

City of Sacramento

Brownfield Revolving Loan Funds (BRLF)

**IMPLEMENTATION PLAN/
LOAN POLICIES AND PROCEDURES MANUAL**

January 6, 2009

TABLE OF CONTENTS

1	PURPOSE OF THE BROWNFIELDS REVOLVING LOAN FUND PROGRAM	4
1.1	Background	4
1.2	Project Partners Roles and Responsibilities	5
2	LOAN APPLICATION PROCESS	7
2.1	Applicant Matching Costs	7
2.2	Subgranting/Loan Forgiveness	7
2.3	Property Owner	7
2.4	Non-Property Owner	8
2.5	Applications from Public Entities	8
2.6	All Appropriate Inquiry	9
2.7	Ineligible Applicants	9
2.8	Eligible Brownfields Sites	10
2.9	Ineligible Brownfields Sites	10
2.10	Eligible Project Costs	11
2.11	Ineligible Project Costs	12
3	LOAN APPROVAL PROCESS	13
3.1	Additional Considerations	13
3.2	Loan Analysis Criteria	15
3.3	Financial Risks and Analysis	15
4	LOAN UNDERWRITING CRITERIA	16
4.1	Ability to Repay the Loan	16
4.2	Adequate Collateral	16
4.3	Commitment by Borrower (Loan Guarantees)	17
4.4	Balance Sheet Analysis	17
4.5	Management Experience	17
4.6	Character of Applicant	18
4.7	Environmental Insurance	18
4.8	Loan Underwriting Guidelines for Government or Public Entities	18

4.9	Public Entity Loans – Special Documentation Requirements.....	19
5	LOAN STRUCTURE AND TERMS.....	21
5.1	Interest Rate	21
5.2	Loan Fees and Costs.....	21
5.3	Repayment Schedule.....	21
5.4	Loan Amortization	21
5.5	Loan Due Dates/Late Charges/Loan Assumption	22
5.6	Grants/Forgivable loans	22
6	LOAN CLOSING AND DISBURSEMENTS.....	23
6.1	Closing Requirements on Fund Recipients.....	23
6.2	Disbursements to the Borrower.....	23
7	LOAN ADMINISTRATION.....	24
7.1	Loan Administration	24
7.2	Loan Servicing	24
7.3	Collection of Delinquent Loans	24
7.4	Repossession and Foreclosure.....	26
7.5	Bankruptcy	26
7.6	Revision of Repayment Terms.....	26
7.7	Delinquency Accounting	27
7.8	Administrative Procedures	27
8	OTHER PROVISIONS	28
8.1	Non-Discrimination/Equal Opportunity Lender	28
8.2	Disclosure of Applicant Information.....	28
8.3	National Environmental Policy Act (NEPA)	28
8.4	Conflict of Interest.....	28
9	FOR AN APPLICATION PACKAGE OR MORE INFORMATION CONTACT	30

1 PURPOSE OF THE BROWNFIELDS REVOLVING LOAN FUND PROGRAM

The United States Environmental Protection Agency's (USEPA) Brownfields Economic Redevelopment is designed to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent access, safely clean up and promote sustainable reuse of Brownfields sites. As part of this initiative, USEPA has awarded Brownfields Revolving Loan Fund Grants.

The City of Sacramento (City) intends to use USEPA funds for the City of Sacramento's Brownfields Revolving Loan Fund Program (BRLF). Brownfields redevelopment is a fiscally-sound way to bring investment back to Sacramento's neglected neighborhoods and business corridors, cleanup the environment, reuse infrastructure, eliminate blight, and relieve pressure on our urban fringe. The City intends to use these funds within redevelopment project areas and blighted commercial corridors including, but not limited to, Downtown, the River District, the Railyards, the Docks and the Commercial Corridors.

1.1 Background

Sacramento is California's state capital and was the first city in California to incorporate. At the confluence of the Sacramento and American rivers, its history began in 1839 with John Sutter's settlement. Gold was discovered in 1849 and thousands of people from all corners of the world came to Sacramento. Sacramento later became the center of commerce and agriculture. With the introduction of the transcontinental rail line in 1863, industry and commerce grew, as did the by-products of their success, the presence of hazardous substances, pollutants and contamination.

Today, with over 460,000 people, Sacramento is the seventh largest city in California and is the center of the world's sixth largest economy. Sacramento is a cosmopolitan convergence of modern high-rises, historic Victorians, beautiful waterfronts, great neighborhoods, vibrant entertainment and cultural venues, and a business friendly environment, all amenities that are reasons why demand to locate in Sacramento and the need for Sacramento's growth continues. Infill development and reuse of underutilized sites, including Brownfields sites, is one of the City's development goals.

The City's Project Goals and Objectives are:

- To increase Sacramento's economic vitality through revitalization of underutilized, contaminated and blighted sites;
- To provide a financial incentive to attract public and private interest in Brownfields properties;
- To reduce risk of human exposure to environmental hazards and promote voluntary clean up of contaminated sites;
- To support Sacramento's desire to develop infill sites and promote Smart growth principles;
- To bring new jobs, housing and amenities to the community;

- To increase private investment and leverage public resources.

1.2 Project Partners Roles and Responsibilities

On May 29, 2007, the City Council approved funding for two positions in Economic Development that would be dedicated resources for the Brownfields Revolving Loan Fund Program. These positions include a Program Manager and Fund Manager.

A. Program Manager and Fund Manager

Lead Agency:

The City of Sacramento will act as the lead agency for the Sacramento Brownfields Revolving Loan Fund (BRLF) Program. The City's Economic Development Department will be recipient of USEPA funds and will manage the BRLF program. Staffing for the program and fund management will be provided by the Economic Development Department.

The City of Sacramento will perform the following program management responsibilities:

- Enter into the cooperative agreement with USEPA;
- Ensure the overall implementation of the BRLF program;
- Ensure that all activities and expenditures are used for authorized purposes;
- Ensure that all activities are tracked and recorded and that timely reports are prepared and submitted to USEPA;
- Coordinate between all BRLF partners;
- Determine applicant eligibility;
- Draft Loan Agreements between the City and BRLF recipients;
- Develop program outreach and application materials;
- Assure that all participation requirements are met.

The City of Sacramento will perform the following fund management responsibilities:

- Provide outreach for the BRLF program;
- Assist borrowers in the preparation of application materials and structure loan agreements;
- Establish loan performance/threshold criteria;
- Assist in the evaluation of loan applications including the evaluation of applicants' legal, technical, financial and managerial capabilities;
- Administer the loan portfolio;
- Prepare reports for the USEPA.

B. Site Manager

The California Department of Toxic Substances Control (DTSC) and the Sacramento County Environmental Management Department (SCEMD) will serve as Site Managers for the BRLF. Selection of DTSC or SCEMD will be contingent upon the nature and scale of the contamination and of the cleanup of a specific project. Responsibilities of the Site Manager will include:

- Coordinate a review of each project with any other applicable regulatory agency;
- Ensure the BRLF program cleanup meets applicable and appropriate requirements under the federal and state environmental laws;
- Monitor all contractors performing BRLF program cleanup work;
- Maintain site-specific records and draft necessary reports for each site;
- Notify the appropriate regulatory agency when there are potential damages to natural resources so that they can ensure that the Natural Resource Trustees are properly notified;
- Prepare notification of transfer of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) wastes as required by 40 CFR 35.6120;
- Ensure that a site is secure and that it poses no immediate threat to human health or environment if the borrower is unable or unwilling to complete the cleanup effort.

2 LOAN APPLICATION PROCESS

The City will provide cleanup funds to eligible borrowers and subgrantees (defined in Sections 2.3-2.4) at eligible properties (defined in Section 2.8) for eligible and allowable cleanup activities (defined in Section 2.10), as detailed below. In practice the City will make these BRLF eligibility determinations based on information provided with the application. The City will present its recommended eligibility determinations to USEPA Region 9 for review and comment before a final eligibility determination is made.

2.1 Applicant Matching Costs

The City has determined that applicants will be required to pay a portion of the required USEPA match. The City will require that recipients match at least 20% of the loan or subgrant amount. The recipients will need to demonstrate through their project accounting that the agreed upon match requirement is being met (see Attachment 1 for forms).

2.2 Subgranting/Loan Forgiveness

The USEPA program guidelines allow for 40% of the funds to be granted. Subgrantees may include states, political subdivisions, U.S. territories, Indian tribes, and non-profit organizations. A significant portion of the grant funds must be loaned to an entity before subgrant will be considered. The amount of principal that will be given as a forgivable loan or grant may be up to 40% of the total loan, provided that the total amount of the forgivable loan or grant does not exceed \$200,000. Loan forgiveness is considered part of the total allowable 40% of funding that may be subgranted.

2.3 Property Owner

An applicant for a loan to clean up property which it owns must include the following supporting information (see section 2.7 for the definition of Ineligible Applicants):

- Proof of ownership;
- Description of the proposed site that demonstrates the property is an eligible site including site property address, assessor parcel number(s) and a complete legal description of the site (include an 8½" x 11" map of the site);if the proposed cleanup area is only a portion of a larger site, include engineered survey/maps for the area that is to be remediated with the requested loan funds;
- An appraisal of the property with valuation subject to the completion of the necessary cleanup action;
- A copy of the Phase I and Phase II Environmental Site Assessments or equivalent documents;
- Description of the intended redevelopment of the project and its project benefits and information about the project coordinator. Include information about potential jobs that will result and financial benefit to the community;

- Documentation of the current zoning and General Plan designation for the intended site and documentation that the planned future development is consistent with the current land uses in the area;
- Description of the cleanup action to be performed on the property. If the property is part of a larger site, a description of any cleanup action that is currently being performed or that will be performed on the larger site;
- Documentation of appropriate security interest in the property and identification of the source of loan repayment;
- If applicable, documentation that the owner of the property agrees to use the property as a security interest for the loan to secure financing necessary for the completion of the cleanup action;
- Information regarding the applicant's environmental compliance history, include a description of all past and current administrative orders, agreements, judicial orders and consent decrees;
- Documentation of the total debt against the property on which the remediation will be taken;
- Documentation of applicant's credit-worthiness, including the applicant's credit history and a description of the applicant's bank relationship.

2.4 Non-Property Owner

If the applicant is not the property owner, the applicant must have long-term site control and shall provide the following additional information:

- Documentation of the applicant's option to purchase the Property; or
- A copy of a long-term lease for the future; and
- Documentation that the property owner agrees to the applicant conducting cleanup activities on the Property.

2.5 Applications from Public Entities

If the applicant is a public entity, the BRLF Program Manager must obtain the following information from the applicant:

- Documentation that the borrowing entity has the legal authority to enter into a legally binding obligation to repay. For example, a memorandum from the legal counsel citing the statutory authority or a council resolution that obligates the repayment from a particular funding source;
- Document that there is an identifiable source of repayment;
- Documentation of an enforcement entity with the authority to ensure that the loan is repaid. This entity will help avoid potential conflicts of interest.

Whenever a governmental agency is applying for funding all eligibility requirements would apply. If necessary, the BRLF Program Manager will work with the City Attorney's Office to prepare a contract detailing the terms of the agreement. The terms of the lending agreement must be reviewed by USEPA prior to loan closing.

2.6 All Appropriate Inquiry

Borrowers and subgrantees may not use these funds to pay for cleanup costs at a Brownfields site where a borrower or subgrantee is potentially liable under CERCLA §107. Therefore, it is important for all borrowers and subgrantees who are asserting a limitation on liability must perform (or have already performed) “all appropriate inquiries” as specified in CERCLA §101(35)(B) and 40 CFR Part 312 on or before the date of acquiring the property. Potential BRLF participants should discuss their “potentially liable under CERCLA §107” status with the City’s Brownfields staff at or prior to the Application stage. Details on documentation may be found by contacting the USEPA district office or on the USEPA website (www.epa.gov/Brownfields).

2.7 Ineligible Applicants

All applicants asserting a limitation on liability must demonstrate that on or before the date of acquiring the property, they carried out “all appropriate inquiries” that meet the USEPA definition in 40 CFR Part 312 to be considered eligible for loan funding. In addition, applicants may be ineligible because of other factors, including the following:

- A person or company that is potentially liable under CERCLA §107.
- A person who has been convicted of a felony or misdemeanor involving the regulation of hazardous materials;
- A person who has been convicted of a felony or misdemeanor involving moral turpitude, including but not limited to, the crimes of fraud, bribery, the falsification of records, perjury, forgery, conspiracy, profiteering or money laundering;
- A person who is in violation of an administrative order or agreement issued by or entered into with any federal, state, or local agency that requires response action at a site or a judicial order or consent decree that requires response action at a site;
- A person subject to a pending investigation or ongoing enforcement action of the Federal Government pursuant to the Federal Resource Conservation and Response, Compensation and Liability Act, 42 USC Sec. 9601 et seq. or is subject to a pending investigation, litigation activities, or ongoing enforcement action by DTSC with respect to the Property;
- A person who is currently or has previously been subject to any penalties resulting from environmental non-compliance at the site subject to the loan request;
- A person or party that is currently or has previously been a generator or transporter of contamination at the site subject to the loan request;
- A person that has been suspended, debarred, or otherwise declared ineligible for funding or grants under any federal government program;
- A person who knowingly made false statements regarding a material fact or knowingly failed to disclose a material fact in connection with an application submitted to this program;

- A site owner currently engaged in litigation over activities related to contamination.

2.8 Eligible Brownfields Sites

Subject to limited restrictions identified below, BRLF cleanup funds are available for cleanups at 'Brownfields sites,' defined as properties where the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Such properties may be contaminated by hazardous substances, petroleum or a petroleum product, controlled substances, or may be mine-scarred lands.

There are six property types requiring property-specific determination by the City with USEPA concurrence. They are as follows:

- Properties that are the subject to an ongoing CERCLA removal action;
- Properties that are the subject to an enforcement action under RCRA, FWPCA, TSCA or SWDA;
- Permitted RCRA corrective action facilities;
- RCRA Subtitle C land disposal units with a specified closure plan;
- Properties with PCB releases subject to remediation under TSCA; and
- Portions of petroleum-contaminated properties where remediation was conducted using LUST TRUST funding.

The City or USEPA must make three additional determinations with respect to an otherwise eligible petroleum-contaminated property, as follows:

- The property is of 'relatively low risk' compared with other 'petroleum-only' properties in the state;
- There is no viable responsible party to conduct the cleanup; and
- Funding will be used by a party that is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site.

The City will work closely with potential borrowers at the Application phase to make the necessary site eligibility determinations. The City will work with potential borrowers to compile all information needed to make any necessary property-specific eligibility determinations. These determinations will be submitted to USEPA for review and ultimate approval.

2.9 Ineligible Brownfields Sites

The City's Program Manager is responsible for determining eligibility of properties under this program. Properties must meet the definition of a Brownfield site and contain a release of a hazardous substance or pollutant to be eligible for funding. The following is a partial list of property characteristics that are not eligible under this program:

- Properties listed or proposed for listing on the National Priorities List;
- Properties which are the subject of an ongoing state or federal enforcement action related to the contamination at issue;
- Properties currently owned by a party responsible for the environmental contamination of the site; and
- Properties under the control of the Federal Government. Note that properties held in trust for Indian tribes are eligible.

2.10 Eligible Project Costs

Costs incurred up to 90 days prior to the execution of a loan or subgrant could be eligible costs if they meet all the criteria of eligible costs listed below. These would include eligible costs incurred while conducting pre-award eligible activities necessary to satisfy BRLF requirements. Such eligible costs could also be counted toward the 20% match required for the loan or subgrant award.

The loan funds may also be used for the purchase of Environmental Insurance but not for pre-cleanup environmental response activities, such as site assessment, identification and characterization.

The following are examples of common *eligible* project costs if they are part of an approved oversight agreement:

- Installation of fences, warning signs, or other security or site control precautions;
- Installation of drainage controls;
- Stabilization of berms, dikes or impoundments; or drainage or closing of lagoons;
- Capping of contaminated soils;
- Using chemicals and other materials to retard the spread of the release or mitigate its effects;
- Excavation, consolidation or removal of contaminated soils;
- Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants, including petroleum;
- Removal of source materials, including free product recovery;
- Containment, treatment or disposal of hazardous materials and petroleum contamination;
- Site monitoring activities, including sampling and analysis, that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
- Site assessment activities that are reasonable, necessary and incidental to the cleanup process, such as confirmation sampling; and
- Costs associated with meeting public participation, worker health and safety, and programmatic management requirements.

2.11 Ineligible Project Costs

The following is a partial list of ineligible project costs under this program:

- Pre-cleanup environmental assessment, such as site assessment, identification and characterization;
- Clean up of naturally occurring substances;
- Monitoring and data collection for the purpose of permit compliance required under other federal and state laws;
- Development activities that are not part of the cleanup;
- Repairing or improving public or private drinking water supplies that have deteriorated through ordinary use;
- A cleanup cost at a Brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA §107;
- Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the voluntary remediation work plan;
- Construction, demolition and development activities that are not cleanup actions (e.g., marketing of property or construction of a new non-cleanup facility);
- Cost sharing or matching requirement for another federal grant (absent statutory authorization);
- Support of lobbying efforts of the recipient.
- Administrative costs as any “part of a loan or sub-grant”; and
- Payment of a penalty or fine.

3 LOAN APPROVAL PROCESS

The loan approval process will generally proceed as follows:

- The Project Manager will perform the initial review and pre-qualification of the loan application to ensure that it is complete and meets the applicable criteria. If the application is determined to be incomplete or ineligible, the applicant will be notified and provided an opportunity to provide additional information. Once an application is determined to be complete and eligible, the Project Manager will analyze the financial components of the loan application. Pre-qualified projects will then be forwarded to the Loan Review Committee with a recommendation for funding and a preliminary credit memorandum.
- The Loan Review Committee will review the application to confirm that the project qualifies for the program.
- This review will include an assessment of the creditworthiness of the borrower. At this point, the applicant should provide an estimated project budget and identify the source of the 20% match requirement.
- The Loan Review Committee will make a recommendation to the Economic Development Director, or his designee. The Economic Development Director, or his designee, will make the ultimate decision to approve or deny the loan. If the amount requested exceeds \$500,000, the recommendation will need to be approved by the City Council.
- Applicants that are approved for the BRLF program will receive a commitment letter from the City detailing the terms, conditions and collateral requirements.
- Applicants approved for BRLF funding will be sent a BRLF Loan Agreement for completion and signature and a list of any closing documents to be provided by the applicant. All recipients of BRLF funds will be required to enter into a standard loan agreement with the City. The applicant will be required to pay the legal expenses for the loan closing, which is considered an eligible project cost. Cross-corporate and personal guarantees will be required.

3.1 Additional Considerations

The following additional considerations will be used to evaluate projects:

- Project Readiness.
 - The project must have a site reuse/redevelopment plan with near term viability;
 - The project must be ready to proceed upon acceptance of the application and must provide a realistic plan for cleanup and redevelopment. Cleanup should begin within ninety (90) days of

execution of the loan documents. The likelihood of success of the project will be an evaluation factor;

- The borrower must demonstrate the financial ability to repay the loan in a timely fashion (loan terms are defined in Section 5);
 - The borrower must obtain all required local, state and federal permits and licenses;
 - The borrower must submit monthly progress reports to the relevant jurisdiction until submission of the completion report. Each report should include a description of the activities performed and to be performed and copies of invoices as appropriate to be paid for cleanup work completed. Minimum reporting is normally required through the City's final inspection of property;
 - Following completion of the final report, the borrower shall submit quarterly reports to the relevant jurisdiction describing redevelopment efforts at the site;
 - The borrower will maintain documents in the information repository and administrative record for a minimum of three years;
- Project Benefits
 - The project must document community support for its benefits to the community and regional economic development efforts;
 - The borrower must provide evidence that the environmental consultant for the project secures performance bonding and workman's compensation for their employees;
 - Environmental: The project must demonstrate that it improves the existing environmental conditions. The extent of environmental improvement will be an evaluation factor;
 - Economic: Improving economic stability is a goal of redevelopment projects through specific documentation of one or more of the following. Written documentation will be an evaluation criterion;
 - ✓ Job creation (number and type of jobs);
 - ✓ Job retention (number and type of jobs);
 - ✓ Infill projects in commercial centers (increased tax base);
 - ✓ Secondary economic benefits (example: destination tourism revenue from project).
 - Community health: Improving community health is a goal of redevelopment projects through one or more of the following. Written documentation will be an evaluation criterion:
 - ✓ Preserve community open/green space;
 - ✓ Encourage re-use of existing infrastructure;
 - ✓ Protect and improve public health and safety;
 - ✓ Elimination of "slum and blight" in commercial centers;
 - ✓ Create urban housing choices, including affordable housing;
 - ✓ Create mixed-use activity centers for sustainable communities.

3.2 Loan Analysis Criteria

The analysis and evaluation of the applicant and the project will include a review of the financial and environmental risks associated with the cleanup and redevelopment of the property and proposed project. This analysis and evaluation will be incorporated into the preliminary credit memorandum prepared by the relevant jurisdiction. This analysis and evaluation will be performed on all applications to ensure that applicants have the resources to repay the BRLF loan.

Additional criteria that will be considered are the socioeconomic and public benefits of the redevelopment project. Though these additional criteria are important, primary consideration will be given to the financial and environmental risks of the proposed project.

3.3 Financial Risks and Analysis

To evaluate the financial soundness of the applicant and the project, the analysis will consider the following:

- The legal structure of the applicant.
- The historical financial condition of the applicant. The applicant's financial condition will be assessed and compared to industry standards.
- Three years of historic data to include:
 - Fiscal year end balance sheets and income statements;
 - Current interim balance sheet and income statement;
 - Business tax returns;
 - A projected balance sheet and income statement if the applicant is a start-up.
- Personal financial statements on business principals, to include:
 - Current personal financial statement, signed and dated;
 - Personal signed tax returns, with all schedules filed with the returns;
 - The history of credit/borrowing transactions of the applicant's business;
 - The current status and future outlook of the applicant's industry;
 - The expertise and experience of the applicant's management;
 - The financial ability and resources of the applicant to complete the project.

Additionally, the proposed project and the applicant must meet the following financial guidelines:

- Historical financial statements (previous three years) must reflect a Debt Coverage Ratio (DCR) (including new debt) of at least 1.2:1, i.e., net income plus depreciation plus interest (or cash flow available for debt service) is at least one hundred and twenty percent (120%) of all debt payments.
- The business must have a positive working capital position.
- The business must have a positive tangible net worth.
- The business must provide acceptable collateral with adequate coverage.
- Obtain life insurance on all principles, prior to loan closing.

4 LOAN UNDERWRITING CRITERIA

The evaluation of underwriting criteria will assist with the assessment of the risks involved in funding the loan request. As a result of this assessment, terms and conditions will be determined and specified in the loan agreement and other loan documents that will provide financial security to the BRLF loan. Underwriting the requests to the BRLF program using the guidelines below will allow for proper “weighing” of the risks involved with each proposed project. Even though the BRLF program is not a traditional lender, all partners will adhere to generally accepted prudent lending practices. Because the purpose of the BRLF program is to return Brownfields properties to productive use and a benefit to the community, underwriting criteria for BRLF loans may be more flexible than those used by a traditional lender.

Loan underwriting will be completed by the Economic Development Department (EDD), based on the preliminary credit memorandum for the project. As BRLF fund manager, along with review by USEPA, the City has the ultimate responsibility to approve or deny any loan requests, as well as to produce and execute all loan documents.

The primary criteria for underwriting loan requests to the BRLF program include:

- Ability to repay the loan.
- Adequate collateral.
- Commitment by borrower.
- Balance sheet analysis.
- Management experience.
- Character of applicant.
- Environmental insurance.

4.1 Ability to Repay the Loan

The primary source of repayment by applicants to the BRLF program will usually be cash flow from business operations. The ability to repay through cash flow is expressed as the Debt Coverage Ratio (DCR) and is defined as follows:

$$\text{DCR} = \text{Cash Flow Available for Debt Service} / \text{Debt Service}$$

4.2 Adequate Collateral

The BRLF will not make any unsecured loans and may take a security interest in the Brownfields site to be cleaned up to ensure a means of recouping the loan. A security interest in all reasonable business (or personal) assets will be required. Security interests in business and personal assets may include:

- Accounts Receivable.
- Inventory.
- Furniture, Fixtures and Equipment.
- Other Business-related Real Estate.

- Equity in Guarantors Personal Real Estate.

Liquidation of the collateral and the ability to repay the loan is measured by the Loan-to-Value Ratio (LVR) and is expressed as follows:

$$\text{LVR} = \text{Loan Amount} / \text{Fair Market Value of the Collateral}$$

4.3 Commitment by Borrower (Loan Guarantees)

Cash flow and collateral are the two sources of repayment; however, normal lending practice usually includes a third or tertiary source, that of guarantees by the owners. Personal guarantees will be required from all persons or entities holding twenty percent (20%) or greater ownership interest in the business. Depending on the overall strength of the loan application, these personal guarantees may require a security interest in personal assets to “back up” the guarantee. Where a substantial personal asset is ownership of another business, that business may also be required to guarantee the debt.

4.4 Balance Sheet Analysis

The balance sheet of the applicant business must indicate that the business has the ability and resources to repay the loan and start and complete the project. A review of the balance sheet should answer these questions in the affirmative:

- Does the company have a positive net worth?
- Does the business have a positive working capital position?
- Does the business have collateral available to secure the BRLF loan?
- Does the company collect its receivables?
- Does the company pay its bills?
- Is the company managing its inventory or work in progress?
- Does the company generate sufficient cash relative to its cash needs?
- Is the owner(s) being paid a reasonable salary?

The applicant should present the last three fiscal years balance sheets and an interim balance sheet no older than 60 days from the date of application.

4.5 Management Experience

Information submitted by the applicant business must show that current management has the experience in the general areas of running a successful business, including finance, operations, marketing, personnel, etc. In addition, this experience must also include the ability to start, manage and complete the proposed voluntary remediation work plan and redevelopment project.

4.6 Character of Applicant

The applicant business and the owner(s) should have favorable credit histories during the past five years, no criminal record and no pending environmental issues.

4.7 Environmental Insurance

Environmental insurance will be considered as a vehicle for managing the risks associated with the proposed project. The use of such insurance will depend on the nature of the proposed project and the financial capabilities of the applicant. BRLF funds can be used by the borrower for environmental insurance, if the expense is incidental to and associated with BRLF costs it incurs for site-specific cleanup activities.

4.8 Loan Underwriting Guidelines for Government or Public Entities

Loans to government or public entities must be evaluated differently than non-government applicants.

Eligible applicants for the BRLF Program for loans to government entities include:

- State of California;
- Sacramento Housing and Redevelopment Agency (SHRA);
- Sacramento County;
- Special Districts of any type including school districts;
- Other local or regional political subdivisions

The USEPA Brownfields Cleanup Revolving Loan Fund (BCRLF) Administrative Manual, October 2004, states that “a cooperative agreement recipient (i.e. City of Sacramento) may not lend to itself ...unless a state or local law establishes that the agency may borrow money from the political jurisdiction of the cooperative agreement recipient and raise funds to pay the loan back.” The policy stated in the manual recognizes that there may be circumstances in which two public agencies, that are administratively part of the same governmental unit, may enter into a loan agreement. The USEPA BCRLF Administrative Manual sets out specific requirements that must be met in order to lend to a government entity, which are as follows:

- The borrowing entity has the legal authority to enter into a legally binding obligation to repay;
- The borrowing entity has an identifiable source of income/repayment;
- That there is an enforcement entity that can enforce loan repayment, so that a BRLF loan is repaid. This entity will help avoid potential conflicts of interest.

All borrower eligibility requirements would still apply to a government entity applicant and the substantive terms of the project and agreements must be reviewed by USEPA. The government entity may submit annual financial statements, independent audits or other evidence of financial condition. In lieu of detailed financial records, the lender

may evaluate the collateral and the project end use to determine repayment ability. Each government entity must submit the standard loan application.

4.9 Public Entity Loans – Special Documentation Requirements

The government/public entity must provide documentation that it has the authority to enter into a repayment agreement, that it has a source of funds to repay the loan and that an enforcement entity exists to ensure loan repayment. A government/public entity requesting assistance under this program must submit the following documents:

- **Legal Authority:** An opinion of legal counsel must determine that the borrowing entity has the legal authority to enter into a binding obligation to repay a revolving loan fund. This documentation should also identify by title (not name) the individual authorized as the agent to conduct all negotiations, execute and submit all documents which may be necessary for the completion of the loan and remediation plan. For example, if the borrowing entity is a government entity, then a Resolution made by an entity allowing entry into a binding obligation to repay the loan is needed. If a Resolution is used to evidence authorization for use of loan funds for an intra-governmental loan and its repayment from identified funding sources, then a copy of the Resolution in lieu of a legal opinion should be provided. If an entity has the legal authority to enter into loans without Council approval, then a Resolution would not be necessary.
- **Identifiable Source of Repayment:** The borrowing entity must provide a letter or other written documentation which identifies the source of repayment for the loan. Examples of this are the proceeds from sale of the property after remediation is complete, in combination with proceeds from tax increment financing, or a guarantee backed by general revenue that becomes effective after a specified period of time, or a funding mechanism such as payment in lieu of taxes.
- **An Entity to Assure Repayment is made:** The City must provide written documentation to USEPA which describes how the repayment obligation under the loan will be monitored and enforced. The documentation should identify an office or department in the government entity that is separate from the RLF Program Manager and the borrowing entity to oversee and assure that repayment of the loan obligation is enforced.
- **Acknowledgement of Program Requirements by Borrowing Entity:** Use of revolving loan funds must be in accordance with CERCLA, NCP and other federal, state and local requirements. The City and the borrowing entity must provide written documentation to USEPA acknowledging that all parties entering in the loan understand and plan to comply with the BRLF Program requirements. This will be done by the applicant entering into a written loan agreement with the City and a written cleanup agreement with the applicable oversight agency. The

documentation should clearly identify that the borrowing entity will comply with the following obligations:

- The timely use of BRLF funds to pay for cleanup costs
- Compliance with competitive procurement requirements
- Davis Bacon compliance
- MBE / WBE
- Other cross cutting requirements (i.e. Uniform Relocation Act)
- Descriptions of CERCLA and NCP requirements and limitations
- Roles and responsibilities for carrying out CERCLA and NCP requirements

As part of the review process, the borrowing entity must submit copies of all agreements from all other parties that have a role in making the project successful. This documentation should be submitted to the Program Manager.

5 LOAN STRUCTURE AND TERMS

The loans provided by this program will be structured to encourage borrowers to clean up Brownfields and put them back into productive use. In order to be fair and equitable, the standard terms offered are set forth below. These terms may vary on a case-by-case basis depending on risk factors and the need for additional incentives.

5.1 Interest Rate

Generally, the interest rate for BRLF participants will be somewhere between 2% and 5%. The interest rate will be negotiated on a case-by-case basis. Other factors for consideration in the determination of the interest rate will be job creation, the rate applied to other community development loan programs offered by the relevant jurisdiction and overall demand for these loans. Interest will be calculated by the simple interest method and based on a 365 day year, using actual days elapsed. Interest will be charged on the outstanding disbursed amount, accrued and added to the principal amount outstanding when disbursement stops.

5.2 Loan Fees and Costs

A loan origination fee of not more than two percent (2.00%) of the loan amount may be charged. The loan origination fee may be incorporated into closing costs for the loan paid by the borrower. All out-of-pocket costs will be paid by the borrower including, but not limited to:

- Commercial credit reports
- Credit reports
- Uniform Commercial Code (UCC) filings
- Title transfer/insurance fees
- Deed of Trust recording and reconveyance fees
- Legal costs

5.3 Repayment Schedule

Payment is required during the term of the loan, and may be principal and interest, or interest only, depending on the project. If the loan is structured with interest only payments, the principal is repaid when the site has:

- Been remediated; or
- The project is refinanced; or
- The project is sold.

5.4 Loan Amortization

The typical loan may have a maximum term of up to five years (60 months) which can be amortized over a longer period. The loan term will be determined on a project-by-

project basis to be consistent with other loans obtained to finance the cleanup of Brownfields properties.

5.5 Loan Due Dates/Late Charges/Loan Assumption

Borrower's payments will be due on the fifth day of each new quarter (with the quarterly due dates being January 5th, April 5th, July 5th and October 5th), with the first payment due at completion of the site remediation or one year after the loan is funded, whichever is first. A late charge of 5% of the payment amount due will be assessed on loans more than 10 days pas due.

5.6 Grants/Forgivable loans

The BRLF will also make a limited number of sub-grants or forgivable loans available to municipal entities, nonprofit organizations or special purpose units of government, including Indian tribes. Sub-grants or forgivable loans will be made on a case-by-case basis and will not exceed 40% of the actual loan with a maximum of \$200,000.

6 LOAN CLOSING AND DISBURSEMENTS

6.1 Closing Requirements on Fund Recipients

Before a contract for financial assistance is transmitted for signature, a recipient must certify that it has complied and will comply with all legal requirements that are determined by USEPA to apply to the operation of the fund. A recipient shall:

- Establish an official file containing an adequate record of all significant actions relating to the project;
- Establish accounts that accurately and adequately account for all amounts of BRLF funds received;
- Establish a system of accounting which ensures that the final total costs of the project, including all direct and indirect costs, are recorded accurately;
- Provide by July 30th of each year, a report of match costs for the preceding period of July 1st to June 30th. This report is to be sent to the Program Manager.
- Establish and maintain such other accounts and records as are required to ensure compliance with requirements for reporting established by the Federal Government;
- Retain all records relating to the project for at least 3 years after final repayment of financial assistance has been made.

Any records of a recipient relating to the project must be made available at any reasonable time for inspection or copying by any authorized representative of the City.

6.2 Disbursements to the Borrower

Funds may be disbursed to borrowers based on a predetermined “schedule” or based on “actual expenses,” to be determined on a project-by-project basis and specified in each loan document, including any appropriate assurances and provisions.

If a scheduled disbursement method is chosen, an agreed upon portion of the obligated funds will be disbursed upon receipt and verification of progress milestones specified in the loan documentation and the design and construction plan.

If the actual-expense method is chosen, the borrower will submit invoices for actual expenses incurred to the City for submittal to USEPA. All expenses shall be approved by the City project manager prior to submittal to USEPA.

7 LOAN ADMINISTRATION

7.1 Loan Administration

City staff will coordinate, monitor, document, disburse and collect revolving loan funds in accordance with this section. When all the loan documents have been signed the Program Manager will:

- File all collateral documents with the appropriate authorities;
- Process a request for funds from USEPA. This is for the initial round of loans. Subsequent loans will be funded from the jurisdiction's repayment account and from USEPA as appropriate;
- When received, funds will be promptly disbursed to the borrower.

7.2 Loan Servicing

The City will contract with a loan servicing firm (such as AmeriNational) to service the loans. After a loan is closed and disbursed the contracted firm will:

- Maintain a loan filing system. The file will include:
 - Applications;
 - Closing documents;
 - Credit memorandum;
 - Servicing records;
 - Perfected collateral documents.
- Maintain a payment collection system to include:
 - Record and determine application of payments;
 - Maintain payment histories;
 - Reminder on 15th day of delinquency;
 - Application of a late fee;
 - If 60 days delinquent then joint collaboration with originating jurisdiction;
 - Determination of legal remedies.

7.3 Collection of Delinquent Loans

A written late notice will be sent to any borrower who becomes over 10 days late for any payment or partial payment. Concurrent with the late notice, a late charge will be assessed against the loan. The amount of the late charge will be reflected on the late notice. If a BRLF loan account becomes further delinquent, the loan servicing firm and

the City will take appropriate collection action. These collection actions are defined as addressing routine delinquency and addressing serious delinquency.

Addressing Routine Delinquency

A late notice will be sent to any borrower more than ten days late, whether or not that borrower has been in communication with the City or the loan servicing firm. Prior to the 30th day of contractual delinquency the loan servicing firm will contact the borrower by telephone or in person to (a) inform the borrower of the delinquency, (b) establish the reason for non-payment, (c) determine when the past due payment will be made, and (d) notify the borrower that they are expected to maintain the loan payments according to the note terms or, at the very least, contact the BRLF Program Manager immediately upon determining that a payment cannot be made on time.

Addressing Serious Delinquency

If at any time a loan becomes past due (see section on Section 7.7) or if the City receives official information that indicates pending delinquency (such as a Bankruptcy Notice), the loan will be considered a serious delinquency (or in default). The borrower may be contacted by letter, phone or in person until a plan has been worked out between the borrower and the City to bring the account to current status. Upon making the determination that the borrower is seriously delinquent and has the potential for default or is unwilling to maintain the loan payments, the City will review the account to determine the appropriate course of action to protect the assets of the City.

The location and condition of any tangible collateral should be ascertained. This may involve a site visit. Guarantors or co-makers should be notified of the status of the loan to avoid catching them off guard should demand later be issued. Also guarantors can be helpful in collecting from maker.

Collection action by the City beyond the mailing of a late notice or routine oral or written communication that may occur includes:

- Issuance of a formal, written demand for the loan balance.
- Filing a lawsuit to recover a loan balance.
- Placing a lien on property.
- Filing a Notice of Default against collateral (foreclosure).
- Ordering the sale of repossessed or foreclosed collateral.
- Filing a lawsuit to recover a deficiency balance.
- Filing a petition with a Bankruptcy Court requesting that a borrower be adjudged a bankrupt.

All persons involved in the collection of delinquent loans will, at all times, adhere to applicable state and federal law governing collections including, but not limited to: Federal Regulation B (Equal Credit Opportunity), requiring equal treatment of debtors

regardless of their sex, age or marital status and the Federal Fair Debt Collection Practices Act, which prohibits harassment of delinquent debtors.

7.4 Repossession and Foreclosure

If the borrower and the City cannot resolve a non-payment issue, the City may consider recovery and sale of the loan collateral. In the case of personal property collateral the borrower is expected to surrender the collateral at a time and place designated by the City. Repossessed and personal property collateral should be assessed as to condition and inventoried immediately upon its delivery to the City. It should then be held in safekeeping and insured against loss.

After all collateral has been sold and the proceeds of the sale(s) applied to the loan, and if there is a balance remaining, the borrower will be notified of this deficiency balance by the certified mailing of a demand notice, demanding payment of the balance by a specific date. If the balance has not been paid by the date specified, the City will consider the appropriate courses of action for the situation.

If uncontaminated real property is used as collateral, foreclosure is an option that may be considered if no other means of resolving the problem are available. The procedure of foreclosure differs from that of repossession. Foreclosure is commenced by the Deed of Trust beneficiary instructing the Trustee (Title Company) to file a notice of default.

Due to the nature of the BRLF Program, real property collateral may be second or third trust deeds, and therefore subject to one or more senior loans. If the BRLF loan program is in default, it is likely that the senior lienholder's loan(s) are also in default. The actions of other lienholders should be monitored in order to protect the lienholder's interest, as foreclosure by a senior lienholder will eliminate the existence of any junior liens.

If a balance remains on the loan after the sale of real property acquired through regular foreclosure, the City will determine if the borrower will be pursued for the deficiency.

7.5 Bankruptcy

The Bankruptcy Court will issue a stay order in all cases when a borrower files for protection under Chapter 7, 11 or 13 bankruptcy laws. This order requires all creditors to stop any action then ongoing and to cease all collection activity on the debt. This period is also an opportunity for secured creditors to file a claim against the assets of the borrower. The claim is filed with the bankruptcy court having jurisdiction over the case. The court will also appoint a trustee to process the claim and deal with the creditors and the assets. Secured creditors are given preference over unsecured creditors, or those secured by intangible assets, in the payment of their claims.

7.6 Revision of Repayment Terms

If the reason for non-payment is considered temporary, the loan may be revised with the approval of the City. During any period of revision, the borrower must at least be able to make interest payments, and must understand that the revision is temporary. He/She is expected to resume regular payments at the end of the revision period.

7.7 Delinquency Accounting

Delinquency accounting is as of the last day of each quarter or annually, dependent upon loan terms. The loan status categories used in this monthly accounting are current, 30 days, 60 days, 90 days and 120+days. For reporting and accounting purposes only, a loan is considered current if it's next due date falls within the quarter just ended, or later. For example, as of July 31st, any loan due for its July or later payment would be in the current category.

A loan is considered to be 30 days past due if its quarterly payment was due within the month prior to the 5th day of the month just ended. For example, as of the 6th day, any loan due for its July payment would be in the 30 day category and so forth. This method of reporting delinquency is used to standardize reporting on loans with different due dates, and differs from the contractual delinquency of a loan, which determines when late notices, late charges and default rates are imposed. A loan is contractually delinquent when it is one or more days late for a part of a payment.

7.8 Administrative Procedures

Administrative Loan files, including all pertinent documentation will be the property of the City and will be stored in a secure non-public location. The Credit File portion of the Administrative Loan File will be retained by the City and stored in locked cabinets.

Quarterly reporting to USEPA is the responsibility of the City.

In order for the City to meet the federal reporting requirements, a cost share report with supporting documentation, covering the period from July 1 to June 30 of each City fiscal year is to be provided by each borrower or subgrantee and submitted to the BRLF Program Manager. This report is due no later than July 30th of each calendar year.

8 OTHER PROVISIONS

8.1 Non-Discrimination/Equal Opportunity Lender

The City will loan monies on a nondiscriminatory basis and no Applicant will be denied a loan on the basis of race, color, national origin, religion, handicap, sex, marital status, sexual orientation or age (provided that the Applicant is of sufficient age to enter into a binding contract). Furthermore, the City will not discriminate on the basis of whether all or a part of the applicant's income derives from any public assistance program, or whether the applicant in good faith exercises any rights under the Consumer Protection Act.

8.2 Disclosure of Applicant Information

Applicants of the BRLF Program are advised that the Program uses public funds. Public records submitted to the City may be made public pursuant to the statutes of the United States of America and the State of California unless they are exempt by statute. USEPA and the City will adhere to the federal Privacy Act of 1974 (5 U.S.C. §552a), a law which mandates how federal agencies maintain records about individuals. The law strives to balance the government's need to maintain these records with the individual's right to be protected from unwarranted invasions of personal privacy.

The federal Privacy Act requires that agencies only collect information on individuals that is necessary to carry out an agency function, provide safeguards to protect the records from unauthorized access and disclosure, allow people to see the records kept on them and provide an opportunity to correct inaccuracies.

As a Public entity, the City's records (and those of the loan recipients and contractors) are also subject to the Public Records Act. The Public Records Act is designed to give public access to information in possession of public agencies: "public records are open to inspection at all times during the office hours of the...agency and every person has a right to inspect any public record, except as...provided, [and to receive] an exact copy" of an identifiable record unless impracticable (Government Code §6253). Specific exceptions to disclosure are listed in the Government Code. The City does not disclose personal financial information of applicants to third parties for marketing purposes.

8.3 National Environmental Policy Act (NEPA)

Use of these funds will require the borrower to be in compliance with the National Environmental Policy Act (NEPA).

8.4 Conflict of Interest

Conflict of interest provisions govern the roles and responsibilities of the lead agency, fund manager, site manager and borrower in compliance with C.F.R. §31.36(b) (3) and §35.6550(b).

9 FOR AN APPLICATION PACKAGE OR MORE INFORMATION CONTACT

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Eligible applicants are invited to submit a completed BRLF Application to the Economic Development Department (EDD) office. The EDD will initiate the loan review and analysis and submit it to the Loan Review Committee with a final recommendation.