

Order 1 – 07/08

Passage: 7/16/07 7-0 (Leeman, Duson absent)

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**ORDER APPROVING AMENDMENTS TO BROWNFIELDS CLEANUP
REVOLVING LOAN FUND GUIDELINES**

ORDERED, that the guidelines of the Brownfields Cleanup Revolving Loan Fund, as amended and attached hereto as Attachment 1, is hereby approved.

PORTLAND BROWNFIELDS CLEANUP REVOLVING LOAN FUND

1. Program Goals

- (a) To finance the removal of CERCLA hazardous substances from Brownfields sites within the City of Portland
- (b) To demonstrate the feasibility of establishing a sustainable revolving loan fund program to finance the cleanup of Brownfields properties, thereby making these properties available for redevelopment and contributing to the revitalization of the community, creation of jobs, improving the environment, and eliminating the public health risks associated with these sites.
- (c) To assist the remediation and redevelopment of Brownfields sites within the City of Portland

2. Program Objectives

- (a) To create an incentive for private investment in the Brownfields areas of the City of Portland ;
- (b) To assess and safely clean up Brownfields properties in order to facilitate their sustainable use;
- (c) To foster development and implementation of financial and administrative approaches that can support self-sustaining efforts to facilitate Brownfields cleanup efforts; and
- (d) To prevent the creation or spread of contamination on or between properties to protect the public health by minimizing exposure to toxic materials in the environment.

3. Program Description

This program is designed to encourage the cleanup of eligible sites and activities associated with removing, mitigating, or preventing the release, or threat of a release, of a hazardous substance, pollutant, or contaminant from Brownfields sites.

4. Program Budget

The funding for the Portland Brownfields Cleanup Revolving Loan Fund is provided by the U.S. Department of Environmental Protection and authorized by the City Council.

5. Project Threshold Requirement:

- (a) The property to be assisted is located within the City of Portland .
- (b) The project applicant or owner must owe no outstanding property taxes, fees, judgments, or liens to the City;
- (c) The project applicant or owner is not a generator or transporter of contamination to the site;
- (d) The project applicant or owner is not currently suspended, debarred or otherwise ineligible to participate in Federal financial assistance programs; and
- (e) The project applicant or owner is not in environmental non-compliance with Federal or State agencies.

6. Eligible Applicants/Entities

- (a) Publicly owned, either directly by a municipality or indirectly through a quasi- public entity such as a community development corporation; or
- (b) Privately-owned by current or prospective commercial property owners, banks, developers etc.

7. Eligible Activities

Cleanup actions associated with removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant or contaminant including:

- (a) Fences, warning signs or other security or site control precautions;
- (b) Drainage controls;
- (c) Stabilization of berms, dikes or impoundments or drainage or closing lagoons;
- (d) Capping of contaminated soils;
- (e) Using chemicals and other materials to retard the spread of the release or mitigate its effects;
- (f) Excavation, consolidation, or removal of highly contaminated soils from the site;
- (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;

- (i) Provision of alternative water supply where necessary immediately to reduce exposure to contaminated household water;
- (j) Site monitoring activities, including sampling and analysis, that are necessary during the cleanup process, including determination of effectiveness of a cleanup; and
- (k) Costs associated with meeting public participation, worker health and safety, and interagency coordination requirements.

8. Ineligible Activities

- (a) Pre-cleanup environmental response activities, such as site assessment, identification, and characterization;
- (b) Cleanup of a naturally occurring substance, products that are part of the structure of and result in exposure within residential building or business or community structures (e.g. interior lead-based paint contamination or asbestos which results in indoor exposure), or public or private drinking water supplies that have deteriorated through ordinary use – except as determined on a site-by-site basis and approved by the U.S. EPA Headquarters, consistent with CERCLA 104(1)(3) and (4);
- (c) Monitoring and data collection necessary to apply for, or comply with environmental permits under other Federal and state laws, unless such a permit is required as a component of the cleanup action; and
- (d) Development activities that are not removal actions (e.g. construction of a new facility or marketing of property).

9. Financing Terms:

The following terms will guide the actions of the Downtown Portland Corporation:

- (a) Loan amount will be limited to the balance of the loan fund;
- (b) Maximum loan term will be 5 years;
- (c) Interest rate will be determined by the Downtown Portland Corporation;
- (d) Brownfields site, business assets, outside collateral, and/or personal guaranties may be required as security;
- (e) Application fee structure shall be determined by the Downtown Portland Corporation.

10. Underwriting Criteria:

Project review will include, but not be limited to, the following factors:

- (a) Location in a Brownfields site within the City of Portland ;

- (b) Necessity of loan funds to make the project economically feasible and at the same time has a high potential for economic success.

11. Application Review Criteria

The Downtown Portland Corporation, with input and recommendations made by both the Maine Department of Environmental Protection and the City's Planning and Urban Development Department, will review project proposals to determine eligibility and negotiate with applicant(s) to determine the least amount of public resources necessary to make the project(s) feasible.

The loan approval process shall be carried out efficiently and pragmatically to insure loans are approved in a timely manner, cleanup plans are implemented and redevelopment projects are completed on schedule to maximize the community benefit goals of the projects. The actions to be taken are:

- (a) The Maine Department of Environmental Protection reviews the environmental assessments and cleanup plan summary. If the Borrower, site and preliminary project costs are eligible under the plan, then the Maine Department of Environmental Protection prepares an Approval memo signed by both themselves and the Planning and Urban Development Department authorizing the Borrower to prepare a draft Engineering Evaluation Cost Analysis (EE/CA). The Planning and Urban Development Department will then prepare a Community Relations Plan (CRP) and the Downtown Portland Corporation will proceed with the review and analyze of the financial components of the loan application;
- (b) Based on a favorable analysis of the financial qualifications of the applicant, the Downtown Portland Corporation prepares a loan approval memo;
- (c) Based on the loan approval memo, the Downtown Portland Corporation in cooperation with the Maine Department of Environmental Protection establishes the loan terms and conditions;
- (d) The loan approval memo and loan terms and conditions are preliminarily approved by the Downtown Portland Corporation;
- (e) The Downtown Portland Corporation approves the loan subject to a 30-day public comment period on the draft EE/CA and the completion and acceptance of the EE/CA and CRP by the Planning and Urban Development Department;
- (f) The loan documents are prepared (e.g., loan agreement, promissory note, mortgage agreement and other credit enhancement agreements);
- (g) The Maine Department of Environmental Protection and the EPA (at their discretion) review the draft EE/CA;
- (h) The EPA Community Relations Coordinator approves the CRP and the Planning and Urban Development Department implements the CRP which includes a 30-day public comment period on the draft EE/CA;
- (i) Based on the CRP, a final draft of the EE/CA is prepared by the Borrower, and the Maine Department of Environment Protection prepares a Response Summary of public comments and issues an RLF Decision Document noting the cleanup alternative chosen;
- (j) Based on the RLF Decision Memo, the Borrower prepares a Scope of Work for the cleanup activities, including a budget and work schedule, a Health and Safety

- Plan, and a Quality Assurance Project Plan; and
- (k) The loan agreement, promissory note, mortgage agreement, and other credit enhancement agreements are signed. Any loan fees are paid.

The City will request the following information to make this determination:

Applicant Information

- (a) Applicant Overview: name, location, principal owners/stockholders, type of business and products or services, date established;
- (b) Financial Overview: historical financial statements for the past three years, most recent quarter and copies of appropriate IRS Tax Returns;
- (c) Management Overview: resumes of principals; and
- (d) Credit References: financial institutions and other creditors.

Site Conditions

- (a) Environmental assessments (Phase I and II) in accordance with American Society for Testing and Materials (ASTM) Standards;
- (b) Information regarding the status of the borrower as a potentially responsible party at the site;
- (c) Information on environmental compliance history;
- (d) Provide information on whether or not the Applicant is currently or ever has been subject to any penalties resulting from environmental non-compliance at the site;
- (e) Provide information on whether or not the Applicant is a generator or transporter of contamination at the site; and
- (f) Provide information on whether or not the Applicant falls under a statutory exemption from liability; or that the EPA could use its enforcement discretion and not pursue the party as a responsible party under CERLA if the Applicant is currently the owner/operator of the site.

Cleanup Plan

Cleanup Plan Summary: cleanup plan including a technical description of work to be done and costs estimates.

Redevelopment Plan

- (a) Financing Project: a description of the cleanup project and the reuse plan;
- (b) Business Plan: a description of the business goals, strategies and action plans; and
- (c) Financial Plan: pro-forma financial statements which demonstrates the economic viability of the project and identifies the sources of repayment for the loan.

Community Benefits

Employment Impact: number of current and new jobs, wage levels and job training anticipated to be generated from the cleanup and redevelopment of the site.

Investment Impact: Serves as an incentive for investment in Brownfields areas.

Housing Units: Available for the creation of Housing Units located in Brownfields areas.