



Rural Economic Development
COMMERCE

June 20, 2016

Mr. Tracy Philbeck
Gaston County
PO Box 1578
Gastonia, NC 28053-1578

PAT MCCRORY
Governor

JOHN E. SKVARLA, III
Secretary

Re: Contract Agreement for Grant Number 2015-044-3212-2587; Your Signature and Reply is Requested
Project Title: "Tosaf USA - Formerly NCDoc Project Rainbow"

Dear Chairman Philbeck:

Enclosed for your review and signature are two complete sets of contract documents required to finalize the grant award from the North Carolina Rural Infrastructure Authority. Below is a description of the documents enclosed along with an explanation of the signatures required for each document.

Document:	Document Description:	Signed By:
Grant Agreement	Contract: Outlines the terms of Grant Agreement between the Department of Commerce and the Unit of Local Government.	Highest Elected Official - Unit of Local Government
Exhibit A	Scope of Services: Outlines the scope of the construction project.	No Signature Required
Exhibit B	Payment Schedule: Outlines the process for the Unit of Local Government to request reimbursements from Department of Commerce.	No Signature Required
Exhibit C	Reporting Schedule: Outlines the schedule of reports that are due from the Unit of Local Government to the Department of Commerce and when they are due.	No Signature Required
Exhibit D	Closeout/Job Requirements: Outlines the process for the Unit of Local Government to report the creation and maintenance of jobs to the Department of Commerce.	No Signature Required
Exhibit E	Legally Binding Commitment (LBC): Outlines terms and conditions of the Loan.	Highest Elected Official - Unit of Local Government and the Business.
Exhibit F	Limited Waiver of Confidentiality: Contains employment information reported to the Department of Commerce's Division of Employment Security.	Each Business involved in the project.
Exhibit G-1	Iran Divestment Act Certification	Highest Elected Official - Unit of Local Government
Exhibit G-2	Iran Divestment Act Certification	Legal Property Owner listed on the Deed

Execute two originals of these documents and return one of them to my attention at the address below within thirty (30) days of your receipt of these materials. Failure to return the documents within the requested time frame could lead to the grant being withdrawn as outlined in Paragraph 24 of the Grant Agreement.

If you have any questions regarding the enclosed documents, please contact me at (919)814-4671.

Sincerely,

Nichole M. Gross
Data and Compliance Specialist

Enclosure



State of North Carolina | Rural Economic Development Division
301 North Wilmington Street | 4346 Mail Service Center | Raleigh, NC 27699-4300
919 814 4600 T

2016-225

The North Carolina Department of Commerce ("Commerce"), an agency of the State of North Carolina ("State"), enters into this Rural Economic Development Grant Agreement ("Grant Agreement") with **Gaston County** (the "Governmental Unit" and, together with Commerce, the "Parties").

WHEREAS, the North Carolina General Assembly ("General Assembly") has determined that it is the policy of the State to stimulate economic activity and to create new jobs for citizens of the State by affording grants or loans to local governmental units to construct critical water and wastewater facilities or to provide other infrastructure needs, subject to the applicable requirements of N.C.G.S. §§143B-472.127 and .128; and

WHEREAS, under N.C.G.S. §143B-472.128, the General Assembly created the North Carolina Rural Infrastructure Authority ("Rural Authority") to review applications for and, where appropriate, authorize such economic infrastructure grants or loans, and, under N.C.G.S. §§143B-472.126 and .127, the General Assembly authorized Commerce to administer such grants or loans; and

WHEREAS, pursuant to N.C.G.S. §§143B-472.127 and .128, and based on the terms, conditions and representations in this Grant Agreement's Exhibit A (Scope of Project), Exhibit B (Payment Schedule), Exhibit C (Reporting Schedule), Exhibit D (Closeout Schedule/Job Requirements), Exhibit E (Legally Binding Commitment ("LBC")) and Exhibit F (Waiver of Confidentiality ("Waiver")), the Rural Authority has approved a grant (the "Grant") to the Governmental Unit; and

WHEREAS, the Governmental Unit has contracted with **Tosaf USA** ("Business"), which has specifically agreed in the LBC that the Grant will provide significant, direct economic benefit to the Business and allow the Business to create new jobs, which will result in direct economic benefit to the Governmental Unit; and

WHEREAS, the Rural Authority awarded the Grant: (1) based on the application filed by the Governmental Unit and any subsequent materials supporting the application that have been approved of by Commerce in writing, all of which are incorporated by reference herein; (2) based on Commerce's Rural Economic Infrastructure Program guidelines and other grant requirements and guidelines, all of which are incorporated herein and may be amended, modified or supplemented and applied accordingly to this Grant Agreement by Commerce in its sole discretion; (3) for constructing the critical public water and wastewater facilities or providing the other public infrastructure needs summarized in Exhibit A (the "Project"); and (4) for the Business to create and retain certain new jobs ("New Jobs") and, if required, maintain a baseline number ("Baseline Number") of pre-existing jobs.

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration as set out herein, the Parties mutually agree to the following terms and conditions:

1. Scope of Program/Agreements to be Executed.

- (a). As conditions of the Grant Agreement:
- i. The highest elected official of the Governmental Unit shall execute two originals of this Grant Agreement in its exact form (unless Commerce approves of a change to its terms in writing) and shall return one of them to Commerce;
 - ii. The Governmental Unit shall ensure that its highest elected official and a duly authorized representative of any Business execute two originals of the LBC attached as Exhibit E in its exact form (unless Commerce approves of a change to its terms in writing) and shall return one such original to Commerce with the executed original of the Grant Agreement; and
 - iii. The Governmental Unit shall ensure that an authorized representative of each Business executes a Waiver, attached as Exhibit F, and shall return the original of any such Waiver to Commerce with the executed original of the Grant Agreement. The Governmental Unit shall also ensure that any additional Business which becomes involved in the Project after the Grant Agreement is finalized executes a Waiver upon its involvement, the original of which the Governmental Unit shall promptly forward to Commerce.
- (b). The Governmental Unit shall provide Commerce with any information obtained pursuant to the LBC and allow Commerce to execute any rights of the Governmental Unit under the LBC, including the Governmental Unit's rights of access, review or monitoring and Commerce's rights as a third-party beneficiary thereunder.
- (c). The Governmental Unit shall exercise all of its rights and duties under the LBC in a prudent and timely manner to ensure the use of the Grant funds for the intended purposes and objectives and to preserve the rights of Commerce in this Grant Agreement and the LBC.
- (d). The LBC specifies how many New Jobs the Business must create and maintain and, if required, the Baseline Number of jobs the Business must maintain. Further, if the Business fails to create or maintain such jobs, the LBC specifies the amount the Business must pay to the Governmental Unit for return to Commerce or else pay directly to Commerce, upon request and as directed. If such jobs are not created or maintained, then the Governmental Unit shall return to Commerce any Grant funds it has not already disbursed, make a timely demand for payment from the Business under the LBC, and, if such payment is not forthcoming, initiate and fully litigate legal proceedings against the Business to recover such payment.
- (e). Without limitation, failure by the Governmental Unit to timely demand such payment from and, if required, initiate and fully litigate such legal proceedings against the Business may affect the future consideration of the Governmental Unit for grant programs administered by Commerce. Further, and without limitation, if the Governmental Unit fails to timely initiate legal proceedings against the Business for such payment under the LBC, and Commerce elects to do so instead, the Governmental Unit is responsible and agrees to reimburse Commerce for all litigation costs and reasonable attorneys' fees that Commerce incurs in pursuing payment from the Business.

2. Changes in the Project or Other Conditions.

- (a). A "Project Change" is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or other infrastructure improvement, the required number of New Jobs, the Baseline Number of jobs, any cessation of business by any Business and any filing of bankruptcy by the Governmental Unit or any Business. Prior to implementing a proposed Project Change, the Governmental Unit shall submit it to Commerce for review. The failure of the Governmental Unit to do so will subject it to the penalties and remedies set forth in Paragraph 14(b) of this Grant Agreement, unless Commerce (in its sole discretion) expressly waives this requirement of pre-implementation review in writing. In any event, there shall be no Project Changes unless expressly approved of by Commerce in its sole discretion in a separate, written agreement stating, if applicable, the costs and schedule for completing the Project Change.
- (b). Additionally, the Governmental Unit shall immediately notify Commerce of any change in conditions or local law, or any other event, which may significantly affect its ability to oversee, administer or perform this Grant Agreement, the LBC or the Project. In its sole discretion, Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.

3. Term of Grant Agreement. The effective period of this Grant Agreement shall commence on **4/23/2015** ("Effective Date") and shall terminate on **4/23/2017** unless terminated on an earlier date under the terms of this Grant Agreement (either one of which dates shall constitute the "Termination Date") or unless extended for an express term in writing by Commerce.

4. Funding and Administrative Expenses.

- (a). The Rural Authority grants to the Governmental Unit an amount not to exceed **\$500,000.00** for expenditures directly relating to the Project. If Commerce determines that the actual costs of the Project are less than the Grant amount, Commerce, in its sole discretion, may reduce the amount of the Grant accordingly. If the Governmental Unit determines that the actual costs of the Project are less than the Grant amount, it shall report so to Commerce and return any surplus Grant funds it has received to Commerce.
- (b). The Governmental Unit hereby represents and warrants that all Grant funds shall be utilized exclusively for the purpose of the Project and consistent with all applicable laws, rules, regulations and requirements, and that the Governmental Unit shall not make or approve of any improper expenditure of Grant funds.
- (c). Without limitation and as determined by Commerce in its sole discretion, eligible expenditures incurred after the date of the Grant award may include any costs required for the actual construction activities of the Project.
- (d). Where there is a cost overrun of a Project, Commerce must agree in writing to participate in the overrun as a condition of the Governmental Unit's continuing eligibility for the Grant. Commerce has the sole discretion to determine what constitutes a cost overrun, when Commerce will participate in an overrun and whether

the effects of a cost overrun on eligible expenditures will be retroactive or prospective. If Commerce agrees in writing to participate in an overrun, eligible expenditures are limited to those under Paragraph 4(c) above. Where there is no cost overrun of a Project, eligible expenditures may include:

- i. Expenses and fees for a third-party Grant administrator of the Governmental Unit up to a combined total for the entire Project of five percent (5%) of the Grant amount or \$25,000, whichever is less. The Governmental Unit shall separately account for, itemize and support such third-party Grant administrator expenses and fees, including by timely submitting or ensuring its Grant administrator timely submits any reports to Commerce required under Exhibits C and D. If the Governmental Unit fails to separately account for, itemize and support such third-party Grant administrator expenses and fees, including by failing to timely submit or ensure its Grant administrator timely submits any such reports, Commerce, in its sole discretion, may disallow the eligibility of such expenses and fees for Grant funding, in whole or in part.
 - ii. Non-construction costs such as engineering design, permitting, land surveying costs, easement preparation and legal costs; and
 - iii. Construction administration and/or inspection costs, which are limited to a total of ten percent (10%) of the total Project costs.
- (e). Without limitation and as determined by Commerce in its sole discretion, the following expenditures are not eligible for Grant funding and should not be submitted to Commerce for reimbursement or credited by the Governmental Unit toward its Cash Match requirement under Paragraph 4(f) below:
- i. Any costs incurred prior to the date of the Grant award;
 - ii. Any costs incurred for privately owned infrastructure improvements;
 - iii. Any costs arising from or related in any manner to any project that has received funds from a grant under the North Carolina Rural Economic Development Public-Owner or Private-Owner Building Reuse Program; and
 - iv. Land acquisition costs or fees related to land acquisition with the exception of costs or fees incurred in acquiring public easements for the Project's infrastructure improvements.
- (f). As a condition of receiving the Grant, the Governmental Unit must contribute a cash match ("Cash Match") equivalent to at least 5% of the Grant amount. The Cash Match shall come from local resources and may not be derived from other State or federal grant funds, including, without limitation, from the funds of any grant under the North Carolina Rural Economic Development Public-Owner or Private-Owner Building Reuse Program. Expenditures that Commerce, in its sole discretion, determines are not eligible for Grant funding (including without limitation those specified in Paragraph 4(e) above) may not be counted toward the Cash Match. All Cash Match funds shall be expended on costs eligible for Grant funding prior to the expenditure of Grant funds.

5. Independent Status of the Governmental Unit.

- (a). The Governmental Unit is an entity independent from the Rural Authority and Commerce. The Grant Agreement, the LBC, the Project and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between or among Commerce, the Rural Authority, the Governmental Unit or any third party (including, without limitation, any Business). Nor shall the Grant Agreement, the LBC or the Project be construed to make the Governmental Unit (including its employees, agents, members or officials) or any third party (including, without limitation, any Business) employees, agents, members or officials of Commerce or the Rural Authority. Neither the Governmental Unit nor any third party (including, without limitation, any Business) shall have the ability to bind Commerce or the Rural Authority to any agreement for payment of goods or services or represent to any person that they have such ability.
- (b). The Governmental Unit shall be responsible for payment of all of its expenses, including rent, office expenses and all forms of compensation to employees. The Governmental Unit shall provide worker's compensation insurance to the extent required for its operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with its operations, for itself and its employees who are performing work pursuant to this Grant Agreement. All expenses incurred by the Governmental Unit are its sole responsibility, and neither Commerce nor the Rural Authority shall be liable for the payment of any obligations incurred in the performance of the Project.

6. Method of Payment. Commerce shall pay the Grant funds to the Governmental Unit in accordance with the Payment Schedule attached hereto as Exhibit B after receipt of written requests for payment from the Governmental Unit certifying that the conditions for such payment under this Grant Agreement have been met and that the Governmental Unit is entitled to receive the amount so requested and any other documentation that may be required by Commerce.

7. Obligation of Funds. The Governmental Unit shall not obligate Grant funds prior to the Effective Date or subsequent to the Termination Date of this Grant Agreement. All obligations outstanding as of the Termination Date shall be liquidated within thirty days after the Termination Date.

8. Project Records.

- (a). The Governmental Unit shall maintain full, accurate and verifiable financial records, supporting documents and all other pertinent data for the Project in such a manner as to clearly identify and document the expenditure of the State funds provided under this Grant Agreement separate from accounts for other awards, monetary contributions or other revenue sources for this Project.
- (b). The Governmental Unit shall retain all financial records, supporting documents and all other pertinent records related to the Grant Agreement, the Project and the LBC for a period of five (5) years from the Termination Date. In the event such records

are audited, all such records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.

9. Monitoring, Reports and Auditing.

- (a). The Governmental Unit agrees to ensure compliance and provide its assistance with such monitoring and auditing requirements as the State may request, including following the Termination Date of this Grant Agreement. Additionally, the Governmental Unit shall regularly monitor all performance under Grant-supported activities, as well as the activities of the Business under the LBC, to ensure that time schedules are being met, New Jobs are being created and maintained, the Baseline Number of jobs is being maintained (if required) and other performance goals are being achieved.
- (b). The Governmental Unit shall furnish Commerce detailed written progress reports according to the time periods specified in Exhibit C or as otherwise requested by Commerce. Such reports should describe the progress made by the Governmental Unit and any Business toward achieving the purpose(s) of the Project and/or the LBC, including specifically the goals of New Job creation and maintenance. Such descriptions should include the successes and problems encountered during the reporting period. Failure to submit a required report by the scheduled submission date will result in the withholding of any forthcoming payment until Commerce is in receipt of the delinquent report and the report meets with Commerce's approval, in Commerce's sole discretion.
- (c). The Governmental Unit acknowledges and agrees that, with regard to the Grant funds, it will be subject to the audit and reporting requirements prescribed by N.C.G.S §159-34, Local Government Finance Act - Annual Independent Audit; rules and regulations. Such audit and reporting requirements may vary depending upon the amount and source of Grant funding received by the Governmental Unit and are subject to change from time to time. Upon completion, the Governmental Unit shall forward to Commerce one copy of any audited financial statements and accompanying reports generated covering the period between the Effective Date and Termination Date of this Grant Agreement.
- (d). Within thirty (30) days after the Termination Date, the Governmental Unit shall submit a final report to Commerce describing the activities and accomplishments of the Project. The final report shall include a review of performance and activities over the entire Project period. In the final report, the Governmental Unit should describe the Project and the LBC, how they were implemented, to what degree their established objectives were met and the difficulties encountered, what they changed and their cost.
- (e). The Governmental Unit grants the State and any of its related agencies, commissions or departments (including, without limitation, Commerce, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor, and examine all of the books, papers, records and other documents relating to the Grant Agreement, the LBC or the Project. Likewise, the Governmental Unit shall ensure that any Business provides the same access. In addition, the

Governmental Unit agrees to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, the Rural Authority or Commerce) for other financial and organizational materials to permit the State to comply with its fiscal monitoring responsibilities or to evaluate the short- and long-range impact of its programs.

10. Termination; Availability of Funds.

- (a). If the Governmental Unit fails to fulfill in a timely and proper manner its obligations or violates any of the covenants or stipulations under this Agreement, or if any Business fails to fulfill in a timely and proper manner its obligations or violates any of its covenants or stipulations under the LBC, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Business written notice specifying the Termination Date of either agreement, which Commerce may determine in its sole discretion. Upon such termination, Commerce shall have no responsibility to make additional Grant payments. Upon such termination, the Governmental Unit shall not expend any Grant funds without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.
- (b). The obligations of the Rural Authority and/or Commerce to pay any amounts under this Grant Agreement are contingent upon the availability and continuation of funds for such purpose. If funds for the Grant become unavailable, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving written notice specifying the Termination Date of either agreement, which Commerce shall determine in its sole discretion. Upon such termination, the State shall have no responsibility to make additional Grant payments. Further, upon such termination, the Governmental Unit shall not expend any Grant funds without Commerce's express written authorization and shall return all unspent Grant funds to Commerce upon demand.

11. Liabilities and Loss. The Governmental Unit hereby agrees to release, indemnify and hold harmless the State (including, without limitation, the Rural Authority and Commerce), and their respective members, officers, directors, employees, agents and attorneys (together, the "Indemnified Parties"), from any claims of third parties (including, without limitation, any Business) arising out of any act or omission of the Governmental Unit or any third party (including, without limitation, any Business) in connection with the performance of this Grant Agreement, the LBC or the Project, and for all losses arising from their implementation. Without limiting the foregoing, the Governmental Unit hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for, and agrees to indemnify and hold harmless the Indemnified Parties against, any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out

of, pertaining to, or having any connection with, the Project or the financing thereof (whether arising out of acts, omissions, or negligence of the Governmental Unit or of any third party (including, without limitation, any Business), or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.

12. Governmental Unit Representations and Warranties. The Governmental Unit hereby represents and warrants that:

- (a). The execution and delivery of this Grant Agreement have been duly authorized by all necessary Governmental Unit action and are not in contravention of law or in contravention of the provisions of any indenture agreement or undertaking to which the Governmental Unit is a party or by which it is bound.
- (b). There is no action, suit proceeding, or investigation at law or in equity or before any court, public board or body pending, or to the knowledge of the Governmental Unit, threatened against or affecting it or any Business that could or might adversely affect the Project or any of the transactions contemplated by this Grant Agreement or the LBC, the validity or enforceability of this Grant Agreement or the LBC, or the abilities of the Governmental Unit or any Business to discharge their obligations under this Grant Agreement or the LBC. If it is subsequently found that an action, suit, proceeding, or investigation did or could threaten or affect the development of the Project, Commerce may require repayment from the Governmental Unit of an amount of Grant funds to be determined in Commerce's sole discretion but not to exceed the amount of Grant funds the Governmental Unit has already received under this Grant Agreement, and this Grant Agreement may be terminated by Commerce effective upon notice.
- (c). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this Grant Agreement by the Governmental Unit or the performance of any of its obligations hereunder, or all such requisite governmental consents or approvals have been obtained. The Governmental Unit shall provide Commerce with evidence of the existence of any such necessary consents or approvals at the time of the execution of this Grant Agreement.
- (d). Upon the Governmental Unit's reasonable inquiry of (including the receipt and review of written documentation from) each Business, every Business is solvent, is financially capable of performing its LBC and Project responsibilities (including, without limitation for the Business, creating and maintaining the New Jobs and, if required, maintaining the Baseline Number of jobs), is a going concern, is duly authorized to do business under North Carolina law, and no Business is delinquent on any federal, state or local taxes, licenses or fees. If it is subsequently found that a Business was not solvent, was not financially capable of performing its LBC or Project responsibilities, was delinquent on its federal, state or local taxes, licenses or fees or, if applicable, was not a going concern or was not duly authorized to do business under North Carolina law, Commerce may require repayment from the Governmental Unit of an amount of Grant funds to be determined in Commerce's

sole discretion but not to exceed the amount of Grant funds the Governmental Unit has already received under this Grant Agreement, and this Grant Agreement may be terminated by Commerce effective upon notice

13. Cessation/Termination, Bankruptcy, Dissolution or Insolvency.

- (a). Under the LBC, the Business agrees at all times to preserve its legal existence, except that it may merge or consolidate with or into, or sell all or substantially all of its assets to, any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Business contained in the LBC, subject to the prior written consent of Commerce as set forth in Paragraph 17(d) if such action constitutes an assignment of the Business' obligations under the LBC. If the Business so merges, consolidates or sells its assets without such an undertaking being provided, it agrees under the LBC to make that payment due under the LBC to the Governmental Unit or Commerce, upon request and as directed. Further, a merger, consolidation or sale without such an undertaking shall constitute a material default under the LBC, and the Governmental Unit or Commerce may terminate the LBC upon written notice to the Business and hold the Business liable for any such payment provided for under the LBC.
- (b). Other than as provided for in Paragraph 13(a) above, if any Business ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall be the sole responsibility of the Governmental Unit to (i) immediately notify Commerce and (ii) pursue any claim for payment owed under the LBC to the Governmental Unit or the State by the Business, including in any legal proceeding, to obtain the maximum payment allowed by law. To the extent the Governmental Unit fails to pursue such payment from the Business in such a proceeding and obtain the maximum payment allowed by law, the Governmental Unit shall be liable to Commerce for all amounts that should have been awarded to the Governmental Unit in the proceeding if it had taken the necessary action (notwithstanding whether such amounts would have actually been paid by the Business). Alternatively, without limitation, if the Governmental Unit fails to pursue payment under the LBC in such a proceeding and Commerce elects to do so instead, the Governmental Unit is responsible and agrees to reimburse Commerce for all legal costs and reasonable attorneys' fees that Commerce incurs in pursuing such payment from the Business.
- (c). If the Governmental Unit fails to provide Commerce notice of any Business ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute a material default under this Grant Agreement. If there is such a cessation or such a proceeding, Commerce may terminate the Grant Agreement upon written notice to the Governmental Unit. If there is such a cessation or such a proceeding, the Governmental Unit agrees that Commerce has the right to terminate this Grant Agreement and/or the LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Business written notice specifying the Termination Date, which Commerce may determine in its sole discretion. Upon such termination, the Governmental Unit shall not expend any Grant funds without Commerce's express written authorization and shall return

all unspent Grant funds to Commerce upon demand.

14. Additional Repayment Requirements and Remedies.

- (a). The repayment requirements and remedies addressed in this Paragraph 14 are in addition to those repayment requirements and other remedies set forth elsewhere in this Grant Agreement, including the requirements to repay unspent Grant funds. No remedy conferred or reserved by or to the State is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this Grant Agreement, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (b). If there is a breach of any of the requirements, covenants or agreements in this Grant Agreement or the LBC, or if there are any representations or warranties which are untrue as to a material fact in this Grant Agreement, the LBC or in relation to the LBC or the Project (including the performance thereof), the Governmental Unit agrees that Commerce has the sole discretion to require repayment from the Governmental Unit of an amount of Grant funds to be determined in Commerce's sole discretion but not to exceed the amount of Grant funds the Governmental Unit has already received under this Grant Agreement. Such requirements, covenants or agreements include but are not limited to Paragraphs 1, 2(a), 4, 10(a), 12 and 13 of this Grant Agreement and include but are not limited to the creation and retention of the New Jobs and the retention of the Baseline Number of jobs under the LBC.

15. No Waiver by the State. Failure of the State (including, without limitation, the Rural Authority and Commerce) at any time to require performance of any term or provision of this Grant Agreement or the LBC shall in no manner affect the rights of the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the State of any condition or the breach of any term, provision or representation contained in this Grant Agreement or the LBC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.

16. Waiver of Objections to Timeliness of Legal Action. The Governmental Unit knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the State (including, without limitation, the Rural Authority or Commerce) to enforce its rights under this Grant Agreement. This waiver includes any objections the Governmental Unit may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.

17. Special Provisions and Conditions.

- (a). Non-discrimination. The Governmental Unit agrees not to discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of

this Grant Agreement.

- (b). Conflict of Interest. The Governmental Unit shall forward to Commerce along with the executed copies of this Grant Agreement a copy of its policy and any ordinance or resolution it has adopted addressing conflicts of interest that may arise involving the members of the Governmental Unit's governing body and/or any of its employees or officers involved in the Grant, the LBC or the Project. Such policy, ordinance or resolution shall address situations in which any of these individuals may directly or indirectly benefit, other than through receipt of their normal compensation in their capacities as the Governmental Unit's employees, officers or members of its governing body, from the Grant, the LBC or Project, and shall include actions to be taken by the Governmental Unit or the individual, or both, to avoid conflicts of interest and the appearance of impropriety. Additionally, the Governmental Unit certifies that, as of the date it executes this Grant Agreement, no such individuals have such a conflict of interest or will directly or indirectly benefit, except in the capacities described above, from the Grant, LBC or Project. Throughout the duration of this Grant Agreement, the LBC and the Project, the Governmental Unit has the duty to promptly inform Commerce of any such conflict of interest or direct or indirect benefit of which it becomes aware.
- (c). Compliance with Laws. The Governmental Unit shall at all times observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the Grant Agreement, the LBC or the Project.
- (d). Non-Assignability. The Governmental Unit shall not assign or transfer any interest in the Grant Agreement without the prior written consent of Commerce; provided, however, that claims for money due to the Governmental Unit from Commerce under this Agreement may be assigned to any commercial bank or other financial institution without such approval.
- (e). Personnel. The Governmental Unit represents that it has, or will secure at its own expense, all personnel required to monitor, carry out and perform the scope of services of this Grant Agreement. Such employees shall not be employees of Commerce. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

Rural Economic Development Grant Agreement
ECONOMIC INFRASTRUCTURE PROGRAM

2015-044-3212-2587

18. Notice. All notices required or permitted to be delivered hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States mails, certified, return receipt requested, first class, postage prepaid and addressed as follows:

If to the Rural Authority or Commerce: Attn: **Melody Adams**
North Carolina Department of Commerce
Rural Economic Development Division
301 North Wilmington Street
4346 Mail Service Center
Raleigh, North Carolina 27699-4346

If to the Governmental Unit: Attn: **Mr. Tracy Philbeck**
Gaston County
PO Box 1578
212 W. Main Avenue
Gastonia, NC 28053-1578

or addressed to such other address or to the attention of such other individual as Commerce or the Governmental Unit shall have specified in a notice delivered pursuant to this subsection.

19. Entire Agreement. This Grant Agreement supersedes all prior agreements between or among the Rural Authority and/or Commerce and the Governmental Unit with regard to the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Commerce and the Governmental Unit.
20. Execution. This Grant Agreement may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and such counterparts, together, shall constitute one and the same Grant Agreement which shall be sufficiently evidenced by one of such original counterparts.
21. Construction, Jurisdiction and Venue. This Grant Agreement shall be construed and governed by the laws of the State of North Carolina. The Governmental Unit agrees and submits, solely for matters concerning this Grant Agreement, to the exclusive jurisdiction of the courts of North Carolina and agrees, solely for such purposes, that the only venue for any legal proceedings shall be Wake County, North Carolina. The place of this Grant Agreement, and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract, tort, or otherwise, relating to its validity, construction, interpretation, and enforcement, shall be determined.
22. Severability. Each provision of this Grant Agreement is intended to be severable and, if any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other

Rural Economic Development Grant Agreement
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provision of this Grant Agreement, but this Grant Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

23. Acceptance. If the Governmental Unit agrees to the Grant conditions as stated, please return the executed documents specified in Paragraph 1(a). This Grant may be withdrawn if Commerce has not received such documents within thirty (30) days from the date of the cover letter from Commerce to the Governmental accompanying this Grant Agreement and its Exhibits.

IN WITNESSETH WHEREOF, the parties hereto have executed this Grant Agreement as of the date first above written.

Gaston County

Signature: _____ [SEAL]

Printed Name: _____

Title: _____

Date: _____

North Carolina Department of Commerce

Signature: Patricia Mitchell [SEAL]

Printed Name: Dr. Patricia Mitchell, CEcD

Title: Assistant Secretary, Rural Development Division

Date: 6-21-16

EXHIBIT A
Scope of Project

2015-044-3212-2587

Gaston County
Tosaf, USA, Inc.

Rural Economic Development Division
Rural Infrastructure Program

General Project Description:

Gaston County requested funds to support Tosaf USA, Inc. in opening 2015-044-3212-2587 a facility in Gaston County. The project company specializes in the manufacturing and marketing of advanced polymers and compounds. The company's products are used by plastic molders and processors serving a wide range of industries including automotive, medical, electrical and packaging. The Bessemer City facility will be its first entry into the U.S. market. The requested amount was included in the State of NC incentive offer to assist in the recruitment of this company and the project was announced on December 12, 2014. The proposed rail spur improvements include the extension of approximately 1,580 linear feet of rail line and necessary appurtenances. In order to stay consistent with the job reporting requirements of the State incentive, the project company proposes to create 60 new, full-time jobs over a two-year period. The County will enter into a siding agreement with the project company and mainline rail provider. In addition, the County will provide \$51,000 and the project company will provide \$407,964 to complete the infrastructure improvements.

Project Cost and Funding:

		Local	Private	Commerce	Source D		Total
1.	Construction	51,000	407,964	500,000		\$	958,964
2.						\$	
3.						\$	
4.						\$	
5.						\$	
6.						\$	

EXHIBIT B
Payment Schedule

2015-044-3212-2587

The Department of Commerce shall issue grant payments upon receipt of:

1. Evidence that the 5% local government match has been satisfied. Evidence may include a copy of cleared local government check or wire transfer receipt.
2. Approved invoices that support expenses in the amount of the funds requested
3. Completed Financial Request form
4. Satisfaction of all reporting requirements at the time of request

Eligible expenditures may not be incurred prior to the effective date or subsequent to the termination date of the grant.

All payment requests must be received by the Department of Commerce within 30 days of the end of the contract period. Payments are subject to the availability of funds.

All required forms can be found on the Commerce website at <http://www.nccommerce.com/rd/rural-grants-programs/forms>.

EXHIBIT C
Reporting Schedule

2015-044-3212-2587

Grantees are required to submit progress and final reports and job verification documentation according to the following schedule.

Report:	Report Due:
Progress Report	1/15/17
Progress Report	12/15/17
Progress Report	1/15/18
Final Report	5/21/18
Job Verification	5/21/18

Failure to submit progress reports as required:

1. Will result in non-payment of payment requests,
2. Can result in the immediate termination of the grant,
3. Can result in the demand for immediate repayment of any funds paid by The Department of Commerce,
and
4. Will negatively impact the grantee's eligibility for future Commerce grants.

All required forms can be found on the Commerce website at <http://www.nccommerce.com/rd/rural-grants-programs/forms>.

EXHIBIT D
Job Verification and Closeout Requirements

2015-044-3212-2587

Rural Infrastructure loans are eligible for forgiveness once the creation and maintenance of the full-time jobs committed for the project are approved by Commerce. Below are the requirements and procedure for approval.

Job Verification

To be considered eligible, a full-time job must be filled with one employee who works at least 35 hours per week and is paid at least minimum wage. Part-time, Full-Time Equivalents, or contract/consulting positions are not eligible.

Grantees should submit the following as evidence of job creation and maintenance:

1. **Job Certification Form**—both the grantee and the participating business are required to complete respective sections of this form that attests to the creation of the number of jobs full-time jobs committed to receive the grant. The form must be signed by the authorized representatives of the local government grantee and the participating business.
2. **NCUI 101 Forms**—The grantee should submit copies of each company's *Employer's Quarterly Tax and Wage Report* (NCUI 101 forms) that have been submitted to the North Carolina Employment Security Commission according to the requirements below.
 - NCUI 101 Forms should be submitted to Commerce using the Rural Drop Box (see instructions below).
 - The forms must include the appropriate number of quarters to show that the company maintained the required employment level for six-consecutive months.
 - The employment level reported must meet or exceed the baseline number of employees reported at the time of the application plus the number of new, full-time jobs committed for the grant.
 - The jobs created and the baseline must be maintained concurrently during the same six-month period.
 - If the NCUI 101 forms include employees from other locations in North Carolina, the names of the employees working in the grant funded project facility should be highlighted.
 - If the NCUI 101 forms include both full and part-time employees an "f" should be written next to the name of each full-time employee and a "p" should be written next to the name of each part-time employee.
3. **Final Report**—the grantee must submit the Final Report Form that describes the activities and outcomes of the project.
4. **Photos**—the grantee must submit digital photos on CD that show a variety of views of the completed project.

All required forms can be found All required forms can be found on the Commerce website at
<http://www.nccommerce.com/rd/rural-grants-programs/forms>

EXHIBIT D
Job Verification and Closeout Requirements

2015-044-3212-2587

Rural DropBox

The Rural DropBox is a secure server for the receipt of job verification data in a secure manner. All job verification documents must be uploaded via the Rural DropBox:

A permanent username and password has been assigned to this project and must be used to upload the job verification documents.

The username and password for this project is as follows:

Username:

Password:

The username and password must be entered exactly as they appear above.

Access the Rural DropBox at www.nccommerce.com/rdg

Please follow the directions below to upload documents:

1. Enter your username and password (provided above)
1. Follow the prompts on upload page (read directions and instructions carefully)
2. Enter a valid email address
3. Click the *Browse* button
4. Select the document you want to upload and *double click* or *highlight document and select open*;
5. **Click "Upload File"**

The submission will be date and time stamped and you will be alerted via email after you have successfully submitted your materials.

Gaston County (the "Governmental Unit") enters into this Rural Economic Development Legally Binding Commitment (the "LBC") with **TOSAF USA, Inc.**, (the "Business" and, together with the Governmental Unit, the "Parties").

WHEREAS, pursuant to N.C.G.S. §§143B-472.127 and .128, the North Carolina Rural Infrastructure Authority (the "Rural Authority") of the State of North Carolina ("State") has awarded a grant (the "Grant") to the Governmental Unit, and the North Carolina Department of Commerce ("Commerce"), an agency of the State, will administer the Grant; and

WHEREAS, the Grant is memorialized in an agreement (the "Grant Agreement") between Commerce and the Governmental Unit, and the Grant Agreement includes Exhibit A (Scope of Project), Exhibit B (Payment Schedule), Exhibit C (Reporting Schedule), Exhibit D (Closeout Schedule/Job Requirements), Exhibit E (this LBC) and Exhibit F (Waiver of Confidentiality ("Waiver")); and

WHEREAS, the Business specifically agrees that the Grant will provide significant, direct economic benefit to the Business and allow the Business to create new jobs, which will result in direct economic benefit to the Governmental Unit; and

WHEREAS, the Rural Authority awarded the Grant: (1) based on the application filed by the Governmental Unit and any subsequent materials supporting the application that have been approved of by Commerce in writing, all of which are incorporated by reference herein; (2) based on Commerce's Rural Economic Infrastructure Program Guidelines and other grant requirements and guidelines, all of which are incorporated herein and may be amended, modified or supplemented and applied accordingly to this Grant Agreement by Commerce in its sole discretion; (3) for constructing the critical public water and wastewater facilities or providing the other public infrastructure needs summarized in Exhibit A (the "Project"); and (4) for the Business to create and retain certain new jobs ("New Jobs") and, if necessary, maintain a baseline number ("Baseline Number") of pre-existing jobs.

WHEREAS, the Governmental Unit and the Business are required to enter into this LBC as conditions for the Governmental Unit to receive the Grant and for the Business to receive the economic benefit of the improved public infrastructure resulting from the Project;

NOW, THEREFORE, in consideration of the mutual promises and such other valuable consideration set out herein, the Parties mutually agree to the following terms and conditions:

1. **Agreements to be Executed.** As conditions of the Grant Agreement and this LBC:
 - (a). The highest elected official of the Governmental Unit and a duly authorized representative of the Business shall execute three originals of the LBC in its exact form (unless Commerce approves of a change to its terms in writing), and the Governmental Unit shall return one such original to Commerce;
 - (b). The Business shall execute a Waiver, Exhibit E to the Grant Agreement, and the Governmental Unit shall forward the original of any such Waiver to Commerce.

2. Third-Party Beneficiary. The Parties agree that the State (including, without limitation, Commerce and the Rural Authority) is an intended third-party beneficiary of this LBC and may, at its option, enforce the terms of this LBC or appear as a party in any litigation concerning the LBC.
3. New Job Creation, Maintenance of New Jobs and Baseline Number of Jobs and Verification.
 - (a). New Job Creation and Maintenance of New Jobs and Baseline Number of Jobs. A “New Job” shall mean a full-time job (consisting of at least 35 hours per week of employment for an individual who is an employee (as opposed to an independent contractor) of the Business, is eligible for all benefits generally available for other full-time employees of the Business and for whom the Business files an IRS W-2 form and withholds applicable federal, State and local income and payroll taxes) which is with the Business, is located in North Carolina, has a wage at least equal to the minimum wage, is created and maintained by the Business at the specific location set forth in Exhibit A and within the jurisdiction of the Governmental Unit and is over and above the 0 full-time jobs in North Carolina (“Baseline Number”) that the Business reported having at the time of the application for the Project. In return for the benefit of the improved public infrastructure resulting from the Project, the Business shall be required to create and maintain in existence for six (6) consecutive months 60 New Jobs prior to the Termination Date, unless this term is extended pursuant to Paragraph 5. If the Business reported having a Baseline Number of jobs at the time of the application for the Project, then, separate and apart from these New Jobs, the Business shall be required to maintain in existence its Baseline Number of jobs for as long as it takes the Business to create and maintain its required number of New Jobs.
 - (b). Verification. When the New Jobs required by Paragraph 3(a) have been created and maintained for six (6) consecutive months, the Business shall notify the Governmental Unit so that it and/or Commerce can verify the creation and maintenance of the New Jobs, as well as the maintenance of the Baseline Number of jobs (if required) and the satisfaction of all other conditions and terms of this LBC and the Project. The Business shall provide to the Governmental Unit and Commerce, or their respective designees, full and complete access to all records of the Business necessary to verify the number and types of jobs created and maintained, the wages paid to employees and all other conditions and terms of this LBC and the Project. Failure of any Business to provide such access upon request shall constitute a material default by the Business under the terms of this LBC and, in the sole discretion of the Governmental Unit and/or Commerce, may subject the Business to payment in an amount calculated under Paragraph 13 below.
4. Changes in the Project or Other Conditions.
 - (a). A “Project Change” is any material alteration, addition, deletion or expansion of the Project, including (without limitation) material changes to construction or rehabilitation, the terms or conditions of the LBC, the required number of New Jobs, the Baseline Number of jobs, the preliminary engineering report, any cessation of business by the Business and any filing of bankruptcy by the Business.

There shall be no Project Changes unless expressly approved of by Commerce and the Governmental Unit in a separate, written agreement stating, if applicable, the costs and schedule for completing the Project Change.

- (b). Additionally, the Business shall immediately notify the Governmental Unit of any change in conditions or local law, or any other event, which may significantly affect its ability to perform the LBC. In their sole discretion, the Governmental Unit or Commerce may deem such a change in conditions, local law or other event to constitute a Project Change.
5. Term of LBC. The effective period of this LBC shall commence on **4/23/2015** ("Effective Date") and shall terminate on **4/23/2017** unless terminated on an earlier date under the terms of this LBC (either one of which dates shall constitute the "Termination Date") or unless extended for an express term in writing by the Governmental Unit.
6. Independent Status of the State, the Governmental Unit, the Business and Any Third Parties.
- (a). The State (including, without limitation, the Rural Authority and Commerce) and the Governmental Unit are independent entities from one another and from the Business and any third party. The Grant Agreement, the LBC, the Project, the creation and maintenance of New Jobs, the maintenance of the Baseline Number of jobs (if required) and any actions taken pursuant to them shall not be deemed to create a partnership or joint venture between the State and the Governmental Unit or between or among either of them and the Business or any third party. Nor shall the Grant Agreement, the LBC, the Project, the creation and maintenance of New Jobs or the maintenance of the Baseline Number of jobs (if required) be construed to make any employees, agents or members of the Business or any third party into employees, agents, members or officials of the Governmental Unit or the State or to make employees, agents, members or officials of the Governmental Unit into employees, agents, members or officials of the State. Neither the Business nor any third party shall have the ability to bind the Governmental Unit or the State to any agreement for payment of goods or services or represent to any person that they have such ability. Nor shall the Governmental Unit have the ability to bind the State to any agreement for payment of goods or services or represent to any person that it has such ability.
 - (b). The Business and any third party shall be responsible for payment of all their expenses, including rent, office expenses and all forms of compensation to their employees. The Business and any third parties shall provide worker's compensation insurance to the extent required for their operations and shall accept full responsibility for payments of unemployment tax or compensation, social security, income taxes, and any other charges, taxes or payroll deductions required by law in connection with their operations, for themselves and their employees who are performing work pursuant to this LBC or the Project. All expenses incurred by the Business or any third party are their sole responsibilities, and neither the Governmental Unit nor the State (including, without limitation, Commerce and the Rural Authority) shall be liable for the payment of any obligations incurred in the performance of the Project or the LBC.

7. Records. The Business shall retain all financial records, supporting documents and all other pertinent records related to the Grant Agreement, the Project, this LBC, the New Jobs and the Baseline Number of jobs (if required) for a period of five (5) years from the Termination Date. In the event such records are audited, all such records shall be retained beyond the five-year period until the audit is concluded and any and all audit findings have been resolved.
8. Monitoring, Reports and Auditing. The Business agrees to generate such reports regarding the Project, the LBC, the New Jobs and the Baseline Number of jobs (if required) as may be requested by the Governmental Unit or the State (including, without limitation, the Rural Authority or Commerce) in such form as they may request, including after the Termination Date. The Business further grants the Governmental Unit or the State (including any of its agencies, commissions or departments such as Commerce, the North Carolina State Auditor and the North Carolina Office of State Budget and Management) and any of their authorized representatives, at all reasonable times and as often as necessary (including after the Termination Date), access to and the right to inspect, copy, monitor and examine all of the books, papers, records and other documents relating to the Grant Agreement, the Project, the LBC, the New Jobs or the Baseline Number of jobs (if required). In addition, the Business agrees to comply at any time, including after the Termination Date, with any requests by the State (including, without limitation, the Rural Authority or Commerce) for other financial and organizational materials to permit the State to comply with its fiscal monitoring responsibilities or to evaluate the short- and long-range impact of its programs.
9. Termination; Availability of Funds.
 - (a). If the Business fails to fulfill in a timely and proper manner any applicable LBC or Project obligations or requirements applicable to it in the LBC, or if the Business violates any of its covenants or stipulations under the LBC, the Business agrees that the Governmental Unit or Commerce has the right to terminate the LBC by giving the Business 60 days written notice specifying the Termination Date, which shall be determined by the Governmental Unit or Commerce in their sole discretion, subject to the 60 day notice requirement. Upon such termination, the Business shall pay the amount calculated under Paragraph 13(b) to the Governmental Unit or Commerce, upon request, as directed and without regard to whether the effective period in Paragraph 5 has yet to expire.
 - (b). If the Business fails to fulfill in a timely and proper manner the obligations or requirements applicable to it in the LBC, or if the Business violates any of its covenants or stipulations under the LBC, the Business agrees that Commerce has the right to terminate its Grant Agreement with the Governmental Unit and/or terminate this LBC by giving, as applicable, the Governmental Unit or the Governmental Unit and the Business 60 days written notice specifying the Termination Date, which Commerce may determine in its sole discretion, subject to the 60 day notice requirement. Upon such termination, the Business shall pay the amount calculated under Paragraph 13(b) to the Governmental Unit or Commerce,

upon request, as directed and without regard to whether the effective period in Paragraph 5 has yet to expire.

- (c). The obligations of the Rural Authority and/or Commerce to pay any Grant funds to the Governmental Unit are contingent upon the availability and continuation of Grant funds for such purpose. If Grant funds become unavailable, the Business agrees that either Commerce or the Governmental Unit has the right to terminate this LBC by giving 60 days written notice specifying the Termination Date, which either the Governmental Unit or Commerce may determine in their sole discretion, subject to the 60 day notice requirement.
10. Liabilities and Loss. The Business hereby agrees to release, indemnify and hold harmless the Governmental Unit and the State (including the Rural Authority and Commerce), and their respective members, officers, directors, employees, agents and attorneys (hereinafter collectively referred to as "Indemnified Parties"), from any claims of third parties arising out of any act or omission of the Business in connection with the performance of this LBC or the Project, and for all losses arising from implementation of this LBC or the Project. Without limiting the foregoing, the Business hereby releases the Indemnified Parties from, and agrees that such Indemnified Parties are not liable for any and all liability or loss, cost or expense, including, without limitation, reasonable attorneys' fees, fines, penalties and civil judgments, resulting from or arising out of or in connection with or pertaining to, any loss or damage to property or any injury to or death of any person occurring in connection with the Project, or resulting from any defect in the fixtures, machinery, equipment or other property used in connection with the Project or arising out of, pertaining to, or having any connection with, the Project or the financing thereof (whether or not arising out of acts, omissions or negligence of the Business or of any third party, or of any of their agents, contractors, servants, employees, licensees, lessees, or assignees), including any claims and losses accruing to or resulting from any and all subcontractors, material men, laborers and any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the Project.
11. Business Representations and Warranties. The Business hereby represents and warrants that:
- (a). The Business is a going concern, is duly authorized to do business under North Carolina law, is not delinquent on any federal, state or local taxes, licenses or fees, is solvent and is financially capable of performing its responsibilities under the LBC (including maintaining the Baseline Number of jobs (if required) and creating and retaining the New Jobs). The Business shall have provided written documentation of such to the Governmental Unit prior to executing this LBC.
 - (b). This LBC has been entered into and executed on behalf of the Business by an individual with full actual and apparent authority to bind the Business to the terms hereto, and the execution and delivery of this LBC have been duly authorized by all necessary action, and are not in contravention of law nor in contravention of any certificate of authority, bylaws or other applicable organizational documents of the Business, nor are they in contravention of the provisions of any indenture, agreement or undertaking to which the Business is a party or by which it is bound.

- (c). There is no action, suit, proceeding or investigation at law or in equity before any court, public board or body pending, or, to the Business' knowledge, threatened against or affecting the Business, that could or might adversely affect the Project, the creation or maintenance of the New Jobs, the maintenance of the Baseline Number of jobs (if required), any of the transactions contemplated by this LBC, the validity or enforceability of this LBC or the Business' ability to discharge its obligations under this LBC.
 - (d). No consent or approval is necessary from any governmental authority as a condition to the execution and delivery of this LBC by the Business or the performance of any of its obligations hereunder, or else all such requisite governmental consents or approvals have been obtained. The Business shall provide the Governmental Unit or Commerce with evidence of the existence of any such necessary consents or approvals at the time of the execution of this LBC.
12. Cessation/Termination, Bankruptcy, Dissolution or Insolvency.
- (a). The Business shall at all times preserve its legal existence, except that it may merge or consolidate with or into or sell all or substantially all of its assets to any entity that expressly undertakes, assumes for itself and agrees in writing to be bound by all of the obligations and undertakings of the Business contained in this LBC, subject to the approval of the Governmental Unit and Commerce as set forth in Paragraph 16(c) if such action constitutes an assignment of the Business' obligations under this LBC. If the Business so merges, consolidates or sells its assets without such an undertaking being provided, the Business shall pay the amount calculated under Paragraph 13(b) to the Governmental Unit or Commerce, upon request, as directed and without regard to whether the effective period in Paragraph 5 has yet to expire. Further, a merger, consolidation or sale without such an undertaking shall constitute a material default under the LBC, and the Governmental Unit or Commerce may terminate the LBC upon written notice to the Business and hold the Business liable for any such payment.
 - (b). Other than as provided for in Paragraph 12(a), if the Business ceases to do business or becomes the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, the Business shall give the Governmental Unit immediate notice of the event, and shall pay the amount calculated under Paragraph 13(b) to the Governmental Unit or Commerce, upon request, as directed and without regard to whether the effective period in Paragraph 5 has yet to expire, but only if to make such payment is permissible under applicable bankruptcy, dissolution or insolvency law.
 - (c). If the Business fails to provide the Governmental Unit notice of the Business ceasing to do business or becoming the subject of any bankruptcy, dissolution or insolvency proceeding prior to the Termination Date, it shall constitute a material default under this LBC. If there is such a cessation or such a proceeding, the Governmental Unit or Commerce may terminate the LBC upon written notice to the Business. Upon such termination, the Business shall pay the amount calculated under Paragraph 13(b) to the Governmental Unit or Commerce, upon request, as directed and without regard to whether the effective period in Paragraph 5 has yet

to expire, but only if to make such payment is permissible under applicable bankruptcy, dissolution or insolvency law.

13. Additional Payment Requirements and Remedies.

- (a). The payment requirements and remedies addressed in this Paragraph 13 are in addition to those repayment requirements and other remedies set forth elsewhere in this LBC, including the requirements to repay unspent Grant funds. No remedy conferred or reserved by or to the State or the Governmental Unit is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy provided for in this LBC, or now or hereinafter existing at law, in equity, or by statute, and any such right or power may be exercised from time to time and as often as may be deemed expedient.
- (b). The Business acknowledges and agrees that: its receipt of the substantial benefit of the improved public infrastructure resulting from the Project is predicated upon the creation and maintenance of the New Jobs and, if required, the maintenance of the Baseline Number of jobs; the Business' failure to create and/or maintain such New Jobs or maintain this Baseline Number of jobs will constitute a material default of this LBC; and that the amounts of payments for which the Business may become liable under Paragraphs 13(b)i and 13(b)ii below reasonably and accurately represent the value of the benefit the Business has received from the improved public infrastructure resulting from the Project.
 - i. If the Business fails to create and maintain such New Jobs, then the Business shall pay to the Governmental Unit or Commerce, as directed, an amount equal to the product of (i) **\$8,334.00** (the amount of Grant funds divided by the number of New Jobs required to be created in Paragraph 3(a) and (ii) the number of New Jobs required to be created in Paragraph 3(a), minus the number of New Jobs actually created, above the Baseline Number of jobs reported, that have been in existence for six (6) consecutive months.
 - ii. Additionally, in the event that the Business fails to maintain its Baseline Number of jobs as required under Paragraph 3(a), the Business shall lose credit for any qualifying New Jobs under this LBC by the same number of jobs that the Baseline Number of jobs is short. For example, if the Baseline Number of jobs falls short by three (3) jobs as of the date the Business has created and maintained all required New Jobs, the number of New Jobs deemed created and maintained shall be reduced by three (3). The amount the Business must pay shall then be calculated in accordance with Paragraph 13(b)i. For example: If the Business fails to create three (3) of the required jobs, the Business will be required to repay \$25,002.00, or three (3) times \$8,334.00.
 - iii. Either Commerce or the Governmental Unit shall notify the Business in writing of the amount to be paid and direct the Business whether to pay such amount to the Governmental Unit for return to Commerce or repay the amount directly to Commerce. All such amounts shall be due

immediately upon demand by the Governmental Unit or Commerce. If not paid within thirty (30) days following demand, the unpaid amount due hereunder shall bear interest at the rate of 10% per annum after demand until paid. Upon default in such payment, the Governmental Unit or Commerce may employ an attorney to enforce their respective rights and remedies, and the Business hereby agrees to pay the legal costs and reasonable attorneys' fees of the Governmental Unit and Commerce plus all other reasonable expenses incurred by such party in exercising any of its rights and remedies upon such defaults. .

14. No Waiver by Governmental Unit or the State. Failure of the Governmental Unit or the State (including, without limitation, the Rural Authority and Commerce) at any time to require performance of any term or provision of this LBC shall in no manner affect the rights of the Governmental Unit or the State at a later date to enforce the same or to enforce any future compliance with or performance of any of the terms or provisions hereof. No waiver of the Governmental Unit or the State of any condition or the breach of any term, provision or representation contained in this LBC, whether by conduct or otherwise, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or of the breach of that or any other term, provision or representation.
15. Waiver of Objections to Timeliness of Legal Action. The Business knowingly waives any objections it has or may have to timeliness of any legal action (including any administrative petition or civil action) by the Governmental Unit or the State (including Commerce) to enforce their rights under this LBC. This waiver includes any objections the Business may possess based on the statutes of limitations or repose and the doctrines of estoppel or laches.
16. Special Provisions and Conditions.
 - (a). Nondiscrimination. The Business agrees that it will not discriminate by reason of age, race, religion, color, sex, national origin or disability related to the activities of this LBC or the Project.
 - (b). Compliance with Laws. The Business shall at all times observe and comply with all laws, regulations, codes, rules, ordinances and other requirements (together, "Laws") of the state, federal and local governments which may in any manner affect the performance of the LBC or the Project.
 - (c). Non-Assignability. The Business shall not assign or transfer any interest in the LBC without the prior written consent of the Governmental Unit and Commerce; provided however, that claims for money due to the Business from the Governmental Unit under this LBC may be assigned to any commercial bank or other financial institution without such approval.
 - (d). Personnel. The Business represents that it has or will secure at its own expense all personnel required to monitor, carry out and perform the scope of services of this LBC and the Project. Such employees shall not be employees of the State (including, without limitation, the Rural Authority or Commerce) or the

Governmental Unit. Such personnel shall be fully qualified and shall be authorized under state and local law to perform such services.

17. Notice. All notices required or permitted hereunder and all communications in respect hereof shall be in writing and shall be deemed given when personally delivered or when deposited in the United States Mail, certified, return receipt requested, postage prepaid, and addressed as follows:

If to the Governmental Unit:

Attn: _____

To the Owner:

Attn: _____

18. Entire Agreement. This LBC supersedes all prior agreements between the Governmental Unit and the Business with regard to the Grant Agreement, the LBC and the Project and expresses their entire understanding with respect to the transactions contemplated herein, and shall not be amended, modified or altered except pursuant to a writing signed by both Parties.
19. Execution. This LBC may be executed in one or more counterparts, each of which, when executed, shall be deemed an original, and all such counterparts, together, shall constitute one and the same LBC which shall be sufficiently evidenced by one of such original counterparts.
20. Construction, Jurisdiction and Venue. This LBC shall be construed and governed by the laws of the State of North Carolina. The Parties agree and submit, solely for matters concerning this Grant Agreement, to the exclusive jurisdiction of the courts of North Carolina and agree, solely for such purposes, that the only venue for any legal proceedings shall be Wake County, North Carolina. The place of this LBC, and all transactions and agreements relating to it, and their situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract, tort, or

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EXHIBIT E

2015-044-3212-2587

otherwise, relating to its validity, construction, interpretation, and enforcement, shall be determined.

21. Severability. Each provision of this LBC is intended to be severable and, if any provision of this LBC is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect or impair any other provision of this LBC, but this LBC shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.

IN WITNESS WHEREOF, the parties hereto have executed this LBC as of the date first above written.

Governmental Unit Name: Gaston County

Signature:

[SEAL]

Printed Name:

Title:

Business Name:

TOSAF USA, Inc.

Signature:

[SEAL]

Printed Name:

Title:

EXHIBIT F**Limited Waiver of Confidentiality
Unemployment Tax and Wage Records****2015-044-3212-2587**

Name of Taxpayer _____

Address: _____

City: _____ State: _____ Zip: _____ Phone: _____

NC Unemployment Insurance Acct #: _____ Fed Tax ID #: _____

I hereby waive any right to confidentiality, as found in N.C.G.S. 96-4 or otherwise, for the limited purpose of authorizing disclosure of certain information contained in the quarterly unemployment insurance tax records of the above-named taxpayer (hereinafter, "Company") filed with the Division of Employment Security ("DES") of the North Carolina Department of Commerce to **Gaston County** ("Governmental Unit") and to the employees of the Rural Economic Division of the North Carolina Department of Commerce ("Rural Division") and members of the North Carolina Rural Infrastructure Authority ("Rural Authority") for the limited purpose of evaluating the issuance of and, in the event of such issuance, administering and ensuring compliance with, a grant and loan pursuant to N.C.G.S. 143B-472.127 and .128.

I recognize that DES is authorized to provide this information to the public officials of the Governmental Unit, the Rural Division and the Rural Authority in the performance of their public duties and that the verification of employment information for the purpose of administering the grant and loan at issue is within the scope of the public duties of the Governmental Unit, the Rural Division and the Rural Authority. I hereby authorize DES to disclose information contained in the Company's quarterly unemployment insurance tax records (the NCUI-101 or successor form) to the Governmental Unit, the Rural Division and/or the Authority for these purposes.

I recognize that unemployment insurance tax information provided in the aggregate to DES and disclosed to the Governmental Unit, the Rural Division and/or the Authority, and the Company's aggregated tax and wage information provided to or otherwise in possession of the Governmental Unit, the Rural Division and/or the Authority, may be treated as public information. This waiver is not intended to release the Governmental Unit, the Rural Division and/or the Authority from any obligation they may have under North Carolina law to maintain the confidentiality of any and all information which could reveal or permit someone to ascertain the identity of any individual employee or that employee's line item unemployment insurance tax or other tax or wage information.

Signature Chief Financial Officer or Other Authorized Company Official_____
Print Name_____
Title_____
Date

Local Government Certification

Name of Entity: Gaston County

Address of Entity: Bx 1578
GASTONIA NC 28053

**IRAN DIVESTMENT ACT CERTIFICATION
REQUIRED BY N.C.G.S. 147-86.59**

As of the date listed below, the entity listed above is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.58.

The undersigned hereby certifies that he or she is authorized by the entity listed above to make the foregoing statement.

Signature Date

Printed Name Title

Notes to persons signing this form:

N.C.G.S. 143C-6A-5(a) requires this certification for bids or contracts with the State of North Carolina, a North Carolina Local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 143-6A-5(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and will be updated every 180 days.

Property Owner Certification

Name of Entity: _____

Address of Entity: _____

**IRAN DIVESTMENT ACT CERTIFICATION
REQUIRED BY N.C.G.S. 147-86.59**

As of the date listed below, the entity listed above is not listed on the Final Divestment List created by the State Treasurer pursuant to N.C.G.S. 147-86.58.

The undersigned hereby certifies that he or she is authorized by the entity listed above to make the foregoing statement.

Signature

Date

Printed Name

Title

Notes to persons signing this form:

N.C.G.S. 143C-6A-5(a) requires this certification for bids or contracts with the State of North Carolina, a North Carolina Local government, or any other political subdivision of the State of North Carolina. The certification is required at the following times:

- When a bid is submitted
- When a contract is entered into (if the certification was not already made when the vendor made its bid)
- When a contract is renewed or assigned

N.C.G.S. 143-6A-5(b) requires that contractors with the State, a North Carolina local government, or any other political subdivision of the State of North Carolina must not utilize any subcontractor found on the State Treasurer's Final Divestment List.

The State Treasurer's Final Divestment List can be found on the State Treasurer's website at the address www.nctreasurer.com/Iran and will be updated every 180 days.

Non-Appropriation: In the event funds are not appropriated during the term of this Agreement for the subject matter herein described, and there are no other available funds by or with which payment can be made to the Vendor, this agreement is terminated. This Agreement will be deemed terminated on the last day of the fiscal period for which appropriations were received without penalty or expense, except to the portion of payment for which funds have been appropriated and budgeted.

IRAN DIVESTMENT ACT CERTIFICATION REQUIRED BY 143C-6A-5(a)

As of the date listed below, the vendor or bidder listed above is not listed on the Final Divestment List created by the State Treasurer pursuant to G.S. 143A-6A-4. The undersigned hereby certifies that he or she is authorized by the vendor or bidder listed above to make the foregoing statement.

NOTE: G.S. 143C-6A-5(a) requires this certification for bids or contracts with the various governmental entities of North Carolina, including Counties. The certification is required when a bid is submitted, when a contract is entered into, and when a contract is renewed or assigned. No vendor may utilize any subcontractor found on the State Treasurer's Final Divestment List. The List is updated every 180 days, and can be found at www.nctreasurer.com/iran

VENDOR

By: _____

Date: _____

GASTON COUNTY

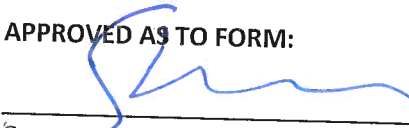
By: _____
County Manager/Asst. County Manager

Date: _____

ATTEST:

Clerk to the Board/Deputy Clerk to the Board

APPROVED AS TO FORM:



County Attorney/Assistant County Attorney

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

Financial Operations Manager/Asst. Financial Operations Manager

NORTH CAROLINA E-VERIFY CERTIFICATION

APPLICABILITY: Pursuant to North Carolina Session Law 2015-294, the certification is applicable for all contracts entered into by Gaston County, except for contracts solely for the purchase of goods, apparatus, supplies, materials, equipment, or contracts with specific other entities as described in NCGS § 143-133.3, piggy-back contracts, and travel purchases.

CERTIFICATION: By signing and entering into this contract with Gaston County, I hereby certify that I comply with E-Verify, the aforementioned Federal program used to verify the work authorization of newly hired employees working in North Carolina. I certify compliance with the E-Verification program pursuant to Article 2 of Chapter 64 of the North Carolina General Statutes. If applicable, I am also certifying that any subcontractor hired or used by me will comply with E-Verify, as described herein.

ADA AND CIVIL RIGHTS CERTIFICATION OF COMPLIANCE

I hereby certify that I comply with all applicable federal civil rights laws, including the applicable provisions of the Americans with Disabilities Act.