FONTANA BUSINESS ASSISTANCE LOAN PROGRAM GUIDELINES

I. PURPOSE.

The City of Fontana (City) desires to support the development and business in the Downtown Fontana Area through forgivable business assistance loans established under the Fontana Business Assistance Loan Program and funded by the City's General Fund. Loans will be available to certain City Businesses under this Program on a first-come, first served basis in divisions of up to $150,000 per Loan, up to a cumulative amount authorized by Resolution of the City Council of the City in the aggregate.

Eligible new businesses may apply for a Loan which will be forgivable in increments of twenty (20) percent for each year the new business remains in continuous operation. Loan funds may be used to procure fixtures, equipment, appliances, and furnishings for the new business approved by the City through purchasing requests. Use of Loan funds is restricted eligible expenses approved by the City and consistent with these Guidelines only.

The Program advances the City's goals of supporting a thriving local business community in the downtown core and incentivizing City residents to dine and shop locally and attracts visitors to the City. A strong local business community supports the City and its residents through the availability of quality businesses close to home, and through tax revenue remaining within the City.

The Program is further intended to aid in the City's economic development goals by creating and retaining jobs within the City, increasing property values and tax revenues, revitalizing commercial corridors and neighborhoods, encouraging new and innovative businesses within the Downtown Fontana area contributing to the culture of the City, and improving the overall business climate and quality of life in the City.

II. DEFINITIONS.

The following terms apply to these Guidelines.

A. **Applicant**: The applicant for a Loan.

B. **Application**: An application for a Loan in the form set forth on Attachment 2.

C. **City**: The City of Fontana, California.

D. **Downtown**: The City's Downtown core, as indicated on Attachment 1.

E. **Loan**: A business assistance loan available pursuant to the Program.

F. **Loan Agreement**: A Program Loan Agreement and Promissory Note executed by an Applicant selected for a Loan in the form attached as Attachment 3.

G. **Guidelines**: These Fontana Business Assistance Loan Program Guidelines.

H. **Program**: The Business Assistance Loan Program described by these Guidelines.

III. LOAN OVERVIEW.

A. **Application**. Each qualifying Applicant is eligible for up to one (1) Loan in an amount not to exceed $150,000 per Loan as more specifically described in Subsection III.C. To apply, Applicants must complete and submit an Application to the City. Submission of an Application does not guarantee approval of a Loan or the availability of any funds. Applications will be processed on a first-come, first-served basis.

B. **Application Period**. The period where Applications will be accepted for review by the City will begin on August 1, 2026 and end on January 31, 2027. City may extend or reopen the Application period in its discretion subject to available funding.

C. **Incomplete or Ineligible Applications**. Incomplete or ineligible Applications will be returned to the Applicant with comments explaining the incompleteness or ineligibility, and how the Application can be corrected, if possible.

D. **Amount of Loan**. Loan amounts will be calculated at the lower of (1) the amount indicated on the Application, (2) a rate of seventy-five dollars ($75.00) per square foot of business operating space (interior and exterior of the business space leased or owned by the Applicant), and (3) $150,000.

E. **Loan Repayment and Forgiveness**. When approved, each Loan is subject to full repayment as indicated in the Loan Agreement. Each year the business operates continuously Downtown, the Loan is forgivable at percentage intervals, and fully forgivable after five (5) years of regular operation Downtown. Specific provisions related to Loan repayment and forgiveness are included in the Loan Agreement.

F. **Eligible Expenses**. The Loan may be used for the costs of equipment, appliances, and furniture for the business. Loans may not be used for operating costs, utilities, overhead, inventory, rent or mortgage payments, payroll, licensing and permitting fees, installation, construction, or labor costs, or any other purpose. Proposed eligible uses will be indicated on the Application, and included on all requests for payment of Loan Funds under the Loan Agreement.

G. **Default and Repayment**. Defaults on the Loan may be enforced by requiring immediate repayment of any portions of the Loan spent in violation of the Loan Agreement with interest on late payments, and any other remedy available to the City.

H. **Availability of Funds**. The availability of Loans is contingent on the available of City funds earmarked for the Program.

IV. ELIGIBILITY REQUIREMENTS

To be eligible for a Loan, Applicants must meet all of the following requirements:

A. **Newly Established Business**. The Applicant must be the owner or manager of a newly established business physically located Downtown. To be considered newly established, the business must have been open and operational for less than three (3) calendar months from the date the Application is submitted. Existing or renovating businesses are not eligible. Existing businesses in the Downtown area moving to a new location are not eligible. Businesses located outside of the Downtown area who relocate into the area may be eligible.

B. **Not on City Property**. City-owned property and buildings are not eligible for Loans under the Program.

C. **Small Business**. The Applicant must demonstrate that the new business is a small business, defined as a business with seven (7) or fewer physical locations nationwide, including the business indicated on the Application.

D. **Food and Beverage, Recreation, Retail, or Entertainment.** The business must be conducted for the primary purpose of food and beverage, recreation, retail, or entertainment accessible to the public. Office uses are ineligible.

E. **Licenses and Permits**. The business must be fully licensed, entitled, and permitted, and hold a valid Fontana Business License. The Applicant shall attach a copy of all relevant licenses, permits, and approvals to the Application.

F. **Fully Developed Property**. The building or property where the business is/will be located must be fully developed and constructed to the satisfaction of City. No Loan funds shall be disbursed for projects that are subject to an open building permit where no Notice of Completion has been granted.

G. **Ownership or Lease**. The Applicant must be the owner, lessee of record, or pending lessee of the property where the business is/will be located, as supported by written documentation (grant deed, lease, letter of intent to lease etc) submitted with the Application. For leases, the lease must be submitted with the Application if available and must authorize the lessee to operate at the property for at least the entire five (5) year Loan term. For pending lessees, a letter of intent to lease signed by the lessee and property owner evidencing the intent to enter into a lease for the property for at least five (5) years must be submitted, and no amount of any Loan will be disbursed until a fully executed and verifiable lease satisfying the terms of this Subsection has been delivered to City.

H. **No Default or Disputes**. The Applicant must not be in default of any lease, agreement, regulation, condition of approval, or any other requirement with the City or applicable to the property. The property where the business is/will be located cannot be the subject of any legal dispute.

I. **Execution of Loan Agreement**. If an Applicant is approved for a Loan, they must execute the Loan Agreement in the form provided within ten (10) days of City's notification to the Applicant that they have been approved for a Loan. Failure to execute within the ten (10) day period will nullify City's approval of the Application.

V. ELIGIBLE COSTS.

The Loan may be used only for the eligible fixtures, equipment, appliance, and furnishings procurement costs listed in the Loan Agreement. Loans may not be used for operating costs, utilities, overhead, rent or mortgage payments, payroll, licensing and permitting fees, installation, construction, or labor costs, or any other purpose. All eligible costs shall be pre-approved by the City and enumerated in the Loan Agreement, and must be requested by the approved borrower on or before **June 30, 2027**.

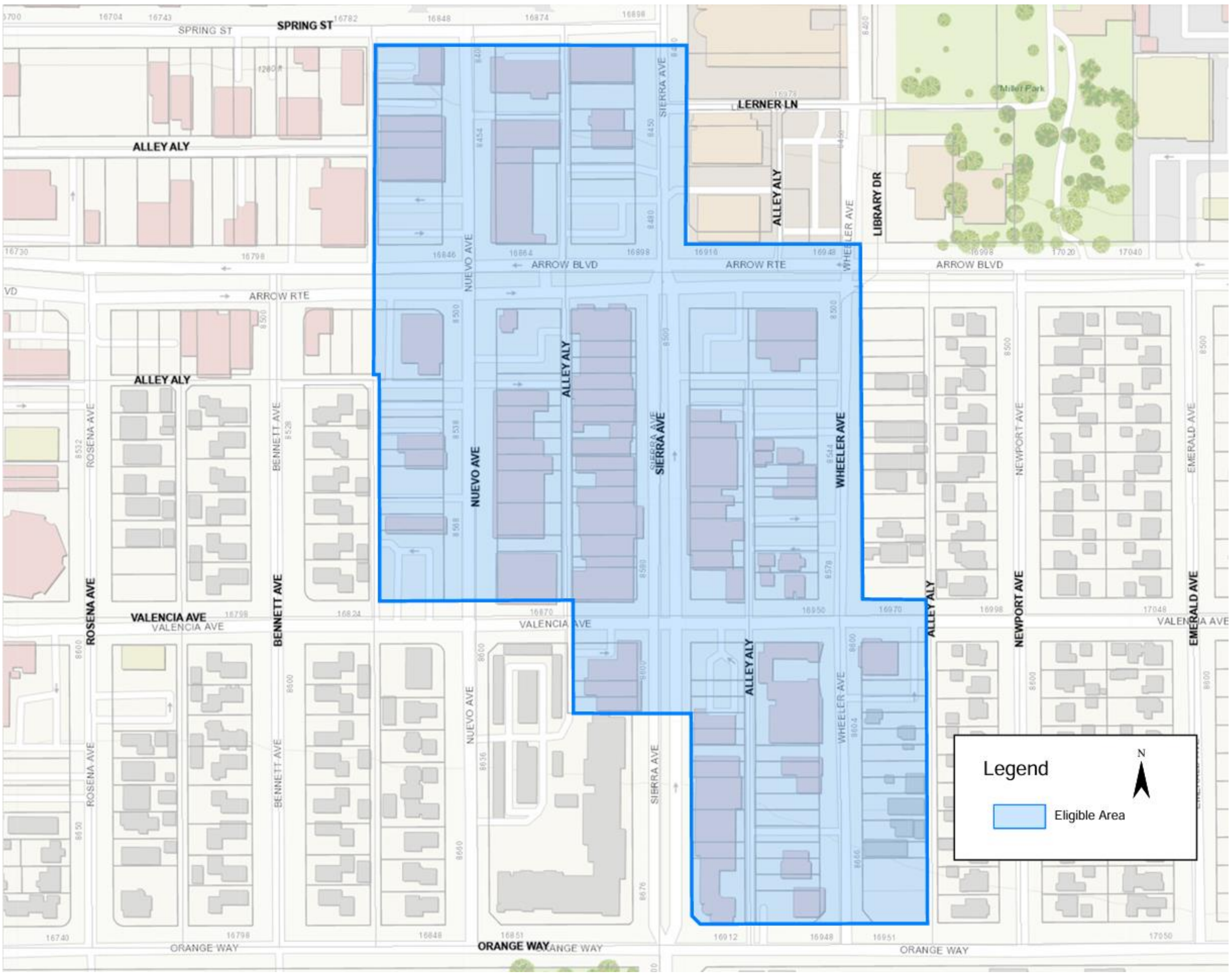
As set forth in the Loan Agreement, failure to use the Loan for eligible costs shall be a default of the Loan Agreement and require the Loan funds to be fully repaid and entitle City to the remedies listed in the Loan Agreement.

VI. CHANGES TO GUIDELINES

City reserves the right to amend these Guidelines or any portion hereof at any time, provided however that the provisions of then-effective Loan Agreements shall remain in full force and effect. The City Manager is authorized to make clarifying and implementing amendments to these Guidelines and to any Loan Agreement which do not increase the cost or risk of the Program or applicable Loan to the City.

ATTACHMENT 1

DOWNTOWN AREA



ATTACHMENT 2

FORM OF APPLICATION

<table>
<tr><td>Business Name:

Address for Notices:</td></tr>
<tr><td>Business Address:

Business APN:

The applicant is (check one) □ the owner □ the lessee □ the pending lessee of the property, with the right, or pending right to possess the property for at least five (5) years from the date the Loan Agreement would be effective.

Owners must attach a copy of their deed to the application. Lessees must attach a copy of their lease. Pending lessees must submit and intent to lease letter signed by the lessee and property owner declaring and intent to enter into a lease for at least five (5) years. If an application is granted, applicants who submitted an intent to lease must submit the duly executed lease that complies with the Program to the City within 180 days, or the Loan will be terminated. No Loan funds will be disbursed until the relevant documentation has been submitted and verified by the City.</td></tr>
<tr><td>Applicable Permits, Licenses, and Entitlements:

☐ ______________________
☐ ______________________
☐ ______________________
☐ ______________________

List by title and reference all relevant permits, license, and entitlements, including the Business’ Fontana Business License. Attach copies.</td></tr>
<tr><td>Square Footage of Operating Space:</td></tr>
</table>

Attach a floorplan showing the operating space on the property.

Business Type:

- ☐ Food and beverage
- ☐ Entertainment
- ☐ Retail
- ☐ Recreation
- ☐ Other: ____________________________

Other Business Locations:

Provide the name, location, and number of years of operation for other businesses owned/operated by the applicant.

Proposed Business Projections:

Estimated Annual Gross Sales: _______
Estimated Annual Gross Costs: _______
Amount of Personal Investment: ______
Amount of Investment from Others: ______

Marketing Plan:

Provide a written statement describing the business' marketing plan. This statement may be written and provided as a separate document.

Expenses to Be Funded or Partially Funded with Loan:

☐ ______________________________ | $ ______________________________
☐ ______________________________ | $ ______________________________
☐ ______________________________ | $ ______________________________
☐ ______________________________ | $ ______________________________
☐ ______________________________ | $ ______________________________
☐ ______________________________ | $ ______________________________
☐ ______________________________ | $ ______________________________
☐ ______________________________ | $ ______________________________
☐ ______________________________ | $ ______________________________

Total, not to exceed amount: ________________________

Provide an itemized list of the anticipated fixtures, equipment, appliances, and furnishings to be funded with the Loan and the anticipated cost. If approved, the amount of the Loan will be the lower of (1) the amount indicated, (2) a rate of seventy-five dollars ($75.00) per square foot of business operating space, and (3) $150,000. The amounts and categories are approximates, and the City may approve rebudgeting of categories, so long as the total amount of the Loan remains consistent with the aggregate not to exceed amount.

Applicant Information:

Name: ___________________________

Mailing Address: ___________________________

Phone: ___________________________

Email: ___________________________

Business Social Media Accounts:

____

____

____

____

Property Owner Contact:

Name: __________________________

Phone: ________________________

Email: _________________________

Authorized Representative:

Name: ________________________

Phone: ________________________

Email: _________________________

Provide the name and information of the person authorized to bind the Applicant and point of contact. If a Loan is approved, this person shall be authorized to submit Disbursement Requests to the City for disbursement of the Loan.

Additional Notes:

Provide any Additional Notes you would like the City to consider with your Application, or leave blank.

Certifications of Applicant

Review and Initial

__________	I understand that the Loan is subject to repayment to the City as set forth in the Loan Agreement.
__________	I understand that the Loan may be forgiven at annual intervals set forth in the Loan Agreement if I continue to consistently operate my business for the required period(s).
__________	I understand that the Loan can only be used on eligible expenses as defined in the Loan Agreement.

___________	I understand that if I default on the Loan Agreement, including if I use the Loan funds for any purpose other than the eligible expenses, I will be required to repay the Loan and indemnify, release, and hold the City harmless from any losses arising from my default.

By signing this Application, you are certifying that all the information provided is true and accurate to the best of your knowledge. You are also certifying and acknowledging that submitting this Application does not automatically guarantee that any Loan will be approved.

APPLICANT

____

Name

____

Title

____

Date

____

Name

____

Title

____

Date

(Two Officer Signatures are Required if Applicant is a Corporation)

ATTACHMENT 3

FORM OF LOAN AGREEMENT AND NOTE

CITY OF FONTANA

BUSINESS ASSISTANCE LOAN PROGRAM AGREEMENT AND PROMISSORY NOTE

LOAN NO. _________

This Business Assistance Loan Program Agreement and Promissory Note ("Agreement") is entered into on ____________________________ ("Effective Date") by and between the City of Fontana, a California municipal corporation ("Lender") and _________________________, ______________________ Business Tax ID ___________________________ ("Borrower").

RECITALS

A. Lender implements a Business Assistance Loan Program ("Program") more specifically described in the Fontana Business Assistance Loan Program Guidelines on file with the Fontana City Clerk (the "Guidelines").

B. The Program provides support to eligible new businesses in the downtown Fontana area through business assistance loans (each a "Loan"), both as defined in the Guidelines.

C. Borrower submitted the application for a Loan under the Program attached to this Agreement as Exhibit A (the "Application").

D. Lender has approved Borrower's Application for a Loan for the business indicated on the Application (the "Business") located at ____ (the "Property"), subject to Borrower's entry into this Agreement.

E. The Program and Loan benefit the health, safety, and/or welfare of the residents and visitors to the City of Fontana through the support and revitalization of the local economy and the availability of quality local services and products.

AGREEMENT

SECTION 1 TERM AND TERMINATION.

A. **Term**. The term of this Agreement ("Term") shall begin on the Effective Date and shall end on the date when Lender confirms in writing to Borrower that (1) the Loan has been repaid in its entirety or forgiven pursuant to Section 2 of this

Agreement and (2) all outstanding obligations of Borrower under this Agreement which do not survive termination have been satisfied. Borrower may request Lender confirm termination of this Agreement at any time the foregoing requirements are met.

B. **Termination for Failure to Enter Into Lease**. If Borrower's Application was approved based on a letter of intent to lease, Borrower and the property owner shall enter into and submit to Lender a fully executed lease agreement for the Business to operate on the Property which complies in all respects with this Agreement within one hundred eighty (180) days of the Effective Date. No Loan funds shall be disbursed to Borrower pursuant to Section 2 until Borrower has complied with this obligation. In the event Borrower fails to submit the required lease in the period provided, this Agreement shall automatically terminate on the one hundred eighty first day after the Effective Date.

SECTION 2 LOAN AND FORGIVENESS.

A. **Grant of Loan**. Lender hereby lends to Borrower a Loan in the amount indicated on Exhibit B ("Loan Amount") for Borrower's use only for the eligible expenses indicated thereon ("Eligible Expenses"). The Loan shall bear simple interest of zero percent (0%) per annum. The Loan shall be held by Lender and disbursed to Borrower pursuant to approved Disbursement Requests submitted between the Effective Date and June 30, 2027 as more specifically set forth in Subsection 2.D and 2.F.

B. **Loan Repayment**. Subject to any portion of the Loan that has been forgiven pursuant to Subsection 2.C, the Loan is due and repayable in full on the date that is two (2) years from the earliest of the following:

1. *Cessation of Operation*. The Business closes, or ceases to operate continuously at the Property as required by Subsection 3.E.

2. *Sale or Transfer of Business*. The Business is sold, conveyed, or otherwise transferred to any person other than Borrower.

Borrower shall provide notice as early as feasible of either of the foregoing events to Lender, and no later than thirty (30) days before such event occurs. Borrower is encouraged to request an assignment of this Agreement pursuant to Subsection 7.M where appropriate, in which event the provisions of this Agreement shall apply to the approved assignee.

C. **Loan Forgiveness**. Subject to Borrower's continuing compliance with this Agreement, the Loan shall be forgiven at a rate of twenty percent (20%) of the Loan Amount per 12 months of the Term, such that by the end of five (5) years (sixty (60) months) from the Effective Date, the Loan would be one hundred percent (100%) forgiven provided that Borrower has not committed an act of Default.

D. **<u>Disbursement of Loan</u>**. The entirety of the Loan shall be held by Lender, and disbursed only upon Lender's approval of a Disbursement Request in the form attached as Exhibit C to this Agreement ("Disbursement Request") subject to the following requirements:

1. *Required Contents*. All Disbursement Requests shall be submitted by Borrower to Lender with all invoices, quotes, and estimates applicable to the Eligible Expenses for which disbursement of the Loan is requested.

2. *Review by Lender*. Lender shall review the Disbursement Request and shall approve it if the request complies with the requirements of this Agreement. Lender shall use best efforts to respond to Disbursement Requests within thirty (30) days, and provide comments if a Disbursement Request is rejected or incomplete.

3. *Disbursement of Funds*. The portion of the Loan indicated in an approved Disbursement Request will be disbursed to Borrower by check issued to the address provided in the Application within thirty (30) days of approval by the Lender or other disbursement method acceptable to both parties.

E. **<u>Expenditure of Disbursed Loan Funds</u>**. Upon receipt of disbursed Loan funds, all amounts shall be expended by Borrower on the Eligible Expenses approved in the relevant Disbursement Request on or before the date that is one hundred eighty (180) days following the date the portion of the applicable Loan funds are disbursed to Borrower pursuant to Subsection 2.D ("Expenditure Deadline"). On or before the Expenditure Deadline, the Business shall submit to Lender the following:

1. *Proof of Eligible Expenditures*. Paid invoices, receipts, proofs of purchase, or other documentation in a form satisfactory to Lender which document the disbursed Loan funds were spent only on the items in the approved Disbursement Request.

2. *Return of Remaining Loan Funds*. A cashier's check or other form of payment acceptable to Lender returning any and all amounts of the disbursed Loan funds not included on the proof of eligible expenditures submitted pursuant to the previous Paragraph.

Following receipt, Lender will review the submitted proof and repayment. In the event Lender determines that additional documentation is needed, Borrower shall respond with any requested documentation within ten (10) days of request.

In the event that Lender reasonably determines that the amount of the disbursed Loan funds were expended on anything other than Eligible Expenses, or the funds returned pursuant to Paragraph 2 were otherwise not properly calculated pursuant to the proof submitted and the terms of this

Agreement, Borrower shall correct the miscalculation and pay to Lender by cashier's check or other form of payment acceptable to Lender any additional amount of the Loan as calculated by Lender within ten (10) days of demand.

The Expenditure Deadline for any approved Disbursement Request may be extended solely by written agreement of Lender.

F. **Disbursement Request Deadline**. Disbursement Requests will only be accepted until **June 30, 2027**, after which date no further Disbursement Requests will be accepted or processed. Any portion of a Loan not already granted to Borrower pursuant to an approved Disbursement Request will automatically revert to Lender on **July 31, 2027**.

SECTION 3 BORROWER OBLIGATIONS. Borrower shall at all times comply with the following for the entire Term:

A. **Legal Compliance**. The Business and Property shall operate at all times in a manner consistent with all applicable laws, including laws related to noise, public nuisance, sanitation, and other matters.

B. **Permits and Licenses**. The Business and Property shall hold all approvals, licenses, and permits necessary for the lawful operation of the Business, including without limitation any and all relevant business licenses, health certifications, liquor licenses, and any other required approval, license, or permit.

C. **Eligible Expenses to Benefit Business**. The Eligible Expenses shall be used solely for the benefit of the Business on the Property and shall be utilized and maintained continuously onsite. The procured Eligible Expenses shall not be sold or transferred to another business or property for the entire Term.

D. **Condition of Business**. The Business and Property shall be continuously maintained in good or better condition, and Borrower shall promptly conduct all necessary repairs to maintain such condition at Borrower's sole cost.

E. **Continuous Operation**. The Business shall operate continuously throughout the Term, resulting in at least 2000 hours per calendar year where the Business is open and operational for public access. In the event an applicable law, permit, license, or other approval requires a lower number of annual operational hours, the Business shall instead operate at the maximum number of hours allowable by the applicable law, permit, license, or other approval.

F. **Bankruptcy**. Borrower shall not commit any act of bankruptcy, or seek any relief under the United States Bankruptcy Code (11 U.S.C. § 101 et seq.), or become involved as a debtor in any bankruptcy proceeding; provided, however, that if any such proceeding is brought involuntarily against Borrower, Borrower shall have forty-five (45) days to obtain the dismissal of such proceeding.

G. **<u>Indemnification, Hold Harmless, and Release</u>**. Borrower agrees that Lender shall not be liable for, and covenants and agrees to indemnify, release and hold harmless Lender and its officials, officers, employees, and agents from and against any and all losses, claims, damages, liabilities, and/or expenses, of every conceivable kind, character and nature whatsoever arising out of, resulting from, or relating to this Agreement, including without limitation Borrower's compliance or noncompliance with the terms hereof, expenditure of the Loan, and any claims regarding the payment or nonpayment of prevailing wages for work pursuant to the California Labor Code. Borrower further covenants and agrees to pay for or reimburse the Lender and its officials, officers, employees, and agents for any and all costs, reasonable attorney's fees, liabilities, or expenses incurred in connection with investigating, defending against or otherwise in connection with any such losses, claims, damages, liabilities, or cause of action related to the Borrower's participation in the Program. Lender shall have the right to select legal counsel and to approve any settlement in connection with such losses, claims, damages, liabilities, or causes of action related to the Borrower's participation in the Program. This Subsection shall survive termination of this Agreement.

The obligations in this Section are the sole responsibility of Borrower, and not Lender. The Loan shall not be used for the satisfaction of the foregoing requirements.

SECTION 4 BORROWER REPRESENTATIONS AND WARRANTIES. Borrower makes the following representations and warranties as of the date of this Agreement and agrees that such representations and warranties shall survive and continue for the entirety of the Term:

A. **<u>Authorization and Validation</u>**. The execution, delivery and performance by Borrower of this Agreement (i) are within the powers of Borrower and upon its execution will constitute a legal, valid and binding obligation of Borrower enforceable in accordance with its terms, and (ii) will not violate any provisions of law, any order of any court or other agency of government, or any indenture, agreement or any other instrument to which Borrower is a party or by which Borrower, or any of its property, is bound, or be in conflict with, result in any breach of or constitute (with due notice and/or lapse of time) a Default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of its property or assets, except as contemplated by the provisions of this Agreement.

B. **<u>Correct Information</u>**. All reports, papers, data and information given to Lender with respect to Borrower and this Agreement, including the Application and any Disbursement Requests, are accurate and correct in all material respects and complete insofar as completeness may be necessary to give Lender a true and accurate knowledge of the subject matters thereof, and there has been no change in such information.

C. **<u>Defaults</u>**. Borrower is not a party to any agreement or instrument that will interfere with its performance under this Agreement, and is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions set forth in any agreement or instrument to which it is a party.

D. **<u>Pending Litigation</u>**. There is not now pending or threatened against or affecting Borrower any claim, investigation, action, suit or proceeding at law, or in equity, or before any court or administrative agency which, if adversely determined, would impair or affect Borrower's performance under this Agreement.

Borrower shall be in Default of this Agreement if any of the foregoing representations and warranties become false, incorrect, or misleading in any material respect at any time during the Term.

SECTION 5 RECORDS, INSPECTIONS, AND AUDITS. The rights and obligations of this Section 5 shall apply for the entire duration of the Term and two (2) years thereafter.

A. **<u>Records to be Maintained</u>**. Borrower shall keep and maintain records providing (1) all disbursements of the Loan to Borrower, including a copy of all Disbursement Requests, (2) invoices, purchase orders, and receipts showing all expenditures of Loan funds consistent with this Agreement, and (3) all other contracts, orders, approvals, and other documentation within Borrower's possession related to this Agreement, the Loan, or the Eligible Expenses (the "Books and Records"). Books and Records shall be kept and prepared in accordance with generally accepted accounting principles or as otherwise required by Lender. Borrower shall provide electronic or physical copies of any such Books and Records to Lender within five (5) days of request.

B. **<u>Inspection of Business and Property</u>**. At any time during operation of the Business or outside of Business hours with three (3) days' written notice to Borrower, Lender may inspect the Business and Property for compliance with this Agreement, including without limitation confirming that the Eligible Expenses have been procured and used for the benefit of the Business in compliance with this Agreement.

C. **<u>Audit</u>**. At any time during operation of the Business or outside of Business hours with three (3) days' written notice to Borrower, Lender may inspect the books, records, and accounts of the Business related to the use and expenditure of the Loan and/or compliance with this Agreement.

D. **<u>Survival</u>**. This Section shall survive termination of the Agreement for two (2) years.

SECTION 6 DEFAULT. Any violation by Borrower of any provision of this Agreement is a "Default," and subject to the remedies and procedures in this

Section. Borrower shall immediately provide written notice to Lender of any defaults of Borrower of this Agreement.

A. **Default and Cure**. In the event of any Default, Lender shall provide Borrower with a thirty (30) day written notice and cure period detailing the nature of the Default and the steps necessary to cure the default. The cure period may be extended by written agreement of Lender, in its sole discretion. If the Default remains uncured in Lender's discretion at the end of the cure period, Lender may take any or all of the actions indicated in Subsection 6.B.

B. **Other Remedies**. Lender may take any or all of the following actions in the event of Default:

   1. *Require Repayment of the Loan*. Declare the outstanding principal amount of the Loan, together with the then accrued and unpaid interest thereon and other charges hereunder, and all other sums secured by this Agreement, to be due and payable immediately, and upon such declaration, such principal and interest and other sums shall immediately become and be due and payable without demand or notice. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred in connection with protection of, or realization on, the security for this Agreement, may be added to the principal hereunder, and shall accrue interest as provided herein.

   2. *Withhold Disbursements*. Halt or refuse to pay any Disbursement Requests.

   3. *Modify Loan*. Reduce the approved not to exceed amount of the Loan to amounts already disbursed consistent with this Agreement, or another amount deemed appropriate by Lender.

   4. *Other Actions*. Take any other action available to Lender at law or in equity.

C. **Interest on Amounts Due**. In the event Borrower fails to timely make any payment required or due hereunder within ten (10) days following the date such payment is due or required to be made; the rate of interest applicable to periods of default for the Defaults set forth in this Section 5 shall be calculated at the lesser of ten percent (10%) per annum or the maximum legal rate, and shall accrue as of the date such payment was originally due. All payments shall be first credited to accrued interest, next to costs, charges, and fees which may be owing from time to time, and then to principal.

D. **Payment in United States Dollars**. All payment shall be made in lawful money of the United States.

E. **Offset**. For any amounts due from Borrower to Lender under this Agreement, Borrower may request that such amounts be offset by the then-current fair market value of the furniture, appliances, and equipment procured through Loan funds. If Lender approves said request in writing, the furniture, applicances, and equipment shall be appraised by a firm selected by Lender the cost of which shall be borne by Borrower. The assessed fair market value of the furniture, applicances, and equipment shall be offset from the amounts due to Lender, and ownership of the fixtures, furnishings, appliances, and equipment shall be delivered to Lender as a condition of the offset.

SECTION 7 MISCELLANEOUS.

A. **Recitals and Exhibits**. The Recitals and Exhibits to this Agreement are incorporated herein by this reference.

B. **Time and Extensions**. Time is of the essence for the purposes of this Agreement. The timeframes set forth herein may only be extended by written approval of Lender in its sole discretion. No extension of time shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Agreement, either in whole or in part.

C. **Notices**. Notices to Lender shall be delivered to Fontana City Hall 16860 Valencia Ave, Fontana, CA 92335, ATTN: Deputy City Manager for Development Services and/or any other address for notices indicated by Lender to Borrower in writing. Notices to Borrower shall be delivered to the address(es) identified in the Application.

D. **Borrower Responsible**. The obligations of Borrower under this Agreement shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Agreement for any reasons whatsoever. Borrower waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights or interests in securing this Agreement.

E. **No Waiver**. No previous waiver and no failure or delay by Lender in acting with respect to the terms of this Agreement shall constitute a waiver of any breach, default, or failure or condition under this Agreement or the obligations secured hereby. A waiver of any term of this Agreement or of any of the obligations secured hereby must be made in writing and shall be limited to the express written terms of such waiver. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of Lender's right to either require prompt payment when due of all other sums payable hereunder or to declare a Default for failure to make prompt or complete payment.

F. **Attorney's Fees and Costs**. Borrower agrees that if any amounts due under this Agreement are not paid when due, Borrower will pay all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Agreement, whether or not suit is filed. If either party to this Agreement is required to initiate or defend litigation in any way connected with this Agreement, the prevailing party in such litigation, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorneys' fees from the losing party. Attorneys' fees shall include attorneys' fees on any appeal, and a party entitled to attorneys' fees shall be entitled to all other reasonable costs for investigating such action, retaining expert witnesses, taking depositions and discovery, and all other necessary costs incurred with respect to such litigation. The court may set attorneys' fees in the same action or in a separate action brought for that purpose.

G. **Rights and Remedies Cumulative**. All remedies provided for herein are cumulative and shall be in addition to any and all other rights and remedies provided by law. The exercise by a party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

H. **Interest Rate Limitation**. None of the terms and provisions contained herein shall ever be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate in excess of the maximum interest rate permitted to be charged by the laws of the State of California. In such event, if any holder of this Agreement shall collect monies which are deemed to constitute interest which would otherwise increase the effective interest rate on this Agreement to a rate in excess of the maximum rate permitted to be charged by the laws of the State of California, all such sums deemed to constitute interest in excess of such maximum rate shall, at the option of such holder, be credited to the payment of the sums due hereunder or returned to Borrower.

I. **Applicable Law and Venue**. This Agreement shall be governed by and construed under the laws of the State of California except to the extent Federal laws preempt the laws of the State of California. Borrower irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of Orange or the United States District Court of the Southern District of California, as Lender may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Agreement. Borrower also waives any objection regarding personal or in rem jurisdiction or venue.

J. **Joint and Severable Obligation**. This Agreement is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

K. **Nonliability of Officials**. No officer, official, member, employee, agent, or representative of Lender shall be personally liable to Borrower, or any successor-in-interest, in the event of any default or breach by Lender, or for any amount which may become due to Borrower or any successor-in-interest, or for breach of any obligation of the terms of this Agreement.

L. **Authorized Representatives**. Lender's Deputy City Manager for Development Services is Lender's authorized representative for all purposes of this Agreement. Lender may designate a designee, including an employee, contractor, consultant, or agent of Lender to serve as Lender's authorized representative hereunder. Borrower's authorized representative is indicated on the Application. Actions taken by each party's respective authorized representative are binding on said party.

M. **Prohibition on Assignment**. Borrower may not assign or transfer this Agreement without the prior written approval of Lender which approval shall not be unreasonably withheld. Accordingly, Borrower shall not, whether voluntarily, involuntarily, or by operation of law, undergo any significant change in ownership or assign all or any part of this Agreement or any rights hereunder or in the Business or Property without Lender's prior written approval which Lender may grant or withhold in its reasonable discretion.

N. **Interpretation**. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply. The section, subsection, and paragraph headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Agreement.

O. **Severability**. If any part, term or provision of this Agreement is held to be illegal, in conflict with any law or otherwise invalid, the remaining portion or portions shall be considered severable and not be affected by such determination, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provisions held to be illegal or invalid.

P. **Survival**. Notwithstanding the expiration of earlier termination of this Agreement, Borrower's obligations to Lender shall not terminate until all closeout requirements are completed. In addition, all provisions expressly stated to survive termination of this Agreement and any other obligations which cannot by their nature be performed until after the expiration or earlier termination of the Agreement shall survive termination. No expiration or termination under this Agreement shall release either party then in Default from liability for such Default. All terms of this Agreement shall survive as necessary for the purpose of enabling either party to enforce its provisions or pursue an action with respect to a Default of this Agreement.

Q. **No Third Party Beneficiaries**. There are no third party beneficiaries to this Agreement.

R. **Counterparts**. This Agreement may be executed in counterparts, each of which, when all the parties hereto have signed this Agreement, shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

S. **Entire Agreement**. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof. In the event of a conflict between this Agreement and the Guidelines, this Agreement shall prevail.

T. **No Joint Venture**. Nothing herein shall be construed as making Lender a joint venturer or partner of Borrower or making Lender a party to Borrower's contracts with contractors or vendors.

U. **Nondiscrimination**. Each party covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that in the performance of this Agreement there shall be no discrimination against or segregation of, any person or group of persons on account of any impermissible classification including, but not limited to, race, color, creed, religion, sex, marital status, sexual orientation, national origin, or ancestry.

V. **Amendments**. This Agreement may only be amended by writing mutually executed by Lender and Borrower.

W. **Authority to Execute**. The person(s) executing this Agreement on behalf of the parties hereto warrant that (a) such party is duly organized and existing, (b) they are duly authorized to execute and deliver this Agreement on behalf of said party, and (c) by so executing this Agreement, such party is formally bound to the provisions of this Agreement.

LENDER:
CITY OF FONTANA

____

City Manager

ATTEST

____

City Clerk

APPROVED AS TO FORM

____

City Attorney

BORROWER
____

____

Name:

Title:

____

Name:

Title:

[Two officer signatures are required if Borrower is a corporation]

EXHIBIT A

APPLICATION

[INSERT BORROWER’S COMPLETED AND APPROVED APPLCIATION]

EXHIBIT B

LOAN DETAIL

Business Name: ____________________________________

Business Location: __________________________________

Amount of Loan: ____________________________________

Estimated Eligible Expenses

- ☐ ___________________________ | $ __________________________
- ☐ ___________________________ | $ __________________________
- ☐ ___________________________ | $ __________________________
- ☐ ___________________________ | $ __________________________
- ☐ ___________________________ | $ __________________________
- ☐ ___________________________ | $ __________________________
- ☐ ___________________________ | $ __________________________
- ☐ ___________________________ | $ __________________________
- ☐ ___________________________ | $ __________________________

Total, not to exceed amount: ______________________

The amounts and categories are approximates, and the City may approve rebudgeting of categories in a Disbursement Request for Eligible Expenses, so long as the total amount of the Loan remains consistent with the aggregate not to exceed amount.

EXHIBIT C

DISBURSEMENT REQUEST

Name of Business: ____________________

Loan No.: ____________________

Amount of Loan: ____________________

Amount of Loan Already Disbursed: ____________________

Amount of Loan Remaining: ____________________

Amount Requested to be Disbursed: ____________________

Eligible Expenses Requested for Disbursement

- ☐ ______________________________ | $ ______________________________
- ☐ ______________________________ | $ ______________________________
- ☐ ______________________________ | $ ______________________________
- ☐ ______________________________ | $ ______________________________
- ☐ ______________________________ | $ ______________________________
- ☐ ______________________________ | $ ______________________________
- ☐ ______________________________ | $ ______________________________
- ☐ ______________________________ | $ ______________________________
- ☐ ______________________________ | $ ______________________________

Total Items: ____________________ Total Estimated Disbursement: _____________

****Attach invoices or quotes for all amounts shown. No disbursement will be approved without corresponding proof of the amount requested.***

Signature of Authorized Representative:

____

Name:

Title:

FOR LENDER USE ONLY ☐ APPROVED ☐ DENIED

Signature: _________________________

Deputy City Manager for Development Services