REVOLVING LOAN FUND (RLF) LOAN GUIDELINES

INTRODUCTION

The State of Indiana ("State") was first selected by the United States Environmental Protection Agency ("U.S. EPA") for a Brownfields Cleanup Revolving Loan Fund Pilot Project grant in 1997. In April 2008, U.S. EPA awarded the Indiana Finance Authority ("Authority") a $2 million grant under Section 104(k) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") to further capitalize a revolving loan fund ("RLF") administered by the Indiana Brownfields Program ("Program") (the "RLF Incentive"). The Authority entered into an assistance agreement with U.S. EPA in September 2008 which added the $2 million RLF award to funds revolved from the loan made using the 1997 RLF grant. As of the date of these guidelines, the Program has over $2.3 million in available RLF funds for the cleanup and redevelopment of brownfield properties throughout the State ("RLF Funds"). The purpose of the Program's RLF Incentive is to facilitate the redevelopment of brownfield sites by making low cost funding available for financing environmental cleanups.

Through its RLF Incentive, the Program offers low-interest loans using RLF Funds ("RLF Loan") to qualifying Indiana political subdivisions, non-profit organizations, and private, for-profit organizations (collectively, "Applicants") for cleanup activities at eligible brownfield sites. In general, an RLF Loan may be used for activities associated with removing, mitigating or preventing the release or threat of release of a hazardous substance, pollutant or contaminant. Eligible Applicants will receive RLF Funds directly from the Program. After sites have been selected for an RLF Loan, borrowers will be required to execute a financial assistance agreement ("Loan Agreement") with the Authority, the Indiana State Budget Agency, and the consultant/contractor selected to perform the RLF Loan work. The Loan Agreement will address each party's obligations regarding the site remediation work to be funded with RLF Funds.

After April 1, 2009, Applicants may apply for an RLF Loan at any time during the balance of the five-year project period for the RLF grant which ends on July 31, 2013. Loans will be funded on a first come, first served basis. An RLF Loan application and required supporting documentation will be posted on the Program's Web site at www.brownfields.in.gov. Applicants should contact the Program to determine the maximum amount of RLF Funds available to loan an Applicant at the time an application is submitted. 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/financial advisor review undertaken for the Program as part of closing an RLF Loan. Any such reimbursement request will be determined by the Program on a case-by-case basis considering factors such as the amount of the loan and the repayment source pledged. The amount of any such request will also be determined on a case-by-case basis, and will not exceed 5% of the loan amount.

LOAN TERMS

Loan terms are flexible and dependent upon project/borrower needs and the Program's need to maintain the long-term stability of the RLF Incentive. The term of any loan awarded under the RLF Incentive will not exceed twenty (20) years. Interest rates will be fixed and range between 0 – 3%. Contact the Program's Financial Resources Coordinator for the maximum size loan available. Repayment terms are negotiated on a project-by-project basis, and may include a deferral of principal payments (and possibly interest payments) for up to two (2) years. 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 an RLF Loan. Collateral requirements are flexible and will be determined on a case-by-case basis. Disbursement of RLF Funds is through a reimbursement process, further discussed below.

An RLF Loan made to a political subdivision or a non-profit entity (but *not* a private, for-profit entity) may be partially forgivable as determined by the Program. The forgivable amount of a loan may not exceed the lesser of either $200,000 or 30% of the loan amount. The amount of forgiveness will be determined on a project-by-project basis by Program staff in accordance with the terms of the Loan Agreement. Specific Program-approved economic development or redevelopment goals must be achieved before a borrower will be released from its obligation to repay a forgivable loan. The criteria considered by the Program for eligibility for and the conditions of loan forgiveness are discussed in detail below.

Forgivable Loans

Specific economic development or redevelopment goals must be achieved *before* a political subdivision or non-profit Applicant will be released from its obligation to repay a forgivable loan. These goals will be embodied in the Loan Agreement and must be prepared by the Applicant, with public input, and tied to a schedule for their attainment. One of the redevelopment goals must be to complete the environmental remediation activities at the site, regardless of whether the RLF Loan will complete the remediation. Other considerations to develop project goals tied to forgiveness shall include:

- End use of the site;
- Economic development or redevelopment goals;
- Number and types of jobs created, wages;
- Non-business use such as parks or green space;
- Tourism;
- Direct or indirect effects of the development/redevelopment on the community;
- Other economic indicators identified by the community; and,
- Schedule/Project Timeline.

ELIGIBILITY

The following items are considered threshold eligibility criteria and may disqualify an application from consideration for an RLF 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 an RLF 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, 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* www.brownfields.in.gov 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, 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., 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 or IC 13-25-4 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:

[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 an RLF Loan under these guidelines.

a. 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.

b. Applicants seeking to qualify as a BFPP or a CPO must not be:
   i) 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
   ii) a reorganized business entity that was potentially liable; or
   iii) 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. These continuing obligations include:
   i) 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;
   ii) taking reasonable steps with respect to hazardous substance releases;
   iii) providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;
   iv) complying with information requests and administrative subpoenas (applies to BFPPs and CPOs); and
   v) 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 these guidelines as a part of your application.

<u>Ineligible Borrowers</u>
An Applicant that meets any or all of the following criteria is an ineligible 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 RLF 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 RLF 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 an RLF Loan, Applicants must demonstrate the following at the time an application is submitted:

- The site meets the State definition of a brownfield. Indiana defines a brownfield as a parcel of real estate that is abandoned or inactive; or may not be operated at its appropriate use; and on which expansion, redevelopment, or reuse 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 term brownfield, for the purposes of awarding RLF Funds, also specifically includes: 1) sites contaminated by controlled substances (e.g., residences or buildings used for the manufacture of methamphetamines); 2) sites contaminated by petroleum or a petroleum product; and, 3) mine-scarred lands.

- 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.

Additional eligibility criteria below apply only to sites with **petroleum contamination** (not co-mingled with hazardous substances). If the site for which you are seeking RLF Funds has petroleum contamination, please contact the Program's EPA/Community Liaison & Outreach Coordinator to discuss obtaining a petroleum eligibility determination from the Program. For a petroleum-contaminated site to be eligible for RLF Funds, Applicants must demonstrate that the Program (or U.S. EPA) has determined:

- The site is of "relatively low risk" compared to other "petroleum-only" sites in the State; and,
- There is no viable responsible party; and,
- The Applicant is not potentially liable for the petroleum contamination to assess, investigate, or clean up the site.

"Exhibit A" of these guidelines requests additional information as a part of an application for RLF Funds for petroleum-contaminated sites that the Program will evaluate to determine site eligibility for funding. "Exhibit C" of these guidelines paraphrases U.S. EPA grant proposal guidance to provide some background for the eligibility criteria for petroleum-contaminated sites that should facilitate answering the related questions on "Exhibit A." If a site satisfies the criteria discussed in "Exhibit C," it may be determined by U.S. EPA or the Program to be eligible for an RLF Loan.

Ineligible Brownfield Sites

A property that meets any or all of the following at the time an application is submitted is ineligible for an RLF Loan (and *not* eligible for a property-specific determination):

- The site is listed or proposed for listing on the National Priorities List.
- The site is subject to the jurisdiction, custody, or control of the U.S. government, except for land held in trust by the U.S. for an Indian tribe.
- The site is subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA.
- The site is subject to an open or pending State or federal administrative or judicial enforcement action.
- The site presents an imminent threat to human health or the environment.

Otherwise Ineligible Sites that May Obtain a Property-specific Determination

A property that meets any or all of the following at the time an application is submitted is ineligible for an RLF Loan, but *is* eligible for a **property-specific determination** *if* the Applicant fulfills the requirements for demonstrating that the site meets the criteria for a property-specific determination for funding:

- Sites subject to planned or ongoing response actions under CERCLA;
- Sites that are subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees, or to which a permit has been issued by the U.S. government or an authorized state under the Resource Conservation and Recovery Act ("RCRA"), the Federal Water Pollution Control Act ("FWPCA"), the Toxic Substances Control Act ("TSCA"), or the Solid Waste Disposal Act ("SWDA");
- Sites that are subject to corrective action orders under RCRA § 3004(u) or 3008(h) and to which a corrective action permit or order has been issued or modified to require the implementation of corrective measures;
- Sites that are land disposal units that have filed a closure notification under Subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit;
- Sites where there has been a release of polychlorinated biphenyls and all or part of the site is subject to remediation under TSCA; and
- Site for which funding for remediation has been obtained from the LUST trust fund or the State's ELTF (or is ELTF-eligible).

Contact the Program's EPA/Community Liaison & Outreach Coordinator for additional information if you are contemplating using RLF Funds on a site that may require a property-specific determination. The general criteria necessary for making a property-specific

determination of eligibility include that an RLF Loan on such property will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for non-profit purposes. In order to demonstrate satisfaction of the required criteria for a property-specific determination, please provide written answers to the related questions found in "Exhibit A" of these guidelines as a part of your application.

The following **petroleum-contaminated** sites are ineligible for an RLF Loan:

- The site is subject to RCRA Corrective Action for hazardous substances contamination or petroleum contamination (under section 9003(h) of the Solid Waste Disposal Act (RCRA § 6991b(h)).

- The site has received specific cleanup assistance under Subtitle I of RCRA from the LUST trust fund or the State's ELTF (or is ELTF-eligible), *unless* a property-specific determination from U.S. EPA is obtained (*see* above for more information about property-specific determinations).

ELIGIBLE USES OF RLF FUNDS

Eligible Project Costs & Activities

RLF Funds are designated for cleanup activities at eligible brownfield sites. Cleanup activities conducted with RLF Funds must be performed consistent with the IDEM Risk Integrated System of Closure ("RISC") guidelines in effect at the time the Program approved the proposed Loan activities. RISC is a set of health-based standards used to evaluate cleanup options and contaminants based on detailed site data and the proposed end use for the site to determine the appropriate cleanup option and contaminant reduction level necessary. All activities sought to be paid for with RLF Funds must receive Program approval *prior* to implementation.

Eligible activities and related costs associated with cleanup include, but are not limited to:

- Documentation of the *Analysis of Brownfields Cleanup Alternatives* ("ABCA");
- Preparation of a remedial action plan;
- Installation of fences, warning signs, or other security or site control precautions;
- Installation of drainage controls;
- Stabilization of berms, dikes, or impoundments; or drainage or closing of lagoons;
- Capping of contaminated soils;
- 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 meeting public participation and worker health and safety requirements (e.g., preparation of *Community Relations Plans* and *Health and Safety Plans*, respectively);
- Costs associated with removal activities, including demolition and/or site preparation that are part of the site cleanup;
- Abatement of asbestos-containing materials and lead-based paint in a building that is slated for reuse; and,
- Costs associated with fees of legal and/or financial advisors related to closing the RLF Loan.

Ineligible Project Costs & Activities

RLF Funds may not be used for activities and related costs incurred *prior* to execution of a Loan Agreement or for:

- Pre-cleanup environmental assessment activities, such as site assessment, identification, and characterization with the exception of site monitoring activities as described above;
- 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 non-cleanup facility);
- Cost sharing or matching requirement for another federal grant (absent statutory authorization);
- Support of job training;
- Lobbying efforts;
- Site acquisition;
- Direct administrative costs;
- Ordinary operating expenses of an Applicant; and,
- Ordinary site maintenance.

Other funding may be available from the Program for ineligible activities/costs under the RLF Incentive, for example, demolition that is not required to conduct cleanup. Please visit http://www.brownfields.in.gov for more information.

COLLATERAL OPTIONS

A variety of financial resources are acceptable repayment sources for an RLF Loan. They include bonds backed by property taxes, tax increment financing ("TIF"), and local option income taxes, called by their acronyms, CAGIT (county adjusted gross income tax), COIT (county option income tax) and CEDIT (or EDIT) (county economic development income tax). Private and non-profit borrowers may be able to securitize an RLF Loan with a letter of credit ("LOC"). If an LOC is pledged to the Authority as collateral for an RLF Loan, the LOC and issuing bank need to be pre-approved by the Authority before loan closing. A political subdivision closing a loan with the Authority that wishes to re-loan the RLF Funds to a private property owner or developer may also require such sub-borrower to provide an LOC as collateral for its loan. In such a case, the Authority will similarly need to pre-approve the issuing bank and the LOC, which may name the Authority as the beneficiary.

DISBURSEMENT PROCEDURES

Loan disbursements will be made by the Program to the borrower for payment to the consultant(s) after the Program receives and approves invoices for work performed consistent with Program-approved activities (incurred cost basis). Alternately, a borrower 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 *Loan Disbursement Guidelines*, as applicable. The *Loan Disbursement Guidelines* are available at http://www.in.gov/ifa/brownfields/files/LIL_Payment_and_Disbursement_Procedures.pdf.

COMPETITIVE BIDDING

Applicants must demonstrate that services to be reimbursed with RLF Funds have been/will be competitively bid. Professional services must be procured in compliance with IC 5-16-11.1, and activities other than professional services are required to be procured in compliance with IC 36-1-12. Program Project Managers may assist in developing bid specifications for work to be performed with RLF Funds. Applicants that do not submit detailed information demonstrating a competitive bidding process with their RLF Loan applications will be required to do so before funding will be disbursed. A competitive bidding fact sheet is available at http://www.in.gov/ifa/brownfields/2558.htm#fact.

U.S. EPA ASSISTANCE AGREEMENT

The terms and conditions contained in the U.S. EPA Assistance Amendment ("AA"), through which the Program awards RLF Funds, are extended to a borrower through its Loan Agreement. Therefore, the Program advises Applicants to familiarize themselves with the terms and conditions of the AA to ensure an understanding of the federal requirements and obligations associated with the use of RLF Funds. For example, use of RLF Funds must comply with federal "cross-cutting" requirements such as Davis-Bacon prevailing wage rates determined by the U.S. Department of Labor. A copy of the AA can be obtained on the Program's Web site at http://www.in.gov/ifa/files/EPA_RLF_AA-CA_T-C_pkg.pdf.

Public Notice Requirements

Borrowers funding cleanups with an RLF Loan must provide the community with an opportunity to provide input on site cleanup and plans for redevelopment. The public must also have the opportunity to comment on the various required documents drafted in preparation for the environmental cleanup, and any comments must be considered as part of the final cleanup decisions. A borrower of RLF Funds must adhere to the following public notice requirements:

- A site-specific community relations plan ("CRP"), including reasonable notice in a major local newspaper of general circulation, on the internet, or similar measure to target the general community and targeted area of the availability of documents for public review;
- Opportunity for involvement (typically 30 days);
- Response to comments (documented in a decision memo or equivalent document); and,
- Administrative record (collection of documents explaining the actions taking place at a site) that is available to the public.

Reporting Requirements

Certain reporting responsibilities will apply to a borrower of RLF Funds. The following activities related to reporting will be a required part of activities conducted with an RLF Loan and satisfied by the borrower and/or the Program:

- Quarterly reporting to U.S. EPA, including progress made on performance objectives and project timeline, update on project milestones, use of/compliance with requirements related to use of disadvantaged business enterprises ("DBE"), property profile, budget recap summary, etc… (submitted within thirty (30) days of the end of each federal fiscal quarter);
- Documentation that all federal and state worker health and safety requirements are met;
- Documentation that RLF Funds are used only for eligible activities at eligible sites (e.g., financial statements such as income statements, balance sheet, or cash flow statement);
- Documentation of compliance with all applicable federal and state cleanup requirements; and,
- Maintenance of records (related to expenditures and response activities) and provision of access to records for three (3) years after the submission of the financial status report, closeout of the cooperative agreement, completion of an ongoing audit, or completion of an ongoing loan, whichever is the longest retention period.

Cleanup Requirements

Certain environmental cleanup responsibilities will apply to a borrower of RLF Funds. The following activities related to cleanup will be a required part of the activities conducted with an RLF Loan and satisfied by the borrower and/or the Program:

- Determination of site and borrower eligibility;
- Establish community involvement (site-specific CRP and related public notice requirements);
- Establish an administrative record (including site investigation reports, cleanup plan and standards used, response to public comments, and verification showing cleanup is complete);
- Conduct an *Analysis of Brownfields Cleanup Alternatives* ("ABCA") (including information about the site issues, applicable laws and cleanup standards, alternative cleanup methods considered, etc…);

- Meet all other applicable federal or state laws (including federal cross-cutting requirements);
- Perform the environmental cleanup in accordance with IDEM's Risk Integrated System of Closure; and,
- Complete and document the environmental cleanup (including Final Report documenting the actions taken, sampling showing cleanup levels were met, the resources committed, etc…).

APPLICATION PROCEDURE

Please follow the instructions provided on the "Application for Brownfield RLF Loan" available on the Program's Web site at www.brownfields.in.gov. All Applicants must complete and submit to the Program the following:

1. One fully-completed application; and, additional information on:

2. Applicant Status, if applicable (*see* page 3):
   - *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 E1527-05), 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 RLF Loan funding to conduct asbestos abatement activities[2]; and,

[2] If the Applicant intends to use RLF 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 RLF Loan administrative process to run its course, should a Loan be awarded.

- 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 RLF Loan-funded activities if the estimated cost of the RLF Loan-funded activities exceeds the requested RLF Loan amount; and,
   - Documentation demonstrating Applicant undertook competitive bidding for services to be reimbursed with RLF Funds; and,
   - *If Applicant is a political subdivision*:
     - Most recent audit from the State Board of Accounts; and,
     - An ordinance or resolution authorizing the Applicant to enter into an RLF Loan Agreement and designating the source of repayment; and,
     - Feasibility study if the repayment source includes revenues.
   - *If Applicant is a non-profit entity*:
     - Most recent independent audit; and,
     - Resolution of Board of Directors authorizing the Applicant to enter into an RLF Loan Agreement and designating the source of repayment.
   - *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 an RLF Loan Agreement and designating the source of repayment.

   Additional information related to financial solvency (e.g., annual income tax returns) or feasibility of pledged source of repayment (e.g., income statements) may be requested of an Applicant if necessary for the Program to approve an RLF Loan.

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

The application for an RLF Loan is available at http://www.brownfields.in.gov.

CONTACT INFORMATION

We welcome comments on the RLF Loan Guidelines at any time. Questions regarding these guidelines can be directed to the Program's Financial Resources Coordinator at (317) 234-1688. Questions regarding the RLF Incentive in general can be directed to the Program's U.S. EPA/Community Liaison & Outreach Coordinator at (317) 234-0235. These guidelines may be modified at any time by the Authority Board to address demand and other issues to promote the effective and efficient administration of the Indiana Brownfields Program.

EXHIBIT A

Applicant and Site Eligibility Questionnaire

RLF Funds may not be used to pay for response costs at a brownfield site for which an Applicant is potentially liable under CERCLA § 107 or IC 13-25-4[1] or at a site that fails certain eligibility criteria discussed in the RLF Loan Guidelines. 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. Please answer the following questions fully, as applicable, and in the order they appear. (Note: based on the responses, and as mentioned in the RLF Loan Guidelines, the Program may need to obtain additional information in order to make the determination of applicant and site eligibility required by U.S. EPA).

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.[2]

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 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 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;

        iii) The nature of the Applicant's ownership (fee simple or other), if applicable;

---

[1] IC 13-25-4, Indiana's Hazardous Substances Response Trust Fund law, is premised on CERCLA. From this point forward in this questionnaire, references to defenses to CERCLA liability should also be considered applicable to, and to be referencing, IC 13-25-4.

[2] 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)).

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 Disposal. Identify whether all disposal of hazardous substances 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 at the site. Affirm that the Applicant has not, at any time, arranged for the disposal of hazardous substances at the site or transported hazardous substances 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,[3] 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.[4] Describe *in detail* the specific appropriate care that the Applicant exercised (or if the property is yet to be acquired, that the Applicant will

[3] **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.**

[4] 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.

exercise upon acquiring the property) with respect to hazardous substances found at the facility by taking reasonable steps[5] to:

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

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.

4) Petroleum Eligibility

For a petroleum-contaminated site that otherwise meets the definition of a brownfield site to be eligible for funding, please answer the questions below in order for the State or U.S. EPA to be able to determine:

- the site is of "relatively low risk" compared with other "petroleum-only" sites in the state;
- there is no viable responsible party;
- the site will not be assessed, investigated, or cleaned up by a person that is potentially liable for cleaning up the site;
- the Applicant is not potentially liable for petroleum contamination to assess, investigate, or clean up the site;
- the site is not subject to RCRA Corrective Action for hazardous substances or petroleum contamination (under section 9003(h) of the Solid Waste Disposal Act (RCRA § 6991b(h)).

To assist in answering the questions below, additional information pertaining to the above-listed criteria can be found in "Exhibit C" of these Guidelines.

a) Is the site currently being cleaned up using Leaking Underground Storage Tank (LUST) trust fund or the State's Excess Liability Trust Fund (ELTF) money (or is the site ELTF-eligible)?

b) Is the site subject to a response action under the Oil Pollution Act (OPA)?

c) Was the site last acquired (regardless of whether the site is owned by the Applicant) through tax foreclosure, abandonment, or equivalent government proceedings?

d) Is the Applicant aware of any of the following?

[5] 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-released hazardous substances 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.

i) A judgment in a court of law or an administrative body that would require that party assess, investigate or remediate the site?; or
ii) A filed enforcement action brought by federal or state authorities, or is party to a citizen suit, that would, if successful, require that party to assess, investigate or clean up the site?; or
iii) A citizen suit, contribution action or other third party claim brought against the current or immediate past owner for the site that would, if successful, require the assessment, investigation, or remediation of the site?

e) Did the current and immediate past owner (and Applicant, if not an owner) dispense or dispose of, or own the subject property during the dispending or disposal of, any contamination at the site?

f) Did the current and immediate past owner (and Applicant, if not an owner) exacerbate the contamination at the site? If not, did the current and/or immediate past owner (and Applicant, if not an owner) take reasonable steps with regard to the contamination at the site?

g) If underground storage tanks (USTs) were operated on the site and are the suspected source on the petroleum contamination on the site, when was operation of the USTs discontinued?

h) If Applicant is aware of a responsible party for the site, is that party financially capable of satisfying obligations under federal or state law to conduct cleanup activities? Is the responsible party an ongoing business or company (e.g., corporation, LLC, partnership, etc.) or a governmental entity? Or, is the responsible party an individual or an insolvent, bankrupt or defunct company? Please provide any available information regarding the party potentially liable to cleanup petroleum contamination at the site (e.g., types and duration of site operations, etc.).

5) <u>Property-Specific Eligibility</u>

As outlined in the RLF Loan Guidelines, certain types of sites are categorically ineligible to receive RLF Funds. Others, however, may be eligible for a property-specific determination of eligibility for funding. The questions posed below will help the Program determine the eligibility for your site for use of RLF Funds.

<u>Ineligible Brownfield Sites</u>

Please answer the following questions "yes" or "no." If the answer to any question is "yes," the site is ineligible for an RLF Loan.

a) Is the site currently listed or proposed for listing on the National Priorities List?

b) Is the site subject to the jurisdiction, custody, or control of the U.S. government (except for land held in trust by the U.S. for an Indian tribe)?

c) Is the site subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees issued to or entered into by parties under CERCLA?

d) Is the site an open or pending State or federal administrative or judicial enforcement action?

e) Does the site present an imminent threat to human health or the environment?

Otherwise Ineligible Sites that May Obtain a Property-specific Determination

Please answer the following questions "yes" or "no." If the answer to any question is "yes," the site *may* be eligible for a property-specific determination of eligibility *if* the Applicant fulfills the requirements for demonstrating that the site meets the criteria for a property-specific determination for funding:

a) Is the site subject to planned or ongoing removal actions under CERCLA?
b) Is the site subject to unilateral administrative orders, court orders, administrative orders on consent, or judicial consent decrees, or to which a permit has been issued by the U.S. government or an authorized state under the Resource Conservation and Recovery Act ("RCRA"), the Federal Water Pollution Control Act ("FWPCA"), the Toxic Substances Control Act ("TSCA"), or the Solid Waste Disposal Act ("SWDA");
c) Is the site subject to corrective action orders under RCRA § 3004(u) or 3008(h) and to which a corrective action permit or order has been issued to modified to require the implementation of corrective measures?
d) Is the site a land disposal unit that has filed a closure notification under Subtitle C of RCRA and to which closure requirements have been specified in a closure plan or permit?
e) Is the site one where there has been a release of polychlorinated biphenyls and all or part of the site is subject to remediation under TSCA?
f) Is the site one for which funding for remediation has been obtained from the LUST trust fund or ELTF?

If the answer to any of the above-listed questions is "yes," the Program and U.S. EPA may still determine that the site qualifies for funding if the expenditure of brownfield funding at the site will: 1) protect human health and the environment, **and** 2) either promote economic development, *or* enable the creation, preservation, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for non-profit purposes.

If your site requires a property-specific determination, submit with your application an explanation, in as much detail as possible, why the availability of brownfields funding will protect human health and the environment and promote economic development or the creation or preservation of greenspace (or other listed objectives). Such documentation should include information such as the following:

As pertains to human health and the environment:
a) specific examples of health risks that will be mitigated;
b) specific environmental improvements that can be anticipated to result from cleanup;
c) specific examples of contamination that will be addressed and the environmental media that will be addressed;

d) description of how the proposed cleanup and redevelopment will ensure protection of human health and the environment and that protectiveness of the remedy consistent with the planned reuse of the site.

As pertains to economic development:

a) description of economic development activities that can reasonably be expected to occur as a result of RLF Loan funding (e.g., number of jobs created, estimated increase in the property and/or profits/sales tax base to community, additional business expansion or new business relocation that may occur within the community);
b) description of how the redevelopment of the site will contribute to community-wide redevelopment and revitalization plans with a specific emphasis on how funding for the brownfield redevelopment is integral to the success of the community-wide plan;
c) description of new businesses or business expansions that are planned for the site.

As pertains to creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes:

a) description of the proposed park, recreational property, greenspace, undeveloped space, or other type of property to be used for nonprofit purposes, including size, use, and surrounding environment that will be preserved or created as a result of RLF Loan funding;
b) description of how the property will be used and by whom;
c) description of how the property will be integrated with surrounding properties or environments;
d) description of how the property will be maintained or preserved for its continued use as a greenspace, recreational area, etc.

EXHIBIT B

Template Access Agreement

SITE ACCESS AGREEMENT
PERMISSION TO ENTER PROPERTY
INDIANA BROWNFIELDS PROGRAM
REVOLVING LOAN FUND

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 RLF 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:

_____	_____
	Date

EXHIBIT C

Petroleum Eligibility Determination Criteria

The information below is paraphrased, in part, from U.S. EPA's grant proposal guidance and is intended to assist an Applicant in answering the questions in "Exhibit A" relating to petroleum-contaminated sites (not commingled with hazardous substances contamination). If a site satisfies the criteria discussed below, it may be determined by U.S. EPA or the Program to be eligible for an RLF Loan.

"*Relatively Low Risk*"
U.S. EPA's view is that the following types of petroleum-contaminated sites are high risk sites, or are not of "relatively low risk:"

- "High risk" sites currently being cleaned up using Leaking Underground Storage Tank ("LUST") trust fund monies or the State's Excess Liability Trust Fund ("ELTF") (or are eligible for ELTF funding);
- Any petroleum-contaminated site that currently is subject to a response under the Oil Pollution Act (OPA).

The Program also searches State databases for the status of petroleum-contaminated sites with respect to other State remediation and/or enforcement programs. Any site that does not fall under the provisions listed by U.S. EPA above, or about which the Program has obtained no information suggesting the site is of a "high risk" nature, would be considered to be of relatively low risk for purposes of determining eligibility for an RLF Loan.

"*A Site for which there is No Viable Responsible Party*"
If U.S. EPA or the Program identifies a party that is responsible for the site, and that party is financially viable, then the site is not eligible for an RLF Loan. This analysis is twofold; U.S. EPA or the Program must first determine whether a responsible party exists and, if a responsible party is identified, then determine whether that party is viable. Applicants must provide information in their application to demonstrate that the property or portion of property contaminated with petroleum or petroleum product for which they seek an RLF Loan has no viable responsible party.

A petroleum-contaminated site may be determined to have no responsible party if the site was last acquired (regardless of whether the site is owned by the Applicant) through tax foreclosure, abandonment, or equivalent government proceedings, and the site meets the criteria in (1) below. Any petroleum-contaminated site not acquired by a method listed above may be determined to have no responsible party if the site meets the criteria in both (1) and (2) below.

(1) No responsible party has been identified for the site through:

(a) A judgment rendered in a court of law or an administrative order that would require any party (including the Applicant) to assess, investigate, or clean up the site; or,

(b) An enforcement action by federal or State authorities that would require any party (including the Applicant) to assess, investigate, or clean up the site; or,

(c) A citizen suit, contribution action, or other third party claim brought against the current or immediate past owner for the site that would, if successful, require the assessment, investigation, or cleanup of the site.

(2) The current and immediate past owner did not dispense or dispose of, or own the subject property during the dispensing or disposal of, any contamination at the site, did not exacerbate the contamination at the site, and took reasonable steps with regard to the contamination at the site.[1]

If no responsible party is identified above, then the petroleum-contaminated site may be eligible for an RLF Loan. If a responsible party is identified above, U.S. EPA or the Program must next determine whether that party is viable. If any such party is determined to be viable, then the petroleum-contaminated site is not eligible for an RLF Loan. If there is a responsible party for the site, the Applicant should explain in its application what steps it took to determine a responsible party's financial status, and why the information presented indicates that the responsible party is not viable. U.S. EPA and the Program will consider a party to be viable if the party is financially capable of satisfying obligations under federal or State law to conduct the activity (i.e., assessment, investigation, or cleanup) identified in the application. Generally, U.S. EPA and the Program will consider ongoing businesses or companies (corporations, LLCs, partnerships, etc.) and government entities to be viable. U.S. EPA and the Program will generally deem a defunct or insolvent company and an individual responsible party to be not viable. U.S. EPA will apply these assumptions to its petroleum funding viability determinations, unless there is information suggesting that the assumption is not appropriate in a particular case (e.g., if there is information that an individual has adequate financial resources to address contamination at a site, or if there is information indicating an ongoing business is not, in fact, viable). *An Applicant should indicate in its application if one of the above assumptions applies and provide support for the assertion.* In circumstances not covered by one of the above assumptions, the Applicant should explain why the responsible party is not viable.

"*Cleaned Up by a Person Not Potentially Liable*"
RLF Funds may be awarded for the cleanup of petroleum-contaminated sites provided:
1) The Applicant has not dispensed or disposed of or owned the property during the dispensing or disposal of petroleum or petroleum product at the site; and,
2) The Applicant did not exacerbate the contamination at the site and took reasonable steps with regard to the contamination at the site.

In order to demonstrate satisfaction of the required criteria for a petroleum eligibility determination, please provide written answers to the related questions in found in "Exhibit A" of these guidelines as a part of your application.

[1] For purposes of determining petroleum brownfield grant eligibility "reasonable steps with regard to contamination at the site" includes, as appropriate: stopping continuing releases, preventing threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to earlier petroleum or petroleum product releases. Reasonable steps are discussed in more detail on pages 9-12 of U.S. EPA's March 6, 2003, "*Common Elements*" guidance.