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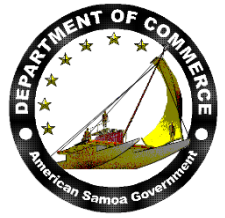
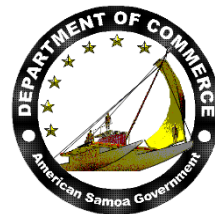


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PETTI T. MATILA
DIRECTOR

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Serial No: DOC21-409

December 3, 2021

Mr. Keith J. Gebauer
Executive Director
American Rescue Plan Act (ARPA) Oversight Office
A.P. Lutali Executive Office Building
Pago Pago, American Samoa 96799

Subject: Cover Letter for ARPA Small Business Program Application

Dear Executive Director Gebauer:

The American Samoa Department of Commerce is pleased to submit this proposal for funding under the American Rescue Plan Act (ARPA).

Small to Medium Size businesses are the lifeline of our island's economy and livelihood. American Samoa is an isolated U.S territory located in the South Pacific and is accessible only by air and sea. We need to ensure that our businesses can continuously serve the community, especially given the global COVID-19 pandemic restrictions, is paramount.

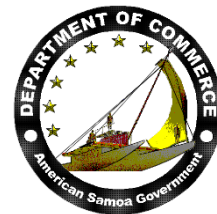
The proposed revolving lines of credit, loans and grant programs will help restore existing businesses, and encouraging new ones. The aim is to assist our business community recover from numerous negative impacts since the beginning of the COVID-19 pandemic.

The importance of strengthening and expanding our businesses is the plan. The plan also includes the ability to respond to, mitigate and ultimately overcome the impacts the pandemic. A successful business community will stimulate our economy in its efforts to recover from COVID 19.

For these reasons, I kindly ask for your continued support, and approval of our proposal.

Sincerely,

Petti T. Matila
Director of Commerce



SECTION 1: OVERVIEW

The COVID-19 global pandemic has had a significant negative impact on American Samoa's economy and commercial activity. When borders were closed in March 2020 to prevent the arrival of the virus, the productivity of commerce in and out of the territory's ports slowed to a near halt. Measures taken locally to prepare and prevent the spread of the virus also hurt many of the small businesses that fuel our local economy. The biggest impact has been seen in the tourism, hospitality, and travel industry. Nearly all tourism-reliant businesses saw massive reductions in revenues and in almost every case, were forced to lay off staff and close their doors. As lockdowns were implemented, local transportation businesses, retail operations, restaurants, and many others all experienced severe losses in revenues. As supply chains slowed across the globe, local importers and wholesalers also began to see severe losses in revenues. Most recently, transportation costs have begun to skyrocket as fuel prices have seen significant increases. Gas is now selling at \$3.506 per gallon (November 22, 2021), over \$0.50 more per gallon versus this same time last year. These rising costs of fuel are impacting the cost of goods across the board and businesses are struggling to meet their consumer's needs.

This proposal seeks to develop the **AS COVID-19 Business Recovery Capital Program (BRCP)**. The BRCP will be designed to include the following components: 1) Small Business Line of Credit (LOC) program; and 2) Grant & Loan (G&L) program. The goal of the program is to provide local businesses, specifically those significantly impacted by the pandemic, with the credit and capital required to respond to the impacts of the virus and support the recovery of the local economy.

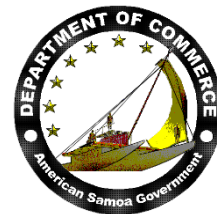
DOC will develop policies and procedures to effectively manage these programs such that the programs are sustainable, long-term capital access programs.

SECTION 2: PROJECT DESCRIPTION

The goal of the BRCP is to provide assistance to local small businesses affected by COVID-19 through a combination of Line of Credit (LOC) program and a Grant & Loan (G&L) program. This assistance is meant to help business owners cover payroll, rent, or other operating costs that have been difficult to meet as a result of the public health emergency.

Providing small businesses with access to capital will directly address the negative impacts of COVID-19, especially in an underserved community like American Samoa where access to capital and commercial loan and/or credit programs are limited to two commercial banks, the Territorial Bank of American Samoa and ANZ Amerika Samoa Bank. As the pandemic unfolded, many local businesses experience shortfalls in revenues and income for extended periods of time. Access to this program will provide small businesses who were impacted with the resources to recover, make the necessary improvements to their business models, and resume their business operations.

The LOC program will be designed such that the ARPA funding provided to this program will act to fully secure all LOCs issued by the partnering bank. All applications for LOC and G&L will be submitted to the Department of Commerce for initial compliance review to ensure the proposed business projects/plans are in line with the goals and objectives of the ARPA funds. Priority is given to industries



that were heavily impacted by the pandemic, specifically the tourism, hospitality and travel industry. Furthermore, given American Samoa's geographic location and unique economic impacts due to the territory's state of public health emergency, priority will also be given to critical infrastructure related industries that experienced shortage of materials and labor due to the global supply chains shortages. American Samoa's economy is reliant on imports, and the shipping delays also led to revenue losses and limited supplies for the construction industry on island.

The G&L program will provide a combined assistance in form of seed funding (grant) that will be based on demonstrated strength of the business plan and proposal, eligibility of use, and how the proposal supports the territory's response to the negative economic impacts of COVID-19. The G&L program will add an option to apply for an affordable low interest loan to complete a project that may require more than what the grant provides. Applications will be submitted to the Department of Commerce for initial screening before it is referred to a five-member review panel made of both public and private sector representatives. The G&L program is one way to encourage innovative business startups and local entrepreneurship to provide goods and services needed during the COVID-19 global pandemic. The G&L program involves a start-off pitch presentation before the review panel to provide recommendations to fine tune a proposed business idea and vote on whether or not to approve the applicant for just seed funding or with an option to borrow more through a low-interest loan. The interest for the G&L program is 3% with an incentive to forgive the rest of the loan for consecutive non-missing payments by 2026.

SECTION 3: ELIGIBILITY ANALYSIS

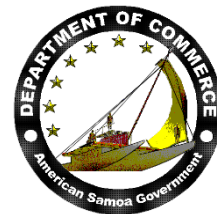
Programs of this type are specifically authorized by the US Department of Treasury's Interim Final Rule (IFR), which identifies a non-exclusive list of eligible uses. 31 CFR 35.

Providing small businesses with access to credit and capital will directly address the above identified negative impacts. The cash infusion is necessary to resume normal operations, especially as commercial flights will resume in the near future.

It is important to note that the criteria for assistance have some limitations. The IFR identifies a non-exhaustive list of eligible uses which includes:

“(providing) assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency, including:

- Loans or grants to mitigate financial hardship such as declines in revenues or impacts of periods of business closure, for example by supporting payroll and benefits costs, costs to retain employees, mortgage, rent, or utilities costs, and other operating costs;
- Loans, grants, or in-kind assistance to implement COVID-19 prevention or mitigation tactics, such as physical plant changes to enable social distancing, enhanced cleaning efforts, barriers or partitions, or COVID-19 vaccination, testing, or contact tracing programs; and



- Technical assistance, counseling, or other services to assist with business planning needs.”
31 CFR 35 (P. 34-35 accessed via PDF).

Tourism, travel & hospitality sectors and other impacted industries will be prioritized in accordance with the intent of the American Rescue Plan Act. However, these broad categories allow flexibility in determining who qualifies for assistance. Yet, each business applying for assistance should demonstrate specifically how they have been negatively impacted by the Public Health Emergency and to what extent. By quantifying the economic impact in their applications, it will ensure that the use is eligible and ensure compliance with ARPA's requirements.

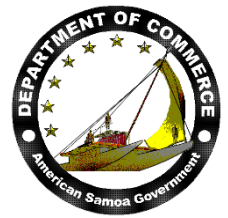
SECTION 4: SCOPE OF WORK

The BRCP will be developed in accordance with industry best practices as a guide, while ensuring the program adheres to all compliance and reporting requirements of ARPA.

Program Models

The BRCP programs will be designed using pre-existing and proven programs as guidelines. DOC intends to incorporate the LOC program already in use at the partnering bank to fast track the development of the program. The LOC program will be modified to ease the normally required credit criteria to ensure aid to businesses is available quickly. DOC also intends to model the Grant & Loan (G&L) program against the EDA Revolving Loan Fund already in operation at the partnering bank, again with modifications to support the overall goal of the BRCP program and to ensure compliance with ARPA regulations and requirements. While the underwriting and applicable loan regulatory process will be handled by the partnering bank, the DOC will initially review and screen project proposals for compliance with ARPA Small Business Loan program goals and objectives:

1. Design the BRCP LOC program:
 - a. Identify a qualified banking partner to carry out LOC program; partner must already be offering a LOC program and have experience & familiarity with LOCs
 - b. Develop guidelines and standard operating procedures using banking partner's current standard operating procedures or LOC program
 - c. Modify guidelines to ensure program objectives are aligned with ARPA State & Local Fiscal Recovery guidelines such that:
 - i. Program to provide assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency
 - ii. Program to provide assistance to small business to support the territory's response to the COVID-19 pandemic.
 1. Must demonstrate the use of funds in response to the impact of COVID-19 and the public health emergency
 - iii. Tourism, travel, and hospitality sectors and other impacted industries will be prioritized in accordance with the intent of the ARP Act



- iv. Applicants must demonstrate how they have been negatively impacted by the Public Health Emergency and to what extent

d. Engage partner by way of Service Agreement

- i. Application underwriting will be handled by partnering bank with DOC as the initial screening agency for compliance with ARPA use of funds and other eligibility criteria. This is a method of ensuring both the underwriting and compliance review process occur concurrently for a timely review and response of the applications;
- ii. All applications will be underwritten and processed in accordance with program guidelines; included as Appendix B
- iii. All applicants will be required to complete a Conflict of Interest disclosure; included as Appendix C
- iv. Note that as part of the service agreement, DOC is to maintain a \$5 million deposit at the partnering bank to fully secure the BRCP LOC upon signing the service agreement

2. Design Grant & Loan (G&L) program:

a. Applicants must:

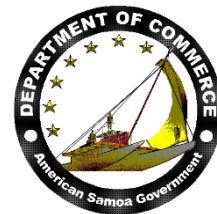
- i. Demonstrate how their business proposal will:
 - 1. Support the territory's response and/or recovery from the COVID-19 pandemic
 - 2. Support the territory's effort to prepare for future pandemics or similar events
 - 3. Support building a resilient economy and how this funding source will enhance financial stability
- ii. Submit their application for screening and referral to a 5-member Review Panel with the option to refer to the bank service partner for a loan, if needed;
- iii. All applications will be underwritten and processed in accordance with program guidelines; included as Appendix B
- iv. All applicants will be required to complete a Conflict of Interest disclosure; included as Appendix C

b. DOC will establish a 5-person review panel to review all grant applications

- i. Grants will vary in amounts based on the demonstrated needs of the applicant
 - 1. Grants will be based on demonstrated strength of the business plan and proposal, eligibility of use, and how the proposal supports the territory's response to the negative economic impacts of COVID-19
- ii. Awardees will also be given the opportunity to secure a small business loan



1. Loans to be serviced by partnering bank
2. G&L program funds will be used to fully secure loans issued by the partnering bank
3. Loan terms will be similar to the EDA RLF Administrative Plan currently in use by the partnering bank
 - a. Draft Program Administrative Plan attached as Appendix D
- c. Program to provides assistance to small businesses to adopt safer operating procedures, weather periods of closure, or mitigate financial hardship resulting from the COVID-19 public health emergency
- d. Program to provide assistance to small business to support the territory's response to the COVID-19 pandemic.
 1. Must demonstrate the use of funds in response to the impact of COVID-19 and the public health emergency
- e. Tourism, travel, and hospitality sectors and other impacted industries will be prioritized in accordance with the intent of the ARP Act
 - i. Other impacted industries may include, for example, industries and sectors involved in the supply chain of goods or services imported into the territory; industries impacted by the soaring price of fuel resulting in increased shipping and transportation costs for basic necessities, building materials, food items and equipment & vehicles
- f. Applicants must demonstrate how they have been negatively impacted by the Public Health Emergency and to what extent
3. Design Reporting Requirements in accordance with ARPA guidelines and regulations
 - a. For BRCP LOC
 - i. Quarterly reports for the LOC program will be compiled by DOC and submitted to the ARPA oversight office.
 - ii. Reports shall include both a programmatic and financial report (including quarterly Federal Financial Report/Form SF425).
 - b. For LOC Banking Partner
 - i. Partnering Bank will be required to submit monthly reports to DOC on all activity relating to the LOC program, including but not limited to: Applicant information (Name, underwriting summary), total number of applications received, total funding requested, industries of impacted businesses, repayment reports, and other critical information as needed to complete Federal Financial Report/Form SF425)

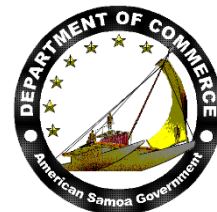


- c. For G&L Program
 - i. Quarterly reports for the LOC program will be compiled by DOC and submitted to the ARPA oversight office.
 - ii. Reports shall include both a programmatic and financial report (including quarterly FFR Federal Financial Report/Form SF425)
 - d. For G&L Banking Partner
 - i. Partnering Bank will be required to submit monthly reports to DOC on all activity relating to the LOC program, including but not limited to: Applicant information (Name, underwriting summary), total number of applications received, total funding requested, industries of impacted businesses, repayment reports, and other critical information as needed to complete Federal Financial Report/Form SF425)
4. Develop Community Engagement Plan
- a. Community Engagement Plan included as Appendix E
5. Other
- a. To comply with ARPA Guidelines, DOC will develop a public disclosure process for all recipients of ARPA funds through both the BRCP LOC & G&L Programs
 - i. Information shall include: recipient names, LOC, Loan, or Grant amounts; purpose of funds; and other relevant information for lines of credit or loans approved of \$50,000 or more
 - ii. All information will be available via the DOC office in Utulei, AS
 - b. Conflict of Interest statements must also be completed

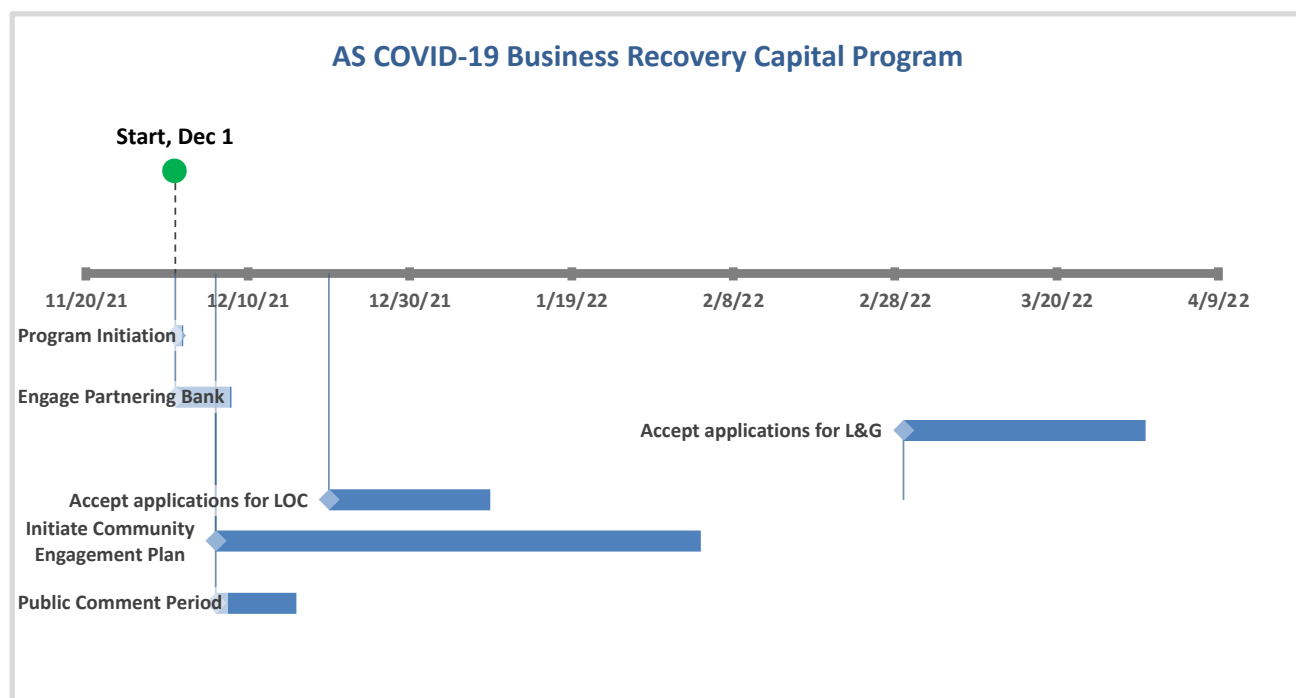
SECTION 5: IMPLEMENTATION PLAN & TIMELINE

ARPA Funds are required by federal statute to be encumbered by December 31, 2024 and spent by December 31, 2026. 31 CFR 35.5. This mandate makes the need for a definite timeline for completion of projects of critical importance.

The Program will commence on December 3, 2021. The BRCP LOC program will continue until December 31, 2022. The G&L program will continue as loans issued through the program are repaid and reissued as per program guidelines. Any and all funds remaining from the BRCP LOC program shall be transferred over to the G&L Program.

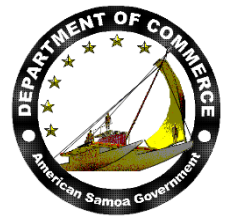


The overall program will be implemented in phases, with the BRCP LOC being launched first. The Grant & Loan program will be launched no later than 2Q2022.



SECTION 6: PROPOSED ITEMIZED BUDGET

Budget Category	Year 1	Year 2	Year 3	Year 4	Year 5	Total
Administration (10%)	\$200,000	\$200,000	\$200,000	\$200,000	\$200,000	\$1,000,000
-Personnel	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$750,000
-Supplies	\$10,000	\$10,000	\$10,000	\$10,000	\$10,000	\$50,000
-Equipment	\$20,000	\$0	\$5,000	\$0	\$0	\$25,000
-Travel	\$5,000	\$5,000	\$5,000	\$5,000	\$5,000	\$25,000
-Other	\$30,000	\$30,000	\$30,000	\$30,000	\$30,000	\$150,000
BRCP (50%)	\$5,000,000					\$5,000,000
L&G (40%)	\$4,000,000					\$4,000,000
Total						\$10,000,000



Budget Details

Administration

Personnel: Personnel costs will include salaries and fringe benefits for a program manager, a compliance officer, an administrative assistant, an outreach coordinator and shared percentage of existing key staff time on the program. This also includes staff overtime for conducting community outreach activities during weekends and after working hours as well as a monthly stipend for panel reviewers on their time spent and expertise being shared with applicants.

Supplies: Supplies include office supplies, fidelity insurance (for bank programs), utilities, or other miscellaneous needs (panel review work as well as media campaign costs) for the program to launch successfully.

Equipment: Equipment includes workstations for personnel, computers, laptops, projector, projector screen, chairs, and other equipment as needed for program implementation.

Travel: Travel costs include fuel for vehicles, air travel to Manu'a islands, and other travel as needed.

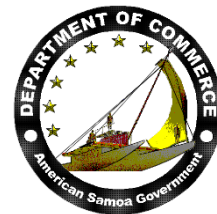
Training: Training costs may include costs for capacity building of staff, outreach program (including mass media campaign costs), and other training costs as needed.

SECTION 7: PROJECT LEAD

The project lead for this program will be Department of Commerce Director Petti T. Matila.

Contact Information

Petti T. Matila, Director
American Samoa Department of Commerce
A.P. Lutali Executive Office Building, 3rd Floor
Pago Pago, American Samoa 96799
Office: (684) 633-5155
Email: petti.matila@doc.as
Website: www.doc.as.gov



SECTION 8: APPENDIX

Appendix A: Intra-governmental Service Agreement

Date: December 6, 2021

AMERICAN RESCUE PLAN ACT (ARPA) COVID-19 BUSINESS RECOVERY LINE OF CREDIT PROGRAM Service Contract

I. The Parties. This Service Contract ("Agreement") made December 6, 2021 ("Effective Date"), is by and between:

Service Provider: Territorial Bank of American Samoa (TBAS), with a mailing address of P.O. Box 716, Pago Pago American Samoa 96799 ("Service Provider"),

AND

Client: Department of Commerce, American Samoa Government (DOC), with a mailing address of Executive Office Building (EOB), Utulei, American Samoa 96799 ("Client"),

Service Provider (TBAS) and Client (DOC) are each referred to herein as a "Party" and, collectively, as the "Parties."

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises and agreements contained herein, DOC hires TBAS to work under the terms and conditions hereby agreed upon by the Parties:

II. Term. The term of this Agreement shall commence **on December 6, 2021 and terminate on December 31, 2022.**

III. The Service.

TBAS agrees to provide the following service and program to support the American Samoa small business community:

- Revolving Lines of Credit under the ARPA program (reference 31 CFR 35)¹
- Accept and process line of credit applications

¹ <https://home.treasury.gov/system/files/136/FRF-Interim-Final-Rule.pdf>



- Review and make recommendations to DOC
- Accept final decisions by DOC and process approvals and send out denials
- Retain 100% plus 5% security for the facility
- Process credit documentation
- Book the facility
- Service and track the facility
- Restricted to Borrowers of 100 or less employees

TBAS while performing the Service shall comply with the policies, standards, and regulations of DOC and ARPA, including local, State, and Federal laws and to the best of their abilities².

IV. Payment for Services.

TBAS will retain the following fees as compensation for the Service performed under this Agreement:

- TBAS to retain 2% commitment fee
- TBAS to retain 2% of the 4% charged as facility interest rate
- Default fees

TBAS will be responsible for servicing and collection of loan payments for up to 90 days after payment is due. If the borrower does not pay the past due amount, TBAS may liquidate the cash collateral to pay off the loan and assign the loan to DOC for collection, at which time TBAS will no longer be required to service the line.

V. Reporting.

TBAS shall submit monthly performance & financial reports on all program activities.

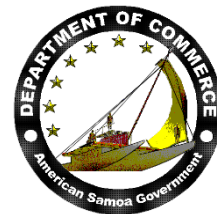
VI. Retainer.

DOC will maintain a minimum \$5 Million deposit with TBAS upon signing this agreement. This deposit will secure lines of credit up to \$500,000 per borrower at 105% of line commitment amount. The cash deposit must be available for the duration of the service agreement.

VII. Inspection of Services.

Any compensation shall be subject to DOC inspecting the completed services performed by TBAS. If any of the Services performed by TBAS pursuant to this Agreement are defective or incomplete, DOC shall have the right to notify TBAS, at which time DOC shall promptly correct such work within a reasonable time.

² <https://www.federalregister.gov/documents/2021/05/17/2021-10283/coronavirus-state-and-local-fiscal-recovery-funds>



VIII. Return of Property.

Upon the termination of this Agreement, all unencumbered funds property provided by DOC must be returned by TBAS. Failure to do so may result in a delay in any final payment. Lines of credit with balances at Termination Date will continue to be secured by encumbered cash collateral.

IX. Time is of the Essence.

TBAS acknowledges that “time is of the essence” in regard to the performance of all services. Therefore, upon receipt of a signed application, the loan process including funding should be performed within 72 business hours. 1 day for TBAS, 1 day for DOC, 1 day for closing.

X. Confidentiality.

TBAS acknowledges and agrees that all financial and accounting records, lists of property owned by DOC, including amounts paid, client and customer lists, and any other data and information related to the DOC business is confidential (“Confidential Information”).

Therefore, except for disclosures required to be made to advance the business of the DOC and information which is a matter of public record, TBAS shall not, during the term of this Agreement or after its termination, disclose any Confidential Information for the benefit of TBAS or any other person, except with the prior written consent of DOC.

a.) Return of Documents.

TBAS acknowledges and agrees that all originals and copies of records, reports, documents, lists, plans, memoranda, notes, and other documentation related to the business of DOC containing Confidential Information shall be the sole and exclusive property of DOC and shall be returned to DOC upon termination of this Agreement or upon written request of DOC.

b.) Injunction.

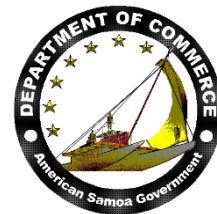
DOC agrees that it would be difficult to measure damage to the DOC's business from any breach by TBAS under this Section; therefore, any monetary damages would be an inadequate remedy for such breach. Accordingly, TBAS agrees that if they should breach this Section, DOC shall be entitled to, in addition to all other remedies it may have at law or equity, to an injunction or other appropriate orders to restrain any such breach, without showing or proving actual damages sustained by the DOC

c.) No Release.

TBAS agrees that the termination of this Agreement shall not release them from the obligations in this Section.

XI. Taxes.

TBAS is not subject to taxation pursuant to A.S.C.A. § 28.0215.



XII. Independent Contractor Status.

TBAS acknowledges that they are an independent contractor and not an agent, partner, joint venture, nor an employee of the DOC. TBAS shall have no authority to bind or otherwise obligate DOC in any manner, nor shall TBAS represent to anyone that it has a right to do so. TBAS further agrees that in the event DOC suffers any loss or damage as a result of a violation of this provision, TBAS shall indemnify and hold harmless DOC from any such loss or damage.

XIII. Safety.

TBAS shall, at their own expense, be solely responsible for protecting its employees, sub-Service Providers, material suppliers, and all other persons from risk of death, injury or bodily harm arising from or in any way related to the Services or the site where it is being performed ("Centennial Building").

In addition, TBAS agrees to act in accordance with the rules and regulations administered by federal law and OSHA. TBAS shall be solely responsible and liable for any penalties, fines, or fees incurred.

XIV. Alcohol and Drugs.

TBAS agrees that the presence of alcohol and drugs are prohibited on the Work Site and while performing their Services. If TBAS or any of their agents, employees, or subcontractors are determined to be present or with alcohol or drugs in their possession, this Agreement shall terminate immediately.

XV. Successors and Assigns.

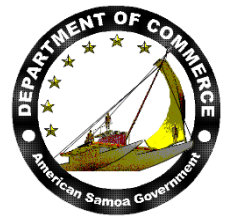
The provisions of this Agreement shall be binding and to the benefit of heirs, personal representatives, successors, and assigns of the Parties. Any provision hereof which imposes upon TBAS or DOC an obligation after termination or expiration of this Agreement shall survive termination or expiration hereof and be binding upon TBAS or DOC.

XVI. Default.

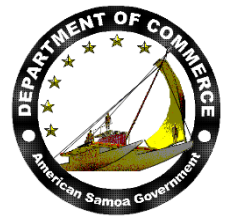
In the event of default under this Agreement, the defaulted Party shall reimburse the non-defaulting Party or Parties for all costs and expenses reasonably incurred by the non-defaulting Party or Parties in connection with the default, including, without limitation, attorney's fees. Additionally, in the event a suit or action is filed to enforce this Agreement or with respect to this Agreement, the prevailing Party or Parties shall be reimbursed by the other Party for all costs and expenses incurred in connection with the suit or action, including, without limitation, reasonable attorney's fees at the trial level and on appeal.

XVII. TERMINATION FOR CONVENIENCE

- (a) DOC may terminate performance of work under this contract in whole or, from time to time, in part if DOC determines that a termination is in the government's interest. The Director of DOC ("Director") shall terminate by delivering to TBAS a notice of termination specifying the extent of termination and the effective date.



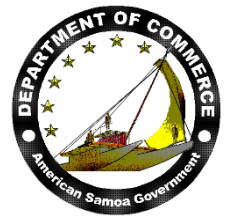
- (b) After receipt of a notice of termination, and except as directed by the Director, TBAS shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
- (1) Stop work as specified in the notice;
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract;
 - (3) Terminate all subcontracts to the extent they relate to the work terminated;
 - (4) Assign to the government, as directed by the Director, all right, title, and interest of TBAS under the subcontracts terminated, in which case the government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations;
 - (5) With approval or ratification to the extent required by the Director, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause;
 - (6) As directed by the Director, transfer title and deliver to the government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the government;
 - (7) Complete performance of the work not terminated;
 - (8) Take any action that may be necessary, or that the Director may direct, for the protection and preservation of the property related to this contract that is in the possession of TBAS and in which the government has or may acquire an interest;
- (c) After termination, TBAS shall submit a final termination settlement proposal to the Director in the form and with the certifications prescribed by the Director. TBAS shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the Director upon written request of TBAS within this 1-year period. However, if the Director determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If TBAS fails to submit the proposal within the time allowed, the Director: may determine, on the basis of information available, the amount, if any, due TBAS because of the termination and shall pay the amount determined.



- (c) Subject to paragraph (c) of this appendix, TBAS and the Director may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph may not exceed the total contract price as reduced by (1) the amount of payments previously made and (2) the contract price of work not terminated.

XVIII. Termination for Default.

- (1) Default. If TBAS refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, commits any other substantial breach of this contract, the Director may notify TBAS in writing of the delay or nonperformance; and if not cured in ten days or any longer time specified in writing by the Director, DOC may terminate TBAS' right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the Director may procure similar supplies or services in a manner and upon terms deemed appropriate by the Director. TBAS shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- (2) TBAS' Duties. Notwithstanding termination of the contract and subject to any directions from the Director, TBAS shall take timely, reasonable, and necessary action to protect and preserve property in the possession of TBAS in which the government has an interest.
- (3) Completion. Payment for completed supplies delivered and accepted shall be at the contract-price. Payment for the protection and preservation of property shall be in an amount agreed upon by TBAS and the Director. The government may withhold from amounts due TBAS such sums as the Director deems to be necessary to protect the government against loss because of outstanding liens or claims of former lien holders and to reimburse the government for the excess costs incurred in procuring similar goods and services.
- (4) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, TBAS shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance) if TBAS has notified the Director within 15 days after the cause of the delay and the failure arises out of causes such as, acts of God, acts of the public enemy, acts of the government and any other governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, TBAS shall not be deemed to be in default, unless the supplies of services to be furnished by the subcontractor



were reasonably obtainable from other sources in sufficient time to permit TBAS to meet the contract requirements.

Upon request of TBAS, the Director shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, TBAS' progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the government under the clause entitled "Termination for Convenience".

(5) Erroneous Termination for Default. If after notice of termination of TBAS' right to proceed under the provisions of this clause, it is determined for any reason that TBAS was not in default under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience, be the same as if the notice of termination had been issued pursuant to such clause.

(6) Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

XIX. No Waiver.

No waiver of any provision of this Agreement shall be deemed or shall constitute a continuing waiver, and no waiver shall be binding unless executed in writing by the Party making the waiver.

XX. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of American Samoa. The American Samoa High Court will provide legal jurisdiction for this agreement.

XXI. Severability.

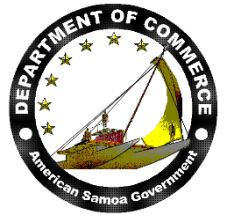
If any term, covenant, condition, or provision of this Agreement is held by the High Court of American Samoa of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

XXII. Additional Terms & Conditions.

Both DOC and TBAS have to adhere to the program requirements as established by its main sponsor and funding source, the American Rescue Plan Act (ARPA). The program particulars are provided by the ARPA-ASG Office. Thus, a compliance report will be required of the program which is the dual responsibilities of DOC and TBAS.

XXIII. Entire Agreement.

This Agreement constitutes the entire agreement between the Parties to its subject matter and supersedes all prior contemporaneous agreements, representations, and understandings of the Parties. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all Parties.



IN WITNESS WHEREOF, the Parties hereto agree to the above terms and have caused this Agreement to be executed in their names by their duly authorized officers.

TBAS CEO Signature _____

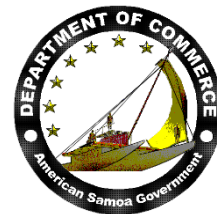
Date _____

Print Name: David Buehler

DOC Director Signature _____

Date _____

Print Name: Petti T. Matila



APPENDIX B: PROGRAM GUIDELINES

PROGRAM CREDIT POLICY

Background and Purpose

Under the American Rescue Program (ARP) for the Territory, DOC was allocated \$10 million to provide assistance for Small Businesses. This includes loans or grants, lines of credit for covering payroll, mortgages or rent, and other operating costs as a result of the public health emergency and measures taken to contain the spread of the virus.

Programs of this type are specifically authorized by the US Department of Treasury's Interim Final Rule (IFR), which identifies a non-exclusive list of eligible uses. Providing small businesses with access to credit and capital will directly address the above identified negative impacts. The cash infusion is necessary to resume normal operations, especially as commercial flights will resume in the near future.

General Credit Policy

As this is a credit offering, the Department of Commerce (DOC) and participating partner (TBAS) will adhere to and comply with all requirements of the:

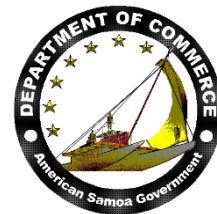
- Equal Credit Opportunity Act (ECOA),
- Fair Housing Act,
- Community Reinvestment Act,
- Fair Debt Collections Act, and
- Other related Credit Protection statutes.

We will not discriminate on the basis of race, color, religion and other prohibited bases when offering the credit products. The Policy and procedures will be reviewed at least annually.

The partnering will be covered by a service agreement which clearly spells out the responsibilities and functions of DOC and TBAS. To be clear, the ARPA program is under DOC as the lead lender with servicing assistance from TBAS for a fee.

Eligible Customers

- Must comply with eligible requirements of ARPA Program
- Companies doing business in AS with valid business license
- Should have a deposit relationship with TBAS
- FICO score of at least 550
- If doing business with ASG, contract is to be assigned as collateral
- No default at any credit or investment dealings



Credit Facilities offered

The ARPA Program will offer a Revolving Lines of Credit and Loans with Grant Options. The total facility offered is \$10 million spread over several years. Currently, \$5 million is allocated for short-term working capital needs, \$4 million for loans/grants, and \$1 million for administration of the program.

Revolving Lines of Credit

We (DOC) are proposing \$5 million of the allocated amount as an Internal Guidance Line (IGL) with the Territorial Bank of American Samoa for 1 year.

TBAS will then use it to offer individual revolving lines of credit to the public. The emphasis is on contractors, builders, consultants, and others involved in the COVID 19 affected industry.

TBAS will be tasked with:

- accepting all applications
- underwriting
- arrange with DOC on final decision to approve or deny
- if denied send letter to customer with reasons
- approval processing and documentation
- booking and disbursement
- follow-up and tracking
- general administration of the program (i.e. reports and customer contact)

DOC will:

- Director of DOC will give the final decision on approval or denial of applications
- on denials, letter sent to customer within 30 days (ECOA requirement)
- approve any underwriting exceptions to policy
- release the cash for collateral/security consideration
- cash used as collateral to earn interest income

Renewal

RLOC are subject to annual renewal up to 3 years. Annually, we will review the policy, usage, and discuss and implement best practices.

Fees and Interest for LOC Program

- 1% origination fee to TBAS.
- 4% interest rate subject to annual review. TBAS retains 2% while DOC received 2% as program income, payable and collected monthly.
- Late fee of 5% on outstanding charged monthly.
- Principal repaid within 90 days and if not repaid, no more advances.
- Look at a 30-day non-usage within the year.
- When a required payment is 90 days past due, TBAS has the demand option to encase the collateral and pay the facility in full.
- DOC will collect thereafter and charge a 10% default rate.



All fees and interest are at the sole discretion of DOC and subject to changes. When changes are inevitable, DOC will notify TBAS and the borrower(s).

Grant & Loan Program

We (DOC) are proposing \$4 million of the allocated amount to support the small business loan program.

All grant applications will be handled by DOC, and those qualified for the loan program will be directed to apply at TBAS.

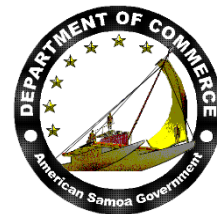
TBAS will utilize the EDA approved revolving loan program Administrative Plan to design and carry out the program. Please refer to the draft Administrative Plan included herein.

TBAS will be tasked with:

- accepting all applications
- underwriting
- arrange with DOC on final decision to approve or deny
- if denied send letter to customer with reasons
- approval processing and documentation
- booking and disbursement
- follow-up and tracking
- general administration of the program (i.e., reports and customer contact)

DOC will:

- Director of DOC will give the final decision on approval or denial of applications
- on denials, letter sent to customer within 30 days (ECOA requirement)
- approve any underwriting exceptions to policy
- release the cash for collateral/security consideration
- cash used as collateral to earn interest income



APPENDIX C: CONFLICT OF INTEREST DISCLOSURE

CONFLICT OF INTEREST POLICY

I. Purpose.

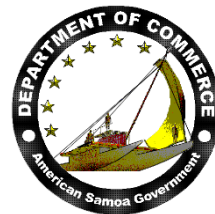
The purpose of this policy is to protect the interests of AS COVID-19 BUSINESS RECOVERY PROGRAM. In the regular course of business, agents and employees may have the opportunity to advance their own personal interests with or against the interests of the Program. Acting in such a manner is unacceptable and any party who acts outside of the programs best interest may be subject to disciplinary action.

II. Definitions.

- a. Employee – any person who is employed by DOC or partnering bank in a part or full-time capacity and in accordance with the labor laws of American Samoa.
- b. Agent – an owner, director, stakeholder, contractor, or other third-party that is in the position to act on behalf of ARPA.
- c. Financial Interest – The interest that any individual may have in the monetary transactions of the program. In particular, any interest that could have a direct bearing on the financial gain/loss of the said individual.

III. Procedure.

- a. Duty to disclose
Every employee/agent of the program is obligated to disclose any known or potential conflicts of interest as soon as they arise. Failure to do so could result in disciplinary action including termination of employment. This is a crucial step to be undertaken for full transparency. Once disclosure is done, the affected party will be **recused** from the decision-making process but may participate in the program in a defined manner as to avoid further conflict of interest.
- c. Investigating potential conflicts
When a possible conflict of interest arises, the DOC Director (Director) will collect all pertinent information and may question any concerned parties. If it is determined that a real or apparent conflict exists, steps will be taken to address the conflict. If no real or apparent conflict exists, the inquiry may be documented but no further action will be taken.
- d. Addressing conflicts of interest
When a real or apparent conflict of interest is found, any transactions that may have been affected will be reviewed retroactively. Affected parties both within and outside of the business, including shareholders, directors, employees, and contractors will be notified. An investigation



will also be conducted by the Director to determine the extent of the conflict and the intentions of the parties involved.

If the conflict in question involves a member or members of the Program, such a member will be excused from the deliberations.

e. Disciplinary action

As all conflicts of interest will be reviewed on a case-by-case basis, a review may result in disciplinary action. The Director has full discretion to deem what disciplinary action is both fitting and necessary, including suspension and/or termination of employment.

IV. Acknowledgment.

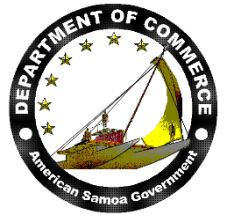
The employee/agent named below understands the procedure for conflicts of interest with the Program, including their duty to disclose any known or potential conflicts.

Furthermore, the employee/agent agrees to abide by the procedures outlined in this policy for the duration of their professional relationship with the Program.

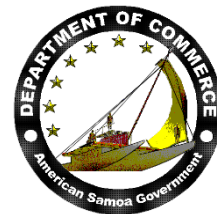
Employee Name: _____

Date:_____

Signature: _____



APPENDIX D: GRANT & LOAN PROGRAM ADMINISTRATION PLAN



APPENDIX E: COMMUNITY ENGAGEMENT PLAN

COMMUNITY ENGAGEMENT

Community engagement is an essential aspect of ARPA funded projects. The intent of the US Treasury in fostering public participation is to maintain transparency and provide opportunities for feedback to ensure that funds are used in the most beneficial manner.

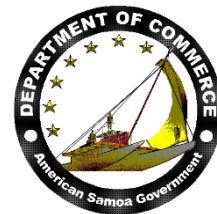
In keeping with the intent of the US Treasury and the American Samoa ARPA Oversight Office, DOC has adopted the following notice and comment timeline for proposed projects:

- A Notice of the DOC Proposed Project will be published online, in local newspapers, and via television or radio broadcasts.
- The Notice will specify that there will be twenty (20) days for the public to provide comment either in writing or by attendance at scheduled public hearings.
- Concurrent to the publication of the Notice, a draft proposal and scope of work will be published on the ARPA website for the public to review.
- General meetings with the public will be scheduled and publicized within the twenty (20) day Notice period. Email comments will also be accepted.
- Presentations to the Legislature will be conducted during the Notice period, as needed.
- At the close of the public comment period, the agency will have 20 days to revise the project as appropriate and submit the Final Draft to the ARPA Oversight Office.
- The Final Draft of the Project will be posted for public review once completed and certified by the ARPA Oversight Office.

It is the responsibility of DOC to publicize notices and adhere to the stated timelines. Upon the final approval of the ARPA Oversight Office, DOC will initiate a general public engagement schedule to inform the community of the final program guidelines.

Engagement Schedule

1. December 6, 2021: Initiate Community Engagement Plan
 - a. Notice to be published online, in local newspaper, TV & Radio
 - b. Application requirements and other program details are to be published at this time
2. December 13, 2021: General Meeting with Public



3. December 16, 2021: Public Comment period closes
4. December 17, 2021: DOC to revise the project as appropriate and submits to ARPA Office
5. Upon approval, DOC will continue with further public engagement to ensure all eligible applicants are aware of the program and how to apply
 - a. January 1, 2022: LOC program launch announcement
 - b. March 1, 2022: L&G program launch announcement
6. Ongoing: public awareness campaign