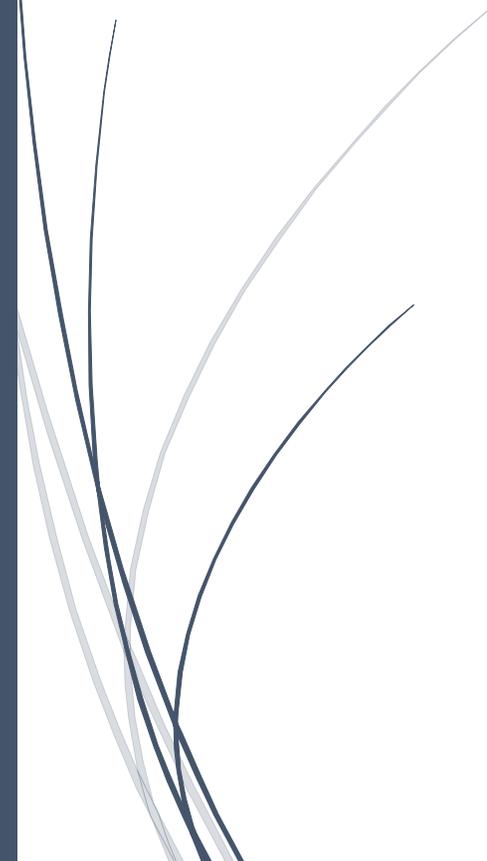




BROWNFIELDS REVOLVING LOAN FUND GUIDELINES

City of Albuquerque Brownfields Revolving Loan Fund
Metropolitan Redevelopment Agency

Diale Fomukong - Planning Development Coordinator |
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A decorative graphic consisting of several thin, curved lines in shades of blue and grey, originating from the bottom left and extending upwards and to the right.

Diale Fomukong
Planning Development Coordinator
METROPOLITAN REDEVELOPMENT AGENCY

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REVOLVING LOAN FUND GUIDELINES

City of Albuquerque Brownfields Revolving Loan Fund Program
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What is a brownfield?

Congress and the [Small Business Liability Relief and Brownfields Revitalization Act](#) of 2002 defined the term "brownfield" as "real properties, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, or real or perceived pollutant, or contaminant."

The presence of hazardous substance on a brownfield site should be determined by a professional investigation known as an Environmental Site Assessment (ESA), because the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 makes the purchaser of any real property liable for any contaminants on the property if they failed to perform adequate due diligence before making the purchase. While not required by law if a purchaser is willing to accept the legal and financial responsibility for a brownfield site, performing an ESA is a practical necessity before buying a property. To not properly investigate a property before purchasing it is to risk becoming liable for all aspects of the cleanup—even if the purchaser didn't make the mess in the first place.

The City of Albuquerque Brownfields Revolving Loan Fund Program (RLF) was established to provide gap financing to complete projects and to encourage the remediation and redevelopment of brownfields sites with low-interest financial assistance in the City of Albuquerque.

Lending Practices: The lending policies of the RLF must follow all Environmental Protection Agency (EPA) guidelines as outlined in the EPA RLF *Administrative Manual*. The EPA'S *Administrative Manual* outlines the policies, procedures, and guidelines to successfully manage the RLF. The City may alter these guidelines at any time, without prior notice to program participants, to maintain compliance with all federal, state and local regulations.

Loan Terms: The term of any loan awarded shall not exceed 10 years. Repayment of the loan will be by either semi-annual or monthly payments of principal and/or interest depending on the specific terms of the agreement between the City and the borrower. If the principal and/or interest payments are deferred for any period of time (maximum two years), the balance of the loan shall be amortized within the remaining term of the loan. The sale or leasing of the property during the term of the loan shall cause the outstanding principal to become due and payable in full immediately. These terms are determined by the City its sole discretion.

Loan-to-Value: The combined loan-to-value of all liens, including funding from the RLF, shall not exceed 100% of the projected value of the project after completion, as determined by a licensed appraiser.

Available Funding: The RLF, provides loans based on availability of funds. If funds are unavailable, applications and loans will be placed on hold until funds become available.

Interest Rate: Interest rates will be offered at a below market rate but no lower than 2%. Interest rates will be determined by the City upon application approval. The City will base the interest rate on a risk assessment of the borrower's ability to repay the loan, as well as the economic soundness of the project.

Collateral: The RLF requires a shared priority mortgage and/or first lien position on the collateralized asset, with the RLF loan repayment proceeds authorized via a multi-party agreement between the participating lender(s), the RLF, and the Borrower. Personal guarantees are required from owners with more than 20 percent ownership in the company or entity that borrows the funds.

The RLF Committee may consider, in appropriate circumstances, other types of credit enhancement, such as a shared priority mortgage. The RLF Committee will evaluate subordination in appropriate circumstances.

Possible Additional Financing Requirements:

- Corporate guarantees from related companies
- Full or partial letter of credit
- Life insurance on key business owners and/or managers

Prepayment: A prepayment penalty will not be imposed.

I. Program Requirements/Eligibility

Eligible RLF borrowers must meet ALL of the following criteria:

- Complete a Phase I Environmental Site Assessment (ESA), within 180 days, and Phase II prior to assuming ownership of property;
- Control (ownership or purchase option) of property located within Albuquerque city limits;
- Exempt from CERCLA liability;
- Authorized to incur debt and enter into legally binding agreements;
- Established project financing other than the RLF loan;
- Completed RLF proposal
- Completed RLF application package
- If publicly-owned: directly by a municipality or indirectly through a quasi-public entity such as a Community Development Corporation
- If privately-owned: demonstrate clear means of recouping RLF expenditures (e.g. through an agreement with the owner or developer or through a lien or other security interests) – this includes sites undergoing purchase by an entity who meets the definition of a prospective purchaser.

The following borrowers are ineligible:

- Generator or transporter of contamination at the brownfield site;
- Currently or previously in environmental non-compliance; or
- Previously suspended, debarred or declared ineligible for Federal Financial Assistance Programs.
- Sites that are perceived to be of environmental concern.

Eligible brownfield sites must meet at least ONE of the following criteria:

- Possess an actual release or substantial threat of a release of a hazardous substance (as listed under 40 CFR Part 302.4); or a perceived environmental concern.
- Possess a release or substantial threat of release of a pollutant or contaminant (as defined by CERCLA 101 (33)) that may present an imminent or substantial danger to public health or welfare under CERCLA 104(a) (1).

The following sites are ineligible:

- Listed or proposed listing on the EPA National Priority List;
- Removal action is necessary within the next six months;
- Federal or state agency is planning or conducting a response or enforcement action; or
- Contaminated by petroleum products except to address a non-petroleum hazardous substance (e.g. co-mingled waste).

Eligible project costs: The RLF loan proceeds shall be used for cleanup only and must be associated with removal activities as defined in CERCLA 101(23) and described in the NCP, 40 CFR Part 300.415. Eligible project costs include the following:

- Costs associated with removing, mitigating, or preventing the release or threat of release of a hazardous substance, pollutant or contaminant, including; fences, warning signs, or other security or site control precautions.
- Drainage control; stabilization of berms, dikes, or impoundments or drainage or closing lagoons; capping of contaminated soils; using chemicals and other materials to retard the spread of the release or mitigate its effects; excavation, consolidation or removal of highly contaminated soils from drainage or other areas; Removal of drums, barrels, tanks or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants; containment, treatment, disposal, or incineration of hazardous materials; and the provision of an alternative water supply where necessary to immediately reduce exposure to contaminated household water and continuing until such time as local authorities can satisfy the need for permanent remedy.
- Site monitoring costs, including sampling and analysis that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.
- Costs associated with meeting the public participation, worker health and safety, and interagency coordination requirements.
- Costs associated with removal activities, including demolition and/or site preparation that are part of the site cleanup.
- Costs associated with the use of a Certified Professional or appropriate environmental personnel to comply with the requirements set forth in the appropriate regulatory program including the State of New Mexico Voluntary Remediation Program Agreement (VRP).
- Environmental Insurance.

Eligible contaminants:

The following sites contain a list of contaminants for eligible activities:

- Possess an actual release or substantial threat of a release of a hazardous substance (as listed under 40 CFR Part 302.4) or
- Possess a release or substantial threat of release of a pollutant or contaminant (as defined by CERCLA 101(33)) that may present an imminent or substantial danger to public health or welfare under CERCLA,104(a) (1).

Ineligible project costs:

- Any costs incurred prior to Award Notice and Notice to Proceed issued by the RLF;
- Pre-cleanup environmental response activities costs, such as site assessments, identification and characterization;
- 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, or public/private drinking water supplies that have deteriorated through ordinary use, except as determined on a site-by-site basis and approved by EPA, consistent with CERCLA §§ 104(a)(3) and (4);
- Monitoring and data collection costs necessary to apply for or comply with environmental permits under other Federal and State laws, unless such a permit is required as a necessary or essential component of the cleanup action; and
- Development costs that are not remedial actions (e.g., construction of a new facility or marketing of property).

COMPLIANCE WITH DAVIS-BACON ACT

Borrower shall be in compliance with the terms of all governmental regulations pertaining to the Project, including regulations contained in 40 CFR Part 300, 42 USCA 9601 et. Seq. and the requirements of the Davis-Bacon Act.

APPLICATION FEE:

All applications for a loan from the RLF shall include a \$1,000.00 non-refundable fee for processing the loan documents. **This fee shall not be waived.**

THE NEW MEXICO VOLUNTARY REMEDIATION PROGRAM (VRP)

Enrollment into the New Mexico Voluntary Remediation Program (VRP) is optional but would be beneficial to the project. For further information, please contact Ms. Savannah Richards, Environmental Scientist/Project Manager at:

Voluntary Remediation Program
Ground Water Quality Bureau
New Mexico Environment Department
Harold Runnels Building
1190 St. Francis Drive
Santa Fe, NM 87502
(505) 827-3253 - Office
savannah.richards@state.nm.us
<https://www.env.nm.gov/>

THE CITY OF ALBUQUERQUE RLF PROCEDURE

Revolving Loan Fund Pre-Application Process	
Activity	Documents
Applicant submits proposal to the RLF staff for evaluation of proposed project feasibility and conformance with program objectives and guidelines	Phase I and Phase II of the Environmental Site Assessments (ESA) and related forms RLF Proposal and Attachments
RLF staff submits the proposal for EPA's approval	Completed Site Eligibility Form Certification

If the project is feasible and eligible, the potential applicant will be invited to submit a full application.

Revolving Loan Fund Application Process	
Activity	Documents
Applicant submits an application and Fee of \$1,000.00 to Metropolitan Redevelopment Agency	Loan application with requested supporting documents
RLF Committee evaluates the submitted application for conformance with program objectives and guidelines	Loan Application plus requested supporting documents
When application is declared complete, RLF staff will submit documents to the RLF Committee for review	Loan Application plus requested supporting documents
RLF staff arranges a meeting with Applicant and the RLF Committee.	RLF Committee Meeting Agenda.
Applicant is formally informed of RLF Committee recommendation to deny or approve the loan	

If the RLF Committee approves the application, the loan agreement process will begin. If application is denied, a letter will be mailed within five days of the Committee's decision outlining the reasons for denial.

Loan Agreement Process	
Activity	Documents
Applicant submits application	Application with required documents
The RLF Committee reviews the application and City staff submits to EPA for review	Draft Quality Assurance Project Plan (QAPP) Draft Community Relations Plan (CRP) – Suggested format is in Appendix 1 but not compulsory to be completed this way. Draft Alternative Brownfields Cleanup Analysis (ABCA)
RLF staff develops and submits project	Draft Quality Assurance Project Plan (QAPP)

cleanup plans for EPA approval; Approval of cleanup plan by EPA	Draft Community Relations Plan (CRP) Draft Alternative Brownfields Cleanup Analysis (ABCA)
RLF staff coordinates drafting the Loan Agreement with the City Legal Department.	Draft loan agreement
Applicant receives draft Loan Agreement, provides comments back to RLF Program	Draft loan agreement
RLF staff submits loan documents to City Council for further review and approval of the loan.	City staff submits loan application, Development agreement and Executive Communication documents to City Council for approval
Closing date is scheduled	Final loan agreement
RLF staff prepares Notice to Proceed for Applicant signature; Establish invoice drawdown schedule	Notice to Proceed agreement