

Order 120-13/14
Passage: 9-0 on 12/16/2013

Effective 12/26/2013

MICHAEL F. BRENNAN, (MAYOR)
KEVIN J. DONOGHUE (1)
DAVID A. MARSHALL (2)
EDWARD J. SUSLOVIC (3)
CHERYL A. LEEMAN (4)

**CITY OF PORTLAND
IN THE CITY COUNCIL**

JOHN R. COYNE (5)
JILL C. DUSON (A/L)
JON HINCK (A/L)
NICHOLAS M. MAVODONES, JR (A/L).

**ORDER AUTHORIZING AMENDMENTS TO THE PORTLAND BROWNFIELDS
CLEANUP REVOLVING LOAN FUND**

ORDERED, that the Portland Brownfields Revolving Loan Fund is hereby amended as specified in the document attached hereto as Attachment 1.

Attachment 1 to Order 120-13/14

PLEASE NOTE: Spacing throughout document will be made consistent once changes are approved by the City Council and redlining can be removed.

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AMENDMENTS TO

PORTLAND BROWNFIELDS CLEANUP REVOLVING LOAN FUND

Using Closeout Brownfields Funds

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Amended to be applicable City-wide and passed by the City Council on 7/16/07.

Amended by Corporator at 11-17-08 Meeting adding an amendment for Requests for Amendment to Loan Terms.

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Whereas, pursuant to a Closeout Agreement between U.S.EPA and the City executed July 2, 2013 and other agreements, the City is now allowed to make changes to the guidelines for the existing Brownfields Cleanup Revolving Loan Fund, in part because the available funds are now considered "retained program income", the guidelines for that Fund are hereby revised as follows in red-line:

1. Program Goals

- (a) To finance the removal of ~~CERCLA~~ hazardous substances from Brownfields sites within the City of Portland.
- (b) To ~~support demonstrate the feasibility of establishing~~ a sustainable revolving loan fund program to finance the ~~assessment and remediation~~/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 ~~assessment and~~ remediation/cleanup 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 ~~in 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~~hazardous materials in the environment.

3. Program Description

This program is designed to encourage the environmental assessment and remediation/ 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. This will be achieved through funding Phase I and II environmental site assessments and remediation/cleanups on public properties owned by the City of Portland, and Phase II environmental site assessments and remediation/cleanups through loans to for-profit entities and non-profit organizations for properties owned by such entities.

All work under this Program is to be completed in accordance with the requirements outlined in the Closeout Agreements between the EPA and the City.

4. Program Funding 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. Eligible Project Applicants/Entities and Threshold Requirements:

- (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 considered potentially responsible for the a generator or transporter of contamination on the property 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 at the subject property.
- (f) The project applicant can be the City of Portland, not-for-profit or private property owner or prospective commercial property owner, bank, developer, etc.
- ~~(e)~~(g) Funds can be used for Phase I and Phase II environmental site assessments and remediation/cleanups on public properties owned by the City of Portland, and for Phase II environmental site assessments and remediation/cleanups on non-profit and privately-owned properties.

6. Eligible Applicants/Entities

- ~~1. 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.~~

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67. Eligible Activities

Assessment and remediation/cleanup activities actions associated with removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant or contaminant including:

- ~~(a) Installation of fences, warning signs or other security or site control precautions;~~
 - ~~2. (b) Drainage controls associated with assessment and remediation/cleanup activities;~~
 - (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;
 - (h) Excavation, consolidation, or removal of highly-contaminated soils from the site;
 - ~~(i) Abatement of hazardous building materials including asbestos, lead paint, mold and PCBs;~~
 - ~~(g) Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants;~~
 - ~~(i) Consolidation, containment, treatment, recycling, disposal, and/or incineration of hazardous materials, pollutants or contaminants;~~
- (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;
 - (l) Phase I Environmental site assessments performed in accordance with EPA All Appropriate Inquiries Final Rule or most current version of ASTM E1527;
 - (m) Phase II Environmental site assessments and remediation planning activities;
 - (n) Programmatic costs for the City of Portland and its Qualified Environmental Professional (QEP) to manage and oversee the work being performed under this Program.

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78. 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 necessary to implement assessment or remediation activities removal actions~~ (e.g. construction of a new facility or marketing of property).

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89. Financing Terms:

The following terms will guide the actions of the ~~Downtown~~ Portland Development Corporation (PDC) on behalf of the City of Portland:

- (a) Loan amount will be limited to the balance of the loan fund but generally not exceed \$200,000;
- (b) Maximum loan term will generally be 5 years but will be determined by the PDC;
- ~~3. (c) Interest rate will be determined by the Downtown P~~Portland Corporation;
- ~~4. (d) Brownfields site itself, business assets or other real property,~~ outside collateral, and/or personal guaranties may be required as security;
- ~~5. (e) Origination Application fee structure will generally be one percent (1%) but will shall~~ be determined by the ~~Downtown Portland D~~Corporation.

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9.10. Requests for Amendment to Loan Terms:

A one (1) percent fee will be applied ~~to for~~ requests for amendments to loan terms, ~~for consulting, as well as costs for~~ legal fees and recording fees associated with preparing any additional loan documents/modifications. The one (1) percent fee will be based on the current loan balance at the time of the request. ~~This one percent fee will be applied to those loan amendments which require the Commercial Loan Officer to bring the request to the DPC Board of Directors based on substantive changes.~~

The City's Economic Development Director Commercial Loan Officer has the discretion to determine whether requested loan amendments should be brought to the PDC Board or ~~done addressed~~ administratively, ~~with follow-up communication to the Board. If done administratively, the Commercial Loan Officer will confer with the Economic Development Division Director and the fee will then be determined based on hourly rates of pay, as well as recording fees and legal hourly fees.~~

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10.11. Underwriting Criteria:

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

- ~~1. Location in a Brownfields site within the City of Portland;~~
- ~~(b) Necessity of loan funds from this Program to make the project economically feasible and at the same time has a high potential for economic success.~~

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11.12. Application Review Criteria

The ~~Downtown City of Portland's Economic Development Department (EDD) 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 work negotiate with applicant(s) to determine the viability of the project and 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. Remediation/cleanup plans should be are implemented efficiently and redevelopment projects are completed on schedule to maximize the community benefit goals of the projects. The actions to be taken are include the following:~~

- ~~(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;~~
- ~~(a) Applicants seeking funds for remediation/cleanup are required to submit the site to the Maine Voluntary Response Action Program (VRAP);~~
- ~~(b) The Brownfields funding application will be submitted to the City of Portland EDD, along with Environmental Site Assessments I and II, and evidence of VRAP submittal to the Maine Department of Environmental Protection (MDEP);~~
- ~~(c) The EDD, with its QEP, will determine if the Applicant, site and preliminary project costs are eligible for Brownfields funding;~~
- ~~(d) If Applicant, site and project costs are determined to be eligible, the EDD will have its underwriter prepare an analysis of the financial components of the application along with recommended terms and conditions for the PDC's review and consideration;~~

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~~2. (e) Project will be publicly noticed and notice will be provided to the appropriate neighborhood organization;~~

~~(f) When so advised by City Corporation Counsel, the PDC chair will accept public comment on the project at the PDC meeting prior to its vote on whether to approve the funding request;~~

~~(g) Based on a favorable analysis of the financial qualifications of the applicant, and the PDC's Downtown Portland Corporation - approval, a commitment letter or will be provided to the applicant; prepares a loan approval memo;~~

~~(j) Based on the VRAP, the Applicant should prepare a final budget of cleanup activities, work schedule, Health and Safety Plan and a VRAP Work Plan;~~

~~1.~~

~~2. 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;~~

~~3. The loan approval memo and loan terms and conditions are preliminarily approved by the Downtown Portland Corporation;~~

~~4. 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;~~

~~(g)-(h) The loan documents are prepared (e.g., loan agreement, promissory note, mortgage agreement and other credit enhancement agreements);~~

~~5. The Maine Department of Environmental Protection and the EPA (at their discretion) review the draft EE/CA;~~

~~6. 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;~~

~~7. 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;~~

~~8. 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~~

~~9. 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 is a checklist of information needed from Applicants: ~~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;

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- (c) Management Overview: resumes of principals; and
- (d) Credit References: financial institutions and other creditors.

Site ~~Related~~ Conditions

- (a) Environmental assessments (Phase I and II) in accordance with American Society for Testing and Materials (ASTM) Standards;
- (b) ~~Information regarding the S~~status of the borrower as a potentially responsible party at the site;
- (c) ~~Information on E~~Environmental compliance history;
- (d) ~~Provide information on W~~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 W~~whether ~~or not~~ the Applicant is a generator or transporter of contamination at the site; and
- (f) ~~Provide information on W~~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 CERCLA if the Applicant is currently the owner/operator of the site.

Remediation/Cleanup Plan

Remediation/Cleanup Plan Summary: Remediation/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 the City Brownfields areas;

Housing-Units: Available for the creation of Housing uUnits located in the City Brownfields areas;

Any Other Community Benefits;