

OFFICE OF ENVIRONMENTAL REMEDIATION  
NOTICE OF ADOPTION OF RULES RELATING TO A NEW YORK CITY  
BROWNFIELD INCENTIVE GRANT PROGRAM

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Director of Environmental Remediation by subdivision e of section 15 of the New York City Charter, that the Office of Environmental Remediation promulgates and adopts rules relating to a New York City Brownfield Incentive Grant Program.

The rules were proposed and published on March 16, 2010. A public hearing was held on April 16, 2010.

Section 1. Chapter 14 of Title 43 of the Rules of the City of New York is amended by adding a new Subchapter 2 to read as follows:

**SUBCHAPTER 2**

**New York City Brownfield Incentive Grant Program**

**§ 43-1415 Purpose and applicability**

- a. Purpose. The New York city brownfield incentive grant (BIG) program is intended to promote the cleanup and redevelopment of brownfield properties in the city of New York.
- b. Applicability. Brownfield incentive grants are available to provide financial assistance for qualified brownfield properties, preferred community development projects, e-designation/restrictive declaration hazardous materials sites, applicants pursuing a

brownfield opportunity area grant, and recipients of brownfield opportunity area grants for the performance of pre-development assessments and investigations, environmental investigations, property remediation, environmental insurance purchase, and technical assistance services and for the development of work plans and applications.

**§ 43-1416 Definitions**

- a. “Affordable housing development” means a development that will be built by a developer on a qualifying brownfield property where at least twenty percent of the housing units are affordable to families that earn no more than eighty percent of the average median income of an area, as determined by the United States department of housing and urban development, and that has been issued a letter of interest from a federal, state, or local housing subsidy program.
  
- b. “Brownfield opportunity area” means an area in the city of New York with a concentration of brownfields for which the New York state department of state has awarded a brownfield opportunity area grant to a recipient pursuant to general municipal law section 970-r.
  
- c. “Community based organization” means a community based organization as defined in section 970-r(1)(c) of the general municipal law.
  
- d. “Community facility development” means a development that will be built by a developer on a qualifying brownfield property where the development provides specific benefits to the local community, including, but not limited to, a community facility use pursuant to the zoning resolution.
  
- e. “E-designation hazardous material site” means a property that has been designated with an (E) on a zoning map, pursuant to section 11-15 of the zoning resolution, because of potential hazardous material contamination.
  
- f. “Grant administration contractor” means an entity under contract with the New York city economic development corporation for administration of the New York city brownfield incentive grant program. The grant administration contractor shall provide oversight of the grant process, including, but not limited to, review of grant applications including evaluation of eligibility for grants; review of statements of work; establishment and maintenance of a list of qualified vendors; communication with grantees and qualified vendors; and performance of quality control of work products.
  
- g. “Grant payment percentage limit” means the seventy-five percent maximum payment by the office for eligible costs for approved services and activities performed under a pre-development grant or an environmental investigation grant. The grant payment

percentage limit is intended to ensure that the grantee bears some of the costs for pre-development and environmental investigation services and activities.

h. “Grantee” means an owner or developer of a qualifying brownfield property, including all parties with an ownership interest in the property, or a recipient of, or an applicant for, a brownfield opportunity area grant in New York city who has been accepted into the New York city brownfield incentive grant program.

i. “Office” means the office of environmental remediation.

j. “Person” means an individual, trust, firm, joint stock company, limited liability company, corporation, joint venture, partnership, association, a local development corporation, or a community development corporation.

k. “Preferred community development project” means a development proposed for a qualifying brownfield property that is: (1) an affordable housing development; (2) consistent with the strategic brownfield goals established in a brownfield opportunity area plan pursuant to section 970-r of the general municipal law, as evidenced by a letter from the recipient of a brownfield opportunity area grant pursuant to section 43-1418(d)(4)(B)(ii); or (3) a community facility development.

l. “Qualified vendor” or “vendor” means:

(1) an environmental professional or consultant or firm thereof; (2) an architect, engineer, attorney, or other professional or firm thereof; (3) a community based organization preparing an application for a brownfield opportunity grant from the New York state department of state; or (4) a community development corporation, local development corporation, community development financial institution, or another similar entity, that is qualified by the grant administration contractor to perform, subcontract, and/or supervise work eligible for reimbursement under the New York city brownfield incentive grant program.

m. “Qualifying brownfield property” means: (1) for a pre-enrollment grant, a property that contains a recognized environmental condition; (2) for an enrollment grant and a track one bonus cleanup grant, a property admitted to the local brownfield cleanup program; (3) for an e-designation hazardous material remediation grant or a restrictive declaration hazardous material remediation grant, an e-designation hazardous material site or a restrictive declaration hazardous material site respectively; (4) for a technical assistance grant, a preferred community development project where the developer is a not-for-profit corporation, or a community based organization that seeks to apply for a brownfield opportunity grant from the New York state department of state; and (5) for a brownfield opportunity area strategic property bonus cleanup grant, a property that has been designated a strategic brownfield property within the New York state brownfield

opportunity area program.

n. "Restrictive declaration hazardous material site" means a property with an institutional control, arising from a city environmental quality review and recorded by the property owner, which requires a potential hazardous material condition to be addressed to the office's satisfaction before the property can be developed or an action involving soil disturbance can be undertaken.

o. "Recognized environmental condition" means the presence or likely presence of any hazardous substances on a property under conditions that indicate an existing release, a past release, or a material threat of a release of any hazardous substances into structures on the property or into the ground, ground water, or surface water of the property. The term includes hazardous substances even under conditions in compliance with laws. The term does not include de minimus conditions that generally do not present material risk of harm to public health or the environment.

p. "Strategic brownfield property" means a property within a brownfield opportunity area that has been determined by the recipient of the brownfield opportunity area grant to be a strategic site within the brownfield opportunity area program.

#### **§ 43-1417 Types of grants**

a. Pre-enrollment grants are awarded for services and activities performed at qualifying brownfield properties that are not yet enrolled in the local brownfield cleanup program.

1. Pre-development grants finance the services and activities that usually precede environmental field investigation and advance brownfield projects at an early stage of the project. Pre-development grants may be used for eligible services and/or activities, as provided in section 43-1419.

2. Environmental investigation grants finance the characterization of a property's subsurface contamination. Environmental investigation services and activities are typically performed after pre-development work and prior to environmental remediation on a brownfield property. Environmental investigation grants may be used for eligible services and/or activities, as provided in section 43-1419.

b. Enrollment grants are awarded for activities performed at qualifying brownfield properties that are enrolled in the local brownfield cleanup program.

1. Cleanup grants.

i. Cleanup grants pay for costs incurred in a property's remediation. They may be used for eligible services and/or activities, as provided in section 43-1419, that are included in, and performed according to the terms of, a remedial action work plan approved by the office.

ii. Brownfield opportunity area strategic property bonus cleanup grants are a type of

cleanup grant that is awarded to pay for eligible cleanup services and/or activities at strategic brownfield properties.

iii. Track one bonus cleanup grants are a type of cleanup grant that provides funding for track one cleanups, as set forth in section 43-1407(h)(1) of this chapter.

2. Environmental insurance grants pay for the purchase of environmental insurance, as provided in section 43-1419.

c. Other Grants

1. Technical assistance grants are awarded to a developer of a preferred community development project where such developer is a not-for-profit corporation, or to a community based organization that seeks to apply for a department of state brownfield opportunity area grant. The grant covers a range of technical services performed by a qualified vendor for project management and technical assistance, as provided in section 43-1419.

2. Brownfield opportunity area local match grants are awarded to a recipient of a New York state department of state brownfield opportunity area grant to facilitate brownfield activities and services performed under that program, by assisting recipients of brownfield opportunity area grants to meet the local match requirement for a state brownfield opportunity area grant pursuant to general municipal law section 970-r.

3. E-designation hazardous material remediation grants and restrictive declaration hazardous material remediation grants provide funding for hazardous material cleanup at e-designation hazardous material sites and restrictive declaration hazardous material sites that are not enrolled in the local brownfield cleanup program, that have an approved remedial action plan, and that have received a notice of satisfaction from the office for remediation of hazardous material.

**§ 43-1418 Eligibility**

a. General

1. Grants are awarded within each fiscal year to grantees. Awards shall be made until brownfield incentive grant funds for a fiscal year are exhausted.

2. Decisions on eligibility for all grants are made by the office and are final.

b. Property eligibility

1. A property shall be located within the city of New York.

2. A property shall meet the definition of a qualifying brownfield property for the type of grant(s) sought.

3. A property admitted to the brownfield cleanup program administered by the New York state department of environmental conservation is ineligible for a grant.

c. Applicant eligibility

1. An applicant is ineligible for a grant if the person is subject to any pending action or proceeding or order identified in section 43-1403(b) of this chapter relating to the property.
2. An applicant who has received a prior grant and did not submit information on the outcome of the brownfield project as required by section 43-1421(b)(5) is not eligible for any additional brownfield incentive grant.
3. An applicant who has received a prior pre-enrollment grant for a property that was subsequently developed and that was not enrolled in a New York city or New York state remedial program is not eligible for any additional brownfield incentive grant.
4. A grantee may receive grants for a maximum of two qualifying brownfield properties each fiscal year. For the purpose of this subdivision, all grants issued for a single property are considered one grant that is received in the year of the initial award payment. For example, a grantee that receives the first payment on an invoice submitted for a pre-development grant award for a property in one fiscal year and an environmental investigation grant for the same property the next fiscal year is considered to have received only one grant issued in the first fiscal year.
5. A grantee may not receive a pre-enrollment grant for more than one qualifying brownfield property each fiscal year. However, if a qualifying brownfield property for which a pre-enrollment grant was obtained is subsequently enrolled by the grantee into a New York city or New York state brownfield cleanup program in the same fiscal year, the grantee may receive a maximum of one additional pre-enrollment grant for a second qualifying brownfield property in the same fiscal year. Pursuant to paragraph 4 of this subdivision, the grantee shall not receive a pre-enrollment grant for more than the two qualifying brownfield properties in such fiscal year.

d. Eligibility requirements for specific grants.

1. Pre-enrollment grants.

A. Pre-development grants. For a qualifying brownfield property to be eligible for a pre-development grant, the applicant shall provide the office with evidence indicating that the property contains a recognized environmental condition that has not been remediated. Such evidence may include, but is not limited to, records of past use, records derived from fire insurance maps, information from direct observation and testing, or findings from studies performed by the office or by other means acceptable to the office.

B. Environmental investigation grants.

i. Submission of a satisfactory phase one investigation shall be required for a qualifying brownfield property to be eligible for an environmental investigation grant, except as provided in clause iii of this subparagraph. A phase one investigation is a search of records and government databases to determine whether prior land uses or processes were likely to have left behind contamination at a property. Phase one investigations shall be

reviewed by the office and/or the grant administration contractor. Upon request of the applicant, the grant administration contractor alone, and not the office, shall review phase one investigations.

ii. To be eligible for an environmental investigation grant, a phase one investigation shall indicate that the property contains a recognized environmental condition.

iii. In lieu of a phase one investigation, recognized environmental conditions may be identified in studies performed by the office, or by other means acceptable to the office.

C. E-designation hazardous material sites and restrictive declaration hazardous material sites are not eligible for pre-enrollment grants.

2. Enrollment grants. Enrollment in the local brownfield cleanup program is required for a property to be eligible for an enrollment grant.

A. Cleanup grants.

i. To be eligible for a cleanup grant, a qualifying brownfield property shall have an office-approved remedial action work plan under the local brownfield cleanup program.

ii. Cleanup services and/or activities that are eligible for awards under this grant are listed in schedule B.

iii. Cleanup services and/or activities that are eligible for awards under this grant shall be performed in accordance with the office-approved remedial action work plan.

B. Brownfield opportunity area strategic property bonus cleanup grant. To be eligible for a brownfield opportunity area strategic property bonus cleanup grant, a qualifying brownfield property shall be eligible for a cleanup grant and shall be designated a strategic brownfield property in the New York state brownfield opportunity area program.

C. Track one bonus cleanup grant. To be eligible for a track one bonus grant, a qualifying brownfield property shall be eligible for a cleanup grant and satisfy the requirements for a track one unrestricted remediation as set forth in section 43-1407(h)(1).

D. Environmental insurance grants. To be eligible for an environmental insurance grant, a qualifying brownfield property shall have an office-approved remedial action work plan under the local brownfield cleanup program.

E. E-designation hazardous material sites and restrictive declaration hazardous material sites are eligible for enrollment grants if the applicant enrolls in the local brownfield cleanup program.

3. Other Grants.

A. Technical Assistance Grants.

i. To be eligible for a technical assistance grant for a qualifying brownfield property that is a preferred community development project where a developer is a not-for-profit corporation, the applicant shall provide the office with evidence that such developer is a not-for-profit corporation and evidence in accordance with paragraph four of this subdivision.

ii. Community based organizations that seek to apply for a brownfield opportunity grant

are eligible for a technical assistance grant for the purpose of development of the brownfield opportunity area grant application.

B. Brownfield opportunity area local match grants. For the recipient of a brownfield opportunity area grant to be eligible for a brownfield opportunity area local match grant, the applicant shall be a community based organization, have entered into a brownfield opportunity area contract with and have a work plan approved by the New York state department of state, and have submitted an invoice to the grant administration contractor for activities pursuant to such work plan.

C. E-designation hazardous material remediation grants and restrictive declaration hazardous material remediation grants. To be eligible for an e-designation hazardous material remediation grant or a restrictive declaration hazardous material remediation grant respectively, a qualifying brownfield property shall have been remediated pursuant to an office-approved remedial action plan for an e-designation hazardous material site or a restrictive declaration hazardous material site and have received a notice of satisfaction from the office.

#### 4. Preferred community development projects.

A. For a qualifying brownfield property to be eligible for a grant as a preferred community development project based on a proposed development of an affordable housing development, the applicant shall provide the office:

- i. evidence that at least twenty percent of the housing units are affordable to families that earn no more than eighty percent of the average median income of the area;
- ii. a proposal for redevelopment of the property; and
- iii. a letter of interest from a federal, state or local housing subsidy program.

B. For a qualifying brownfield property to be eligible for a grant as a preferred community development project based on a proposed development that is consistent with the strategic brownfield goals established in a brownfield opportunity area plan, the applicant shall provide the office with a signed letter of support for the proposed development from the recipient of a brownfield opportunity area grant that has an executed brownfield opportunity area contract with the New York state department of state pursuant to section 970-r of the general municipal law. The letter shall state that the brownfield property is located within the identified brownfield opportunity area and that its proposed redevelopment is consistent with plans established for the brownfield opportunity area by such recipient of a brownfield opportunity area grant.

C. For a qualifying brownfield property to be eligible for a grant as a preferred community development project based on a proposed development that is a community facility development, the applicant shall provide the office:

- i. a proposal for redevelopment of the property; and

ii. evidence of the specific benefits the facility provides the community.

**§ 43-1419 Eligible Services and Activities**

a. Eligible services and/or activities within each grant type for which grant awards may be issued are listed in Schedule B.

1. For pre-development grants, eligible services and/or activities shall include, but shall not be limited to, title insurance, title search, project feasibility study (i.e. market analysis, concept plans, pro forma financial analysis, zoning analysis, and permitting), community outreach, and phase one investigations.

2. For environmental investigation grants, eligible services and/or activities shall include, but shall not be limited to, development of a phase two/site characterization workplan; development of a remedial investigation workplan; study of soil, groundwater, and soil vapor; laboratory analysis of soil, groundwater, and soil vapor samples; and development of phase two/site characterization reports.

3. For cleanup grants, track one bonus cleanup grants, brownfield opportunity area strategic property bonus cleanup grants, e-designation hazardous material remediation grants, and restrictive declaration hazardous material remediation grants, eligible services and/or activities shall include, but shall not be limited to, development of an approved remedial action work plan or remedial action plan; soil removal and disposal; backfill; engineering controls (i.e. cap emplacement); institutional controls; documentation preparation; and development of remedial action reports.

4. For environmental insurance grants, eligible services and/or activities shall include purchase of pollution legal liability insurance and cleanup cost cap insurance.

5. For technical assistance grants for preferred community development projects, eligible services shall include consulting services for activities including, but not limited to, assistance in the planning and execution of a brownfield project, including assessment of the viability of a brownfield project; development and/or review of documents required by the brownfield incentive grant program or the local brownfield cleanup program, including applications, agreements, statements of work, scopes of work, work plans, or reports; preparation of a budget; project planning; and review of brownfield project sequencing and scheduling. For technical assistance grants for community based organizations seeking to apply to the New York state department of state for a brownfield opportunity area grant, eligible services shall include consulting services for the development of such an application.

6. For brownfield opportunity area local match grants, eligible services and/or activities shall include those that are covered by a work plan approved by the New York state department of state associated with a contract executed with the New York state department of state.

b. Except as provided in subdivision c of this section, the office shall require a statement of work before eligible services and/or activities may be funded using grant funds.

1. The statement of work may be submitted with or after the grant application.
  2. The statement of work shall be submitted on a form and in a manner to be established by the office.
  3. The grant administration contractor shall review the statement of work to ensure that the proposed services and/or activities comply with schedule B.
  4. Eligibility for awards is contingent upon submission of an acceptable statement of work.
- c. The office shall require a remedial action work plan or remedial action plan, respectively, before eligible services and/or activities may be performed using the following grant funds:
1. For cleanup grants, track one bonus grants, and brownfield opportunity area strategic property bonus cleanup grants, the eligible services and/or activities shall be described in a remedial action work plan approved by the office as part of the local brownfield cleanup program.
  2. For e-designation hazardous material remediation grants and restrictive declaration hazardous remediation cleanup grants, the eligible services and/or activities shall be described in a remedial action plan approved by the office as part of the e-designation hazardous material and restrictive declaration hazardous material management programs respectively.
  3. Eligibility for awards is contingent upon approval of a remedial action work plan or remedial action plan.
- d. The grant administration contractor shall establish a list of qualified vendors for performance of eligible services and/or activities.

#### **§43-1420 Applications**

- a. Applications are required for all brownfield incentive grants.
- b. Consistent with the provisions of this subchapter, applicants may submit a single application to request grant funding for eligible services and/or activities for one qualifying brownfield property for different grants at different stages of remediation of the property, or for the same grant at different stages of remediation of the property.
- c. An applicant or a grantee may apply for another grant for the same qualifying brownfield property by submitting a modification to the original application with an additional statement of work.
- d. Applications shall be submitted to the office in such form and manner and containing such information as the office may require.
- e. All applications shall include:
  1. the identity of all applicants. Where a limited liability company owns a brownfield project, all parties with a twenty-five percent ownership interest in the limited liability company shall be individually identified in the application.
  2. the street address of the property;
  3. the location of the property, by borough, block and lot;

4. the zoning designation of the property;
  5. a description of the development plan for the property;
  6. the grant type(s) applied for; and
  7. any other information requested by the office.
- f. If activities to be reimbursed under a grant require that the grantee and its vendors and/or contractors have access to the qualifying brownfield property, the applicant shall provide certification of property ownership, a property access agreement, or certification that work will be done in accordance with an executed property access agreement.
- g. If the applicant or grantee identified in an application for a brownfield incentive grant changes, a new application or modification to the existing application identifying the new applicant or grantee shall be submitted to the grant administration contractor.

### **§ 43-1421 Agreements**

- a. Brownfield incentive grants require an executed agreement between the grantee and the grant administration contractor prior to the disbursement of funds.
- b. Brownfield incentive grant agreements shall include:
  1. A grantee shall indemnify both the city of New York and the grant administration contractor for all services and activities to be performed in relation to the grant, including, but not limited to, all services and activities that will be reimbursed with grant funds.
  2. A grantee must require its qualified vendors to indemnify both the city of New York and the grant administration contractor for all services and activities to be performed in relation to the grant, including, but not limited to, all services and activities that will be reimbursed with grant funds.
  3. All eligible services and/or activities must be performed by a qualified vendor, except in the following circumstances:
    - A. A grantee may directly hire a contractor, other than a qualified vendor, to perform remedial work under an approved remedial action work plan, provided that the grantee requires the contractor to maintain insurance that is adequate for the nature and scope of the services and activities performed, as determined by the office. That insurance must name the city of New York and the grant administration contractor as additional insureds.
    - B. In select cases or categories, the office may waive the requirement that eligible services and/or activities be performed by a qualified vendor. In deciding whether to waive this requirement, the office will consider at a minimum:
      - i. The degree of risk in the work performed, including the risk of injury to persons or damage to property or the risk of other claims, damages or losses;
      - ii. Whether the work performed is adequately covered by insurance; and
      - iii. Whether the office is assured that the work performed will be of sufficient quality.
  4. A grantee shall accept all terms of the grant including, but not limited to, administration of grants by the grant administration contractor.
  5. Project information required by the office. A grantee shall provide basic information

required for each grant in a manner and form developed by the office for this purpose. Information required by the office may include:

- A. a schedule for work;
- B. details of the planned development;
- C. an estimate of the number of jobs to be created by the planned development;
- D. estimated costs of the planned development;
- E. basic development information, including, but not limited to, the square footage of residential, commercial, industrial, and open space to be created; and
- F. the number of residential affordable housing units to be created.

6. A grantee shall agree to office requirements for future reporting on projects related to each grant. Such reporting shall be submitted on forms developed by the office for this purpose and may include details of the outcome of each project after grant activities are completed, including, but not limited to:

- A. whether the proposed development was constructed;
- B. whether a government remediation program was utilized for the cleanup; and
- C. an update of information contained in paragraph 4 of this subdivision.

#### **§ 43-1422 Grant Awards and Award Limits**

a. Brownfield incentive grants shall be paid to the grantee or the qualified vendor who performed the work upon receipt of invoices for eligible activities and/or services listed in schedule B, provided that brownfield opportunity area local match grants shall be paid to the grantee upon receipt of a copy of a work plan approved by the New York state department of state and a copy of a contract executed with the New York state department of state.

b. A grantee may be awarded brownfield incentive grants from one or more of the grant types for the same qualifying brownfield property. Total grant amounts awarded to the grantee, including costs for grant administration, may not exceed the award limits identified in subdivision c of this section.

c. Award limits.

1. Generally. Grants may be awarded for a qualifying brownfield property totaling up to the amount listed in schedule A, including the costs for administration pursuant to § 43-1423(a)(2).

2. Preferred community development projects. A grantee for a preferred community development project may be awarded: (1) a pre-enrollment grant of up to \$25,000 and (2) a technical assistance grant of up to \$5,000. A grantee for a preferred community development project that is enrolled in the local brownfield cleanup program may be awarded an enrollment grant of up to \$100,000, including the sum of the pre-enrollment grant and excluding the sum of the technical assistance grant. The cost of grant administration shall not be deducted from grants awarded to a grantee of a preferred community development project.

3. Brownfield opportunity area local match grant. A grantee of a brownfield opportunity

area local match grant may receive a grant of up to \$25,000 or ten percent of the brownfield opportunity area grant award from the New York state department of state, whichever is less. The cost of grant administration shall not be deducted from grants awarded to a grantee of a brownfield opportunity area local match grant.

4. Community based organization applicant for a brownfield opportunity area grant. A community based organization that seeks to apply for a brownfield opportunity grant may receive a technical assistance grant of up to \$10,000 for eligible consulting services. The cost of grant administration shall not be deducted from grants awarded to a grantee of a community based organization brownfield opportunity area grant.

5. Brownfield opportunity area strategic property bonus cleanup grant. A grantee of a brownfield opportunity area strategic property bonus cleanup grant may receive a grant of up to \$10,000 for cleanup services and activities. This grant award may be in addition to pre-enrollment and other enrollment grants received under this program.

6. Track one bonus cleanup grants. A grantee who achieves a track one cleanup may receive a grant award of \$25,000. This grant award shall be in addition to pre-enrollment and other enrollment grants received under this program.

7. E-designation hazardous material sites and restrictive declaration hazardous material sites. The award limits for e-designation hazardous material sites and restrictive declaration hazardous material sites shall be as follows:

A. A grantee of an e-designation hazardous material remediation grant or restrictive declaration hazardous material remediation grant may receive a grant of up to \$5,000 for cleanup services and activities. If the property subsequently enrolls in the local brownfield cleanup program and is awarded an enrollment grant, then the enrollment grant shall be reduced by the amount of the e-designation hazardous material remediation grant or restrictive declaration hazardous material remediation grant respectively.

B. A grantee for an e-designation hazardous material site or a restrictive declaration hazardous material site that has been admitted into the local brownfield cleanup program may be awarded an enrollment grant of up to \$60,000.

C. A grantee for an e-designation hazardous material site or a restrictive declaration hazardous material site that has been admitted into the local brownfield cleanup program and is a preferred community development project may be awarded an enrollment grant of up to \$100,000. The cost of grant administration shall not be deducted from grants awarded to a grantee of a preferred community development project.

### **§ 43-1423 Grant Disbursements and Administration**

a. Administration of grants.

1. The grant administration contractor shall review all invoices and all other documents provided by the applicant pursuant to this subchapter prior to awarding grant funds, in order to ensure that services and/or activities comply with this subchapter.

2. The grant administration contractor may reduce awards, other than awards for a preferred community development project, a brownfield opportunity area local match

grant, and a technical assistance grant for a community based organization that seeks to apply for a brownfield opportunity grant, by a reasonable amount to cover costs of administering the New York city brownfield incentive grant program.

b. Disbursement of grants.

1. Grants are payable to the grantee or the qualified vendor.
2. The office may earmark grant funds for reimbursement to the grantee at the time of approval of the statement of work for eligible activities and/or services.
3. Enrollment grants may be reimbursed in the year following the award year if funds are no longer available in the award year and are available in the subsequent year.
4. Pre-development and environmental investigation grants are awarded subject to the grant award limits pursuant to section 43-1422 and subject to the grant payment percentage limit applied to eligible costs for approved services and activities in schedule B. A preferred community development project where the developer is a not-for-profit corporation is not subject to the grant payment percentage limit.

**Schedule A**  
**Grant Awards and Award Limits**

		Property Type <sup>i</sup>						BOA Development Grants	
		Qualifying brownfield properties not enrolled in LBCP <sup>ii</sup>	Qualifying brownfield properties enrolled in LBCP <sup>ii,iii</sup>	Preferred community development projects not enrolled in LBCP <sup>iv</sup>	Preferred community development projects enrolled in LBCP <sup>iv,v</sup>	E-designation/ restrictive declaration hazardous material sites not enrolled in LBCP <sup>ii</sup>	BOA strategic property enrolled in LBCP	Community based organization BOA grant applicant	BOA grant recipient with an executed state assistance contract <sup>vi</sup>
Standard Grants	Predevelopment grant	Up to \$5,000	Up to \$5,000	Up to \$10,000	Up to \$10,000	N/A	Up to \$10,000	N/A	N/A
	Environmental investigation grant	Up to \$10,000 <sup>vii</sup>	Up to \$10,000 <sup>vii</sup>	Up to \$25,000 <sup>vii</sup>	Up to \$25,000 <sup>vii</sup>	N/A	Up to \$25,000 <sup>vii</sup>	N/A	N/A
	Cleanup grant	N/A	Up to \$60,000 <sup>viii</sup>	N/A	Up to \$100,000 <sup>viii</sup>	N/A	Up to \$100,000 <sup>viii</sup>	N/A	N/A
	E-designation hazardous material remediation grant or restrictive declaration hazardous materials remediation grant	N/A	N/A	N/A	N/A	Up to \$5,000 <sup>ix</sup>	N/A	N/A	N/A
	Environmental insurance grant	N/A	Up to \$60,000 <sup>x</sup>	N/A	Up to \$100,000 <sup>x</sup>	N/A	Up to \$100,000 <sup>x</sup>	N/A	N/A
	Standard grant award cap <sup>xi</sup>	\$10,000	\$60,000	\$25,000	\$100,000	\$5,000	\$100,000	N/A	N/A
	Special Grants	Track-one bonus cleanup grant	N/A	\$25,000	N/A	\$25,000	N/A	\$25,000	N/A
BOA strategic property bonus cleanup grant		N/A	N/A	N/A	N/A	N/A	\$10,000	N/A	N/A
Technical assistance grant		N/A	N/A	Up to \$5,000 <sup>iv,xii</sup>	Up to \$5,000 <sup>iv,xii</sup>	N/A	Up to \$5,000	Up to \$10,000 <sup>iv,xiii</sup>	N/A
BOA local match grant		N/A	N/A	N/A	N/A	N/A	N/A	N/A	The lesser of \$25,000 or 10% of the BOA grant award <sup>iv</sup>
	Maximum grant award	\$10,000	\$85,000	\$30,000	\$130,000	\$5,000	\$140,000	\$10,000	\$25,000

LBCP: The local brownfield cleanup program administered by the office of environmental remediation.

BOA: The brownfield opportunity area. This is a program for area-wide brownfield and community planning managed by the New York state department of state.

N/A: not applicable.

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- <sup>i</sup> Properties for which a grant is pursued can fall into only one type. The property type may change as conditions change.
- <sup>ii</sup> The grant administration contractor may reduce the grant amount to cover the cost of administration.
- <sup>iii</sup> Includes e-designation hazardous material sites and restrictive declaration hazardous material sites that are enrolled in the LBCP.
- <sup>iv</sup> Grants shall not be reduced to cover the cost of grant administration.
- <sup>v</sup> Includes e-designation hazardous material sites and restrictive declaration hazardous materials sites that are also preferred community development projects and enrolled in the LBCP.
- <sup>vi</sup> A BOA grant recipient with an executed state assistance contract by definition also has an approved work program.
- <sup>vii</sup> Limit includes all proceeds from pre-development grant.
- <sup>viii</sup> Limit includes all proceeds from pre-development grant, environmental investigation grant and environmental insurance grant.
- <sup>ix</sup> For e-designation hazardous material sites and restrictive declaration hazardous material sites that are remediated pursuant to an office-approved remedial work plan.
- <sup>x</sup> Limit includes all proceeds from pre-development grant, environmental investigation grant and cleanup grant.
- <sup>xi</sup> Cap includes proceeds from all standard grant types.
- <sup>xii</sup> Technical assistance grants for preferred community development projects are limited to not-for-profit developers.
- <sup>xiii</sup> Technical assistance with development of BOA program application.

**Schedule B**  
**Eligible Services and Activities / Reimbursable Allowance**<sup>1, 2</sup>

Activity	Unit	Reimbursable Allowance for Non-Preferred Community Development Project <sup>3</sup>	Reimbursable Allowance for Preferred Community Development Project <sup>4</sup>
<b>Pre-development</b>			
<i>Title Insurance/ Title Search</i>			
full coverage	each	\$765	\$1,020
limited coverage	each	\$382.50	\$510
non-insured reports	each	\$255	\$340
<i>Project Feasibility Study</i>			
market analysis	each	\$765	\$1,020
concept plans	each	\$765	\$1,020
pro-forma financial analysis	each	\$765	\$1,020
zoning analysis	each	\$765	\$1,020
<i>Other Services</i>			
community outreach	each	\$956.25	\$1,275
site survey	day	\$956.25	\$1,275
Phase 1 ESA	each	\$1,593.75	\$2,125
<b>Environmental Investigation</b>			
<i>Workplans</i>			
Phase II/site characterization workplan	each	\$1,275	\$1,700
remedial investigation workplan	each	\$1,593.75	\$2,125
<i>Phase II (soil)</i>			
geophysical survey report (GPR contractor)	1/2 day	\$765	\$1,020
geophysical survey report (GPR contractor)	day	\$1,116	\$1,488
geophysical anomalies investigation (excavator/operator)	day	\$606	\$808
soil boring Installation	1/2 day	\$637.50	\$850
soil boring Installation	day	\$956.25	\$1,275
soil sample collection/field screening	day	\$510	\$680
<i>Phase II (groundwater)</i>			
monitoring well installation (unconsolidated)	Well	\$1,593.75	\$2,125

<sup>1</sup> All listed prices are inclusive of all subcontractor, professional oversight, materials and equipment costs.

<sup>2</sup> The Grant Allowance amounts presented in Schedule B represent the maximum amounts up to which specified activities may be funded. An eligible service and activity will not necessarily be funded up to that maximum amount.

<sup>3</sup> Pursuant to section 43-1423(b)(4), predevelopment and environmental investigation grants, other than for preferred community development projects where the developer is a not-for-profit corporation, are reimbursed subject to the grant payment percentage limit of 75% for eligible costs for approved services and activities.

<sup>4</sup> This column applies to preferred community development projects where the developer is a not-for-profit corporation. Pursuant to section 43-1423(b)(4), such projects are not subject to the grant payment percentage limit.

Activity	Unit	Reimbursable Allowance for Non-Preferred Community Development Project <sup>3</sup>	Reimbursable Allowance for Preferred Community Development Project <sup>4</sup>
monitoring well installation (bedrock)	Well	\$2,550	\$3,400
disposal of drill cuttings and transportation	drum	\$79.50	\$106
monitoring well survey	day	\$956.25	\$1,275
temporary well-point installation	each	\$382.50	\$510
groundwater sample collection	day	\$510	\$680
disposal of purge water and transportation	drum	\$51	\$68
aquifer test	each	\$382.50	\$510
<i>Phase II (vapor)</i>			
vapor probe installation	day	\$956.25	\$1,275
vapor sample collection	day	\$510	\$680
ambient air sample and collection	day	\$510	\$680
<i>Reports</i>			
Phase II/site characterization report	each	\$1,275	\$1,700
remedial investigation report	each	\$1,593.75	\$2,125
grant project reporting	each	\$318.75	\$425
<i>Lab Analysis</i>			
Metals (soil/water)			
Priority Pollutant metals (13 metals)	sample	\$62.25	\$83
total RCRA metals (8 metals)	sample	\$39.75	\$53
Target Analyte List metals (23 metals)	sample	\$96.75	\$129
Organics (soil/water)			
base neutrals	sample	\$86.25	\$115
base neutrals + 10 or 15	sample	\$96	\$128
base neutrals/acid extractables (semivolatile organics)	sample	\$153	\$204
BTEX	sample	\$30.75	\$41
BTEX + MTBE + TBA	sample	\$30.75	\$41
herbicides	sample	\$57.75	\$77
PAHs	sample	\$86.25	\$115
PCBs	sample	\$38.25	\$51
PCBs in oil	sample	\$30.75	\$41
pesticides	sample	\$38.25	\$51
volatiles	sample	\$51	\$68
volatiles + 10 or 15	sample	\$57.75	\$77
volatiles (drinking water)	sample	\$78.75	\$105
volatiles (drinking water) + 10 or 15	sample	\$86.25	\$115
target compound list (VO+10, BNAE+20, Pest/PCB)	sample	\$306	\$408
Organics (air)			
TO-15	sample	\$204	\$272
Group Tests			
ID-27 (TCLP metals, TPH, PCBs, reactive CN & S, Ignitability, pH)	sample	\$156	\$208
Priority Pollutants + 40 (VO+15, BNAE+25, pest/PCB, 13 metals, CN, phenol)	sample	\$401.25	\$535
RCRA characteristics (reactive CN & S, ignitability, corrosivity)	sample	\$38.25	\$51

Activity	Unit	Reimbursable Allowance for Non-Preferred Community Development Project <sup>3</sup>	Reimbursable Allowance for Preferred Community Development Project <sup>4</sup>
TCLP-full (8 metals, VO, BNAE, pesticides, herbicides)	sample	\$381.75	\$509

Activity	Unit	Reimbursable Allowance
<b>Environmental Remediation</b>		
<i>Workplans</i>		
remedial action workplan	each	\$2,500
remedial action report	each	\$2,500
remedial action monitoring plan	each	\$1,275
community and environmental protection plan	each	\$510
community air monitoring plan	each	\$340
site management plan	each	\$765
<i>Soil Removal</i>		
disposal - soil, hazardous (does not include transportation)	ton	\$102
disposal - soil, non-hazardous (does not include transportation)	ton	\$43
waste characterization: ID-27 (TCLP metals, TPH, PCBs, reactive CN & S, ignitability, PH)	sample	\$208
mobilization/demobilization - one time allowable per site per machine	each	\$425
loader/backhoe w/ operator	day	\$808
small-trackhoe w/ operator (J Deere 200LC or equivalent)	day	\$1,190
large trackhoe w/ operator (Cat 325 or equivalent)	day	\$1,445
skid steer loader w/ operator	day	\$595
dump truck w/ operator (approx. 12 yd. 3)	day	\$340
dump truck, tandem - triaxle w/ operator (25 yd. 3)	day	\$765
rolloff container (20 yd. 3)	each	\$510
vacuum truck w/ operator	hr	\$77
post-excavation soil sample collection	day	\$680
<i>Backfill</i>		
recycled concrete aggregate	ton	\$13
certified clean fill material	ton	\$17
top soil	cy	\$21
<i>Engineering Controls (cap emplacement)</i>		
clean fill/gravel	ton	\$17
top soil	cy	\$21
asphalt (2 in. compacted asphalt on 2 in. gravel base)	sf	\$3.80
cement paving (4 in.)	sf	\$4.25
<i>Institutional Controls</i>		
deed restriction preparation	each	\$2,125
<i>Reports</i>		
remedial action progress report	each	\$850
remedial action report	each	\$2,500
closure report	each	\$2,500
grant project reporting	each	\$425

Activity	Unit	Reimbursable Allowance
<i>Lab Analysis</i>		
Metals (soil/water)		
Priority Pollutant metals (13 metals)	sample	\$83
total RCRA metals (8 metals)	sample	\$53
Target Analyte List metals (23 metals)	sample	\$129
Organics (soil/water)		
base neutrals	sample	\$115
base neutrals + 10 or 15	sample	\$128
base neutrals/acid extractables (semivolatile organics)	sample	\$204
BTEX	sample	\$41
BTEX + MTBE + TBA	sample	\$41
herbicides	sample	\$77
PAHs	sample	\$115
PCBs	sample	\$51
PCBs in oil	sample	\$41
pesticides	sample	\$51
volatiles	sample	\$68
Volatiles + 10 or 15	sample	\$77
volatiles (drinking water)	sample	\$105
volatiles (drinking water) + 10 or 15	sample	\$115
target compound list (VO+10, BNAE+20, Pest/PCB)	sample	\$408
Organics (air)		
TO-15	sample	\$272
<i>Group Tests</i>		
ID-27 (TCLP metals, TPH, PCBs, reactive CN & S, ignitability, pH)	sample	\$208
Priority Pollutants+ 40 (VO+15, BNAE+25, pest/PCB, 13 metals, CN, phenol)	sample	\$535
RCRA characteristics (reactive CN & S, ignitability, corrosivity)	sample	\$51
TCLP-full (8 metals, VO, BNAE, pesticides, herbicides)	sample	\$509
<b>Technical Assistance Grants</b>		
<i>Professional Services</i>		
attorney	hr	\$213
architect	hr	\$128
planner	hr	\$128
professional engineers	hr	\$128
environmental consultants	hr	\$81
community based organizations	hr	\$81
<b>Brownfield Opportunity Area Local Match Grants</b>		
<p>For Brownfield Opportunity Area (BOA) Local Match Grants, eligible services and/or activities must be reasonable, relevant, and directly related to the BOA scope of work. In order for these eligible costs to be reimbursed, they must be related to a work plan approved by the New York State Department of State pursuant to an executed State Assistance Contract and be appropriately documented in accord with the BOA Record Keeping and Payment Guide. See the guidance for the BOA Program issued by the New York State Department of State for questions or clarification regarding eligible and ineligible costs. <b>The total amount of reimbursable expenses may not surpass the grant limit of the lesser of \$25,000 or 10% of the Brownfield Opportunity Area Grant award.</b></p>		

***Environmental Insurance Grants***

For environmental insurance grants, eligible services and/or activities shall include purchase of Pollution Legal Liability Insurance and Cleanup Cost Cap Insurance. **The total amount of reimbursable expenses may not surpass the grant limit established in Schedule A.**

## **STATEMENT OF BASIS AND PURPOSE**

Local Law No. 27 of 2009 amended the New York City Charter to create the Office of Environmental Remediation (OER) and authorized its director, *inter alia*, to develop and administer a financial incentive program to encourage public or private entities to identify, investigate, remediate, and redevelop brownfields in support of the City's economic development.

Through the New York City brownfield incentive grant (BIG) program, OER will award grants to support and advance brownfield projects across the City. Eligible grantees include private and non-profit owners and developers of qualifying brownfields properties and recipients of New York State brownfield opportunity area grants in the City. Grant recipients can use grant funds to pay for eligible services and activities performed by a qualified vendor of their choosing, or in the case of a recipient of a brownfield opportunity area grant, for its local match for the State grant. Generally, grantees can receive grants for up to two brownfield projects per City fiscal year, but to qualify for a second grant at least one of these projects must be enrolled in the New York City local brownfield cleanup program.

The brownfield incentive grant program will make grant funds available to brownfield projects from the earliest stages of project development through project remediation. OER will create nine types of grants divided into three general grant categories, including pre-enrollment grants, enrollment grants, and other grants. Enrollment grants, which are only available to brownfield properties enrolled in the City's local brownfield cleanup program, are larger than pre-enrollment grants.

Pre-enrollment grants consist of predevelopment grants and environmental investigation grants. Depending upon the type of project, these pre-enrollment grants for eligible services and activities are available for up to \$10,000 to up to \$25,000.

Enrollment grants consist of environmental insurance grants, cleanup grants and two types of bonus cleanup grants for complete cleanups (called “Track 1” or unrestricted use cleanups) and for strategic brownfield properties in brownfield opportunity areas. Cleanup grants and environmental insurance grants range from up to \$60,000 to up to \$100,000; track one bonus cleanup grants are \$25,000, and BOA strategic property bonus cleanup grants are \$10,000.

In addition, OER will award three other grants. A grant for technical assistance will provide project management and planning assistance for brownfield projects to non-profit developers of preferred community development projects and to community based organizations that seek to apply for State brownfield opportunity area grants. Technical assistance grants range from up to \$5,000 to up to \$10,000. Another grant will assist recipients of State brownfield opportunity area grants in meeting the State program’s local match requirements. The brownfield opportunity area local match grants will be up to \$25,000. Finally, OER will award cleanup grants to properties with either a hazardous material E-designation or a hazardous material restrictive declaration which, upon cleanup, receive a notice of satisfaction from OER. E-designation and restrictive declaration hazardous material remediation grants are \$5,000.

The rule sets forth eligibility requirements for properties, applicants and types of grants. An eligible property must be located within the City of New York, may not be

admitted to a State remedial program, and must meet specific eligibility requirements for each type of grant. An applicant is ineligible for a grant if he or she is subject to any pending action, proceeding, or order relating to the property where the City, State, or federal government seeks penalties or the investigation, removal, or remediation of contamination.

The rule also details the eligible services and activities for each type of grant and requires grantees to apply for grants and execute agreements with the Grant Administration Contractor and provide documents that grant-eligible services and activities were performed satisfactorily.