

City of Duluth
U.S. Environmental Protection Agency Brownfield RLF Grant #BF-00E01083
Brownfield Revolving Loan Fund Program Guidelines – December 2016

Statement of Purpose: The City of Duluth (City) is the recipient of a FY2012 U.S. Environmental Protection Agency (EPA) Brownfield Program "Brownfield Revolving Loan Fund" (BRLF) Grant. The grant consists of \$650,000 for the capitalization of a fund that will be used to make loans for the remediation of properties contaminated with hazardous substances. Grant funds are available for sites City-wide, with special emphasis on the St. Louis River Corridor. The project period for accessing the grant extends to 9/30/2017.

Brownfield Program Goals: The BRLF is a part of the City's Business and Economic Development Department ("BEDD"). The overall development goals of the department include the following:

1. Growth of the City's tax base,
2. Creation of jobs for City residents,
3. Creation of affordable housing, and
4. Expansion, connection, and improvement of the City's network of recreational trails, park land and open spaces.

Objectives of BRLF: To reclaim abandoned and underutilized brownfield sites for productive reuse and maximize leveraging opportunities from both private and public sectors. The City's BRLF will provide loans to eligible applicants to assist in the remediation of eligible contaminated property supportive of productive reuse.

Eligible Project Costs: Actions associated with the removing or mitigating of a hazardous substance, pollutant or contaminant. Sites with EPA accepted Environmental Plans and consistent with our City Comprehensive Plan are eligible. Loan funds can be used for remediation activities on brownfield sites ("removal activities" as defined in CERCLA 101(23) and described in the National Oil and Hazardous Substances Contingency Plan ("NCP"), 40 CFR Part 300.415). Eligible remediation costs include but are not necessarily limited to:

1. Costs associated with removing, managing, or preventing the release or threat of release of a hazardous substance, pollutant or contaminant, including:
 - Excavation, treatment, and removal or on-site management (including, but not limited to, capping) of contaminated soils;
 - Following removal: approved disposal, reuse and/or treatment of contaminated soils;
 - Fences, warning signs, or other security or site control precautions;
 - Drainage control;
 - Stabilization of berms, dikes, or impoundments;
 - Removal of drums, barrels, tanks or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants;
 - Containment, treatment, disposal or incineration of hazardous materials;

- Provision of alternative water supply where immediately necessary to reduce exposure to contaminated drinking water and continuing until such time as local authorities can provide a permanent remedy;
 - Pilings, vapor barriers, or other construction costs incurred in order to build safely upon contaminated soils that have been fully characterized and are being managed on-site as part of the site remedy (with or without institutional controls);
 - Mobilization to the subject property, and other activities necessary to access and prepare the property for remediation.
2. Site monitoring costs, including costs of sampling and analysis that are reasonable and necessary during the remediation process, such as confirmation sampling to ascertain the efficacy and sufficiency of the remediation.
 3. Bid-specification preparation costs, pre-design costs such as including costs of additional site sampling necessary to prepare volume estimates.
 4. Costs associated with meeting the public participation, worker health and safety, and interagency coordination requirements.
 5. Costs associated with removal activities, including demolition and/or site preparation that are part of the site remediation (including abatement of asbestos and lead paint in buildings that must be demolished in order to access contaminated soil beneath the building).
 6. Costs associated with abatement of hazardous materials, including asbestos and lead paint, necessary to safely reuse a building on a contaminated property.

Ineligible Costs: Loan funds cannot be used for the following activities:

1. Pre-remediation environmental response activities costs such as site assessments, identification and characterization.
2. Development costs that are not remedial actions (e.g., construction of a new facility or marketing of property).
3. Acquisition.

Eligible Applicant: Private, public or non-profit entities with ownership of the brownfield site. To be considered an eligible applicant for the BRLF, loan applicants must meet the following conditions:

1. Is not a responsible party (under CERCLA) for the identified release at the subject property (which must be in the City of Duluth);
2. Owns, or controls through a purchase option, the subject property. (Prior to any funding, the applicant must own the subject property);
3. Must have conducted appropriate environmental due diligence prior to purchase in the event that they own the subject property;
4. Is authorized to incur debt and enter into legally binding agreements;
5. Is financially sound; and

6. Has presented an economically viable reuse plan to the City.

Funding Available: The city funding from the BRLF will be in the form of a loan, a discounted loan, a sub-grant or a combination on a single project. If a loan becomes discounted, it will be termed partially waived and will not be termed a sub-grant.

Applicants are eligible for funding of up to \$200,000 total project funding from the city BRLF. City funding is available for up to 80% of the total eligible project costs with the remaining amount, but no less than 20%, from the applicant. A larger loan amount can be considered on an exception basis. Exception criteria can include but are not limited to significant job creation and dealing with a dangerous public health issue.

Loan Structure: The City will consider the types of loans described within this document to public, private developer, and non-profit entities. Loans will be structured as follows:

- Interest rates will range from 0% to prime rate, will be determined at the time of the loan, and will depend upon cash flows generated by the project, the applicant's needs for funds, and the significance of the project to the community.
- In general, the City will be flexible on loan terms, factoring in such variables as project revenue streams, credit-worthiness of the applicant, and the degree to which the loan is subordinated. The typical loan will be amortized over 15 years with a 5-year term (with a balloon payment at the end of the term). Balloon payments can be considered for renewal.
- The City will consider loan terms that accommodate the use of tax increment revenues for repayment.
- Loan security will be required for BRLF loans to private for-profit and non-profit entities to protect the City in the event of loan default. Loan Security may include loan personal guarantees, mortgages and other collateral. Based upon the City's experience with redevelopment projects, it is most likely that BRLF loans will be one piece of the remediation funding and will need to help leverage additional funding sources. Mortgages may be a shared mortgage or lien position, or the City may also consider subordination in appropriate circumstances to the security of banks and other providers of traditional senior debt.
- Other credit enhancements may be considered that include: Life insurance on key business owners and/or managers and corporate guarantees from related companies.
- Loans to public entities will not require collateral but will involve well-defined, multi-layered repayment structures.

Community Relations Plan: Early community consultation and ongoing community involvement are the cornerstones of EPA's Brownfields grants. The City's Community Relations Plan described below is designed to assist the public in obtaining loans through the BRLF and also to provide reasonable notice to the public when a remediation will occur using these funds.

EPA Requirements and Responsibilities: This is an EPA-funded RLF and federal EPA requirements apply to applicants of this loan fund.

- a. Civil Rights Agreement-No applicant may be denied a loan on the basis of race, color, national origin, religion, age, handicap or sex. All advertisement and promotion of this program will emphasize this civil rights provision.
- b. Certificate of Non-Relocation - Each applicant will be required to complete an Employers Certificate of Non-Relocation stating that the project, for which funds are being sought, will not relocate jobs from one labor market to another.
- c. Historic Preservation -All loans must be submitted to the State of MN Historic Preservation Office for review and consultation.
- d. Davis- Bacon Wages: all loans for the remediation project must meet the requirements of the Davis-Bacon Act as amended (40 U.S.C. 276s-276s.5). Applicants will submit certified payrolls on a monthly basis to the city BEDD Staff for confirmation.
- e. Auditing Requirements: A sub grantee will be subject to Audit 133 when expending more than \$750,000 of federal funds in one year.
- f. ADA Certification --The final project constructed on a site using these funds for remediation must meet ADA requirements for accessibility.
- g. Flood Plains and Wetlands - Projects altering a wetland or 100-year floodplain as determined by soils mapping, U.S. Department of Agriculture studies or other accepted means that find there is an adverse effect, will not be funded.
- h. Air and Water Quality and Environmental Review Procedure: Funded projects must comply with local, state and federal environmental regulations.

Development of Administrative Documents: The Northspan Group (“Northspan”) will prepare the administrative documents necessary to process loans, including a loan application form, a loan agreement and associated documents (promissory note, mortgage, loan guaranty and loan collateral agreements). Loan documents will be reviewed by the City Attorney’s Office prior to loan closing.

Review and Approval of Loan Applications:

- a. **Meet With Potential Applicant To Determine Funding Eligibility:**
 - City staff will hold an initial meeting with potential applicants to discuss the BRLF program requirements and to discuss project eligibility. The City will be represented at this meeting by the City’s BRLF project manager or designee (the “Project Manager”).
 - Funding Criteria: The funding criteria determine whether a project is consistent with the City's economic development guiding principles. The funding criteria are distinct from underwriting criteria and include, at a minimum, that the proposed redevelopment project supported by the proposed remediation project:
 1. Must have a high likelihood of succeeding under current market conditions.
 2. Is consistent with the City's Brownfield Program Goals.
 3. Conforms to the City's economic development guiding principles as stated in the City’s Comprehensive Plan.
- b. **Determine EPA Eligibility and Review of Proposed Remediation Actions:**
 - Applicant and their environmental consulting firm (“Consultant”) will evaluate whether the proposed project is an Eligible Brownfield Site by preparing and submitting to the U.S. EPA Project Officer a written Eligibility Determination

Request (“EDR”) for the hazardous substance site. The applicant will be informed of the results of the EDR.

- Upon approval of the EDR, the Consultant will develop an Alternatives Brownfield Cleanup Analysis (ABCA) document for the review by, and approval of, the U.S. EPA Project Officer.
- Based upon the approved ABCA, the Consultant will develop a Response Action Plan (RAP) for the review by, and approval of, the MPCA’s Voluntary Investigation and Cleanup (VIC) Program. The Project Manager will ensure that all sites proposed to be cleaned up with BRLF funds be enrolled in the VIC Program.

c. Obtain Loan Application Materials; Fiscal Eligibility; Credit Memo

- Following approval of the RAP by the MPCA, Northspan will complete the requisite financial analysis on behalf of the City to determine the feasibility of providing a BRLF loan to the applicant. Additionally, Northspan is responsible for collecting and analyzing all necessary paperwork.
- Northspan will prepare a Credit Memo for submission to the Project Manager. The Credit Memo will provide a recommendation as to whether or not the project is an acceptable credit risk for the City’s financing consideration. The Credit Memo will be a comprehensive document sufficient for presentation to the City’s Internal Loan Review Committee “ILRC” and will contain the following:
 - Description and overview of the project;
 - Determine project’s eligibility within the framework of the Cooperative Agreement between the City and the EPA;
 - Overall economic benefits of the proposed project;
 - Balance sheet analysis and determination of adequate capital and equity;
 - Analysis of repayment ability;
 - Collateral adequacy;
 - Management skills of the applicant;
 - Credit risk of applicant;
 - Need for any special requirements, key person life insurance, personal guarantees, etc.

d. Review and Approval of the Credit Memo and Application

- The Credit Memo of Northspan will be delivered to the Project Manager who will then convene the (ILRC). The ILRC consists of: City Business and Economic Development Director, City CFO, City Attorney and the Project Manager, or designee(s). The ILRC will review and discuss the Credit Memo and the recommendation provided therein. The ILRC is authorized to approve or disapprove a loan and to impose such conditions as deemed necessary and appropriate to achieve the program goals.
- The City reserves the right not to fund any application, regardless of potential eligibility, if, in the discretion of the BEDD staff, the proposed project is determined to fall outside of the City's Brownfield Program Goals.

- The final loan decision of the ILRC will be forwarded in writing by the Project Manager to the U.S. EPA Program Officer, as identified in the EPA Cooperative Agreement, and to the applicant.
- e. **Site Specific Community Involvement:** The City intends to involve the community affected by each BRLF-funded remediation in the site remediation decisions in a manner consistent with the MPCA's over-arching Response Action Plan (“RAP”) approval process and consistent with the NCP. The following activities will be conducted prior to the commencement of loan-site remediation:
- **Conduct Public Meeting:** The City will hold a public meeting with our neighborhood partners to discuss remediation plans and reuse plans for the site.
 - **Publish Public Notice and Establish Information Repository:** The City will publish a public notice of the plan to remediate and redevelop the site and invite the public to review the remediation plans at an identified public repository of information. The notice will be published for one day in the Duluth News Tribune. The notice will announce the public comment period and the public meeting.
 - **Public Comment Period:** The City will hold a 30-day public comment period on the remediation plans and will respond to all substantial comments and questions.
- f. **Loan Agreement Preparation and Execution:** Upon approval by the ILRC of the loan, the loan agreement and associated documents will be prepared by Northspan in accordance with the Credit Memo's recommendation as may be modified by the ILRC. Loan agreements will address cross-cutting requirements such as Davis Bacon wages, Section 106 of the National Historic Preservation Act (NHPA) and Minority Business Enterprises/Woman’s Business Enterprises (MBE/WBE) requirements. The loan agreement and associated documents are subject to the approval of the City Attorney’s Office. Upon EPA review of the final loan document, Northspan will hold a formal closing for the loan. The Project Manager is authorized to execute the loan documents on behalf of the City.
- g. **Appropriateness and Safety of Remediations:**
- **Prepare Action Memo for Site:** A City consultant will prepare an Action Memo for the site that will summarize the environmental conditions at the Site, and the proposed response actions and will include the ABCA, a summary of the community involvement process, a schedule and a budget. This document will be signed by the Director of the BEDD prior to the commencement of remediation.
 - **Send Bid Documents to EPA:** A copy of the remediation bid documents will be sent to the EPA. The EPA will not approve or reject the bid documents. The EPA will review the bid documents to alert the City to aspects of the bid documents that may contradict the terms and conditions of the Cooperative Agreement or to identify terms and conditions (for example, the need to post a sign stating that the remediation is funded, in part, by the EPA) that are not addressed by the bid documents.
 - **Oversight of Remediation Operations:** The MPCA staff assigned to the Site will oversee the remediation in a manner consistent with MPCA standard oversight. The BEDD staff will stay in close communication with the MPCA regarding the progress

of the remediation, deviations from the approved RAP, and unforeseen conditions encountered during the remediation.

- **Final Closure Report:** Upon completion of the remediation, the applicant and their Consultant will draft a RAP Implementation Report and submit it to the MPCA for review and approval. BEDD staff or a City consultant will draft a Closure Memo that references the RAP Implementation Report, and the MPCA's approval of the report, identifies any institutional controls placed on the property, and references any agreement with the MPCA that requires ongoing maintenance activities or ongoing response actions. The Project Manager will send copies of all closing documentation to the EPA for record keeping requirements.

- h. Management of the Loan Fund:** The City of Duluth Finance Department's Chief Financial Officer (CFO) and City Auditor will be responsible for setting up the management and servicing of the loan and directing any necessary collection actions. The Finance Department will also perform the day-to-day fund management, including disbursement and repayment. The CFO will be the designated Fund Manager. The Project Manager will review and approve draw requests and associated invoices to make sure costs are program eligible and reasonable.

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Brownfield Revolving Loan Fund Operations—December 2016

Community Relations Plan:

Marketing Plan: The City's marketing campaign will focus on making presentations within the existing community and business networks. Presentations will be made to the Mayor's monthly Economic Development Coalition meeting comprised of staff of public entities and non-profit organizations working on economic development projects. This coordinated approach to development positions the City to work with a potential remediation-related project early on to assess its fit for the loan program.

City staff will make presentations at its existing bi-monthly meetings with the Technical Advisory Committee (TAC) whose membership is comprised of governmental and non-profit partners.

The BRLF will be promoted at lending institutions and through developer contacts who express a financing need for business development projects.

Site Work: The City intends to involve the community affected by each BRLF-funded remediation. Communication on site remediation decisions will be made in a manner consistent with the MPCA's over-arching RAP approval process and consistent with the National Oil and Hazardous Substances Contingency Plan (NCP). The following activities will be conducted prior to a ILRC meeting on loans for site remediation:

- **Conduct Public Meeting:** The City will hold a public meeting with our neighborhood partners to discuss remediation plans and reuse plans for the site.
- **Publish Public Notice and Establish Information Repository:** The City will publish a public notice of the plan to remediation and redevelop the site. The public will be invited to review the remediation plans at an identified public repository of information. The notice will be published for one day in the Duluth News Tribune. The notice will announce the public comment period and public meeting.
- **Public Comment Period:** The City will hold up to a 30-day public comment period on the remediation plans and will respond to all substantial comments and questions.

City staff will ensure that all sites being cleaned up with BRLF be enrolled in the MPCA's Voluntary Investigation and Cleanup (VIC) Program.