



**MEMORANDUM**

**To:** Members of the Authority

**From:** Tim Sullivan  
Chief Executive Officer

**Date:** October 13, 2021

**Subject:** Brownfields Impact Fund (U.S. EPA Brownfields Revolving Loan Fund Grant)

**Summary**

The Members are requested to approve:

1. The creation of the Brownfields Impact Fund – a \$960,000 pilot program that will provide loans to private developers and loans and/or subgrants to public sector and non-profit entities to carry out cleanup activities at brownfield sites, assisting with the return of these vacant and underutilized properties to public benefit.
2. Utilization of \$160,000 of the Authority’s General Operating Budget and/or in-kind contributions to meet the cost share requirement of the U.S. EPA award to support the program.
3. Delegation to Authority staff (Programmatic Director or above, Underwriting Director or above, Vice President or above) to approve individual applications to the Brownfields Impact Fund in accordance with the terms set forth in this memo and the attached program specifications, and because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline applications that do not meet eligibility requirements.
4. In connection with appeals from declinations based solely on non-discretionary reasons, delegated authority to the Chief Executive Officer or any Senior/Executive Vice President to designate a one or more Hearing Officers to prepare a Final Administrative Decisions. The Final Administrative Decision must be approved by a Senior Vice President, Executive Vice President, Vice President, Managing Director, Director, or Senior Legislative Officer, upon recommendation of the Hearing Officer.

5. Delegation to Authority staff (Chief Executive Officer or any Senior Vice President) to accept additional funding up to \$5 million over a fifteen year period for this program from the U.S. EPA, and to impose additional requirements that may be required by law as a condition of accepting additional funding, provided that the requirements are consistent with the parameters of the program.
6. Delegation to Authority staff (Chief Executive Officer, any Senior Vice President, any Chief Officer, or any Director) to waive the application fee for subgrant applicants upon demonstration by the applicant that the imposition of the fee would impose undue financial hardship.

### **Background**

Through this comprehensive economic plan for building a stronger, fairer economy in New Jersey, Governor Murphy has identified the remediation and redevelopment of brownfield sites as an important component of smart planning that will allow New Jersey to meet its goals for economic growth. On November 14, 2019, the Members of the Authority approved the NJEDA's application to the U.S. EPA Brownfields Revolving Loan Fund grant opportunity. On May 6, 2020, the U.S. EPA selected the NJEDA to receive a Brownfields Revolving Loan Fund grant of \$800,000 with which the Brownfields and Sustainable Systems team will create a pilot program known as the Brownfields Impact Fund.

Brownfields are former commercial or industrial sites that are vacant or underutilized and are suspected or known to be contaminated. The properties have a negative impact on New Jersey's economy because they lower property values, decrease employment opportunities, and lead to a loss of tax revenue. They can also attract illegal activities due to their unsightly, blighted nature and can create an overall negative perception of the community. Brownfields are diverse in their shapes, sizes, contamination levels, and locations. A brownfield can be a large, former industrial property or a small, local site like an abandoned gas station in a downtown area. The remediation of brownfield properties can transform communities, providing benefits to the local and regional economies including fostering the development of medium, small, and microbusinesses. Brownfield remediation projects can also have an overall positive effect on the community such as increased safety, community pride, and health and wellness.

The brownfield path to redevelopment begins with the assessment phase looking at the history and current status of the site to determine if potential environmental issues exist. If environmental issues are identified, the process moves to into the investigation phase. The investigation determines if contamination is present on the site via sampling and laboratory testing. If there is contamination, the test results can inform a redevelopment plan. The next phase, the remediation phase, includes addressing the contamination making the site safe for reuse. This environmental cleanup is often the most challenging step in converting contaminated properties into healthy and productive use such as commercial and industrial development, housing, and other catalysts for economic activity. This is the step for which the Brownfield Impact Fund is designed.

The Brownfields Impact Fund is an important product that will facilitate the redevelopment of brownfields by addressing funding gaps to make the remediation phase of the project financially

viable, after which construction financing can be more readily obtained by the developer. The goal is to fund projects that will perform cleanup activities that will help promote the redevelopment of brownfield sites for productive reuse. This program can increase the economic impact of the State's investment, reactivating long-stalled sites and encouraging job creation through remediation, redevelopment, and productive reuse of the property. An additional outcome of the program is to minimize the negative environmental impacts of developing current green spaces for commercial and industrial use. The Brownfield Impact Fund will accomplish this by focusing on the reuse of distressed, abandoned brownfields properties, which are often located in sought after areas within the community. Revitalization of brownfield properties allows for economic development in key locations which often have existing access to a potential workforce, infrastructure, and redevelopment opportunities in our communities.

### **Program Design**

Under the Brownfields Impact Fund, the NJEDA will make low-interest loans available to for-profit organizations and will make low-interest loans and grant funding available to non-profit organizations and units of local governments. Private developers will not be eligible to apply for grant funding. Funds will be awarded on a first come, first serve basis upon receipt of a completed application.

These loans/subgrants will assist with the cleanup and other pre-construction activities of brownfield sites throughout the state, particularly those within the federally designated Opportunity Zones in the States' Community Collaborative Initiative (CCI) cities. Eligible uses of the loan and/or subgrant funding includes remediation activities necessary to clean up the release or mitigate the threatened release of hazardous materials and other activities approved by the U.S. EPA and outlined in the program specifications.

CCI is a place-based partnership, between the New Jersey Department of Environmental Protection (NJDEP) and the NJEDA, that tackles quality of life issues in New Jersey's most distressed cities. CCI aligns its interests with those that support environmental and community revitalization, equitable economic development, and enhanced public health outcomes. The CCI cities are complex communities that are home to New Jersey's most underserved populations. These cities have been disproportionately burdened with the remnants of New Jersey's industrial legacy.

For the first three months (90 days) of the program from the date the Authority begins accepting applications, eligibility will be limited to the CCI cities. After the 90-day period, the Authority will begin accepting applications from projects located in areas outside of the defined CCI cities, subject to the availability of funding.

Under the Brownfield Impact Fund, the minimum loan amount will be \$50,000, with a maximum loan amount of up to \$350,000. The minimum subgrants amount will be \$25,000, with a maximum subgrant amount of up to \$350,000. The total amount of all grant funding will not exceed \$360,000 (45% of the total U.S. EPA award amount of \$800,000) pursuant to U.S. EPA program requirements. U.S. EPA has the right to recover funding from the NJEDA in the case of noncompliance with the U.S. EPA agreement or with federal law.

As part of eligibility for the Brownfields Impact Fund, entities applying for a loan must be able to demonstrate site control or a path to site control of a brownfield property at time of application. For non-profit organizations and units of local government applying for grant funding, the entity must own the brownfield property at the time of the application and retain ownership of the term of the grant.

Furthermore, all applicants for either the loan or subgrant must be accompanied by a letter of support from the mayor or, if the position of mayor does not exist, from the governing body of the municipality in which the brownfield site is located. The letter of support must indicate that the project aligns with the master land use plan, or the local redevelopment plan, or that no local redevelopment plan exists. In any event, all applicants must have a redevelopment plan for the contaminated property.

Applicants must be in good standing with the NJ Department of Labor and Workforce Development and the NJ Department of Environmental Protection (as determined by each Department). If a compliance issue exists, the eligible entity may have an agreement with the respective Department that includes a practical corrective action plan, as applicable. Furthermore, the eligible entity will be required to provide, prior to execution of a grant agreement, a valid tax clearance certificate from the NJ Division of Taxation within the NJ Department of Treasury.

Loans or subgrants cannot be provided to entities who caused or contributed to the contamination of the property. Specifically, this program excludes: individuals or entities responsible for, or individuals or entities who have common ownership or control with entities responsible for, any existing environmental contamination at the site. Entity must not be considered liable or potentially liable for the environmental contamination under the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 107.

### **Interest Rate and Terms**

The goal of the U.S. EPA is the remediation of brownfield sites, and these remediation activities are often complex and are frequently stalled due to funding gaps. As the loans are primarily funded by the U.S. EPA, there is a higher threshold for risk. The U.S. EPA does not provide strict underwriting criteria, but rather expects the NJEDA shall undertake reasonable efforts to enforce the terms of the loan agreement. As such, NJEDA will follow the guidelines of the Cooperative Agreement with the U.S. EPA, pertaining to prudent lending and sub-granting practices. Further underwriting requirements are detailed in an attachment to the program specifications (NJEDA Confidential).

In recognition of the higher threshold for risk, the NJEDA has structured these loans with an up to 20-year term and 2% interest rate (with an option for interest rate reductions to a floor of 1%). Principal and interest will be deferred until the end of Year 4. During this period, interest will accrue and capitalize.

The Davis-Bacon Act and New Jersey Prevailing Wage requirements, and associated U.S. Department of Labor (DOL) regulations, apply to all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this program.

### **Fund Utilization**

Staff is recommending the utilization of \$160,000 of the Authority's General Fund and/or in-kind contributions to meet the required cost share of the \$800,000 in U.S. EPA award to fully fund this program at \$960,000. The Authority's maximum cash contribution is \$160,000. This contribution may be reduced by in-kind labor contributions and cost-share match by the applicants, as described below.

Of this \$960,000, \$800,000 will be available to capitalize the Revolving Loan Fund in the form of loans and/or subgrants. U.S. EPA approved \$160,000 to be utilized by the Authority to support programmatic expenses, including staff time, contractors, marketing, outreach, training, travel, and other costs associated with operating the program. Some of these costs, such as staff time, may be provided as in-kind services. Additionally, there may be instances that the loan and/or subgrant provided through this program does not cover the entirety of the remediation cost.

*Example: If an applicant's total remediation project costs are \$400,000, and the NJEDA provides \$350,000 through this program, the remaining \$50,000 of the remediation project costs could be counted towards the NJEDA's cost share.*

NJEDA will coordinate with the applicant to capture and document available cost share.

### **Approval Process / Delegated Authority**

Potential applicants will be asked to complete a pre-application screening form prior to submitting an application. The Brownfields & Sustainable Systems team will review applications for eligibility and appropriateness based on the U.S. EPA guidelines as identified in the attached program specifications. The approval process also includes a technical review which will vet projects for readiness. The factors for the technical review include but are not limited to completion of the environmental assessment, existence of a draft remedial action workplan, engineer's cost estimate for remediation, and permits. A third-party contractor, BRS, Inc. is currently under contract to the Authority to provide this review.

In recognition of the anticipated loan/subgrant amounts and the non-discretionary program criteria, the Members are requested to approve Delegation to Authority staff (Programmatic Director or above, Underwriting Director or above, Vice President or above For example - Director of Brownfields & Sustainable Systems, Director of Underwriting, and Senior Vice President of Finance & Development) to approve individual applications to the Brownfields Impact Fund, in accordance with the terms set forth in the attached program specifications. Financial underwriting is not required for subgrants; therefore, the approval process for loans and subgrants will require the following levels of approval:

- a. Loans

- i. Programmatic – Program Director or above
- ii. Underwriting – Director or above
- iii. Final Approval – Vice President or above

b. Subgrants

- i. Programmatic – Program Director or above
- ii. Final Approval – Vice President or above

The delegated authority requested for approval also includes the delegated authority to decline for any declinations based solely on non-discretionary reasons. For final administrative decisions based solely on non-discretionary reasons, delegated authority is requested for approval by a Senior Vice President, Vice President, Managing Director, or the Director of Legal Affairs. With delegated authority, two signatures at director level or higher will be required for approvals and/or declinations.

For appeals, Delegation to Authority staff (Chief Legal & Strategic Affairs Officer, any Vice President, Director of Legal Affairs, Director of Business Operations) to issue final administrative decisions for appeals of non-discretionary declinations.

**Fees**

For the Brownfield Impact Fund, there will be an application fee for loans of \$1,000. For the Brownfield Impact Fund, there will be an application fee for subgrants of \$1,000. For subgrant applications, the NJEDA will waive the application fee upon demonstration by the applicant that the imposition of the fee would impose an undue financial hardship. Undue financial hardship is determined by delegated authority based on NJEDA established objective criteria provided in the Program application and in accordance with program policies and procedures. The program policies and procedures include a provision that the Department of Community Affairs (DCA) Municipal Revitalization Index (MRI), which demonstrates municipal distress, will be utilized to evaluate hardship for municipalities. The program policies and procedures also include a provision for non-profits that the hardship will be evaluated based on their annual operating budget.

For loans specifically, there will be a commitment fee of 0.875% of the loan amount, a closing fee of 0.875% of the loan amount. For any modifications needed on a loan, there will be a loan modification fee of \$1,000. These fees are consistent with other NJEDA programs.

**Recommendation**

The approval of the members is requested for: (1) The creation of the Brownfields Impact Fund – a \$960,000 pilot program that will provide loans to private developers and loans and/or subgrants to public sector and non-profit entities to carry out cleanup activities at brownfield sites, assisting with the return of these vacant and underutilized properties to public benefit; (2) Utilization of \$160,000 of Authority General Funds and/or in-kind contributions, the U.S. EPA award cost share requirement, to operate the Brownfields Impact Fund; (3) Delegation to Authority staff (Programmatic Director or above, Underwriting Director or above (when applicable), and a Vice President) to approve individual applications to the Brownfields Impact Fund in accordance with

the terms set forth in this memo and the attached program specifications, and because the specifications are streamlined and will result in non-discretionary decisions, the delegated authority requested includes the authority to decline applications that do not meet eligibility requirements; (4) Delegation to Authority staff (Chief Legal & Strategic Affairs Officer, any Vice President, Director of Legal Affairs, Director of Business Operations) to issue final administrative decisions for appeals of non-discretionary declinations; (5) Delegation to Authority staff (Chief Executive Officer or any Senior Vice President) to accept additional funding up to \$5 million over a 15 year period for this program from the U.S. EPA, and to impose additional requirements that may be required by law as a condition of accepting additional funding, provided that the requirements are consistent with the parameters of the program; and (6) Delegation to Authority staff (Chief Executive Officer, any Senior Vice President, any Chief Officer, or any Director) to waive the application fee for subgrant applicants upon demonstration by the applicant that the imposition of the fee would impose undue financial hardship.



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Tim Sullivan, CEO

Prepared by: Elizabeth Limbrick, Melissa Dulinski, and Christina Gaetano

Attachment:

- Exhibit A – Program Specifications – Brownfield Impact Fund
- Exhibit B – (*Confidential*) – Underwriting Procedures – Brownfield Impact Fund