



## **BROWNFIELDS REVOLVING LOAN FUND COALITION Policies and Procedures**

### **I. PROGRAM OVERVIEW**

The Brownfields Revolving Loan Fund Coalition (BFC) includes the City of Tallahassee (City), and the City of Tallahassee Community Redevelopment Agency (CRA). The BFC received a Brownfields Revolving Loan Fund grant (RLF) to capitalize a loan program to address environmental contamination within the city limits of Tallahassee. The focus area is the Tallahassee Community Redevelopment Areas: the Greater Frenchtown/Southside District and the Downtown District.

The overall economic development strategy of the City and CRA is to create a framework for the redevelopment and enhancement of selected areas of the central urban district. The purpose of the BFC program is to provide for the cleanup of environmental contamination within the redevelopment areas, with an initial emphasis on the Gaines Street Corridor (GSC), in an effort to enhance human health, environmental health, and the economic viability of the area. The RLF supports the objective of revitalizing the redevelopment areas and GSC by cleaning up eligible properties within the area and making them ready for reuse.

The BFC's plan for the use of the RLF grant funds is to work closely with property owners and private sector developers interested in redevelopment opportunities at petroleum- or hazardous substance-contaminated properties in the GSC that have a high degree of market potential for redevelopment. Despite the existing contamination, these brownfields sites have been recognized by local leaders as prime opportunities for redevelopment based upon their location, target market and return on investment potential.

One of Tallahassee's oldest areas, the Gaines Street Corridor is characterized as a low income, minority neighborhood with an existing rail corridor, warehousing and light industrial uses. Historic industrial uses include chemical warehousing, petroleum distribution centers, animal stockyards, and housing. Of the 465 individual parcels (under 265 separate ownerships) within the GSC's boundaries, 24 properties have been identified by state and local authorities as contaminated, and an additional 49 are perceived to be contaminated based on current or past land use. About 70 properties have remained vacant despite proximity to economic centers of downtown and the universities.

The overall goal of both the CRA and City of Tallahassee is to promote this area as a mixed-use district, with multi-arts, retail and residential development. The successful redevelopment of this area depends largely on property owners and investors having a comfort level regarding cleanup needs and an understanding of potential remediation costs. Redevelopment of many environmentally stigmatized properties within the GSC will result in increased residential, commercial, and light industrial uses.

As part of the effort to promote the area as a mixed-use district, the CRA and others are in the process of evaluating market conditions for a variety of redevelopment projects, including a mid-sized conference center, hotel, educational opportunities, and retail, commercial and housing developments. Many of these developments will occur on properties that have some level of contamination. The CRA is promoting the brownfield revolving loan program as a key financial resource to developers seeking CRA financial assistance.

Projects or sites located outside of the focus area or outside the city limits of Tallahassee will also be evaluated for loans and/or subgrants and may be approved with the consent of the U.S. Environmental Protection Agency (EPA).

## **II. ELIGIBILITY**

### **A. Site Eligibility**

The City of Tallahassee must submit all sites and site-specific work for EPA approval prior to incurring any costs. This includes information stating whether or not a site meets the definition of a brownfield as defined in Section 101(39) of CERCLA.

#### **1. Eligible Brownfield sites are:**

- Sites meeting the eligibility requirements of the EPA Region 4 Brownfields Site Eligibility Determination Outline.
- Sites contaminated by petroleum or petroleum products.
- Sites contaminated by hazardous substances.
- Sites at which Phase I and II Site Assessments have been completed in accordance with ASTM standards and the EPA has determined are eligible for cleanup funding.

#### **2. Eligible petroleum-contaminated sites must meet the following *additional* criteria to be considered:**

- That the State has determined are of relatively low risk as compared to other petroleum-only sites in the state.
- For which the State has determined there is “no viable responsible party.”
- For which the State has determined that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site.
- Which are not subject to any order issued under section 9003(h) of the Resource Conservation and Recovery Act (RCRA).

#### **3. Other sites/EPA Special Determination:**

If a site does not meet the general definition of a brownfield, but is determined to be eligible for a property-specific funding determination, then the City must provide information on how financial assistance will protect human health and the environment, and either promote economic development or enable creation of,

preservation of, or addition to parks, greenways, undeveloped property, other recreation property, or other property used for nonprofit purposes.

Sufficient documentation concerning petroleum-only sites must be submitted by the City or appropriate state official to certify (qualify) eligibility of petroleum-only site.

#### **4. Ineligible Brownfield Sites are:**

- Facilities listed or proposed for listing on the EPA National Priorities List.
- Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA.
- Facilities that are subject to the jurisdiction of, or under the custody of the United States government except land held in trust by the United States Government for an Indian tribe.
- A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.
- Sites that have received specific cleanup assistance under the Subtitle I of RCRA from the Leaking Underground Storage Tank (LUST) trust fund, unless a property-specific funding determination from EPA is obtained.

#### **B. Revolving Loan Fund – Borrower/Subgrantee Eligibility**

##### **1. Eligible Borrowers/subgrantees are any public or private entities that meet all of the following criteria:**

- Borrower is the site owner or has permission of the site owner to apply for the loan funds.
- Borrower/subgrantee has and can allow access in writing to a site on which a RLF subgrant or loan is being requested.
- Borrower/subgrantee acquired property after the time of contamination; has not caused, contributed to, permitted or exacerbated the release of hazardous substances or petroleum products on or emanating from the property.
- Subgrantee is not potentially liable under CERCLA Section 107.
- Borrower/subgrantee has not been suspended, debarred or declared ineligible for Federal financial assistance programs.
- Borrower is authorized to incur debt and enter into legally binding agreements.
- Borrower/subgrantee meets financial requirements.
- Borrower/subgrantee for approved eligible petroleum-contaminated site cleanup must be a person who is not potentially liable for cleaning up the site.
- Eligible subgrantees are limited to states, political subdivisions, US territories, Indian tribes, and non-profit organizations as defined under CERCLA 104(k)(1)Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999.

- **In addition to the above requirements, eligible subgrantees must also own the property they are seeking funds for.**

## **2. Special Considerations**

The BFC shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a loan or grant recipient is potentially liable under CERCLA 107. The BFC may rely on its own investigation which can include an opinion from the subgrant recipient's or borrower's counsel. However, the BFC must advise the borrower or subgrant recipient that the investigation and/or opinion of the subgrant recipient's or borrower's counsel is not binding to the Federal Government.

## **C. Eligible Activities**

The Borrower or subgrantee may only use funds for eligible costs, as designated by the U.S. EPA's Administrator, for cleanup only and must be associated with removal and remediation activities. Eligible project costs include the following:

1. Costs associated with removing, mitigating, or preventing the release or threat of release of a hazardous substance, pollutant, contaminant, petroleum product or controlled substance into the environment including:
  - a. Fences, warning signs, or other security or site control precautions;
  - b. Drainage control.
  - c. Stabilization of berms, dikes, or impoundments or drainage or closing lagoons.
  - d. Capping of contaminated materials.
  - e. Using chemicals and other materials or methods to retard the spread of the release or mitigate its effects.
  - f. Excavation, consolidation or removal of highly contaminated soils from drainage or other areas.
  - g. Removal of drums, barrels, tanks or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants.
  - h. Containment, treatment, disposal or incineration of hazardous materials; and
  - i. Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water and continuing until such time as local authorities can satisfy the need for permanent remedy.
2. Site monitoring costs, including sampling and analysis that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.
3. Costs associated with meeting the public participation, worker health and safety and interagency coordination requirements.
4. Costs associated with removal activities, including demolition and/or site preparation that are part of site cleanup.
5. Environmental Insurance Premiums.

## D. Restricted Activities

The RLF cleanup loan may not be used for:

- Pre-cleanup environmental assessment activities (i.e. planning, inventory, site assessment, identification, or characterization).
- Monitoring or data collection necessary to apply for, or comply with environmental permits under other state and federal laws unless such a permit is required as a component of the cleanup action.
- Development activities that are not removal or remediation actions (e.g. construction of a new facility or marketing of property).
- Job training unrelated to performing a specific cleanup at a site covered by a loan;
- Payment of a penalty or fine.
- Payment of a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.
- A cleanup cost at a brownfields site for which the recipient of the subgrant or loan is potentially liable under CERCLA Section 107.
- Payment as a cost of compliance with any federal law, excluding the cost of compliance with laws applicable for cleanup.
- Payment of an administrative cost.
- Unallowable costs (e.g. lobbying and fund raising) under applicable OMB Circulars.
- **Administrative costs** which include the following:
  - i. Salaries, benefits, contractual costs, supplies, and data processing charges incurred for loan/subgrant administration and overhead costs;
  - ii. Direct costs for loan administration, even if the borrower is required to carry out the activity under the loan agreement. Ineligible loan administrative costs include expenses for:
    - Preparation of applications for loan agreements;
    - Preparing revisions and changes in the budget, work plans, and other documents required under the loan agreement;
    - Maintaining and operating financial management and personnel systems;
    - Preparing payment requests and handling payments; and
    - Audits.

## E. Compliance with state and federal conditions

Each applicant must demonstrate an acceptance of, and willingness to follow, all applicable State and Federal regulations, including but not limited to:

- The need to minimize the time that elapses between payment of BFC funds by EPA and the use of these funds to pay costs incurred in the cleanup;
- Compliance with competitive procurement requirements;
- Davis/Bacon compliance;
- MBE/WBE Enterprise;
- Other cross-cutting requirements such as the Uniform Relocation Act;

- Descriptions of CERCLA and NCP requirements and limitations;
- Roles and responsibilities for carrying out CERCLA and NCP requirements;
- Historic preservation requirements;
- Compliance with FDEP regulations; and
- Compliance with public participation requirements.

Interested applicants may request a list of applicable requirements.

### **III. LOAN OR SUBGRANT APPLICATION PROCEDURE**

#### **A. Pre-Application**

Before an application is prepared, BFC staff will collect preliminary information to determine, to the extent possible, that the potential borrower or subgrantee and the project are eligible. This first steps in the process will be an EPA determination if the site is eligible, and a staff review of the proposed activity to screen for conformance with the objectives and guidelines of the program. Based on the outcome of this initial review, the potential borrower or subgrantee may or may not be invited to prepare a complete application. If invited, an application number will be issued to the applicant. As part of this process BFC staff strongly encourages potential applicants to review all guidelines and application requirements and meet with staff prior to compiling any application information.

#### **B. Required Application Documents**

##### **1. All applications must include the following documents:**

- **Compliance History** – A borrower or subgrant applicant must submit information regarding its overall environmental compliance history at the site subject to the loan or subgrant. This includes any penalties resulting from environmental noncompliance. The BFC and EPA will consider this history in the analysis of the applicant as a cleanup and business risk.
- **Remediation Plan Summary** – A technical description of work to be done including any contracts (acquired or needed) and cost estimates.
- **Business Plan** – A description of the business goals, strategies and action plans demonstrating redevelopment feasibility.
- **Financial Plan** – Pro-forma financial statements which demonstrate the economic viability of the project and identify sources of repayment for the loan.

##### **2. Applications where the loan repayment is contingent upon redevelopment must also include the following documents:**

- **Redevelopment Plans** – A description of the redevelopment plan and compliance with the applicable site development criteria. Additional criteria to be considered in the making of a BFC loan are the socioeconomic and public benefits of redevelopment projects. While these additional criteria are important, they will be secondary to the primary underwriting criteria established to ensure to the BFC the financial soundness of the proposal.

The redevelopment plan cited above should, at a minimum, contain the following information:

- a. Site location, site size, and physical characteristics of site.
- b. Development plan for site, including proposed renderings.
- c. Quantity and quality of jobs created.
- d. Estimated/anticipated increase in property valuation (including how it has been calculated).
- e. Compliance with zoning requirements (if applicable) and impact on surrounding area.
- f. Development challenges, project schedule and timing.
- g. Expected impacts on the BFC Region.
- h. Expected impacts on community.
- i. Participation of minority and/or women-owned enterprise.
- j. Need for additional community/city services.
- k. The socioeconomic and public benefits of the redevelopment project.
- l. Creation/preservation of greenspace.

### **C. Loan/Subgrant Application**

Applications and guidance will be provided upon request. The applicant will submit a completed Application to the City of Tallahassee’s Department of Environmental Policy and Energy Resources (EPER) for initial eligibility review by BFC staff before the loan or subgrant application is submitted to the Loan Review Committee (LRC).

1. BFC Staff will review application packages for completeness within fifteen working days of receipt.
2. The BFC Qualified Environmental Professional (QEP) will review the following information to evaluate the appropriateness of the proposed remediation plan:
  - Environmental Site Assessments (ex., Phase I and Phase II) conducted in accordance with ASTM standards.
  - Current site environmental compliance and statutory exemption from liability if granted.
  - Information regarding applicant’s environmental compliance history.
  - The proposed remediation activities.
  - Terms and conditions of the Remediation Plan established in accordance with the Brownfields Site Rehabilitation Agreement (BSRA), if applicable.

**Evaluation Criteria include, but are not limited to:**

- Whether the site is the subject of a BSRA with the Florida Department of Environmental Protection.
- Whether the remediation plan budget is reasonable and cleanup is achievable within the budget provided.
- Whether the project contributes to the overall health and welfare of residents in the area of the site.
- How the project contributes to the redevelopment potential of the site.

**3. BFC staff will review Borrower's financial information and legal records to ensure the submitted information is adequate to assess:**

- The legal structure of the applicant (corporation, partnership, limited liability partnership or sole proprietor), its principal owners/stockholders and its Board of Directors, if applicable.
- The business name, location, type of business, products and/or services, and date established.
- The timeliness and completeness of the applicant's financial statements (audited or un-audited).
- The applicant's general financial condition.
- The applicant's creditworthiness.
- Adequacy of the Applicant's equity and additional collateral.
- Availability of matching funds, credit lines and other potential sources of funding.
- The availability of the required 20% cost share from sources other than the RLF fund for cleanup.
- Compliance with maximum loan amounts and other terms with other outstanding loans.

Subgrant applicants: the requirement to provide the match may be modified or waived, at the discretion of the Loan Review Committee. Please provide information pertaining to the applicant's matching ability.

**4. Redevelopment Potential Criteria:**

If an application includes redevelopment information, BFC staff will review the information provided to determine:

- Whether the project is consistent with locally adopted community redevelopment plans.
- The degree to which the project uses existing community infrastructure.
- The degree to which the project enhances the community's natural environment (i.e. open space/ greenspaces).
- The potential of the project to generate permanent jobs for community residents.



- The degree to which the project contributes to the overall revitalization of the community.
- Has a high degree of redevelopment potential (i.e. relatively short timeframe for implementation).
- Contributes to the overall health and welfare of residents in proximity to the site.

5. BFC staff will provide the reviewed application materials to the Loan Review Committee within fifteen working days of receipt.

## **D. Cost Share Requirement**

### **1. Loan Application Requirements**

Evidence of a cost share of at least 20% of the loan amount will be required of all borrowers. Cost share may be in the form of a contribution of money, labor, materials, or services from a non-federal source. The cost share contribution must be for costs that are eligible and allowable under the Cooperative Agreement between BFC and the EPA, and must be supported by adequate documentation.

### **2. Subgrant Applications Requirements**

Evidence of a cost share of 20% of the subgrant amount will be required of all subgrant applicants. The required cost share may be reduced, at the discretion of the Loan Review Committee. Cost share may be in the form of a contribution of money, labor, materials, or services from a non-federal source. The cost share contribution must be for costs that are eligible and allowable under the Cooperative Agreement between BFC and the EPA, and must be supported by adequate documentation.

## **E. Fees**

### **1. Loan Fees**

The following fees will be required upon application to the BFC.

Application/Underwriting fee:

0.375% of loan request or minimum of \$250

Closing Cost fee:

0.5% for loans over \$100,000

0.75% for loans under \$100,000

Borrower shall assume all closing costs.

### **2. Subgrant Fees**

The following fees will be required upon application for the BFC Subgrant Program.

*Application fee:* \$150

## **F. Application Review Timeline**

BFC staff will work closely with the applicant to ensure the process is completed as soon as possible; however, the complete process for application approval can take up to 100 days. For a full application timeline, please refer to the Loan and Subgrant Application Process (Attachment 1).

## **G. Loan Review Committee**

The Bylaws of the Brownfields Revolving Loan Fund Coalition Loan Review Committee establish a five-member committee and define their roles and responsibilities.

The LRC will meet within 15 days of receiving from BFC staff all required loan paperwork to review loan documents, and make a decision to fund or not fund an application.

The applicant shall be notified in writing of the decision of the LRC within five working days after the LRC meeting date.

### **1. Conflict of Interest**

- No officer, employee, Council member, or member of the BFC, or person related to the officer, employee, Council member, or BFC member by family, law, or business arrangement shall receive any benefits resulting from the use of loan funds unless the officer, employee, or Board member affected first discloses to the City of Tallahassee on public record the proposed or potential benefit and receives a written determination from the BFC that the benefit involved is not so substantial as to affect the integrity of the BFC decision process and of the services of the officer, employee or BFC member.
- An officer, employee or board member of BFC shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment or any other thing of monetary value, for himself or for another person, from any person or organization seeking to obtain a loan or any portion of the loan funds.
- Former BFC board members and/or officers are ineligible to apply for or receive loan funds for a period of one year from the date of termination of his/her services.

### **2. Evaluation Criteria**

Projects will be selected for funding based upon their relative viability, as demonstrated by the following:

- The creditworthiness of the applicant based on the adequacy, timeliness and completeness of the applicant's financial statements (audited or un-audited).
- The applicant's general financial condition including the historical, current, and projected financial condition of the applicant and its comparison to industry norms. This will include at a minimum:
  - The applicant's records and projections of earnings and cash flow.
  - The applicant's history of borrowing and adherence to the terms and conditions of past loans.
- The Applicant's credit references from financial institutions and other creditors.
- The documented ability of the borrower to repay the loan based on information provided about the Applicant's equity and additional collateral.
- The availability of matching funds, credit lines and other potential sources of funding.
- A demonstration of at least 20% cost share for loan applicants and 20% for subgrant applicants from sources other than the RLF fund for cleanup.
- Compliance with maximum loan amounts and other terms with other outstanding loans.
- Whether the borrower is ready to proceed.
- If redevelopment is proposed, whether the project attracts private sector investment.

No loan funds will be issued for projects depending on site redevelopment for repayment unless all appropriate Growth Management permits have been initiated.

### **3. Loan Review Committee Approval**

Draft loan and subgrant agreements will be presented to the LRC for review. The LRC will make recommendations to the City Commission for final approval of authorization to enter into a Loan or Subgrant Agreement with the applicant.

## **IV. Loan Agreements**

### **A. Loan Amount**

The minimum loan is \$50,000, and the maximum limit will be no more than the amount available in the revolving loan fund.

### **B. Interest Rates**

The RLF is intended to be a flexible financing tool. The interest rate is intended to be below normal market rates for the risk associated with the project and financial wherewithal of the borrower. Rates will generally be set at less than the prime rate, but not less than zero percent.

## **C. Terms**

The actual term is negotiable, depending on the structure of the loan agreement. Environmental remediation loans may be amortized for 30 years with a balloon payment at 10 years. Preference will be given to short term “bridge” style loans.

## **D. Security**

BFC will utilize prudent lending practices to evaluate whether sufficient and adequate collateral is available to secure all RLF loans. Collateral will generally be in the form of liens on the assets financed, including fixed assets such as real estate and machinery, and lease assignments. Liens upon other non-project assets of the Borrower or personal guarantees may also be used to secure the loan. Whenever possible, loans will be secured by a mortgage on real property. BFC will obtain Security Agreements and UCC filings on project assets including machinery, and equipment, furniture, fixtures, and rolling stock. Liens may or may not be subordinated.

## **E. Project Completion**

All RLF remediation projects shall be completed in a timely fashion with a maximum duration of twelve (12) months from the time when the agreement between Borrower and the City is fully executed. With the approval of EPA, the City may extend the deadline for completion. If the RLF funds are not expended within the allocated time, amounts of the loan not expended may be reallocated to the RLF if needed to loan to other applicants.

Funds loaned or subgranted must be expended no later than September 30, 2016. The repayment schedule is not tied to this date.

## **F. Closing the Loan**

### **1. Loan Agreement**

Staff shall prepare draft loan documents for review by the BFC, LRC, EPA and the Borrower. Loan documents shall include a Loan Security Agreement, a Promissory Note, and other documents determined by the RLF Program necessary to complete the particular loan. Loan negotiations will be conducted by the LRC with the advice of Legal Counsel. The LRC will make funding recommendations to the City Commission, who will have the final authority for lending decisions. Once the Loan Agreement has been negotiated and approved, a Closing Date will be scheduled.

### **2. Closing Date**

The closing date will be scheduled at the convenience of all parties.

### **3. Closing Agenda**

A list of items necessary for closing will be provided to the Borrower prior to the attorney closing.

#### **4. Note**

The RLF program is to provide for the recapture of RLF funds for future loan awards, subgrants and appropriate expenses. The loan principal and interest of a RLF loan shall be paid in accordance with the terms of the commitment letter. The entire amount of principal outstanding shall be due and payable in full together with accrued interest no later than on the 10<sup>th</sup> anniversary of the date after the first required payment. Loan agreements must include equity participation by the Borrower.

#### **5. Borrower Certifications**

The following certifications shall be made in the Loan Agreement:

- The Borrower shall certify that they are not currently, nor have they previously been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan.
- The Borrower shall certify that they are not a generator and/or transporter of wastes contributing to the contamination at a brownfields site, and the property is not out of compliance with state or federal laws.
- As applicable, the Borrower shall conduct remediation activities as required by the State of Florida DEP Brownfields Site Rehabilitation Agreement or other such directive of the State Brownfields Program.
- The Borrower shall certify that they will submit Quarterly Progress Reports documenting clean-up activities and use of loan proceeds. Documentation of the clean-up activity shall be maintained by the Borrower for the length of the loan.
- The Borrower shall conduct BFC response activities in accordance with the BFC's cooperative agreement and the U.S. Comprehensive Environmental Response Compensation and Liability Act (CERCLA).
- The Borrower shall certify that they will provide written notification of shipments of hazardous substance removal in accordance with CERCLA and State requirements.
- If the Borrower is currently the owner/operator of the site, the Borrower must provide evidence of statutory exemption from liability; or indicate that EPA intends to use enforcement discretion and not pursue the party as a responsible party under CERCLA.

#### **G. Disbursement Requests**

Loan disbursements for approved RLF projects may be made after the BFC has signed and executed agreements with the Borrower. Requests for loan disbursements (invoices for work performed) will be made to the BFC, and must be based on the budget

submitted in the remediation activities plan. The budget may include a contingency amount for change orders. The Fund Manager, in consultation with the BFC staff will review and approve loan disbursement requests. The QEP will review the invoices and sign a certificate of completion or partial completion of remedial work. Upon invoice approval, EPER staff will process the disbursement.

## **H. Delinquent Loan Procedures**

In the event that a loan payment is more than fifteen (15) days late, a loan shall be declared delinquent and the Lender (BFC) shall pursue any or all remedies available to itself under the promissory note and mortgage.

Personal and/or corporate guarantees may be required by the Loan Review Committee.

## **V. SUBGRANT AGREEMENTS**

### **A. Evaluation Criteria**

For evaluation criteria, see Section III. C. 2, beginning on page 7 of the Policies and Procedures.

### **B. Subgrant Amount**

A maximum subgrant award of \$200,000 (\$100,000 for hazardous substance and \$100,000 for petroleum products) is available to municipalities, counties and nonprofit corporations.

### **C. Project Completion**

All BFC cleanup projects shall be completed in a timely fashion with maximum remediation project duration of twelve (12) months. If circumstances require additional time for completion, a memorandum shall be written and placed in the subgrant file explaining the reasons for the delay. With the approval of the federal EPA, BFC may extend the deadline for completion. If the BFC funds are not expended within the allocated time, amounts of the subgrant not expended may be reallocated to the BFC if needed to subgrant to other applicants.

Subgrant funds must be expended no later than September 30, 2016.