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AG 2000 -121

August 16, 2000

City Council  
Sacramento, California

Honorable Members in Session:

SUBJECT: Brownfield Cleanup Revolving Loan Fund – Modification of Rates and Terms

LOCATION & COUNCIL DISTRICT - Citywide

RECOMMENDATION

Staff recommends adoption of the attached resolutions that authorize:

- ◆ modification of the terms and conditions of the Sacramento Brownfield Cleanup Revolving Loan Fund (SBCRLF) to make the program available city-wide on the most effective terms;
- ◆ the City Manager to accept additional grant funds from the EPA under an amendment to the existing Assistance Agreement, should they be made available to the City; and,
- ◆ The City Manager and the Executive Director to sign an Amended Memorandum of Understanding between the City of Sacramento and Sacramento Housing and Redevelopment Agency which reflects the recommended changes and clearly defines the delegation of roles, responsibilities and compensation.

CONTACT PERSONS

Leslie Fritzsche, Program Manager, 440-1399 ext 1301  
Beverly Fretz-Brown, Director, Development Services, 440-1317

FOR COUNCIL MEETING OF - August 29, 2000

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## SUMMARY

In 1997 the City received an award of \$350,000 from the U. S. Environmental Protection Agency to operate a revolving loan fund for the cleanup of sites contaminated with hazardous substances. In 1999 the EPA amended its Assistance Agreement with Sacramento to increase the loan fund to \$500,000.

The terms of Sacramento's program limited availability to five redevelopment areas where, unfortunately, the funds are unable to fulfill the needs of the area. Specifically potential sites have needed more liberal funding terms, or have been contaminated with ineligible substances such as petroleum. There is one application in process; however the requested loan terms would require a waiver of the current BCRLF program to be feasible.

This report recommends modification of the terms and conditions of the existing SBCRLF program to make the loans available throughout the City and upon more favorable terms. A summary of the changes may be found in Attachment I. When all the funds in the SBCLRF become encumbered, and should the EPA offer to increase the award through under the terms of the existing Assistance Agreement, the City Manager would be authorized to accept additional grant funds. Finally, the report recommends the City Manager and Executive Director execute an Amended Memorandum of Agreement which incorporates the new terms and conditions, and outlines the roles and responsibilities of the City and Agency in the delivery of this program (please see Attachment II).

## COMMISSION ACTION

At its meeting August 16, 2000 meeting the Sacramento Housing and Redevelopment Commission adopted a motion recommending approval of the attached resolutions. The votes were as follows:

AYES:	Amundson, Burns, Castello, Cespedes, Dobbins, Harland, Newsome, Simon
NOES:	None
ABSENT:	Holloway, Rotz

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### BACKGROUND

In September 1997 the City of Sacramento was selected to receive a grant of \$350,000 from the U.S. Environmental Protection Agency (EPA) to operate a brownfield cleanup revolving loan fund (BCRLF). In 1999 the EPA changed the terms of its BCRLF program and increased the award to \$500,000. The grant may be used to capitalize a revolving loan fund, and to pay administrative costs. The Sacramento BCRLF is governed by a combination of minimal EPA loan terms and requirements, and more comprehensive local guidelines.

A "brownfield" is generally defined as a site which is unused or under-utilized due to the actual or perceived presence of hazardous substances. These conditions occur in both commercial and residential settings. As new development and investment by-pass the suspect site it becomes a blight to the community, and in worse scenarios it may also present health hazards.

### Loan Terms and Conditions

The EPA program guidelines allow the funds to be used for cleanup of hazardous substances (excepting petroleum, asbestos, and lead). The funds may not be used for the preliminary testing and assessment processes. The City adopted local program guidelines limiting use of the funds to five redevelopment areas (Del Paso Heights, Franklin Boulevard, North Sacramento, Oak Park, and the R Street Corridor). The loan terms included: an interest rate of four percent below prime rate (in accordance with EPA requirements at the time); a maximum term of three years; and an application fee of \$100.

The guidelines adopted by Sacramento make the program ineligible and unattractive to its potential market segment. Because the funds must be a loan, not a grant, successful projects are most likely to be located in areas with strong increases in property values and likelihood of commercial development in order to accommodate repayment of the loan; or the loan terms must be flexible to accommodate sites with minimal profitability.

Nationwide only two loans have been closed under this program. The EPA believes this is primarily due to its early requirements on interest rates; prohibition against petroleum, lead-based paint, or asbestos; and restriction against loans to municipal agencies or responsible parties (a responsible party is the generator of the contamination, or subsequent owner with legal liability). In order to make the program more successful the EPA has amended some of its terms. It has removed the requirement to charge any interest on these loans, and the prohibition against loans to municipal entities. Also, the EPA is currently seeking to approve responsible parties as eligible borrowers.

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Likewise, City and SHRA staff are proposing changes to the local guidelines to make the BCRLF a useful tool to promote in-fill development in Sacramento. Funds will be made available citywide, and on less restrictive loan terms. A summary of the proposed changes is in Attachment I.

### Additional EPA Grant Funds

The application for BCRLF currently in process may require the entire amount of the current EPA grant of \$500,000. Once the grant funds are fully encumbered, no further loan activity would be possible until sufficient funds are repaid. However, the EPA is willing to amend its Assistance Agreement with Sacramento provide an additional \$500,000 once the original funds are fully obligated. Repayment of loans will provide second generation funds that may be used under the same terms of the grant from EPA. Additionally, staff will investigate the feasibility of selling performing loans to financial institutions in fulfillment of their commitment to the Community Reinvestment Act.

### Memorandum of Understanding

The Memorandum of Understanding between the City of Sacramento (the "City") and Sacramento Housing and Redevelopment Agency (SHRA) designates the City to serve as Lead Agency and SHRA to serve as the BCRLF Fund Manager. Both parties have duties clearly defined by the terms of the Assistance Agreement with EPA. The 15 percent of the grant funds eligible to pay administrative costs were assigned to SHRA.

City and SHRA staffs' experience with the program thus far has increased the understanding of staff involvement necessary to deliver the program. This report therefore recommends that the MOU be modified to clearly delegate the roles, responsibilities, and compensation associated with the SBCRLF.

The City shall serve as the Lead Agency with responsibility for:

- ◆ ensuring environmental cleanups using BCRLF funds are conducted in accordance with the Assistance Agreement, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) and the National Contingency Plan (NCP)
- ◆ providing technical assistance to applicants

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SHRA shall serve as Fund Manager with responsibility for:

- ◆ ensuring that the BCRLF is managed in conformance with the cooperative agreement, applicable laws and regulations, and prudent lending practices
- ◆ tracking and reporting financial transactions in accordance with the terms and conditions of the award letter
- ◆ providing quarterly and annual reports on program status to the EPA and the City
- ◆ provide technical assistance to applicants
- ◆ marketing the program to promote its full useage and benefits
- ◆ recommending changes to the program as needed to enhance its effectiveness
- ◆ processing and underwriting loan applications, and presentation for approval
- ◆ preparing all documents necessary to complete a prudent loan transaction
- ◆ administering disbursement and repayment of funds

In recompense for the above activities, the City and SHRA shall divide all administrative funds received as follows: one-third will be paid to the City and two-thirds will be paid to SHRA.

### **FINANCIAL CONSIDERATIONS**

The City has received an award of \$500,000 from EPA. Terms of the award allow 15 percent of the funds to pay for administrative costs. That amount may be drawn down in proportion to disbursements of award funds up to the amount of administrative costs incurred. (*ei* if a borrower requested a disbursement of \$100,000, then SHRA could receive a total draw of \$115,000 and request up to \$15,000 for administrative costs incurred). Funds may be requested through the LOCCS system.

The amount of administrative funds which will become available to the City and SHRA during a program year is difficult to predict. The level of borrowing activity (and the accompanying administrative funds) will be in proportion to the level of staff activity to market the loan program and assist borrowers to develop a successful application.

### **POLICY CONSIDERATIONS**

The actions recommended in this report are consistent with previously approved policies to assist commercial projects.

### **ENVIRONMENTAL REVIEW**

The proposed action does not constitute a project under CEQA per Guidelines Section 15378(b)(3), and is exempt from NEPA per 24CGR Part 58.34(a)(4). Projects which receive BCRLF loans will be subject to environmental review.

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**M/WBE CONSIDERATIONS**

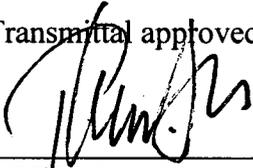
M/WBE considerations do not apply to the actions included in this report. However, the terms of the award from EPA include goals for inclusion of minority- and women-owned businesses. EPA's goals apply to prime contractors and contractors making awards to subcontractors. They will be required to take race- and gender-neutral yet affirmative steps to reach the goals. Projects which receive BCRLF loans will be monitored and the use of M/WBE firms will be reported to EPA.

Respectfully submitted,



ANNE M. MOORE  
Executive Director

Transmittal approved,



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ROBERT P. THOMAS  
City Manager

ATTACHMENT I – SUMMARY AND COMPARISON OF LOAN TERMS

**SACRAMENTO BROWNFIELD CLEANUP  
REVOLVING LOAN FUND  
Terms and Conditions**

<b>ELIGIBLE USES:</b>	Borrowers may use funds for the cleanup of hazardous substances excepting asbestos, lead, and petroleum. However if eligible and non-eligible substances are commingled, the site will be eligible. The cost of specialty insurance products and agency oversight may be included. Borrowers may also use up to ten percent of loan funds for administrative costs and community outreach. Pre-cleanup activities such as assessment, characterization, remediation plan and feasibility review are not eligible.	
<b>ELIGIBLE LOCATIONS:</b>	City wide	
<b>INTEREST RATE:</b>	Zero to Three percent (to be negotiated)	
<b>MAXIMUM TERM:</b>	Twenty years. Loans may be structured with a shorter maturity and options for five-year extensions up to a maximum of 20 years.	
<b>PAYMENT SCHEDULE:</b>	Flexible	
<b>APPLICATION FEE:</b>	\$250 after initial screening for eligibility	
<b>LOAN FEE:</b>	Up to 5 years	No fee
	Up to 10 years	One percent
	Up to 15 years	Two percent
	Up to 20 years	Three percent
<b>EXTENSION FEE:</b>	Five-year extension:	One percent plus \$150
<b>COLLATERAL:</b>	Collateral may consist of subject site, other sites, personal property, other collateral, letters of credit, or a combination of these	
<b>LOAN TO VALUE RATIO:</b>	Maximum LTV (or CLTV) is 90 percent. If the collateral is a stream of income, the debt service coverage should be 1.05	

**COMPARISON OF LOAN TERMS AND CONDITIONS**

	<b>BROWNFIELD CLEAN UP EPA requirements</b>	<b>SACRAMENTO BROWNFIELD CLEAN UP LOAN - Current Terms</b>	<b>SACRAMENTO BROWNFIELD CLEAN UP LOAN - Proposed Terms</b>
Types of assistance	Loans, loan guarantees, NO GRANTS	Same	Same
Eligible locations	Open	Sites in North Sacramento, Oak Park, Richards Blvd, R Street Corridor, & Stockton Blvd. – Which are in process of being developed	City-wide
Clean-up period restrictions	NO projects which MUST be completed in less than six months; NO projects which will require MORE than 12 months to complete	Same	Same
Contaminant eligibility	No petroleum, lead or asbestos products	Same	Same
Eligible uses of funds	Removal, mitigation and prevention of releases or threats of releases of hazardous substances, clean-up insurance.	Same	Same
Ineligible uses of funds	No pre-clean up activities (ie Site assessments, characterization, feasibility review, remediation plans)	Same	Same
Agency administration costs	May use up to 15% of grant amount, 10% of repaid principal, and 100% of repaid interest	All administrative funds designated to SHRA	Split administrative funds between the City and SHRA - one-third and two-thirds
Borrower administrative costs	May use up to 10% of loan amount for administration (and response planning costs)	Same	Same
Disbursal of funds	Per agreed-upon schedule, OR as reimbursement	Same	Same
Loan term	Open	Three year maximum term	Up to 20 years. Loans may be structured for less than 20 with options for extensions.
	<b>BROWNFIELD CLEAN UP EPA requirements</b>	<b>BROWNFIELD CLEAN UP Current terms</b>	<b>BROWNFIELD CLEAN UP Proposed terms</b>

	<b>BROWNFIELD CLEAN UP EPA requirements</b>	<b>BROWNFIELD CLEAN UP Current terms</b>	<b>BROWNFIELD CLEAN UP Proposed terms</b>
Interest rate	Market rate or less, not less than 0%	Floor rate is Prime less four percent	Zero to Three percent (to be negotiated, preference given to redevelopment areas, or other target areas)
Fees	Open	\$100 application fee (after eligibility review completed) 1% loan fee in staff report but not fact sheet	<b>REDEVELOPMENT AREAS</b>  Application fee \$ 250  Loan Fee: 0 – 5 years    No fee Up to 10 years    1 % Up to 15 years    2 % Up to 20 years    3 %  Five year extension 1 % plus \$150
Repayment schedule	Open	Same	Up to 20 years
Repayment Terms	Open	Open	Same
Borrower's responsibilities	Develop and conduct response, maintain documentation for 10 years, sign written loan agreements, comply with federal & state regulations, provide collateral as required	Same	Same
Program income	Must be used first	Same	Same
Size of loan	Open	Same	Same
Collateral	May be lien on subject or other property, chattel lien, personal guarantee, or pledge of other assets	Same	Same 90% LTV or 1.05 DSC
Loan fund usage	Goal : 50% average outstanding.	Goal: 40% @ 18 months; 70% @ 24 months; 100% @ 36 months	
Other eligible sources of funds	TI, CDBG, HOME, HTF		

**MEMORANDUM OF UNDERSTANDING**

**BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM**

**RECITALS**

WHEREAS, the United States Environmental Protection Agency (EPA) has launched the Brownfields Economic Redevelopment Initiative to empower states, local governments, and Indian tribes to prevent, assess, safely cleanup, and sustainably reuse sites contaminated with hazardous substances.

WHEREAS, in 1995 the CITY OF SACRAMENTO (CITY) was awarded a Brownfield Pilot Project Grant.

WHEREAS, in July, 1997 the CITY was notified of a commitment of \$350,000 from the EPA to implement a Brownfields Cleanup Revolving Loan Fund (BCRLF).

WHEREAS, in September 1999 the CITY was notified of an additional commitment of \$150,000 from the EPA to implement the BCRLF

WHEREAS, the CITY is the Lead Agency and Cooperative Agreement recipient for the BCRLF as those terms are defined by EPA under the Brownfields Economic Redevelopment Initiative grant.

WHEREAS, the CITY, as Lead Agency, may designate a Fund Manager to manage the BCRLF in conformance with the Cooperative Agreement, federal and state requirements, and prudent lending practices.

WHEREAS, the Sacramento Housing and Redevelopment Agency (SHRA) is an experienced revolving loan fund manager, currently managing both state and federal loan funds.

NOW THEREFORE, the SHRA and the CITY agree as follows:

**AGREEMENT**

1. The CITY designates the SHRA to serve as the BCRLF Fund Manager and SHRA accepts such designation.

2. SHRA will advertise and promote the BCRLF program city wide, and in conjunction with other redevelopment financial incentives in the all Redevelopment Project Areas

3. SHRA will establish procedural and loan underwriting guidelines for the BCRLF program, including application and administrative fees to be charged to borrowers. The Sacramento Housing and Redevelopment Commission loan committee will be delegated authority to approve or deny individual BCRLF loans.

4. SHRA will draw down approved loan funds directly from EPA. Each draw-down will be at 115% of the loan amount, with one-third of the extra 15 percent going to the City to compensate for Lead Agency administrative costs and two-thirds going to SHRA to compensate for marketing costs and the program's administrative costs.

5. SHRA will report to the CITY and EPA on a quarterly basis regarding the success of the BCRLF. In its reports, SHRA will summarize the program's marketing efforts, loan proposals under consideration, completed loan transactions, and loan repayment activities.

6. Neither SHRA, nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by CITY under this Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, CITY shall fully indemnify, defend and hold SHRA harmless from any liability imposed for injury to persons or property occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction delegated to CITY under this Agreement.

7. Neither CITY, nor any officer or employee thereof, shall be responsible for any damage or liability occurring by reason of anything done or omitted to be done by SHRA under this Agreement. It is also understood and agreed that, pursuant to Government Code Section 895.4, SHRA shall fully indemnify, defend and hold CITY harmless from any liability imposed for injury to persons or property occurring by reason of anything done or omitted to be done by SHRA under or in connection with any work, authority or jurisdiction delegated to SHRA under this Agreement.

8. This Agreement may only be modified or amended in writing signed by both parties.

9. The term of this Agreement shall be for six (6) years commencing October 7, 1997. This Agreement may be terminated by either party upon sixty (60) days following receipt of written notice to the other party.

CITY OF SACRAMENTO

SACRAMENTO HOUSING AND  
REDEVELOPMENT AGENCY

BY \_\_\_\_\_  
Robert P. Thomas  
City Manager

By \_\_\_\_\_  
Anne M. Moore  
Executive Director

APPROVED AS TO FORM:

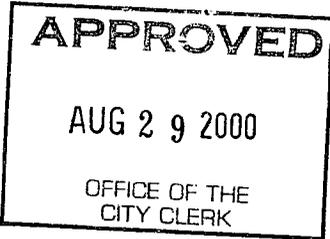
APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Agency Counsel

ATTEST:

\_\_\_\_\_  
City Clerk



**RESOLUTION NO. 2000-504**

**ADOPTED BY THE SACRAMENTO CITY COUNCIL**

ON DATE OF

**SACRAMENTO BROWNFIELD CLEANUP  
REVOLVING LOAN PROGRAM**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO:

Section 1. The modifications to the terms and conditions of the Sacramento Brownfield Cleanup Revolving Loan Fund recommended in this staff report are approved.

Section 2. The City Manager is authorized to accept all increases in grant funding from the U.S. Environmental Protection Agency awarded to increase the Brownfield Cleanup Revolving Loan Fund.

Section 3. The City Manager and Executive Director of Sacramento Housing and Redevelopment Agency are authorized to sign the Amended Memorandum of Agreement in connection with administration of the Sacramento Brownfield Cleanup Revolving Loan Fund.

\_\_\_\_\_  
MAYOR

ATTEST:

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
**FOR CITY CLERK USE ONLY**

RESOLUTION NO.: \_\_\_\_\_

DATE ADOPTED: \_\_\_\_\_