



**CITY OF MISSOULA  
BROWNFIELDS PROGRAM**

**REVOLVING LOAN FUND  
GUIDELINES**

**Revised on 01-13-2026**

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## PROGRAM INTRODUCTION

### Purpose and Scope

The City of Missoula Brownfields Program (City) protects human health and the environment by facilitating the reuse or redevelopment of properties which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. The City's Brownfields Revolving Loan Fund or RLF makes funding available for eligible entities to apply for a loan and/or subgrant to finance environmental cleanup pursuant to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) § 104(k) & 107.

Beginning as a pilot program in 1998, the City of Missoula administers a robust Brownfields Program with support from the U.S. Environmental Protection Agency (EPA) Region 8. The Brownfields RLF was fundamental in the cleanup and redevelopment of 46 acres at the Old Sawmill District from 2006 to 2014, which has already seen \$100 million in public and private investment. Program income from loan payments overtime is being used at multiple brownfield sites including cleanup at the John Engen Local Government Building. Brownfields RLF loans and subgrants have assisted in the cleanup and redevelopment of properties for uses ranging from housing, retail, mixed-use, industrial, community gardens, parks and open space, food banks, and houselessness shelters.

The City's Brownfields Program Specialist along with a Qualified Environmental Professional (QEP), EPA, and the Montana Department of Environmental Quality (DEQ) provide the technical knowledge needed to ensure the successful completion of brownfield site cleanup projects. Under contract with the City, a firm with expertise in underwriting provides loan underwriting services to offer lending support. Eligible cleanup activities **must** take place within the City-limits of Missoula, MT. These guidelines are neither intended to be all-inclusive nor so restrictive that they cannot be amended.

### Summary

EPA defines a brownfield as a property where the expansion, redevelopment, or reuse is complicated by the presence or potential presence of a hazardous substance, pollutant or contamination. Brownfields are often abandoned, idled, or under-utilized, and a major barrier to redeveloping them is the fact that contaminated properties have marginal economic feasibility after considering remediation costs. Brownfield cleanup and redevelopment increase the tax base, spurs job creation and often kick-starts revitalization activities within a neighborhood. The program accomplishes its purpose in two ways:

- 1) By providing loans and subgrants to carry out cleanup activities to protect human health and the environment; and
- 3) By leveraging other public and private funding sources to stimulate reuse or redevelopment of brownfield sites for neighborhood revitalization.

Nonprofit organizations and private for-profit entities may apply for loans. The repayment of loans is required. Only nonprofit organizations may apply for subgrants. Private entities are not eligible to apply for subgrants. The repayment of subgrants is not required. Loan repayments get deposited back into the RLF to be reinvested on future brownfield site cleanup projects. If properly managed, the RLF can operate in perpetuity.

### Available Funding

Entities may apply year-round on a rolling basis. The amount available for a loan or subgrant varies, depending on the number of applications received, the availability of EPA grant funds, and the balance of the RLF. A loan is not limited to any certain funding amount. However, a subgrant is limited to **\$350,000 per site**. A waiver of this funding limit for a subgrant must be approved by EPA. Contact the Brownfields Program for current information on available funding and site limitations.

**Loan Lending Policies (does not apply to subgrants)**

1. **Repayment Terms:** Special provisions may be negotiated on a case-by-case basis, such as deferral of principal payments, interest rate reduction, extended amortization schedules with balloon payments of principal, period of accruing interest or interest only payments, and such other terms as may be determined to be appropriate. For all loans, the term will be determined based upon such factors as the structure of other related loans, the nature of the collateralized assets and other security, and the borrower's projected ability to repay the loan.
2. **Interest:** The minimum interest rate for loans will be one (1) percent, and the maximum interest rate will be three (3) percent. For all loans, rates may be negotiated on a case-by-case basis.
3. **Security:** Consideration will be given to the merits and potential economic benefits of each loan request. Loans from the RLF will inherently be higher risk than conventional commercial financial institutions might be willing to assume. Therefore, when appropriate, the City will require liens, assignments, or other rights to assets of assisted firms as collateral according to the following standards:
  - a. To encourage the participation of other lenders, the City's collateral position may be subordinated and made inferior to liens securing other loans made in connection with the proposed project (see part 4. below).
  - b. The City may obtain collateral such as liens on inventories, receivables, fixed assets, and/or other assets of the Borrower. These liens may also be subordinated to other loans made in connection with the proposed project.
  - c. The City may also require security in the form of assignment of patents and licenses, the acquisition of insurance naming the Fund as beneficiary, personal loan guarantees, or such other security as may be necessary to support the Fund's exposure.
  - d. Loan requests submitted by entities that depend largely on certain individuals for their success will be expected to provide and assign adequate life insurance on those key people to secure the loan. In certain cases, personal guarantees may be required from the principal owners.
4. **Subordination:** After consultation with EPA, subordination of debt and collateral from the City may be allowed, but only in cases where necessary to facilitate the maximum financial participation by private institutional lenders. When appropriate and feasible, subordination of notes payable to officers, owners or other parties affiliated with the Borrower will be required. Such subordination may include subordinate security interests and/or repayment restrictions. The execution of inter-creditor agreements will generally be required. Subordination of financing from the City will be negotiated on a case-by-case basis.
5. **Expectations:** Subject to final approval by the EPA, the City may recommend exceptions to the policies and criteria discussed under this section in cases where assistance from the RLF will result in extraordinary public benefit.
6. **Preparation for Closing:** The City will prepare loan closing documents. Draft documents will be available at least ten working days prior to closing. All conditions cited in the loan documents must be satisfied prior to closing.

7. **Closing Costs:** In order to prevent delays in closing, the loan recipient should be aware that they are responsible for the following costs, as applicable, some of which may be financed as part of the loan (if requested at time of application): Credit reports on individuals and Dun & Bradstreet reports on company; Title commitment and policy; UCC filing fees for property and equipment; Recording fees for real estate; Appraisal and valuation fees; Environmental site assessments, if determined necessary by the City; Loan commitment and origination fees as determined by City, in no case exceeding a total of two percent (2%); Professional fees; Tax certificates; Hazard insurance, with the City named as loss payee; Flood Insurance if the property is located in a flood or mudslide hazard area, as designated by the federal Insurance Administration of the Department of Housing and Urban Development; and State Voluntary Cleanup Program review, if applicable.
8. **Delinquencies:** Collection procedures for delinquent loans will include, but are not limited to:
  - a. Written notification of late fee assessment.
  - b. Written reminder notices of delinquency at fifteen (15) days delinquent.
  - c. Follow-up reminder notices with telephone contacts with the Borrower at thirty (30) days delinquent and as necessary thereafter.
  - d. Personal contact with the Borrower after forty (45) days delinquent and on-site inspections of the project.
  - e. Notification of Default at sixty (60) days delinquent and exercise of remedies per loan documentation.

### **Acquisition of Program Commitment**

In order to ascertain whether and under what terms and conditions the City will make a loan or subgrant, a prospective recipient must acquire a Program Commitment. The process is described below.

1. **Initial Contact**

All applicants must submit a **Pre-Application Letter** stating their interest in receiving a brownfield cleanup loan or subgrant. Upon receipt of the letter, notice will be provided to the applicant, inviting a full application or disallowing an application and the reasons why. If notice of invitation is received, the prospective recipient should follow instructions for the appropriate application (loan or subgrant). All instructions on the list should be followed carefully to ensure a complete application is submitted. If the applicant has questions about eligibility or about how to complete the pre-application or application materials, they should contact the City early in the process.

Note: EPA **must** determine site eligibility for each brownfield site. As part of the pre-application letter, the City will assist applicants by submitting an EPA Site Eligibility Determination Form.

2. **Application Review Process**

When an application is received, a review of the application will be conducted by the Department of Community Planning, Development, and Innovation (CPDI) including the Brownfields Program Specialist and QEP. If deemed complete, a request for support will be presented to the Brownfields Program Working Group consisting of senior leadership from the Missoula City Mayor's Office, CPDI, Missoula Redevelopment Agency, and Attorney's Office. The City's loan underwriter will review all loan applications and make recommendations regarding each loan application to the City.

If a loan or subgrant is recommended for funding, subaward documents will be prepared. The final subaward recommendation will be referred to the Missoula City Council for approval and authorization for the Mayor to execute the subaward. City Council consideration will be held

before the Housing, Redevelopment & Community Programs (HRCP) Committee with final recommendation going before the full City Council's regularly scheduled Monday night meeting.

### Program Priorities

The City has identified two **Brownfields Target Areas**: 1). The Bitterroot Rail Corridor (BRC); and 2) The Westside Opportunity Zone (Westside OZ). The BRC is a near-continuous string of underutilized former industrial lots along 2.5 miles of railroad line running through two blighted Urban Renewal Districts (URDs). The Westside OZ also overlaps two blighted URDs and is split by the largest railroad yard in Montana – a State Superfund Site – and is Missoula's most impoverished census tract. Remediating and reusing brownfield properties in these two target areas is critical to Missoula's equitable economic development. The City will utilize the RLF opportunistically to assist cleanup projects at other sites as appropriate.

The City is particularly interested in funding projects that will a). promote lasting job creation and sustainable deconstruction and building methods, and b). projects that will facilitate the creation of, preservation of, or addition to a park, greenway, affordable housing, or the extent to which the project will meet the needs of the community. While the RLF can be used to finance eligible projects with various end uses (residential, recreational, commercial or industrial), the **most competitive** applications will use a loan or subgrant to leverage other partnerships and funding sources to foster City-wide goals. In addition, the most competitive projects will:

- Implement components of community development through six key elements: Livability, Safety and Wellness, Economic Health, Housing, Community Design, and Environmental Quality. See “*2035 City Growth Policy*” - adopted November 23, 2015.
- Provide housing at a wide range of entry points to ensure all Missoulians can obtain safe and decent homes. See “*A Place to Call Home: Meeting Missoula’s Housing Needs*” - adopted June 24, 2019, and “*Affordable Housing Trust Fund Policies and Administrative Procedures*” - adopted August 11, 2021.

### Making Your Application

The information provided in these Guidelines is meant to assist you in determining whether you are eligible for Brownfields funding assistance through the City of Missoula and to guide you through the application process. Because this is a lengthy process, requiring a great deal of information, the City is available to answer questions at any point with any portion of the application. It's important to begin this process early in the site planning stages to allow ample time in preparation for cleanup activities. For many, it will make sense to have a pre-application meeting with the Brownfields Program to determine if you qualify for participation in the program. Please contact the program for assistance.

Brownfields Program  
Community Development Division  
Community Planning, Development, and Innovation (CPDI)  
City of Missoula

**Physical and Mailing Address:** 435 Ryman Street, Missoula, MT 59802  
**Phone:** 406-552-6630

## ADMINISTRATIVE AND PROGRAMATIC CONDITIONS

### **I. GENERAL FEDERAL REQUIREMENTS**

Please note that these Guidelines apply to the Brownfields RLF capitalization cooperative agreements that the City has been awarded from EPA under the Comprehensive Environmental Response, Compensation, and Liability Act (CERLCA) § 104(k).

Note: For the purposes of complying with certain provisions of the Uniform Grant Guidance (UGG), 2 CFR Part 200, loans are subawards as the term is defined at 2 CFR § 200.92. The term subaward also encompasses “subgrants” made by the City under CERLCA § 104(k)(3)(B)(ii). The UGG requirements for subawards in the form of loans and subawards in the form of subgrants are different. For clarity, these guidelines refer to “loans” to describe subawards that require repayments of principal, interest charges and loan processing fees paid by “Borrowers”. The Guidelines refer to “subgrants” to describe subawards the City provides to an eligible entity or nonprofit organization (“Subgrantees”) under terms that do not require repayment.

#### **A. Six Good Faith Efforts, 40 CFR, Part 33, Subpart C**

Pursuant to 40 CFR, Section 33.301, the Borrower and Subgrantee agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained, which include:

1. Ensure Disadvantaged Business Enterprises (DBEs) are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. This includes placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
2. Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitation for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
3. Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. This will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
4. Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
5. Use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.
6. If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (1) through (5) of this section.

#### **B. Federal Policy and Guidance**

1. All work done by Borrowers and Subgrantees must comply with the requirements of CERLCA § 104(k). Borrowers and Subgrantees shall also ensure that cleanup activities comply with all

applicable federal and state laws and regulations. Borrowers and Subgrantees must ensure cleanups are protective of human health and the environment.

2. Borrowers and Subgrantees must consider whether they are required to participate in a state response program.
3. A term and condition or other legally binding provision shall be included in all agreements entered into with the federal funds awarded, or when funds awarded are used in combination with non-federal sources of funds, to ensure that Borrowers and Subgrantees comply with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Part 200 and 1500.
4. The Borrower and Subgrantee must comply with federal cross-cutting requirements. These requirements include, but are not limited to, Disadvantaged Business Enterprise (DBE) requirements found at 40 CFR Part 33; OSHA Worker Health and Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Opportunity, and implementing regulations at 41 CFR § 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC § 327-333); the Anti-Kickback Act (40 USC § 276c); and Section 504 of the Davis-Bacon prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration, and repair contracts and subcontracts awarded with funds from EPA by operation of CERCLA § 104(g). For more detailed information on complying with Davis-Bacon, please see Section VIII. Davis-Bacon.

## **II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY REQUIREMENTS**

### **A. Brownfield Site Eligibility**

1. The Borrower and Subgrantee must provide information to the City about site-specific work. The information that must be included includes whether the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA and whether the Borrower or Subgrantee is the potentially responsible party under CERCLA § 107, is exempt from CERLCA liability, or has a defense to CERLCA liability.
2. If the site is excluded from the general definition of a brownfield site but is eligible for a property-specific funding determination, then the Borrower or Subgrantee may request a property-specific funding determination from EPA. In its request, the Borrower and Subgrantee must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote property, other recreational property, or other property used for nonprofit purposes. EPA will make all determinations on the eligibility on property-specific funding determinations.
3. Brownfield Sites Contaminated with Petroleum.
  - a. For any petroleum-contaminated brownfield site, the Borrower and Subgrantee shall provide sufficient documentation that documents that:
    - i. DEQ determines there is no “viable responsible party” for the site.
    - ii. DEQ determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and

- iii. The site is not subject to any order issued under Section 9003(h) of the Solid Waste Disposal Act.
- iv. This documentation must be prepared by the Borrower, Subgrantee or DEQ, following contact and discussion with the appropriate State of Montana petroleum program official.

b. Documentation must include:

- i. The identity of the State of Montana program official contacted;
- ii. The State of Montana official's telephone number;
- iii. The date of the contact; and
- iv. A summary of the discussion relating to the State of Montana's determination that there is no viable party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site.
- v. Other documentation provided by the State of Montana to the recipient relevant to any of the determinations by the State of Montana must also be provided.

c. If the State of Montana chooses not to make the determinations described above, the Borrower and Subgrantee must contact the City and EPA and provide the information necessary for EPA to make the requisite determinations.

## **B. Borrower and Subgrantee Eligibility**

1. Eligible Borrowers include a site owner, a site developer, or another person without regard to whether the Borrower is a for-profit organization. Borrowers do not have to own the property throughout the term of the loan unless ownership is required for the purpose of securing collateral, or the City otherwise determines that Borrower site ownership is necessary.
2. Eligible Subgrantees include entities as defined under CERCLA § 104(k)(1), which includes nonprofit organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and other nonprofit organizations as defined at 2 CFR § 200.70. Nonprofit institutions of higher education as defined at 2 CFR § 200.55 are also eligible for cleanup subgrants. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.
3. The Subgrantee must retain ownership of the site throughout the period of performance of the subgrant and must consult with the City and EPA prior to transferring title or otherwise conveying the real property comprising the site. For the purpose of these guidelines, the term "owns" means fee simple title unless EPA approves a different ownership arrangement.
4. Loan forgiveness: For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30%, provided the total amount of the principal forgiven for that loan shall not exceed \$200,000. Eligible nonprofit organizations described above are eligible for discounted loans. Private for-profit entities are not eligible for discounted loans. In addition to these guidelines, a discounted loan shall not be used in combination with a subgrant at the same site. This applies only after the cleanup project has successfully been completed and when loan repayments are in good standing.
5. The Borrower and Subgrantee shall not use funds to pay for cleanup activities at a site for which they are potentially liable under CERCLA § 107. The Borrower and Subgrantee may rely on its

own investigation which can include an opinion of their counsel; however, this investigation of its counsel is not binding on the City or the Federal Government.

6. For approved eligible petroleum-contaminated brownfield sites, the Borrower and Subgrantee cleaning up the site must not be potentially liable for cleaning up the site. An entity generally will not be considered potentially liable for petroleum-contamination if it has not dispensed or disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and taken responsible steps with regard to the contamination at the site.
7. The Borrower and Subgrantee must maintain sufficient documentation supporting and demonstrating the eligibility of the site.
8. The Borrower and Subgrantee must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The City will consider this history in its analysis of the Borrower and Subgrantee as a cleanup and business risk.
9. An entity that is currently suspended, debarred, or otherwise declared ineligible to receive federal funds cannot be a Borrower or Subgrantee.

### **C. Obligations**

1. A Borrower or Subgrantee who is eligible, or seeks to become eligible, to receive a loan or subgrant must provide information indicating that funds will not be used to pay for a response cost at a site for which the Borrower or Subgrantee is potentially liable under CERCLA § 107. The Borrower or Subgrantee must demonstrate that it meets the requirements for one of the Landowner Liability Protections as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Landowner (ILO). These requirements include certain threshold criteria and continuing obligations that must be met in order for the Borrower or Subgrantee to maintain its eligible status. If the Borrower or Subgrantee fails to meet these obligations, the City and EPA may disallow the costs incurred for cleaning up the site under CERCLA § 101(k)(8)(C). The Landowner Liability Protection requirements include:
  - a. Performing “all appropriate inquiries” into the previous ownership and uses of the property before acquiring the property.
  - b. Not being potentially liable or affiliated with any other person who is potentially liable for response costs at the site through: any direct or indirect familial relationship, any contractual, corporate, or financial relationships, or through the result of a reorganized business entity that was potentially liable.
    - i. While not necessary to obtain ILO protection, the Borrower or Subgrantee must still establish by a preponderance of the evidence that the act or omission that caused the release or threat of release of hazardous substances and any resulting damages were caused by a third party with whom the person does not have an employment, agency, or contractual relationship.
  - c. Demonstrate that no disposal of hazardous substances occurred at the facility after acquisition by the landowner (does not specifically apply for the CPO protection).

- d. Taking “reasonable steps” with respect to hazardous substance releases by stopping any continuing releases, preventing any threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to any previously released hazardous substance.
- e. Complying with any land use restrictions established or relied on in connection with the response action at the site and not impeding the effectiveness or integrity of institutional controls employed in connection with the response action.
- f. Providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the site from which there has been a release or threatened release.
- g. Complying with information requests and administrative subpoenas (does not specifically apply for ILO protection).
- h. Providing all legally required notices with respect to the discovery or release of any hazardous substances at the site (does not specifically apply for the ILO protection).

2. Notwithstanding the Borrower’s or Subgrantee’s continuing obligations under these guidelines, the Borrower and Subgrantee are subject to the application provisions of CERCLA governing its status as a BPPP, CPO, or ILO. CERCLA requires additional obligations to maintain liability protection. These obligations are found at § 101(35), 101(40), 107(b), 107(q) and 107(r).
3. Borrowers and Subgrantees that are exempt from CERCLA liability or do not have to meet the requirements for asserting an affirmative defense to CERCLA liability must also comply with continuing obligations items c.-h., above.

### **III. GENERAL ADMINISTRATIVE REQUIREMENTS**

#### **A. Sufficient Progress**

1. If after 6 months from the date of the subaward agreement, the City determines that the Borrower or Subgrantee has not made sufficient progress in implementing the cleanup project, the Borrower and Subgrantee must implement a corrective action plan concurred on by the City. Alternatively, the City may terminate the subaward agreement under the provisions of the contract for material non-compliance with its terms, or with the consent of the Borrower and Subgrantee, depending on the circumstances. Sufficient progress may be demonstrated by a combination of all the following: hiring of all key personnel, procurement of cleanup contractors, compliance with federal cross-cutting requirements, community engagement, or other documented activities that demonstrate to the City satisfactions that the Borrower and Subgrantee will successfully perform the cleanup project.

#### **B. Substantial Involvement**

1. The City and EPA may be substantially involved in overseeing and monitoring the loan or subgrant agreement.
  - a. Substantial involvement by the City and EPA includes administrative activities by the City and EPA such as approving substantive terms included in professional services contracts.

- b. Substantial City and EPA involvement includes brownfield property-specific funding determinations as described in Section II.A.2. Borrowers and Subgrantees may request technical assistance from the City and EPA to determine if sites qualify as brownfield sites and to determine whether the statutory prohibition found in CERCLA § 104(k)(5)(B)(i)(IV) applies.
  - c. Substantial City and EPA involvement may include reviewing financial and environmental status reports and monitoring all reporting, record-keeping, and other program requirements.
  - d. The City and EPA may waive any of the provisions in Section III.B.1., except for property-specific funding determinations, at its own initiative or upon request by the Borrower or Subgrantee. The City and EPA will provide waivers in writing.
2. Effects of substantial involvement from the City and EPA include:
  - a. The City and EPA's review of any project phase, document, or cost incurred under the loan or subgrant award will not have any effect upon CERCLA § 128, determinations or rights, authorities, and actions under CERCLA or any federal statute.
  - b. The Borrower and Subgrantee remain responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable federal and state laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the Borrower and Subgrantee must consult with the City and EPA.

### **C. Borrower and Subgrantee Roles and Responsibilities**

1. The Borrower and Subgrantee are responsible for establishing a project team that will implement the site cleanup project and assign a Program Manager for coordinating the team's activities as outlined below.
2. The Borrower and Subgrantee must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10 to coordinate, direct, and oversee the brownfield site cleanup activities at a given site, if it does not have such a professional on staff. Under some circumstances, the City's QEP may be leveraged.
3. The Borrower and Subgrantee shall appoint appropriate legal counsel if counsel is not already available. Counsel must review all loan and subgrant agreements prior to execution unless the City and EPA waives this requirement.
4. The Borrower and Subgrantee are responsible for ensuring all contractor agreements are consistent with these Guidelines.
5. When the City makes a subaward to a Borrower and Subgrantee, the City becomes a pass-through entity for the purposes of the subrecipient oversight and management requirements of 2 CFR § 200.330 through 200.332. Requirements for oversight and management of Subgrantees are supplemented in EPA's National Term and Condition for Subawards, which is available upon request.
6. The following requirements apply to Borrowers in lieu of those specified in EPA's National Term and Conditions for Subawards.

- a. Borrowers must comply with the internal control requirements specified in 2 CFR § 200.303 and are subject to 2 CFR Part 200, Subpart F, *Audit Requirements*. All loans must include a condition that requires Borrowers to comply with this requirement. No other provisions of the Uniform Grant Guidance, including the Procurement Standards, apply directly to Borrowers.
7. Each Borrower and Subgrantee must have a “unique entity identifier.” This identifier is required for registering in the System for Award Management (SAM) and by 2 CFR Part 25 and 2 CFR § 200.331(a)(1).
8. The Borrower and Subgrantee must comply with 2 CFR Part 170, *Reporting Subaward and Executive Compensation* under the Federal Funding Accountability and Transparency Act (FFATA).
9. Cybersecurity – when collecting and managing environmental data, the Borrower and Subgrantee must protect the data by following all applicable State law cybersecurity requirements.
  - a. EPA must ensure that any connections between the Borrower and Subgrantee’s network or information system and EPA networks used by the Borrower and Subgrantee to transfer data are secure. For purposes of this section, a connection is defined as a dedicated persistent interface with an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.
10. All geospatial data created by the Borrower and Subgrantee must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at <https://www.fgdc.gov/>

#### **D. QUARTERLY PROGRESS REPORTS**

1. The Borrower and Subgrantee agrees to submit quarterly progress reports to the City within 30 days after each reporting period which will be established at the time of subaward.
  - a. These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed for the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.
2. The Borrower and Subgrantee must maintain records that will enable it to report to the City on the amount of funds disbursed to clean up subject properties.
3. The Borrower and Subgrantee agrees to inform the City and EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the loan or subgrant application.
4. **Final Technical Report with Environmental Results.** In accordance with EPA regulations 2 CFR Parts 200 and 1500 (*specifically, § 200.238, Monitoring and Reporting Performance*), the Borrower and Subgrantee agrees to submit to the City within 45 days after the expiration or termination of the approved project period a final technical report that shall document project

activities over the entire project period and shall include brief information on each of the following areas:

- a) A comparison of actual accomplishments with the anticipated outputs/outcomes;
- b) Reasons why anticipated outputs/outcomes were not met; and
- c) Other pertinent information, including when appropriate, analysis and explanation of cost overruns or high unit costs.

## **IV. FINANCIAL ADMINISTRATION REQUIREMENTS**

### **A. Cost Share Requirements**

The Borrower and Subgrantee are not required to contribute towards a cost-share match, however, the City reserves the right to require a cost-share match contribution at any given brownfield site.

### **B. Eligible Uses of Funds for the Borrower and Subgrantee**

1. To the extent permissible by a subaward agreement, the Borrower and Subgrantee may use funds for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include activities described in Section V of these Guidelines. In addition, eligible programmatic expenses may include:
  - a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k).
  - b. Ensuring that an RLF cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
  - c. Limited site characteristics to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.
  - d. Preparing and updating an Analysis of Brownfields Cleanup Alternatives (ABC) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternative considered, and the proposed cleanup.
  - e. Ensuring that public participation requirements are met. This includes preparing a Community Engagement Plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.
  - f. Establishing an Administrative Record for the site.
  - g. Ensuring the adequacy of each cleanup as it is implemented to ensure compliance with applicable federal and state environmental requirements.
  - h. Using a portion of the loan or subgrant to purchase environmental insurance for the site. The loan or subgrant shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under Section IV.C. *Ineligible Uses of Funds for the Borrower and/or Subgrantees.*
    - i. Borrower and Subgrantee progress reporting to the City is an eligible programmatic cost.

2. The Borrower and Subgrantee must maintain records that will enable it to report to the City on the amount of costs incurred at brownfield sites.
3. To determine whether a cleanup subgrant is appropriate, the City will consider the following as required by CERCLA § 104(k)(3)(B)(c):
  - a. The extent to which 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.
  - b. The extent to which the subgrant will meet the needs of a community that has the liability to draw on other sources of funding 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.
  - c. The extent to which the subgrant will facilitate the use or reuse of existing infrastructure; and
  - d. The benefit of promoting the long-term availability of funds from the RLF for brownfield remediation.

**Note: Subgrantees must maintain sufficient records to support and document these determinations.**

#### **C. Ineligible Uses of Funds for the Borrower and/or Subgrantee**

1. Funds shall not be used by the Borrower or Subgrantee for any of the following activities:
  - a. Environmental assessment activities, including Phase I and Phase II Environmental Site Assessments.
  - b. 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.
  - c. Construction, demolition, and site development activities that are not cleanup actions (e.g., marketing of property, construction of a new facility, or addressing public or private drinking water supplies that have deteriorated through ordinary use).
  - d. Job training activities unrelated to performing a specific cleanup at a site covered by a loan or grant.
  - e. To pay for a penalty or fine.
  - f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is a specific statutory authority.
  - g. To pay for a response cost at a brownfield site for which the Borrower or Subgrantee is potentially liable under CERCLA § 107.
  - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.

- i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR 200, Subpart E.

## **V. RLF REQUIREMENTS**

### **A. Authorized RLF Cleanup Activities**

1. The Borrower and Subgrantee shall prepare an Analysis of Brownfield Cleanup Alternatives (ABCAs) which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminated sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must also consider the resilience of the remedial actions to address potential adverse impacts caused by extreme weather events (e.g., sea level rise, increased frequency of and intensity of flooding, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent possible. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.
2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the Borrower and Subgrantee shall consult with the City and EPA regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist the City and EPA in complying with any requirements of the NHPA and implementing regulations.

### **B. Quality Assurance (QA) requirements**

1. If environmental data is to be collected as part of the brownfield cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the Borrower and Subgrantee shall comply with 2 CFR § 1500.11 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements. Borrowers and Subgrantees must use the City's most current Programmatic Quality Assurance Project Plan (PQAPP) which is approved by EPA. The PQAPP is a document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met.

### **2. Competency of Organizations Generating Environmental Measurement Data**

- a. In accordance with Agency Policy Directive Number FEM-2012-02, *Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements*, the Borrower and Subgrantee agrees, by entering a subaward agreement with the City, that it has demonstrated competency prior to award. The Borrower and Subgrantee agree to demonstrate competency prior to carrying out any activities under the subaward involving the generation or use of environmental data. The Borrower and Subgrantee shall maintain competency for the duration of the project period of the subaward and this will be documented during the reporting process. A copy of the Policy is available online at <https://www.epa.gov/measurements-modeling/documents-about-measurement-competency-under-assistance-agreements>

### **C. Community Engagement and Public Involvement in RLF Cleanup Activities**

1. All loan and subgrant cleanup activities require a site-specific Community Engagement Plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site.
2. The Borrower and Subgrantee agree to clearly reference EPA investments in the project during all phases of community outreach which may include the development of any post-project summary or success materials that highlight achievements to which the project contributed.
  - a. If any documents, fact sheets, and/or web materials are developed as part of the award, then they shall include the following statement: **“Though this project has been funded, wholly or in part, by EPA, the contents of this document do not necessarily reflect the views and policies of the EPA.”**
  - b. If a sign is developed as part of a project funded by a loan or subgrant award, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA’s logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-epa-assistance-agreement-recipients>
3. The Borrower and Subgrantee agree to notify the City and EPA of public or media events publicizing the accomplishments of significant events related to construction and/or site reuse projects as a result of a loan or subgrant award and provide the opportunity for attendance and participation by the City and state and federal representatives with at least ten (10) working days' notice.
4. To increase public awareness of projects serving communities where English is not the predominant language, Borrowers and Subgrantees are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

### **D. Administrative Record**

- 1) The Borrower and Subgrantee shall establish an Administrative Record that contains the documents that form the basis for the selection of a site cleanup plan. Documents in the Administrative Record shall include the ABCA; site investigation reports; site cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The Borrower and Subgrantee shall keep the Administrative Record available at a location convenient to the public and make it available for inspection. The Administrative Record must be retained for three (3) years after the termination of the subaward agreement.

### **E. Implementation of RLF Cleanup Activities**

- 1) The Borrower and Subgrantee shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subgrant agreement shall contain terms and conditions, subject by the state regulatory oversight authority, that allow the Borrower and Subgrantee to change cleanup activities as necessary based on comments from the public or any new information acquired.

- 2) If the Borrower or Subgrantee is unable or unwilling to complete the RLF cleanup, the Borrower and Subgrantee shall ensure that the site is secure. The Borrower and Subgrantee shall notify the City and appropriate state agency and EPA to ensure an orderly transition should additional activities become necessary.

## **F. Completion of RLF Cleanup Activities**

- 1) The Borrower and Subgrantee shall ensure that the successful completion of an RLF cleanup is properly documented. This must be done through a final report or letter from a Qualified Environmental Professional, or other documentation provided by the State of Montana that shows cleanups are complete (Cleanup Completion Reports, No Further Action letters, institutional controls, etc.). This documentation must be included as part of the Administrative Record.

## **VI. SUPPLEMENTAL RLF REQUIREMENTS**

### **A. Inclusion of Additional Terms and Conditions in RLF Loan and Subgrant Documents**

1. All subaward agreements with the City must include the information required by 2 CFR § 200.331(a).
2. The City shall ensure that the Borrower and Subgrantee meets the cleanup and other program requirements under these Guidelines by including the following special terms and conditions in loan and subgrant award agreements:
  - a. Borrowers and Subgrantees shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable federal and state laws and regulations.
  - b. Borrowers and Subgrantees shall ensure that the cleanup protects human health and the environment.
  - c. Borrowers and Subgrantees shall document how funds are used.
  - d. Borrowers and Subgrantees shall maintain records for a minimum of three (3) years following completion of the cleanup financed all or in part with RLF funds unless one of the conditions described at 2 CFR § 200.333 is present. Borrowers and Subgrantees shall obtain written approval from the City prior to disposing of records. The Borrower and Subgrantee shall provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the City and federal government.
  - e. Borrowers and Subgrantees shall certify that they are not currently, nor have they been, subject to any penalties from environmental non-compliance at the site subject to the loan or subgrant.
  - f. Borrowers and Subgrantees shall certify that they are not potentially liable under CERCLA § 107 for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrantee must state the basis for that assertion. When using RLF funds for petroleum-contaminated brownfield sites, Borrowers and Subgrantees shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. The Borrower and Subgrantee may consult with the City and EPA for assistance with this matter.

- g. Borrowers and Subgrantees shall conduct cleanup activities as required by the City.
- h. Subgrantees, other than Borrowers, shall comply with all applicable EPA assistance regulations (2 CFR Parts 200 and 1500). All procurements conducted with subgrant funds, but not loans, must comply with Procurement Standards at 2 CFR § 200.317 through 200.326.
- i. Borrowers must comply with the internal control requirements specified in 2 CFR § 200.303 and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The City must oversee and manage loans as required by 2 CFR §§ 200.330 through 200.332. No other provisions of the Uniform Grant Guidance apply directly to Borrowers.
- j. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into using RLF funds, or when funds awarded by the City are used in combination with non-federal sources of funds, to ensure that Borrowers and Subgrantees comply with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Parts 200 and 1500.
- k. EPA provides general information on statutes, regulations, and Executive Orders that apply to EPA grants on the Grants internet site at <https://www.epa.gov/grants>. Many federal requirements are agreement or program specific, and EPA and the City encourages Borrowers and Subgrantees to review the terms of their subaward agreements carefully and consult the City and EPA for advice if necessary.

## **B. Loan Default**

1. In the event of a loan default, the City shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If cleanup is not complete at the time of default, the Borrower is responsible for:
  - a. Documenting the nexus between the amount paid by the City to the Borrower (bank or other financial institution) and the cleanup that took place prior to the default; and
  - b. Securing the site (e.g., ensuring public safety) and informing the City, EPA, and the State of Montana.

## **VII. DISBURSEMENT, PAYMENT, AND CLOSEOUT**

For the purposes of these Guidelines, the following definitions apply: “payment” is the EPA’s transfer of funds to the City; the Borrower and Subgrantee incurs an “obligation” when it enters into a subaward agreement with the City; “disbursement” is the transfer of funds from the City to the Borrower or Subgrantee. “Closeout” refers to the process the City follows to both ensure that all administrative actions and work required under the subaward agreement have been completed.

### **A. Methods of disbursement**

1. The City will disburse funds to the Borrower and Subgrantee by means of ‘actual expense’. An ‘actual expense’ disbursement requires the Borrower or Subgrantee to submit documentation of the Borrower’s or Subgrantee’s expenditures (e.g., invoices) when requesting disbursement from the City. Further, the City shall include an appropriate provision in the subaward agreement

which ensures that the Borrower or Subgrantee uses funds promptly for costs incurred in connection with the cleanup.

## **B. Schedule and Closeout**

1. There are two fundamental criteria for closeout:
  - a. Final disbursement of funds from the City to the Borrower or Subgrantee following the end date of the subaward agreement or prior to the end date; and
  - b. Completion of all cleanup activities funded completely, or in part, by the City and EPA.

## **C. Compliance and Closeout Schedule**

1. If the Borrower or Subgrantee fails to comply with the closeout schedule, any funds attributable to the subaward agreement may be subject to City and federal recovery.

## **D. Final Requirements**

1. The Borrower and Subgrantee must submit the **Final Technical Report** as described above in Section III. D. 4.
2. The Borrower and Subgrantee must ensure that all appropriate data has been submitted to the City in order to report cleanup activities to EPA.

## **VIII. DAVIS-BACON**

### **Davis Bacon Terms and Conditions with Cleanup Activities using Hazardous Waste Funding.**

The following guidelines specify how a Borrower and Subgrantee will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under CERCLA 104(g) and any other statute which makes DB applicable to EPA financial assistance. If a Borrower or Subgrantee has questions regarding when DB applies, obtaining correct DB wage determinations, DB contract provision, or DB compliance monitoring, they should contact the City and EPA.

1. Applicability of the DB Prevailing Wage Requirements. For the purposes of this guidance, EPA has determined that all construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings, is subject to DB. If the Borrower or Subgrantee encounters a unique situation at a site that presents uncertainties regarding DB applicability, the Borrower or Subgrantee must discuss the situation with the City and EPA before authorizing work on the site.
2. Obtaining Wage Determinations.
  - a. Unless otherwise instructed by the City and EPA on a project specific basis, the Borrower or Subgrantee shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. Borrowers and Subgrantees must obtain wage determinations for specific localities at <https://sam.gov/>

- i. When soliciting competitive contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments) for, the excavation and removal of hazardous substances, construction of caps, barriers, and similar activities that do not involve construction of buildings the Borrower or Subgrantee shall use the “Heavy Construction” Classification.
- ii. When soliciting competitive contracts or issuing ordering instruments for the construction of structures which house treatment equipment, and abatement of contamination in buildings (other than residential structures less than 4 stories in height) the Borrower or Subgrantee shall use “Building Construction” classification.
- iii. When soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the Borrower or Subgrantee shall use “Residential Construction” classification.

Note: Borrowers and Subgrantee must discuss unique situations that may not be covered by the General Wage Classifications described above with the City and EPA. If, based on discussions with a Borrower or Subgrantee, EPA determines that DB applies to a unique situation the Agency will advise the Borrower or Subgrantee which General Wage Classification to use based on the nature of the construction activity at the site.

- b. Borrowers and Subgrantees shall obtain the wage determination for the locality in which a Brownfields cleanup activity subject to DB will take place ***prior*** to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
- c. While the solicitation remains open, the Borrower and Subgrantee shall monitor <https://sam.gov/> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The Borrower and Subgrantee shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Borrower or Subgrantee may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency’s finding to the Borrower or Subgrantee.
- d. If the Borrower or Subgrantee does not award the contract within 90 days of the closure of the solicitation, any modifications or determination contained in the solicitation shall be effective unless EPA, at the request of the Borrower or Subgrantee, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The Borrower or Subgrantee shall monitor <https://sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remains current.
- e. If the Borrower or Subgrantee carries out Brownfield cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the Borrower and Subgrantee shall insert the appropriate DOL wage determination from <https://sam.gov/> into the ordering instrument.

- f. The Borrower and Subgrantee including the City shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- g. As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Borrower's or Subgrantee's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Borrower or Subgrantee has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the Borrower or Subgrantee shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Borrower's or Subgrantee's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions.

- a. The Borrower and Subgrantee shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from federal funds or in accordance with guarantees of a federal agency or financed from funds obtained by pledge of any contract of a federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to DB, labor standards provisions which will be provided and included as an exhibit in all subaward agreements.

*~ End of Guidelines ~*