



LOW-INTEREST LOAN GUIDELINES

INTRODUCTION

The Indiana Brownfields Program (“Program”) offers low-interest loans (“Loans”) to qualifying Indiana borrowers (“Applicants”) for acquisition of, and limited environmental assessment, environmental remediation, and qualified demolition activities at, eligible brownfield sites with hazardous substances and/or petroleum contamination.

Loan amounts fluctuate and an award amount may be tied to any other financial assistance provided by the Program to the Applicant in a fiscal year. Applicants should contact the Program to determine the maximum Loan amount available to the Applicant at the time an application is submitted. Furthermore, there is a limited amount of unobligated dollars in the Indiana Brownfields Fund (“Fund”) and Loans will be funded on a first come, first served basis. Terms and conditions, if any, of a Loan award will be detailed in an Applicant’s award letter, including conditions related to and a date after which the Loan award will expire. Loan recipients will be required to execute a financial assistance agreement (“Agreement”) with the Indiana Finance Authority (“Authority”), following Authority Board approval of the Loan award, which will include the consultant/contractor selected to perform the Loan work.

LOAN TERMS

Interest Rates and Repayment

Loan terms are flexible (up to 20 years) and depending upon project/borrower needs and the Program’s need to maintain the long-term stability of the Fund. Interest rates on Loans from the Fund may range from 0% to 3%, in part based on the duration of the loan term (longer term loans may dictate a higher interest rate). Loan recipients may be eligible to defer principal payments on loans for up to two (2) years to provide adequate time to budget for loan payments. If payments on principal and interest are deferred for any period of time, the balance of the loan shall be amortized within the remaining loan term. There are no prepayment penalties on a Loan. Collateral requirements, discussed below, are flexible and will be determined on a case-by-case basis. Disbursement of Loan Funds is through a reimbursement process, further discussed below.

Forgivable Loans

A Loan to a political subdivision (but not a private or non-profit entity) may be partially forgivable as determined by the Program. Typically, not more than twenty percent (20%) of the total amount of an eligible Loan may be in the form of a forgivable loan. The amount of forgiveness will be determined on a project-by-project basis by Program staff and approved by the Authority Board. Specific economic development or redevelopment goals must be achieved before a political subdivision will be released from its obligation to repay a forgivable loan. The criteria considered by the Program for eligibility for, and the conditions of, forgiveness are discussed in detail below.

1. To be eligible for a forgivable loan, as a threshold matter, an Applicant (other than a private individual or entity or non-profit entity) must be able to demonstrate that the Applicant or any entity involved in the project (i.e., co-applicant, property owner, developer) is not a liable party under the Comprehensive

Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et. seq.*, (“CERCLA”), Indiana’s Hazardous Substance Response Trust Fund law, IC 13-25-4, Indiana’s Petroleum Releases law, IC 13-24-1, or Indiana’s Underground Storage Tank (“UST”) Corrective Action law, IC 13-23-13-8. Under CERCLA § 107 and IC 13-25-4-8, current owners and operators of a facility, owners and operators of a facility at the time of disposal of a hazardous substance, parties that arranged for the treatment or disposal of hazardous substances, and parties that accepted hazardous substances for transport to disposal or treatment facilities are potentially liable for cleanup or paying the cost of cleaning up a site. Thus, an owner of contaminated land may be liable under CERCLA § 107 or IC 13-25-4 even though he/she did not cause or contribute to the contamination at the site. Under IC 13-24-1, current owners and operators of a petroleum facility are potentially liable for cleanup or paying the cost of cleaning up a site. Under IC 13-23-13, the owner or operator of a UST is potentially liable for costs of corrective action to address a release from a UST.

An Applicant (other than a private or non-profit entity), or any other entities involved in the project, that are eligible or that seek to become eligible for a forgivable Loan based on an exemption from CERCLA liability or petroleum cleanup liability as a: (1) bona fide prospective purchaser (“BFPP”), (2) contiguous property owner (“CPO”), or (3) innocent landowner (“ILO”) (known as the “landowner liability protections”), must meet certain threshold criteria and satisfy certain continuing obligations to maintain its status as an eligible Applicant. These include, but are not limited to the following:

- a. Any Loan Applicant (or any entity involved in the project) asserting a BFPP, CPO, or ILO limitation on liability must perform (or have already performed) “all appropriate inquiry,” as found in section 101(35)(B) of CERCLA, **on or before the date of its acquisition** of the property which is the subject of the application.
- b. An Applicant seeking to qualify as a bona fide prospective purchaser or a contiguous property owner must not be:
 - 1) potentially liable, or affiliated with any other person that is potentially liable, for response costs at the facility through (a) any direct or indirect familial relationship; or (b) any contractual, corporate, or financial relationships; or
 - 2) a reorganized business entity that was potentially liable or
 - 3) otherwise liable under CERCLA § 107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.
- c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability or petroleum cleanup liability. These continuing obligations include:
 - 1) complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
 - 2) taking reasonable steps with respect to hazardous substance releases;
 - 3) providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;
 - 4) complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and
 - 5) complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners). *See* CERCLA §§ 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B).

In order to demonstrate the landowner liability protections or any other potentially applicable liability exemption (i.e., involuntary acquisition by a political subdivision), please provide written answers to the questions found in Attachment A and submit them as a part of the supplemental information to the application.

If the Applicant or any other entity involved in redeveloping the Site is adjudged, by final, non-appealable order within 10 years of the date of the Agreement, to be a party responsible for the contamination being assessed and/or remediated with Loan funds, any portion of the Loan that has been forgiven will become immediately due and payable by the Applicant subject to a reasonable repayment schedule determined by the Program based on the amount due.

At the discretion of the Program, for forgivable Loan purposes only, and based on the rank of the project and available funds, a political subdivision Applicant (or any entity involved in the project) that satisfies the criteria to qualify as a BFPP but for having purchased the Site that is the subject of the Loan prior to January 11, 2002, may claim BFPP status so long as the political subdivision Applicant (or other entity involved in the project) can satisfy all the other BFPP requirements listed below:

- All disposal of hazardous substances and/or petroleum at the site occurred before the person acquired the Site.
- The owner must not be liable in any way for contamination at the Site or affiliated with a responsible party. Affiliations include familial, contractual, or corporate relationships that are the result of a reorganization of a business entity with potential liability.
- The owner must have made all appropriate inquiries (AAI) in to the prior ownership and uses of the site prior to purchase. AAI, typically met with an ASTM-based Phase I environmental assessment, cannot be more than one year old at time of purchase and must be updated, prior to purchase, if it is more than six months old at time of purchase. Please see EPA's AAI Final Rule (70 FR 66070) (<http://www.epa.gov/brownfields/regneg.htm>).
- The owner must take appropriate care (reasonable steps) regarding any hazardous substances and/or petroleum found at the Site, including preventing future releases and exposures to hazardous substances and/or petroleum on the Site.
- The owner must provide all legally required notices and cooperate with authorized response persons in the event of a discovery or release of any hazardous substances or petroleum at the Site.
- The owner must comply with any land-use restrictions associated with response actions at the Site.

2. The Program may consider additional criteria to determine the priority of a forgivable loan application including, for example, whether the site cleanup needs are tied to a funding source earmarked for a specific purpose (e.g., releases from underground storage tanks).

3. Specific economic development or redevelopment goals must be achieved *before* a political subdivision will be released from its obligation to repay a forgivable loan. These goals will be embodied in the Agreement and must be prepared by the Applicant, with public input, and tied to a schedule for their attainment. As a matter of practice, one of the redevelopment goals must be to complete the environmental remediation activities at the site, if applicable, regardless of whether the Loan will be used to conduct the remediation. Considerations for the other project goals tied to forgiveness shall include:

- End use of the site
- Economic development or redevelopment goals
- Number and types of jobs/wages created
- Number and types of jobs/wages retained
- Non-business use such as parks or green space
- Wellhead protection
- Capital improvements/equipment investment
- Natural resource benefit
- Tourism
- Direct or indirect effects of the development/redevelopment on the community
- Other economic indicators identified by the community
- Schedule/Project Timeline

LOAN ELIGIBILITY

The following items are considered threshold eligibility criteria and may disqualify an application from consideration for a Loan. For purposes of threshold eligibility review, the Program, if necessary, may seek clarification of Applicant information and/or consider information from other sources, including the Indiana Department of Environmental Management (“IDEM”), the Authority, or U.S. EPA files. In addition, a determination of eligibility to receive a Loan from the Authority under these guidelines does not release any party from obligations under any federal or state law or regulation, or under common law, and does not impact or limit state or U.S. EPA enforcement authorities against any party.

Eligible Borrowers

Eligible borrowers can be any Indiana political subdivision, non-profit organization, or private individual or for-profit entity with control over (ownership or purchase option) or access to an eligible brownfield site within the State and that is authorized to incur debt, enter into legally binding agreements and is financially sound. The borrower must meet the definition of a:

- political subdivision as defined in IC 13-11-2-164(c) (*see* https://www.in.gov/ifa/brownfields/files/QualifyingPoliticalSubdivisions_10-08-08.pdf for examples of entities that qualify); or,
- non-profit corporation as defined in 31 U.S.C. § 6101(4)(6), Section (4)(6) of the Federal Financial Assistance Management Improvement Act;¹ or,
- private individual or for-profit entity (i.e., any person, sole proprietor, corporation, company, firm, partnership, association, trust, joint venture, investor, developer, or other business enterprise).

For Applicants other than cities, towns, or counties applying as a political subdivision (e.g., a redevelopment commission), documentation of eligibility must be attached to the loan application (e.g.,

¹ The term “non-profit organization” means any corporation, trust, association, cooperative, or other organization that is operated mainly for scientific, educational, service, charitable, or similar purpose in the public interest; is not organized primarily for profit; and uses net proceeds to maintain, improve, or expand the operation of the organization. In accordance with the Lobbying Disclosure Act, 2 U.S.C. § 1601 et. seq., non-profit organizations exempt from taxation under Section 501(c)(4) of the Internal Revenue Code that lobby are *not* eligible for U.S. EPA grant funding. U.S. EPA has adopted a definition of nonprofit organization that includes universities and other nonprofit educational institutions, which will therefore be eligible for a Loan under this guidance.

resolutions, authorizing statutes, etc.). *For non-profit applicants*, current documentation verifying 501(c)(3) tax exempt status from the U.S. Internal Revenue Service, or from a State that has authority under its laws to grant non-profit status to an organization, must be attached to the loan application. *If the applicant is a private, for-profit entity*, documentation such as Articles of Organization, an Operating Agreement, Certificate of Limited Partnership, Partnership Agreement, or a Certificate of Existence (Good Standing) from the Secretary of State’s office must be attached to the loan application.

In addition, an eligible borrower must be exempt from liability for petroleum contamination under IC 13-23 and IC 13-24-1 for petroleum cleanup applications and exempt from liability under CERCLA and IC 13-25-4 for hazardous substances cleanup applications. An Applicant seeking to demonstrate it is not liable under CERCLA, IC 13-25-4, IC 13-24-1 or IC 13-23-13 by means of a landowner liability exemption (e.g., bona fide prospective purchaser (“BFPP”), contiguous property owner (“CPO”), or innocent landowner (“ILO”)), must meet certain threshold criteria and satisfy certain continuing obligations to maintain its status as an eligible borrower. These include, but are not limited to the following:

- d. All Applicants asserting a BFPP, CPO, or ILO limitation on liability must perform (or have already performed) “all appropriate inquiry,” as found in section 101(35)(B) of CERCLA, **on or before the date of their acquisition** of the property that is the subject of the application.
- e. Applicants seeking to qualify as a BFPP or a CPO must not be:
 - 1) potentially liable, or affiliated with any other person that is potentially liable, for response costs at the facility through (a) any direct or indirect familial relationship; or (b) any contractual, corporate, or financial relationships; or
 - 2) a reorganized business entity that was potentially liable; or
 - 3) otherwise liable under CERCLA § 107(a) as a prior owner or operator, or generator or transporter of hazardous substances (or petroleum) to the facility.
- f. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:
 - 1) complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
 - 2) taking reasonable steps with respect to hazardous substance (or petroleum) releases;
 - 3) providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;
 - 4) complying with information requests and administrative subpoenas (applies to BFPPs and CPOs); and
 - 5) complying with legally required notices (again, applies to BFPPs and CPO). *See* CERCLA §§ 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B). *See also*, CERCLA §§ 101(35), 101(40), 107(b) and 107(q) (outlining additional obligations to maintain landowner liability protections).

In order to demonstrate the above, or any other potentially applicable liability exemption (i.e., involuntary acquisition by a political subdivision), provide written answers to the questions found in “Exhibit A” of this guidance as a part of the application.

Ineligible Borrowers

An Applicant that meets any or all of the following criteria is not an eligible borrower:

- **Responsible party:** any Applicant that is considered a responsible party under CERCLA and/or IC 13-25-4 for hazardous substances cleanup applications, or IC 13-23 and/or IC 13-24-1 for petroleum cleanup applications, at the site at which the Loan Funds will be utilized.
- **Non-compliance:** any Applicant that has a demonstrated pattern of uncorrected environmental non-compliance.
- **Previous ineligibility:** any Applicant that has been suspended, debarred, or declared ineligible for Federal or State financial assistance programs.
- **No site access:** any Applicant that does not have written consent for access (access agreement) to perform the cleanup activities using Loan Funds on a site it does not own. Access to the brownfield must be provided to the Indiana Department of Environmental Management (“IDEM”), the Authority, and the Applicant until the Program’s issuance of a comment letter indicating acceptance of final reports received from the consultant pertaining to remediation activities at the site. A template access agreement is attached hereto as “Exhibit B” as an example of the type of consent the Program will accept.

Eligible Brownfield Sites

To be eligible for Loan funding, Applicants must demonstrate the following at the time an application is submitted:

1. The property meets the definition of a brownfield or potential brownfield.²
2. The Applicant or any entity involved in the project (i.e., co-applicant, property owner, developer) did not cause or contribute to the environmental contamination found on the brownfield or own and/or operate at the site at the time of disposal of hazardous substances or release of petroleum on the brownfield at which the Loan will be utilized.
3. The Applicant, if not a private or non-profit entity, meets the definition of political subdivision (as defined by IC 13-11-2-164(c)).
4. If the Applicant intends to apply for Loan funding to perform asbestos abatement activities, it has submitted its “IDEM Notification of Demolition and Renovation Operations” (State Form 44593 (R2/8-99) to the Indiana Department of Environmental Management’s (“IDEM”) Office of Air Quality (“OAQ”) for review and has received acknowledgment (notice confirming its receipt) from IDEM OAQ. The “IDEM Notification of Demolition and Renovation Operations” requires a start date be included on the form; this date should be no earlier than five (5) months from the date

² A threshold issue evaluated by the Program in reviewing applications is whether the property on which loan funding is sought to be spent meets the definition of a brownfield, which is a parcel of real estate that is abandoned or inactive; or may not be operated at its appropriate use; and on which expansion or redevelopment is complicated because of the presence or potential presence of a hazardous substance, a contaminant, petroleum, or a petroleum product that poses a risk to human health and the environment. IC 13-11-2-19.3. The Program will also consider providing a loan to an eligible applicant to address contamination on the site that is at risk for becoming a brownfield due to the discontinuation of operations and/or ongoing remedial activities by a current owner or party responsible for the contamination.

of application submittal in order to allow for the Loan administrative process to run its course, should a Loan be awarded.

5. The Applicant verifies that adequate funding is available and committed to complete the Loan-funded activities if the estimated cost of the Loan-funded activities exceeds the requested Loan amount.
6. The current owner of the brownfield, if not the Applicant, has provided written consent to the Applicant for site access to perform the Loan-funded activities. Access to the brownfield must be given to the State, any consultant(s), the Applicant, and any of their respective representatives or agents for the duration of the Loan activities.
7. For any site not owned by the town, city or county in which it is located, a letter of support to the Applicant from the locality in which the site is located.

The following items are also threshold eligibility criteria and may disqualify an application from consideration for Loan funding:

1. The site is subject to an open or pending state or federal enforcement action.
2. The site is under Resource Conservation and Recovery Act Corrective Action.
3. The site presents an imminent threat to human health and the environment.

Note: For purposes of the threshold eligibility review, the Program, if necessary, may seek clarification of applicant information and/or consider information from other sources, including IDEM, the Authority, or United States Environmental Protection Agency (“EPA”) files. In addition, a determination of eligibility to receive brownfields loan assistance from the Indiana Finance Authority under these guidelines does not release any party from obligations under any federal or state law or regulation, or under common law, and does not impact or limit state or EPA enforcement authorities against any party.

General Selection Criteria

The following criteria may be used by the Program to determine the priority of a loan application if multiple loan applications are being evaluated at the same time and the balance in the Fund is limited:

- Repayment timeline
- Redevelopment plans for the site – economic & community development potential (jobs and/or greenspace to be created, investment planned, etc.)
- Timeline for redevelopment/feasibility of project success
- Leveraged funding (e.g., matching funds (local or private), other investment(s))
- Community engagement and local support for the project
- Interest of a developer or new end user in the property
- Sustainability/environmental benefit/infrastructure reuse
- Environmental and public health benefits
- Geographic disbursement of funds

ELIGIBLE USES OF FUNDS

Eligible Project Costs & Activities

Loans are available to acquire and/or conduct limited environmental assessment, environmental remediation, and qualified demolition activities at brownfield sites (“Approved Loan Costs”). Assessment and remediation activities conducted with Loan funds must be performed consistent with the IDEM *Remediation Closure Guide* (March 22, 2012 and applicable revisions) (“RCG”) in effect at the time the Program approved the proposed Loan activities. The RCG is a set of health-based standards used to evaluate cleanup options and contaminants based on the detailed site data and proposed site end use to determine the appropriate cleanup option and contaminant reduction level necessary. Funding may also be used for certain other costs incurred in conjunction with Approved Loan Costs as approved by the Program and Authority Board. All activities sought to be paid for with Loan funds must receive Program approval *prior* to implementation. Costs eligible for Loan funding include:

- Acquisition of property
- Installation of fencing, warning signs, or other security or site control precautions
- Installation of drainage controls
- Stabilization of berms, dikes, or impoundments; or drainage/closing of lagoons
- Limited environmental assessment and related activities
- Capping of contaminated soils
- Use of 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 contamination
- 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 cleanup verification (i.e., to confirm the cleanup is adequate to address the scope of the release) or confirmation sampling (i.e., to confirm the cleanup has adequately addressed the release)
- Costs associated with removal activities, including demolition and/or site preparation that are part of the site cleanup (e.g., slab removal)
- Abatement of asbestos-containing materials and lead-based paint in a building that is slated for reuse (only if performed in conjunction with Program-approved remediation activities)³
- Costs associated with fees of legal and/or financial advisors related to providing financial assistance
- Remediation Work Plan preparation
- Soil and groundwater remediation activities
- Demolition and disposal of structures (only if performed in conjunction with Program-approved remediation activities)

³ A loan for abatement of asbestos-containing materials and/or lead-based paint or demolition only, in the absence of other Program-approved remediation activities, may be approvable but could be subject to a dollar cap, higher interest rate and shortened-loan term.

- Administrative Voluntary Remediation Program (“VRP”) expenses (i.e., VRP application fee, oversight fees, etc.)

If an Applicant intends to use Loan proceeds to acquire the brownfield site(s), the following additional requirements must be demonstrated at the time of application: 1) a purchase agreement (or other transfer mechanism) has been executed for the site(s); 2) an AAI-compliant Phase I has been completed and is available for review; and 3) the Applicant (or third party, i.e., co-applicant, developer) will adhere to all requirements pre- and post-acquisition to qualify as a bona fide prospective purchaser (described in further detail below). The aforementioned requirements apply to public to public transactions, public to private transactions, private to public transactions, and private to private transactions.

Ineligible Project Costs & Activities

With limited exceptions, loan funding cannot be used to reimburse for acquisition, assessment, demolition or remediation activities undertaken prior to Program approval.⁴ All activities conducted with Loan funds must receive Program approval *prior* to implementation. Loan funds will not be approved for the following activities:

- Pre-cleanup environmental assessment activities, such as site assessment, identification, and characterization (with the exception of site monitoring activities described above as being eligible);
- Cleanup costs of a naturally occurring substance below background levels, products that are part of the structure and result in exposure within residential, business or community structures (e.g., interior lead-based paint or asbestos contamination 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 U.S. EPA, consistent with CERCLA §§ 104(a)(3) and (4);
- A cleanup cost at a brownfield site for which the borrower 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 unrelated to cleanup activities);
- Costs of new infrastructure (e.g., sewer hookup, sidewalks)
- Support of job training;
- Lobbying efforts;
- Direct administrative costs;
- Ordinary operating expenses of an Applicant;
- Ordinary site maintenance; and,
- Per diem expenses.

Other funding may be available from the Program for ineligible activities/costs under the LIL Incentive, for example, demolition that is not required to conduct cleanup. Please contact the Program’s Financial Resources Coordinator to discuss other possible funding mechanisms.

⁴ The Program and Authority Board may approve loan funding to reimburse costs of assessment or remediation activities incurred prior to Program approval in the limited instance, for example, of such costs having been incurred under the oversight of another IDEM remediation program through an IDEM-approved workplan.

COLLATERAL OPTIONS

A variety of financial resources are acceptable repayment sources for a Loan. For governmental unit borrowers they may include bonds backed by net revenue of sewage works, property taxes, tax increment financing (“TIF”) and local option income taxes (LOIT). Private and non-profit borrowers require different security such as securing the Loan with a bank-issued letter of credit (“LOC”). Each of these involve preparation and reviews of the authorizing documentation (including pre-approval of any LOC bank) before loan closing. Consultation with the Authority at the planning stage will aid the authorization and approval process.

DISBURSEMENT PROCEDURES

Loan disbursements will be made by the Program to the Applicant for payment to the consultant(s) (or sub-grantee or borrower) after the Program receives and approves invoices for work performed consistent with Program-approved activities (incurred cost/actual expense basis). Alternately, an Applicant may request that the Program disburse payments directly to its consultant(s). When making disbursements, the Program will generally adhere to the procedures outlined in the *Financial Assistance Disbursement Guidelines*, as applicable. When seeking payment from its Loan award, the Applicant will be required to sign a Disbursement Request Form. By signing a Disbursement Request Form, the Applicant will be affirming that the invoiced services submitted for payment were bid pursuant to Indiana law. Program Project Managers may assist in developing bid specifications for work to be performed with Loan funds. The *Financial Assistance Disbursement Guidelines* are available at <https://www.in.gov/ifa/brownfields/2366.htm>.

COMPETITIVE BIDDING

Applicants must demonstrate that services to be reimbursed with Loan funding have been/will be competitively bid. Professional services need to be procured by a political subdivision applicant in compliance with IC 5-16-11.1, and activities other than professional services are required to be procured by a political subdivision applicant in compliance with IC 36-1-12. The Program defers to the local government’s procurement practices for compliance with applicable bidding laws. In the absence of a waiver of such requirement by Program staff as approved by the Authority Board, non-profit and private applicants must demonstrate that a procurement process similar to that required of a political subdivision applicant has been/will be undertaken. Program Project Managers may assist in developing bid specifications for work to be performed with Loan funds. A competitive bidding fact sheet is available to borrowers by contacting their Program Project Manager or the Program’s Federal Funding & Community Relations Coordinator.

APPLICATION PROCEDURE

Please follow the instructions provided on the “Application for Brownfield Low-Interest Loan” available on the Program’s Web site at www.brownfields.in.gov. There is no application fee, although the Program reserves the right to request that the Applicant reimburse the Program for costs associated with outside legal counsel review undertaken for the Program as part of providing financial assistance. The information listed below must also be submitted to the Program with the Applicant’s application as an electronic file on CD-Rom or in hard copy (not preferred) at the Program office at 100 N. Senate Avenue, Indiana Government Center North, Room 1275, Indianapolis. All Applicants must complete and submit to

the Program the items listed below. If any required document is unavailable at the time an application is submitted, an explanation for such deficiency must be provided.

1. One fully-completed application; and, additional information on:
2. Applicant Status, if applicable (*see* page 4-5):
 - *if qualifying as a political subdivision and is not a town, city, or county*, Applicant meets the definition of political subdivision as defined by IC 13-11-2-164(c); or,
 - *if qualifying as a nonprofit corporation*, Applicant verifies 501(c)(3) tax-exempt status; or,
 - *if qualifying as a private, for-profit entity*, Applicant verifies form of organization (e.g., partnership, articles of incorporation) and/or status in good standing with Secretary of State's office.
3. Site Access: an Access Agreement from the current owner of the brownfield (if not owned by the Applicant) giving access to the brownfield to the State, any consultant(s), the Applicant, and any of their respective representatives or agents for the duration of the cleanup activities (template agreement provided in "Exhibit B").
4. Planned Cleanup Activities:
 - A written American Society for Testing and Materials ("ASTM") *Phase I Environmental Site Assessment* (Standard E1527-13), including any updates (180-day or one-year) required per the standard; and,
 - A *Phase II Environmental Site Assessment* with data of sufficient quality and quantity to support any planned remediation activities; and,
 - Acknowledgment/confirmation from IDEM's Office of Air Quality ("OAQ") of its receipt of the required Notification Form for asbestos abatement activities, if the Applicant desires to use Loan funding to conduct asbestos abatement activities;⁵ and,
 - Sufficient detail of how costs will be allocated and the specific cleanup activities to be performed; and,
 - Letter of support to the Applicant from the locality in which the site is located if the site is not owned by the city, town, or county.
5. Financial Matters:
 - Verification that adequate funding is available and committed to complete the Loan-funded activities if the estimated cost of the Loan-funded activities exceeds the requested Loan amount; and,
 - Documentation demonstrating Applicant undertook competitive bidding (or equivalent process) for services to be reimbursed with Loan Funds; and,
 - *If Applicant is a political subdivision*:
 - Most recent audit from the State Board of Accounts; and,

⁵ If the Applicant intends to use Loan Funds to perform asbestos abatement activities, at the time of the application, the Applicant must have submitted its "IDEM Notification of Demolition and Renovation Operations" (State Form 44593 (R2/8-99)) to the IDEM OAQ for review and received acknowledgment (notice confirming its receipt) from IDEM OAQ. The "IDEM Notification of Demolition and Renovation Operations" requires a start date be included on the form; this date should be no earlier than five (5) months from the date of application submittal in order to allow for the Loan administrative process to run its course, should a Loan be awarded.

- An ordinance or resolution authorizing the Applicant to enter into a Loan Agreement and establishing the pledged source of repayment; and,
- Feasibility study if the repayment source includes project revenues.
- Proforma accounting reports if the repayment source is existing revenues other than property taxes.
- Loan Due diligence information.
- *If Applicant is a non-profit entity:*
 - Most recent independent audit; and,
 - Resolution of Board of Directors authorizing the Applicant to enter into a Loan Agreement and security documents to secure the Loan
 - Loan Due Diligence information.
- *If Applicant is a private, for-profit entity:*
 - Most recent (two years) audited financial statements; and,
 - Resolution of Board of Directors (or other appropriate body, if any, authorized to obligate the Applicant) authorizing the Applicant to enter into a Loan Agreement and security documents to secure the Loan
 - Loan Due Diligence information.

Additional information related to financial solvency (e.g., annual income tax returns) may be requested of an Applicant if necessary for the Program to approve a Loan.

6. Other: *Applicant and Site Eligibility Questionnaire* in “Exhibit A” or other submittals as indicated in the application or as available.

FURTHER INFORMATION

Questions regarding these guidelines or low-interest loans in general can be directed to the Program’s Financial Resources Coordinator by phone at (317) 234-1688. These guidelines may be modified at any time by the Indiana Finance Authority Board to address demand and other issues to promote the effective and efficient administration of the Indiana Brownfields Program.

Revised May 17, 2018.

Attachment A

Property Ownership Eligibility Questions

Indiana Brownfields Program (“Program”) funding may not be used to pay for response costs at a brownfield site for which the applicant (eligible political subdivision per IC 13-11-2-164(c) or private or non-profit entity) or any other entity involved in the project (collectively, the “Applicant”) is potentially liable under CERCLA § 107 or IC 13-25-4, IC 13-24-1 or IC 13-23-13.⁶ The following questions are intended to help the Program ensure that the Applicant is not liable under CERCLA or applicable state laws pertaining to hazardous substance and petroleum contamination for response costs at the site designated in its application, and that the site itself does not fail eligibility requirements. As applicable, please answer the following questions fully and in the order they appear. (Note: based on the responses, and as mentioned in the LIL Guidelines, the Program may need to obtain additional information in order to make the required determination of applicant and site eligibility).

1. Responsible Party. Affirm that the Applicant is not potentially liable for contamination at the site under CERCLA § 107 (*e.g.*, as a current owner or operator of a facility, an owner or operator of a facility at the time of disposal of a hazardous substance, a party that arranged for the treatment or disposal of a hazardous substance, a party that arranged for the treatment or disposal of hazardous substances, or a party that accepted hazardous substances for transport to disposal or treatment facilities at the site) and/or IC 13-25-4, IC 13-23, and IC 13-24-1, and explain why.⁷
2. Enforcement Actions. Identify known ongoing or anticipated state or federal environmental enforcement actions related to the brownfield site for which funding is sought. Describe any inquiries or orders from federal, state, or local government entities that the Applicant is aware of regarding the responsibility of any party (including the Applicant) for the contamination or hazardous waste at the site. The information provided in this section may be verified, and the Program may conduct an independent review of information related to the Applicant’s responsibility for the contamination or hazardous waste at the site.
3. Information on Liability and Defenses/Protections.
 - a. Information on the Property Acquisition. To save space, the information in subsections i-v below may be combined into one response, though please be sure to fully answer each question. Describe:
 - i) How the Applicant acquired or will acquire ownership (*e.g.*, by negotiated purchase from a private individual, by purchase or transfer from another governmental unit, by foreclosure of real property taxes, by eminent domain, or other (describe));
 - ii) The date the Applicant acquired or will acquire the property;

⁶ An exception is made for Loan applicants that would otherwise satisfy the exemption from CERCLA liability as a bona fide prospective purchaser (BFPP), but for the date of site acquisition. Please see the Loan guidelines for additional information and complete these eligibility questions as the guidelines require the Applicant to satisfy all other criteria to qualify as a BFPP in order to be eligible for funding under this exception.

⁷ Because current owners of sites are potentially liable under CERCLA, Applicants who own the site (or plan to acquire the site) must be able to meet the requirements of one of the CERCLA landowner liability protections, such as the bona fide prospective purchaser provision (CERCLA § 107(r)), the innocent landowner defense (CERCLA § 107(b)(3) and 101(35)(A)), or the exclusion for state or local governments that involuntarily acquire property (CERCLA § 101(20)(D); IC 13-25-4-8(e)). Similar liability exemptions also exist under Indiana law for owners or prospective purchasers of petroleum-contaminated properties. *See* IC 13-11-2-150, IC 13-11-2-151 (defining owner of a petroleum facility and UST, respectively).

- iii) The nature of the Applicant's ownership (fee simple or other), if applicable;
 - iv) The name and identity of the party from whom the Applicant acquired ownership (*i.e.*, the transferor), if applicable;
 - v) All familial, contractual, corporate or financial relationships or affiliations the Applicant has or had with all prior owners or operators (or other potentially responsible parties) of the property (including the person or entity from which the Applicant acquired the property).
- b. Timing of Hazardous Substance/Petroleum Disposal. Identify whether all disposal of hazardous substances/petroleum at the site occurred before the Applicant acquired (or will acquire) the property and whether the Applicant caused or contributed to any release of hazardous substances/petroleum at the site. Affirm that the Applicant has not, at any time, arranged for the disposal of hazardous substances/petroleum at the site or transported hazardous substances/petroleum to the site.
- c. Pre-Purchase Inquiry. Describe any inquiry by the Applicant or others into the previous ownership, uses of the property, and environmental conditions conducted prior to taking ownership. Please include in the description:
- i) the types of site assessments performed (*e.g.*, ASTM Phase I or equivalent), the dates of each assessment,⁸ and the entity for which they were performed (state whether the assessment was performed specifically for the Applicant, or if not, the name of the party that had the assessment performed and that party's relationship to the Applicant); and
 - ii) who performed the assessments and identify his/her qualifications to perform such work;
- d. Post-Acquisition Uses. Describe all uses to which the property has been put since the Applicant acquired ownership (or the uses that the Applicant anticipates once it acquires the property) through the present, including any uses by persons or entities other than the Applicant. Please provide a timeline with the names of all current and prior users during the time of the Applicant's ownership; the dates of all uses; the details of each use, including the rights or other reason pursuant to which the use was claimed or taken (*e.g.*, lease, license, trespass); and the Applicant's relationship to the current and prior users.
- e. Continuing Obligations.⁹ Describe *in detail* the specific appropriate care that the Applicant exercised (or if the property is yet to be acquired, that the Applicant will exercise upon acquiring the property) with respect to hazardous substances/petroleum found at the facility by taking reasonable steps¹⁰ to:

⁸ Please note that if the Applicant's Phase I assessment was conducted more than 180 days prior to the date it plans to purchase the property, the Applicant will need to update certain aspects of the Phase I in order to take advantage of the bona fide prospective purchaser provision. If this is the case, please affirm that the Applicant has or will conduct the appropriate updates within 180 days of purchase.

⁹ Owners of contaminated land should be aware that some CERCLA liability protections require that the site owner meet certain continuing obligations. For example, owners must comply with land use restrictions and institutional controls; take reasonable steps with respect to the hazardous substances on the property; cooperate, assist and allow access to authorized representatives; and comply with CERCLA information requests and subpoenas and provide legally required notices.

¹⁰ Please note that reasonable steps may include actions such as limiting access to the property, monitoring known contaminants, and complying with state and/or local requirements. The steps taken to prevent or limit exposure to previously-

- i) stop any continuing releases;
- ii) prevent any threatened future release;
- iii) prevent or limit exposure to any previously released hazardous substance/petroleum.

Please confirm your commitment to:

- i) comply with all land use restrictions and institutional controls;
- ii) assist and cooperate with those performing the cleanup and to provide access to the property;
- iii) comply with all information requests and administrative subpoenas that have or may be issued in connection with the property; and
- iv) provide all legally required notices.

released hazardous substances/petroleum, may depend, for example, on such things as the location of the site in relation to the public and whether the public has been known to use (or even trespass on) the site. Program technical staff are available to discuss reasonable steps for a site should an Applicant require assistance to determine the reasonable steps required at the brownfield.

EXHIBIT B
Template Access Agreement

**SITE ACCESS AGREEMENT
PERMISSION TO ENTER PROPERTY
INDIANA BROWNFIELDS PROGRAM
LOW INTEREST LOAN**

This Site Access Agreement (“Agreement”) is made by and between [insert property owner] (“Owner”), and [insert applicant] (“Borrower”) regarding the Owner’s property located at [insert address] (“Site”), Indiana Brownfields Program (“Program”) Site Identification Number [insert site number]. The Borrower requests permission to enter the Site for the exclusive purposes of conducting environmental remediation and cleanup activities.

1. Owner hereby gives permission to Borrower, or the Borrower’s agents or assigns (including, but not limited to, the Borrower’s employees, authorized environmental consultants and/or contractors, Indiana Department of Environmental Management (“IDEM”) employees, Indiana Finance Authority (“IFA”) employees, or other designees authorized by the Borrower (collectively, “Authorized Parties”) to enter upon the Site to perform remediation and cleanup activities at the Site. This permission is effective immediately upon the execution of this Agreement by Owner and the Borrower.
2. The permission granted by Owner under this Agreement is contemplated to be used for the following activities that may be performed by Authorized Parties:
 - a. [Activities TBD]; and,
 - b. Disclosure of environmental information as required by law.
3. Upon completion of remediation and cleanup activities, Authorized Parties will restore the property as near as practicable to its condition immediately prior to the commencement of such activities.
4. The granting of this permission by the Owner is not intended, nor should it be construed, as an admission of liability on the part of the Owner or the Owner’s successors and assigns for any contamination discovered on the Site.
5. Authorized Parties may enter the Site during normal business hours and may also make special arrangements to enter the Site at other times after agreement from the Owner.
6. Authorized Parties shall enter upon the Site at their own risk, and Owner shall not be held responsible or liable for injury, damage, or loss incurred by any Authorized Party arising out of or in connection with activities under this Agreement, except to the extent that any injury is caused due to the acts or omissions of Owner, any lessee of the Site, or any employee or agent of the Owner.
7. To the extent permitted by law, the Borrower agrees to indemnify, defend and hold harmless the Owner, the State, the IFA and their agents, officers, and employees from any and all claims, demands, losses, expenses, damages (general, punitive or otherwise) and suits, including (but not limited to) court costs, attorney’s fees and other costs and expenses arising out of or related to the acts or omissions of the Borrower, its agent or assigns (including, but not limited to, the Borrower’s employees, authorized environmental consultants and/or contractors, or other designee authorized by the Borrower that is not a State agency or related State governmental entity) in connection with the performance of activities under this Agreement, except to the extent that any injury is caused due to the acts or omissions of Owner, any lessee of the Site, or any employee or agent of Owner. Neither the State nor the IFA is providing any indemnification, either jointly or severally, to the Owner or the Borrower or its agents, assigns or designees.
8. The Program will supply to Owner all information derived from the remediation and cleanup activities conducted at the Site. The Borrower may use such information for any purpose at the Borrower’s sole discretion.

Information will be held in confidence except as instructed by the Owner, the Borrower, the Program, or as required by law.

9. In exercising its access privileges, Authorized Parties will take reasonable steps not to interfere with the Owner's operations on the Site.

10. Authorized Parties will give notice to the Owner at least one (1) week in advance of the start of field activities on the Site.

11. Owner ensures that Owner and any/all Site operators will give Authorized Parties access to the entire Site for the purposes set forth in this Agreement.

12. Any party to this Agreement may terminate this Agreement by giving two (2) months advanced written notice, or all parties may terminate the Agreement at any time by written agreement.

13. This Agreement shall expire upon the Program's issuance of a comment letter indicating completion of project activities under the Borrower's Loan.

[insert name], Site Owner

Witness

Date

Date

Site Owner's Telephone Number: _____
Site Owner's Mailing Address (if other than Site address): _____

For the benefit of [*choose & insert name of Borrower*]

[insert authorized signatory's name]
[insert signatory's title]

Date

Accepted by the Indiana Brownfields Program by:

Andrea Robertson Habeck, CHMM
Technical Staff Coordinator
Indiana Brownfields Program

Date