

City of Berkeley Revolving Loan Fund Administrative Plan

OFFICE OF ECONOMIC DEVELOPMENT
CITY OF BERKELEY, CA

CITY OF BERKELEY REVOLVING LOAN FUND

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TABLE OF CONTENTS

Part 1: Revolving Loan Fund Strategy	Page 4
A. Economic Adjustment Program Overview	Page 4
B. The Business Development Strategy	Page 8
C. The Financing Strategy	Page 10
D. The Financing Policies	Page 12
E. Portfolio Standards and Targets	Page 15
F. Loan Selection Criteria	Page 15
G. Performance Assessment Process	Page 16
Part 2: Revolving Loan Fund Organizational Structure and Operational Procedures	Page 16
A. Organizational Structure	Page 16
B. Loan Processing Procedures	Page 18
1. Standard Loan Application Requirements	Page 18
2. Credit Reports	Page 19
3. Uniform Commercial Code Lien Search	Page 19
4. Appraisal Reports	Page 19
5. Environmental Reviews	Page 20
6. Standard Collateral Requirements	Page 21
7. Standard Equity Requirements	Page 21
8. Loan Write-up	Page 22
9. Procedures for Loan Approvals	Page 23
10. Loan Decline – Appeals Process	Page 23
C. Loan Closing and Disbursement Procedures	Page 24
1. General Closing Requirements	Page 21
2. Loan Closing Documentation Requirements	Page 21
3. Loan Disbursement Requirements	Page 22
D. Loan Servicing Procedures	Page 22
1. Loan Payments and Collection Procedures	Page 22
2. Loan Monitoring Procedures	Page 22
3. Late Payment Follow-up Procedures	Page 23
4. Collection Procedures	Page 23
5. Write-off Policies and Procedures	Page 23
E. Administrative Procedures	Page 23
1. Procedures for Loan Files and Loan Closing Documentation	Page 23
2. Procedures for Complying with EDA Reporting Requirements	Page 24
3. Grantee Control Procedures	Page 24
4. Plan Amendment Procedures	Page 24
List of Exhibits:	Page 29

PART 1: THE REVOLVING LOAN FUND STRATEGY

The RLF will supplement private financing for tenant improvements, fixed assets such as equipment for businesses, to the extent that private financing is unavailable. The RLF is designed to address areas of economic distress and help implement the City's economic development strategy for the Target Area as summarized below. The following sections provide a list of key strategies and serve as a guide for the Revolving Loan Fund.

A. ECONOMIC ADJUSTMENT STRATEGY OVERVIEW

1. Nature and Scale of Economic Challenges in South-West Berkeley

While the South Berkeley area continues to be home for many of the City's lowest income and minority residents and is one of the more economically depressed areas in the City, with the onset of the current economic crisis, unemployment now affects a wider resident population resident throughout the City of Berkeley. Further, poverty and unemployment are somewhat less geographically concentrated in South Berkeley than they once were.

Expansion of the Target Area does not mean that the RLF will cease lending in South Berkeley or cease lending to retail businesses. However, in order to combat unemployment, the RLF needs the flexibility to consider loan requests from businesses outside the area that have the potential to create more and perhaps better-quality jobs.

From March 2008 to March 2009, the Alameda County unemployment rate was 5.7% in March 2008, increasing to 10.5% in March 2009. During the same time period, the City of Berkeley experienced a similar increase in the unemployment rate increasing from 5.2% in March 2008 to 10% in March 2009. Regionally, layoffs and closures have affected our regional population at large with unemployment rates in March 2009 at 10.2%, up 4.8% from March 2008. The unemployment rate for the State of California increased from 6.5% to 11.5% during the same time period. With an employment base of 54,200, the City has lost more than 1,700 jobs in the one-year period alone.

Throughout the City major vacancies in retail and manufacturing have hit the City. In the Downtown two major retail chains have created a void in vital commercial space in the center of the downtown. Additionally major manufacturers including Scharffen Berger and Xoma announced major layoffs/closures, which will leave empty warehousing space in West Berkeley. Smaller retailers in the South Berkeley commercial area have seen a 20-30% decline in gross receipts in the past quarter. These older commercial strip areas can be characterized serving primarily expanded neighborhoods or sub-regional market areas.

Long-term vacancies, physical deterioration of building along older commercial areas coupled with a feeling of economic insecurity by consumers has discouraged outside foot traffic from coming into the downtown as well as having an adverse affect on business attraction to our commercial districts. The RLF program will not only serve to revitalize our commercial corridors but to prioritize job retention and creation in the City.

The recession of 2009 has not only cost the jobs of thousands of residents in the East Bay, it has created a credit crunch making it harder for businesses to access private capital for financing business expansion and improvements.

Businesses in the Target Area often are unable to access private capital for financing business expansion and improvements. Those who can meet private capital procurement requirements may do so at higher prices because of the current credit crunch. Use of RLF funds in tandem with private financing can reduce the risk of private financing, thereby increasing the availability of private capital to businesses.

2. Economic Adjustment Strategy Development

There are several area plans that dictate the direction of economic development activity within the City. Within the boundaries of the Target Area there are three area plans, including:

- Downtown Berkeley Area Plan
- South Berkeley Area Plan
- West Berkeley Plan

All other areas that do not fall within the area plans specified fall within the jurisdiction of the General Plan's Economic Development and Employment Element.

3. Area Resources/Assets

The commercial areas within the Target Area are primarily developed with a mix of residential and business clusters/corridors. The South Berkeley area can be characterized as neighborhood commercial districts on arterial streets: Adeline Avenue, Shattuck Avenue, Sacramento Street/San Pablo have a mix of smaller retail and service-sector businesses. Some light industrial and food processing establishments also exist along San Pablo Avenue. The Target Area is adjacent R&D firms are highly concentrated in, but not limited to, the West Berkeley area. West Berkeley has experienced continued growth in biotechnology, pharmaceuticals, environmental services and food processing. While there was a vested effort to attract growth in the previous Target Area, there was very little success in doing so. Expansion provides an opportunity to assist these sectors grow while continuing to assist our existing businesses.

The expansion of the Target Area possesses a number of resources and potential opportunities for economic development and growth, including:

- Availability of commercial zoned vacant or underutilized parcels along major traffic corridors,
- Commercial districts with their own character;
- Organized merchant associations in many districts of the city;
- Three BART stations, a rapid transit station with good bus connections;
- Recent and planned public improvements along major corridors;
- A high degree of community involvement and support for economic development and revitalization efforts;

- Commitment of a significant amount of City and federal resources, including the recent development projects and public improvements around the Downtown Berkeley and Ashby BART station, transportation enhancements along San Pablo Avenue and University Avenue, a number of City grants for business façade improvements; and
- Availability of good educational and training resources through the University of California, the Berkeley Community College District, the City’s First Source Program and other employment training programs. In particular the University of California, Berkeley and the Lawrence Berkeley National Laboratories are major draws for high tech businesses, many of which have ongoing relationships with the University.

The City has identified the following industry clusters as having the most potential for expansion and attraction efforts (in no particular order):

- Healthcare, including pharmaceuticals, medical devices, biotechnology and healthcare services;
- Environmental, including environmental technology and environmental services;
- Business services, including locally serving professional services, business related services, technical services and finance and real estate services;
- Light manufacturing, including food processing; and Retail Trade.

The healthcare, environmental and business service clusters all show an increasing potential for the creation of better paying jobs. Therefore, the City will give the highest priority to financing expansions and attracting new businesses in those clusters.

4. Strategic Adjustment Goals and Objectives

The Economic Development and Employment Element of the General Plan places heavy emphasis upon economic development strategies aimed at addressing poverty and economic distress issues in the City. The Economic Development Element of the Plan sets forth the following goals for improving economic conditions in the City of Berkeley:

Goal 1: Increase the number of jobs that go to Berkeley citizens by coordinating economic development efforts with employment placement;

Goal 2: Continue to implement the West Berkeley Plan, with its central emphasis on protecting and strengthening the city’s manufacturing sector;

Goal 2: Promote policies, programs, and services that support a diverse local economy providing a range of goods and services that support existing local businesses, and that encourage new, independent business ventures;

Goal 4: Provide programs and services to assist neighborhood and avenue commercial districts and ensure diversity in the mix of commercial good and services in the shopping districts;

Goal 5: Encourage merchant and neighborhood associations and other groups to enhance business districts and to meet the needs to adjacent neighborhoods;

Goal 6: Improve the customer access to Berkeley businesses;

Goal 7: Improve the environmental profile of all economic activity in Berkeley and promote Berkeley as a regional center for environmentally responsible business.

Goal 8: Implement capital and transit improvements to support the local economy;

Goal 9: Encourage local efforts to fund additional services and improvements for business districts, such as business improvement districts, redevelopment areas, and assessment areas;

Goal 10: Continue to diversify, revitalize and promote the Downtown as a civic, cultural, commercial and entertainment center of Berkeley; and

Goal 11: Promote Berkeley locally and internationally by taking actions to support the development of arts and culture in Berkeley.

Goal 12: Promote Berkeley as a location for appropriate business, visitor, and conference destination.

Some of the objectives in the Plan to achieve these goals are:

- *Promote resident ownership of Berkeley's businesses;*
- *Expand access to business assistance and resources for property acquisition;*
- *Encourage entrepreneurial efforts in Berkeley;*
- *Retain existing Berkeley businesses;*
- *Retain and create high quality jobs for Berkeley residents;*
- *Retain and attract Berkeley businesses that offer high quality employment opportunities which match Berkeley residents' occupational and skills profile;*
- *Promote City and nonprofit participation in businesses and housing enterprises;*
- *Promote public/private partnerships between the City, non-profit organizations and businesses;*
- *Promote investment in Berkeley on the part of private investors, banks and the City;*
- *Provide financial assistance for commercial rehabilitation and seismic upgrading.*

The Economic Development and Employment element supports these goals and objectives, while providing specific actions to reach them.

5. Implementation Programs and Activities

The City is implementing the following programs in the Target Area that are designed to support the objectives of the economic adjustment effort. The City focuses its business retention and attraction programs in the Target Area. The City works with financial institutions to access private capital for business expansion and attraction and for development of key properties. The RLF is used in tandem with private financing, and the City provides a list of examples to assist borrowers in seeking and applying for financing.

Employment and business assistance programs are targeted to the Area. Capital improvement programs and projects are planned for the Area. (see below under the Business Development Strategy for a more complete discussion of these programs and activities.)

6. Organizational Structure and Management

The City of Berkeley's Office of Economic Development (OED) is responsible for managing the ongoing economic development program for the entire City. The Economic Development Manager reports directly to the City Manager and supervises staff that carries out economic development and business assistance activities. OED staff

administers the RLF and provides business assistance in the Target Area. OED works closely with community organizations and merchant associations in implementing the program.

The RLF Administrative Plan will be reviewed annually to coincide with the annual certification to EDA, which requires that the RLF plan is consistent with the local economic adjustment strategies for the City of Berkeley. OED will be responsible for updating the RLF Plan as necessary to ensure consistency with updates of the local economic adjustment strategy.

B. THE BUSINESS DEVELOPMENT STRATEGY

1. Objectives of the Business Development Strategy

The RLF is designed to assist in achieving the following economic development objectives and benefits for the Target Area:

- Provide financing mechanisms through which public investment will stimulate concomitant private investment in the commercial revitalization of commercial districts within the Target Area that otherwise would not have occurred;
- Provide a programmatic framework for the effective rehabilitation and conservation commercial facilities;
- Provide incentives for the retention, expansion and location of firms that will promote increased employment opportunities for residents, a stronger non-residential tax base, and more opportunity for residents' participation in economic activities;
- Increase minority enterprise development in the Target Area;
- Increase women's business development in the Target Area;
- Link RLF borrowers with the City's First Source Employment program;
- Increase the growth potential of businesses in the Target Area;
- Establish linkages with the area's existing economy to ensure the RLF Funds are not used as a substitute for private investment;
- Generate additional tax revenues for the City of Berkeley;
- Assisting firms in meeting environmental standards; and
- Encouraging the development of vacant land and the rehabilitation of dilapidated or vacant buildings in the Target Area.

2. Targeted Sectors

The City has targeted the following industry clusters in the Target Area for business assistance (in no particular order):

- Healthcare, including pharmaceuticals, medical devices, biotechnology and healthcare services;
- Environmental, including environmental technology and environmental services;
- Business services, including locally serving professional services, business related services, technical services and finance and real estate services;
- Light manufacturing, including food processing; and
- Retail Trade.

3. Types of Business Assistance

OED assists businesses in the Target Area with a full range of local economic development activities. OED works to attract new businesses to the City of Berkeley in the targeted sectors by identifying and marketing vacant sites and buildings in close collaboration with the commercial real estate community. OED assists new businesses in obtaining permits and financing. Assistance is provided to existing to expand, including assistance with financing through the RLF and other available financing, and assistance with permits. OED also refers new and existing businesses interested in business planning to community resources such as the Oakland Business Development Corporation and the East Bay Small Business Development Center. Employers are provided assistance in obtaining qualified employees that are also local residents through the City's First Source Employment Program.

4. Programs

Programs and activities that are being undertaken to address identified needs in the Target Area include:

- **Business Assistance**
The City has targeted its business retention and expansion program efforts to the specific industry clusters in the Target Area. Businesses are provided a full range of business assistance including assistance with financing, permits, project planning, business planning, etc.
- **Business Attraction**
The City has focused its business attraction efforts on key vacant and underutilized sites in the Target Area.
- **The City of Berkeley Revolving Loan Fund**
The City will originate RLF loans in the Target area. OED will continue to work with businesses that request RLF information and work with community partners on financing requests.
- **Business District Advertising**
The City periodically assists business districts in marketing and promotion activities by purchasing banners and assisting in marketing campaigns.
- **Encouraging Business or Merchant Associations and Networking**
The City assists in forming and supporting merchant groups (i.e. Adeline Street/ Lorin District Merchants Association, Sacramento Merchants Association, Downtown Business Association, North Shattuck Association, Solano Street Business Association).
- **Public Improvements**
The City continues to seek funding for needed public improvements in the commercial districts in the Target Area from local and outside funding sources, like the federal Transportation for Livable Communities program. The City has developed a specific public improvements plan for public improvements along San Pablo Avenue and University Avenue designed to make it more pedestrian friendly and to tie in with planned transit upgrades, including new express transit stops at the Dwight Way and Ashby Avenue intersections.

The Downtown Area Plan calls for several public improvements in the Downtown designed to improve pedestrian connections between the University of California Campus and the Downtown. A major goal for the Plan is to establish greenways as connectors to and from existing open spaces. The City is also repaving and reconstructing sidewalks along University Avenue and Telegraph Avenue, two main commercial arterials that connect the City to the UC Campus.

- Façade Improvement Grants

The City has assisted many businesses over the past years to complete façade improvements with grants from the City. If more funds become available in the future, the OED will undertake marketing efforts in the community.

- Problem Properties

OED Staff works with the City's Neighborhood Services to addresses problem properties. OED staff has been working with the owners of problem properties in the Target Area.

C. THE FINANCING STRATEGY

1. Financing Needs and Opportunities

There is a high demand asset acquisition and expansion of existing businesses.

Low-cost financing can also be a significant incentive for businesses to expand and/or relocate in vacant or under-utilized sites, thus achieving the dual goals of business attraction and blight elimination. The program will focus on the greatest financing needs for fixed assets (including machinery/equipment), tenant improvements, and real estate. The loan amounts will have a standard maximum of \$35, 000 with larger amounts available on an exception basis.

2. Public and Private Funding Availability

Access to reasonably priced capital for near bankable businesses continues to be a problem in the Target Area. Businesses are often unable to access financing due to the following:

- The current economic climate/ credit crunch has made it difficult for small business owners to access capital for expansion purposes;
- The cost of private financing, including SBA loans, is too high for many smaller businesses;
- Most commercial lenders are reluctant to process SBA loans that are less than 50,000;
- Many businesses are unable to provide the required collateral for conventional and SBA loans;
- Some business owners need assistance in preparing viable business plans in order to apply for financing;
- Business owners in the area are often unaware of financing options that are available to them and need assistance identifying the best financing options for their businesses.

Business owners with viable operations are constrained if they lack sufficient time in business or do not have assets that can provide an easily liquidated source of secondary

repayment. Banks often require a stronger business and credit history than is available for many businesses in the Target Area. Conventional business loans frequently require higher interest rates and fees and quicker amortizations. Bank financing is generally unavailable for start-up capital.

Because of the economic shifts in the market, there is a need for smaller loans or micro loans with lower equity requirements and for businesses without established banking relationships, such as firms that began with owner-equity. Through careful screening of loan applicants and creative loan structuring, the RLF will reduce the reluctance of conventional lenders to meet needs of riskier, but creditworthy businesses. By making lower cost financing available, the RLF will improve access to private financing by lowering the overall cost of capital.

3. RLF Financing Niche

In general the RLF will target financing to those industry clusters showing the greatest potential for growth, creation of higher paying jobs and economic impact. The highest priority will be given to loans to businesses in the healthcare, environmental services and business services clusters. High priority will also be given to loans to light industrial and food processing businesses. The RLF will also continue to target businesses in South Berkeley commercial districts. Priority will be given to loans to retail businesses where they finance a project that helps to eliminate blight and upgrade a commercial area and which will lead to other investment in the area.

Financing for startup businesses will be measured against the total portfolio periodically. Startups include new businesses and those in business for less than 2 years. Given the inherent risk associated with start-up companies, any available high quality secondary sources of income and repayment must be pledged by the company principals or other appropriate guarantor. In addition, it is highly desirable that the startup be able to provide at least a 20% equity injection of the requested loan amount. This can be in form of owner equity and/or private financing. Loans will generally be made to small businesses, which are defined as businesses with annual sales of \$1,000,000 or less or otherwise meeting the SBA's definition as a small business.

The targeted businesses will generally need financing and technical assistance. Identified needs will be met by referrals to business workshops conducted by the Small Business Administration (SBA), the Alameda County Small Business Development Center and other local economic business assistance programs. Businesses may receive assistance in developing business plans from several local organizations, including the Alameda County Small Business Development Center, SCORE (Service Corps of Retired Executives), the Women's Initiative for Self-Employment, and the Sustainable Business Alliance. Additionally, it is encouraged for businesses to have a consultation with local business owners with proven record of success. RLF staff will provide a list of these business owners.

The RLF will provide financing in the form of loans only. The loans will typically have lower interest rates than available private loans (See Section D below for loan terms).

The primary use of RLF will be to assist existing businesses to expand.

4. RLF Impact

The RLF will work to build on the assets of the Target Area and target those business sectors that show the greatest potential for expansion and that provide the best fit for the overall development strategy for the Area. The main anticipated impacts of the RLF are:

- Strengthening the local economy by providing financing to existing and start-up businesses;
- Stimulating private investment through leveraging commercial financing and referring businesses to other investors with available resources;
- Providing business opportunities for residents of the Target Area;
- Enhancing the job opportunities by providing financing to viable, long-term businesses that will create stable, higher paid jobs.

D. FINANCING POLICIES

RLF loans may be made to qualifying businesses for tenant improvements, fixed assets such as equipment and machinery and real estate transactions on an exception basis.

1. Loan Size – The standard maximum loan size of \$35,000. The LAB may approve loan amounts larger than the standard maximum on an exception basis.

2. Interest Rates - Interest rates on loans will be fixed. The standard RLF interest rate on RLF loans will be equivalent to the prime interest rate quoted in the *Wall Street Journal* plus 2% at the time of loan approval by the LAB. The minimum or floor interest rate for RLF loans is five percent (5 %) or seventy five (75%) of the prime interest rate listed in the *Wall Street Journal*.

According to 13 CFR 307.15, the only exception for the above policy is if the prime interest rate listed in the *Wall Street Journal* exceed fourteen (14%) percent, the minimum RLF interest rate is not required to be raised above ten (10%) if doing so compromises the ability of the RLF program to implement the financing policy.

3. Application Fee - There will be a \$200 fee for each application. Fee will be credited towards loan fee and will be refunded if not approved.

4. Loan Fees – Loan fees will be 1% of the amount loaned.

5. Payment Terms - Payments will generally be made monthly; however, customized payment structures may be extended to borrowers depending upon their individual cash flow needs. In the case of multiple disbursement loans for equipment or tenant improvements, there may be an interest-only period until the loan is fully disbursed, generally not more than 180 days. Temporarily reduced or deferred payments may be considered as options in structuring a workout plan

6. Loan Terms - The standard loan terms will be 3-7years fully amortized, depending on loan amount. In general, loan terms will not exceed the average useful life of the assets being financed. The loan term will be the lesser of the average useful life of the asset being financed or the term based upon the borrower's ability to pay. Smaller loans will generally have shorter terms. Loans will be available for expansion, fixed assets, equipment and real estate loans.

7. Private Leveraging/Participation - The RLF is highly encouraged to participate in other financing institutions' loans and/or lines of credit. There is a EDA portfolio requirement in which the RLF will leverage a minimum of two private dollars for each RLF dollar loaned. This leveraging requirement applies to the portfolio as a whole rather than to the individual loan. Private investment is capital invested by the borrower or others or financing from private entities such as banks.

8. Equity/Borrower Injection General Requirement -

The RLF will require all borrowers to inject owner equity as a percentage of the requested loan amount; this may be in form of owner equity and/or private financing. The borrower's equity injection should be as follows: at least 10% of requested loan amount for existing businesses and at least 20% of requested loan amount for startup businesses.

Additionally, start up business will be required to demonstrate significant industry experience or the equivalent. They will also be required to provide a secondary source of repayment and a complete business plan.

Exceptions may be made on a case-by-case basis depending upon the particular project. In general, existing equity or existing cash injection into the business indicates a reasonable level of commitment to the business; therefore consideration will be given to existing equity in determining new equity required as a result of the project being financed.

9. Collateral: Collateral pledged for each loan will depend upon the loan amount, the overall risk of the credit, and the availability of personal and business assets to be pledged as collateral. In general, the market value of pledged collateral will equal or exceed the loan. The value of pledged collateral will be verified through a market analysis, appraisal, or other means that are deemed appropriate for the particular project, costs for the valuation to be borne by the borrower. Lender must engage the appraiser. Collateralized security may include, but not be limited to, interest in machinery and equipment, furniture and fixtures, building, property, inventory and receivables.

Security in Personal Assets and Personal Guarantees:

Personal guarantees will be required of all principals with 20% or more interest in the borrower's business. Security in the personal assets of principals who owns 10% or more interest in the borrower's firm may be required as additional collateral. Such security can include property outside the business, including, but not limited to real estate of principals.

The City will secure loans by recording UCC-1 filings to secure equipment, fixtures, furniture, receivables, and inventory. Loans will be secured by collateral to the maximum extent possible to ensure an adequate secondary source of repayment. Generally, collateral pledged through UCC-1 filings for RLF loans shall not be pledged to other lenders or for other obligations of a business.

10. Credit Memorandums - Each application will be reviewed for standard underwriting criteria. A credit memorandum will be signed by the OED project manager and OED Manager and presented to the LAB. Generally the credit memo will address the following: location in the Target Area, management ability, and market feasibility, primary source of repayment, secondary source of repayment, leverage, environmental issues, job creation, credit history and the project's economic impact. All credit memos will include an analysis on the non-substitution documentation to verify that funds are not replacing private or commercial financing. Credit memorandums will also address other program requirements, such as the ratio of funds loaned to jobs created.

11. Financing Restrictions – RLF Capital may not be used to:

- a) Acquire an equity position in a private business;
- b) Subsidize interest payments on an existing loan;
- c) Provide the equity contribution required of borrowers under other Federal loan programs;
- d) Enable a borrower to acquire an interest in a business, either through the purchase of stock or through the acquisition of assets, unless the need for RLF financing is sufficiently justified and documented in the loan write-up. Acceptable justification could include acquiring a business to substantially save it from imminent foreclosure, or acquiring it to facilitate a significant expansion or increased investment;
- e) Provide loans to a borrower for the purpose of investing in interest bearing accounts, certificates of deposit or other investment not related to the objectives of the RLF;
- f) Refinance debt unless:
 1. Has moved or will move into the Target Area for reasons unrelated to RLF assistance;
 2. Has relocated to the Target Area prior to the date of the applicant's request for RLF assistance;
 3. Will expand employment in the Target Area substantailly beyond employment in the area where the business was originally located;
 4. Is relocating from technologically obsolete facilities to remain competetive
 5. Is expanding into the new area by adding a branch affiliate of subsidiary while maintaining employment levels in the old area(s);
 6. Is determined "exempt" by EDA.
- g) Finance any activity that serves to relocate jobs from one commuting area to another. (A commuting area is that area defined by the distance people travel to work to and from the Berkeley area) This non-relocation requirement shall not apply to a business which:

1. There is a sound economic justification and the City sufficiently documents in the loan write-up that the RLF is not replacing private capital solely for the purpose of reducing the risk of loss to an existing lender(s) or to lowering the cost of financing, or
2. An RLF loan uses RLF income and/or recycled RLF funds to purchase the rights of a prior lien holder during an in-process foreclosure action in order to preclude a significant loss on an RLF loan. This action may be undertaken only if there is a high probability of receiving compensation within 18 months from the sale of assets sufficient to cover the RLF's expenses plus a reasonable portion of the outstanding loan obligation;

Additionally, all businesses that receive a RLF loan will sign First Source Agreements with the City. The businesses then utilize the City of Berkeley's First Source Program for the recruitment and referral of Berkeley applicants for new and replacement employment.

E. PORTFOLIO STANDARDS AND TARGETS

1. Lending Targets

The goal of the RLF is to target industry clusters to produce the following ranges for allocation of the portfolio:

- Healthcare, environmental services, business services: 50-65%
- Light industry: 10-35%
- Retail: 15-25%

A *maximum* of 25% of the portfolio shall be loaned to start-up businesses. Exceptions made to exceed this target shall be made only in situations where repayment is guaranteed through a very strong collateral position.

2. Private Investment Leveraging Ratio

As specified in the EDA Terms and Conditions, the portfolio shall maintain a private leverage ratio of 2:1, or \$2 of private dollars or funds to every \$1 in EDA funding.

3. Cost per Job

- a. Every project shall have a new job creation or jobs saved component.
- b. The portfolio shall target a cost per job ratio of \$20,000 or less.
- c. The maximum cost per job for any single loan will generally not exceed \$30,000.

F. LOAN SELECTION CRITERIA

Each application must demonstrate that financing is not otherwise available on terms or conditions that would permit completion and/or the successful operation or accomplishment of the project activities to be financed. The primary evidence for this will be the analysis provided in the credit memo supported by outside documentation, for example, bank decline letters.

Priority in processing loan applications will be given to applications that further the targeting of RLF funds as outlined in Section E. above. Loan applications will be considered for processing, if:

1. Staff can demonstrate credit worthiness based upon the financing policies of this plan;
2. The project is consistent with the business development strategy;
3. The loan will meet program goals to facilitate in the creation of higher paying, higher skilled, private sector jobs, diversify and strengthen the economy, and stimulate private investment. Priority will be given to those projects that provide the highest economic benefit; and
4. The loan is consistent with the goal of maintaining a diversified portfolio.

G. PERFORMANCE ASSESSMENT PROCESS

The portfolio goals will be monitored at the time of the annual report to EDA. If targets are out of line or a trend is noticed in this direction, these trends will be analyzed to determine if any modifications to the Plan and/or portfolio are required. This will be accomplished by utilizing the current database software that is utilized to generate the EDA report.

The EDA Administrative Plan will be reviewed annually as part of the annual certification. Changes will be made to the plan as deemed appropriate to ensure the plan is consistent with the area's current economic development strategy and that the RLF is being operated in accordance with policies and procedures contained in the approved plan. (13 CFR 308.14).

PART 2: REVOLVING LOAN FUND ORGANIZATIONAL STRUCTURE AND OPERATIONAL PROCEDURES

A. ORGANIZATIONAL STRUCTURE

1. Overview

The City's Office of Economic Development Department (OED) is responsible for the implementation of the South Berkeley revitalization program and administration of the RLF. A Project Coordinator, hereafter referred to as the Program Manager, under the general direction of the Economic Development Manager, is responsible for responsible for developing, completing, coordinating, and servicing the loans generated by the RLF. OED staff works closely with private lenders to secure financing for businesses in coordination with City financing mechanisms. The City of Berkeley will provide referral

assistance to RLF clients for services, including loan packaging and business counseling, and to coordinate technical assistance resources including assistance from banks, colleges, minority business development assistance centers, business development organizations and trade associations. The City's Housing Department is responsible for receiving payments of all RLF loans using standard loan servicing software. The Housing Department provides monthly reports, upon request, on the status of all outstanding loans to OED for monitoring purposes.

2. Loan Administration Board (LAB)

The Loan Board will generally schedule meetings quarterly, or "as needed", and will agree to review transactions requiring quick action on an "as needed" basis. Organizational and operational matters, including loan decisions, will be made by a majority vote of the appointed members of the Board. A quorum will exist whenever at least half of appointed members are in attendance. However, at least one LAB member with financing experience (similar to the type of loans to be made) must be present for each loan decision. No loan will be committed, no major loan modification or waiver agreed to, no loan foreclosure action initiated without formal prior review and comment (in the form of LAB minutes) of the Loan Board. Staff will recommend on interest rates, terms and conditions for all loans. The LAB will make the final determination on the pricing and other terms of all loans from the RLF.

3. Conflict of Interest

No officer, employee, or member of the City Council, LAB or other City board or commission that advises, approves, recommends or otherwise participates in decisions concerning loans or the use of RLF funds, or person related to the officer, another employee, or any member of the City Council, LAB or other City board or commission by immediate family, law, or business arrangement, may receive any benefits resulting from the use of RLF loan or grant funds.

In addition, the City may not lend RLF funds to an employee of the City or any member of the City Council, the LAB or other City board or commission. Former board members and members of his or her immediate family shall not receive a loan from the RLF for a period of two (2) years from the date that board member last served on the RLF's board of directors. Immediate family is defined as domestic partner or significant other, parents, grandparents, siblings, children and grandchildren, but does not include more distant relatives, including cousins, unless they live in the same household.

Exception: A benefit or loan may be conferred if the officer, employee, LAB member, City Council member or other board or commission member affected first discloses to the City on the public record the proposed or potential benefit and receives the City Attorney's written determination that the benefit involved is not so substantial as to reflect adversely upon or affect the integrity of the RLF's decision process or of the services of the officer, employee, or member of the City Council, LAB or other City board or commission. LAB members are responsible for disclosing any possible conflict of interest that may exist with respect to a particular action of the LAB.

An officer, employee, or member of the City Council, LAB or other board or commission shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for him or herself or for another person, from any person or organization seeking to obtain a loan or any portion of the RLF funds. Former LAB members and/or officers are ineligible to apply for or receive loan or grant funds for a period of one year from the date of termination of his/her services.

Loan board members that have other professional relationships (i.e., a banker with loan to borrower) with a prospective borrower cannot be present for deliberations, but may respond to questions from other members of the LAB, to avoid the appearance of a conflict of interest. All LAB members will be required to comply with local and state conflict of interest policies and filing requirements. Please refer to 13 CFR 300.3

B. LOAN PROCESSING PROCEDURES

OED staff will work to publicize the RLF and identify eligible applicants, and will:

- Contact businesses through commercial and industrial brokers;
- Market the RLF through commercial banks that serve the Target Area;
- Publish at least one article per year in a local newspaper or periodical noting the availability of the RLF, its intent and how to access it;
- Market the RLF through direct marketing and through business associations.

1. Standard Application Requirements

Each potential borrower will be required to initially complete the City's standard Pre-Application (Exhibit C). Staff will review the pre-application to determine if it meets the general intent and purpose of the RLF. In evaluation of applicants, staff will consider whether the project/loan:

- Meets the targeting criteria and is in one of the targeted clusters
- Demonstrates a reasonable assurance of repayment
- Is consistent with the portfolio job/cost ratio established for the RLF
- Leveraging of private dollars (minimum of 2:1 target for the entire RLF portfolio)
 - Exceptions for leveraging are up to the discretion of the board. An example for such exception can include, but is not limited to, start-ups with a high number of projected jobs and high economic impact. With such an example, board will need to weight the entire RLF portfolio to ensure that the minimum 2:1 is met.

Potential borrowers are required to submit the following documents with their application:

- If available, three years of business and personal tax returns, all schedules
 - IRS Form 8831 (Request for Transcript) IRS Form 4506 (Request for Copy) may be required
- Three years of business financial statements, to contain as a minimum, balance sheets and profit & loss statements (quarterly and/or monthly statements may be required as appropriate).

- Personal financial statement dated not more than three months prior to the loan application. Required for each principal with 10% or more ownership in the applicant company, and may be required for individuals with management responsibilities.
- Business plan with financial projections
- Proof of hazard and liability insurance
- If available, accounts receivable and accounts payable aging schedules, dated the same date as most recent business financial statement;
- Schedule of debts to include: 1) original amount of debt; 2) current balance outstanding; 3) Payment amount(s); 4) interest rate; 5) collateral; 6) status (current/delinquent).
- Financial projections, generally to include: 1) a description of the assumptions behind the financial projections, 2) a projected cash flow for a minimum of 12 months; 2) a projected balance sheet and income statement for at minimum of 12 months; 3) other as may be necessary to adequately assess the application.

Borrowers shall be approved based upon a reasonable assurance and determination of repayment ability and potential economic benefits to the community, i.e., number and quality of jobs they will create, amount of taxes generated, extent to which they expand a targeted industry cluster and relation to other businesses and services.

2. Credit Reports

Standard commercial and personal credit reports on all principals owning 10% or more of a business under consideration for a loan and the business will be ordered and reviewed. Adverse credit deficiencies that would cause the underwriter to question the ability and or willingness of the potential borrower to repay the loan will be deemed a valid reason for declining the request. A summary review of the results of the credit reports shall be a part of the loan write-up. Costs of credit reports shall be borne by the borrower, whether or not the loan is approved.

3. Uniform Commercial Code (UCC) Lien Search

A UCC search shall be completed to determine any existing liens, where personal property is being taken as security (i.e. equipment, or business assets).

A real estate title report will be required in those instances where real property is being taken as collateral.

4. Appraisal Reports

Appraisal reports or other valuation determinations will normally be obtained, where existing fixed assets and/or real properties are being used as primary collateral. Appraisals will utilize qualified appraisers having expertise appropriate to the assets being pledged. The cost of these appraisal(s) shall be for the account of the borrower, whether or not the loan is approved.

5. Environmental Reviews

The City of Berkeley has an environmental review process in accordance with the intent of the National Environmental Policy Act (NEPA) of 1969, as amended (P.L. 91-190), as implemented by the “Regulations” of the President’s Council on Environmental Quality (40 CFR, Parts 1500-1508). The borrower will be required to comply with applicable laws and statutes, including, but not limited to the following:

- a. The Clean Air Act, as amended (42. USC. 749) et seq);
- b. The Federal Water Pollution Control Act, as amended (33 U.S.C. 1251, et seq.);
- c. The Coastal Zone Management Act of 1972, P.L. 92-583, as amended (16 U.S.C. 1451, et seq.);
- d. Executive Order 11988, Floodplain Management (May 24, 1977), and regulations and guidelines issued by the Economic Development Administration;
- e. Executive Order 11990, Protection of Wetlands (May 24, 1977);
- f. The Endangered Species Act of 1973 P.L. 93-205, as amended (16 U.S.C. 1531, et. seq.);
- g. The Safe Drinking Water Act, P. L. 93-523, as amended (42 U.S.C. 300f-300j-0);
- h. The Wild and Scenic Rivers Act, as amended (16 U.S.C. 1271, et seq.);
- i. The Resource Conservation and Recovery Act of 1976, P.L. 94-580, as amended (41 U.S.C. 6901);
- j. The Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), P.L. 96-510, as amended, by Superfund Amendments and Reauthorization Act of 1986 (SARA) (41 U.S.C. 9601, et. seq.)
- k. The National Historic Preservation Act P.L. 89-665 (16 U.S.C. 470, et seq.), (36 CFR Part 800);
- l. Coastal Barriers Resources Act P.L. 97-348 (16 U.S.C. 3501, et seq.); and
- m. All state and local environmental review requirements with all applicable Federal, state and local standards. The RLF will ensure that potential borrowers’ environmental submittal is reviewed.
 - A site inspection of the property by a qualified inspector will be conducted, as well as an environmental audit, as appropriate.
 - Loans that will lead to alteration of the physical environment (i.e. construction) will require compliance with the California Environmental Quality Act (CEQA), PRC Section 21000, et seq.
 - A determination will be made whether a Phase I or Phase II environmental assessment is warranted for hazardous waste, given the size of the loan versus whether an unsecured position in a contaminated property is an acceptable risk for the RLF,
 - A mechanism to mitigate adverse impacts.

The LAB will disapprove any loan project that would adversely (without mitigation) impact flood plains, wetlands, significant historic or archeological properties, drinking water resources, or nonrenewable nature resources. The RLF will utilize the services of qualified personnel to review environmental questionnaires for compliance with the above. Environmental review under CEQA will generally be carried out as a part of the City’s

issuance of permits for a project. However, in cases where City permits do not require environmental review, RLF staff may require independent environmental study or investigations to assure compliance with all local, state and federal environmental laws and regulations.

6. Standard Collateral Requirements

Loans will be secured to the fullest extent possible to protect the interests of the RLF as a secondary source of repayment. The RLF will obtain a perfected interest in a borrower's assets, including outside assets of related parties, as appropriate. Loans may be secured with the following types of assets:

- Real property
- Machinery & equipment
- Inventory
- Accounts Receivable
- Stock pledges
- Patents and other intellectual properties
- Securities
- Intangibles
- Personal and/or corporate guarantees

A personal guarantee will be required of any principal having a 20% or more ownership in the company being considered; it shall also be required of the principal(s) trust(s) deemed to be controlled by him or her. Personal guarantees may be collateralized with liens or property. Appropriate hazard and liability insurance shall be required, and key man life insurance shall be considered depending on the size and nature of the transaction and the health and ages of the principals. The City of Berkeley shall be named as a Loss Payee on the appropriate insurance policies. Trust deeds will be obtained and supported by lenders title policies in those cases where real property is pledged as collateral. Liens on all personal property will be perfected by UCC-1 filings. UCC searches will be conducted to determine encumbrances and to ensure the RLF obtains desired lien position.

7. Standard Equity Requirements

Existing businesses may be required to inject at least 20% of the requested loan amount; start-up businesses are required to inject at least 20% of the requested loan amount.

Assets (e.g. equipment), which are added to a project from outside sources, may be considered part of the equity investment, provided they are lien free.

8. Loan Write-Up

Written loan presentations to the Loan Administration Board will be signed by the Manager of Economic Development and will contain at a minimum the following information:

1. Evidence that the Borrower is in the Target Area approved by EDA.
2. Recommendation: Support funding recommendation based on analysis of the business' industry, its place in that industry, financial analysis, and ability to repay.

3. Findings: Indicate if borrower is eligible, under criteria established in the RLF Plan and EDA Grant Agreement.
4. Description of Business
5. Background and History of Business Operation: Describe the history and background of the business, including a brief industry analysis.
6. Detailed description of the borrower; i.e., is it a corporation, partnership, sole proprietorship, list owners and their percentage of the business.
7. List of names and relationships of the guarantors to the owners of the business as appropriate.
8. Provide loan details:
 - (a) Loan Request: State the amount of the request
State the recommended monthly amortization and term.
 - (b) Interest: Indicate the rate, specifying a fix rate.
 - (c) Use of Funds by category.
 - (d) Loan Fees: The maximum fee charged will be 1% of the total loan amount.
Applicants shall be responsible for any outside costs incurred for processing, such as appraisals, environmental reports, credit reports, etc.
9. Purpose: Describe in detail the purpose of the loan by category, i.e., fixed asset financing, tenant improvements, etc. Be specific about sources and uses of proceeds to complete the project. Any proposed exceptions to loan policies need to be explained.
10. Credit Report: Indicate the results of the credit reports obtained on the principals, guarantors, and company.
11. Financial Analysis: Indicate the source of information for the analysis. Describe the company's financial performance as reflected by its financial statements, with special emphasis on revenues and operating income, leverage, cash flow, and debt capacity. Projection should be consistent with historical performance unless there is an extraordinary event such as a new contract. Any significant changes in financial positions or performance of the company will be explained.
12. Personal Financial Analysis: Write an analysis of the principal's and guarantor(s) personal financial statements. Any significant changes in financial position or performance will be explained.
13. Collateral: Describe the collateral pledged for this loan, and indicate the secured position of the RLF. If property is being pledged, show the present market value and the net equity available for all properties pledged. Date of appraisal, name of appraiser and loan to value must also be included.
14. Job/Cost Ratio: Divide the total loan amount by the number of jobs saved and/or created as a result of this loan.
15. Public Benefit: Describe the benefit of this loan in terms of jobs retained and/or created. Indicate the value of this borrower to the community. Jobs saved are defined as jobs that would be imminently lost without RLF assistance.
16. Environmental Problems: Discuss any environmental review in connection with the loan, including, any City environmental review and the results of any required Phase I or Phase II environmental study. Attach an environmental checklist or other review that is relevant to consideration of the loan. Indicate what actions the borrower must take to comply with any environmental findings or requirements.

Necessary and Appropriate: A borrower is not eligible for RLF financing if credit is otherwise available on terms and conditions that would permit completion and/or the successful operation or accomplishment of the project activities to be financed. This section describes the reason why credit is not available elsewhere and should indicate what supplemental evidence supports this representation. The second part of this section will state why this loan is an appropriate use of funds. Accompanying the loan write-up will be spread sheets of the company's financial statements, most recent years' financial statement (if financial statements are not available, tax returns should be included), personal financial statements of the principals, and financial projections, as specified in the standard application requirements. The City will provide a list of organizations in Alameda County that provide assistance with financial statements.

9. Procedure for Loan Approvals

When a loan is approved, staff will draft a resolution stipulating the terms of approval and obtain the signature of the chairperson of the Loan Administration Board. The minutes of the LAB meeting shall reflect this approval and be circulated to all members of the Loan Board. RLF staff shall be directed to prepare and send a commitment letter with a time expiration date signed by the Manager of Economic Development to the prospective borrower, stating the terms and conditions of the committed loan consistent with the written credit memo to the LAB, and any provisions or changes recommended by the LAB. It shall also state *"this commitment is based on the fact that there have been no material adverse changes in the credit condition of the borrower since statements and information has been submitted to the RLF. If any such material adverse changes have taken place, this commitment is void and not in effect."*

10. Loan Decline – Appeal Process

The LAB will act upon recommendations for loan approval with the knowledge that the due diligence and underwriting on each loan has been completed, and upon reliance that the financial exhibits provided in the application are correct. Where a loan is denied by the LAB, an applicant may request further review by the LAB if the applicant can provide additional information that addresses the concerns of the LAB about the proposed loan. However, LAB decisions on loans are final and binding and cannot be appealed to the City Council.

C. LOAN CLOSING AND DISBURSEMENT PROCEDURES

1. General Closing Requirements

- a. Proof of equity, such as current bank account statements showing the needed funds on deposit, will be required for all loans requiring an equity injection;
- b. If existing debt is being converted to equity, or subordinated, evidence such as a subordination agreement, the original note, the conversion agreement, corporate resolutions and copies of shares issued will be required.
Where another lender is involved in the financing of a business an inter-creditor agreement setting forth the respective rights of the parties shall be required where appropriate for the protection for the RLF.

2. Loan Closing Documentation Requirements

- a. All loans will require a promissory note and a loan agreement.
- b. All loan documents will be reviewed and approved by the Office of the City Attorney prior to loan closing.
- c. Sole proprietorships using a “doing business as/dba” will be required to provide copies of fictitious name filings.
- d. Partnerships will be required to provide copies of the partnership agreements and buyout agreements if applicable.
- e. Corporations will normally be required to provide copies of the Articles of Incorporation, By Laws, certificates of good standing, and corporate resolution to borrow.
- f. All loans will require a security agreement where personal property secures a loan.
- g. Perfection of collateral will require UCC-1 filings on equipment and fixtures, inventory and receivables, recording deeds of trust on real property, and certificates of title or stock registration, as appropriate.
- h. UCC searches will be performed before loan board review to determine position. UCC searches may also be performed after loan closing and UCC filings to confirm that the desired lien position was actually obtained.
- i. Lenders Title insurance will be required for all financed real property.
- j. Vehicle titles will show the City of Berkeley as lien holder. If a third party owns the collateral, hypothecation and assignment agreements shall be required.
- k. All principals with 20% or more ownership will normally be required to provide continuing guarantees, and subordination agreements, as appropriate.
- l. Inter-creditor Agreement, if necessary, to preclude prior lien holder from increasing debt, and/or to delineate collateral and responsibilities of lenders.
- m. Prior to closing, the borrower will present the required hazard and liability insurance policies, and any other insurance coverage such as key life insurance, as required
- n. Lease assignments will be taken as appropriate.

The Loan Agreement shall contain covenants that shall require the borrower to comply with Federal statutory and regulatory requirements that apply to activities carried out with RLF loans. The Loan Agreement shall contain a provision to protect and hold the Federal government harmless from and against all liabilities that the Government may incur as a result of providing an award to assist (directly or indirectly) in site preparation or construction as well as the renovation or repair of any facility or site. This applies to the extent that such liabilities are incurred because of ground water, surface, soil or other conditions caused by operations of the RLF Recipient or any of its predecessors on the property. The Loan Agreement shall also include a list of the Federal requirements that apply to RLF Borrowers as provided in Part III.B. of the U.S. Department of Commerce Economic Development Administration Revolving Loan Fund Standard Terms and Conditions of October 9, 2007, as may be amended.

3. Loan Disbursement Requirements

- (a) The borrower will certify in the loan agreement that the funds are to be used for the purposes intended as specified in the loan application. A positive covenant shall be included in the loan agreement stating the purpose of the loan. A breach of this covenant shall be deemed an event of default and the loan may be called.
- (b) If the proceeds are for the purchase of equipment, fixtures, or vehicles, the borrower must show original invoices before the check will be created payable to the vendor or jointly to the vendor and business.

In instances where construction is in progress, a building control account will be established as necessary to avoid mechanics liens.

D. LOAN SERVICING PROCEDURES

1. Loan Payment and Collection Procedures

The City of Berkeley Housing Department will provide borrowers with payment coupons, receive and deposit loan and interest payments into an interest bearing RLF bank account, and, upon request, advise RLF staff when funds are received. Additionally, upon request, the Housing Department will provide monthly reports of disbursements, receipts of interest and principal and any past due accounts. Timely notification of any payment due and not paid will be provided.

Late fees (which will be incorporated in the body of the Promissory note) shall be 5% of the payment outstanding and begin accruing on the next calendar day after the payment is due. If the loan is past due more than 15 business days, late fees shall commence.

2. Loan Monitoring Procedures

- a. Annual financial statements (defined to include a balance sheet and profit and loss statement, compiled by an independent accountant or certified by the chief financial officer and president) may be required on all loans. RLF staff shall monitor these and other dated requirements such as insurance renewals, and UCC renewals. If documents are not received on a timely basis as stipulated by the Loan Agreement, designated staff will be responsible for correcting the deficiency. Provisions will be made in the Loan Agreement that audited statements may be required.
- b. OED staff will be required to visit each borrower quarterly for the first 12 months and determine whether the business is on line with its business plan.

OED staff will then schedule quarterly visits with each borrower, as needed. Each visit will be documented by memorandum, and will contain a summary of the progress the business is making from a marketing and financial perspective, as well as an assessment of the business' future. This report shall be provided to the LAB.

Once a year jobs saved/created data will be compiled by OED staff and supplied to the EDA as part of the required semi-annual reports. All jobs will be reported in full time equivalents. All required loan documentation and special provisions will be monitored.

3. Late Payment Follow-up Procedures

- a. Upon being advised that a payment due was not made, RLF staff will contact the borrower promptly to determine the problem, if any exists.
- b. The loan servicer will send a written notice of delinquent payment 5 working days after due date with notification of late penalty, and will notify the RLF staff in writing.
- c. RLF staff will send a second written notice 30 days after the due date.
- d. RLF staff will send a third written notice 60 days after the due date.
- e. RLF staff will send a fourth written notice 90 days after the due date.
- f. During the first 30 days of delinquency, written and oral communication, as well as site visits by RLF staff will be utilized to resolve the delinquency.
- g. If, after 90 days a delinquency still exists and the loan has not been renegotiated or brought current, the loan will generally be determined to be in default and recovery of the security will commence.
- h. Any renegotiation of loan terms to remedy a default must be approved the LAB.
- i. If at any time during this 90-day period, the Economic Development Manager believes that the borrower cannot or will not bring the loan current, with Loan Administrative Board approval, RLF staff can declare the loan in default and begin recovery against collateral, if deemed appropriate.

4. Collection Procedures

The RLF staff will work to exercise all rights and privileges of a lender in order to collect the proceeds on delinquent loans. To ensure that the delinquent loan is collected in an appropriate, efficient, and timely manner, staff will:

- a. Prepare a plan of action with guidance by the Loan Administrative Board for collecting the loan and taking action against the collateral.
- b. Make sure all required loan documentation is in order.
- c. Consult with the City Attorney on all default notices and collection efforts and to insure that no laws or regulations will be violated by the collection effort and that all legally required actions are taken.
- d. Contact all other co-lenders as appropriate.
- e. List defaulted or chronically delinquent loans with credit bureaus.
- f. Notify the guarantors of the default and put them on notice that they are expected to make payment, in full, upon demand.
- g. Begin collection procedures and/or asset liquidation process.

5. Write-off Policy and Procedures

Loans with an outstanding balance that have been placed in default and remain outstanding after 180 days will generally be written off. However, collection efforts will continue until determined not to be cost effective or prospects for recovery no longer exist. A reasonable loss through defaults will be considered without establishing a loan loss reserve. All write-offs must be directed to the City's Finance Department for approval by the City Council.

E. ADMINISTRATIVE PROCEDURES

1. Procedures for Loan Files and Loan Closing Documentation

(a) All original primary loan documents will be maintained in the Loan/Collateral file, which will be stored in a secure location by the City Clerk. This file will contain the original note(s), loan agreement, collateral perfection documents (UCC-1 filings, deeds of trust, etc.), all other original legal documents, and will include the document checklist signed by the OED staff conducting the closing. All files will be filed and recorded as specified by the EDA Terms and Conditions, Part II, Section G.

(b) Each individual borrower will have a loan file consisting of two items 1) a credit file and 2) an application file.

1) The Credit File will contain copies of the appropriate legal documents needed to monitor the loan, as well as the original credit memo to the LAB, financial statements and tax returns, credit reports, personal financial statements, a copy of the commitment letter, copies of proof of insurance, site visit memorandum, job reports, and any other correspondence relating to the relationship between the borrower and the RLF. A chronological record shall be maintained recording all significant events by date with a brief description.

2) Application File: The application file shall be established to contain the original application, business plan, financials, business plan evaluation, and any other documentation provided to evaluate the application. Every effort will be made to maintain confidentiality of applicant records/applications. There will be a public file which will can be reviewed by the public and a private file that will include all documentation including, but not limited to, application, credit memorandum, third party evaluations and non-confidential reports and UCC-1 filings.

(c) Record Retention: Loan files and related documents and records must be retained for the life of the loan and for a seven-year period from the date of final disposition of the loan. The City will maintain four different kinds of file records: 1) an application file, 2) a loan file, 3) a decline file and 4) a closed loan file. This will ensure that we have records of all decisions made by the LAB for public review.

The date of final disposition of the loan is defined as the date of:

- i. Full payment of the principal, interest, fees, penalties, and other costs associated with the loan; or
- ii. Final settlement or write-off of any unpaid amounts associated with the loan

(d) Administrative records: The OED staff or loan servicer must:

- ii. Maintain adequate accounting records and source documentation to substantiate the amount and percent of RLF income expended for eligible RLF administrative costs.
- iii. Retain records of administrative costs incurred for activities and equipment relating to the operation of the RLF for five from the date the costs were claimed.

(e) Make any retained records, even those retained for longer than the period described, available for inspection. The record retention periods, described in Chapter III, Part 316, Sec. 308.13, are minimum periods and such prescription is not intended to limit any other record retention requirement of law or agreement.

2. Procedures for Complying with EDA Reporting Requirements

Please refer to 13 CFR – Effective utilization of Revolving Loan Funds.

Capital utilization standard.

(1) During the Revolving Phase, the City of Berkeley must manage their repayment and lending schedules to provide that at all times at least seventy-five (75%) percent of their RLF capital is loaned or committed.

2) When the percentage of loaned RLF capital falls below the application capital utilization percentage, the dollar amount of the RLF funds equivalent to the difference between the actual percentage of RLF capital loaned and the applicable capital utilization percentage is referred to as “excess funds.”

- (i) Sequestration of excess funds. If the City of Berkeley fails to satisfy the applicable utilization percentage requirements for two (2) consecutive Reporting Periods, EDA may require the City to deposit excess funds in an interest-bearing account. The portion of interest earned on the account holding excess funds attributable to the Federal Share (as defined in §314.5 of the same chapter) of the RLF Grant shall be remitted to the U.S. Treasury. The City must obtain EDA’s written authorization to withdraw any sequestered funds.
- (ii) Persistent non-compliance. An RLF recipient (the City) will generally be allowed a reasonable period of time to lend excess funds and achieve the applicable capital utilization percentage. However, if the City fails to achieve the applicable capital utilization percentage after a reasonable period of time, as determined by EDA, it may be subject to sanctions such as suspension or termination.

Loan Default Rates.

(1) EDA shall monitor the City’s loan default rate to ensure proper protection of the Federal Share (as defined in §314.5 of the same chapter) of the RLF property, and request information from the City as necessary to determine whether it is collecting loan repayments and complying with the financial obligations under the RLF Grant. Such information may include:

- (i) A written analysis of the City’s portfolio, which shall consider the Recipient’s business plan, loan and collateral policies, loan services and collection policies and procedures, the rate of growth of the RLF Capital Base, and detailed information on any loan in default; and

A corrective action plan subject to EDA’s approval, which shall include specific actions the RLF recipient must take to reduce the loan default rate; and

- (ii) A quarterly status report indicating the City’s progress on achieving the milestones outlined in the corrective action plan.

(2) Failure to provide the information requested and to take steps to protect the Federal Share may subject the City to enforcement action under §307.21 and the terms and conditions of this Grant.

A collection account has been established and maintained in coordination with the City Attorney and the City's Finance Department in accordance with City regulations governing collections.

3. Grantee Control Procedures

RLF staff shall, periodically review the loan files to determine if they are consistent, complete and correct. All accounts, books, records and loan files shall be reviewed and audited in accordance with City Auditor standards, and Federal Administrative and Audit Standards.

4. Plan Amendment Procedures

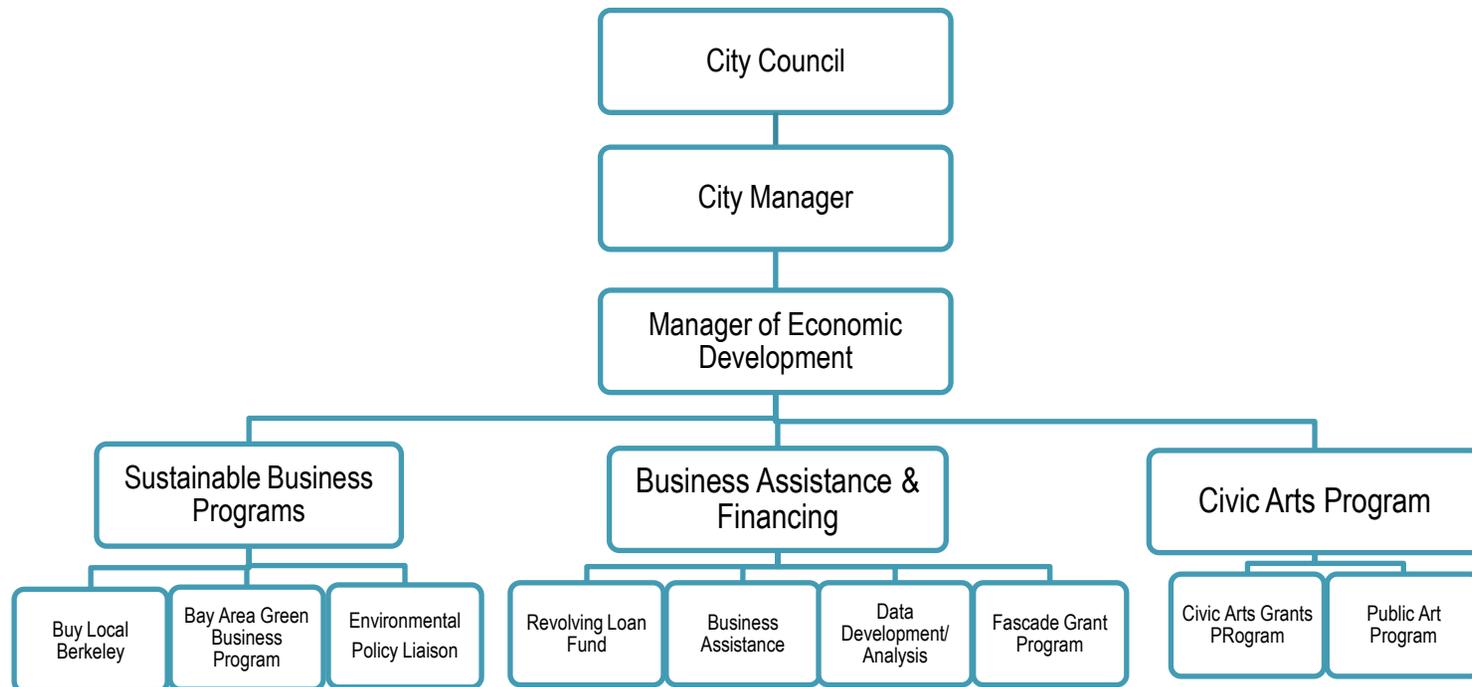
Any changes to this Administrative Plan must be approved by the LAB and City Council and shall be submitted to the EDA in writing for approval consistent with requirements of the EDA.

Exhibits

Exhibit A:	Organizational Chart	Page 30
Exhibit B:	Pre-Application	Page 32
Exhibit C:	Credit Authorization	Page 37
Exhibit D:	Application Checklist	Page 39
Exhibit E:	Sample Resolution	Page 41
Exhibit F:	Sample Commitment Letter	Page 43
Exhibit G:	Sample Loan Closing Worksheet	Page 47
Exhibit H:	Sample Loan File Check List	Page 51
Exhibit I:	Sample Servicing Report	Page 53
Exhibit J:	Sample Default Notification Letter	Page 56
Exhibit K:	Map of Target Area	Page 58

Exhibit A

Organizational Chart



**City of Berkeley Revolving Loan Fund
Pre-Application**

IV. BUSINESS INFORMATION:

Briefly describe your business, the distinct function of your product / service, your intended customers, your marketing strategy, and how the COBLF loan will assist your business development. Please submit a prepared business plan with this application. If no business plan available, please provide explanation

II. PROJECT FINANCING:

- (A) A. Amount of City Loan Request: \$ _____
- (B) B. Applicant Equity Contribution*: \$ _____

Purpose of Loan:

Source of Loan Repayment:

*Equity contribution: Value of money and other assets the Applicant invested in the business during the past 12 months or will invest in the business. Please submit evidence of all private funds (bank statements, letter of commitment and turndown letters).

III. USE OF FUNDS:

	Amount of City Loan Request (listed on line A above)	(Plus)	Applicant's Equity Contribution (listed on line "B" above)*	(Equals)	TOTAL PROJECT COST
Inventory	\$	+	\$	=	\$
Equipment & Machinery	\$	+	\$	=	\$
Leasehold Improvements	\$	+	\$	=	\$
Loan Fees (2% of total loan)	\$	+	\$	=	\$
Other	\$	+	\$	=	\$
TOTAL	\$		\$	=	\$

*Plus any additional Funds to be used for this project- including additional loans/ private funds. Sources of funds need to be documented, including denial of bank for additional funds.

V. COLLATERAL OFFERED:

Collateral	Name(s) of Owner(s)	Present Market Value
Real Estate		\$
Equipment & Machinery		\$
Inventory		\$
Other Assets		\$
TOTAL		\$

Other Collateral (Please Explain): _____

VI. OUTSTANDING DEBT: List all outstanding debts (not accounts payable). Any business loans, loans from family/friends, credit card debt, and any other debt the business has incurred. Please list EVERYTHING the business owes. If you need more room, please attach a separate sheet.

CREDITOR	Account Number		Original Amount (\$)	Maturity Date	Collateral Held
	Date of Loan	Interest Rate %	Current Balance (\$)	Monthly Payment (\$)	
1.			\$		
		%	\$	\$	
2.			\$		
		%	\$	\$	
3.			\$		
		%	\$	\$	
4.			\$		
		%	\$	\$	
5.			\$		
		%	\$	\$	
6.			\$		
		%	\$	\$	
7.			\$		
		%	\$	\$	
8.			\$		
		%	\$	\$	

VII. PUBLIC BENEFIT: As a result of the loan, will your business:

a. Create jobs? YES NO

Estimate how many jobs the business will create in the next two years: _____

b. Retain existing jobs? YES NO

c. Expand a manufacturing enterprise? YES NO

d. Have a positive environmental impact? YES NO

e. Strengthen a key commercial corridor or re-use a long vacant property? YES NO

f. Provide goods/ services presently not available? YES NO

g. Substantially increase tax revenues? YES NO

Please describe the public benefits and quantify, where possible.

VIII. EMPLOYMENT

	TOTAL		WHITE		BLACK		ASIAN		HISPANIC		AM. IND		OTHER	
	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Current Employees														
Management														
Professional														
Office/Clerical														
Skilled Workers														
Service / Maintenance														
Other														

CREDIT AUTHORIZATION

**CREDIT AUTHORIZATION FOR THE CITY OF BERKELEY
REVOLVING LOAN FUND**

The following information is required to complete a credit investigation with respect to your loan fund application. This form is to be completed by every applicant, and each partner or shareholder holding a 10% or more interest in the business concern.

Legal Name: _____

Social Security #: _____

Birth Date: _____

Home Address: _____

Occupation: _____

“With my signature below, I hereby authorize the City of Berkeley to contact and obtain credit reports from credit reporting agencies (Equifax, Dun and Bradstreet, etc.) And creditors with regard to the status of any past, outstanding or current indebtedness.”

By: _____
Signature

Printed Name

Date: _____

APPLICANT CHECKLIST

**CITY OF BERKELEY REVOLVING LOAN FUND APPLICATION
SUPPLEMENTAL INFORMATION**

Applicant should submit the following items as applicable and as requested by City staff.

- Financial Statement – Prior 3 years and current within 90 days
 - a. Balance Sheets
 - b. Income/Expense Statement
 - c. Articles of Incorporation/By Laws or Partnership Agreement (If Applicable)
 - d. Resume(s) of Principal(s) (normally those with 20% ownership or more)
 - e. Certificate of Good Standing (corporations only)
- Pro Forma Financial Projections (Including Notes & Schedules)
 - a. 1 year Income/Cash Flow Statement (Month to Month)
 - b. Additional 2 years Cash Flow Projections
 - c. Explanation of the underlying assumption supporting the cash flow projections
- Individual Federal Income Tax Return – (if proprietorship or partnership) – Prior 3 years.
- Business Federal Income Tax Return – Prior 3 years.
- IRS Form 4506, Request for Copy of Tax Return
- Verification of business space (i.e. Deed of Trust, Lease/Rental Agreement, Purchase Agreement as applicable)
- Agreement of Landlord (for tenant improvement loans)
- Proof of Hazard and Liability Insurance
- Plans, Cost Estimates/Bids for Construction or Equipment
- Appraisals or independent evaluations on assets offered as collateral.
- Aging of Accounts Receivable and Payable within 90 days and list of vendors and addresses and account numbers for any accounts over 30 days.
- Schedule of Business Debts (Include the following: original amount of debt, current balance outstanding, payment amount(s), payment amount, interest rate, collateral, status (current/delinquent)
- Private Lender Commitment or Denial of funds letter(s).
- Copy of Business License
- Environmental Checklist (if required for project)

The City of Berkeley will be conducting a credit check of your business and personal payment record, if applicable.

**SAMPLE LOAN ADMINISTRATION BOARD (LAB)
RESOLUTION**

**LOAN ADMINISTRATION BOARD
of the
CITY OF BERKELEY**

The Loan Administration Board (LAB) administering the City of Berkeley's Revolving Loan Fund (RLF) met on _____, 20xx to discuss the RLF loan to _____ and passed the following motion:

Moved by _____ to approve loan with the requirements recommended in the staff credit memo, and with the following additional requirements; 1) specific UCC-1 filing on _____; 2) blanket UCC-1 filing on all business assets; 3) direct disbursement of loan proceeds to vendors for equipment and to contractor for improvements; 4) 1st position on collateral; 5) signed tax returns; 6) audited financial statements for 200_; 7) other conditions:.

The staff recommendation on loan terms is as follows:

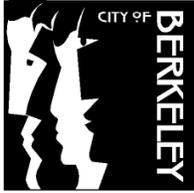
Principal Amount: \$ _____
Loan Term: Due in __ months, amortized over __ months
Interest Rate: ____ %
Monthly Payment: \$ _____ per month

Seconded by _____.

The Board vote with respect to this Motion was __ Ayes, __ Noes, __ Abstentions.
Board Members Absent: _____

Chairperson
Loan Administration Board

SAMPLE COMMITMENT LETTER



Loan Administration Board

Date:

Name of Borrower:

Re: Loan Approval/Intent to Lend

Dear Borrower:

This commitment letter will confirm that on behalf of the Berkeley Revolving Loan Fund, the Loan Administration Board of the RLF approved a commitment to make funds available to you substantially upon certain terms and conditions. This approval was made on _____.

1. Amount and Nature of Loan. Loan Amount (\$000,000.00) associated with the acquisition of the commercial property at _____

2. Purpose. The loan funds will be used solely for the acquisition of the commercial equipment, and related soft costs.

3. Maturity and Payment of Loan. The amortization of loan will be ___ months , with a ___-month call, and will be payable as follows: Principal and Interest payments, with interest commencing from date of note, with interest accruing at _____% fixed. The estimated payment amount is \$_____ per month, with first payment due the first day of the month following the original note date.

4. Interest. The stated interest rate on the loan will be _____ percent (_____%). Following any default, the interest rate shall increase to the maximum rate allowed by State of California Law after any default. Interest will be calculated based upon a 365-day year.

In the event any payment is more than fifteen (15) days past due, you will be assessed a late charge of five percent (5%) of the amount of such payment for each thirty (30) day period for which the payment is overdue.

5. Evidence of Obligation. The loan will be evidenced by a Loan Agreement and Promissory Note executed by you, together with the documents necessary to create and perfect security interests described herein.

6. Fees and Expenses. You shall pay all out-of-pocket expenses incurred by the RLF in connection with this transaction, including legal fees and disbursements of counsel and including by way of illustration, but not limited to appraisal costs, title insurance premiums and other related title company costs, escrow fees, UCC search fees and all recording fees, even in the event the transaction is not consummated.

7. Security Arrangements. The loan will be secured by a second position deed of trust on the commercial real property located at _____; a first security filing on equipment of _____, guarantees of _____, _____, and _____; deed of trust on _____ personal residence at _____; and deed of trust on _____ personal residence at _____.

8. Conditions of Lending. The loan will be conditioned upon satisfaction of all required elements, for example, the following:

- a. Execution by you of all documents required by the RLF to evidence the loan or any of the security interests described herein.
- b. Approval by the RLF of the results of a title report and lien searches on equipment and fixtures.
- c. The absence of any adverse change in your business or financial condition.
- d. The City is satisfied that no hazardous waste or substances, toxic, waste, substances or pollutants are or have been used, generated, stored or removed on or from the real property to be covered by the deeds of trust described herein in violation of any federal, state or local law, rule or regulation. You will be required to indemnify the City against any such violations.
- e. Your obtaining irrevocable written commitments from other lenders and providing such additional funds as are reasonably necessary in the discretion of the City to permit you to complete the acquisition and purchase of the property located at: _____.
- f. Your provision of evidence that _____ is organized and qualified to do business in this state.
- g. A copy of your current business license from the City of Berkeley.
- h. Payment of a loan fee in an amount equal to two percent (2%) of the loan at closing.

9. Covenants. In connection with the loan, you will be required to comply with all of the following:

2. Within time periods specified in the Loan Agreement you will be required to provide annual, CPA compiled financial statements to the RLF.
 3. You will be required to provide evidence of adequate liability and property damage insurance in an amount and with a company satisfactory to the RLF as stipulated in the Loan Agreement.
10. Default: The Loan Agreement and other loan documents will contain provisions making any breach of any term or condition thereof a default.
11. Miscellaneous:

- a. Funds used by the RLF to make the loan are be provided by the Economic Development Administration, (EDA), and as a consequence will be subject to certain restrictions and requirements, all of which will be described in the Loan Agreement.
- b. You will not have any right to assign the loan or any of your interest therein.
- c. Time is of the essence in the performance of all of your obligations hereunder.
- d. This letter and the loan shall be construed and interpreted in accordance with the laws of the state of California.
- e. ORAL AGREEMENTS, PROMISES, OR COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, MODIFY OR AMEND ANY TERMS OF THE LOAN, RELEASE ANY GUARANTOR, FORBEAR FROM ENFORCING REPAYMENT OF THE LOAN OR EXERCISING ANY REMEDY UNDER THE LOAN DOCUMENTS, OR MAKE ANY OTHER FINANCIAL ACCOMMODATION PERTAINING TO THE LOAN ARE NOT ENFORCEABLE UNDER CALIFORNIA LAW.

This commitment is conditioned upon the preparation, execution and delivery of legal documentation in form and substance satisfactory to the RRLF and to its counsel, which documentation in addition to incorporating substantially the terms set forth above will include such other terms as are customary for transactions of this type. This commitment is further conditioned upon the strict compliance by the Borrower with all requirements of this commitment letter before the expiration date hereof.

Please evidence your approval of the foregoing to signing and returning the lender the enclosed copy (accompanied by the commitment fee referred to above) on or before _____. If such executed copy (and fee) is not received by the RLF by such date, then this commitment shall automatically expire and be of no further force or effect.

Sincerely yours,

Economic Development Manager

Accepted this ____ day of _____, 200x.

BORROWER:

By: _____
Its: _____

SAMPLE CLOSING CHECKLIST

-

CLOSING CHECKLIST

Account Name: _____

Approved: _____

ITEM REQUIRED	Required		Received/Complete	
	Yes	No	Yes	No
	A. DOCUMENTS RECEIVED			
ATTORNEY ENGAGEMENT LETTER				
1. Commitment letter completed				
1a. Commitment letter returned				
2. Loan Agreement				
3. Note				
3.a. Amended Note (Allonge)				
4. Deed of Trust				
4.a. Title Policy				
1. Assignment of Rents				
2. Assignment of (Commercial) Lease				
7. Guaranty (s)				
7.a. Acknowledgment and Consent				
8. Security Agreement				
8a. List of equipment for UCC.				
9. UCC-1 and/or UCC-2				
9a. UCC 11R				
10. Estoppel Certificate (5a/parties to Estoppel)				
11. Assignment of Cash Value/Life Insurance				
11a. Copy of Insurance Policy				
11.b. Personal residence				
12. Collateral Receipt for:				
13. Assignment Letter (dividends)				

CLOSING CHECKLIST

Account Name: _____

Approved: _____

ITEM REQUIRED				
	Required		Received/Complete	
	Yes	No	Yes	No
B. FINAL CLOSING PROCESSS AND CROSS CHECK LIST				
1. Escrow/Disbursement Instructions				
2. Copy of lender(s) approval/commitment/decline letter				
3. Tenant and owner lease agreements received				
4. Title Commitment				
4. (a) Title Policy #				
Contact Name:				
5. Organizational documents and borrowing resolutions				
6. Liability and fire protection insurance binders				
7. Copy of purchase agreement/and amendments				
8. Bills/invoices to be paid from escrow				
9. Copies of architect, engineer, and construction contracts				
10. Receipt of performance bond, as required				
11. Copies of all construction lien releases				
12. Copies of all reports, certificates, or other documents furnished by construction lender				
13. Real estate appraisal and all addendum and/or amendments				
14. A certified survey with a legal description conforming to the title policy and the deed of trust				
15. Evidence that required equity has been provided				
16. Other (list below)				
16a. Order check for closing				
16b. Final review of documents				
16c. All insurance binders received				
16d. Prepare data entry sheet				

CLOSING CHECKLIST

Account Name: _____

Approved: _____

ITEM REQUIRED				
	Required		Received/Complete	
	Yes	No	Yes	No
C. DOCUMENTS TO BE REVIEWED AND/OR MODIFIED				
1. Promissory Note				
2. Security Agreement				
3. Loan Agreement				
3.a. UCC Filings				
4. Participation Agreement				
5. Continuing Guaranty				
6. Other documents				
7. Warrant Agreement				
8. Copies of Subordinated Debt				
9. Copies of Other Notes/Warrants				
10. Inter-creditor Agreement				

LOAN FILE CHECKLIST

SAMPLE SERVICING REPORT

LOAN SERVICING REPORT
Insurance, Jobs Report and Site Visits

START-UP LIST OF EXISTING AND PROJECTED JOBS: _____

JOBS REPORTS DUE: Semi-annual/Start date: _____

JOB CREATION OBJECTIVE: (____)MET: _____(Date)

JOB RETENTION OBJECTIVE: (____)MET: _____(Date)

Job Creation/Retention Reports Received:

Date: _____	Employee Status: _____

Insurance Certificate with the RLF listed as Loss Payee Required on:

() FF&E () Vehicles () Real Estate () Inventory

() Personal Residence () Key Man Life Insurance

Other () General Liability

Company Name: _____

Collateral Covered: _____

Agent Name: _____ Agent Phone: _____

Expires: _____

Company Name: _____

Collateral Covered: _____

Agent Name: _____ Agent Phone: _____

Expires: _____

Comments on Expirations/Change of Coverage:

LOAN MONITORING and SITE VISIT REPORT						
BORROWER:						
CONTACT NAME:						
PHONE NUMBER:		REPORT DATE				
REVIEWER NAME:						
NAME OF STAFF INTERVIEWED:						
PROJECT SITE VISIT:	Yes	No	FILE REVIEW ONLY?	Yes	No	
ORIGINAL LOAN PURPOSE (Use of Proceeds):						
			Days Delinquent			
STATUS OF LOAN:	Current					
	Delinquent					
F. LOAN AGREEMENT IN COMPLIANCE			Yes	No		
Comments						
JOB CREATION and/or RETENTION						
Full-time #	Part-time #		Minority/Ethnic Group			
	Hours worked per week:		Asian Pacific Islander			
FOLLOW-UP and/or REQUESTS TO BORROWER:						
DATE OF NEXT REVIEW:						

SAMPLE DEFAULT NOTIFICATION LETTER

LOAN DEFAULT NOTIFICATION LETTER

Date:

Borrower Name

Address

City, State, Zip

Loan #:

RE Account:

Amount Past Due:

Late Charges:

Dear (Borrower):

You are hereby notified that due to your failure to make the monthly payments due for (time-span, year), for the total amount indicated above, pursuant to the terms of that certain Promissory Note dated _____ in the original principal amount of \$_____ (the Note) given to you by the Berkeley Revolving Loan Fund (RLF), you are in default under the terms of the Note.

Pursuant to the terms of the Note, the City hereby demands that you pay all payments now due, together with accrued interest, late charges, and any costs or fees incurred by the Authority in connection with the default as provided in the Note.

The current principal balance of the Note is \$_____ as of _____, with interest accruing on the principal balance from _____, the date of your default, at the rate of _____ (_____%) per annum. In addition, you are required to pay a late charge equal to five percent (5%) of the amount of the monthly payment due for each thirty day period after fifteen days from the due date of such payment. Late charges accrued are indicated above.

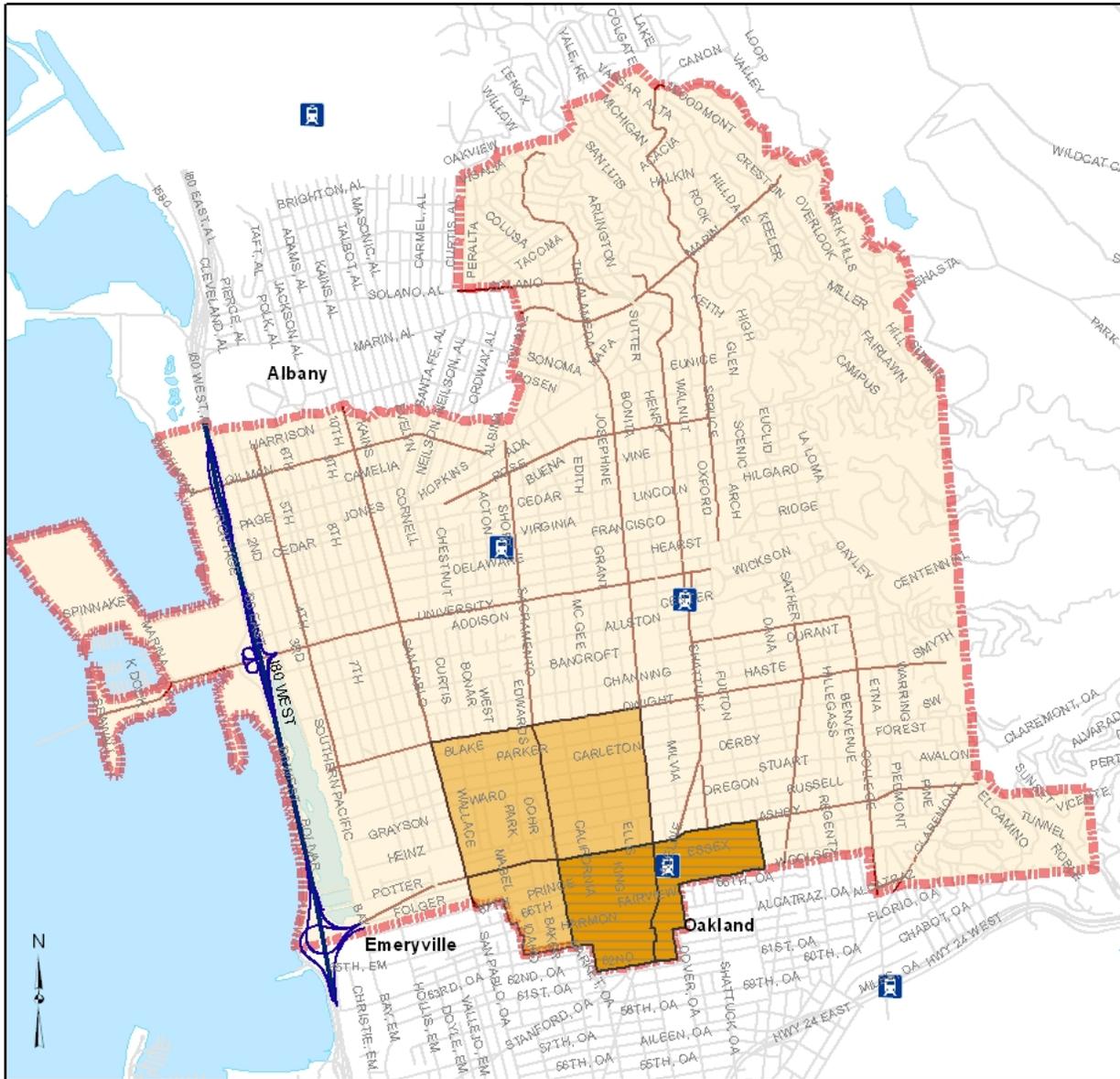
All payments must be made to the City of Berkeley RLF at

You are being given 30 days from the date of this letter to bring these payments current. Failure to do so will result in legal action against the corporation, and you personally.

Sincerely yours,

Economic Development Manager

MAP OF TARGET AREA



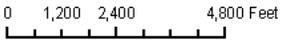
City of Berkeley Revolving Loan Fund (RLF)

- Legend**
- Expanded Target Area
 - Original Target Area
 - EDA-Approved RLF Boundaries
 - Bart Stations

This map is for reference purposes only.

Care was taken in the creation of this map, but it is provided "AS IS". Please contact the City of Berkeley to verify map information or to report any errors.

March 3, 2009



CITY OF BERKELEY
 Office of Economic Development
 2180 Milvia Street, Berkeley CA 94704

