

**City of Geneva
Revolving Loan Fund
Policy Guidelines and Operating Plan
Approved – June 2019**

Section 1. GENERAL

1.1 **Policy Guidelines and Operation Plan.** The Policy Guidelines and Operating Plan (the “Plan”) is adopted by the City of Geneva Revolving Loan Fund Committee (RLF) and is intended to serve as the primary administrative document for all activities of the City of Geneva Revolving Loan Fund that are funded in whole or in part with proceeds from Community Development Block Grant (“CDBG”) funds provided for economic development activities to the City of Geneva. Any revisions or amendments to the Plan will require approval by the City of Geneva Revolving Loan Fund. Exceptions to the Plan may be approved on a case-by-case basis pursuant to the criteria set forth at Section 8 of the Plan.

1.2 **Objectives.** The primary objectives of the Program are to 1) Facilitate the expansion and retention of business activity within the City of Geneva, create and retain employment opportunities, and maintain and expand the City’s commercial and industrial base; and 2) Support the City’s nonprofit organizations in their efforts to expand services to benefit the City’s low to moderate income population. The decisions made should align with the City’s Comprehensive Plan and contribute towards making Geneva a more beautiful, more prosperous, more equitable, more connected, and more sustainable community.

1.3 **Form of Assistance.** The Program will provide assistance only in the form of secured commercial loans.

Section 2. ELIGIBILITY REQUIREMENTS

2. 1 **Eligible Activities.**

- (a) The principal activity that will be primarily impacted by the Program financing must be located within the City of Geneva.
- (b) Program financing may be used to assist any form of activity that the Revolving Loan Fund Committee determines to be consistent with the purposes of the Program, that is eligible for funding under the CDBG program, and that is not specifically ineligible pursuant to Section 2.2 of this Plan.
- (c) The activity to be undertaken with assistance from the Program must either (i) directly result in the creation or retention of employment positions for low- and moderate-income persons consistent with the Federal regulations governing the CDBG program, (ii) be undertaken by a microenterprise (as such term is defined in Section 102(a)(22) of the Housing and Community Development Act of 1974, as amended) that is owned by a low- and moderate-income person or persons as defined by the United States Department of Housing and Urban Development, (iii) provide development assistance to nonprofit

organizations for a purpose that will serve a predominately low to moderate income area, and be an eligible activity pursuant to 24 CFR 570.201(o).

2.2 Ineligible Activities. The following activities, as further defined by the U. S. Small Business Administration, may not be assisted with Program financing.

- (a) Speculative activities, defined as a business that derives profits from fluctuations in prices;
- (b) Lending activities, including those conducted by banks, finance companies, factors, leasing companies, insurance companies (but not insurance agents or agencies), and similar firms;
- (c) Construction or purchase of construction materials;
- (d) Pyramid sales plans;
- (e) Gambling activities; and
- (f) Illegal activities.

2.3 Eligible borrowers.

- (a) Eligible borrowers include sole proprietorships, partnerships, corporations, limited liability companies, limited liability partnerships, professional service corporations, cooperatives, nonprofit organizations, and any other legally recognized form of business.
- (b) Loans may be provided to individuals acting as principals of an eligible entity and who will rent or lease assets to an otherwise eligible borrower.
- (c) Borrowers must be either:
 - (i) Private for-profit businesses eligible to receive CDBG assistance pursuant to 24 CFR 570.203(b) or 24 CFR 570.201(o) for the use of HUD-administered CDBG assistance.
 - (ii) Private for-profit businesses eligible to receive CDBG assistance pursuant to Sections 105(a)(17) and (22) of the Housing and Community Development Act of 1974, as amended for the use of State-administered CDBG assistance;
 - (iii) Nonprofit entities authorized to receive assistance pursuant to 24 CFR 570.204 (Community-Based Development Organizations) for the use of HUD-administered CDBG assistance; or
 - (iv) Nonprofit entities authorized to receive assistance pursuant to Sections 105(a)(14) and (15) of the Housing and Community Development Act of 1974, as amended for the use of State-administered CDBG assistance.

2.4 Eligible Uses of Program Funds. Program funds may be used for any justifiable business purpose including, but not limited to fixed assets including inventory and receivables, permanent working capital and lines of credit, and refinancing of existing debt where such refinancing is a required

element of the project financing and is not indicative of imprudent management. The use of Program funds must also be eligible pursuant to the Federal regulations governing the CDBG program.

Section 3. PROGRAM STANDARDS

Nonprofit Organizations:

3.1 Providing a Public Benefit. A minimum level of public benefit must be obtained with Program financing by providing goods or services to residents of an area, such that the number of low- and moderate-income persons residing in the areas served by the assisted business amounts to at least one low- and moderate-income person per \$350.

For-Profit Business:

3.2 Employment/Cost Ratio. The amount of Program financing may not exceed the ratio of \$35,000 for each employment opportunity to be created or retained. For the purposes of calculating employment opportunities, the following will apply:

- (a) Only permanent jobs will be counted; temporary and construction jobs will not be counted.
- (b) Jobs of 35 or more hours per week will be considered as one full-time job. Part-time permanent jobs of less than 35 hours per week will be converted to full-time equivalent jobs by dividing the number of part-time hours by 40.
- (c) Seasonal jobs will be considered to be permanent jobs if the duration of the working period is long enough to classify the job as the employee's principal occupation.
- (d) Projected employment must be reasonably expected to occur as a direct result of the expanded business activity, and such projection may in no instance extend beyond 36 months from the completion of the financed activities.
- (e) The limit of \$35,000 of Program financing per employment position may be exceeded in instances where the RLF Committee determines that the expanded business activity will result in an extraordinary degree of other public benefit. Such determination shall be in the form of an approved RLF Committee resolution. In no instance may the amount of Program financing per employment position exceed the maximum amount allowable under the CDBG program.
- (f) For assistance, to start-up microenterprises that are owned by a low- and moderate-income person or persons, any owner of the business will be considered to be an employee if that owner is active in the daily operations of the business. Assistance to existing microenterprises will be subject to the employment requirements of this Section 3.1.

3.3 Program Financing Amount. Program assistance must be no greater than the minimum amount necessary to affect the business activity. Applicants must therefore demonstrate that all other private and public sources of debt and equity have either been maximized or are inappropriate, unaffordable, or otherwise unavailable. Businesses are eligible to apply for an amount equal to the

gap between what the financial institution can loan and how much cash equity is available and is to be evenly matched by a local financial institution.

3.4 Minimum Amount of Program Assistance. Program assistance will not be considered where the amount of such required assistance is less than \$5,000. Exceptions to this Section 3.3 may be granted by the RLF Committee on a case-by-case basis where such exception is determined to be in the best interests of the Program and where the reason for such exception is stated in an RLF Committee resolution.

3.5 Maximum Amount of Program Assistance. The Plan does not establish a maximum amount of Program assistance available to an applicant on either a one-time or aggregate basis. However, the RLF may, from time to time at its discretion, establish maximum amounts of assistance based on the total amount of Program funds available and the demand for such funds. Funds requested by nonprofit organizations will be not exceed 25% of the loan fund balance at time of application.

Section 4. LENDING POLICIES

4.1 Terms of Loans. For fixed asset loans, the Program loan term will generally be consistent with the life of the assets being financed, with such periods being consistent with standard commercial lending policies and in no instance exceeding 5-7 years. For all loans, the term will be determined by the RLF Committee based upon such factors as the nature of the collateralized assets, and the borrower's projected ability to repay the loan.

4.2 Interest Rate. Program loans will bear interest at a fixed rate of 75% of prime at time of closing. The maximum interest charged on a loan will be 9%. Exceptions to the interest rate policy may be applied by the Committee on a case-by-case basis based on such factors as the risk of default, the value of security, and the prevailing commercial lending rates. The reason for the application of any such exception shall be stated in an RLF Committee resolution.

4.3 Repayment Terms. The RLF will determine the schedule of loan repayments on a case-by-case basis based on the applicant's projected ability to repay the loan, the projected value of the collateral and other security, and the overall risk assumed by the Program. Repayment terms may involve standard forms of loan amortization, periods of accruing interest or interest only payments, extended amortization schedules with balloon payments of principal, and/or such other terms as may be determined by the RLF Committee to be appropriate.

4.4 Security. The RLF Committee will determine the required security for each loan on a case-by-case basis based on such factors as the risk of default, the nature and value of the security, and the position of the Program in relation to other lenders. In determining the appropriate security, the following will apply:

- (a) The RLF Committee will generally require a security interest in all assets financed with Program funds. Other assets of the borrower may be required as additional security at the RLF Committee's option.
- (b) The RLF Committee may require the personal guarantee of persons having an ownership interest in the borrowing entity.

(c) The RLF Committee may, at its discretion, require additional security including, but not limited to additional collateral, guarantees, and the assignment of life insurance.

4.5 Subordination.

- (a) Program promissory notes shall not be subordinated to any other lending interest except where the RLF Committee determines that such subordination shall be subject to terms and conditions acceptable to the RLF Committee.
- (b) The RLF Committee will generally allow a subordination of Program collateral interests to private institutional lenders where necessary to facilitate the maximum financial participation by the private lenders.
- (c) The standing of the RLF Committee's financing relative to other public or quasi-public lenders will be negotiated on a case-by-case basis.
- (d) The RLF Committee will generally require the subordination to Program financing of all notes payable to any officer, owner, or similarly affiliated party to the borrower where such subordination is appropriate and feasible. The terms and conditions of any such subordination shall be established by the RLF Committee on a case-by-case basis.
- (e) The RLF Committee's use of and/or participation in inter creditor agreements shall be at the discretion of the RLF Committee.

Section 5. APPLICATION PROCESSING

5.1 Loan Applications. Applications for Program financing must include all of the information required by the Program Application Form (attached hereto as Appendix A), and any additional information as may be reasonably requested by the RLF Committee.

5.2 Application Fee. A fee of 1% of the loan request up to a maximum of \$400.00 must accompany all Program loan applications. Such fee will be in consideration of loan processing costs incurred by the RLF, will become the property of the RLF, will not be considered as or accounted for as CDBG Program Income, and will be unrestricted in its use by the RLF.

5.3 Application Processing.

- (a) The processing of loan applications will generally consist of the following:
 - (i) Review of applications for completeness and procurement of appropriate additional information.
 - (ii) Review for Program and CDBG eligibility criteria.
 - (iii) Determination of economic feasibility, performance of credit analysis, and assessment of risk.
 - (iv) Determination of amount and terms of Program financing, including appropriate security.

- (v) Performance of the evaluations and financial underwriting required at 24 CFR 570.209 and Appendix A thereto for HUD-administered CDBG assistance, and at 24 CFR 570.482 for State-administered CDBG assistance.
- (vi) Preparation of a written report to the RLF Committee summarizing the review process and providing recommendations as appropriate.

(b) The RLF Committee Chair, or such other person as the RLF Committee may, from time to time, designate for such purpose, shall determine (i) the completeness and eligibility of a loan application, and (ii) whether a loan application and associated loan review are appropriate for presentation to the RLF Committee for consideration.

5.4 Loan Approvals. The RLF Committee shall have the sole authority to approve Program loans. Such authority shall include the commitment to lend Program funds, the interest rate(s) to be charged, the repayment terms, the requisite security for the loan, and other appropriate conditions of lending and covenants of the borrower.

5.5 Loan Declinations.

- (a) Loan applications may be declined by the RLF Committee or such other person as may be designated by the RLF Committee to oversee the daily operations of the Program, based on a lack of application completeness or a failure to meet the eligibility criteria pursuant to Section 2 of this Plan. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.
- (b) Loan applications may be declined by the RLF Committee for reasons relating to credit issues and financial feasibility.
- (c) Loan applications may be declined by the RLF for any reason or reasons that represent a reasonable determination that the approval of the Program application would not meet the objectives of the Program and/or would not represent an appropriate or prudent use of Program funds. In such instances, the applicant will be notified in writing of the reason(s) for disapproval.

Section 6. POST-APPROVAL PROCESS

6.1 Commitment Letter. Within 10 calendar days from the date of the RLF Committee's approval of a Program loan, a commitment letter shall be sent to the applicant that includes, at a minimum, the following information:

- (a) The amount of the approved loan, the applicable interest rate, the term of the loan, the terms of repayment, and the expiration date of the commitment.
- (b) The required use of the loan funds.
- (c) The RLF Committee's requirements for collateral and additional security – including guarantees, pledges of assets, assignment of life insurance, etc.

- (d) Summary information regarding employment requirements.
- (e) Any other conditions of lending.
- (f) A listing and explanation of any fees to be charged and other closing costs that will be the responsibility of the borrower.
- (g) A listing of those conditions and requirements of the borrower that must be fulfilled precedent to a loan closing.
- (h) Any other information that could reasonably be expected to influence the borrower's decision to accept the terms of the loan commitment.

6.2 Commitment Fee.

- (a) In consideration of the reservation of funds for approved loan applications, the loan applicant will be charged a commitment fee equal to one percent (1%) of the approved loan amount. The commitment fee will be nonrefundable and will become due and payable concurrent with the applicant's executed acceptance of the loan commitment.
- (b) The commitment fee will be credited to the loan applicant at the time of the loan closing to offset any costs and/or fees associated with the loan closing. Any balance of the commitment fee remaining after all closing costs are paid will become the property of the RLF, will not be considered as or accounted for as CDBG Program Income, will not become part of the Program funds, and will be unrestricted in its use.
- (c) Commitment fees for loans that do not close through no fault of or action by the RLF will become the property of the RLF, will not be considered as or accounted for as CDBG Program Income, will not be considered as or accounted for as CDBG Program Income, will not become part of the Program funds, and will be unrestricted in their use. Exceptions to this policy that will allow the return of all or a portion of the commitment fee to the loan applicant may be granted by the RLF Committee on a case-by-case basis in consideration of the reason(s) that the loan did not close.
- (d) Commitment fees for loans that do not close as the result of actions or circumstances solely within the control of the RLF will be returned in whole to the loan applicant.
- (e) In all other circumstances where a loan does not close, the return of all or a portion of the commitment fee will be at the discretion of the RLF Committee based on the nature of the circumstances.

6.3 Loan Closing Fees and Costs.

- (a) Borrowers will be required to pay the RLF's legal fees associated with a loan closing in accordance with the schedule attached hereto.

(b) Borrowers will pay all of the RLF's third-party costs for documents, instruments, and services associated with the loan closing including, but not limited to surveys, title and lien searches, filing and recording fees, and appraisals.

6.4 Loan Closings. The RLF attorney will have the responsibility to prepare and/or require the preparation of all appropriate closing documents. The RLF attorney will determine the appropriate closing documents to be executed based upon the terms and conditions of the loan approval and standard commercial lending policies. Such documents will generally include the following:

- (a) A loan agreement that includes a description of the loan terms and security, appropriate representations and warranties, the conditions of lending, affirmative and negative covenants (including compliance with applicable federal laws and regulations), requirements regarding employment creation and reporting, default provisions, and any other provisions that may be appropriate.
- (b) A note or notes to evidence the indebtedness and the terms of repayment.
- (c) The appropriate documents to evidence and record mortgages, liens, guarantees, and such other security as may be required by the terms of the loan.
- (d) Other appropriate documents as determined by the RLF attorney.

6.5 Security. The RLF attorney will be responsible for perfecting all of the RLF's security interests including, where appropriate, the execution of security agreements, the filing of financing statements, the execution and filing of mortgage documents, the execution of guarantees, and any other appropriate actions to adequately protect the RLF's security interests. Intercreditor agreements may be executed where appropriate to further protect the RLF's interests and to facilitate the processing of defaults and foreclosures.

6.6 Loan Disbursements. The following guidelines shall generally apply to the disbursement of the RLF loan proceeds.

- (a) Subject to the borrower's compliance with the terms and conditions of the loan agreement, all documents evidencing and securing the loan, and other guidelines for disbursement as detailed in this Section 6.6, the RLF Committee may disburse loan proceeds upon the borrower's presentation of vouchers and other evidence satisfactory to the RLF Committee that represent paid or accrued expenses of the borrower and which are eligible costs as determined by the RLF Committee.
- (b) Where RLF loan funds will be used by the borrower as working capital, the RLF Committee will establish an appropriate disbursement schedule and the RLF Chair will be responsible for ensuring that appropriate documentation of the use of the loan funds is procured.
- (c) Where other debt, equity, or grant funding is to be used in conjunction with the Program financing, such funding must, in the opinion of the RLF Committee, be firmly committed for such use. Evidence of the commitment(s) must be submitted by the borrower.

(d) Where other debt, equity, or grant funding is to be used in conjunction with the Program financing, the RLF Committee will, at its discretion, determine an appropriate draw schedule for Program funding based on such factors as the nature and magnitude of risk assumed by the RLF, the nature of the activities being financed, the draw schedule for the other financing, and applicable federal regulations for the use of CDBG funds. The manner and terms of the disbursement of the Program financing should normally be included as part of the written report to the RLF Committee and should be included in the approval of the financing by the RLF Committee. However, in instances where the RLF Committee has not prescribed a draw schedule, the RLF Committee Chair may establish a draw schedule.

Section 7. LOAN MANAGEMENT

7.1 General. The RLF Committee will establish and use appropriate systems for the accounting and collection of Program loan repayments and shall procure and maintain appropriate documents and records associated with Program assistance in a manner consistent with the rules and requirements of the CDBG program and with standard commercial lending policies.

7.2 Delinquencies. For loan repayments that are 15 days past due, the borrower of the delinquency will be contacted and encouraged to submit a prompt payment. Delinquencies that continue for 60 days will be referred to the RLF Committee for appropriate action. Notwithstanding the above, the RLF Committee Chair, or such other person charged with the responsibility of monitoring the activity of borrowers, shall immediately notify the RLF Committee of any bankruptcy or other serious event that would negatively affect the financial status of a Program borrower.

7.3 Annual Financial Review. The RLF Committee will conduct an annual financial review for all borrowers with outstanding Program loans based primarily on the annual financial statements submitted by the borrower. Additional information may be procured as appropriate. The reviews will be presented to the RLF Committee for further action or recommendations as appropriate.

7.4 Adjustment of Terms and Conditions. Requests by the borrower for adjustment of any of the terms and conditions of a closed Program loan will be reviewed to determine whether the adjustment is in the best interests of the RLF. Requests will be processed in accordance with the following:

- (a) Requests to adjust the interest rate, term of the loan, or security for the loan will be determined by the RLF Committee.
- (b) Requests to accrue interest, defer principal payments, or otherwise temporarily modify the repayment schedule may be approved by the RLF Committee.
- (c) Requests for changes respecting any covenants or conditions of a financial nature must be approved by the RLF Committee as to content and the RLF attorney as to form.
- (d) Requests for any other changes to the covenants or conditions of the loan including, but not limited to such areas as reporting requirements, cost documentation, and maintenance of records may be approved by the RLF Committee Chair or such other person as may be designated to oversee the daily operations of the Program.

Section 8. EXCEPTIONS

8.1 Exceptions.

- (a) The RLF Committee may deviate from the Eligibility Requirements (Section 2), Program Standards (Section 3), and Lending Policies (Section 4) sections of the Plan only where such deviation is determined by the RLF Committee to result in an extraordinary public benefit to the City of Geneva. The nature of the deviation and the nature and extent of public benefit to result must be stated in an approved RLF Committee resolution. In no instance shall deviation be inconsistent with the laws, regulations, rules, or policies of the CDBG program.
- (b) Any other deviations from the Plan will require the authorization of the RLF Committee.

FINANCIAL DISCLOSURE STATEMENT

APPLICATION FEE:

Non-Refundable Application Fee: 1% of loan request up to a maximum of \$400.00
Must be submitted with Loan Application

FILING FEE:

None

PROCESSING FEE:

None

CLOSING COSTS

The applicant will be required to pay the following attorneys' fees on behalf of the RLF in connection with the loan, in accordance with the following schedule:

<u>Loan Amount</u>	<u>Attorney Fee</u>
\$0 to \$100,000	\$2,000
\$100,001 to \$125,000	\$2,500
\$125,001 to \$150,000	\$3,000
\$150,001 to \$175,000	\$3,500
\$175,001 to \$200,000	\$4,000
\$200,001 to \$250,000	\$4,500
\$250,001 to \$500,000	\$5,000
\$500,001+	TBD

- 1.) In addition to attorney's fees, disbursements incurred for each loan must be paid by the applicant at closing.
- 2.) The applicant must also provide, at its cost and expense, any necessary instruments as specified by the RLF's counsel, including but not limited to, an opinion of its counsel, surveys, equipment lists, schedules title and lien searches, and disbursements, if any, with respect to the preparation of loan documentation or the filing or recording of loan-related documents.
- 3.) If after the applicant signs the commitment letter, the loan does not close for any reason, the applicant will be responsible for all of the legal fees set out above and any disbursements incurred in connection with the loan preparation.
- 4.) If the applicant is unable to close the loan within the term of the commitment letter and desires an extension thereof, the applicant will be charged a fee of \$500.00 for each sixty (60) day extension.
- 5.) If the applicant seeks to refinance, amend, or renegotiate an RLF loan, or submits documentation that requires the RLF's review, consent or execution, any and all legal fees and disbursements that the RLF incurs in connection with this request are payable by the applicant making the request.