

City of Springfield, Missouri  
Brownfields Program

# **REVOLVING LOAN FUND**

## **Policies and Procedures**

Adopted by City Council on January 26, 2009

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# FORWARD

The Springfield Brownfields Revolving Loan Fund (RLF), administered by the Springfield Department of Planning and Development through the Brownfields Committee, provides loans and subgrants for environmental cleanup of brownfields property.

In October 2007, the City of Springfield was awarded a grant from EPA for \$1,000,000 to establish a Revolving Loan Fund. The purpose of the RLF is to provide loans to public and private property owners and sub-grants for eligible organizations to facilitate environmental cleanup. The RLF expands the Brownfields Program that has been operating since 1999 providing environmental assessments for both public and private property to help facilitate redevelopment.

This document contains the RLF policies and procedures that have been adopted by the City Council on \_\_\_\_\_ to govern the RLF program. For further information, please contact the Brownfields Coordinator in the Department of Planning and Development, at (417) 864-1031.

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# **CHAPTER I**

## **DESCRIPTION OF THE CITY OF SPRINGFIELD REVOLVING LOAN FUND**

### **1. Introduction and Purpose**

The Brownfields Revolving Loan Fund (RLF) is designed to provide financial assistance as an economic incentive to encourage eligible entities to cleanup environmental contamination on brownfields sites within the city limits of Springfield. The fund is primarily focused on providing low interest loans, and (under special circumstances) grants may be awarded to eligible non profits.

The purpose of this Policy and Procedures document is to provide a system for uniform administration of the RLF program by the Brownfields Committee will adhere to the details specified in this document.

The City Council of Springfield Missouri has approved these Policies and Procedures. The Brownfields Committee appointed by the Director of Planning and Development will administer the RLF by following the guidelines provided within this document.

### **2. Mission**

The City of Springfield is a municipal corporation under the laws of the State of Missouri. The mission statement of the Brownfields Revolving Loan Fund is:

*The Brownfields Revolving Loan Fund is a financial tool to assist and encourage environmental cleanup and sustainable reuse of brownfields property within the City of Springfield thus improving the quality of life for the community.*

### **3. Definitions**

When used in context with the Brownfields Revolving Loan Fund (RLF) the following definitions shall apply:

**APPLICANT** means any individual, firm, corporation, association or partnership including non-for-profit organizations, desiring to obtain financial assistance under the RLF by providing the appropriate information and by signing loan documents as required.

**ARBITRATION** means a hearing and determination of a case in controversy by a person chosen by the parties or under statutory authority.

**BORROWER** means an eligible loan applicant entering into an agreement with the City of Springfield to borrow RLF funds for environmental cleanup.

**BROWNFIELDS** means “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or

contaminant.” - Public Law 107-118 (H.R. 2869) - "Small Business Liability Relief and Brownfields Revitalization Act", January 11, 2002.

BROWNFIELDS COMMITTEE is the committee appointed by the Director of Planning and Development charged with administering the RLF in accordance with the Policies and Procedures contained within this document. In general committee members shall include the Brownfields Coordinator, City Attorney, Loan Fund Manger/City Grants Administrator, Environmental Engineer, and Development Economist.

BROWNFIELDS COORDINATOR means the staff person assigned to the daily oversight and administration of the Brownfields Program including all EPA grants, environmental assessments and the RLF program.

CITY means the City of Springfield, Missouri, a Municipal Corporation.

CONTRACTOR: means the environmental consultant retained to perform environmental remediation including cleanup of the contaminated site.

ECONOMIC DEVELOPMENT means the acquisition, construction, reconstruction, or installation of commercial, industrial or residential buildings, structures, and other real property equipment or improvements which are directed to and may result in the creation or retention of jobs principally to benefit low and moderate-income persons.

ELIGIBLE ENTITY means any entity determined to be eligible for either an RLF loan or subgrant based on the criteria contained within this document and as defined by the EPA RLF Administrative Manual.

ELIGIBLE AND ALLOWABLE COST mean the cost that are eligible uses of the RLF loan or subgrant as described within this document and as defined by the EPA RLF Administrative Manual.

EPA means the United States Environmental Protection Agency.

EPA PROJECT OFFICER means the EPA staff person assigned to oversee the Springfield Missouri RLF.

FUND MANAGER means the person responsible for the financial management of the RLF. The fund manager assists the City in carrying out its responsibilities on a site-specific basis, and works on behalf of the City.

GAP FINANCING means the difference between the amount of financing provided by a lending institution and the amount of financing provided by the Owner.

LAND CLEARANCE FOR REDEVELOPMENT AUTHORITY (LCRA) means that political subdivision headed by a Board of Commissioners appointed by the City Council and charged with certain responsibilities for the administration of the Small Business Development Loan Program.

LOAN means the financial transaction between the borrower and the lender (City of Springfield) whereby the two parties enter into an agreement for the lender to provide temporary financing to the borrower for the project to be repaid per the Terms and Conditions of the agreement.

MDNR means the Missouri Department of Natural Resources

MBVCP means the Missouri Brownfields Voluntary Cleanup Program

OWNER means the person or persons named on the recorded property deed; or owner of record.

PLANS AND SPECIFICATIONS means a description of the construction to be performed which is acceptable to the Loan Committee. This generally will be staff work write-up or architectural plans.

PROJECT AREA means a designated area or district approved by the City Council that is eligible to receive business assistance.

PROJECT means a business property which is being assisted under the Brownfields RLF.

SUBGRANT means the financing (grant) awarded to the subgrantee by the City of Springfield through the EPA funded Brownfields RLF Program for the project per the Terms and Conditions of the subgrant agreement.

SUBGRANTEE means the eligible entity that is the recipient of an EPA funded RLF subgrant awarded by the City of Springfield per the Terms and Conditions of the subgrant agreement.

#### **4. Confidentiality and Conflicts of Interest**

Personal and business financial information will be held in confidence to be reviewed only by the Brownfields Committee and City Attorneys Office for use exclusively in the evaluation of the RLF application. EPA staff shall also review this information when requested.

No person who is an employee, agent, consultant, officer or elected official or appointed official of the City of Springfield or the LCRA who exercises or has exercised any functions or responsibilities with respect to activities assisted under this program or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from such activities, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

## **CHAPTER II ELIGIBILITY**

The City of Springfield will only provide loans and subgrants to eligible borrowers and subgrantees for sites with eligible and allowable cleanup activities as described in this chapter. In addition to the eligibility described in this document, recipients must meet and will be reviewed based on the EPA criteria for eligible use of funds.

### **1. Eligible Applicants**

Eligible borrowers can be any public and private entity with control over or access to a brownfields site. Eligible subgrantees are limited to political subdivisions and non-profit organizations that own the site they intend to clean up. Applicants must not be suspended, debarred or otherwise declared ineligible from receiving federal funds. If the property was obtained by involuntary means, this must be documented.

Prior to funding approval, all eligible applicants will be evaluated based on additional criteria specified within the application documents and must meet Brownfields Committee approval for eligibility. Borrowers and subgrantees must assert:

- Bona fide prospective purchaser (BFPP),
- Contiguous property owners (CPO), or
- Innocent landowners (ILO) have performed “all appropriate inquiry” as found in CERCLA 101 (35)(B), on or before acquiring the property and are not liable for cleanup cost.
- Proof that they performed "all appropriate inquiry" into the property prior to obtaining it and meet all other CERCLA liability exemptions/defense requirements.

#### **Subgrantee Eligibility Restrictions**

In addition to the restrictions identified above, the following must be taken into consideration and documented for the extent to which a subgrant will:

- Facilitate the creation or preservation of greenspace (e.g. a park, recreation area);
- Benefit the needs of low income communities who have limited sources of funding for environmental remediation and redevelopment;
- Facilitate the use of existing infrastructure; and
- Promote the long-term availability of RLF funds.
- The subgrant recipient must retain ownership of the site until the cleanup is completed and through-out the period of performance of the subgrant.

### **2. Ineligible Applicants**

- Borrowers and subgrantees potentially liable under CERCLA
- Applicants that are potentially liable, or affiliated with any other person that is potentially liable, for cleanup cost through: (a) any direct or indirect familial relationship, or (b) any contractual, corporate, or financial relationships;
- A recognized business entity that was potentially liable;
- Anyone otherwise liable under CERCLA 107 (a) as a prior owner/operator or generator or transporter of hazardous substances to the facility.

- An entity that is currently suspended, debarred from receiving federal funding, or otherwise declared ineligible.

### 3. Eligible Sites

The RLF can be used for cleanup on eligible brownfields sites as defined by the brownfields law which includes sites where the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The Brownfields law also specifies that RLF funds can be used at sites that are contaminated by petroleum or petroleum product, controlled substance, or mine-scarred lands. RLF funds may only be used at sites that are:

- Contaminated by a hazardous substance, pollutant, or contaminant;
- Contaminated by petroleum or a petroleum product, and is determined by the State to be relatively low risk with no liable and viable party and not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act
- Contaminated by controlled substances; or
- Mine-scarred lands.

### 4. Ineligible Sites

- Sites listed or proposed for listing on the National Priorities List (NPL);
- Sites subject to unilateral administrative order, a court order, an administrative order on consent or judicial consent decree issued or entered into by parties under CERCLA; and
- Sites subject to the jurisdiction, custody, or control of the United States government, *except* for land held in trust by the United States for an Indian tribe.

The following petroleum-contaminated sites are not eligible for RLF funding:

- Sites subject to a corrective action order under RCRA § 9003(h); or
- Sites that have received specific cleanup assistance under the Subtitle I of RCRA from the Leaking Underground Storage Tank (LUST) trust fund are excluded from receiving financial assistance, unless a property-specific funding determination from EPA is obtained (See Section 3.4, Sites that may be Eligible for a Property-Specific Funding Determination, for more information on property-specific determinations).

**Certain sites that are excluded from funding eligibility could still qualify for funds if the recipient can provide documentation for EPA to make a property-specific determination** that the site meets the goals and criteria of the brownfields program and the criteria set forth in the Brownfields Law. Eligibility approval from EPA must be received prior to conducting work at these sites.

### 5. Eligible Activities

RLF funds are designated for eligible cleanup activities by eligible entities at eligible brownfields sites. Funds must be used on cleanup activities only. These activities include:

- Removing, mitigating, or preventing the release or threat of a release of a hazardous substance, pollutant, contaminant, petroleum product, or controlled substance into the environment;
- Site assessment or site monitoring activities that are reasonable, necessary, and incidental to the cleanup process;
- Costs associated with meeting public participation, worker health and safety, and program management requirements related to managing the RLF; and
- Compliance with state and federal laws applicable to the cleanup.

Direct programmatic costs may be eligible and allowable. However, the Brownfields Law makes administrative costs ineligible. Please see EPA Prohibitions on Use of Funds, of the 2007 Proposal Guidelines Revolving Loan Fund for discussion of the administrative cost prohibition

Actions associated with cleanup include, but are not limited to:

- Documentation of the Analysis of Brownfields Cleanup Alternatives (ABCA);
- Development and implementation of RLF marketing strategy;
- Oversight of cleanup activities;
- Installation of fences, warning signs, or other security or site control precautions;
- Installation of drainage controls;
- Stabilization of berms, dikes, or impoundments; or drainage or closing of lagoons;
- Capping of contaminated soils;
- Using chemicals and other materials to retard the spread of the release or mitigate its effects;
- Excavation, consolidation, or removal of contaminated soils;
- Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants, or contaminants, including petroleum;
- Removal of source materials, including free product recovery; and
- Containment, treatment, or disposal of hazardous materials and petroleum contamination.

The Brownfields Law also provides that RLF funds can be used for:

- Site monitoring activities, including sampling and analysis, that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
- Site assessment activities that are reasonable, necessary, and incidental to the cleanup process, such as confirmation sampling; and
- Costs associated with meeting public participation, worker health and safety, and programmatic management requirements.

## **6. Ineligible Activities**

RLF funds may NOT be used for the following activities:

- Pre-cleanup environmental assessment activities, such as site assessment, identification, and characterization with the exception of site monitoring activities as described above;
- Public or private drinking water supplies that have deteriorated through ordinary use;
- A cleanup cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA § 107;
- 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;

- Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new non-cleanup facility);
- Construction, demolition, and cost sharing or matching requirement for another federal grant (absent statutory authorization);
- Support of job training;
- Support of lobbying efforts of the recipient; and
- In addition, the Brownfields Law includes the administrative cost prohibition which prohibits the use of any “part of a grant or loan” for the payment of an administrative cost.

## 7. Eligible Fund Uses

RLF funds can be used for eligible “programmatic” costs, but are not allowed for administrative costs. (Please see Prohibitions on Use of Funds in the 2007 Proposal Guidelines for Brownfields Revolving Loan Funds.)

### **Statutory Exceptions to the Administrative Cost Prohibition**

The following administrative costs are eligible for RLF funds. The Brownfields Law provides that the administrative cost prohibition does not apply to:

- Investigation and identification of the extent of the contamination;
- Design and performance of a cleanup action; or
- Monitoring of a natural resource (e.g., soil, groundwater) for contamination.

Eligible programmatic costs are expenses incurred for activities that are integral to achieving the purpose of the program. For example, programmatic costs could include the costs of loan processing, legal fees, and professional services, or overseeing the borrower’s activities to ensure compliance with relevant and appropriate requirements of the NCP (see 40 C.F.R. § 300.700 et seq.). RLF funds may be used for (but are not limited to) the following programmatic activities:

- Site cleanup activities;
- Site remediation activities;
- VCP or State response program fees associated with the cleanup (see the RLF Grant Proposal Guidelines)
- Cost required to purchase insurance;
- Expenses for making and managing loans and/or subgrants, operating the revolving fund, and financial management expenses;
- Expenses for site cleanup activities, as in the case of subgrants to eligible entities and nonprofit organizations in remediation of brownfield sites under CERCLA § 104(k)(3)(A)(ii);
- Costs incurred for complying with procurement provisions of 40 C.F.R. Part 30 (Institutions of Higher Education, Hospitals and other Non-Profit Organizations) and 40 C.F.R. Part 31 (State, local and Indian tribal governments) otherwise referred to as the Uniform Administrative Rules for Federal grant and cooperative agreement and subawards.

- Costs for performance and programmatic financial reporting required under 40 C.F.R. 30.51 and 30.52, and 40 C.F.R. 31.40 and 31.41 are eligible programmatic costs. Performance and financial reporting are essential programmatic tools for both the recipient and EPA to ensure that grants are carried out in accordance with statutory and regulatory requirements;
- Costs associated with monitoring the health of populations exposed to hazardous substances from a brownfields site. In addition, costs associated with monitoring and enforcing institutional controls used to prevent human exposure to hazardous substances at a brownfields site are considered eligible administrative costs. These costs cannot exceed 10% of the grant funds, and are only eligible to local government recipients; and Expenses for travel, training, equipment, supplies, reference materials, and contractual support, if those costs are reasonable and can be allocated to tasks specified in an approved scope of work for carrying out the activities specified in statutory exceptions to the administrative cost prohibition (e.g., investigation and identification of the extent of the contamination; design and performance of a cleanup action; or monitoring a natural re-source for contamination) or other eligible programmatic costs described in this section. For example, costs for training recipient personnel are eligible and allowable if the costs are for training employees who perform work under the RLF grant.

## **8. Ineligible Fund Uses**

Direct administrative costs are prohibited costs, as are indirect costs. The Brownfields law prohibits the use of any “part of a grant or loan” for the payment of an administrative cost. Prohibited direct administrative costs or indirect charges include but are not limited to:

- Salaries;
- Benefits;
- Contractual cost;
- Supplies; or
- Data processing charges incurred to comply with most provisions of the Uniform Administrative Requirements for Grants contained in 40 C.F.R. Part 30 or 40 C.F.R. Part 31.

Prohibited administrative costs also are all indirect costs under OMB Circulars A-21, A-87, and A-122, and Subpart 31.2 of the Federal Acquisition Regulation. In addition to direct administrative costs, RLF funds may not be used for the payment of:

- A penalty or fine;
- A federal cost-share requirement (i.e., a cost-share required by other federal funds);
- A cleanup cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA § 107;
- A cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
- Unallowable costs (e.g., lobbying and fund raising) under OMB Circulars A-21 (universities), A-87 (state, tribal, and local governments), or A-122 (non-profit organizations), and Subpart 31.2 of the Federal Acquisition Regulation (commercial organizations), as applicable.

# **CHAPTER III**

## **UNDERWRITING AND APPROVAL**

### **1. Underwriting Guidelines for Loans**

- Evaluate credit – must have satisfactory credit
- Evaluate security – loans must be adequately secured by real estate (either cleanup property or other)
- Demonstrate repayment ability
- Require a personal guarantee on loans
- The City may take a subordinate collateral position

### **2. Criteria for Approval**

A successful applicant for a City of Springfield Brownfields RLF Loan must meet all criteria outlined below as well as the requirements of the EPA RLF Administrative Manual.

1. Be an eligible applicant;
2. Be the fee simple title owner of an eligible brownfields site at the time subgrant funding is awarded, or for borrowers, have control over or access to the eligible brownfields site;
3. Request funds for an eligible activity;
4. Propose a project that supports EPA’s Mission “To Protect Human Health and the Environment” and meets at least one EPA’s Goals;
  - a) Clean Air and Global Climate Change
  - b) Clean and Safe Water
  - c) Land Preservation and Restoration
  - d) Healthy Communities and Ecosystems
  - e) Compliance and Environmental Stewardship
5. Comply with all applicable Federal and EPA regulations;
6. Comply with Environmental Cleanup Responsibilities as stated in the EPA RLF Administrative Manual, October 2004 as amended;
7. Complete all application forms and provide all information required by the Brownfields Committee;
8. Demonstrate reasonable ability to repay the loan through project cash flow, business income, or financial capacity;
9. Provide sufficient collateral;
10. Demonstrate satisfactory credit history;
11. Demonstrate reasonableness of cleanup cost through a competitive procurement process.

In addition to the criteria listed above, eligible sites must meet one or more of the following criteria, all of which will be considered by the Brownfields Committee prior to approval:

1. Site Location The site must be located within the city limits of Springfield to be eligible for a loan or subgrant. Evaluation of the site location will include its relationship to the Vision 20/20 Comprehensive Planning goals for the City of Springfield as amended and to City Council priorities. Priority will be given to sites that have been targeted through an inventory or study. For example, sites strategically located in a target planning or redevelopment area, such as Center City, the Jordan Valley Planning Area, the CDBG boundary, the Jordan Creek CORPS Study area, neighborhoods, or a City acquisition for public use will be given highest priority.

2. Environmental Need Demonstrated contamination from hazardous substances, pollutants or contaminants, petroleum or petroleum products, controlled substances, or mine scarred lands must be documented.
3. Redevelopment Potential: Potential for redevelopment based on the property condition, surrounding area, location, market conditions, and/or commitment of the developer community, or not-for-profit must be clearly delineated. Plans for redevelopment must be consistent with the highest and best use of the property.
4. Community Benefit Community benefit from use of funds for the site must be linked to the impact of eliminating the brownfield property. Level of benefit from redevelopment should be in the form of economic, health, and/or environmental improvement.
5. Cost Benefit Cost benefit of the project relative to the use of brownfields funds must be documented and consideration will be given to the amount of grant funds remaining and other pending projects. Property targeted for City acquisition or City owned property will receive priority over private property.

The loan request must be approved by the Brownfields Committee.

### **3. Approval Process**

#### Loan or Subgrant Pre Application

The Applicant shall submit a Pre-Application for an RLF Loan of Subgrant on the Pre-Application Form approved by the Brownfields Committee. The Brownfields Committee will review the pre-application to determine property, recipient and project eligibility as specified in Chapter II of this document. On certain projects EPA may provide an eligibility determination. The Brownfields Committee or Brownfields Coordinator will discuss the terms and grant Terms and Conditions of the Loan/Subgrant with the applicant and notify eligible applicants of the Committee's decision.

#### Full Application

Once the project has been determined to be eligible, applicants may then submit a full application. The full application is a comprehensive project description that is used to evaluate projects for consideration of loan or subgrant awards. A credit analysis and financial evaluation will be carried out for each project application.

#### Application Review

The Brownfields Committee shall review the RLF Application for use before and after the cleanup project. Brownfields Committee will review each application, and evaluate it based on the information provided by the applicant for the project and the Criteria for Approval listed in this section, and meet jointly to make a funding determination. The Committee may request the Applicant to submit cleanup bids from a Contractor/Contract approval by the Brownfields Committee. An appraisal may also be required. Based upon information submitted, the Brownfields Committee shall review the Application and shall either approve or disapprove the loan or subgrant. If the loan or subgrant is disapproved, the Committee shall inform the Applicant and state the reasons for denial in writing.

#### Application Approval

Successful loan and subgrant applications will require that all loan or subgrant documents be executed prior to funding. The applicant may be required to enroll the property in the Missouri

Brownfields Voluntary Cleanup Program. The Brownfields Coordinator and Fund Manager will meet with the applicant to discuss approval, next steps in the cleanup process, and drawdown procedures.

#### **4. Appeal Process**

Any Applicant aggrieved by a decision of the Brownfields Committee relating to loan or subgrant approval, cancellation, or determination of loan or subgrant amount, may appeal said decision by filing a written notice of appeal with the Secretary of the Land Clearance for Redevelopment Board (LCRA) within thirty (30) days of receiving written notice of the Brownfields Committee's decision. The request for appeal shall be placed on the LCRA Board agenda. The LCRA Board may affirm or reverse or modify the decision of the Brownfields Committee and notify the Committee and the Applicant in writing of its decision and the reasons therefore. The LCRA Board decision shall be final.

##### Resolution of Disputes

Ultimately, the Property Owner and the Contractor are responsible for discussing and resolving their differences. However, in those cases where agreement is not reached initially, and the project is likely to remain stagnant for an unreasonable period of time, the Property Owner and Contractor must submit their differences to the City for mediation and arbitration.

If the City's informal assistance does not succeed in resolving the dispute, the Property Owner and Contractor may either submit the case jointly to formal, binding arbitration or seek the advice of their own legal counsel.

For the purposes of these Policies and Procedures, a "dispute" shall be defined as a continuing claim, submitted in writing, which is raised by either the Property Owner or the Contractor, alleging that the letter or the spirit of the written contract has not been carried out by the other party. Such disputes generally involve interpretation of such issues as quality of workmanship, required scope of work, contract price adjustments and mutual cooperation between the Property Owner and the Contractor.

This definition also covers those occasions when one party to the contract claims that the other party has defaulted on his contractual obligations and wishes to halt further work under contract.

##### Informal Mediation by the City

It is common for the City's Brownfields Coordinator to be asked to make clarifications of contract requirements or performance evaluations in response to minor difficulties that arise in every project on a day-to-day basis. However, if any such field judgments are not acceptable to both parties, the aggrieved party may ask for informal mediation by the Brownfields Committee. The request must be submitted in writing within five days after the other party has received the Brownfields Coordinator's field judgment.

If both parties agree, the Brownfields Coordinator will convene a meeting before the Brownfields Committee at the Department of Planning and Development offices within five days of receiving the first written notice of dispute. The Brownfields Committee will hear the dispute and advise the Brownfields Coordinator in the formulation of resolution of dispute.

After listening to both sides of the issue, unless further investigation is warranted, the Brownfields Coordinator will propose a resolution to the dispute he or she considers to be fair to both parties while being consistent with the contract documents and the brownfields RLF program policies and procedures.

If both parties accept the Brownfields Coordinator's proposal, a simple statement of acceptance may be drafted on the spot, signed by all parties and witnessed by a member of the Planning and Development staff. This does not necessarily mean that both parties now see eye-to-eye on the issue, only that they have accepted the Program Administrator's proposal on practical terms and are willing to resolve the dispute. Copies of the statement will be made for each party to the contract and for the project file.

While this informal mediation process cannot be considered legally binding, its purpose is to give both parties a fair and open hearing and thereby neutralize conflicts that could jeopardize the project.

When the meeting is the result of a request by either party to terminate the contract, the Brownfields Coordinator will, after reviewing the evidence presented, take the matter under advisement and within five days render a written decision for or against termination.

#### Formal, Binding Arbitration

If either party declines to sign a statement accepting the Program Administrator's proposed resolution, the Program Administrator will advise them this mediation meeting has exhausted the avenue of appeal as far as the City is concerned.

The Program Administrator will also provide both parties with information about arbitration services that are available for a fee through the Better Business Bureau of Southwest Missouri. (The General Contractor and Property Owner shall be responsible for all fees associated with the binding arbitration procedure).

The Bureau's arbitration services call for both parties in a dispute to jointly submit a signed request for arbitration, stating the nature of the dispute and agreeing beforehand to abide by the arbitrator's decision.

The facts of their case are reviewed at a scheduled hearing before the arbitrator, who is a disinterested community volunteer acceptable to both parties. If additional information is needed, the arbitrator may visit the job site before delivering a written decision.

The decision of the arbitrator and any award made by the arbitrator generally are not subject to appeal in a court of law.

## **CHAPTER IV**

# **ROLES, REPORTS AND MONITORING**

### The Role of the City of Springfield

#### Servicing

The City must report to EPA quarterly on the RLF performance, in compliance with the terms and conditions.

1. Submits quarterly reports within 30 days of the end of each federal fiscal quarter. Items included in 40 C.F.R.. 31.40 must be included in quarterly reports. Examples include: Documentation of progress at meeting the performance objectives, project narrative and project time line; an update on project milestones; a property profile; a budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds; and if applicable, quarterly reports must specify costs incurred at petroleum-only brownfields sites; clearly identifies in quarterly reports which activities performed during the reporting period were undertaken with EPA funds, and will relate EPA-funded activities to the objectives and milestones agreed upon in the work plan including a list of sites where cleanup (either through loans or subgrants) activities were completed.
2. Determines site eligibility for projects.
3. The Environmental Engineer with the assistance of the Brownfields Committee conducts cleanup oversight of contractors work for all projects.
4. Maintains adequate accounting records and source documentation to substantiate the amount and percentage of program income expended for eligible programmatic costs.
5. Complies with applicable Office of Management and Budget (OMB) cost principles when charging costs against program income.
6. Maintains RLF records for three years after the submission of the financial status report, closeout of the cooperative agreement, or completion of an ongoing loan, whichever is the longest retention period.
7. Receives written approval from EPA before destroying any records.
8. Ensures that periodic audits of their programs are conducted by an outside auditor in accordance with General Accounting Office (GAO) accounting standards or generally accepted government auditing standards.

### Applicant Reports to the City of Springfield: Content and Frequency

The borrower or subgrantee must show that they have:

- a) Documented and used funds only for eligible activities at eligible sites.
- b) Demonstrate adequate collateral and has repaid funds within the terms of the loan agreement.
- c) Provided financial records to the City on a regular basis.
- d) Kept records of compliance with the terms and conditions of the loan including applicable federal and state requirements.
- e) Complied with all applicable federal and state requirements.
- f)** Maintained records and provided access to records for three years after the submission of the financial status report, closeout of the cooperative agreement, completion of an ongoing audit, or completion of an ongoing loan, whichever is the longest retention period.

## **CHAPTER V**

### **PROTECTION OF SECURITY INTEREST**

This Chapter outlines the basic procedures and policies of the City regarding protection of its financial interest in real property.

In order to meet program objectives and achieve goals, and to provide financial assistance where needed, the Brownfields Committee may approve loans for environmental cleanup on properties which require the City to assume a subordinate position to existing liens on the property being assisted. As a result thereof, it may be necessary from time to time for the City to provide funds for legal assistance to acquire a permanent interest in, or to obtain temporary control of, the assisted property in order to protect the financial interest of the City when foreclosure is pending by a lienholder on the property as a result of nonpayment by the mortgagor. RLF funds may not be used to purchase the property.

The Director of Planning and Development, upon recommendation of the Brownfields Committee, is authorized to expend funds from the Revolving Loan Fund, or from other sources as may be appropriate, on legal fees to acquire a permanent interest in or to obtain temporary control of the assisted property in order to protect the financial interest of the RLF Program upon general default of the borrower or when foreclosing by a lienholder would seriously affect the investment of the RLF in the property and RLF loan program.

The City Manager, upon recommendation of the Director of Planning and Development, may sell, lease, convey or otherwise transfer any real estate acquired by the City pursuant to a foreclosure of a deed of trust securing a loan under the RLF Program. Notwithstanding any other ordinance to the contrary, any such sale, lease, conveyance, transfer or other disposition of real estate thus acquired by the City shall conform to the following procedure:

- a. The Brownfields Committee shall, with the approval of the Director of Planning and Development, advertise for the sale, lease, conveyance, transfer or other disposition of the real estate in a newspaper, magazine or other publication generally recognized in the Community as a real estate marketing medium.
- b. The Brownfields Committee shall receive and evaluate offers, and may negotiate such further terms and conditions as advance the purposes of the RLF program. Where public knowledge might adversely affect the legal consideration, offers, negotiations and related documents shall remain closed records where permitted by law until completion of the lease or sale of the real estate.
- c. The Brownfields Committee may, with the approval of the Director of Planning and Development, enter into a contract for the sale, lease, conveyance, transfer or other disposition of the real estate, with actual closure of the transaction contingent upon the approval of the City Manager.

- d. The City Manager is authorized to execute all deeds, leases or other instruments necessary to close the sale, lease, conveyance, transfer or other disposition of the real estate

The Director of the Planning and Development is authorized, upon recommendation of the Brownfields Committee, and with EPA approval, to write off a debtor's liability for the portion of indebtedness, which is in excess of the property's fair market value when the property is sold under the following circumstances. Nothing contained herein shall be deemed to allow the forgiveness of any debt in contravention of Article 3, Section 39 of the Missouri Constitution.

1. Bankruptcy
2. Foreclosure
3. Conveyance by deed in lieu of foreclosure
4. The property was liquidated to help pay debtor's uninsured medical or nursing home expenses.

## **APPENDICES**

Prudent Lending Practices

Procedures

Checklist for Loans and Subgrants

Pre-Application

Full-Application

Example Promissory Note

Example Deed of Trust