period Begins: February 8, 2016
Inquiry Period Ends: February 26, 2016
Proposals Due: March 4, 2016 by 5:00 pm

Estimated Dates

Contract Award Notification: By April 15, 2016

PROPOSAL SUBMITTAL

Proposals must be submitted in the following manner:

- **Proposals must be submitted via e-mail by no later than March 4, 2016 by 5:00 p.m. to Procurement@development.ohio.gov.**
- Proposals are to be submitted on 8.5 x 11-inch paper.
- Margins must not be less than ¼ of an inch on all sides.
- Font must be 10 point or larger with no more than 6 lines of text per inch.
- Proposals should be no more than 25 pages in length. Forms required to be returned with the proposals, such as Appendix 1, will not be counted toward the maximum total.

- All pages must be numbered consecutively using the format "Page [#] of [total number of pages]" (e.g., Page 2 of 20).

Applicants are advised there will be no opportunity to correct mistakes or deficiencies in their submitted materials after the Proposal Due Date. Proposals that are incomplete or otherwise missing required information may not be evaluated.

It is the Applicant's responsibility to ensure timely submission of a complete Proposal. Late Proposals may not be scored. ODSA is under no obligation to consider a Proposal which is received after the Proposal Due Date or that is incomplete. Proposals that are not submitted in the format requested may not be scored.

No supplementary or revised materials will be accepted after the Proposal Due Date unless specifically requested by ODSA.

All costs incurred in the preparation of the Proposal shall be borne by the Applicant alone and ODSA shall not contribute, in any way, to the cost of the preparation of the Proposal.

Any and all documents developed by the Applicant during the course of this project will be provided to ODSA upon request and will become the property of ODSA. The Applicant shall not assert any claims arising under copyright or otherwise inconsistent with the transfer of ownership of such documents.

All information submitted in response to this RFP shall be a public record unless a statutory exception exists that would protect the information from release to the public. Any information submitted with the Proposal which the Applicant reasonably believes to be a trade secret, as that term is defined in Section 1333.61 of the Ohio Revised Code, may be designated as such by marking the information as follows: the phrase "trade secret," marked with two asterisks on each side, must be placed at the beginning and end of the trade secret information (example: ** TRADE SECRET **). In addition, the trade secret information shall be underlined. Information determined to be a trade secret under the laws of the State of Ohio may be protected as trade secrets by ODSA in accordance with Ohio law.

ODSA reserves the right to:

- Accept or reject any and all Proposals and/or bids if ODSA determines that it is in the best interests of the State to do so.
- Rebid this RFP, requesting new Proposals from qualified Applicants.
- Waive or modify minor irregularities in Proposals received.
- Negotiate with Applicant(s), within the requirements of this RFP, to best serve the interests of the State.
- Require the submission of modifications or additions to Proposals as a condition of further participation in the selection process.
- Fund any Proposal in full or in part; any assignments of work by ODSA under the scope of this RFP will be made dependent on need and the availability of adequate, specific funding.
- Not make an award at the end of the evaluation process; this RFP is not to be interpreted or construed to guarantee that one or more Applicants submitting responses will be awarded contracts.
- Adjust the RFP Calendar of Event dates for whatever reason it deems appropriate.
- Contact Applicant to clarify any portion of the Applicant's submittal.

If, during the review process, ODSA determines that it is necessary to make further distinctions between certain

Applicants, ODSA may request certain selected Applicants to make a presentation to staff and reviewers.

In accordance with federal and state statutes and ODSA policy, no person shall be excluded from participation or subject to discrimination in the RFP process on the basis of race, color, age, sex, national origin, military status, religion, or disability.

INQUIRIES

Prospective Applicants may make inquiries or seek clarifications regarding this RFP any time during the inquiry period listed in the RFP Calendar of Events. To make an inquiry, prospective Applicants must use the following process:

1. Access the State Procurement web site at <http://www.ohio.gov/procure>.
2. From the Navigation Bar at the top, select "for Suppliers".
3. Under the title "Bid Opportunities", select "All Opportunities".
4. Enter the RFP Number found on Page 1 of this document as the "Document/Bid Number".
5. Click the "Search" button.
6. Select this RFP.
7. On the document information page, click the "Submit Inquiry" button.
8. On the document inquiry page, complete the required "Personal Information" section by providing the following:
 - a. First and last name of the prospective Applicant's representative who is responsible for the inquiry;
 - b. Name/Company/Business of the prospective Applicant;
 - c. Representative's business phone number; and
 - d. Representative's e-mail address.
9. Type the inquiry in the space provided, making certain to include the following:
 - a. A reference to the relevant part of this RFP;
 - b. The heading for the provision under question; and
 - c. The page number of the RFP where the provision can be found.
 - d. Enter the Security Number.
10. Click the "Submit" button.

Prospective Applicants submitting inquiries will receive an immediate acknowledgement by e-mail that their inquiry has been received. **The prospective Applicant who submitted the inquiry will not receive an e-mail response to the question, but will need to view the response on the State Procurement web site where it will be posted for viewing by all prospective Applicants.**

Prospective Applicants may view inquiries using the following process:

1. Access the State Procurement web site at <http://www.ohio.gov/procure>.
2. From the Navigation Bar at the top, select "for Suppliers".
3. Under the title "Bid Opportunities", select "All Opportunities".
4. Enter the RFP Number found on Page 1 of this document as the "Document/Bid Number".
5. Click the "Search" button.
6. Select this RFP.
7. On the document information page, click the "View Q & A" button to display all inquiries with responses submitted to date.

ODSA will try to respond to all properly posed inquiries within 48 hours, excluding weekends and state holidays. ODSA will not respond to any inquiries received after 8:00 a.m. on February 26, 2016. Prospective Applicants who attempt to seek information or clarifications verbally will be directed to reduce their questions to writing in accordance with the terms of this RFP and state purchasing policy. No other form of communication is acceptable, and use of any other form of communication or any attempt to communicate with ODSA staff or any other agency of the State to discuss this RFP may result in the Applicant being deemed ineligible.

PART FOUR: EVALUATION OF PROPOSALS

EVALUATION PROCESS

ODSA’s evaluation process of responses submitted to this request may consist of up to four distinct phases:

1. ODSA’s initial review of all proposals for timely submission;
2. An evaluation committee review of the proposals for defects and scoring;
3. ODSA’s request for more information (clarifications, interviews, presentations, and/or demonstrations); and,
4. Negotiations or best offer requests.

At its sole discretion, ODSA will determine whether steps three and/or four of the evaluation process are necessary under this RFP, reserving for itself the ability to eliminate or add steps three or four at any time during the evaluation process. ODSA may add or remove sub-phases to steps 2 through 4 at any time if ODSA believes doing so will improve the evaluation process.

A minimum average score of 80 must be achieved during the evaluation process to be considered for the contract.

PROPOSAL EVALUATION CRITERIA

In the proposal evaluation phase, Agency staff or reviewers selected by the Agency will rate the proposals submitted in response to this RFP based on the following criteria and weight assigned to each criterion.

Evaluation Criteria	Weight
Technical Capacity: 1. Credit Evaluation	Up to 15 points
Organizational Capacity: 1. Staff capacity and composition of loan review board 2. Geographical reach and balance 3. Stability of cash flows/income	Up to 20 points
Administrative Capacity: 1. Clear, concise, and sound administrative processes (i.e. collection and delinquency procedures, loan intake procedures, loan closing procedures, and economic development/loan monitoring procedures.) 2. Plan outlining intent to service existing loan portfolios	Up to 20 points
Economic Development Impact:	Up to 20

1. Marketing plan outlining ways and means to market the Program 2. Funding request vs demonstration of economic need	points
Fees structure, cost presentation and competitiveness	Up to 10 points
Past experience administering loan programs, including previous performance utilizing Program funds	Up to 15 points
Total:	100 points

PART FIVE: CONTRACT AWARD

CONTRACT AWARD PROCESS

It is ODSA’s intention to award one or more contracts under the scope of this RFP and as based on the RFP Calendar of Events schedule, so long as ODSA determines that doing so is in the State’s best interests and ODSA has not otherwise changed the award date.

Any award decision by ODSA under this RFP is final. After ODSA makes its decision under this RFP, all Applicants will be notified (in writing or by phone, at ODSA’s discretion) of the final evaluation and determination as to their Proposals.

ODSA will issue a notice of contract award to the selected Applicant(s) and finalized contract terms and conditions will be forwarded for signature. Once copies of the contract are submitted by the Applicant(s), and pending any further approvals that may be required (e.g., State Controlling Board), ODSA will fully execute the contract.

Once the contract is fully executed, ODSA will issue to the Applicant(s) one (1) copy of the signed instrument for its/their files.

Unless otherwise negotiated and included in the executed contract/scope of work, the selected Applicant(s) shall be bound by all outlined services, policies and procedures as contained in the their submitted and evaluated proposal.

NUMBER OF AWARDS

ODSA anticipates making at least one award depending on Programs’ needs and the fit of the Applicant(s) to the scope of this RFP.

Appendix 1:

Standard Affirmation and Disclosure Form and Standard Terms and Conditions

The Standard Affirmation and Disclosure Form must be filled out and returned with a bid response in order for it to be eligible for scoring.

STANDARD AFFIRMATION AND DISCLOSURE FORM
EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

All of the following provisions must be included in all invitations to bid, requests for proposals, state term schedules, multiple award contracts, requests for quotations, informal quotations, and statements of work. This information is to be submitted as part of the response to any of the procurement methods listed.

By the signature affixed hereto, the Contractor affirms, understands and will abide by the requirements of Executive Order 2011-12K. If awarded a contract, both the Contractor and any of its subcontractors shall perform no services requested under this Contract outside of the United States.

The Contractor shall provide all the name(s) and location(s) where services under this Contract will be performed in the spaces provided below or by attachment. Failure to provide this information may subject the Contractor to sanctions. If the Contractor will not be using subcontractors, indicate "Not Applicable" in the appropriate spaces.

1. Principal location of business of Contractor:

(Address)

(City, State, Zip)

Name/Principal location of business of subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

2. Location where services will be performed by Contractor:

(Address)

(City, State, Zip)

Name/Location where services will be performed by subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

3. Location where state data will be stored, accessed, tested, maintained or backed-up, by Contractor:

(Address)

(Address, City, State, Zip)

Name/Location(s) where state data will be stored, accessed, tested, maintained or backed-up by subcontractor(s):

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

(Name)

(Address, City, State, Zip)

Contractor also affirms, understands and agrees that Contractor and its subcontractors are under a duty to disclose to the State any change or shift in location of services performed by Contractor or its subcontractors before, during and after execution of any Contract with the State. Contractor agrees it shall so notify the State immediately of any such change or shift in location of its services. The State has the right to immediately terminate the contract, unless a duly signed waiver from the State has been attained by the Contractor to perform the services outside the United States.

On behalf of the Contractor, I acknowledge that I am duly authorized to execute this Affirmation and Disclosure form and have read and understand that this form is a part of any Contract that Contractor may enter into with the State and is incorporated therein.

By: _____
Contractor

Print Name: _____

Title: _____

Date: _____

STANDARD TERMS AND CONDITIONS

EXECUTIVE ORDER 2011-12K

Governing the Expenditure of Public Funds on Offshore Services

The Contractor affirms to have read and understands Executive Order 2011-12K and shall abide by those requirements in the performance of this Contract. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in this Contract.

Appendix 2:

ODSA's Standard Loan Administration and Escrow Agreements

This sample document is provided only for convenience and the terms and conditions contained herein are subject to change without notice.

LOAN ADMINISTRATION AND ESCROW AGREEMENT

THIS LOAN ADMINISTRATION AND ESCROW AGREEMENT (the "Agreement"), is made and entered into this ___ day of _____, 2016 by and among the Director of the Ohio Development Services Agency (the "Director" [**and the "Escrow Agent"**]), [Economic Development Corporation Name] (the "Administrator"), an Ohio non-profit corporation, and [**Escrow Agent Institution Name**] (the "Escrow Agent").

WHEREAS, the Director is authorized by Article VIII, Section 13, of the Ohio Constitution and Chapter 166 of the Ohio Revised Code (the "Act") to enter into agreements with persons engaged in industry, commerce, distribution or research to induce such persons to acquire, construct, reconstruct, rehabilitate, renovate, enlarge, improve, equip or furnish, or otherwise develop buildings, structures, and equipment and other property comprising all or part of, or serving or being incidental to, an Eligible Project; and

WHEREAS, the Director has identified a need to target assistance under the Act to small business entities within the eighty-eight counties of the State of Ohio (the "Service Area"), within such Service Area assistance is to be made available under the Act through the implementation of the Regional 166 Loan Program (the "Regional Loan Program") pursuant to this Agreement; and

[WHEREAS, the Escrow Agent is a public depository eligible to receive and hold public deposits as provided in Sections 135.01 to 135.21 of the Ohio Revised Code;]

WHEREAS, the Director wishes to revise all prior Loan Administration and Escrow Agreements and enter into an Agreement effective [**Month, Day, Year**] for the Service Area by appointing _____ Economic Development Corporation Name as an Administrator and installing _____ Institution Name as the Escrow Agent; and

WHEREAS, the Director has proposed the Regional Loan Program in conjunction with the Administrator to serve an existing need for assistance under the Act to companies within the State of Ohio having a need for capital funds to locate or expand operations; and

WHEREAS, the Director has previously allotted Administrator certain funds available under the Act for the Regional Loan Program, and some or all of such funding may have been disbursed to the Administrator for the purposes set forth herein; and

WHEREAS, by this Agreement the Director proposes to make funds available to the Administrator for the purpose of implementing the Regional Loan Program in the Service Area, through marketing, packaging and servicing activities.

NOW THEREFORE, in consideration of the mutual promises and agreements hereinafter set forth, the parties hereto agree as follows:

ARTICLE 1

DEFINITIONS

SECTION 1.1. USE OF DEFINED TERMS

In addition to the words and terms elsewhere defined in this Agreement, or by references to the Loan Documents or other instruments, the words and terms set forth in Section 1.2 hereof shall have the meanings therein set forth unless the context or use expressly indicates a different meaning or intent. Such definitions shall be equally applicable to both the singular and plural forms of any of the words and terms therein defined.

SECTION 1.2. DEFINITIONS:

As used herein:

“Act” means Chapter 166, Ohio Revised Code, as from time to time amended or supplemented.

“Additional Financing” means an equity infusion by the Borrower and financing by one or more lenders to the Borrower, or a combination thereof sufficient to finance the Allowable Costs of the Eligible Project in excess of the Loan Amount, in accordance with the Loan Approval Documents.

“Administrator” means [Economic Development Corporation Name].

“Agreement” means this Loan Administration and Escrow Agreement, as from time to time amended or supplemented.

“Allowable Costs” means allowable costs of the Eligible Project within the meaning of the Act, in accordance with the Loan Approval Documents.

“Approval Summary” means the document outlining the project parameters and terms and conditions of the proposed assistance under the Regional Loan Program as approved by the Board of Directors of the Administrator and presented and accepted by the Borrower, in such form as set forth in the Regional Loan Program Guidelines.

“Borrower” or “Borrowers” means the entity, or entities, receiving assistance under the Regional Loan Program pursuant to this Agreement, the Approval Summary, the Loan Approval Documents and the Act.

“Closing Date” means the date established by the Administrator for closing a Loan in accordance with Section 2.3 of the Agreement.

“Controlling Board” means the Controlling Board created by Section 127.12 of the Ohio Revised Code.

“Disbursement” means the disbursement of the Loan Amount by the Escrow Agent to the Borrower on the Disbursement Date pursuant to the Loan Agreement, this Agreement and the Loan Approval Documents.

“Disbursement Date” means the date established by the Administrator for the

disbursement in accordance with Section 2.3 of this Agreement.

"Distressed Area" means all or part of a Service Area characterized by: (a) both a mean unemployment rate for the immediately preceding five (5) years equal to one hundred twenty-five percent (125%) of the unemployment rate then prevailing in the United States, and per capita income equal to eighty percent (80%) or less of the per capita income then prevailing in the United States; or (b) such other indicia as shall be determined from time to time by the Director in its sole discretion and provided to the Administrator. Also, assisting disadvantaged borrowers, such as, hub zones, Appalachian (priority investment areas), business district revitalization areas, and the expansion of small businesses owned or controlled by veterans.

"Eligible Investments" means (a) obligations issued by the United States of America, or money market funds invested solely in obligations thereof, (b) certificates of deposit of banks, including the Escrow Agent or trust companies organized under the laws of the United States of America or any State thereof having a reported combined capital and surplus of at least One Hundred Million Dollars (\$100,000,000.00), or (c) any investment referred to in divisions (A), (B), (C), or (D) of Section 135.14, Ohio Revised Code, or any funds that invest solely in investments referred to in such Section, as the same may be amended from time to time; provided that any such investment or deposit is not prohibited by applicable law.

"Eligible Project" or "Project" means an eligible project within the meaning of the Act.

"Escrow Account" means the account under the sole control of the Director established by Escrow Agent for deposit of the Escrow Amount.

"Escrow Allotment" means _____ No/100 Dollars (\$_____) allotted to the Administrator by the Director, or such greater or lesser amount as may from time to time be distributed to the Administrator and Escrow Agent by the Director in support of the Regional Loan Program.

"Escrow Amount" means the Escrow Allotment and any payments of principal and interest, fees and investment income held by the Escrow Agent in accordance with the terms of this Agreement.

"Event of Default" means an event of default as defined in the Loan Documents.

"Facilities Establishment Fund" means the fund created by Section 166.03, Ohio Revised Code.

"GO Forward Letter" means a letter issued by the Administrator to the Borrower detailing the parameters of the Eligible Project and citing the Borrower's need to proceed at Borrower's own risk with aspects of the Eligible Project prior to final approvals and closing.

"Guaranty" means a guaranty agreement or guaranty agreements, executed and delivered to the Administrator by the Borrower guarantying repayment of the Loan in accordance with the Loan Approval Documents, in such form as shall have been previously approved by the Director.

"Interest Rate" means the rate of interest applied to the Regional Loan as determined on a loan-by-loan basis by the Administrator consistent with the terms of Section 2.2(D)(5) of this Agreement.

"Loan" means a loan, made by the Administrator to a Borrower or the Portfolio Loans assigned to the Administrator as part of this Agreement, in the Loan Amount disbursed in accordance with the provisions of this Agreement, the Loan Agreement and the Loan Approval Documents.

"Loan Agreement" means the loan agreement entered into between the Administrator and a Borrower to establish the terms of the Loan in accordance with the Loan Approval Documents, in such a form as shall have been previously approved by the Director.

"Loan Amount" means the lesser of: (a) Five Hundred Thousand and No/00s Dollars (\$500,000.00) or (b) the maximum percent of total Allowable Costs of the Eligible Project as set forth in the Regional Loan Program Guidelines, and actually disbursed to the Borrower.

"Loan Approval Documents" means with respect to the Loan, the recommendations of the Administrator, the Director and the approval of the Controlling Board.

"Loan Documents" means the Loan Agreement, the Note, the Guaranty, the Security Documents and all other instruments, documents, certificates, opinions or other materials necessary to evidence and secure the Loan in accordance with the Loan Approval Documents, in such form as shall have been previously approved by the Director.

"Mortgage" means a mortgage executed and delivered by the Borrower to the Administrator to secure repayment of the Loan in accordance with the Loan Approval Documents, in such form as shall have been previously approved by the Director.

"Note" means the promissory note executed and delivered by the Borrower to the Administrator in the principal amount of the Loan to evidence the Loan made pursuant to the Loan Agreement in accordance with the Loan Approval Documents, in such form as shall have been previously approved by the Director.

"Notice Address" means:

- A. As to the Director: Ohio Development Services Agency
77 South High Street, 29th Floor

Columbus, Ohio 43215-6108
Attn: Chief Legal Counsel

B. As to Administrator: _____

Attn: _____

C. As to Escrow Agent: _____

Attn: _____

“Notification of Disbursement” means the notification in the form attached hereto as Exhibit A, and made a part hereof, to be presented by the Administrator to the Director in connection with a Disbursement.

“Priority Investment Area” means the areas as designated annually by the Director meeting specific statutory requirements and available for preferential benefit, including but not limited to favorable interest rates. AS of the date of this Agreement, maps of the defined Priority Investment Areas are available for review at http://development.ohio.gov/reports/reports_pra.htm.

“Regional Loan Program Guidelines” means policies and procedures outlined by the Director and as such policies and procedures may be amended. A copy of the Regional Loan Program Guidelines as in effect on the date of this Agreement is attached hereto as Exhibit B.

"Security Agreement" means a security agreement, executed and delivered by the Borrower to the Administrator to secure repayment of the Loan in accordance with the Loan Approval Documents, in such form as shall have been previously approved by the Director.

"Security Documents" means collectively, the mortgages, liens assignments, pledges, or other agreements or instruments executed and delivered by the Borrower to the Administrator, securing repayment of the Loan in accordance with the Loan Approval Documents, including, as applicable and without limitation, the Mortgage and the Security Agreement.

SECTION 1.3. CERTAIN WORDS AND REFERENCES:

A. Any references herein to the Director shall include those succeeding to his functions, duties or responsibilities pursuant to or by operation of law or lawfully performing such functions. Any reference to a section or provision of the Constitution of the State of Ohio or to the Act or to a section, provision, or chapter of the Ohio Revised Code shall include such section, provision or chapter as from time to time amended, modified, revised, supplemented or superseded.

B. The terms “hereof,” “hereby,” “herein,” “hereto,” “hereunder,” and similar terms refer to this Agreement.

ARTICLE II

LOAN ADMINISTRATION

SECTION 2.1. FEES:

A. The Administrator may receive and process a request for Regional Loan Program assistance from any Borrower for an Eligible Project within the Service Area. In addition, the Administrator may receive such fees as outlined below for the administration and servicing of Portfolio Loans.

B. The Administrator shall have the right to charge, collect and retain from the Borrower the following fees:

1. Initiation Fee; A loan initiation fee not to exceed One Thousand Dollars (\$1,000) payable by the Borrower at the time of the application submittal;
2. Processing Fee: A processing fee in an amount not to exceed one and one-half percent (1.5%) of the Loan Amount, paid by the Borrower at the time of loan closing for services rendered in the processing of the loan request;
3. Servicing Fee: A monthly servicing fee in an amount not to exceed one twelfth (1/12) of one-quarter (1/4) of one (1) percent of the outstanding principal balance of the Loan (the “Servicing Fee”);
4. Reimbursement of Costs: Reimbursement of actual and necessary costs incurred by the Administrator with respect to the processing of the request for assistance, including, but not limited to, reimbursement for payments to outside consultants and attorneys and recording and filing fees; and

C. The Administrator in accordance with the Regional Loan Program Guidelines, shall to charge and collect from the Borrower a subordinate collateral security fee equal to one percent (1%) of the Loan Amount for any such loan proposing a subordinate or second lien security position on any of the assets to be acquired as part of the Eligible Project (the “Subordinate Collateral Security Fee”). The Subordinate Collateral Security Fee shall be payable to the Director at the closing of the Loan.

SECTION 2.2. APPROVAL OF THE LOAN:

A. Upon the recommendation/approval of an Eligible Project by the Administrator’s Board of Directors, the Administrator shall submit to the Director complete information meeting the loan package requirements as set forth in the Regional 166 Loan Program Loan Package Requirements (the “Loan Package Requirements”), which are

attached hereto as Exhibit C. The Director shall review the loan package to determine whether the proposed assistance set forth in the Administrator's approval conforms to the loan package, the Act, this Agreement and the Loan Package Requirements, and that the strength of underlying financial information and financing structure support a sound credit decision at a level of risk and economic benefit acceptable to the Director. The Director reserves the right to utilize other tools and information in support of accessing/validating the creditworthiness/soundness of a loan package, and reserves the right to not approve the loan package.

B. If the Director determines there are discrepancies between the Administrator's approval and the loan package, the Act, this Agreement or the Regional Loan Program Guidelines, and/or that the Director requires additional information to support a sound credit decision, and/or if the Director determines that a material adverse change has occurred in the financial condition or assets of the Borrower, and/or if the Director determines that any of the information provided by or on behalf of the Borrower to Development, the Director, or anyone assisting the Director with respect to the loan package is false, incomplete, or inaccurate, the Director shall return the loan package to the Administrator without approval, and outlining any requests for additional information required to support a sound credit decision. The Administrator may resubmit a revised loan package which is to include the Administrator's formal recommendation/approval of the revised loan package.

C. If the proposed loan package is rejected, as submitted, for any reason, the Director shall provide the Administrator with notice of the rejection. The Administrator may restructure and/or provide additional information, as requested by the Director, in order to resubmit a revised loan package, provided that the revised loan package has been formally recommended/approved by the Administrator.

D. The Administrator shall ensure the Director has the most current of the following documents:

1. A copy of the Approval Summary developed by the Administrator and Borrower;
2. A summary of the current business activities of the Borrower furnished by the Borrower;
3. Information with respect to the current financial condition of the Borrower furnished by the Borrower;
4. Projected financial information of the Borrower, supplied by the Borrower, including without limitation, the following:
 - (a) The expected impact of the Eligible Project on the financial condition of the Borrower;
 - (b) A detailed description of the Eligible Project, including

identification of whether the project involves the relocation of employment positions or assets from one Ohio political subdivision to another;

(c) The number of employment positions reasonably expected to be created and/or retained by the Borrower in Ohio as a direct result of the Eligible Project;

(d) The aggregate total dollar amount of all state and local tax revenues reasonably expected to be generated by the Borrower as a direct result of the Eligible Project; and

(e) A breakdown of all Allowable Costs of the Eligible Project and the sources and terms of all Additional Financing.

5. The certificate of the Administrator to the Director evidencing that:

(a) The use of funds by the Borrower will constitute an Eligible Project that is economically sound;

(b) The nature, amount and terms of the Loan are appropriate in light of the consideration set forth in Section 166.05(A) of the Act and the Regional Loan Program Guidelines and will conform to the requirements of the Act and the Regional Loan Program Guidelines;

(c) The benefits to be derived by the State of Ohio and local area in which the Eligible Project will be located from the establishment or development and operation of the Eligible Project will exceed the cost of providing such assistance;

(d) The Borrower is unable to finance the necessary Allowable Costs through ordinary financial channels upon comparable terms;

(e) The Loan will be secured by the Mortgage and/or the Security Agreement granting the Director not less than a second priority mortgage lien and/or security interest in the Eligible Project and by such other Security Documents as shall be required by the Loan Approval documents;

(f) None of the Loan Amount is to be used by the Borrower for the purpose of acquiring small tools, supplies or inventory;

(g) The Interest Rate applicable to the Note shall be fixed at or below local market rates at the time the Loan is presented to the Director for approval, and the Note shall be payable over a term not to exceed the longest term of any loans included as part of the Additional Financing, in each case as required by the Loan Approval Documents; and

(h) The proposed Loan meets all requirements set forth within the Regional Loan Program Guidelines.

6. If the Loan is not secured on at least a shared first priority basis with the Additional Financing, a narrative detailing efforts by the Administrator to negotiate with the lender(s) providing the Additional Financing to obtain a first priority mortgage lien and/or security interest in the Eligible Project, and documentation that a Subordinate Collateral Security Fee shall be paid at closing.

E. If, in the Director's sole discretion, a determination that the proposed assistance conforms to the Act, this Agreement, and the Regional Loan Program Guidelines, the Director shall forward the project materials to the Controlling Board for its final review and potential approval. Upon approval of the Controlling Board, the Director shall notify the Administrator of such approval.

F. If requested by the Director, a representative of the Administrator responsible for the Project shall attend the meeting of the Controlling Board at which the Project is to be considered and shall make a formal presentation to the Controlling Board with respect to the proposed assistance.

G. The Administrator shall not make a firm commitment to the Borrower with respect to the Loan or enter into any of the Loan Documents prior to receipt by the Administrator of written notice by the Director that the Director has recommended the Loan to the Controlling Board and the Controlling Board has approved the Loan, which notice shall be accompanied by copies of the Loan Approval Documents. The Borrower may not begin the Eligible Project until receipt of the written notice referenced in this paragraph G, subject to entering into acceptable Loan Documents evidencing the Borrower's repayment obligation. If the Borrower requests permission to begin a portion of the Eligible Project prior to the requisite approvals, the Administrator may consider issuing a GO Forward Letter permitting the Borrower to proceed at its own risk. Such a request will not be considered prior to the Administrator's review of the Borrower's request for assistance.

SECTION 2.3. CLOSING AND DIBURSEMENT OF THE LOAN:

A. Following receipt from the Director of the Loan Approval Documents, the Administrator shall establish a Closing Date and a Disbursement Date for the Loan, and shall promptly notify the Director and the Escrow Agent of such Closing Date and Disbursement Date. Administrator shall provide to the Director a Notification of Disbursement, in the form attached hereto as Exhibit A and in accordance with the requirements of Section 5.1 hereof, not fewer than ten (10) days prior to the scheduled Disbursement Date. Administrator shall close the Loan on the Closing Date, in accordance with all the provisions of this Agreement, the Regional Loan Program, the Loan Approval Documents and the Act, and shall assign to the Director all of its right, title and interest in and to the Loan Documents (the "Assignment") on the Closing Date. Such Assignment shall be in form and substance as approved by the Director. The Escrow Agent shall not disburse funds from the Escrow

Account until confirmation that the Assignment has been made.

B. After any required execution thereof by the Administrator, Borrower and Director, the Administrator shall cause any Mortgage, such other of the Security Documents as are appropriate, any instruments supplemental thereto, financing statements, including all necessary amendments, supplements and appropriate continuation statements, to be recorded, registered and filed, in such manner and in such places as may be required in order to establish, preserve and protect the lien(s) to the Director intended to be created thereby at the level of priority required by the Loan Approval Documents. Within ten (10) business days of the Closing Date, the Administrator shall deliver to the Director the executed original Loan Documents. Administrator shall not do any of the following without the prior written consent of the Director:

1. Modify any of the Loan Documents;
2. Grant any waiver, indulgence, forbearance, change, amendment, release or extension of the Loan Documents;
3. Exchange or release any security which may at any time be given to secure the Note;
4. Accept partial payment or payments due under the Note or any other amounts due under the Loan Documents

C. The Disbursement shall occur on the Disbursement Date in accordance with the provisions of Section 3.2 of this Agreement, provided that the Administrator shall have received the following, all in form and content satisfactory to the Director and Administrator and in conformity with the Loan Documents:

1. The certificate of the Borrower setting forth in reasonable detail the costs as incurred in completion of the Eligible Project, including a detail by category of the Allowable Costs;
2. If the security for the Loan consists of an interest in real property or fixtures, an ALTA loan policy or policies of title insurance insuring the Director's interest created by the Loan Documents at the level of priority therein provided;
3. All UCC-II searches or responses to UCC-II requests as are appropriate, disclosing only such filings as are consistent with the Director's interest created by the Loan Documents;
4. Satisfactory evidence of all insurance coverages required by the Loan Documents;
5. Satisfactory evidence of zoning compliance, availability of utilities and

all necessary licenses and permits required in connection with the Eligible Project;

6. Documents evidencing and securing the Additional Financing;

7. To the extent that the Eligible Project involves construction, the following:

(a) The Certificate of the Borrower certifying the completion date of the Eligible Project, that all improvements have been made, and all Eligible Project costs have been paid; and

(b) Certificates of occupancy.

8. To the extent that the Loan is secured by a mortgage on real property, a satisfactory environmental audit of the Eligible Project performed in accordance with such standards as shall have been determined by the Director and provided to the Administrator; and

9. Such other waivers, certificates, assurances, assignments, instruments, documents, materials, opinions or information required to fully protect the interests of the Director in the Eligible Project intended to be created by the Loan Documents in accordance with the Loan Approval Documents.

SECTION 2.4. LOAN ADMINISTRATION; REPORTING REQUIREMENTS:

A. The Escrow Agent shall receive and deposit from the Borrower all repayments of a Loan and Loan-related fees as they become due during the term of this Agreement. All amounts representing the repayments of principal of and interest on the Loan and Loan-related fees shall be held, invested, reinvested and disbursed in accordance with this Section 2.4 and Section 3.2 hereof. The Escrow Agent shall report monthly to the Administrator on the repayment status of each outstanding Loan (including loan payoffs which must be reported to the Director within three (3) business days of receipt of payment), in the manner and at such times as shall have been agreed upon between the Administrator and the Escrow Agent. All amounts representing the payment of principal and interest of a Loan and Loan-related fees shall be applied as follows:

1. Beginning [**Month, Day, Year**], the Escrow Agent shall disburse to the Administrator in consideration of its administration of its Portfolio Loans, an amount equal to sixty percent (60%) of the monthly payment of interest collected from the Borrowers on each outstanding Loan; however, for any Loan with a project site located in a county designated as part of the Appalachian Region, the Escrow Agent shall disburse to the Administrator in consideration of its administration of the Loan, an amount equal to seventy-five percent (75%) of each monthly payment of interest collected from the Borrower.

2. The Escrow Agent shall disburse monthly to the Administrator one hundred percent (100%) of the Servicing Fee collected from Borrowers; and

3. The balance of amounts collected from Borrowers, including any interest earned thereon, shall be retained as part of the Escrow Amount.

Any change in the percent of monthly loan interest to be paid by the Escrow Agent to the Administrator shall become effective in not less than thirty (30) days after the Director notifies the Escrow Agent and Administrator in writing of such change.

B. Within thirty (30) days immediately following the end of each calendar month throughout the term of this Agreement, the Administrator shall provide to the Director a written report detailing the status of each Loan, including details as to each Loan that is delinquent in payment or other existing default(s), and the workout steps in process, as well as the current status of each request for loan assistance received by the Administrator for assistance under the Regional Loan Program. Administrator's failure to provide a report on delinquent Loans in excess of thirty (30) days delinquent in payment may result in removal of the Administrator pursuant to Article IV of this Agreement.

C. Throughout the term of any Loan Agreement, the Administrator shall receive from the Borrower such reports, certificates, documents, instruments, materials or information as shall be required by the Loan Documents, this Agreement, the Regional Loan Program Guidelines and the Act, and shall promptly forward copies of such reports, certificates, documents, instruments, materials or information to the Director upon request, and in a form/manner satisfactory to the Director.

D. The Administrator shall inform all Borrowers that the Director may randomly select them for a confidential survey concerning Regional Loan Program process and the Borrowers' experiences. Such information shall be used to evaluate performance of the Administrator and as a means to improve the program. Any release of the survey information shall be done in an aggregate form and not on an individual basis.

SECTION 2.5. EVENT OF DEFAULT; WORKOUT PROCEDURE:

A. The Administrator shall follow the Regional Loan Program Guidelines regarding loan defaults and workout procedures, including, but not limited to, notifying the Director in writing of the occurrence of an Event of Default under the Loan Documents and taking such actions with respect thereto, as may be reasonably requested by the Director. Any modifications to the Loan Documents, accommodations, or forbearance agreements must be reviewed and approved by the Director prior to implementation. Administrator shall be solely responsible for the costs of any such action reasonably requested by the Director with the understanding that the costs of any such action taken at the request of the Director shall be paid solely from amounts recovered from the affected Borrower.

B. In the event that the Administrator's workout efforts fail, the filing of

bankruptcy by the Borrower, or if a foreclosure action is necessary, the Director shall certify the Loan to the Ohio Attorney General's Office to represent the Director's interests. Once the Loan is certified to the Ohio Attorney General's Office for collections, proceeds from the sale or liquidation of the collateral shall remain with the Director and shall not be made available to the Escrow Account.

SECTION 2.6. BOOKS AND RECORDS:

The Administrator shall provide the Director with prompt access to and a right to examine the books and records of the Administrator as is necessary to ensure compliance with the terms of this Agreement. Administrator shall not destroy or remove from its premises any books or records maintained in connection with its administration of the Regional Loan Program and shall promptly forward to the Director all such books and records upon the Director's request or upon termination of this Agreement.

SECTION 2.7. DISTRESSED AREAS:

The Administrator shall develop and submit to the Director, as requested, a marketing plan designed to target assistance under the Regional Loan Program to small industrial companies within any Distressed Areas within the Service Area and identified to the Administrator.

SECTION 2.8. IMPLEMENTATION AND MARKETING PLAN:

In furtherance of the marketing and implementation of the Regional Loan Program, and upon formal request of the Director, the Administrator shall prepare and provide to the Director an implementation and marketing plan for the Regional Loan Program. Failure to submit the Administrator's marketing plan in sufficient detail within sixty (60) days of the Director's written request may lead to removal of the Administrator or termination of this Agreement pursuant to Article IV.

ARTICLE III

ESCROW ACCOUNT

SECTION 3.1. GENERAL OBLIGATIONS:

A. The Escrow Agent shall serve as Escrow Agent and promptly perform all its obligations as such hereunder. This Agreement shall constitute the instructions to the Escrow Agent.

B. The Director and the Administrator hereby authorize the Escrow Agent to accept, and the Escrow Agent agrees to accept and observe, in amplification or modification of the instructions herein, as the case may be, written instructions approved by both the Director and Administrator, or the respective counsel of each.

C. The duties of the Escrow Agent hereunder may not be assigned by the Escrow Agent without the prior written consent of both the Administrator and the Director.

SECTION 3.2. DEPOSITS AND DISBURSEMENTS OUT OF ESCROW:

A. Upon execution and delivery of this Agreement, the Director authorizes the Escrow Agent to establish an Escrow Account **[in the name of the Director]** (the “Escrow Account”) for deposit of the Escrow Amount to be used to disburse, **[invest and reinvest]** the Escrow Amount already on deposit with the Escrow Agent and any Loan payments made from time to time hereafter according to the terms and conditions of this Agreement. The Escrow Account shall comply with all applicable collateral requirements of the Treasurer of the State of Ohio regarding public deposits.

B. Upon execution and delivery of the Loan Documents to the Administrator, and verification that the Assignment to the Director has been made, the Escrow Agent may, pursuant to the Loan Documents, release the Loan Amount to the Borrower. The Escrow Agent agrees to receive, hold and disburse the Loan Amount in accordance with the provisions of this Agreement and hereby acknowledges receipt of such amount.

C. [The Escrow Amount shall be invested and reinvested by the Escrow Agent in Eligible Investments or such other instruments as shall from time to time be agreed upon by the Director and the Escrow Agent.]

D. Upon the sole written authorization and discretion of the Administrator, **[including a copy of the Notice by the Director provided for in Section 2.3(D) hereof,]** the Escrow Agent shall disburse the Loan Amount on the Disbursement Date to or for the benefit of the Borrower.

E. The Escrow Account shall at all times be subject to the control, lien and charge in favor of the Director and, at the request of the Director and following ten (10) days written notice given to the Administrator, shall be disbursed to the Director by the Escrow Agent to cure any defaults under any agreement between the Director and Administrator relating to the administration of the Regional Loan Program.

F. The Administrator shall direct that all amounts representing repayments of principal and interest on the Loan by the Borrower to the Administrator pursuant to the Loan Agreement and all Loan-related servicing fees (except any Loan initiation or processing fees) shall be paid directly to the Escrow Agent. Except as provided in Section 2.4(A)(1) and (2) hereof, all such amounts shall thereupon become part of the Escrow Amount, and the Escrow Agent shall receive, **[hold, invest, reinvest]** and further disburse such amounts in accordance with the provisions of this Agreement.

G. Each month during the term of this Agreement, the Escrow Agent shall verify payments of interest, principal and servicing fees received and calculate and disburse to the Administrator the amounts allowable under Section 2.4 of this Agreement. **[The Escrow Agent shall also complete and submit to the Director by the 15th day of each month, in a**

form satisfactory to the Director, a report which outlines the payments of interest, principal and servicing fees received, and verifies the amounts disbursed to the Administrator as allowable under Section 2.4 of this Agreement.]

H. Not later than thirty (30) days after the closing of a Loan that required a Subordinate Collateral Security Fee, the Escrow Agent shall forward to the Director the amount set forth in the Loan documents as the Subordinate Collateral Fee.

I. [Any and all earnings resulting from the investment of the Escrow Amount shall be added to the Escrow Amount and held by the Escrow Agent for the sole benefit of the Director, shall be invested and reinvested by the Escrow Agent in accordance with Section 3.2(C) hereof, shall be part of the Escrow Amount, subject to disbursement under Section 3.2(D) hereof unless otherwise directed by the Director, and such earnings shall, in any event, be promptly disbursed to the Director, the Facilities Establishment Fund, or such other location as directed by the Director, at such times and in such manner as the Director, in his sole discretion, shall designate.]

J. Should the Director determine that reallocation of all or a portion of the Escrow Amount is necessary for the effective administration of the Regional Loan Program, and upon a minimum of thirty (30) days prior written notice to the Administrator and Escrow Agent, the Director may direct the Escrow Agent to disburse back to the Director, to the Facilities Establishment Fund or to another entity serving as escrow agent for another administrator in the Regional Loan Program, all or any portion of the Escrow Amount as the Director, in the Director's sole discretion, shall designate. The Escrow Agent shall promptly disburse such funds as directed.

SECTION 3.3. ESCROW PROCEDURES:

A. Disbursement shall be made by the Escrow Agent upon written authorization and direction of the Administrator in accordance with procedures set forth herein. No portion of the Escrow Amount shall be paid by the Escrow Agent to any person or organization except in compliance with the specific provisions of this Agreement.

B. The Escrow Agent shall maintain accurate records of all transactions with respect to the Escrow Account, including but not limited to a record of all earnings resulting from the investment and reinvestment of the Escrow Amount, and shall upon request, make such records available to the Director and Administrator for inspection.

C. The Escrow Agent shall accept as full payment for its services hereunder the fees set forth in Exhibit D attached hereto and incorporated herein by this reference, which fees shall be payable to the Escrow Agent solely from the Escrow Amount. In no event shall the Director, Administrator or Borrower be responsible for any other fee or expenses of the Escrow Agent hereunder.

ARTICLE IV

REMOVAL AND TERMINATION

SECTION 4.1. REMOVAL BY DIRECTOR:

Notwithstanding any provision to the contrary contained in this Agreement, the Director may remove the Administrator and/or the Escrow Agent, without cause, upon sixty (60) days prior written notice to each of the other parties hereto. The Director may appoint such other party or parties in lieu thereof, which party or parties shall agree in writing to assume all the duties and obligations of the removed party or parties hereunder. Upon such removal and reappointment, this Agreement shall not terminate but shall remain in full force and effect with the successor of the removed party or parties. Appointment of a successor Administrator and/or Escrow Agent shall not be construed to waive or release any claims the Director may have arising from any breach by the removed party or parties of its obligations under this Agreement.

SECTION 4.2. TERMINATION:

This Agreement shall terminate upon the earlier to occur of:

A. December 31, 2018;

B. The sixtieth (60th) day immediate following written notice by the Director, Administrator, or the Escrow Agent to each of the other parties; provided, however, that no termination under this subsection B shall be effective as to any Loan previously recommended by the Director to the Controlling Board or, as applicable, previously approved by the Controlling Board, until such Loan has been disbursed in accordance with the terms of this Agreement; or

C. If the Director determines, in his reasonable discretion, that the Administrator is underutilizing its Escrow Allotment funds, the Director reserves the right to take back any remaining funds from the Escrow Account and assume from the Administrator all servicing responsibilities for the Administrator's Portfolio Loans.

SECTION 4.3. DUTIES UPON REMOVAL OR TERMINATION:

A. Prior to the effective date of such termination, the Administrator shall notify the Borrower to direct all further repayments of the Loan to the Director;

B. The Escrow Agent shall promptly deliver to the Director, by cashier's check or wire transfer, any and all undisbursed portions of the Escrow Amount and any and all earnings from the investment and reinvestment thereof, net of all payments to the Administrator required hereunder through the date of termination, which amounts shall be delivered to the Administrator.

C. Any and all repayments of the Loan thereafter received by any of the parties hereto shall be forwarded immediately to the Director at the Notice Address.

D. The Administrator shall promptly forward to the Director all original Loan Documents and loan files in its possession and such additional reports, documents, certificates, instruments, materials or information as shall be reasonably requested by the Director.

The provisions of this Section 4.3 shall survive termination of this Agreement.

SECTION 4.4. LIMITATION OF LIABILITY:

Except as provided in Sections 5.2 and 5.3 hereof or except as occasioned by the failure of the Administrator to abide by any express terms or provisions of this Agreement, upon the termination of this Agreement by the Director, the Director assumes all responsibility with respect to all Loans committed or in process, and the Administrator shall have no further responsibility or obligation with respect thereto.

ARTICLE V

MISCELLANEOUS

SECTION 5.1. NOTICES:

All notices, certificates, requests or other communications hereunder shall be in writing and shall be deemed to be sufficiently given when mailed by registered or certified mail, postage prepaid, and addressed to the appropriate Notice Address. The Director, Administrator or the Escrow Agent may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates, requests or other communications shall be sent.

SECTION 5.2. INDEMNIFICATION:

A. The Escrow Agent shall defend, indemnify and hold the Director and Administrator harmless against any and all losses, costs, expenses, claims or actions arising out of or connected with the Escrow Agent's gross negligence, willful or wanton misconduct or bad faith of the Escrow Agent or its employees or agents in the performance of the Escrow Agent's duties hereunder. Escrow Agent shall reimburse the Director and Administrator for any judgments and all reasonable costs incurred by the Director or Administrator in defending against such claims or actions.

B. Administrator shall defend, indemnify and hold the Escrow Agent and the Director harmless against any and all losses, costs, expenses, claims or actions arising out of or connected with the Administrator's gross negligence, willful or wanton misconduct or bad faith in the performance of the Administrator's duties hereunder. Administrator shall reimburse the Escrow Agent and Director for any judgments and all reasonable costs incurred by the Escrow Agent or Director in defending against such claims or actions.

SECTION 5.3. CONFIDENTIALITY:

As used herein, "Confidential Information" means any and all information provided in any form from one party to another party which is, by its nature, information that a prudent business person would maintain as confidential. Such information includes proprietary information, trade secret information and "Personal information" as described in Ohio Rev. Code Sec. 1347.01(E). The Administrator and the Escrow Agent shall use Confidential Information only in connection with the purposes set forth herein. The Administrator and the Escrow Agent acknowledge that Confidential Information may include personal or proprietary information relating to businesses or individuals. The Administrator and the Escrow Agent agree to use reasonable efforts to safeguard Confidential Information and to prevent the unauthorized, negligent or inadvertent disclosure of Confidential Information. "Reasonable efforts" means efforts not less than those one party employs to protect its own Confidential Information and, in any event, efforts not less than those a prudent business person would take to protect his or her own confidential and proprietary information. The Administrator and the Escrow Agent shall not, without the prior written approval of the Director, directly or indirectly disclose Confidential Information to any person or business entity except to its own employees and representatives, including, without limitation, attorneys, accountants and financial advisors on a need-to-know basis for the purposes contemplated by this Agreement. Without limiting the generality of the foregoing, if the Administrator or the Escrow Agent experiences any breach of data security that exposes the Confidential Information to disclosure or unauthorized use, the Administrator and the Escrow Agent agree to bear all costs to notify every individual whose Confidential Information may have been compromised and agree that it shall also hold the Director harmless from any claim arising from or related to such breach.

SECTION 5.4. EXTENT OF CONVENANTS; NO PERSONAL LIABILITY:

All covenants, obligations and agreements of the Director and Administrator contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of the present or future Director in other than his or her official capacity acting pursuant to the Act, the Regional Loan Program and this Agreement, or any present or future officer of the Administrator or Escrow Agent in other than his or her official capacity acting pursuant to this Agreement.

SECTION 5.5. BINDING EFFECT:

This Agreement shall inure to the benefit of and shall be binding in accordance with its terms upon the Director, the Administrator, the Escrow Agent and their respective successors and assigns.

SECTION 5.6. ASSIGNMENTS:

Neither this Agreement nor any rights, duties or obligations described herein shall be assigned by the Director, the Administrator or the Escrow Agent without the prior written consent of the other parties hereto. Except as expressly provided herein, the Administrator

shall not assign any of its rights, duties or obligations described in any of the Loan Documents to which it is a party without the prior written consent of the Director.

SECTION 5.7. AMENDMENTS AND SUPPLEMENTS:

This Agreement contains the entire agreement between the parties as of the date hereof with respect to the subject matter hereof and may not be amended or supplemented except by an instrument in writing executed by the Director, the Administrator and the Escrow Agent.

SECTION 5.8. EXECUTION OF COUNTERPARTS:

This Agreement may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement.

SECTION 5.9. SEVERABILITY:

If any provision of this Agreement, or any covenant, obligation or agreement contained herein is determined by a court to be invalid or unenforceable, such determination shall not affect any other provision, covenant, obligation or agreement, each of which shall be construed and enforced as if such invalid or unenforceable portion were not contained herein. Such invalidity or unenforceability shall not affect any valid and enforceable application thereof, and each such provision, covenant, or agreement shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent permitted by law.

SECTION 5.10. CAPTIONS:

The captions and headings in this Agreement shall be solely for the convenience of reference and shall in no way define, limit or describe the scope or intent of any provisions of this Agreement.

SECTION 5.11. GOVERNING LAW:

This Agreement shall be deemed to be a contract made under the laws of the State of Ohio and for all purposes shall be governed by and construed in accordance with the laws of the State of Ohio. In the event of any irreconcilable conflict between the provisions of the Act and the terms of this Agreement, the provisions shall control.

SECTION 5.12. RELIANCE:

In the absence of bad faith, the Director and the Escrow Agent, in exercising its respective duties hereunder may fully rely upon the certificates and representations of the Administrator with respect to its obligations hereunder and shall be under no affirmative duty to conduct any independent investigation.

SECTION 5.13. ENFORCEABILITY:

None of the rights, duties and obligations of the parties created by this Agreement shall be valid and enforceable until all statutory provisions of the Ohio Revised Code, including but not limited to Section 126.07, have been complied with and until such time as all necessary funds are made available and forthcoming from all appropriate state agencies.

[Signature Page follows.]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first set forth above.

**Ohio Development Services Agency,
State of Ohio
David Goodman, Director**

By: /s/ _____

Name: _____

Its: _____

**[Economic Development Corporation
Name]**

By: /s/ _____

Name: _____

Its: _____

[Escrow Agent Name]

By: /s/ _____

Name: _____

Its: _____

Exhibit 1:

Ohio Regional 166 Loan Program Guidelines

OHIO REGIONAL 166 LOAN PROGRAM

Regional Loan Program Guidelines

The Ohio Regional 166 Loan Program (the “Program”) is an integral part of the State's overall economic development strategy and is an approximately \$60 million loan program statewide. The Program is authorized under Chapter 166 of the Ohio Revised Code and funded through the Facilities Establishment Fund. Job creation and positive economic growth are the most immediate desired results of this Program. The Program promotes economic development, business expansion, and job retention and/or creation by providing financial assistance to entities for the reimbursement of allowable costs of Eligible Projects (defined below). This financial assistance takes the form of low-interest loans to businesses creating new and/or retaining existing employment opportunities at an entity’s project site in the State.

The Ohio Development Services Agency (“ODSA” or the “Agency”) provides the following Regional Loan Program Guidelines (the “Program Guidelines”) to set forth the requirements and expectations of the Agency for each Administrator of the Program. These Program Guidelines amplify and explain the structure of the Program and any duties of the parties under a Loan Administration and Escrow Agreement (the “Agreement”) entered into among the Agency, the Administrator, and any party serving as Escrow Agent, and may be modified from time to time by the Agency.

Program Structure

Eligible Projects

Eligible Projects include those related to industry, commerce, distribution, or research activities (“Eligible Project” or “Project”).

Allowable Costs/Uses

- Land and/or building purchase – if the project involves the purchase of an existing building, the business must occupy at least 51% of the premises;
- Machinery & equipment purchases;
- Building construction and/or renovation costs – in the case of construction, the business must occupy at least 60% of the premises;
- Long-term leasehold improvements;
- Ongoing fixed asset purchases; and
- Capitalizable costs directly related to fixed asset purchase.

Note: Refinancing and retail projects are ineligible.

Total Project Financing

The Program may finance up to 40% of an Eligible Project, with loans up to \$500,000. The Agency requires a minimum of 10% equity contribution from the borrower in the Eligible Project, however a greater equity contribution may be required based on due diligence. The

remaining Eligible Project shall be funded by the borrower either directly or indirectly through third party investors and/or private lenders. ODSA will give preference to Eligible Projects with the above or a similar financing structure. Notwithstanding the foregoing, if there is no third party financing in the Eligible Project, up to 75% of the Eligible Project may be funded by Program loan proceeds with the remainder funded by the borrower's equity contribution.

Term

Terms shall be based upon the useful life of the property financed with Program loan proceeds and should reflect the term of the bank loan in the project, if applicable. Regardless of a longer useful life, the maximum term for real estate (only) loans is up to 20 years and the maximum term for loans to acquire machinery and equipment is up to 10 years.

Interest Rate

Interest rates shall be fixed at/or below local market rates at the time the loan is presented to ODSA for approval.

Job Creation/Retention

Promoting economic development is one of the key Agency objectives, and as such, job creation and/or retention must be taken into consideration while reviewing proposed loans. Priority may be given to Eligible Projects with higher wage and job creation commitments in a distressed area of the State; however, a specific loan dollars/job ratio is not required. The loan agreement will outline the date (metric evaluation date) by which certain commitments, including the job commitments, have to be fulfilled.

Security & Collateral

The Agency requires a first priority mortgage and/or lien position on project costs/uses financed with the Program loan proceeds or an acceptable Intercreditor Agreement providing for shared proceeds. Notwithstanding the foregoing, a second collateral position may be taken if not more than 30% of the Eligible Project is being financed with Program loan proceeds, the borrower pays an additional 1% security fee to ODSA, and the loan is further secured by sufficient credit enhancements, such as the following:

- Personal guarantees from owners with more than 20% ownership in the company;
- Corporate guarantees from related companies;
- Life insurance on key business owners and/or managers;
- Full or partial letter of credit from a recognized financial institution; and/or
- Other types of credit enhancements, if necessary.

As an example, for a \$1,000,000 project with the Agency in a second collateral position, the project could be financed with 30% from Program proceeds (\$300,000), 60% from third party financing (\$600,000), and 10% from the borrower equity (\$100,000).

Assets offered as collateral may be required to undergo a third party evaluation (i.e. appraisal) in accordance with these Program Guidelines. Request for Program funds from any borrowers with outstanding liabilities with the Ohio EPA or Ohio Department of Taxation will not be considered until those liabilities have been resolved.

Borrowers cannot transfer ownership of any entity without approval from the Agency; even in case of sale of related entities or subsidiaries not pledged as collateral. It is the borrower's responsibility to inform the Administrator and the Agency before such sale or change in ownership interest is complete. If the borrower is sold or substantially sells all of its assets, the Program loan must be paid-off as part of the sale. However, assumption of a loan may be considered on a case-by-case basis and must be approved by ODSA.

Prepayment

The Agency imposes no pre-payment penalty.

Program Fees

An Administrator may receive such fees, as outlined below, to administer and service the Ohio regional 166 loans:

1. **Initiation Fee:** A loan initiation fee not to exceed One Thousand Dollars (\$1,000.00) payable by the borrower at the time of the application submission;
2. **Processing Fee:** A processing fee in an amount not to exceed one and one-half percent (1.5%) of the loan amount, paid by the borrower at the time of loan closing for services rendered in the processing of the loan request;
3. **Servicing Fee:** A monthly servicing fee in an amount not to exceed one twelfth (1/12) of one-quarter (1/4) of one (1) percent of the outstanding principal balance of the loan; and
4. **Reimbursement of Costs:** Reimbursement of actual and necessary costs incurred by the Administrator with respect to the processing of the request for assistance, including, but not limited to, reimbursement for payments to outside consultants and recording and filing fees.

The Administrator, in accordance with these Program Guidelines, shall also charge and collect an additional one percent (1%) processing fee from the borrower in cases of loans with second collateral positions. This fee will be collected by the Administrator and be made payable and sent to the Agency at the closing of the loan.

Administrator Compensation

The Escrow Agent shall disburse to the Administrator in consideration for its administration of its loans in the Program, an amount equal to sixty percent (60%) of the monthly payments of interest collected from borrowers for each outstanding Program loan. However, for any loan with a project site located in a county designated as part of the Appalachian Region, the Escrow

Agent shall disburse to the Administrator in consideration of its administration of such loan, an amount equal to seventy-five percent (75%) of each monthly payments of interest collected from the borrower.

Escrow Agent

ODSA will serve as the Escrow Agent (“Escrow Agent”) for disbursements for this Program. Notwithstanding the foregoing, an existing Administrator under the Program may elect to continue the use of its current Third-Party Escrow Agent.

Administrator Responsibilities

Evaluating credit worthiness

The Administrator will gather necessary information from the prospective borrower to conduct due diligence and credit analysis. This information request may include (but is not limited to): borrower’s historical and financial statements, personal/corporate financial statements from all loan guarantors, appraisals of collateral, environmental clearances, industry reports, and other commonly utilized resources (such as D&B, IBISWorld, Lexis Nexis, etc.) used to analyze credit risk. This information gathering exercise shall include a site visit by the Administrator to the prospective borrower’s place of business, and potentially to the project site. Upon receipt, the Administrator shall evaluate the following components before making a determination and recommendation to advance Program funds to a prospective borrower:

- **Ability to Repay:** Can the business demonstrate (through historical or financial statements) that it has the ability to generate enough cash to pay for the project financing? This should include analysis of the borrower’s existing lines of credit and loans, an understanding of the working capital needs/availability of the borrower, and the borrower’s payment history.
- **Management:** Has the business demonstrated sufficient management capability to handle the Project and to position the company for likely Program loan repayment and job creation?
- **Collateral / Security:** All assets offered as collateral of the Program loan should have some form of cost verification (e.g., appraisals, third party estimates, purchase agreements). In most cases, the Agency will accept the documents provided to (and accepted by) the private lender (bank/credit union) that are providing additional financing for the Project.
- **Employment Impact:** The number of full-time equivalent jobs the borrower expects to create and/or retain.

Delinquency

In the event that a loan payment is delinquent for 30 days (or more), the Administrator must inform the Agency’s Regional 166 Loan Program Manager (the “Program Manager”) and advise of the collection efforts undertaken by the Administrator. Should any loan remain in payment default for a period of forty-five (45) days without a defined workout plan in progress, or a loan modification or forbearance agreement executed, that loan shall immediately be forwarded to the

Agency for additional due diligence and possible remedial action. The Administrator will remove from its list of outstanding loans any loans that are forwarded to the Agency for collections. The Administrator shall send the Program Manager a summary of the remediation/collection efforts along with any documents that have been sent to the borrower.

Loan Defaults

For all non-delinquency loan defaults, the Administrator shall notify the Agency of an event of default, whether declared or undeclared, within ten (10) business days of knowledge of such default. The Administrator may develop a workout plan and propose remedies to a borrower, and the Agency will remain available to assist the Administrator, if requested. In certain circumstances, at the Agency's discretion, the Agency may determine it is necessary for the Agency to assume the loan servicing for a particular loan in default. Should any loan remain in default for a period of forty-five (45) business days without a defined workout plan in progress, or a loan modification or forbearance agreement executed, that loan shall be forwarded to the Agency for additional due diligence and remedies, including potential certification the loan to the Ohio Attorney General's Office. The Administrator shall send the Program Manager a summary of the remediation/collection efforts along with any documents that have been sent to the borrower.

In the event that a borrower commences a case concerning it under Title 11 of the United States Code entitled "Bankruptcy," the Administrator shall immediately notify the Agency.

Books and Records

The Administrator shall provide the Agency with prompt access to and a right to examine the books and records of the Administrator, as is necessary to ensure compliance with the terms of the Agreement. The Administrator shall not destroy or remove from its premises any books or records maintained in connection with its administration of the Program and shall promptly forward to the Director all such books and records upon the Agency's request or upon termination of the Agreement.

Loan Closing and Disbursement

Following receipt of the approval form from the Program Manager, the Administrator shall establish a closing date and a disbursement date for the Loan, and notify the Program Manager of such closing and disbursement dates. In case of loans being serviced by the Agency, the Administrator shall provide the Program Manager with a Notification of Disbursement (Exhibit A of the Agreement), not fewer than ten (10) business days prior to the scheduled disbursement date.

These Program Guidelines require the use of an Agency prescribed template for all loan documents. The Agency will provide the template for loan documents to each Administrator. The Administrator will also be responsible for delivering to the Program Manager a copy of the executed loan closing transcript within ten (10) business days of a loan closing. At the time of the loan closing, the Administrator shall assign all its right, title and interest in and to the

executed loan closing documents to the Agency (the “Assignment”). Such assignment shall be in a form and substance as approved by the Agency. Further, the Administrator shall cause the mortgage and such other of the security documents as are appropriate, any instruments supplemental thereto, financing statements, including all necessary amendments, supplements and appropriate continuation statements, to be recorded, registered and filed, in such a manner, and in such places as may be required in order to establish, preserve and protect the lien(s) in favor of the Agency. Filings shall be in the name of the Administrator and assigned to the Agency as set forth in these Program Guidelines.

No Program funds shall be disbursed until after the receipt of confirmation that the Assignment has been made. The following documents are also required before disbursement can take place:

- The certificate of the borrower setting forth in reasonable detail, the cost incurred in the completion of the Eligible Project, including a detail category of allowable costs;
- If the security for the loan consists of an interest in real property or fixtures, an ALTA loan policy or policies of title insurance insuring the Agency's interest created by the loan documents at the level of priority therein provided;
- All UCC-II searches or responses to UCC-II requests as are appropriate, disclosing only such filings as are consistent with the Agency's interest created by the loan documents;
- Satisfactory evidence of all insurance coverages required by the loan documents;
- Satisfactory evidence of zoning compliance, availability of utilities and all necessary licenses and permits required in connection with the Eligible Project; and
- Documents evidencing and securing the additional financing.

To the extent that the Eligible Project involves construction, the following documents are also required:

- The certificate of the borrower certifying the completion date of the Eligible Project, that all improvements have been made and all Eligible Project costs have been paid;
- Certificates of occupancy;
- A satisfactory environmental audit of the Eligible Project performed in accordance with such standards set forth by the Agency and provided to the Administrator; and
- Such other waivers, certificates, assurances, assignments, instruments, documents materials, opinions or information required to fully protect the interests of the Agency in the Eligible Project intended to be created by the loan documents, in accordance with the loan approval documents.

Loan Administration – Reporting Requirements

Within 30 business days following the end of each calendar month, the Administrator shall provide the Program Manager with a monthly project report detailing the status of each loan including information on closed loans, loan balances, past-due loans, financial statements, loans in default, and other relevant information as applicable. If a borrower is non-compliant with its reporting requirements under the loan agreement, the Administrator will make reasonable efforts to collect these documents, and provide same to the Agency upon request.

A failure by the Administrator to report in a timely manner may result in the assessment of a penalty of \$500 per occurrence. Repeated failures may result in removal of the Administrator from the Program, along with a transfer of servicing responsibilities by the Agency to itself or another Administrator.

The Administrator shall inform all borrowers that the Agency may randomly select them for a confidential survey concerning the Program process and the borrower's experience. Such information shall be used to evaluate the performance of the Administrator and as a means to improve the Program.

Portfolio Monitoring

The Administrator shall collect/track satisfactory evidence of all insurance coverages required by the loan agreements throughout the terms of all loans, and shall notify the Agency if a borrower fails to maintain the insurance coverages required by the loan agreement. Further, the Administrator shall maintain UCCs and/or other security interests the Agency has in accordance with the loan agreement for the term of the loan, and shall only release these security interests when the loan has been paid or at the written instruction of the Agency. The Administrator shall perform periodic site visits (or at the request of the Agency) to the borrowers in their portfolios to validate loan collateral, jobs, business health, provide customer service, build good will, and to further identify future credit needs.

Escrow Agent Responsibilities

ODSA will serve as the Escrow Agent for disbursements under this Program. Notwithstanding the foregoing, an existing Administrator in the Program under a previously executed Loan Administration and Escrow Agreement may elect to continue the use of its current third party Escrow Agent.

If the Agency is not serving as the Escrow Agent for a particular Administrator, the Escrow Agent shall be a public depository eligible to receive and hold public deposits as provided in Sections 135.01 to 135.21 of the Ohio Revised Code. All amounts representing the repayments of principal and interest shall be held, invested, reinvested and disbursed in accordance with the Agreement.

Additional responsibilities of the Escrow Agent include:

- Establish and maintain an escrow account to disburse the Program loan amount on the disbursement date, and to collect repayments of principal and interest on outstanding loans. All disbursements shall be made upon written authorization of the Administrator and/or the Agency, and in accordance with the Agreement (the "Escrow Account"). No portion of the escrow balance shall be paid by the Escrow Agent to any person or organization except in compliance with the terms of the Agreement, or at the written direction of the Administrator;
- Receive and deposit Program loan repayments and loan related fees from borrowers, and apply/post these payments to the respective Program loans in accordance with the Agreement;

- All amounts received representing repayments of principal and interest on the loan, and loan related fees shall be held, invested, reinvested and disbursed in accordance with the Agreement, and at the direction of the Agency;
- Report monthly (and/or as requested) to the Administrator regarding the repayment status of each outstanding Program loan, in a manner and at such times as requested by the Administrator;
- Verify payments of interest, principal, and servicing fees collected and disburse the monthly administrator compensation to the Administrator in accordance with the terms described in the Agreement;
- Complete and submit to the Agency, by the 15th day of each month, in a form satisfactory to the Agency, a report which outlines the payments of interest, principal and servicing fees received and verifies the amounts disbursed to the Administrator as allowable under the Agreement, during the preceding month;
- Maintain accurate records of all transactions, and make this record available for inspection/audit by the Agency as needed;
- Should the Agency determine that reallocation of all or a portion of the Escrow Amount (as defined in the Agreement) is necessary for the effective administration of the Program, and upon a minimum of thirty (30) days prior written notice to the Administrator and Escrow Agent, the Agency may direct, in its sole discretion, the Escrow Agent to disburse all or any portion of the Escrow Amount back to the Director, the Facilities Establishment Fund or another entity serving as escrow agent for another administrator in the Program; and
- Exhibit D to the Agreement shall outline the fees that will be paid to the Escrow Agent, out of the Escrow Account, as full payment for its services. Exhibit D to the Agreement must be submitted to the Director for review prior to execution of the Agreement, and the fee structure outlined in Exhibit D of the Agreement shall be subject to the Director's approval. The fees shall be payable to the Escrow Agent solely from the Escrow Account. The Agency shall not be responsible for any other fee or expenses of the Escrow Agent.

Exhibit 2:

Notification of Disbursement

NOTIFICATION OF DISBURSEMENT

Pursuant to Section 2.3(A) of the Loan Administration and Escrow Agreement, ("Agreement") dated as of the ____ day of _____, 20__, among the **DIRECTOR OF THE OHIO DEVELOPMENT SERVICES AGENCY** ("Director"), the _____ ("____"), and _____ ("Escrow Agent"), _____ hereby gives notice to the Director that, per authorization of the undersigned, the Escrow Agent has been instructed to disburse to or for the benefit of _____ ("Borrower") the amount of _____, which amount represents the Loan Amount (as defined in the Loan Agreement, dated _____ between _____ and the Borrower).

All capitalized terms not defined herein shall have the same meaning as defined in the Agreement.

In connection with this Notification of Disbursement, the undersigned, after reasonable investigation and to the best of his or her knowledge, hereby further certified and agrees that:

1. Each item for which the Disbursement is to be made constitutes an Allowable Cost of the Eligible Project.
2. The date on which the Disbursement is to be made is _____.
3. _____ has no information causing it to believe that any representation or warranty of the Borrower contained in the Application or otherwise or communicated by the Borrower to _____ was or is materially incorrect or inaccurate.
4. As of the date hereof, _____ knows of no breach, default or event of default, nor any event which by notice, passage of time or both would constitute an event of default, under the terms of the Additional Financing.
5. To the extent that the Eligible Project for which the Disbursement is to be made involves construction, all such construction has been completed according to the plans and specifications for the Eligible Project.
6. The amount of the Disbursement does not exceed the Loan Amount (as defined in the Agreement).
7. All other conditions precedent to the Disbursement contained in the Agreement and the Loan Documents have been satisfied.

8. This Notification of Disbursement constitutes the approval of _____ with respect to each item for which the Disbursement is to be made.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____, 20__.

[Economic Development Corporation Name]

By: _____
Its: _____

Exhibit 3:

Loan Package Requirements & Loan Process

Regional 166 Loan Program - Loan Package Requirements

The Administrator must submit the following information to the Ohio Development Services Agency (“ODSA” or the “Agency”) in a form and manner acceptable to the Agency:

1. The loan application and any supporting documents submitted by the borrower;
2. Recommendation/approval from the Administrator’s board of the loan transaction/package. This can include a board resolution, meeting minutes, or some other executed form of notification that provides information regarding the borrower, the loan transaction and the recommendation. This recommendation/approval will certify that the funds will be used for an Eligible Project and that the nature, amount and terms of the loan align with the requirements outlined in Chapter 166 of the Ohio Revised Code;
3. Project summary page, which will include:
 - a. Administrator name and associated loan officer, mailing address, and relevant contact information;
 - b. Loan amount, including rate and term;
 - c. Borrower name, and all demographic information, (including FTI or SSN, NAICS code, date the business was established, nature of business, and type of business entity, i.e., LLC, S-Corp, C-Corp);
 - d. Ownership structure (name(s) and % of ownership);
 - e. Operating company information (if applicable);
 - f. Project location (includes physical address);
 - g. Number of retained and created jobs, including any retained jobs at risk; and
 - h. Sources and uses of funds.
4. Collateral and financial summary page, including the appraisal evaluation (appraisal and liquidation value);
5. Narrative, including borrower entity and project description, history, current business activities, ownership, management profile, financial analysis (debt service) and recommendation;
6. Financial information on the borrower entity and/or operating entity. The last three years of financial statements with notes (if applicable), an interim statement, three years of projected income statements. In the absence of audited financial statements, the Agency will accept CPA compilations, CPA reviewed statements, and tax returns;
7. Current personal financial statements from all individuals guaranteeing the loan;
8. Bank's commitment letter and/or term sheet(if applicable);
9. Phase I environmental (findings/summary page only, if applicable);
10. Financial covenants, cost benefit analysis and job impact statement (including average

hourly wages);

11. Cost verification – e.g., purchase agreements, third party estimates, appraisals; and

12. Any additional information as requested by the Agency.

Loan Approval Process

- A prospective borrower approaches an Administrator and/or a private lender (bank/credit union) in search of financing for their business.
- The Administrator and/or the private lender perform a preliminary investigation of the borrower’s financing needs (the “Project”) and its business in order to evaluate if the Project would be eligible for participation in the Program.
- After a successful determination, the Administrator and private lender work in collaboration with the borrower to define the likely financing structure (“Project Sources & Uses”) for the Project.
- The private lender will proceed with its standard internal credit underwriting, due diligence and loan approval processes, to approve its portion of the Project financing and of the structure of the total Project.
- A loan officer of the Administrator will proceed concurrently with credit underwriting, due diligence and loan review processes (i.e. facilitate completion of clearance forms for the Ohio Department of Taxation and Ohio EPA by borrower and subsequent submission of the completed forms to ODSA) to verify that the Project is eligible and the borrower is creditworthy. Once complete, the loan officer will present the recommendation to the Administrator’s board for review and approval.
- Once approved by the Administrator’s board and by the private lender, the Administrator sends the loan request package to the Agency’s Regional 166 Loan Program Manager (“Program Manager”) for his/her review, approval, and recommendation.
- The Program Manager reviews the loan request package, and runs a clearance check on the borrower with Ohio EPA and the Department of Taxation.
- Once reviewed by the Program Manager, an acceptable loan package is presented to the Agency’s Office of Strategic Business Investment (“OSBI”) Loan Review Panel (that includes the Financial Incentives Manager and the OSBI Deputy Chief/Business Services Division Chief) for review.
- Once reviewed and recommended by the OSBI Loan Review Panel, the Program Manager places the loan request on the State of Ohio Controlling Board’s public meeting agenda, through the Controlling Board system for approval of the appropriation of funds.

- Once approved by the State of Ohio Controlling Board, the Program Manager obtains an approval form that is sent to the Administrator. Receipt of this form signals that the borrower can proceed with the Project, subject to entering into acceptable loan documents evidencing the borrower's repayment obligation, with funding assistance from the Administrator and the private lender in accordance with the Program Guidelines, and the Loan Administration and Escrow Agreement ("Agreement").
- The Administrator works with the borrower, any third party lender, and any other parties providing financing for the Project, to complete all necessary loan documentation in accordance with the Program Guidelines.