

CITY OF EASTVALE
CDBG JOB CREATION AND BUSINESS INCENTIVE LOAN POLICY

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I. INTRODUCTION

This written policy is intended as a guide in making credit decisions regarding applications for Community Development Block Grant (CDBG) Job Creation and Business Incentive loan projects for the City of Eastvale (City). This policy is written to allow flexibility as credit needs change. It should be used as a tool to provide some consistency for project selection. Projects will be considered for funding on a case-by-case basis, until available funding is exhausted. Only those projects falling within the scope of the guidelines will be considered for funding. Depending on funding amount, successful applicants will be determined by the City Manager or City Council.

II. PURPOSE

This policy provides financial assistance to support economic development and business retention and expansion goals. The goals are structured to promote Eastvale as a positive place for quality business, promote business expansion and attraction to enhance local economic growth, and ensure that government regulations promote a favorable business climate.

Community Development Block Loan (CDBG) funds will support business development likely to increase levels of employment for residents of Eastvale with extremely low- to moderate-income.

This loan program is not to be equated with a loan program available through banking or financial institutions. As a public lender, the source of funds is interested as much in the social benefits as return on investment, and preservation of capital. The return to Eastvale is multiple: increased investment in the business community, additional jobs, and business activity, and increased tax revenues and quality of life for our residents.

The purpose of the economic development assistance is to:

1. Fulfill a need within the community.
2. Create income eligible jobs for persons with extremely low- to moderate-income.
3. Generate increased sales tax for the community.
4. Create opportunities for business expansion for existing Eastvale businesses.
5. Create opportunities for recruiting new businesses to fill commercial vacancies.
6. Encourage additional foot traffic and social activity within the proposed business location.
7. Diversify the City's sales tax base.

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III. CITY RESPONSIBILITY

City is providing funds through the Community Development Block Program for the use of the participant within the scope of the requirements of the United States Department of Housing and Urban Development. Participant and all third parties shall rely upon its or their own judgment with respect to development of the project and any review, exercise of judgment or information supplied to participant or to any third party by City in connection with any such matter is for the public purpose of carrying out this Policy.

IV. FEDERAL AND COUNTY REQUIREMENTS

The City, as a member of the County of Riverside and as a recipient in the Community Development Block Grant (CDBG) program, funded by the United States Department of Housing and Urban Development (HUD), will require that Participant comply with all standard CDBG regulations and Participant will agree to so comply. The Agreements to be executed between City and Participant will specifically incorporate the federal and county requirements. In the event of any conflict between the program parameters outlined in this policy and federal and county requirements, the provisions of the federal and county requirements shall control. After the City has disbursed the loan to Participant, participant may not terminate the Agreements.

V. PROHIBITION AGAINST CHANGE IN OWNERSHIP MANAGEMENT AND CONTROL OF PARTICIPANT

The qualifications and identity of Participant in this program are of particular concern to City. It is because of those qualifications and identity that City will enter into an Agreement with Participant. No voluntary or involuntary successor in interest of Participant shall acquire any rights or powers under this program except as expressly set forth within executed documents under this program. A change in ownership, management and control shall be subject to the approval of City, but such approval shall not be unreasonably withheld.

Participant shall not assign all or any part of any Agreements or Notes under this program without the prior written approval of City, which approval shall not be unreasonably withheld.

VI. JOB CREATION REQUIREMENT

A. Number of Jobs to be Created

Participants in this program agree to create one permanent Full-Time Equivalent (FTE) job for persons with extremely low- to moderate-income per \$35,000 loaned. In meeting this requirement, funds loaned will be forgiven over each year of participation and compliance with the program, as outlined in Subsection D.

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Participant shall comply with the terms and conditions of Subsection VI-F below for creation of permanent jobs during the term of the program.

B. Created Jobs Defined

If a CDBG loan is awarded, it will be based on job creation for persons with extremely low- to moderate-. For purposes of being considered a created job, a job must be a new job (full or part-time) for the person, or the CDBG assistance must enable an existing income-producing “sideline” activity to become the person’s principal occupation. In counting jobs, the following policies apply:

1. Part-time jobs must be converted to full-time equivalents.
2. Only permanent jobs count-temporary jobs may not be included.
3. Seasonal jobs may be counted only if the season is long enough for the job to be considered as the employee’s principal occupation.
4. All permanent jobs created by the activity must be counted even if the activity has multiple sources of funding.
5. Jobs indirectly created by an assisted activity (i.e., trickle-down jobs) may not be counted.

To qualify, the person hired must be from an extremely low- to moderate-income household as established by the U.S. Department of Housing and Urban Development (HUD) income guidelines.

To qualify as extremely low- to moderate-income, information must be obtained on family size and income so it is evident that family income does not exceed the extremely low- to moderate-income limit.

C. Base Number of Job Positions Required

Participants agree that jobs created will be cumulative and will not replace any jobs existing prior to participation in the program. The City Council wishes to promote job creation; consequently, it is essential that the number of existing employees prior to application for the loan be clearly determined and established as the benchmark in identifying the total number of employees required by program regulations. Adequate documentation for employee number for the ending quarter prior to application for the program must be provided. Staff will present the employee number information to City Council with a recommendation for the benchmark.

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D. Participation Period Required

The required period of time for program compliance and fund forgiveness/repayment is contingent upon the amount loaned. The following schedule applies:

<u>Amount of Loan</u>	<u>Forgiveness/Reporting Period</u>
Up to \$50,0002 years
Greater than \$50,0003 years

E. Full-Time Equivalent (FTE) Defined

For the purposes of this program, Full-Time Equivalent (FTE) is defined as forty (40) hours of paid full-time or part-time work in a seven-day period. The participant can meet the FTE requirement by hiring one full-time employee or multiple part-time employees provided the employee or employees work a combined total of forty (40) hours per week.

F. Job Count Start Date

Job count start date will be based on an event which occurs after the execution of the Agreement document. The start date will vary depending on the structure of the financing for each particular economic development project. The Job Count start date should start when the funding of the project is complete, and the business has begun/resumed its operation.

G. 51% Requirement

Fifty-one percent of all jobs created must be held by persons with extremely low-to moderate-income as defined by the Department of Housing and Urban Development.

H. Pro-rated Credit for Partial Compliance

Each year of participation in the program, if a participating business fails to meet the job creation requirement in any six-month period, the business will not be forgiven that annual pro-ration of the loan and will be responsible for repayment of that portion to the City. No loan forgiveness or write down until all required job are created and reported.

I. Event of Default

If the job creation requirements are not reached in any two succeeding six-month periods, the Agreement will be terminated and the balance of the loan that has not been forgiven will be called as due. The City is responsible for 100% repayment to the County if the National Objective is not met.

J. Reporting Requirement

The participating business is responsible for providing a quarterly report to the Economic Development Division of the City of Eastvale which documents jobs created by employee name, job title, hours worked per week, and hourly rate, for qualifying employees. The Quarterly Report will be filed each quarter for the two or three years under the loan.

K. Displacement

Jobs created within job creation requirements are not eligible for displacement.

VII. GEOGRAPHIC LOCATION/TARGET AREAS

The CDBG job creation and business incentive loans will be limited geographically to the City of Eastvale.

VIII. ELIGIBLE PROJECTS

Funding will be recommended for the following eligible projects:

- New sales tax generating businesses
- Existing sales tax generating businesses wanting to expand their gross floor area (square footage) by 50% or more

Funding priority will be recommended for projects that meet the overall design scope and criteria for the location, create jobs for persons with extremely low- to moderate-income, expand economic opportunities and generate sales tax. The following project types will be considered for CDBG job creation and business incentive loan project funding:

A. New Retail/Commercial

- 1) General Consumer Goods
 - 2) Home Improvement Stores
 - 3) Consumer Appliances/Electronics
 - 4) Health and Sporting Goods stores
 - 5) Grocery and Import stores
 - 6) Furniture stores
 - 7) Clothing and shoes
 - 8) Kitchen equipment
 - 9) Book and Entertainment stores
 - 10) Gift stores
 - 11) Musical Instruments and sound equipment stores
-

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12)Boutique Day Spa (selling taxable items)

- B.** Quality Food Establishments
 - 1) Premium Casual or Fine Dining Restaurants
- C.** Entertainment-related activities
 - 1) Movie theaters (selling concessions)
 - 2) Theatre (selling concessions)

IX. ELIGIBLE ACTIVITIES

Within these categories funding can be used for the following types of activities:

- Interior and/or exterior leasehold improvements
- Purchase of business equipment, furniture, and fixtures
- Working Capital
- Building renovation and construction

X. PROPOSAL RATING

Eligible applicants loan proposals will be weighted using the following rating system:

1. Fulfill a need within the community.
2. Create income eligible jobs for persons with extremely low- to moderate-income.
3. Generate increased sales tax for the community.
4. Create opportunities for business expansion for existing Eastvale businesses.
5. Create opportunities for recruiting new businesses to fill commercial vacancies.
6. Encourage additional foot traffic and social activity within the proposed business location.
7. Diversify the City's sales tax base.

XI. ADMINISTRATION

A. Loan Committee

In order to ensure timely review of applications, a CDBG loan committee will be organized. The Committee will be comprised of the City Manager, Community Development Director, Economic Development Manager and Finance Director. The Committee will meet as needed to review the applications and approve or deny them based upon the rating system in section X of this policy. The Committee will also approve or decline applications submitted by the Program Administrator on behalf of the business entity with regard to new loans, payment deferrals, substitution or release of collateral, waiver or release of covenants/amendments to loan documents. The City Council will also approve or decline any exceptions to the general loan policy.

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B. CDBG Fund Administrator

The CDBG Fund Administrator, County of Riverside Economic Development Agency, must review and approve all loans.

C. Program Administrator

The Program Administrator will market, solicit, review, and process potential borrowers' applications for credit. The Program Administrator will decline or refer out to some other agency any applicant who clearly does not qualify under eligibility standards as set forth by the policy. The Program Administrator will recommend new credit, payment deferrals, release or substitution of collateral, waivers/amendments to loan covenants and exceptions to loan policy to the Loan Committee.

XII. FUNDING LEVELS

Funding assistance of \$35,000 or greater per project will be awarded based on availability and determination by committee.

XIII. FUNDING AVAILABILITY

The Economic Development Program is funded on a fiscal year basis. City of Eastvale fiscal year begins on July 1 and ends on June 30 of the following year. Limited funds are available in each fiscal year when the program is funded.

Funding preference will be given to first-time applicants. After the initial approval and loaning, a period of ten years shall elapse between the date of the maximum CDBG Economic Development award and any subsequent application. The interim period shall apply to:

1. The business owned at the time of the first application, whether the owner is the original owner or a subsequent owner.
2. Any additional business in which the owner/partner/member/officer of the original business has a proprietary and/or financial interest.

Any business receiving a City of Eastvale Economic Development Loan shall disclose the information and details of the loan upon sale or transfer of the business to any subsequent owner.

Exceptions to the ten-year interim period would include cases of involuntary relocation through no fault of the business, or other emergencies.

XIV. APPLICATION PERIOD

A. Submittal

Applications will be accepted on a continuous basis.

B. Processing

Applications will be processed when funds are available.

XV. APPLICATION PROCEDURE

All loans are subject to analysis to determine risk. Loans will be awarded only to projects, which demonstrate that the service provided is commensurate with the risks incurred. In return for the public moneys provided, the businesses will generate increased investment, jobs, business activity, and thus increased tax revenues.

A. General Credit Criteria

The business loan applications will be analyzed for the following criteria, based on criteria specified by the U.S. Department of Housing and Urban Development, Office of Community Planning and Development, and by the Small Business Administration:

- 1) Ability to repay in case of default or termination of business.
- 2) Balance Sheet Analysis
Balance sheet must be sound before the loan is made.
- 3) Historical earnings and cash flow records, from verifiable sources as determined by the loan committee, to ensure sufficient repayment of all requested credit, and to provide the owner(s) with a reasonable level of personal income to satisfy personal obligations. Typically, a borrower will have been profitable during the most recently completed year and will maintain a cash flow coverage ratio of 1:1 (defined as earnings before debt service, interest and taxes divided by debt service), with sufficient collateral. The ratio would be 2:1 without collateral. If partial collateral is pledged, the ratio may be prorated downward.
- 4) Collateral
Collateral, when available in any form, may be requested by the Loan Committee. Collateral will be pledged commensurate with the amount of requested credit, as well as a security interest in newly purchased assets, or those purchased with loan funds. If the project cannot repay the loan from cash flow, the City will collect payment by liquidating the asset and satisfying

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the specific lien securing the property. A letter of credit or bond may be accepted in lieu of collateral.

5) Commitment

Personal and corporate guarantees may be required. The borrower should sign personally for the loan.

6) Management Experience

The management team must have experience in all areas of running the business: sales, finance, operations, personnel, etc. The management team includes the principals, directors, senior management and consultants.

The management team should have direct experience in these areas or have comparable business skills which can be transferred.

7) Business Plan

The business plan will help identify worthy ventures. The monthly cash flow statement for the first year is especially important.

8) Character

The owners and management should have favorable credit histories, a reputation for treating customers fairly, no bankruptcy in the past five years, and a clean criminal record. Good character will be determined by credit reports, payment history with verified vendors, personal interview, or other means as determined.

9) Niche

It is difficult for a small firm to compete with much larger companies on price. The entrepreneur must be committed to customer service; or the business must serve a market niche or offer a unique product or service.

All of the above criteria are important, and the absence of any one may be sufficient to deny a loan request.

B. Undesirable Credit Applications/Borrowers/Guarantors

Using the guidelines for the Small Business Administration and the Department of Housing and Urban Development, the following are undesirable without mitigating circumstances acceptable to the Loan Committee:

- 1) Applications for funding that would substantially reduce the amount of non-Federal support for the activity available in other recognized, reasonable loan programs available in the target areas;
- 2) Requests for credit to repay existing creditors

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- 3) Funds used to repay debt to applicant owner(s), partners, stockholders
- 4) Requests for funding from new start-up businesses not associated with a franchise chain or not adding an additional business location
- 5) Requests for funding for businesses which do not meet the criteria specified in Section VIII A through C.
- 6) Non-profit organizations, as designated by Charter/Bylaws, unless designated as approved Community Based Development Organizations (CBDO)
- 7) Lack of profitable operations, as demonstrated by sources acceptable to Loan Committee
- 8) Loans to restricted membership or discriminatory groups/organizations.
- 9) Loans to uses with complete access restrictions based on age.
- 10) Lack of sufficient equity/highly leveraged situations as determined by Loan Committee.
- 11) Personal or business bankruptcy, or prior business failure without sufficient, documented information to mitigate, as determined by Loan Committee;
- 12) Poor personal or business credit as evidenced by many derogatory items including public record items, tax liens, judgments, or excessive existing credit as determined by Loan Committee;
- 13) Undocumented aliens;
- 14) Felony convictions, dishonorable discharge or "Bad Conduct" discharge from military service (each situation will be independently evaluated);
- 15) Business active in any unlawful activity

C. Exceptions to Loan Policy

If a project does not fall within the guidelines listed above, but is of such special character and will complement the area in which location is proposed, the City Manager or City Council (depending on loan amount) may consider the project for funding.

XVI. PRICING AND TERMS

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Considerations of loan product pricing extended to borrowers will be based on a rate equal to the rate earned by the City's investment in the California Local Agency Investment Fund (LAIF) as determined on a monthly basis, but in no event to exceed 10 per cent (10%) per annum. Interest which accrues and is unpaid shall be added to principal on a monthly basis and thereafter bear interest as if it were part of principal. Principal and all accrued and unpaid interest shall be due and payable not later than the terms specified in the Note. Additional terms extended to borrowers will be based on the amount of risk involved.

XVII. COLLATERAL

Collateral is a mandatory requirement, real property preferred but not required. Property such as equipment will be considered as collateral. It is intended that any available collateral from the borrower and/or guarantor(s) will be required, as well as a first lien position on any assets purchased with any loan funds. Junior liens on real property will be required at the discretion of the Loan Committee. However, it will be the policy that all collateral required for loan approval will be of material value. Caution will be used whenever taking a junior lien position on collateral where there is a substantial senior lien. It will be a determination of the Loan Committee whether to waive a collateral position when available.

Titled motor vehicles, when taken as collateral, must show the City as mortgagee/lienholder on the certificate of title, and held in safekeeping by the Community Development Director or designee.

In all cases, a UCC-1 and security agreement will be taken against all business assets.

XVIII. CESSATION OF BUSINESS

If Participant should cease business at the site, participant shall repay its obligations to City as provided in the Note which shall be executed when Agreement is signed. The term "cease business" shall mean when the site is no longer used as the principal place of business for Participant's business. Participant shall give City written notice not less than thirty (30) days prior to cessation of business. If Participant should cease business at the site, Participant shall pay to the City, in cash, within fifteen (15) days of the Participant's receipt of written notification from the City of the balance due on the Note.

XIX. GUARANTORS

The City will generally follow the rules of the Small Business Administration as to qualification of guarantors:

- A. Active Management with any ownership equity in borrower must guaranty

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- B. Shareholders/owners of 20% or more equity in borrower must guaranty regardless of active involvement in management

Guarantees may be secured or unsecured as determined by the Loan Committee.

XX. PROBLEM CREDITS

While it is the intent of this policy to be sensitive to the borrower's financial needs, and the intent to match any repayment schedule to the borrower's ability to repay, it is inevitable that there will be delinquencies and defaults. It is the responsibility of the Program Administrator to monitor all loan payments, especially those that are in arrears. It will be the stated policy that upon determination of a "problem credit" the City will pursue any and all remedies allowed by Regulation or Law in a professional, aggressive, and consistent manner until some resolution is reached.

XXI. ACTION OCCURRENCES

The following occurrences will warrant action on the part of the Program Administrator and/or City Council.

- A. Delinquent payment – whenever the terms of the Promissory Note are not being met in a timely manner (delinquent by more than 30 days);
- B. Violation of Loan Covenants – whenever the terms of the Loan Agreement are not being met in a timely fashion. The severity and immediacy of action is dependent on the type of breach; some covenants are more serious and lead to a default, while others less severe can sometimes be tolerated at the discretion of the Program Administrator.
- C. Receipt of bankruptcy notice;
- D. Filing of a "Notice of Default" by another lienholder on real property;
- E. Legal Service, such as Writs of Attachment, Tax Liens, Subpoenas for records;
- F. Death of debtor or guarantor;
- G. Notice of significant legal action against borrower/guarantor;
- H. Returned mail from borrower's address by Post Office;
- I. "Skip Trace" inquiry from another creditor.

XXII. COLLECTION ACTION

It is important to be clear and specific about any breach of the Note, Loan Agreement, or any of the above mentioned occurrences. The circumstances of a particular situation will often dictate the method to use in taking corrective action. Telephone contact with the borrower/guarantor is the most expedient and cost effective; however, some cases demand more formal notification such as "Demand Letters", Legal Action, and Foreclosure. Personal site visits and conversations with the borrower are warranted at the discretion of the Program Administrator.

XXIII. NON-ACCRUAL LOAN STATUS

Credits will be moved to a non-accrual status at the 90-day delinquency point unless otherwise directed by the City Council. At this point, many of the above-mentioned "Action Steps" should have been started; a collection plan, if applicable, should be in process at this point. Rewriting the entire Note in an effort to provide relief to the borrower should be considered after a detailed analysis of the financial condition of the borrower and his/her prospects for timely payments in the future. In any case, the Loan Committee and/or the City Council must approve a re-structured Note.

XXIV. COLLATERAL APPRAISALS

Collateral taken as security for any type of credit should be appraised if it has any significant value. In most cases, real property will be the collateral that is most needed for a third party appraisal (the City will accept "drive-by" and short-form appraisals). Since the City is not under the scrutiny of Federal and State Banking Regulators, there is more flexibility as to the extent of any appraisal and in which circumstances. It is the stated policy that some form of valuation be used to determine the equity of any collateral taken by the City, remembering that the cost and time of obtaining such appraisals may have an adverse affect on the borrower considering the size of the credit involved. The Loan Committee shall use its discretion in all collateral matters, unless otherwise dictated by the City Council.

XXV. FINANCIAL INFORMATION REQUIRED

It will be the policy of the City to require financial statements from each applicant in the form of a balance sheet and income statement for any and all fiscal year-ends since inception of the business (up to 3 years), and within the past 90 days of application date. Current personal financial statements for each business owner and personal and business federal tax returns for the prior three years are required, including all supporting schedules and statements. The City will obtain the written permission of the applicant to verify any and all tax returns with the Internal Revenue Service for accuracy (IRS Form 4506). Month-to-month projections covering any interim period until year-end, plus one full fiscal year is required, including the assumptions that the projections were based upon. Additional information will be

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requested at the discretion of the Program Administrator with direction from the Loan Committee and/or City Council:

All borrowers will be required as a covenant in the Loan Agreement to provide ongoing financial information as follows:

- A. Fiscal Year End balance sheet and income statement within 90 days of each year end;
- B. More frequent statements such as Accounts Receivable Agings, work in progress reports, or any other documents requested by the Loan Committee to assist the borrower in the monitoring of the credit.
- C. Payroll reports showing employee status, on a quarterly basis.

XXVI. FINANCIAL INQUIRIES

The City will not provide responses to inquiries regarding credit status of program participants.

XXVII. INSURANCE

All collateral taken as security for any credit must be insured appropriately as determined by the Loan Committee; evidence of that coverage must be provided showing the City as "Additional Insured," "Loss Payee," or "Mortgagee," whichever is appropriate for the collateral insured. The lapse of any insurance will create a default on the Loan Agreement, and must be remedied immediately by the borrower. If necessary, the City will obtain appropriate insurance to protect its collateral and debit the premium to the borrower.

Additionally, in the case where real estate collateral is taken, a PIRT of short form title policy will be required.



CITY OF EASTVALE
12363 Limonite Avenue, Suite 910
Eastvale, CA 91752
(951) 361-0900

For City Use Only
Date submitted: _____
Rec'd by: _____

Community Development Block Grant Business Incentive Application

BUSINESS INFORMATION

Project Address/Location
Assessor Parcel Number(s)
Description and Purpose of the Business

CONTACT INFORMATION

***The applicant and property owner are considered jointly and severally liable for all project expenses.**
Please check the box indicating which address invoices should be sent to.

<input type="checkbox"/>	Property Owner:	<input type="checkbox"/>	Applicant:
Name:	_____	Name:	_____
Contact:	_____	Contact:	_____
Address:	_____	Address:	_____
City, Zip:	_____	City, Zip:	_____
Phone:	_____	Phone:	_____
Fax:	_____	Fax:	_____
E-mail:	_____	E-mail:	_____

Check here if additional Property Owner Certifications are attached to this application.

<input type="checkbox"/>	Agent:	<input type="checkbox"/>	Other:
--------------------------	---------------	--------------------------	---------------

Name: _____
 Contact: _____
 Address: _____
 City, Zip: _____
 Phone: _____
 Fax: _____
 E-mail: _____

Name: _____
 Contact: _____
 Address: _____
 City, Zip: _____
 Phone: _____
 Fax: _____
 E-mail: _____

Agreement and Representations of Applicant and Property Owner

This application is not complete, and processing of this application will not begin, until all initials and signatures are provided:

1) Applicant(s) acknowledge and agree that by making this application, that in the performance of their functions, City staff and it consultants may enter upon the subject property and make examinations and surveys, provided that the entries, examinations and surveys do not unreasonably interfere with the use of the land by those persons lawfully entitled to the possession thereof. _____(Initial)

2) Applicant(s) certify under penalty of perjury that I am the legal owner(s) (all individual owners must sign as they appear on the deed to the land), Corporate Officer(s) empowered to sign for the corporation, Owner's Legal Agent having power of Attorney (a notarized Power of Attorney document must accompany this application), or the owner's authorized representative (include a notarized consent form from the owner). _____(Initial)

3) Applicant(s) acknowledge and agree that I/we have included all of the required items and understand that missing items may result in delaying the processing of my application. I further acknowledge and agree that by signing this document I accept the posting of public notices regarding the proposed project at the project site, and agree to pay all related costs. _____(Initial)

4) Applicant(s) agree to defend, indemnify and hold harmless the City of Eastvale ("City") and its agents, officers, consultants, independent contractors and employees ("City's Agents") from any and all claims, actions or proceedings against the City or the City's Agents to attack, set aside, void, or annul an approval by the City, or the City's Agents concerning the Project (collectively "Claim"). The City shall promptly notify the Applicant of any Claim and the City shall cooperate fully in the defense. If the City fails to promptly notify the Applicant of any Claim or if the City fails to cooperate fully in the defense, the Applicant shall not thereafter be responsible to defend, indemnify, or hold harmless the City. Nothing in this paragraph shall obligate the City to defend any Claim and the City shall not be required to pay or perform any settlement arising from any such Claim not defended by the City, unless the settlement is approved in writing by the City. Nothing contained in this paragraph shall prohibit the City from independently defending any Claim, and if the City does decide to independently defend a Claim, the City shall bear its own attorney's fees, expenses of litigation and costs for that independent defense. The Applicant may agree to reimburse the City for attorney's fees, expenses of litigation and costs for that independent defense. Should the City decide to independently defend any Claim, the Applicant(s) shall not be required to pay or perform any settlement arising from any such Claim unless the settlement is approved by the Applicant. _____(Initial)

6) Applicant(s) acknowledges and agrees that this application sets forth all covenants, promises, conditions and understandings between the parties regarding the advance of Funds and the uses thereof, and there are no promises, conditions or understandings either oral or in writing between the parties other than as set forth herein. No contemporary or subsequent alteration, amendment, change or addition to this application form shall be binding upon the City unless reduced to writing and signed by the City Manager or his/her designee. No course of conduct shall be binding upon the

City and waiver of one or more provisions or violations shall not be construed as a course of conduct to be relied upon and may not be the basis for any expectation of future waiver or estoppel. _____(Initial)

7) No employee, agent, independent contractor or other representative of the City, other than the City Manager or the City Council, has the authority to alter the terms or effect of this application and Applicant(s) acknowledge and agree that it/they have not relied upon any promises, representations, conditions or understandings other than those set forth in this application. _____(Initial)

8) This Application shall be a public record. _____(Initial)

9) This Application is made under, and shall in all respects be interpreted, enforced, and governed by, the laws of the State of California. In the event of a dispute concerning the terms of this Application, the venue for any legal action shall be with the appropriate court in the County of Sacramento, State of California. Should legal proceedings of any type arise out of this Agreement, the prevailing party shall be entitled to costs, attorney’s fees, and legal expenses, including but not limited to expert fees and costs. _____(Initial)

IT IS SO AGREED:

Applicant Signature

Date

Property Owner Signature

Date

Attach additional signatures on a separate sheet.