



REPORT TO COUNCIL

City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www.CityofSacramento.org

Consent
August 25, 2009

Honorable Mayor and
Members of the City Council

Title: Curtis Park Village Project

Location/Council District: Council District 5

Recommendation: Adopt a Resolution approving a \$900,000 Brownfield Revolving Loan Fund (BRLF) loan to Calvin Elk Grove-Florin, LLC for environmental clean-up at the Curtis Park Village Project.

Contact: Diana Sasser, Project Manager, 808-5519; James Rinehart, Economic Development Manager, 808-5054

Presenters: Not Applicable

Department: Economic Development

Division: Citywide

Organization No: 18001031

Description/Analysis

Issue: The Curtis Park Village (CPV) project is a unique mixed-use, transit-oriented development project located adjacent to two light rail stations in Sacramento. The 72-acre site is located on an old railyard and as a result requires a major clean-up effort to develop this brownfield site. Calvin and Elk Grove-Florin, Limited Liability Company (LLC), the owner and developer of the CPV project (Developer), was awarded a \$4 million Cal-Reuse Grant from the Center for Creative Land Recycling (CCLR). However, this funding is currently on hold due to the lack of State bond funding availability. Therefore, the developer has submitted an application for \$900,000 to the City of Sacramento's (City) Brownfield Revolving Loan Fund (BRLF) as a bridge loan to allow the cleanup work to proceed.

The BRLF Loan Committee has approved Developer's loan request. The BRLF will be paid back once the Cal-Reuse grant is received by the developer. This BRLF loan is different than the \$1,817,000 contingent loan approved for CPV by City Council on May 19, 2009, as those funds are to come from Environmental Protection Agency (EPA) and the 2009 American Reinvestment and Recovery

Act (ARRA) stimulus funding if such funds are awarded to the City.

The City Council previously authorized the City Manager to approve up to \$500,000 in BRLF loans made in accordance with the Council-approved BRLF Guidelines. This loan requires Council approval because it exceeds the City Manager's authorization and because the interest repayment terms deviate slightly from the BRLF Guidelines.

Policy Considerations: The action recommended in this report is consistent with previously approved policies to assist commercial projects and promote in-fill development.

Environmental Considerations:

California Environmental Quality Act (CEQA): The Developer has completed an environmental review in compliance with CEQA for the Curtis Park Village project.

Sustainability Considerations: The recommended action and project are consistent with the Sustainability Master Plan (SMP).

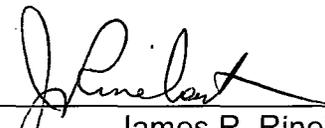
Commission/Committee Action: Not applicable.

Rationale for Recommendation: The City's BRLF Loan Committee has recommended awarding a \$900,000 loan to Calvine and Elk Grove-Florin, LLC. The site has already been approved by EPA as eligible. The Developer will be required to provide a 20% match, or \$180,000, in the form of equity or other local funding. These funds will allow the CPV project to proceed with the clean up of its site while the Developer's receipt of the Cal-Reuse Grant from CCLR is pending. The Developer is required to provide current appraisals of the collateral properties to ensure that they are sufficient to protect the City's economic interest in the loan. The Developer will also be required set up an interest-reserve account to assure that interest payments will be made timely.

Financial Considerations: In 2008, the City was awarded approximately \$950,000 in BRLF funds from EPA funding to date. The Developer has applied for a \$900,000 BRLF loan. Developer's loan will be for a 5-year loan term at 2% interest. During the five year term, interest-only payments will be made annually with a balloon payment of the principal at the end of 5-years, to be repaid with the Cal-Reuse Grant. Having the interest payments made on an annual basis is a slight deviation from the previously approved BRLF Guidelines Section 5.5 requiring interest payments to be made quarterly.

Emerging Small Business Development (ESBD): Not applicable.

Respectfully Submitted by:


James R. Rinehart
Citywide Development Manager

Recommendation Approved:


Ray Kerridge
City Manager

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RESOLUTION NO.

Adopted by the Sacramento City Council

APPROVING A \$900,000 BROWNFIELD REVOLVING LOAN FUND (BRLF) LOAN TO CALVINE ELK GROVE-FLORIN, LLC FOR ENVIRONMENTAL CLEAN-UP AT THE CURTIS PARK VILLAGE PROJECT

BACKGROUND

- A. A "brownfield" is generally defined as a site which is unused or underutilized due to the (actual or perceived) presence of hazardous substances. Brownfields redevelopment is a fiscally-sound way to bring investment back to Sacramento's neglected neighborhoods and business corridors, cleanup the environment, reuse infrastructure, eliminate blight, and relieve pressure on the urban fringe.
- B. The City Council previously authorized establishment of a Brownfield Cleanup Revolving Loan Fund (BRLF) to promote the cleanup of brownfield sites within the City for future development of such sites and on July, 15, 2008, the City Council accepted grant funding from the U.S. Environmental Protection Agency (EPA) to fund the City's BRLF program. The City Manager was authorized by Resolution 2008-475 to establish the grant fund and project accounts to receive and administer the funds. The City Manager is authorized to approve loans and grants only up to \$500,000 each made in accordance with the Council-approved BRLF Guidelines.
- C. Calvine Elk Grove-Florin, LLC originally submitted a loan application for a loan of \$2,267,000 from the BRLF for its Curtis Park Village project located at APNs: 013-0010-008, -009, and 023 through 028.
- D. On May 19, 2009 the City Council approved a loan for \$1,817,000 to Calvine Elk Grove-Florin, LLC conditioned upon the City receiving additional EPA American Reinvestment and Recovery Act (ARRA) funding, which is anticipated will occur by September 30, 2009.
- E. Calvine Elk Grove-Florin, LLC has received site eligibility approval from EPA.
- F. The City's BRLF Loan Committee was prepared to award a \$450,000 loan to Calvine Elk Grove-Florin, LLC from the original BRLF loan pool and now recommends increasing the loan to \$900,000. Because such a loan exceeds \$500,000 and the interest payment terms deviate from the BRLF Guidelines, it requires City Council approval.

BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:

- Section 1. The City Council hereby authorizes a loan up to \$900,000 from the BRLF funds described in Paragraph B, above, be made to Calvine Elk Grove-Florin, LLC for the Curtis Park Village project provided that sufficient collateral is provided in the form of a deed of trust on properties with sufficient equity based on current appraisals. The Developer shall also set up an interest-reserve account to assure that future interest payments can be timely made.
- Section 2. The City Council hereby approves the Loan Agreement For Site Remediation, attached hereto as Exhibit A, and authorizes the City Manager to execute said Loan Agreement in accordance with the requirements set forth in Section 1 of this resolution.
- Section 3. The City Council hereby approves the Promissory Note, attached hereto as Exhibit B. The interest-only payments may be made annually instead of quarterly during the five year term, with a balloon payment of the principal at the end of five years.
- Section 4. Exhibits A and B are part of this resolution.

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Exhibit A

**CITY OF SACRAMENTO
BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM**

LOAN AGREEMENT FOR SITE REMEDIATION

THIS AGREEMENT is entered as of the ____ day of _____, 2009 (“Effective Date”), by and between CALVINE ELK GROVE-FLORIN, LLC (hereinafter “BORROWER”), and the CITY OF SACRAMENTO, (hereinafter (“CITY”), as of the date first above written.

WHEREAS, CITY is a recipient of U.S. Brownfields Cleanup Revolving Loan Funds (U.S. RLF) and authorized to make certain loans from these funds; and

WHEREAS, using said U.S. RLF, CITY has established guidelines for the Sacramento Brownfields Cleanup Revolving Loan Fund Program (hereinafter the “BCRLF Program”) (Exhibit A) to assist property owners and developers to remediate properties in the City of Sacramento; and

WHEREAS, the BORROWER has completed loan pre-qualification and application requirements for the BCRLF program (Exhibit C); and

WHEREAS, to induce CITY to make the LOAN, BORROWER shall have executed a PROMISSORY NOTE and such other related instruments or agreements concurrently herewith (collectively known as the LOAN DOCUMENTS)

WHEREAS, BORROWER wishes to borrow from CITY, and CITY is willing to lend such sum described in the PROMISSORY NOTE to BORROWER on the terms and conditions herein contained; and

NOW, THEREFORE, CITY and BORROWER, intending to be legally bound, agree to as follows:

I. **LOAN**

- A. **LOAN.** CITY hereby agrees to loan to BORROWER the principal sum of Nine Hundred Thousand Dollars (\$900,000) for the purpose described herein, which shall bear simple interest at the rate of two percent (2%) per annum beginning on the first day following the recordation of the PROMISSORY NOTE, on unpaid principal until principal is paid in full (the “LOAN”).
- B. **PROMISSORY NOTE.** The LOAN shall be evidenced by BORROWER’s PROMISSORY NOTE dated concurrently with this AGREEMENT substantially in the form of Exhibit B attached hereto (“PROMISSORY

NOTE”), all terms of which are incorporated herein by reference. The PROMISSORY NOTE shall mature on the fifth (5th) anniversary date following the Effective Date (“Maturity”), when any remaining balance of principal and interest owed CITY shall be due and payable.

C. EARLY REPAYMENT AND FORGIVENESS OF INTEREST.

BORROWER may, without premium, prepay any portion of the principal on the LOAN as allowed for in the PROMISSORY NOTE; provided, however, interest may be forgiven on the LOAN if BORROWER completes the project and repays the principal within twenty-four (24) months from the date hereof.

D. FAILURE TO PAY THE LOAN BALANCE UPON MATURITY.

In the event that BORROWER fails to pay any interest payments or the principal amount in full on the PROMISSORY NOTE when they are due, whether before Maturity, at Maturity or by acceleration, the interest rate on this Note shall increase to seven percent (7%) per annum or the maximum rate allowed by law, whichever is lower.

E. PURPOSE.

1. The proceeds of the LOAN shall be used only for the approved removal of hazardous substances from the BORROWER’s property at APN 013-0010-008, 013-0010-009, 013-0010-023, 013-0010-024, 013-0010-025, 013-0010-026, 013-0010-027, 013-0010-028 (the “Property”, Exhibit “D”), as set forth in the following Exhibits (collectively, the “Project Documents”):

- Exhibit “E” Work Plans
 - Exhibit “F” Engineering Evaluation/Cost Analysis (EE/CA)
 - Exhibit “G” Project Budget
 - Exhibit “H” Responsiveness Summary, as amended (PPP)
 - Exhibit “I” Schedule
- (The Exhibits may be consolidated, as appropriate)

2. BORROWER understands and agrees that any and all work performed on the Property for which LOAN funds are used and the receipt of the LOAN under this Agreement is conditioned upon BORROWER’s full compliance with the Project Documents and this AGREEMENT.

F. REMEDATION AGREEMENT.

BORROWER intends to enter into an agreement with a qualified contractor (hereinafter referred to as “Contractor”) to execute the Work Plan. BORROWER shall attach and incorporate a copy of this AGREEMENT and the BCRLF Program guidelines to any agreement with the Contractor.

- G. CONTRACTOR QUALIFICATIONS AND INSURANCE. BORROWER affirms that Contractor will be required to examine the Property, will be fully familiar with local conditions, and will be able to execute the Work Plan. Contractor shall perform the Work Plan consistent with the level of care and skill exercised by similar contractors performing comparable services under comparable circumstances. Contractor shall possess a Hazardous Substance Removal and Remedial Action License Certification and the appropriate license from the California Contractor's State License Board for the past twenty-four (24) months prior to date of the Remediation Agreement. Contractor shall maintain and keep in force insurance, including, but not limited to pollution, general liability, and automobile insurance with a minimum of \$1,000,000 coverage per accident or claim, property insurance and workman's compensation. Insurance shall be placed with an insurer with an AM. Bests' rating of no less than A:VII
- H. TRANSACTION FEES AND CLOSING REQUIREMENTS.
1. BORROWER shall pay all closing costs by cash or check at the occurrence of escrow closing.
 2. Before closing of the loan, BORROWER shall submit the following documents, any of which may be waived by the CITY:
 - a. Property Appraisal (re Loan Collateral)
 - b. Opinion of BORROWER's legal counsel that BORROWER, if a corporation, is in good standing and that all documents executed by BORROWER are valid and enforceable in accordance with their respective terms.
 - c. Written authorization in the form of a resolution, authorizing the BORROWER to BORROW, and authorizing the BORROWER's representatives to execute the LOAN DOCUMENTS on behalf of BORROWER.
 - d. Title Report, and evidence that no outstanding taxes, fees, charges, mortgages, liens, encumbrances or other assessments have been filed or recorded against the Property (re Loan Collateral), or that the CITY waives exceptions on the Title Report.
 - e. Title Insurance provided at the expense of the BORROWER. (re Loan Collateral)

- f. Evidence of insurance coverage with limits of liability determined by the CITY. All insurance coverage required by the section shall remain in full force and effect during the term of the LOAN. (re project and Loan Collateral)
 - g. Performance Bond or other acceptable performance security approved by the City Attorney.
 - h. CITY's receipt of Project Cost breakdown based upon estimates and prices supplied by BORROWER.
 - i. Evidence of a firm commitment for a construction loan and permanent financing from an accredited lending institution.
3. Transaction Fees. CITY, may, at its option, charge transaction fees for document preparation and recording and all other services related to the Property including, but not limited to subordination, sale or other transfer, demand notices, refinancing, reconveyance, and litigation. BORROWER shall pay or reimburse CITY on demand for all present or future documentary stamp taxes, if any, required by any state as a condition of filing a financial statement covering collateral which is the subject of this AGREEMENT.
4. Loan Collection Service Fees. CITY may, at its option, charge a fee for loan collection services equal to that fee which the contractor providing such services charges to the CITY for the processing of loan payments. (Not applicable to this transaction)
5. Upon Default. Upon default arising from provisions of Section VI, BORROWER promises to pay CITY all collection and attorney's fees and expenses actually incurred by the CITY, whether or not litigation is commenced, including but not limited to attorney's fees and penalties and/or fees due under this AGREEMENT.

I. SECURITY

- 1. As security for BORROWER's indebtedness to CITY, BORROWER shall execute a PROMISSORY NOTE as a condition precedent to CITY making the LOAN. The Note shall be dated concurrently with this AGREEMENT.
- 2. The indebtedness evidenced by the PROMISSORY NOTE may be secured by a DEED OF TRUST dated concurrently with this AGREEMENT. The DEED OF TRUST shall also secure (i) all indebtedness evidenced by any extension or renewal of the PROMISSORY NOTE, and (ii) payment of such further sums as

BORROWER may owe CITY in the future for any interest, fees and costs due under this AGREEMENT.

- J. INSPECTION AND RIGHT TO STOP WORK. CITY or its designee may inspect work at the Property during and upon completion of remediation, with BORROWER to provide notice to CITY when completion is imminent (not later than five days prior). CITY shall select a Site Manager who shall perform duties including, but not limited to, coordination, oversight and inspection of the BCRLF Project Response Action. CITY shall, at all times, have the right, but not the obligation, to enter the Property during the execution of the Work Plan. If CITY finds that the work is unsatisfactory or is not substantially in accordance with the Work Plan, CITY shall have the right to stop work, and order work replacement by BORROWER at BORROWER's expense. CITY shall not be obligated to make any disbursements until all work is satisfactory to the CITY.
- K. DISBURSEMENT OF LOAN FUNDS. The loan funds shall be disbursed to BORROWER or the Contractor in monthly draws as reimbursement for allowable expenses incurred by BORROWER or the Contractor based upon the progress of the work and in accordance with the approved Project Budget and Schedule. No draws shall be advanced to BORROWER or the Contractor without the written approval of the Site Manager.
- L. PROGRESS PAYMENTS AND RETENTION. All requests by BORROWER for progress payments will be on a monthly basis and shall be approved by the BORROWER's Licensed Environmental Professional (LEP) and submitted to the CITY before the first day of each month, for review and approval by the Site Manager and CITY. The progress payment will not be available until the 5th day of each month. The CITY reserves the right to withhold up to ten percent (10%) of each payment as retention. Any withheld funds will be released after submitting a Construction Phase Completion Report and receipt of a Certificate of Phase Completion, approved by the Site Manager, and receipt of properly executed lien waivers.
- M. ADHERENCE TO BUDGET. BORROWER agrees to keep all expenditures from loan proceeds within the approved Budget. BORROWER shall not exceed any of the costs enumerated in the approved Project Budget without the prior written approval of the Site Manager and CITY.
- II. REPRESENTATIONS AND WARRANTIES. BORROWER makes the following representations and warranties to CITY, which representations and warranties shall survive the execution of this AGREEMENT.

- A. CLEANUP PLANNING REQUIREMENTS. The following provisions will apply for AGREEMENTS executed prior to the preparation of an Engineering Evaluation and Cost Analysis.
1. BORROWER shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations 41 CFR 60-4 relating to Federally assisted construction contracts.
 2. BORROWER shall provide CITY with a copy of Phase I and Phase II Environmental Assessment of the Property performed according to the American Society of Testing and Materials (ASTM) Standards. Alternatively, BORROWER may provide a Remedial Action Plan (RAP) in lieu of the Phase II Environmental Assessment. BORROWER shall be responsible for the payment of all costs and expenses related to the Assessment, and LOAN funds shall not be used for payment of any such costs or expenses. The Assessment shall include, but is not limited to site background, the threat posed to by the contaminant to public health, welfare, and the environment and all past activities conducted by any government agency, and the site testing results.
 3. CITY shall prepare and implement a Community Relations Plan (CRP) or Public Participation Plan with the assistance and cooperation of the BORROWER. The CRP shall be submitted to the U.S. Environmental Protection Agency (EPA) for review prior to implementation. The CRP shall include the following:
 - a. Copies of interviews conducted with residents and community leaders, local officials, and public interest groups.
 - b. Copies of news releases and other information which explains the proposed project to be disseminated throughout the area surrounding the affected area.
 - c. Procedures for the establishment of a local information repository at or near the potential site that includes public information supplied by both CITY and BORROWER related to the proposed response action. BORROWER shall supply CITY with any additional information that would assist CITY in documenting the BCRLF Response Action.
 4. After CITY has prepared the CRP, BORROWER shall draft an 'analysis of brownfields cleanup alternatives' document that contains information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.);

cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the cleanup proposed.

5. BORROWER shall make the draft analysis of brownfields cleanup alternatives document available for review and public comment for a period of not less than thirty (30) days from the date of publication of a public notice which announces the availability of the document for public review.
6. BORROWER shall also submit copies of the draft analysis of brownfields cleanup alternatives to the State for review and approval and to CITY's designated Site Manager, if applicable, for review and comment.
7. After the public comment period, BORROWER shall incorporate all appropriate comments into a final analysis of brownfields cleanup alternatives document and prepare a written response to the public comments if appropriate.
8. BORROWER shall prepare remedial design and engineering documents and submit them to the State for review and approval and to CITY's designated Site Manager, if applicable, for review and comment. This may occur simultaneously with the submittal of the analysis of cleanup alternatives document.
9. Prior to the initiation of any cleanup activities, BORROWER shall prepare a detailed budget for the proposed cleanup activities and submit it to CITY and EPA for approval.

B. ENVIRONMENTAL WARRANTIES. BORROWER certifies that:

1. The Property is not listed, or proposed for listing on the National Priorities List of the EPA;
2. BORROWER is not responsible for the existing environmental hazards as generator or transporter of the contamination pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended (CERCLA);
3. BORROWER certifies that it is not an owner operator of the site pursuant to CERCLA. If BORROWER is or becomes an owner operator of the site pursuant to CERCLA prior to the execution of this AGREEMENT, the BORROWER shall certify that it falls under a CERCLA statutory exemption from liability, or that EPA could use

its enforcement discretion as deemed necessary and appropriate by the said agency.

4. BORROWER has entered into an appropriate State response program and has received approvals required by that program and has or will submit copies of the State approvals to CITY and EPA.
 5. If BORROWER will collect environmental samples using LOAN proceeds, BORROWER shall prepare a Quality Assurance Project Plan which sets forth the manner and method of collecting samples to assure the complete removal of all hazardous substances and submit it to EPA for review and approval.
- C. LEGAL STATUS. BORROWER is a Limited Liability Company permitted to operate in the State of California.
- D. NO VIOLATION. The making and performance by BORROWER of this AGREEMENT does not violate any provision of Federal or State law, or City of Sacramento ordinance, or result in a breach of or constitute a default under any agreement, indenture or other instrument to which BORROWER is a party or by which BORROWER may be bound.
- E. AUTHORIZATION. This AGREEMENT and the PROMISSORY NOTE have been duly authorized, executed and delivered, and are valid and binding agreements of BORROWER.
- F. LITIGATION. There are no pending or threatened actions or proceedings before any court or administrative agency which may adversely affect the financial condition or operation of BORROWER other than those heretofore disclosed by BORROWER to CITY in writing.
- G. CORRECTNESS OF FINANCIAL STATEMENT. The financial statement dated December 31, 2008 heretofore delivered by BORROWER to CITY presents fairly the financial condition of BORROWER, and has been prepared by a Certified Public Accountant in accordance with generally accepted accounting principles consistently applied. As of the date of such financial statement, and since such date, there has been no material adverse change in the condition or operation of BORROWER, nor has BORROWER mortgaged, pledged or granted security interest in or encumbered any of BORROWER's assets or properties since such date.
- H. NO ADDITIONAL SUBORDINATION. The obligations of BORROWER under this AGREEMENT and the PROMISSORY NOTE will not be further subordinated in right of payment to any obligation of BORROWER, other than that which may be provided under this AGREEMENT, unless otherwise acknowledged or agreed to by CITY in writing.

- III. **CONDITIONS PRECEDENT**. The obligation of CITY to make this LOAN contemplated hereunder is subject to the fulfillment of the following conditions:
- A. **EPA APPROVALS**. The execution of the LOAN is subject to the approval of the U.S. Environmental Protection Agency of these LOAN DOCUMENTS.
 - B. **APPROVAL OF CITY'S LEGAL COUNSEL**. All legal matters incidental to CITY's commitment to issue the LOAN hereunder shall be satisfactory to the CITY's City Attorney, including the form, validity and enforceability of this AGREEMENT and the LOAN DOCUMENTS.
 - C. **COMPLIANCE**. The representations and warranties contained herein shall be true on and as of the date of the signing of this AGREEMENT with the same effect as though such representations and warranties had been made on and as of such date, and on such date no event of default as defined in Article VI herein ("EVENTS OF DEFAULT") and no condition, event or act which, with the giving of notice or the lapse of time or both would constitute an EVENT OF DEFAULT, shall have occurred and be continuing or shall exist.
 - D. **SUBMISSION OF REMEDIATION CONTRACTS**. BORROWER shall submit to CITY copies of all bids and remediation contracts to be conducted by contractors and subcontractors for all work required under the Work Plan approved by the appropriate regulatory agency.
- IV. **AFFIRMATIVE COVENANTS**. BORROWER covenants that so long as BORROWER is indebted to CITY under this AGREEMENT, and remains indebted to the payment in full of the PROMISSORY NOTE issued hereunder, BORROWER shall do the following:
- A. **PUNCTUAL PAYMENT**. BORROWER shall punctually pay the principal and any interest of the PROMISSORY NOTE at the times and place and in the manner specified in the PROMISSORY NOTE.
 - B. **ACCOUNTING RECORDS**. BORROWER shall document all the uses of the LOAN proceeds, and maintain adequate books and accounts in accordance with generally accepted accounting principles consistently applied. BORROWER shall seek the written approval of CITY prior to disposing of records. BORROWER shall maintain documentation on the use of the loan proceeds for a minimum of three (3) years after the completion of remediation activities supported by the loan, or for the length of the loan, whichever is greater, except as follows:
 - 1. Records that are subject to audit findings shall be retained three years after such findings have been resolved.

2. BORROWER shall permit any representative of CITY, at any reasonable time, to inspect, audit and examine such books and inspect the properties of BORROWER. All such records and supporting documents shall be made available, upon request, for inspection or audit by CITY or its representatives.
- C. FINANCIAL STATEMENTS AND ONGOING REPORTING. BORROWER shall furnish CITY, so long as amounts remain due under the PROMISSORY NOTE:
1. Quarterly reports which document that they are in compliance with all relevant Federal and State environmental regulations and that they meet the requirements of the BCRLF Program.
 2. Quarterly financial statements to the BCRLF Program, including basic accounting and control mechanisms to track use of funds and document that the funds are spent for legitimate authorized uses. BORROWERs accounting system must track site-specific costs, and track cost activity and operable unit if applicable. Financial statements include: (i) Income Statements; (ii) Balance Sheet; and (iii) Cash Flow Statement.
 3. From time to time such other information as CITY may reasonably request.
- D. INSPECTION OF RECORDS. BORROWER agrees to permit the CITY or its designated representative to inspect and/or audit its records and books relative to the LOAN DOCUMENTS at any time during normal business hours and under reasonable circumstances, and to copy therefrom any information that CITY desires relevant to the LOAN DOCUMENTS. CITY shall provide written notice to the BORROWER prior to the execution of this provision. BORROWER agrees to deliver the records or to have the records delivered to CITY or its designated representative at an address designated by such party within the City of Sacramento. If CITY or its representative finds that the records delivered are incomplete, BORROWER agrees to pay CITY's or its representative's cost to travel to BORROWER's office or to other location where books or records are located to audit or retrieve the complete records.
- E. COMPLIANCE WITH ALL LAWS. BORROWER shall carry out the Project in accordance Federal cross-cutting requirements of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 104 (k), and all other applicable provisions of Federal, State, and Local laws, including, but not limited to: Uniform Administrative Requirements for Grants and Cooperative Agreements to States and

Local Governments (40 CFR Part 31); Cooperative Agreements for Superfund Response Actions (40 CFR Part 35, Subpart O); the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300); Minority Business Enterprises and Women-Owned Business Enterprises (MBE/WBE) requirements (40 CFR 30.44(b) or 31.36(e); Occupational Health and Safety Administration (OSHA) Worker Safety Standard (29 CFR 1910.120); Permits required by Section 404 of Clean Water Act; Executive Order 11246, Equal Opportunity; and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act (40 USC 327-333); the Anti-Kickback Act (40 USC 276c); Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250; and the EPA RLF Administrative Manual, EPA Publication xxx, Chapter 7.

F. PREVAILING WAGES.

1. BORROWER shall carry out the Project in accordance with the Davis-Bacon Act of 1931 (CERCLA 104(g)(1), 40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222). The Davis-Bacon Act requires payment of Federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with BCRLF Loan Funds. BORROWER must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction contract.
2. BORROWER and its Contractor shall comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation and prevailing wages. BORROWER shall ensure that all workers, laborers and mechanics employed in construction, alteration, installation, demolition or repair work done under this AGREEMENT are paid not less than the general prevailing rate of per diem wages, including holidays and overtime work, for each craft, classification or type of worker by the contractor or by any subcontractor doing the work. The appropriate wage determinations can be obtained from the California Department of Industrial Relations (<http://www.dir.ca.gov>) and are available for inspection at CITY's offices. BORROWER or its contractor shall post, at each job site, a copy of the prevailing rate of per diem wages. BORROWER and/or its contractor shall forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates.
3. In the event of a conflict between the Federal prevailing wages and State prevailing wages, the higher wage rate shall be paid.

4. If BORROWER or its Contractor or Subcontractor fails to pay the applicable prevailing wage rate, BORROWER shall indemnify, defend and hold harmless CITY and its officials, officers, employees and agents against any resulting actions, demands, suits, claims or losses.
- G. INSURANCE. In addition to Contractor's insurance requirements, BORROWER shall maintain and keep in force insurance of the types and amounts necessary to protect the security for BORROWER's indebtedness to the CITY, including, but not limited to general liability and automobile liability insurance with a minimum of \$1,000,000 coverage per accident or claim, property insurance and workman's compensation, if applicable, and fire insurance for the value of the property, and coverage for pollution incidents that may be evidenced by pollution legal liability insurance. The workman's compensation policy shall include a waiver of subrogation in favor of CITY. Insurance coverage shall be primary as respects any other insurance or self-insurance available to CITY. Insurance shall be placed with an AM Best's rating of no less than A:VII. The City of Sacramento, its officers, employees and agents, shall be named as "Loss Payee" on a property insurance policy and "Additional Insured" on a general liability policy; and BORROWER shall deliver to CITY from time to time at CITY's request certificates of insurance or policies setting forth all business insurance then in effect. Policies shall be endorsed to provide that CITY shall be provided with thirty (30) days written notice of any cancellation, suspension or reduction in limits.
- H. MAINTENANCE. BORROWER shall keep the Property and business operations in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that the Property shall be fully and efficiently preserved and maintained. (Not applicable to this project)
- I. TAXES AND OTHER LIABILITIES. BORROWER shall pay and discharge when due any and all indebted obligations, assessments, taxes real and personal, including federal and state payroll and income taxes, except such as BORROWER may in good faith contest or as to which a bona fide dispute may arise; provided provision is made to the satisfaction of CITY for eventual payment thereof in the event that it is found that the same is an obligation of BORROWER.
- J. LITIGATION. BORROWER shall promptly give notice in writing to CITY of any litigation pending or threatened against BORROWER or the Property in excess of Five Thousand Dollars (\$5,000.00).
- K. NON-DISCRIMINATION AND EQUAL OPPORTUNITY. BORROWER will comply with all Federal, State and Local laws prohibiting discrimination on

the grounds of race, color, national origin, sex and disability. In addition, BORROWER will undertake good faith efforts to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies. BORROWER shall submit a report of such efforts on the CITY-provided form.

L. DEBARMENT AND SUSPENSION. The BORROWER certifies that BORROWER and Contractor:

1. Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from Federal, State or local (hereinafter "public) transactions;
2. Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; violation of Federal or State antitrust or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under paragraph IV.L.2, above; and
4. Have not within the preceding three years had a public transaction terminated for cause or default.

M. ENVIRONMENTAL COMPLIANCE. BORROWER certifies that BORROWER and Contractor are not currently, nor have been, subject to any penalties resulting from environmental non-compliance at the Property. BORROWER further certifies that they will conduct their remediation activities in accordance with the BCRLP Program Guidelines, and will modify the cleanup activities, as necessary and as determined by CITY, based on unforeseen site conditions or public involvement requirements.

N. NOTICE TO CHANGE IN WORK PLANS. BORROWER will immediately report in writing any potential changes to the Work Plan referenced in Section I.E and the discovery of pollutants not identified in the Work Plan. All changes or modification to the Project or the Project Documents shall be approved in writing by the Site Manager and/or the state regulatory agency where appropriate, and CITY prior to such change or modification

becoming effective. All additional costs incurred as the result of any Change Orders shall be the responsibility of BORROWER. In the event that unforeseen conditions are discovered during the project implementation, CITY reserves the right to revise the BCRLF Response Action and the Project Documents, which if approved by the state regulatory agency where appropriate, BORROWER must implement.

- O. **START AND COMPLETION OF PROJECT.** BORROWER will begin the project within thirty days after recordation of PROMISSORY NOTE and will complete all work included in the Work Plan within twenty-four (24) months following the commencement of work. BORROWER agrees to complete the work in a timely manner in accordance with the Work Plan and Budget. BORROWER shall notify the CITY when the Work Plan is complete. The notice shall contain certification or documentation necessary to establish the following, and shall be submitted to the Site Manager and/or the State regulatory Agency, where appropriate, for review and approval:
1. Certificate of Phase Completion has been issued for the Project by BORROWER's LEP;
 2. A Construction Phase Completion Report developed by the BORROWER's LEP in accordance with Section 300.165 of the NCP and all applicable EPA guidance (40 CFR 300.165). This report shall summarize the actions taken, the resources committed and the problems encountered in completion of the Project, if any.
 3. Identify any institutional controls required.
- P. **PROJECT SIGNAGE.** BORROWER shall erect a sign on the Property stating that work is being financed in part by the U.S. BCRLF and the Sacramento BCRLF and appropriate contacts for obtaining information about the activities being conducted on the Property. The sign shall comply with all State and Local law applicable to signs.
- V. **NEGATIVE COVENANTS.** BORROWER further covenants that so long as BORROWER is indebted to CITY under this AGREEMENT until payment in full of the PROMISSORY NOTE issued hereunder, BORROWER will not without prior written consent of CITY use LOAN proceeds other than for activities approved under the BCRLF Program Guidelines and for the activities stated under Section I.E. Loan proceeds will not be used for administrative or programmatic activities.
- VI. **EVENTS OF DEFAULT.**
- A. The following shall constitute EVENTS OF DEFAULT:

1. BORROWER assigns this AGREEMENT or any proceeds advanced hereunder or any interest herein to a third party or if the Property or any interest conveyed, assigned or otherwise transferred without the prior written consent of CITY.
2. BORROWER fails to pay any principal or interest when due under the PROMISSORY NOTE.
3. Any representation or warranty made by BORROWER hereunder or in the LOAN DOCUMENTS proves to be false or misleading in any material respect.
4. Use of the proceeds of the LOAN for a purpose other than that stated in Section I.E.
5. Default by BORROWER in the performance of any other term, covenant or agreement contained herein, or in the LOAN DOCUMENTS, which is not cured within 30 days from its occurrence.
6. Default by BORROWER under the terms of any agreement or instrument pursuant to which BORROWER has borrowed money from any person or entity.
7. The failure of BORROWER promptly to pay and discharge any judgment or levy of any attachment, execution or other process against the assets of BORROWER, and such judgment be not satisfied, or such levy or other process be not removed within 30 days after the entry or levy thereof, or at least 5 days prior to the time of any proposed sale under any such judgment or levy.
8. BORROWER shall be adjudicated as bankrupt or insolvent, or shall consent to or apply for the appointment of a receiver, trustee or liquidator of itself or any of its property, or shall admit in writing its inability to pay its debts generally as they become due, or shall make a general assessment for the benefit of creditors, or shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization or arrangement in a proceeding under any bankruptcy law, or BORROWER or its directors or majority stockholders shall take action looking into the dissolution, liquidation, or reorganization of BORROWER.
9. The breach by Guarantors of any of the financial covenants in the Continuing Guaranty.

10. Sale of the security for the indebtedness to the CITY.
 11. Sale or transfer of the Property prior to completion of the remediation work, without prior approval of CITY.
 12. Failure of BORROWER to complete WORK PLAN.
- B. ACCELERATION. If an Event of Default shall occur, any indebtedness of BORROWER under this AGREEMENT of the PROMISSORY NOTE, any term of the PROMISSORY NOTE to the contrary notwithstanding shall at CITY's option and without notice, become immediately due and payable without presentment, notice or demand, all of which are hereby expressly waived by BORROWER, and the obligations, if any of CITY to permit further borrowings hereunder shall immediately cease and terminate.
- C. SECURE SITE. In the event of default, BORROWER shall secure the site. The cost of securing the site is the responsibility of the BORROWER. If BORROWER fails to secure the site within 24 hours, CITY may do so at the BORROWER's sole cost.
- D. CITY ACCESS. In the event of default or failure to complete the Work Plan, BORROWER grants the CITY site access for any purpose the CITY deems appropriate. (Not applicable to this transaction)
- VII. REMEDIES OF CITY. Upon the occurrence of any one or more of the Events of Default and at any time thereafter:
- A. CITY may exercise any and all of the rights, power, privileges and remedies provided in the LOAN DOCUMENTS.
 - B. Upon the occurrence of any Event of Default, CITY may exercise, singly or in combination, any or all of the rights, powers and privileges provided in this Article VII and all other remedies available to the CITY under the LOAN DOCUMENTS, at law or in equity, at any time and from time to time and such exercise shall not constitute a waiver of any of CITY's rights or remedies thereunder whether or not the indebtedness evidenced by the PROMISSORY NOTE shall be due and payable and whether or not CITY shall have instituted any foreclosure proceedings or other actions for the enforcement of its rights under the LOAN DOCUMENTS.
 - C. CITY shall be entitled to exercise all other remedies provided to CITY under the LOAN DOCUMENTS or otherwise available under California law, including, but not limited to:
 1. The appointment of a receiver;

2. The institution of a suit in equity or other appropriate proceedings for specific performance or an injunction against a violation of this AGREEMENT or the LOAN DOCUMENTS; and
 3. Taking possession of the Property and performing any and all work and labor necessary to complete the Work Plan in which event expenditures therefore shall be deemed an additional loan to BORROWER, payable on demand, bearing interest at the maximum rate allowed by law.
- D. CITY may, but shall not be obligated to, set-off against any and all BORROWER's property in which it has a security interest.
- VIII. **INDEMNIFICATION.** BORROWER shall, at BORROWER's expense, defend, indemnify, and otherwise hold CITY, its officers, employees and agents harmless against any and all claims, demands, losses, expenses, damages (general, punitive or otherwise) and causes of action (whether legal or equitable in nature) asserted by any person, firm, corporation, or other entity and arising out of or caused by any of the LOAN DOCUMENTS, or BORROWER's actions or inactions with regard to the Property, or by the use of the proceeds of the LOAN. BORROWER shall pay CITY upon demand all claims, judgments, damages, lawsuits or expenses (including legal expenses) incurred by CITY as a result of any legal action arising out of or caused by any of the LOAN DOCUMENTS, or by the use of the proceeds of this LOAN.
- IX. **MISCELLANEOUS,**
- A. **WAIVER.** No delay or failure of CITY, or any holder of the PROMISSORY NOTE exercising any right, power or privilege hereunder or in the LOAN DOCUMENTS shall affect such right, power or privilege; nor shall any single or partial exercise thereof of any abandonment or discontinuance of steps to enforce such a right, power or privilege affect such right, power or privilege. The rights and remedies of CITY hereunder are cumulative and not exclusive. Any waiver, permit, consent or approval of any kind by CITY, or any holder of the PROMISSORY NOTE, of any breach or default hereunder, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing.
 - B. **SUCCESSORS.** This AGREEMENT shall be binding upon the permitted assigns or successors of BORROWER and CITY. This AGREEMENT shall not be assigned or transferred by BORROWER without the written consent of CITY and any purported assignment or transfer without such prior written consent shall be void.
 - C. **NOTICES.** All notices, requests and demands given to or made upon the

respective parties under the LOAN DOCUMENTS shall be deemed to have been given or made when deposited in the mail, first class postage prepaid, and addressed as follows:

BORROWER: Calvin EIk Grove-Florin, LLC

CITY: The City of Sacramento
Economic Development Department
915 I Street, 3rd Floor
Sacramento, CA 95814

- D. COSTS AND ATTORNEY'S FEES. BORROWER will reimburse CITY for all costs, expenses and reasonable attorneys' fees expended or incurred by CITY in enforcing this AGREEMENT, in actions for declaratory relief in any way related to this AGREEMENT, or in collecting any sum which becomes due the CITY on the PROMISSORY NOTE.
- E. CALIFORNIA LAW APPLICABLE. This AGREEMENT and the PROMISSORY NOTE shall be construed in accordance with the laws of the State of California. Venue for any actions arising from this AGREEMENT and PROMISSORY NOTE shall be Sacramento County.
- F. EXHIBITS. All Exhibits mentioned in this AGREEMENT shall be deemed incorporated herein by reference as though fully set forth herein.
- G. RELATIONSHIP. The relationship of CITY and BORROWER is that of lender and borrower. No party hereto intends to create any other relationship hereby, and the parties disavow and negate any intention to create a partnership or joint venture hereby.
- H. ENTIRE AGREEMENT.
 - 1. The terms and conditions of this AGREEMENT, all exhibits attached and any documents expressly incorporated by reference represents the entire AGREEMENT between the parties with respect to the subject matter of this AGREEMENT. This AGREEMENT shall supersede any prior loan agreements, oral or written, regarding the subject matter between CITY and BORROWER. No other loan agreement, contract, statement, or promise relating to the subject matter of this AGREEMENT shall be valid or binding except by a written amendment to this AGREEMENT.
 - 2. If any conflicts arise between the terms and conditions of this

AGREEMENT and the terms and conditions of the attached exhibits or any documents expressly incorporated by reference, the terms and conditions of this AGREEMENT shall control.

- 3. If any part of this AGREEMENT is determined to be illegal or unenforceable, all other parts shall be given effect separately and shall be in effect.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the date first hereinabove written.

CITY OF SACRAMENTO ("CITY")

By: _____
City Manager

Attested By:

City Clerk

Approved as to form:

City Attorney

CALVINE ELK GROVE-FLORIN, LLC ("BORROWER")

By: _____

Title: _____

Federal I.D. #: _____

Social Security #: _____

Exhibit B**PROMISSORY NOTE**

\$900,000 Sacramento, California
Date: As of _____, 2009

1. FOR VALUE RECEIVED, in payments as herein stated, the undersigned Calvin Elk Grove-Florin, LLC, a California Limited Liability Company ("Borrower") promises to pay to THE CITY OF SACRAMENTO ("Lender"), or order, at its office at 915 I Street, 3rd Floor, Sacramento, California 95814, or at such other place as the holder hereof may from time to time designate in writing, in lawful money of the United States of America, the principal sum of Nine Hundred Thousand Dollars (\$ 900,000), together with interest on the unpaid principal balance of this Note, calculated at the initial rate of two percent (2%) per annum (computed on the basis of a 365-day year, actual days elapsed); provided, however, if BORROWER fails to pay any interest payments or the principal amount in full when they are due, whether before Maturity, at Maturity or by acceleration, the interest rate on this Note shall increase to seven percent (7%) per annum or the maximum rate allowed by law, whichever is lower. For purposes of this Note, "Maturity" shall have the same meaning set forth in Section I.B of the related Loan Agreement For Site Remediation signed by Borrower concurrently with this Note.
2. This Note is the Promissory Note defined in, and is entitled to the benefits of, the agreement entitled "Loan Agreement For Site Remediation" ("Loan Agreement"), dated concurrently herewith, between Borrower and Lender. Terms defined in the Loan Agreement shall, when used herein, have the same meaning as therein.
3. Interest is due on the first day of each year beginning on the first day of January following execution of this Note and continuing for four (4) successive years thereafter. The final payment of principal and interest is payable at Maturity and said principal and interest will be paid in full. Interest will accrue at two percent (2%) based on the principal amount outstanding. Each payment shall be credited first on interest then due and the remainder on principal. A late charge of five percent (5%) of any payment due not paid within ten (10) days of the due date thereof shall be paid to Lender in addition to any other amount(s) due under this Note.
4. This Note may be prepaid, at any time or from time to time, in whole or in part without premium or penalty. Any prepayment of principal must be accompanied by interest accrued but unpaid hereunder to the date of receipt of prepayment; provided however, interest may be forgiven on the Note if Borrower completes the project and repays the principal within twenty-four (24) months from the date hereof. If interest is owed on the Note, prepayments shall be applied first to accrued interest then due and the remainder will be credited to principal.
5. This Note is either secured by, or entitled to the benefits, rights and privileges of, the following instruments executed contemporaneously herewith:

DEED OF TRUST

6. If this Note is not paid when due, whether at maturity or by acceleration, Borrower, and every guarantor and endorser of this Note, and every person who assumes the obligations of this Note, agrees to pay all costs of collection when incurred, including, but not limited to, reasonable attorney's fees, whether or not suit is filed hereon. Additionally, the holder hereof shall be entitled to reimbursement for all attorney's fees and costs incurred in enforcing any judgment arising from or out of this Note which shall not merge into said judgment and may be added to the judgment and substantiated by supplemental cost bill.

7. Borrower, every guarantor and endorser of this Note, and every person who assumes the obligations of this Note, waives presentment, demand, protest, and notice of dishonor, notice of protest, notice of nonpayment, and notice of any kind with respect to this Note or any guarantee of it.

8. Borrower agrees to perform and comply with each of the covenants, conditions, provisions and agreements of Borrower contained in the Loan Agreement, or any agreement or instrument evidencing, securing, or guaranteeing the indebtedness evidence hereby.

9. This Note may not be changed or terminated orally, but only by an agreement in writing signed by the party against who enforcement of such change or termination is sought. No alteration, amendment or waiver of any provision of this Note, the Loan Agreement, or any agreement or instrument evidencing or providing security for this Note, made by agreement of the holder hereof or any other person or party, shall constitute a waiver of any other term hereof, or otherwise release or discharge the liability of Borrower under this Note.

10. If an Event of Default, as defined in the Loan Agreement, shall occur and be continuing, the entire principal balance of this Note, together with interest which shall have accrued thereon, may be declared immediately due and payable in the manner and with the effect provided in the Loan Agreement. After occurrence of an Event of Default, unpaid accrued interest shall be added to the unpaid principal amount of this Note, and interest shall accrue thereon at the rate specified in this Note.

11. This Note is governed by and is to be construed in accordance with the laws of the State of California.

BORROWER:

By: _____

Its: _____

