

RESOLUTION NO. 83-2007

Adopted August 7, 2007

AUTHORIZING A MEMORANDUM OF AGREEMENT WITH THE DEPARTMENT OF TOXIC SUBSTANCES CONTROL AND THE CITY OF LOS ANGELES TO PARTICIPATE IN THE CALIFORNIA BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM; BAYVIEW HUNTERS POINT REDEVELOPMENT PROJECT AREA

BASIS FOR RESOLUTION

1. In 2005, the Redevelopment Agency of the City and County of San Francisco ("Agency") was invited to join the California Department of Toxic Substances Control ("DTSC") and the City of Los Angeles ("Los Angeles") in a coalition called California's Urban Reuse for Brownfields ("CURB"), for the purpose of submitting an application for a Revolving Loan Fund Grant through the United States Environmental Protection Agency ("EPA") Brownfields Program.
2. On December 14, 2005, CURB submitted an application for \$3 million in EPA funds to establish for a California Brownfields Cleanup Revolving Loan Fund ("CBCRLF") administered by DTSC, to assist the Agency, Los Angeles and the State in funding the environmental cleanup of up to 15 Brownfield sites in their respective jurisdictions over the next 5 years. The funds would be used to make loans and grants, cover certain administrative costs of CURB members and potentially fund loan guarantees.
3. In June 2006, CURB was selected for an EPA coalition grant award of \$3 million for the CBCRLF. DTSC submitted the final grant application on behalf of the CURB Coalition and is the Cooperative Agreement Recipient for the EPA grant ("Grant"), awarded on August 10, 2006. This Grant is for a five-year period ending on June 30, 2011.
4. Administration of the Grant requires a working partnership among CURB Coalition members in conducting the various operational and administrative activities of the CBCRLF. A Memorandum of Agreement ("MOA") describes the CBCRLF Program organization and roles and responsibilities of each CURB member in implementing the CBCRLF.
5. Authorizing the MOA with DTSC and Los Angeles to conduct the various operational and administrative activities of the CBCRLF and participate in the CBCRLF Program implements DTSC regulations and restores the environment on the individual Brownfield sites, and therefore, is exempt from the California Environmental Quality Act ("CEQA"), pursuant to CEQA Guidelines Section 15308.

**CALIFORNIA BROWNFIELDS CLEANUP REVOLVING LOAN FUND
MEMORANDUM OF AGREEMENT**

This Memorandum of Agreement (hereinafter "MOA"), executed on the respective date of the signatures of the parties shown hereafter, is effective as of _____ 2007 between the **DEPARTMENT OF TOXIC SUBSTANCES CONTROL**, (hereinafter "**DTSC**"), State of California, **City of Los Angeles and the Redevelopment Agency of the City and County of San Francisco** (hereinafter "**COALITION PARTNERS**"), political subdivisions of the State of California.

WHEREAS, the **United States Environmental Protection Agency** (hereinafter "**EPA**"), in recognition of the lingering threat to public health and the negative effect of "brownfields" on community economic vitality, established a Brownfields Economic Redevelopment Initiative to facilitate State and local efforts to redevelop brownfields sites, defined as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant" in the **Comprehensive Environmental Response, Compensation, and Liability Act** of 1980, § 101(39), as amended (hereinafter "**CERCLA**");

WHEREAS, as part of its Initiative, EPA established a Brownfields Cleanup Revolving Loan Fund grant program to capitalize State and local revolving loan funds for low-cost loans for the cleanup of contaminated sites;

WHEREAS, the State of California, through DTSC, is establishing a State brownfields program to address the public and environmental health issues posed by brownfields in California and to facilitate redevelopment of these properties in California;

WHEREAS, DTSC and the COALITION PARTNERS formed California's Urban and Rural Brownfields Coalition, herein after "**CURB Coalition**," which was selected for an EPA coalition grant award of \$3 million for a **California Brownfields Cleanup Revolving Loan Fund** (hereinafter "**CBCRLF**") in June 2006;

WHEREAS, DTSC submitted the final grant application on behalf of the CURB Coalition and is the Cooperative Agreement Recipient for EPA grant, BF-96987501-0, awarded August 10, 2006;

WHEREAS, \$2,500,000 of the \$3 million grant award must be allocated for the cleanup of hazardous substance release sites and \$500,000 must be allotted for the cleanup of petroleum sites. No less than sixty (60) percent of the \$3 million grant award must be used for direct loans and no more than forty (40) percent for subgrants under each category (Hazardous Waste and Petroleum);

WHEREAS, the CBCRLF Workplan approved by EPA relies on a working partnership among CURB Coalition members in conducting the various operational and

administrative activities of the CBCRLF Program;

NOW, THEREFORE, in consideration of the promises contained in this MOA, the parties hereto agree as follows:

A. Purpose:

1. The purpose of the California Brownfields Cleanup Revolving Loan Fund is to facilitate the reuse and/or redevelopment of contaminated sites by making low-cost financing available for the cleanup of eligible public or privately-held properties. Funding source is the EPA grant.

B. CBCRLF Program Organization and Responsibilities:

1. The CBCRLF Program will be administered by DTSC, assisted by a CBCRLF Program Team of at least one representative from each of the three (3) parties signed below. The CBCRLF Program Team will meet to discuss issues and make decisions regarding the CBCRLF Program and use of grant funds. A CBCRLF Loan Committee will be responsible for approving loan recipients.
2. Each CURB Coalition Partner must authorize in writing their designee to the CBCRLF Program Team. DTSC and each of the CURB Coalition Partners must each designate in writing the name of the person authorized to serve on the Loan Committee.
3. The primary responsibilities of each CURB Coalition member and the CBCRLF Loan Committee are set forth in this section, and are detailed in the CBCRLF Implementation Plan (Exhibit 1).
 - a. DTSC Roles and Responsibilities:
 - 1) DTSC is the Cooperative Agreement Recipient and Lead Agency for the EPA grant.
 - 2) DTSC is the Project Manager and is responsible for overall grant administration, CBCRLF Program development, procurement, marketing, and ensuring that grant activities and funds comply with the CBCRLF Cooperative Agreement (reporting), EPA grant guidelines, and underlying federal and State laws.
 - 3) DTSC will provide for technical loan services, including the review of loan applications, recommendations regarding loan approval or disapproval, and loan execution and closing.
 - 4) DTSC is the Fund Manager for the CBCRLF, and is responsible for program forms and documents, managing and servicing loan agreements, and loan accounting and record keeping.

- 5) DTSC will assist in ensuring timely review and processing of Voluntary Cleanup Program applications for CBCRLF funding.
- 6) DTSC will assist successful loan applicants and the respective local governmental entity, as needed, with site-specific community involvement activities.
- 7) For loan recipients within the City of Los Angeles or within the City and County of San Francisco, DTSC will:
 - a) Coordinate review of the loan application with the respective local governmental entity and ensure its consistency with local and State plans;
 - b) Facilitate communication with the respective local governmental entity on all matters related to the cleanup project; and
 - c) Ensure that EPA community involvement requirements are met for the cleanup project.
- 8) DTSC is the Site Manager for the CBCRLF grant, and is responsible for assuring that cleanups conducted under the CBCRLF Program are in compliance with State and federal environmental laws and in accordance with the CBCRLF Cooperative Agreement.
- 9) For sites outside of the City of Los Angeles, and outside of the City and County of San Francisco, DTSC will oversee cleanup activities funded by CBCRLF loans through the **State Voluntary Cleanup Program (VCP)**, and may charge fees in accordance with VCP rules.
 - a) DTSC will assign an individual Site Manager for each CBCRLF site, who will be responsible for overseeing cleanups at specific sites, including field visits.
 - b) DTSC will establish and maintain the administrative record for each CBCRLF site, and provide information to the CURB Coalition Partner, or the appropriate representatives, regarding cleanup activities and institutional controls required upon completion of cleanup activities.
 - c) DTSC will work with the CURB Coalition Partner, or the appropriate representatives, to assist loan recipients in conducting site-specific community involvement activities as required by the VCP.
 - d) DTSC will respond to public inquiries about public and environmental health matters at CBCRLF cleanup sites.
 - e) DTSC will assist in notifying EPA and securing a site if cleanup activities must be terminated prior to completion for any reason.

b. CURB/Coalition Partners' Roles and Responsibilities:

- 1) The CURB Coalition Partners will designate an individual or individuals to serve on the CBCRLF Program Team and the CBCRLF Loan Committee. The CBCRLF Program Team representative shall be the local governmental entity liaison for the CBCRLF Program. Each CURB Coalition Partner must notify all Coalition members of the name, postal address, telephone, email, and fax information of the

CBCRLF Program Team representative and the Loan Committee representative.

- 2) The CURB Coalition Partners are responsible for ensuring the consistency of CBCRLF cleanup projects with their respective local plans and planning priorities, and for ensuring local agency review of the loan applications received. CBCRLF Program Team representatives will participate in any preapplication meetings with prospective loan applicants.
- 3) CBCRLF Program Team representatives will assist CBCRLF cleanup projects within their jurisdiction by:
 - a) Participating in site-specific community involvement activities; and
 - b) Ensuring that a public repository for cleanup-related documents is established and maintained within the community until approval of a final report documenting the completion of all cleanup-related activities.
- 4) CURB Coalition Partners will assist DTSC in the ongoing identification of sites within their jurisdiction with potential for brownfields redevelopment, and in integrating brownfields redevelopment in ongoing local planning processes and expanding brownfields redevelopment opportunities within their region.
- 5) EPA grant funds will be used to pay the travel and lodging expenses for one (1) CBCRLF Program Team representative (or their designee) from each CURB Coalition Partner to attend an EPA-sponsored brownfields conference or workshop at least once a year for the duration of the EPA grant.
- 6) For sites within the City of Los Angeles, or within the City and County of San Francisco, the CURB Coalition Partners will determine who should conduct the oversight cleanup activities based on: 1) if the cleanup activities qualify for a locally-delegated State program; or 2) if the loan applicant requests local oversight and DTSC concurs. If the CURB partners determine that local oversight is appropriate, the local oversight agency is responsible for assessing community awareness/concern; for instance, information regarding the community's knowledge of the site, the types of community concerns, media interest or likelihood of interest, and involvement of any community groups. Please see Attachment A.

c. CBCRLF Loan Committee Roles and Responsibilities:

- 1) The Loan Committee shall approve CBCRLF loans, based on the recommendations from DTSC, the CBCRLF Program Team, and the affected region.
- 2) The Loan Committee shall be comprised of no more than five (5) members: three (3) voting members, one each to be designated by the Redevelopment Agency of the City and County of San Francisco, the City of Los Angeles, and DTSC for the State of California, and up

to two (2) non-voting members with expertise in project financing and redevelopment. The CBCRLF Program Team and the members of the Loan Committee may select the two non-voting members from entities outside the CURB Coalition. The non-voting members shall participate in an advisory capacity to the voting members of the Loan Committee.

- 3) No member of the Loan Committee may vote on or participate in discussions of projects where that Loan Committee member has a direct personal financial interest in any contract or Brownfields project, existing or proposed, that may be brought before the Loan Committee. For purposes of this section, "financial interest" shall mean a substantial interest held by a member or member's immediate family, such as:
 - a) An ownership interest in a business;
 - b) Employment or prospective employment for which negotiations have begun;
 - c) An ownership interest in real or personal property;
 - d) A loan or other debt or interest in business or real property; or
 - e) A position as director or officer in a business.
- 4) If a member of the Loan Committee has a preexisting actual or appearance of a conflict of interest, he or she shall immediately disclose this in writing to the Committee, and this disclosure shall be entered into the minutes of the Committee.
- 5) The Loan Committee shall base *its* review and decision on the strength of a loan proposal with respect to CBCRLF Program objectives and criteria contained in the CBCRLF Implementation Plan.
- 6) Each CURB Coalition Partner will contribute a 20% match to the funds disbursed to projects in its jurisdiction. If new members join the Coalition, each must contribute a 20% match following the same principle. The mechanism for the match will be determined by each Partner and must adhere to EPA criteria. A combination of mechanisms can be used and may include: in-kind services, personnel costs, additional cleanup costs, Community Development Block Grant funds, and tax-increment funds.

An available cleanup cost mechanism to meet the 20% cost share is to loan applicants 80% of the estimated cost of their cleanups, and provide EPA with invoices for 100% of the cost of the cleanups (with the remaining 20% contributed by the applicant attributable to the appropriate CURB Coalition partner's cost share).

Coalition-wide activities (like general marketing) by a CURB Coalition Partner can be applied to 20% obligation of that partner. In the case of loans, the match should be made within the period of the loan. In the

case of sub-grants, the match should be made within one year of the grant issuance.

4. All parties shall assist DTSC in developing a marketing strategy and marketing the CBCRLF through their ongoing agency programs. Any additional materials prepared for dissemination to individuals, organizations, or the general public by any party must be approved by the CBCRLF Program Team. Each CURB coalition partner will be responsible for marketing the RLF program in each of its own jurisdictions.

C. Allocation of Funds for Direct Loans:

1. RLF cooperative agreement funds can be used to clean up eligible Brownfields sites. They are defined by the Brownfields law as sites where the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The Brownfields Law also specifies the RLF funds can be used at sites that are contaminated by petroleum or a petroleum product, controlled substances, or mine-scarred lands.
2. The goal of the CURB Coalition is to make up to \$ 1,000,000.00 worth of cleanup loans to projects in each CURB Coalition Partner's jurisdiction under the initial EPA grant award and over the course of the EPA grant period.
2. This goal does not constitute an entitlement to or guarantee of this amount of loan activity within each CURB Coalition Partner's jurisdiction.
3. All parties will collaborate in identifying potential projects within each CURB Coalition Partner's jurisdiction to ensure that potential loan applicants in each jurisdiction have an opportunity to access CBCRLF loan funds over time.
4. CBCRLF Loan Committee decisions will be guided by procedures and criteria contained in the CBCRLF Implementation Plan for assuring an equitable distribution of loan funding among projects in each of the CURB Coalition Partners' jurisdictions.

D. Allocation of Funds for Subgrants:

1. Eligible subgrantees are limited to states, political subdivisions, U.S. territories, Indian tribes, and non-profit organizations that own the site they intend to clean up.

The Coalition shall make no more than forty percent (40%) of funds available as subgrant awards and will give consideration to non-profit organizations and

eligible local governmental entities. For-profit organizations are not eligible for grant funding under the CBCRFL.

The Coalition shall consider projects that maximize community economic benefit from the remediation and reuse of contaminated sites under the control of non-profit organizations and eligible governmental entities for subgrant awards. A series of criteria will be used in the evaluation of subgrant award sites, including but not limited to:

- a) Location of site in relation to community facilities or sensitive populations
- b) Public benefit, greenway space or other amenities
- c) Reuse of existing public infrastructure

Subgrant applications will be reviewed for potential benefits and consistency with existing CBRLF criteria and the impact on the long-term financial ability of the CBRLF.

D. CURB Coalition Procedures:

1. Meetings. Meetings of the CBCRLF Program Team shall be convened by DTSC at least two (2) times a year. Loan Committee meetings shall be convened by DTSC on an as-needed basis. A meeting of the CBCRLF Program Team may also be called by DTSC upon the request of two members for the purpose of transacting business these members designate in the call for such meeting. No meeting shall be held unless all CBCRLF Program Team members are given notice a minimum of seven (7) days in advance, except when the participants agree to conduct a meeting and waive the meeting notice requirement.
2. Convenor. DTSC shall, in consultation with other members of the CBCRLF Program Team, prepare agendas and facilitate meetings. DTSC may designate another Member to assume the duties of Convenor in its absence.
3. Quorum for the CBCRLF Loan Committee. A quorum for the Loan Committee shall consist of the three (3) voting members. A Loan Committee member must be present either in person or by telephone to be counted in the quorum. In the event of a Committee Member's absence, that member may send a substitute who is authorized to participate and vote. Voting by written proxy is allowed. If the number of CURB Coalition Partners changes, the quorum will be redefined by agreement of the Loan Committee.
4. Decision-making. It is the intent that decisions affecting more than one CURB Coalition Member be made with member consensus whenever possible. In the event that consensus cannot be reached, a simple majority vote will decide the issue.

5. Record of Decisions. Loan Committee decisions and the rationale for approval or denial of any project funding shall be recorded in writing and maintained in adherence with grant record keeping requirements. Minutes of any other meetings or actions are not required. This documentation may be recorded at the discretion of DTSC.
6. Term of Office. Loan Committee and CBCRLF Program Team members will serve indefinite terms at the pleasure of their respective organizations.
7. Public Meetings. The CURB Coalition may hold public informational meetings as needed.

E. CURB Coalition Membership:

1. New members that meet EPA eligibility for Brownfields RLF grants may request to join the CBCRLF Program. Provisional members must submit this request in writing to DTSC and receive the approval of the CURB Coalition members. Provisional members must submit a proposal for and be awarded an EPA Brownfields RLF grant to join the CURB Coalition. New members will be required to sign an updated agreement that obligates the new members to participate in the CURB Coalition for the duration of this MOA, and under the terms and conditions of this MOA, as amended.
2. New members must contribute to the CBCRLF Program, an EPA Brownfields Revolving Loan Fund grant award, including any federal match required. EPA funds awarded to new members for revolving loans that are added to the CBCRLF will be managed in accordance with the Cooperative Agreement for that new grant, the CBCRLF Implementation Plan, and this MOA. Any non-federal funds added to the CBCRLF will be accounted for separately.
3. Members seeking to leave the CURB Coalition must submit their resignation request in writing to DTSC and must give thirty (30) days notice.

F. Term of Agreement and Termination:

1. This MOA becomes effective upon signature of the three (3) parties below. This MOA will automatically terminate on June 30, 2011 at the end of the EPA grant period. It is the intent of the CURB Coalition to continue the CBCRLF Program after the EPA grant period has ended. At that time, this MOA may be extended in three (3) year periods or a period otherwise agreed to by all parties by mutual agreement of the signing parties. Each party agrees to appoint a representative/s to the CBCRLF Program Team and Loan Committee through

June 30, 2011. In April 2011, the CURB Coalition members shall review this MOA and make changes as necessary.

2. This MOA may be terminated with thirty (30) days written notice under any of the following circumstances:
 - a) By mutual agreement of the CURB Coalition members, upon final loan distribution and expenditure of all EPA Brownfields Revolving Loan Fund grant moneys awarded to CURB Coalition members and contributed to the CBCRLF;
 - b) Where significant changes in the organization of the CBCRLF Program organization, the support capacity of participating entities, or the CBCRLF Workplan and Cooperative Agreement render this MOA impracticable;
 - c) Deobligation of the grant award or closeout of the RLF program by EPA; or
 - d) By mutual agreement of the CURB Coalition members to terminate the CBCRLF Program and return any unexpended funds to EPA.

G. Miscellaneous:

1. The CURB Coalition must not spend funds except for their intended use as defined in the CBCRLF Cooperative Agreement and the EPA BCRLF Administrative Manual (OSWER, EPA 500-B-98.001, May 1998).
2. Funds awarded or contributed to the CBCRLF Program for direct loans shall be retained by the CBCRLF Program for low-cost loans to eligible cleanup projects. Termination of this MOA or CURB Coalition membership shall have no effect on the disposition of funds for direct loans.
3. Within six months of establishing a functioning loan program, the CURB Coalition Partners will report to EPA regarding progress toward milestones, including its first milestone of reviewing five loan applications.
4. For sites within the City of Los Angeles, or within the City and County of San Francisco, where the local agency is overseeing cleanup activities funded by CBCRLF loans:
 - a. The State of California (DTSC) shall not be liable for any injuries or damages to persons or property resulting from acts or omissions by the local oversight agency or by related parties in carrying out oversight activities pursuant to this MOA, nor shall the State of California (DTSC) be held as a party to any contract entered into by the local agency or its agent in carrying out oversight activities pursuant to this MOA.
 - b. Nothing in this MOA is intended or shall preclude DTSC from taking any action authorized by law or equity to protect human health and safety or the environment and recovering the costs thereof.

- c. Nothing in this MOA shall relieve the local oversight agency from complying with all applicable federal, state, and local laws and regulations.
5. The parties acknowledge that the provisions of this MOA shall govern the parties only with respect to their individual roles and responsibilities under the CBCRLF program, and that such provisions shall not in any manner extinguish or otherwise abridge any right or prerogative granted or reserved to the individual parties by law or ordinance.
6. This MOA, together with attachments or addenda, constitutes the entire Agreement between the parties and supersedes all prior negotiations, representations, or agreements, either written or oral. This MOA may be amended only by written instrument properly signed by the parties hereto. Any amendment of this MOA shall be approved by consensus.

IN VIEW OF THE ABOVE, the parties execute this Agreement by their signatures, on the dates below, to be effective as of the date above written.

**CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL**

**SAN FRANCISCO REDEVELOPMENT
AGENCY**

By: _____
Hamid Saebfar, Deputy Director
Site Mitigation & Brownfields Reuse Program

By: _____
Marcia Rosen, Executive Director

Date

Date

CITY OF LOS ANGELES

By: _____
Detrich B. Allen, General Manager
Environmental Affairs Department

Date