



CITY OF ATLANTA – INVEST ATLANTA

**BROWNFIELDS REVOLVING LOAN FUND (BRLF)  
PROGRAM**

**GUIDELINES AND PROCEDURES MANUAL**

2016

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# Introduction

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## City of Atlanta - Invest Atlanta Brownfields Revolving Loan Fund Program

The City of Atlanta - Invest Atlanta Brownfield Revolving Loan Fund (BRLF) Program provides financing for eligible brownfields clean-up projects within the Atlanta city limits. Brownfields Revolving Loan Fund (BCRLF) loans are available to qualified, suitable market- ready sites to appropriate developers and buyers. The loans provided by the BRLF fund the remediation required for site cleanup, which then allow redevelopment projects to go forward. The net result will be that the BRLF will help to advance the brownfield program goals.

Funding for the program is provided by the U.S. Environmental Protection Agency (EPA) and the City of Atlanta. In 2009, the City of Atlanta received a \$1,000,000 Revolving Loan Fund grant to set up the Brownfield Revolving Loan Fund Program. A 20% match is required. EPA provides additional funding through Supplemental funds. The loan program is jointly managed by the City of Atlanta and Invest Atlanta.

Invest Atlanta entered into an Intergovernmental Agreement (IGA) with the City of Atlanta in October 1st of 2014 that authorizes Invest Atlanta to manage the City of Atlanta's award for United States Environmental Protection Agency (EPA) Brownfields Revolving Loan Fund (BRLF) grant. The IGA is set to expire in September 30th of 2019 per 14-R-4108. A previous IGA; 10-R-0161 was effective October 1, 2009 and September 20, 2014.

The Brownfields Revolving Loan Program Guidelines and Procedures Manual provides information about the requirements and procedures of the US EPA Revolving Loan Fund grant program, environmental cleanup requirements, as well as information about site and borrower eligibility, allowable cost, application process, terms and conditions.

In addition, this Manual provides general principles on which sound loan decisions can be made and determine parameters for actions related to the City of Atlanta Brownfields Revolving Loan Fund (BRLF).

## Invest Atlanta/City of Atlanta BRLF Review Committee

The City of Atlanta BRLF is an equal opportunity lender, considering loan applications without regard to race, gender, national origin, or ethnic background. The BRLF Review Committee, (the Committee) composed of City of Atlanta and Invest Atlanta staff will make loan and subgrant eligibility determinations.

## Participation in the State of Georgia Brownfields Program

All projects undertaken with BRLF funding will be required to also participate in the State of Georgia Environmental Protection Division Brownfields Program (<http://epd.georgia.gov/brownfield>). This requirement will be included in the loan agreement.

Before a loan is submitted to the Committee, the property owner must enter into a Brownfields Site Rehabilitation Agreement with the Georgia Department of Environmental Protection, or a delegated agency. In addition, a Remedial Action Plan must be approved by the Georgia Department of Environmental Protection, or a delegated agency.

## Brownfields and Targeted Communities

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A **brownfield site is defined** as real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of hazardous substances, pollutants, contaminants, controlled substances, petroleum or petroleum products, or is mine-scarred land.

### Targeted Communities

The Brownfield Revolving Loan Fund is available in Targeted Communities within the City of Atlanta. The City of Atlanta and Invest Atlanta will focus its marketing activities on the Targeted Communities listed below in order to have a positive impact on these areas. Further, Invest Atlanta, where possible will coordinate with the Phoenix Fund and Business Improvement Loan Funds to maximize financial impact when projects become eligible for multiple lender options.

- The Atlanta BeltLine
- Targeted Redevelopment Corridors
  - Donald Lee Hollowell Parkway
  - Simpson Road
  - Jonesboro Road
  - Campbellton Road
  - Stadium Neighborhoods
  - Memorial Drive
- Proctor Creek Watershed
- Groundwork Atlanta (NPU's D and G)
- Atlanta Area Wide Planning Program
- Opportunity Zones - Downtown, Auburn Avenue, Lakewood Park, Metropolitan Village Dist., Cleveland Ave. Gateway and Southside Industrial Park.

## Goals of the Brownfield Revolving Loan Fund Program

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Many parcels in the City of Atlanta have actual or perceived environmental contamination and are often abandoned or underutilized. The presence of contamination along with the risks and costs associated with addressing contamination can be a significant barrier to redevelopment. The City of Atlanta Brownfield Program seeks to revitalize these areas and improve the quality of life in the City of Atlanta. The goals of the City's Brownfield Program are to improve the quality of life, revitalize neighborhoods and increase the City's tax base by:

- Encouraging sustainable redevelopment of brownfield sites;
- Protecting human health and the environment;
- Supporting the retention and attraction of jobs;
- Maximizing the effectiveness of the Brownfield Program through collaborative efforts; and
- Educating and engaging with the community about the Brownfield Program.

The Goals of the Brownfield Revolving Loan Program are listed below.

- Alleviate the conditions of severe poverty existing in the City of Atlanta.
- Protect the region's drinking water supply by minimizing contamination of the highly porous surficial sole source aquifer that lies beneath the City.
- Establish an expedited, equitable, coordinated, and easy-to-use process available to developers who may be interested in a particular potential brownfields site.
- Influence market conditions to attract private development to brownfields sites in areas selected for public policy reasons.
- Enhance and reinforce ecosystem environmental restoration, public health, economic development, and transit-related efforts.
- Further local strategies to promote sustainable communities, reduce greenhouse gas emissions, and foster leadership in sustainable development worldwide.

## Borrower Eligibility

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To be eligible for funding, the borrower and/or subgrantee are either an “eligible entity” as defined in CERCLA § 104(k)(1) or a nonprofit as defined in section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106-107, 31 U.S.C. 6101. Nonprofit organizations exempt from taxation under section 501(c) of the Internal Revenue Code that lobby are not eligible.

Additionally, for subgrants, applicants must be the sole owner of the property that is the subject of a grant proposal by the date specified in the grant guidelines, for the year in which the applicant has received the grant.

Eligibility restrictions include the following:

- Borrowers and subgrantees may not use EPA funding to pay for cleanup costs at a Brownfields site where a borrower or subgrantee is potentially liable under CERCLA § 107.
- An entity that is currently suspended, debarred from receiving federal funding, or otherwise declared ineligible cannot be a borrower.

Borrowers and subgrantees are eligible to receive a loan or subgrant based on liability protection from CERCLA in one of these three categories:

- Bona fide prospective purchaser (BFPP),
- Contiguous property owner (CPO), or
- Innocent landowner (ILO).

All borrowers and subgrantees asserting a BFPP, CPO, or ILO limitation on liability must perform (or have already performed) “All Appropriate Inquiry” (AAI) as provided for in CERCLA § 101(35) (B), on or before acquiring the property. All Phase I and Phase II ESA must be completed for the property and comply with Georgia EPD and ASTM guidelines.

Borrowers and subgrantees seeking to qualify as BFPP or CPO must not be potentially liable, or affiliated with any other person that is potentially liable, for cleanup costs.



## Subgrants

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BRLF cleanup subgrants may be provided to an eligible entity or non-profit organization (as defined in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999) to clean up sites owned by the eligible entity or non-profit organization at the time the subgrant is awarded. The subgrant recipient must retain ownership of the site throughout the period of performance of the subgrant. Subgrantees are required to fulfill all reporting, record keeping and program requirements. Subgrants awards cannot exceed \$200,000. Non-profit subgrantees must expend subgrants in accordance with 40 C.F.R Part 30 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations) and OMB Circular a-122, which establishes principles for determining costs of grants, contracts and other agreements with non-profit organizations.

In determining if a subgrant will be awarded, the following will be taken consideration:

- The extent the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
- The extent the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
- The extent the subgrant will facilitate the use or reuse of existing infrastructure; and
- The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

## Site Eligibility

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Sites eligible for cleanup activities with brownfields funding must satisfy the definition of a “brownfield site” provided in CERCLA § 101(39) (A). Brownfield sites are defined as “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. Brownfield sites may include sites with hazardous substance contamination, petroleum contamination, or controlled substances contamination and mine-scarred lands.

These sites may include:

- Sites where there is a presence or potential presence of contamination by a hazardous substance as defined in CERCLA § 101(14) or a pollutant or contaminant as defined in CERCLA § 101(33);
- Sites contaminated by petroleum or a petroleum product (additional analysis required);
- Sites contaminated by controlled substances; and
- Mine-scarred lands.

### Petroleum Site Eligibility

For petroleum contaminated site(s) that otherwise meets the general definition of a “brownfield site” to be eligible for funding, EPA or the state must determine that:

- The site is of ‘relatively low risk’ compared with other ‘petroleum only’ sites in the state;
- There is no viable responsible party for the site;
- The site will not be assessed, investigated or cleaned up by a person that is potentially liable for cleaning up the site; and
- The site is not subject to any order under § 9003(h) of the Solid Waste Disposal Act (SWDA).

The borrower must request the State Environmental Protection Division (EPD) to determine whether a petroleum-contaminated site may be eligible for brownfields funding. If the state makes the determination required under CERCLA § 101(39) (D) (ii) (II), documentation must be provided.

### Mine scarred lands

Cleanup grant funds may be used to clean up mine-scarred lands. Mine-scarred lands include the land, associated waters, and surrounding watersheds where extraction or processing of ores and minerals (including coal) has occurred.

## Site Specific Determination

Some sites which are sites are excluded from the general definition of a “brownfield site” may be eligible if EPA makes a property-specific determination that allows the use of grant funds. In making their determination, EPA will consider the items listed below.

- Basic site identification information and eligible entity identification information.
- The specific circumstance that necessitated this request for a property-specific determination.
- A short explanation of why the site requires a property-specific funding determination.
- The degree to which other funding is or is not available for the cleanup of the site.
- An explanation of whether or not the applicant is responsible for the contamination at a site.

The subgrant or applicant must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan.

## Eligible Activities

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Brownfield RLF funding must be used only for eligible activities and eligible costs. The eligible activities are listed below.

- 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;
- 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;
- Containment, treatment, or disposal of hazardous materials and petroleum products;
- Site monitoring activities, including sampling and analysis that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
- Sampling as related to design and implementation of a selected cleanup plan;
- Preparing an Analysis of Brownfields Cleanup Alternatives (ABCA);
- Ensuring public participation requirements are met including Community Relations Plan; and
- Establishing an administrative record for each site.

## Ineligible Activities

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RLF funds cannot be used for the following activities:

- Pre-cleanup environmental activities (e.g., Phase I and Phase II site assessment, identification, and characterization with the exception of site monitoring activities);
- All indirect costs for the grantee<sup>1</sup>, even if the grantee has an approved indirect cost rate from its cognizant federal audit agency;
- Sampling activities;
- Addressing public or private drinking water supplies that have deteriorated through ordinary use;
- A cleanup or other response cost at a brownfields site for which the recipient of the grant 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 facility);
- Cost sharing or matching requirement for another federal grant (absent statutory authorization);
- Support of job training covered by EPA's CERCLA § 104(k)(6) grant program;
- Support of lobbying efforts, in accordance with applicable OMB cost principles;
- Pay and penalty or a fine;
- Purchasing insurance intended to provide coverage for any of these ineligible activities; or
- Paying a cost of compliance with any federal law not applicable to the cleanup.

## Eligible Costs

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The costs listed below are eligible cost for Revolving Loan Funds.

- Costs for design and performance of a response action
- Costs for monitoring of a natural resource (e.g., soil, groundwater) for contamination.

Eligible programmatic costs include:

- Expenses for site cleanup activities under CERCLA § 104(k)(3)(A)(ii);
- Voluntary cleanup program (VCP) or state cleanup program fees associated with the site remediation;
- Costs required to purchase insurance if the purchase of such insurance is necessary to carry out cleanup activities;
- Costs associated with meeting public participation, community notification, worker health and safety, and programmatic management requirements;
- 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;
- Developing a Quality Assurance Project Plan (QAPP); and
- Ensuring adequacy of cleanup and overseeing activities to ensure compliance with Federal & State requirements.

### Ineligible Costs

The Brownfields Law prohibits RLF funding to be used for the following costs:

- A penalty or fine;
- A federal cost-share requirement (matching funds for another federal grant)
- Administrative costs;
- A response costs at a brownfield site for which the grantee is potentially liable under CERCLA § 107
- A cost related to complying with federal laws other than those applicable to the cleanup; or
- Purchase insurance intended to provide coverage for any of the above ineligible costs.

# Environmental Cleanup

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Environmental cleanups funded with the Brownfield Revolving Loan Fund need to follow the steps outlined below.

- Determining if the Site, the Borrower/Subgrantee, and the Environmental Cleanup are Eligible for Brownfields Funding; All Appropriate Inquiry Documentation;
- Planning Community Involvement;
- Conducting an Analysis of Brownfields Cleanup Alternatives (ABCA);
- Establishing the Administrative Record;
- Conducting Community Involvement;
- Meeting All Applicable Federal and State Laws;
- Performing the Environmental Cleanup (in a manner protective of human health and the environment);
- Documenting the Environmental Cleanup;
- Selecting Environmental Cleanup Technologies; and
- Understanding Institutional Controls

## Applicable Federal Laws

BRLF funded projects need to be in compliance applicable Federal Laws including the Endangered Species Act (ESA) and National Historic Preservation Act (NHPA).

- Endangered Species Act (ESA): All projects funded by EPA grants must complete its ESA Section 7 consultation requirements before cleanup may begin.
- National Historic Preservation Act (NHPA): EPA must consider the effect of grant-funded cleanup activities on any historic properties included on or eligible for inclusion on the National Register of Historic Places or “cultural resources.”
- Davis-Bacon Act of 1931 - CERCLA § 104(g) requires that borrowers and subgrantees comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for construction, repair or alteration contracts “funded in whole or in part” with funds provided under the RLF agreement. The recipient must ensure that the borrower or subgrantee obtains recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.

# Community Involvement

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Community involvement is an essential component the Brownfield Revolving Fund Program. Through this process, the public has an opportunity to provide input on the proposed site cleanup and plans for redevelopment, to comment on the required documents drafted in preparation for the environmental cleanup and to have these comments considered in part of the final cleanup decision.

Community involvement activities must be initiated prior to the cleanup of a site and continue throughout each step of the environmental cleanup process. Final cleanup decisions must not be made prior to carrying out the required community involvement activities. RLF grant funds may be used to support community involvement activities as a programmatic cost. All environmental cleanups require a site-specific plan for involving and informing the community.

## Conducting an Analysis of Brownfields Cleanup Alternatives (ABCA)

Recipients of Brownfields Revolving Loan Funds must conduct and document an analysis of brownfield cleanup alternatives (ABCA) considering the site characteristics, surrounding environment, land-use restrictions, potential future uses, and cleanup goals in order to ensure and document that the appropriate type of cleanup is selected to address the site. The ABCA or its equivalent must include:

- Its purpose, information about the site and contamination issues (i.e., contaminants of concern, exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup.
- A comparative analysis of the alternatives being considered using the criteria of effectiveness, implementability and the cost of each alternative. At a minimum, the ABCA must include a comparison of the proposed cleanup action and the “no action” alternative. As appropriate, additional cleanup alternatives may be included in the analysis. The ABCA should discuss whether/ how each alternative would achieve cleanup standards and applicable laws.
- Cleanup method chosen must be based on this analysis.

## Establishing the Administrative Record

Each loan recipient is responsible for establishing an administrative record containing the information forming the basis for the selection of an RLF environmental cleanup plan. The administrative record includes all relevant site information and documents that form the basis for the selection of a cleanup. This may include appropriate sections of loan or subgrant documents necessary to ensure that cleanup requirements are met.



The administrative record must be available for review at a location convenient to the public, and must include:

- The eligibility determination of the site, the borrower/ subgrantee, and the proposed cleanup activities.
- An ABCA or its equivalent.
- A site-specific community plan for involving and informing the community during the cleanup process,
- Documenting Community Involvement and Issuing the Decision Document.
- Documents or other information that form the basis for selection of a cleanup. Such information may include sampling data, quality control and assurance documentation, site inspection reports, Phase I and Phase II assessment reports, public health evaluations or risk assessments, and other technical and engineering documents as deemed appropriate by the recipient or borrower/subgrantee.

A recipient is required to make the administrative record, including the ABCA, available for public comment prior to issuing its decision document that selects the final cleanup action for the site. An important aspect of community involvement is allowing the public to comment on the administrative record for the site.

After the administrative record is established for the site, the recipient must:

- Provide public notice of the availability of the administrative record, which includes the ABCA, and other documents that provide the basis for the proposed cleanup. The notice may be placed in a major local newspaper of general circulation, on the Internet, or similar measure to inform the general community and target area of the availability of the administrative record for public review; and
- Provide reasonable opportunity, typically 30 days, for written and oral comments on the administrative record. Upon timely request, extend the public comment period as needed.
- If deemed appropriate by the recipient, the borrower/ subgrantee, a meeting may be held during the public comment period to discuss the proposed cleanup and solicit comments from interested parties.

### **Documenting Community Involvement and Issuing the Decision Document**

After the public comment period is complete, the recipient will issue a decision document that selects the final cleanup action for the site. The decision document shall include a response to all relevant comments received during the public comment period and document any change(s) to the final cleanup plan based on comments received.

## Conducting the Environmental Cleanup

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After the decision document has been issued, the cleanup can be performed in accordance with the final cleanup plan and in a manner that is protective of human health and the environment. During the cleanup process, loan recipient have to update their property profile and provide quarterly reports to reflect the cleanup activities.

Loan recipients and the City and Invest Atlanta's Qualified Environmental Professional (QEPs) shall ensure the adequacy of each RLF cleanup as it is implemented by conducting or reviewing cleanup confirmation sampling. Confirmation sampling should show that the established cleanup levels and other applicable requirements will be or have been met or additional cleanup activity is warranted.

After the RLF funded environmental cleanup is completed, the borrower or subgrantee must formally document the activities conducted. This must be done through a final report or letter, or other documentation provided to the State EPD requesting formal approval that the cleanup is complete. This document needs to be included as part of the administrative record.

In addition, at the completion of an RLF cleanup, the loan recipient must prepare a report on the cleanup operation and actions taken. The report should contain the following items:

- Documentation of cleanup actions taken and any modifications made to the cleanup plan;
- Documentation that the actions that were taken met the cleanup levels established in the final cleanup plan, including the results of any cleanup confirmation sampling;
- Documentation of the resources committed; and
- Documentation of any problems encountered and how they were resolved.

The cleanup completion documentation should be reviewed by the City's and Invest Atlanta Qualified Environmental Professional (QEP) for concurrence and submitted to EPA response program for approval. Invest Atlanta shall request that the Georgia EPD provide a letter of concurrence that cleanup is complete and that any engineering or institutional controls are in place.

# Loan Parameters

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## Loan Amount Guidelines

The preferred loans and sub-grants will be a minimum of (\$35,000) thirty five thousand dollars; no maximum loan limit will be established to ensure flexibility. Sub-grants can't exceed two hundred thousand dollars (\$200,000). The BRLF loan amount may not exceed eighty percent (80%) of the total approved clean-up cost. In cases where limited financing from a private/traditional source is available, loans can be used as supplemental or "second mortgage" funds. Second positions on collateral may be acceptable so long as the prior lien holder is a lending institution.

## Equity

When business owners can contribute equity/cash without impairing cash flow, equity will be required. For each individual loan the equity requirement will generally range from ten to twenty percent of the total project cost.

Businesses may be required to inject funds into the project depending upon; 1) whether the business has adequate equity, generally determined to be defined as a debt-to-net worth ratio that is 4:1 or less; 2) the overall strength of the business; 3) collateral coverage; and 4) availability of cash to put into the project. These elements are all considered in determining the equity required for each project.

Exceptions may be made on a case-by-case basis depending upon the particular project. It is BRLF's general philosophy that existing equity or previous cash injection into the business indicates a reasonable level of commitment to the business; therefore, consideration will be given to existing equity in determining new equity required as a result of the project being financed.

## Interest Rates

Interest rates will be established to meet the needs of borrowers while yielding income to support the administrative expenses of City of Atlanta BRLF. The interest rate, as a general rule, will be less than or equal to the prime interest rate, but not less than zero percent. It is anticipated that loan rates will be between zero percent (0%) and the current market rate plus one hundred basis points. The prime rate shall be the prime rate quoted in the Wall Street Journal or the maximum interest rate allowed under State law. The interest rate will be fixed for the term of the loan.

Deviations from this policy may be made when warranted to cover administrative costs. The Committee will establish the rates, based on the ability of the company to support the debt service, and the overall risk of the project. Repaid interest will be retained to pay administrative expenses of the program.

## Terms

Loan terms will be based upon the borrower's needs, repayment ability and how much the borrower is financing. Repayment terms will be customized depending on the projects cash flow needs. Interest only payments may be made available for the first year; however, all loans will be fully amortized by a daily rate. Deferred payments may be an option in structuring a workout plan. Generally, terms will be kept as short as practical in order to recycle funds. All conditions, including the loan term, will be evidenced by a promissory note, security documents, and other closing documents, as necessary, to be signed at closing.

## Collateral

The Brownfield RLF Review Committee will strive to obtain sufficient and adequate collateral to secure all loans while recognizing that shortfalls in security may exist. Collateral requirements will consider the merits and potential economic and community benefits of each request. Personal guaranties by all parties with more than twenty percent (20%) ownership interest will be required for each loan unless there is a sound justification included in the loan write-up and thereby approved by the Committee. The value of pledged collateral (i.e.: Real Estate, Securities, Equipment, etc.) would be verified through a market analysis, appraisal or other means that are deemed appropriate for the particular project. Liens will be placed on all collateral. Liens may also be placed on other non-- project personal assets of the borrower in order to further secure the loan. As an abundance of caution, City of Atlanta BRLF will secure its loans to the maximum extent possible to ensure an adequate secondary source of repayment.

Personal guarantees may be required of the principal borrowers according to the circumstances involved. Key man or term insurance also may be required, if warranted by the Committee.

## Loan Discounts

At the discretion of the RLF Review Committee, loans can be discounted up to thirty percent (30%) not to exceed two hundred thousand dollars (\$200,000) per site (e.g., \$600,000 loan with a 30% discount is \$180,000 principal forgiven). However, discounted loans cannot be given to private or for profit entities.

# Loan Application and Approval Process

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## Loan Application Exhibits and Process

Before an application is prepared, staff will collect preliminary information to determine, to the maximum extent possible, that the potential borrower and project are eligible. This first step in the loan selection process will be 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 will either be referred to other sources of financing or invited to prepare a complete application.

The Borrower must be in good financial standing, current on all property taxes and other obligations to the City demonstrate ability to repay the loan and complete the project successfully. The borrower needs to demonstrate that it has secured financing necessary to complete the project.

## Application Process

1. Pre-application meeting
  - a. Executive summary of business plan and/ or development plan
  - b. All Appropriate Inquiry Documentation, Environmental Assessment Report/ Engineering Evaluation Cost Analysis of State of Georgia Brownfield registration letter
  - c. Letter of site eligibility
2. Application
3. Review of Financial Condition & Business/ Development Plan
4. Environmental Risk Evaluation
5. Redevelopment Plan Review
6. Loan Review Committee Meeting
7. EPA Review of Loan
8. Invest of Atlanta Board approval
9. Decision Made
10. Notification
11. Establishment of Offer and Terms
12. Loan/ Grant Closing
13. Cleanup
14. Disbursement
15. Verification
16. Retesting

## Required Documents

The following documents may be required for loan applications, as applicable:

1. History and description of the business: describing the formation of the business, the owner(s), the products and services provided.
2. Project costs, requested loan amount: the costs of the project and committed or potential sources of financing.
3. Resume of owner(s) and key management personnel.
4. Occupation/ Business License
5. Articles of Incorporation
6. Business financial statements for three previous years, including Balance Sheets, Income Statements, and Notes to Financial Statement, and/ or Tax Returns. For local governments, provide annual budget with sufficient detail to demonstrate that the loan can be repaid.
7. Current Business Financial Statements: Balance Sheet, Income Statement, etc. not over 90 days old.
8. Financial Projections for two years, including Balance Sheet, Income Statement, and Cash Flow showing proposed financing.
9. Personal Financial Statement(s) on Owner(s) and Income Tax Returns for three years. If an applicant has already applied for financing with another lender and has completed a Personal Financial Statement for that lender, a copy of the already completed Personal Financial Statement will be accepted, if not more than 90 days old.
10. Schedule of Existing Personal Debts.
11. Schedule of Existing Business Debts.
12. Personal Credit Bureau Report for all Principals.
13. List of Collateral offered to secure proposed loan with outstanding loan balances (prior mortgages, etc.).
14. Other financing associated with the project.
15. EPA Property Profile Form
16. Legal Property Description
17. Assessment Report
18. Brownfield Agreement with State of Georgia
19. Final Work Plan
20. ABCA Draft
21. 30 Day Public Review
22. Invest Atlanta to make notice available in location (legal paper).
23. QAPP
24. ESA Consultation
25. SHPO Consultation
26. Other Funding Confirmation
27. Davis Bacon Wage Rates Certification Form
28. Contract with a Qualified Environmental Professional

29. Cleanup Budget
30. Cleanup Contract (contracts need to meet Federal Procurement requirements 40 CFR Part 30).
31. Cleanup Schedule
32. Cleanup Contractor Insurance
33. Site Photos

All applicants shall submit four duplicate three ringed binders with applications, clean-up plan and supporting documentations to Invest Atlanta. Upon completion of the loan application, staff will conduct an analysis to ascertain the project's potential for success. This review will entail a review of the business plan and/or information listed above. An in-depth credit analysis will be conducted, by a separate Invest Atlanta loan committee that has loan underwriting background, to determine the repayment ability of the borrower and will consider business cash flow, personal debt to income ratios, personal and business credit history, management, type of business, industry performance and collateral. If the analysis indicates the business plans are viable and well timed, and the borrower is creditworthy, staff will work with the applicant to structure the terms of the loan package. All loan decision authority rests with the Loan Review Committee.

### **Credit Reports**

Credit reports may be required. In situations where the applicant has experience with a bank, staff may contact that bank for a credit reference in lieu of conducting a credit report. In cases where credit reports and/ or bank references reveal an unfavorable finding, a signed statement of explanation by the applicant will be required and shall be submitted to the Committee for review.

### **Credit Criteria**

The key to the success of the program is flexibility and the ability to mold the program to meet the individual and unique needs of borrowers. Historical and projected cash flow, working capital, liquidity, and debt to equity will be considered. Staff will assess the overall stability of the property owner by comparing historical financials. Below are general guidelines that will be used in identifying creditworthiness and in screening applicants.

1. Personal credit report
2. Business credit references
3. Personal Debt/ Income ratio
4. Cost or appraised value of collateral
5. Applicants with bankruptcies, foreclosures, repossessions, judgments, or delinquent credit must provide signed information on the status and resolution of the situation.
6. Applicants that cannot demonstrate the likelihood of making proposed loan

payments may be denied by staff with Committee consideration. Rejected applications will be reported to the Committee.

7. Staff will review personal obligations of the owners. If personal obligations could be a potential drain on the business cash flow, the loan may be declined.
8. For existing companies, cash flow should be sufficient to support current and proposed debt service. In cases where a shortage exists, borrower(s) must demonstrate specific ways/ plans in which changes will be brought to insure cash flow is positive.
9. For new companies, business plan projections should designate targeted customers. Applicants may be asked to provide letters of intent from potential customers to document the need for their product/ service or provide evidence of leveraged funding.
10. The Committee may limit the debt to income ratio (total personal debt divided by income) for business owners to 50%.
11. Borrowers with two or more bankruptcies, repossessions, or foreclosures within a 5-year period will generally not be considered for a loan.

Loan applications will be reviewed for standard underwriting criteria. The write-up may be mailed to the Committee members prior to the Board meeting or may be distributed at the meeting. Write-ups generally will include a summary of the business history, an assessment of management capabilities, a description of the products or goods/ service sold by the applicant, an analysis of the market conditions, a list of the project costs along with a structure for the proposed financing, a description of the need for financing, an overview of the repayment ability, determination that the project is consistent with policy guidelines, and a brief statement regarding the overall environmental impact. Additionally, staff will submit strengths, weaknesses, and recommendations for the credit. The credit may be supplemental or replaced by a Loan Risk Assessment.

### **Procedures for Loan Approvals, Documentation of Committee Actions, and Notification of Borrowers**

Loan decisions will be made at Committee meetings when a quorum is present. Members may review the loan write-up prior to Committee meetings. At the meetings staff will provide a more detailed overview of the business and an in-depth financial and credit analysis of the project. Meetings will be scheduled as needed, and Committee members will be notified of meetings at least ten (10) calendar days' prior.

The Committee may establish parameters, which certain decisions can be made by staff without Committee consideration. Staff may approve changes in situations where an existing borrower requests minor changes in loan terms. Signatures are required for approval. Deferrals of principal of up to six (6) months, release of a guarantor who no longer owns stock, and release of secondary collateral after half of the loan term is paid are examples of situations where staff approval is sufficient. Committee members will be notified of staff actions at the next Committee meeting. For more complex requests, such



as loan assumptions, direct Committee action is required. In these cases, a memorandum outlining the request, along with a recommendation from staff, shall be mailed to Committee members. Voting should occur at the next Committee meeting.

### Loan Closing and Disbursement

After the Committee has approved a loan, staff will initiate the closing process. After a commitment letter has been issued and the conditions and terms have been accepted (in writing) by the borrower, a conference with the Invest Atlanta's attorney may take place to determine the documents needed for closing. All loan documents must be approved and executed by the Invest Atlanta Legal Department. Either a set of standard loan documents will be developed by staff and provided to the borrower's attorney or the Invest Atlanta's attorney will participate in each closing to ensure consistency and accuracy in loan closing files. For example, in the case of a loan collateralized by assets other than real estate, it may be sufficient to have only the borrower's attorney present at the closing. Keeping closing costs at a minimum is critical to make the program affordable to those needing it most. At a minimum, a loan agreement, promissory note, and collateral and security instruments and guaranty will be required.

### Appraisals

The Committee or other approvers on a case-by-case basis will determine appraisal requirements. They may not always be required because of the appraisal cost relative to loan size. When required by the Committee or other approvers, they will be conducted by appraisers satisfactory to the Invest Atlanta and completed prior to disbursement of proceeds. When not required, staff will wherever possible document collateral's historical cost, anticipated cost, tax value or book value.

### Closing Documentation

The following: documents will generally be required to facilitate the loan

1. Loan Agreement
2. Note (Executed)
3. Certificate and Assurances
4. Guaranty (if borrower is not an individual)
5. Mortgage with title option verifying lien position\*
6. UCC, with proper UCC search confirming lien position\*
7. Resolution to Borrow\*
8. Life Insurance Assignment\*
9. Evidence of Hazard Insurance (with Invest Atlanta as an additional Loss Payee)

## 10. Flood Insurance\*

\*If required by the Committee, based on collateral and structure of the loan.

### Signage Required at the Property

Within ten (10) days from the execution of a Loan Agreement, the Borrower shall erect a sign at the Property stating that a portion of the Project is being financed by the Lender's BRLF, specifically referencing the "City of Atlanta's Brownfields Revolving Loan Fund in partnership with Invest Atlanta and sponsored by the United States Environmental Protection Agency." The EPA and City of Atlanta logo may be used on project signage when the sign can be placed on a visible location with direct linkage to site activities. The signage shall also detail the appropriate contacts for obtaining information on the cleanup activities being conducted on the Property. The required signage erected on the Property shall comply with all applicable Laws, including those pertaining to outdoor advertising.

If written documentation is developed as part of the project funded by this loan, then the sign and documents shall include either a statement (e.g. this project has been funded, wholly or in part by EPA, the City of Atlanta Brownfields Program and Invest Atlanta) and/or EPA and the City of Atlanta Brownfields Program logo acknowledging that the EPA and City of Atlanta Brownfields Program are a source of funding for this project

### Loan Disbursement Requirements

Funds will be disbursed to the borrower by means of "actual expense" or by a predetermined schedule. An "actual expense" disbursement approach requires the City of Atlanta and the Invest Atlanta to submit documentation of the borrower's expenditures (e.g., invoices) to EPA to request payment. A scheduled disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower on the basis of an agreed upon schedule (e.g., progress payments) or upon execution of the loan. The City of Atlanta will submit documentation of disbursement schedules to EPA. If total disbursement schedule of the loan agreement calls for disbursement of the entire amount of the loan upon execution, the cooperative agreement recipient shall demonstrate to U.S. EPA's Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan. Further, the loan agreement shall include a provision which ensures that the borrower uses loan funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

## Loan Servicing Procedures

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Once the loan is closed, the applicant is entered into the best available loan servicing database by the loan processor. A file will be developed for the new account and will contain, at a minimum, the following sections, as applicable:

- Pre-application/ Application forms: Copies of all application documents as submitted by the applicant;
- Correspondence Received;
- Correspondence Sent;
- Copies of the Loan Agreement and Promissory Note;
- Collateral Agreement;
- Uniform Commercial Code (UCC) filings, if applicable
- Inter-creditor Agreement, if applicable;
- Credit Reports;
- Corporate charter, or Articles of Incorporation and By-Laws or Partnership Agreement;
- Corporate Resolution to Borrower;
- Borrower's Counsel's Opinion;
- Deed of Trust on Property, if applicable;
- Insurance(s);
- Personal Guarantees;
- BRLF Loan Commitment Letter;
- Telephone Log; and,
- Others, as necessary.

Payments will be sent directly to the Invest Atlanta. The loan processor or fund manager will apply payments per the terms of the Note. The fund manager shall be a person designated by the Invest Atlanta Finance Department Senior Vice President or another member of the senior executive staff. As part of the loan servicing the loan processor or fund manager will make periodic visits to the project site for a visual inspection and to keep the lines of communication open between the borrower and the Invest Atlanta. For new loans, at least quarterly visits to the location of the project will be made.

All payment requests will follow all applicable EPA requirements for fund disbursements.

Monthly reports will be generated as per a tickler system to alert staff to the required servicing responsibilities for the month for each loan. The loan processor and fund manager will confer regarding servicing needs including reviewing any delinquent loans. A monthly report on all borrowers will be provided to the Committee for their review.

Borrowers may be asked to submit annual tax returns, financial statements and job reports. In addition, property tax status, insurance on collateral and UCC-1 continuation will be monitored.

The fund manager will annually review all loans for compliance with the loan agreement, promissory note, and other applicable requirements. The fund manager also will review all submitted financial information and the payment record of all loan recipients, as reported by the Finance Department, to determine their fiscal performance. In addition, the fund manager will review the tasks accomplished to ensure the goals and objectives of the City of Atlanta BRLF Plan are being achieved.

### Delinquency Procedures

A loan will be included in the delinquency report once it becomes 15 days past due. The fund manager or loan processor will make phone calls to the borrower when a loan becomes 15 days past due. Staff will confer weekly to discuss any loan delinquency and will respond in a prompt manner in order to reduce problems and find solutions. A complete delinquency report will be provided to the Committee at each meeting. The Committee directs staff as to additional measures to be taken that staff is not already implementing.

**30 days:** Staff will contact borrower again by phone call, outside visit and/ or send the borrower a 30-day past due letter and continue to call the borrower on a weekly basis.

**45 days:** Contact the borrower in person to discuss the repayment of the loan, continue telephone contact and/ or send the borrower a 45-day past due letter and report to the INVEST ATLANTA credit reporting agency. This collection letter will be sent certified mail with return receipt requested. Continue to call borrower regularly to obtain full payment plus late fees. Notify Committee and the Invest Atlanta's attorney for possible legal action.

**60 days:** The Invest Atlanta's attorney will send the borrower a demand letter for all amounts past due plus late fees and legal fees due by certified letter. Discontinue contact with borrower, refer any calls or visits to our attorney for payment, and notify the Committee, if not previously done. Report to credit reporting agency.

**90 days:** Loans over 90 days delinquent shall be reported to the Committee, and automatically forwarded to the Invest Atlanta's attorney for additional legal action and resolution.

### Uncollectable Loans

All loans deemed to be uncollectable would be written-off. The Committee, after all efforts to collect the loan have been exhausted; will have the responsibility and authority to make the decision to write off the loan. All write offs must be in compliance with GAAP (Generally Accepted Accounting Principles).

## Policy Exceptions

The Committee will approve policy exceptions. Staff may present to the Committee applications, which deviate from the policies in this manual whenever the project meets the goals of the program. The Committee will determine if the loan will be approved after staff has described the exception. It is anticipated that any loans with exceptions would comply with the BCRLF Loan Selection Criteria in Section I and that the exceptions would relate to the items found in Loan Amounts and Structure (Section I).

# RLF Process Approval and Clean Up Process

