ORDINANCE NO.: 2013-117

Adopting the Commercial Revolving Loan Fund ("CRLF") Code, revised August 2, 2013

BE IT ORDAINED by the Mayor and Council this ___ day of _____, 2013, that the attached Commercial Revolving Loan Fund Code, revised August 2, 2013.

ORIGINAL
STAMPED IN RED

Requested by:

Office of Business Opportunities

Mayor

Approved by:

City Manager

Approved as to form:

City Attorney

ATTEST:

City Clerk

Introduced: 10/15/2013
Final Reading: 11/12/2013

Last revised: 10/16/2013
13102149

COMMERCIAL REVOLVING LOAN FUND

8.1 PURPOSE

The City of Columbia, through economic development projects financed by the Commercial Revolving Loan Fund, seeks to improve the number and caliber of job opportunities, as well as to retain existing jobs within the City of Columbia. The City of Columbia seeks to foster entrepreneurship, innovation and productivity through investments in infrastructure development, capacity building, and business development in order to attract private capital investment and higher-skill, higher-wage jobs. Additionally, the City of Columbia seeks the revitalization of commercial corridors throughout the City.

This code provision applies to all of the City of Columbia's commercial revolving loan funds, including those funds capitalized with federal, state and local dollars, unless a fund is otherwise provided for under another section of this code.

Interest payments and fees may be utilized to defray the ongoing administrative costs of operating the CRLF. Principal and any interest not used for administrative expenses will revolve into the CRLF for relending. The City will comply with any and all federal regulations and caps regarding administrative expenses.

8.2 DEFINITIONS

1. *Commercial Revolving Loan Fund Committee of the City of Columbia (CRLF Committee).* Seven (7) member committee appointed by City Council to review and approve/disapprove loan applications

2. *CRLF*: Commercial Revolving Loan Fund

3. *CRLF Staff.* The staff of the City of Columbia

4. *Economic Development Administration (EDA).* A department of the United States Department of Commerce providing revolving loan funds to the City of Columbia

5. *Equity.* Total grants and private dollars brought to a project by a borrower from any source other than the City of Columbia.

6. *Minority Business.* A minority-owned business is a business which reflects 51% minority ownership and in control of management decisions. Minority refers to any individual of a race other than Caucasian (white)

7. *Participating lender.* Banks and other institutional lenders who, in the regular course of business, make commercial loans

8. *Private commitment.* A commitment of funds needed for a project obtained from a bank, other lending institution, or legitimate private source

9. *Private to public dollar leveraging ratio.* The amount of private dollar investment, either through private commitment and/or a participating lender in a project in relation to the amount of public funds invested

10. *Small Business.* A small business is a start-up or expanding business which has 50 or fewer employees.

11. *Target Area.* From time to time the City may target a specific geographical area, census tract, corridor, or business type for funding. Such a designation will be considered a target area

12. *Total Project Cost.* Total direct costs incurred to carry out a project

13. *United States Department of Housing and Urban Development (HUD).* The Federal Agency that administers the Community Development Block Grant (CDBG) and any other federal funds awarded to the City Of Columbia

14. *Woman-owned business.* A business which reflects 51% female ownership and in control of management decisions is considered a women-owned business

8.3 TYPES OF LOANS

Commercial revolving loans may take the form of:

1. *Participation loans* made in conjunction with loans made by other public or private financial lending institutions, with subordination features, also known as gap financing;

2. *Commercial loans* with a minimum equity investment as determined by the funding source. (Equity investments can come from the owner, private and/or non-bank investors, grants, or other sources of equity.);

3. *Loans under $10,000* which may not require bank participation or private equity investment.

4. All loan types may offer special financing techniques, including moratoriums on interest and/or principal repayments for a specified period of time.

8.4 USE OF LOAN FUNDS

1. Loans may be made to small businesses for the purpose of financing building construction, conversions, expansions, acquisition of land, buildings, machinery, equipment, supplies and

materials or in particular cases of supplying working capital where it is deemed necessary by the staff and CRLF Committee.

2. Interest payments and fees may be utilized to defray the ongoing administrative costs of operating the CRLF. Principal and any interest not used for administrative expenses will revolve into the CRLF for relending. The City will comply with any and all federal regulations and caps regarding administrative expenses.

8. 5 ELIGIBILE APPLICANTS

1. The applicant must fit the definition of small business as defined by the City of Columbia - fifty (50) employees or less.

2. The business must be located within the corporate limits of the City of Columbia.

3. Applicants must agree to provide all information and business records requested pertaining to the loan or business during the application process or the term of the loan must be made available to the city. (Personal financial statements shall remain confidential.)

4. All principals or owners must agree to provide personal guarantees.

5. Applicants who have been in default on previous loans with the City of Columbia are not eligible for additional funding.

6. Minimum credit score. The City requires the applicant to have a minimum credit score of 600 to be eligible to apply for a commercial loan.

7. In order for a current loan recipient to be eligible for an additional loan, the applicant must meet the following conditions:

a. Minimum 50% equity requirement
b. Previous loan must either be paid off or have been in repayment for at least 2 years and be current with no late payments or defaults
c. Business must be in an identified target area of the City of Columbia
d. Business is unable to get all of the financing needed for the project from a private financial institution or other private source

8.6 INELIGIBLE ACTIVITIES

Commercial revolving loan funds cannot be used for the activities listed below. City staff may reject applications for ineligible activities.

1. The direct or indirect refinancing of any pre-existing debt or subsidizing interest payments on an existing loan.

2. Funds for payment, distribution, or as a loan to owners, partners or shareholders of the applicant's business, except as ordinary compensation for services rendered.

3. Acquisition of an equity position in a private business,

4. Loan guarantees (a promise by one party to assume the debt obligation of a borrower if the borrower defaults on a loan).

5. The relocation of a business within the City of Columbia presently located outside of the Columbia commuting area.

6. Where the purpose of the loan is to finance the acquisition, construction, improvement or operation of real property which is to be held for speculative real estate ventures.

7. Where the purpose of the loan is to finance the creation, dissemination, or distribution of material deemed patently repugnant by commonly recognized community standards of decency or which has the effect of denying anyone their constitutionally guaranteed rights.

8. Where the effect of the granting of the loan would be to encourage a monopoly or be inconsistent with accepted practices of the American system of free competitive enterprise.

9. Where the applicant's business may not operate totally within the laws of the City of Columbia and the State of South Carolina.

10. Other activities prohibited by specific funding sources. See sections 8.18.1(c) for additional ineligible uses of EDA funds.

11. If City Staff determines that an application is ineligible for funding, a letter will be sent to the applicant within fourteen (14) business days of receipt. City Staff will notify the CRLF Committee of all applications that have been determined to be ineligible.

8. 7 FEES, INTEREST, TERMS AND LIMITS

1. Fees

Application Fee

A. A loan application fee of $100, plus identifiable direct third-party charges (credit reports,), shall be collected at time of application to defer processing expenses.

Origination Fee

A loan servicing fee of up to one percent (1%) shall be added to the cost of the CRLF loan. Fees shall be predicated on local market conditions and commensurate to risk to the CRLF.

2. Interest

A. Unless otherwise dictated by the funding source, (see sections EDA - 8.19.4; CDBG – 8.20.4; CERF – 8.21.4) the interest rate to be charged on City of Columbia CRLF loans shall be set at one percent (1%) below the current money center prime rate quoted in the Wall Street Journal. This rate will change from time to time with changes in the prime rate. These changes will be reflected in the City's rate of interest on the last day of the month in which the change in prime rate occurs.

B. In no event shall the interest rate charged be less than three percent (3%) annually nor shall it be greater than the maximum interest allowed under state law. Adjustable interest rates and balloon/call provisions may be utilized.

3. Terms

Terms for repayment of loans may vary, but standard terms for repayment shall be as follows:
A. Equipment: 7 to 10 years;
B. Land and building: up to 25 years
C. Inventory: up to 3 years
D. Working Capital: up to 2 years
E. Leasehold Improvements: up to 25 years
F. All loans will have five (5) year balloon/call features

4. Limits

The city's maximum loan shall not exceed $200,000 for EDA funded loans and $100,000 for loans from all other funding sources.

The CRLF committee reserves the right to adjust the fees, interest, terms and limits when deemed necessary to carry out the goals of the commercial revolving loan fund program, however all federal requirements for lending programs must be met.

8.8 LOAN REVIEW COMMITTEE

The CRLF Committee shall consist of seven (7) members who shall assume responsibility for final approval of loan applications. The CRLF committee will be comprised of (1) one attorney with business or corporate expertise, (2) a licensed commercial contractor, (3-4) two small business persons (of which one may represent a small business development agency or a non-profit business), (5) a local bank representative, (6) an Assistant City Manager with the City of Columbia and (7) the Community Development Director with the City of Columbia. Individuals for these positions will be appointed by city council for two (2) year terms. City staff/administration members on the committee must not be the direct or indirect supervisor of the city staff presenting loans for approval.

The CRLF Committee is authorized to do the following:
1. Approve/deny all loan requests;

2. Approve/deny loan modifications recommended by staff;
3. Approve/deny subordination requests that would change the City's collateral position on an active loan;
4. Approve/deny referrals for legal action on defaulted loans;
5. Review policies and procedures which apply to CRLF funds; and
6. Review quarterly portfolio reports provided by staff.

In determining whether a loan request should be approved or denied, the CRLF committee is to consider the underwriting guidelines established under Section 8.10.

Only the CRLF committee can reverse its decisions to approve or deny loan requests, modifications, and referrals for legal action.

The CRLF committee is a public body and is subject to the Freedom of Information Act. Any scheduled meeting convening a quorum of the membership, whether corporal or by electronic means (including a telephone conference) is subject to FOIA.

8.9 APPLICATION PROCEDURES

1. An application form and all required supporting documentation must be submitted prior to a loan request being analyzed by City staff.

2. Loan Applications must include the following to be considered complete:
   a. Business Financial statements for the past three (3) years and interim statements for the current year submitted by an applicant showing the applicable date of the information given, and signed and certified by the applicant or his accountant. The COC may require an audited statement.
   b. Personal financial statements for all principals of the business.
   c. Federal Tax Returns for the past three (3) years and interim statements for the current year must be submitted for all existing businesses.
   d. If an Applicant does not have three (3) years of tax returns or financial statements, the COC shall require personal tax returns of the principals in the business
   e. Three most recent months of bank statements for the business or for start-up businesses with no bank history, three most recent months of statements for all principals of the business.
   f. A detailed projection of earnings for the next three (3) years must be submitted by the applicant.
   g. Incorporation documentation for incorporated businesses.
   h. Verification of current number of employees.

3. After a completed application has been submitted, the loan officer will review the file to ensure it meets all minimum underwriting criteria and present to the CRLF committee for approval within sixty (60) days.

4. Applicants are required to attend CRLF committee meetings when their application is being reviewed.

5. Applicants will be informed of their approval/denial status within seven (7) business days of the committee's decision.

8.10 UNDERWRITING CRITERIA (CONSIDERATION AND REVIEW OF APPLICATIONS)

Before submitting an Application Package to the CRLF Committee, City staff will review the package for the following underwriting criteria.

1. Adequate assurances are given that the loan can be repaid pursuant to proper terms and conditions based on review of financial statements and analysis of cash flow.

2. Adequate assurance that the loan is to accomplish an improvement which is warranted in light of current market conditions and an analysis of past performance and future projections.

3. The applicant must obtain a minimum private commitment of 10% (or higher as required by the applicable funding source-CDBG section 8.20.3; EDA section 8.19.3; CERF section 8.21.3) of the total project costs, where required. City of Columbia grants cannot be used to meet an applicant's minimum equity investment.

4. Each loan must create or retain one job per $35,000 borrowed. Each applicant must certify that all jobs to be created will be filled as proposed in the loan application and/or all jobs being retained would be lost to the business within two (2) years without public support.

5. The applicant's credit, capacity and collateral is adequate.
   a. Borrowers should have a debt coverage ratio of 1.0-1.15 and above.
   b. Applicants must show evidence of adequate and acceptable collateral sufficient to provide a legitimate secondary repayment source through the life of the loan.

      i. Collateral should have a maximum loan to value ratio of:
         (a) 50-75% for inventory, equipment and receivables and
         (b) 80% for real estate
         (c) The ratio for the loan value to the collateral needed shall be determined by staff.
      ii. The City may take a subordinate position to other lenders.
      iii. Collateral is required on all loans above $10,000. Loans under $10,000 may be approved with proper personal guarantees (and UCCs if applicable) to satisfy collateral requirements.
      iv. Any subordination agreements occurring after loan closing may be executed by City staff unless the result would change the City's position to a lesser position, in which case loan committee approval is required. The CRLF Committee will be notified of any subordination executed.

6. The business data provided by the application shows the business as solvent, efficient and or profitable.

7. The applicant demonstrates adequate funding to complete the proposed improvement project.

8. The proposed improvements meet any applicable federal guidelines. It is the responsibility of city staff to ensure that all improvements funded with federal funds meet the appropriate federal guidelines prior to awarding funds.

9. No conflicts of interest or perceived conflicts of interest exist preventing award.

10. Preference will be shown to applicants included in one or more of the following classifications:

    a. minority-owned small businesses;
    b. women-owned small-businesses;
    c. commercial and/or business activities which have a significant economic benefit;
    d. acquisition and renovation of older buildings in a target area;
    e. businesses involving new technology; and
    f. applicants with high job and private to public dollar leveraging ratios

After staff's analysis the underwriting criteria, all eligible completed Application Packages shall be submitted to the loan review committee for consideration.

8.11 LOAN CLOSING REQUIREMENTS AND MONITORING

1. Personal guarantees are required on all loans in addition to any other collateral requirements determined by the CRLF committee.
2. The City shall record UCC's for equipment, furniture and fixtures financed and/or used as collateral.
3. City staff should insure that all loans are protected through adequate insurance coverage.

    A. Key man insurance (an insurance policy taken out by a business to compensate that business for financial losses that would arise from the death or extended incapacity of an important member of the business) may be required under the following circumstances:
        1. The business is a sole proprietorship with no succession plan.
        2. The loan amount is greater than $50,000.
        3. There is no real estate used as collateral for the loan.

4. It is the responsibility of the City staff to collect financial statements and tax documents throughout the life of the loan as well as to inspect all collateral. It is the responsibility of the borrower to provide all requested information as part of the terms of the loan.

5. The city CRLF staff shall have the right to inspect, at reasonable hours, any facilities, equipment, premises, books, and records pertaining to the processing of a loan application or in the administration of a loan granted to the business under this program.
6. The City staff is to monitor job creation and/or retention for three (3) years from the closing date of a loan.

8.12 REPORTING

A semi-annual report will be completed in July and January of every year and presented to City Council as public record of the performance and management of the fund.

8.13 DELINQUENCY AND DEFAULT

Delinquency is defined as:
A. past due – up to 30 days late,
B. seriously delinquent – from 30 to 90 days late; and
C. Default – over 90 days late.

1. Past due loans will be monitored by the Loan Servicing Agent, if applicable, and/or City staff and borrowers will be contacted to collect payment.
2. If a borrower should become seriously delinquent, the following actions may be taken, with the approval of the CRLF Committee:
   a. to postpone, defer or otherwise modify the loan terms for a specified work-out period;
   b. cancel all or a portion of the debt in consideration of borrower's transfer of collateral to the lender in lieu of foreclosure.
3. Loans more than 90 days past due are in default. In cases where it is determined that funds cannot be collected, foreclosure action may be initiated with the approval of the CRLF committee. Should the CRLF committee decide to recommend legal action, case files should be transferred to the legal department who will take appropriate action in conjunction with the private lenders or the city manager who may specify other possible action.

8.14 LOAN SERVICING

1. Subsequent to approval and commitment, CRLF staff will coordinate loan closing with the private lender, borrower, and closing attorney. A document file will be established by CRLF staff when the loan is booked in by accounting. Receipt of post-closing documentation and periodic submission of financial statements will be monitored by CRLF staff. Borrower will be responsible for full compliance with terms, provisions and conditions contained within the loan documents.

   CRLF loans will be of three (3) types with regards to servicing responsibilities:

a. A joint loan made in concert with a private lender (lead lender) where the lead lender services the loan and periodically remits to the city its participant's share of monies collected.
b. A separate city loan funded by CRLF and underwritten in concert with and related to the loan of the leads lender but independently evidenced and secured. In this instance, the city's loan will be serviced by the lead lender or a loan servicing agent selected by the city.
c. All loans not serviced by the lead lender or a loan servicing agent selected by the City will be serviced by City staff.

8.15 INSPECTION OF PREMISES AND RECORDS

1. Subsequent to approval and commitment, city staff will coordinate loan closing with the private lender where applicable, borrower and closing attorney. Receipt of post- closing documentation and periodic submission of financial statements will be monitored by City staff. Borrower will be responsible for full compliance with terms, provisions and conditions contained with the loan documents.

2. The City staff, or its servicing agent, shall have the right to inspect at reasonable hours any facilities, equipment, premises, books, and records pertaining to the processing of a loan granted to the business under this program.

8.16 PRIVACY PROTECTION POLICY

City staff collects sensitive information from businesses and individuals and must comply with city and federal privacy regulations. All loan files must secure to maximize maintenance of privacy. In the event of a Freedom of Information Request, personal financial information and trade secrets may not be publicly disclosed.

8.17 PORTFOLIO GOALS AND PERFORMANCE

1. The CRLF as a whole should create or retain one job per $15,000 borrowed.

2. Working capital loans shall be initially limited to thirty percent (30%) of the total Commercial Revolving Loan Fund Program's portfolio

3. A goal of 40% minority participation in the initial CRLF was established at the request of EDA. The City of Columbia will continue to commit to this goal with all loan funds governed by this code. The percentage may be determined by the amount of funds committed.

4. A goal of 35% women-owned businesses participation shall also apply.

5. Loans for start-up businesses shall be limited to thirty percent (30%) of the total Commercial Revolving Loan Fund Program's portfolio

8.18 ECONOMIC DEVELOPMENT ADMINISTRATION (EDA) FUNDS THROUGH THE DEPARTMENT OF COMMERCE

1. Specific EDA RLF Requirements

a. Use of Capital. The City must use RLF Capital for the purpose of making loans that are consistent with an approved Revolving Loan Fund Plan (RLF) or such other purposes approved by the EDA. To ensure that grant funds are used as intended, each loan agreement must clearly state the purpose of each loan. (See 13 C.F.R. § 307.17(a).)

b. Bank Participation. This fund requires bank participation. A letter of credit must be submitted with the loan application.

c. Restriction on Use of RLF Capital. In addition to City of Columbia ineligible uses, RLF Capital shall not be used to:

i. Provide for borrowers' required equity contributions under other Federal Agencies' loan programs;

ii. Enable borrowers to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless sufficient justification is provided in the loan documentation. Sufficient justification may include acquiring a business to save it from imminent closure or to acquire a business to facilitate a significant expansion or increase in investment with a significant increase in jobs. The potential economic benefits must be clearly consistent with the strategic objective of the RLF;

iii. Provide RLF loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit or any investments unrelated to the RLF;

iv. Refinance existing debt, unless the City sufficiently documents in the loans documentation a "sound economic justification" for the refinancing (e.g. the refinancing will support additional capital investment intended to increase business activities).

2. Loan Amount. The maximum loan amount is $200,000.

3. Private Commitment Requirement for each loan. RLF awards cannot exceed 50% of the total project cost (a minimum of 50% of the total project cost required to be from other non-RLF sources). The RLF loans funded by EDA encourage a 4 to 1 private to public match.

4. Interest Rates. The minimum interest rate the City may charge pursuant to EDA guidelines is four (4) percentage points below the lesser of the current Money Center Prime Interest Rate quoted in the Wall Street Journal or the maximum interest rate allowable under state law. In no event shall the

interest rate be less than the lesser of four (4) percentage points or seventy-five percent (75%) of the prime interest rate quoted in the Wall Street Journal.

5. Leveraging of RLF Portfolio. RLF loans must be used to leverage private investment of at least two dollars for every dollar of such RLF loans. This leveraging requirement applies to the RLF portfolio as a whole rather than to individual loans and is effective for the duration of the RLF's operation. To be classified as leveraged, private investment must be made within twelve (12) months prior to approval of an RLF loan, as part of the same business development project, and may include:

a. capital invested by the borrower or others;

b. Financing from private entities; or

c. the non-guaranteed portion and ninety (90) percent of the guaranteed portions of US Small Business Administration's 7 (a) loans and 504 Debenture loans.

6. A goal of 40% minority participation in the initial CRLF was established at the request of EDA. The City of Columbia will continue to commit to this goal with all loan funds governed by this code. The percentage may be determined by the amount of funds committed.

8.19 COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) FUNDS

The City of Columbia may from time to time allocate additional Community Development Block Grant (CDBG) dollars for revolving loan fund use.

1. Specific CDBG requirements

A. Eligible activity: All projects must be an eligible activity per HUD regulations (Title 24 Section 570.201-202). Examples of eligible activities include, but are not limited to: acquisition, code enforcement, commercial rehabilitation, technical assistance, planning, micro-enterprise development, and special economic development.

B. National Objective: All projects must also meet one of HUD's national objectives: (a) benefit to low/moderate income persons, (b) eliminate/prevent slum or blight, or (c) urgent community need. If a project is located within a designated empowerment zone or eligible census tract there is a presumption of meeting the low/moderate income benefit standard.

C. Public Benefit: If a project is designated as special economic development, in addition to being an eligible activity meeting a national objective, it must also meet HUD's public benefit standards.

2. The maximum loan amount shall be $100,000. The CRLF committee may adjust this limit in keeping with the requirements of the funding source.

3. A minimum equity investment of 10% by the borrower is required.

4. Interest Rate: See Section 8.7(2).

8.20 COLUMBIA ECONOMIC RENAISSANCE FUND (CERF).

1. Specific CERF requirements: This fund is capitalized with general fund dollars. Bank participation is not required, however it is encouraged.

A. Eligible applicants and uses: Developers, including City of Columbia development corporations and businesses owners are eligible to apply for funding based on the eligible activities listed below:

i. Developers and development corporations: property acquisition and pre-construction costs.

ii. Business owners: property acquisition, construction, business expansion, and other activities related to economic development.

2. The maximum loan shall be $100,000 for any one project. However the CRLF committee may adjust this limit based on available funding.

3. A minimum equity investment of 10% by the borrower is required.

4. Interest Rate: See Section 8.7(2).
   A. Loans may have an interest only component.

5. Development and rehabilitation projects must be complete within two (2) years of closing.

8.21 CONFLICT OF INTEREST

1. Any interested parties, including City officials, OBO employees, commercial revolving loan fund committee members and any other parties that advise, approve, recommend or otherwise participate in business decisions of the commercial revolving loan fund committee, may not receive any direct or indirect financial or personal benefits in connection with the approval and awarding of a loan. These financial interests may include employment, as an employee or through contractual services, stock ownership, a creditor or debtor relationship or prospective employment, with the organization selected or to be selected for an award.

2. An interested party may not use their position for a purpose that constitutes or presents the appearance of personal or organizational conflicts of interest or of personal gain. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice.

3. When a conflict of interest or perceived conflict of interest arises the following safeguards will be implemented to assure that the integrity of the loan award decision is not compromised.

a. Any staff or committee member aware of any conflict of interest, or perceived conflict of interest, has a duty to disclose the conflict to the CRLF chair and/OBO director. Such conflict of interest shall be disclosed in writing and presented to city staff for dissemination to the CRLF and the City Manager.

b. Failure to disclose a conflict of interest can result in removal from the CRLF Committee. Committee members that fail to disclose a conflict of interest resulting in a determination of conflict of interest from the federal funding source and a requirement that the funds be repaid may be liable for any funds awarded under the code that are deemed ineligible or must be returned to any agency as a result of the conflict

c. When a conflict of interest or perceived conflict of interest arises, the commercial revolving loan committee may not loan funds to an interested party.

d. If an interested party has, or has had a business relationship with a CRLF loan applicant within a year of the application, they will not be permitted to participate in the loan application review and must recuse themselves from the decision-making process when the loan is funded with City or CDBG dollars.

e. If the City of Columbia has a financial interest, either directly or indirectly in an applicant's project, any CRLF committee members who are city employees must recuse themselves from the decision-making process to avoid any appearance of organizational conflict of interest.

4. A business in which a city employee has an ownership interest is eligible to apply for commercial revolving loan funds, so long as none of the conflicts of interest above, or designated by federal guidelines, apply.

5. The City and the CRLF committee members must comply with all additional federal conflict of interest provisions that may apply.