

OFFICE OF ENVIRONMENTAL REMEDIATION

NOTICE OF ADOPTION OF AMENDMENTS TO THE BROWNFIELD INCENTIVE GRANT PROGRAM

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Office of Environmental Remediation (“OER”) by Sections 15(e)(5) and (18) and Section 1043 of the City Charter, that OER has promulgated and adopted amendments to rules relating to the Brownfield Incentive Grant program.

The rules were proposed and published in the City Record on October 16, 2018. A public hearing was held on November 16, 2018. No comments on the proposed rule amendments were received from the public prior to, during, or after the hearing. Following the hearing, comments were received internally from staff and have been incorporated into the rule. These changes are discussed below in the Statement of Basis and Purpose.

Statement of Basis and Purpose of Adopted Rule

The Office of Environmental Remediation (“Office” or “OER”) was established by Local Law No. 27 of 2009. Charter § 15(e)(5) authorizes its Director to develop and administer financial and other incentive programs to encourage the identification, investigation, remediation, and redevelopment of brownfields. Charter § 15(e)(18) authorizes the Director to promulgate rules to implement these provisions.

The Office administers the Brownfield Incentive Grant (“BIG”) program to support and advance brownfield projects across New York City. Previously, BIG grant awards could be reduced by costs associated with grant administration, but OER waived these costs for certain eligible projects. As originally proposed in this rulemaking, OER would extend this waiver to qualifying brownfield properties enrolled in OER’s Voluntary Cleanup Program (“VCP”). Based on internal comments, the Office will instead completely remove this administrative reduction for all BIG grants, allowing all grantees to receive the entire grant award for which they would otherwise qualify.

As indicated in the proposed rule when initially published for comment, OER has established a new method for reimbursing remedial activities through the BIG program. Developers currently apply for BIG cleanup grants by submitting documentation of itemized eligible remedial activities as work is performed. Depending on the type and number of activities performed, it may take several months to a year for OER and its grant administrator to review these submissions and release grant funds. To streamline this process, the Office has added a new, comprehensive eligible service, “Remedial action: full service.” Developers can select this new service in their grant applications and demonstrate completion of an OER-approved remedy under the VCP, instead of submitting documentation for each eligible activity. This new service will simplify applications, streamlining OER’s review and enabling OER to deliver valuable grants to projects sooner. Because a typical cleanup project reaches or exceeds its grant award cap, this new service will result in awards consistent with the current grant structure, while also incentivizing cleanup of underutilized land in New York City. Based on internal comments received after the public comment period, OER increased this new service’s reimbursable allowance from \$70,000 to \$85,000.

Finally, as originally proposed, the rule amendments allow for reimbursement of transportation costs associated with soil disposal. Because transportation is an integral part of the soil disposal process and separating trucking and general disposal costs in submitted invoices is administratively burdensome, OER now includes such transportation as an eligible activity.

Specifically, the amendments to the BIG rule are now as follows:

- Eliminate administrative costs for *all* grants, thereby allowing grantees to receive the entire award for which they qualify (§43-1422, §43-1423(a)(2), and Schedule A).
- Add a new eligible service titled “Remedial action: full service” intended to cover all remedial action activities (Schedule B). This amount was originally proposed to be \$70,000 and has been increased to \$85,000.
- Allow for reimbursement of transportation costs associated with soil disposal as an eligible activity (Schedule B), as initially proposed.
- Correct the maximum grant awards summarized in Schedule B.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 43-1422 of Subchapter 2 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows

§ 43-1422 Grant Awards and Award Limits.

* * *

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 RCNY § 43-1423(a)(2)]. Activities and services in connection with pre-enrollment and enrollment grants can be performed by a qualified vendor under contract with the New York City economic development corporation, the New York City department of environmental protection or the Office.
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, (2) a technical assistance grant of up to \$5,000, and (3) once the project is enrolled in the City voluntary cleanup program, an enrollment grant of up to \$35,000, including the sum of the pre-enrollment grant and excluding the sum of the technical assistance grant. A not-for-profit developer of a preferred community development project or a developer of a

residential building where 100% of the units are affordable is eligible for an enrollment grant of \$50,000. The amount of the enrollment grant includes the sum of the pre-enrollment grant and excludes 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, for step one of the brownfield opportunity area program, whichever is less, and \$25,000 or ten percent of the brownfield opportunity area grant award from the New York state department of state for step two of the brownfield opportunity area program, whichever is less. A grantee of a brownfield opportunity area local match grant that is a community based organization in a place-based community brownfield planning area may receive a grant of up to \$25,000. Activities and services on behalf of a community based organization that conducts place-based community brownfield planning through a brownfield opportunity area local match grant can be performed by a qualified vendor under contract with the New York City economic development corporation, the New York City department of environmental protection or the Office. [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. Community based organizations that conduct place-based community brownfield planning in areas identified by the Office may also receive a technical assistance grant of \$10,000. Activities and services on behalf of a community based organization that conducts place-based community brownfield planning through a technical assistance grant can be performed by a qualified vendor under contract with the New York City economic development corporation, the New York City department of environmental protection or the Office. [The cost of grant administration shall not be deducted from grants awarded to a grantee of a community based organization brownfield opportunity area grant.]

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

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- C. A grantee for an e-designation hazardous material site or a restrictive declaration hazardous material site that has been admitted into the City voluntary cleanup program and is a preferred community development project may be awarded an enrollment grant of up to \$35,000. [The cost of grant administration shall not be deducted from grants awarded to a grantee of a preferred community development project.]

8. *Climate change resilience bonus cleanup grants.* An applicant for a climate change resilience bonus cleanup grant may receive a grant award of up to \$10,000. This grant award shall be in addition to a pre-enrollment and enrollment grants received under this program [, and the costs of administration shall be deducted from grants awarded to the grantee].
9. *Brownfield green job training grants.* An applicant for a brownfield green job training grant may receive a grant award of up to \$6,000. This grant award shall be in addition to pre-enrollment and enrollment grants received under this program [, and the costs of administration shall not be deducted from the brownfield green job training grant awarded to the grantee].
10. *Green property certification grants.* An applicant for a green property certification grant is eligible for a grant of up to \$1,000 to cover the cost of one New York city green property certification plaque for each eligible site pursuant to 43 RCNY § 43-1428. [The cost of administration shall not be deducted from grants awarded to the grantee.]
11. *City pre-enrollment grants.* City pre-enrollment grants are funded to a maximum of \$125,000 for pre-enrollment activities and services. The Office may award a grant higher than this amount where it determines that a City-supported affordable or supportive housing development or an industrial project supported by the New York City Economic Development Corporation incurs more than \$125,000 in investigation costs to enroll in the State brownfield program or obtain DEC's approval of its remedial action work plan. If such a project is denied entry into the State brownfield program and enrolls instead in the City voluntary program, it will be reimbursed for the cost of conducting a site investigation. Activities and services for a City pre-enrollment grant can be performed by a qualified vendor under contract with the New York city economic development corporation, the New York city department of environmental protection or the Office. [The cost of grant administration shall not be deducted from grants awarded to a grantee of a City pre-enrollment grant.]
12. City enrollment grants are funded to a maximum of \$250,000 for eligible services and activities including any City pre-enrollment grants. If a City-supported affordable housing or industrial project is enrolled in the City voluntary cleanup program, the project is eligible for a cleanup grant of \$50,000. Activities and services for a City enrollment grant can be performed by a qualified vendor under contract with the New York city economic development corporation, the department of environmental protection, or the Office. [The cost of grant administration shall not be deducted from grants awarded to a grantee of a city enrollment grant.]

§ 2. Paragraph 2 of subdivision a of Section 43-1423 of Subchapter 2 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

§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 local match grant, a green job training grant, a City pre-enrollment grant, a City enrollment grant and a technical assistance grant for a community based organization that seeks to apply for a brownfield opportunity grant or one that conducts place-based community brownfield planning, by a reasonable amount to cover costs of administering the New York City Brownfield Incentive Grant program.]

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§ 3. Schedule A of Subchapter 2 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

Schedule A Grant Awards and Award Limits

[Schedule A appears at the end of this rule]

§ 4. Schedule B of Subchapter 2 of Chapter 14 of Title 43 of the Rules of the City of New York is amended to read as follows:

**Schedule B
Eligible Services and Activities / Reimbursable Allowance ^{a, b}**

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Environmental Remediation

	Unit	Reimbursable Allowance
<u>Remedial Action</u>		
<u>Remedial action: full service ^e</u>	<u>each</u>	<u>\$85,000</u>
Workplans and Reports		
remedial action workplan	each	\$5,000
remedial action report	each	\$5,000
remedial investigation report and remedial action work plan: full service ^{e,f}	each	\$30,000
Remedial action report: full service ^{f,g}	each	\$30,000
site management plan	each	\$2,500
grant project reporting	each	\$425
field oversight ^{g,h}	half day	\$400
	day	\$1,000
environmental insurance ^{h,i}	premium	\$25,000/\$30,000
Soil Removal		
disposal - soil, [non-]hazardous [(does not include transportation)]	ton	\$102

disposal – soil, non-hazardous [(does not include transportation)]	ton	\$43
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^e Reimbursement up to \$85,000 subject to the project award cap. This payment is intended to cover all remedial action activities. This activity can only be selected for projects that have enrolled in the City’s Voluntary Cleanup Program.

^f Reimbursement up to \$30,000 subject to the project award cap. This payment is intended to cover all remedial investigation activities and all document preparation activities including: a remedial investigation work plan, a Phase I environmental site assessment, a remedial investigation report, sampling, field oversight, mobilization, monitoring, chemical analysis and a remedial action work plan. This activity can only be selected for projects that have enrolled in the City voluntary cleanup program and no other costs for remedial investigation or remedial work plan preparation may be claimed.

^g Reimbursement up to \$30,000 subject to the project award cap. This payment is intended to cover all remedial action oversight activities and all document preparation activities including: field oversight by staff, daily reports, CAMP monitoring and equipment, HASP monitoring, sample collection, and preparation of a remedial action report. It does not cover construction of remedial systems including engineering controls. This activity can only be selected for projects that have enrolled in the City voluntary cleanup program and no other costs for remedial action oversight or remedial action report preparation may be claimed.

^h Reimbursement for field oversight consists of oversight of active remedial work by a qualified environmental professional, CAMP monitoring equipment, HASP monitoring, and the collection of samples. The deliverable is a daily report that identifies the qualified environmental professional.

ⁱ Eligible activities consist of the purchase of Pollution Legal Liability, Contractors Pollution Liability and Cleanup Cost Cap Insurance. The total amount of reimbursable expenses may not surpass the grant limits established in Schedule A. Purchase of environmental insurance for a project that subsequently enrolls in the City voluntary cleanup program is an eligible expense following program enrollment.

Schedule A Grant Awards and Award Limits

Property Type ¹								BOA Development Grants		
		Qualifying brownfield properties not enrolled in VCP ^[2]	Qualifying brownfield properties enrolled in VCP ^{[2],[3]}	Preferred community development projects not enrolled in VCP ^[4]	Preferred community development projects enrolled in VCP ^{[4],[5],[3]}	City-supported development properties ^[2]	E-designation/restrictive declaration hazardous material sites not enrolled in VCP ^[2]	BOA strategic property enrolled in VCP ^[4]	Community based organization BOA grant applicant ^[4]	BOA grant recipient with an executed state assistance contract ^[4]
Standard Grants	Pre-development grant	Up to \$5,000	Up to \$5,000	Up to \$10,000	Up to \$10,000	N/A	N/A	Up to \$10,000	N/A	N/A
	Environmental investigation grant	Up to \$10,000 ^{[7],[5]}	Up to \$10,000 ^{[7],[5]}	Up to \$25,000 ^{[7],[5]}	Up to \$25,000 ^{[7],[5]}	N/A	N/A	Up to \$25,000 ^{[7],[5]}	N/A	N/A
	Cleanup grant	N/A	Up to \$25,000 ^{[8],[6]}	N/A	Up to \$35,000 ^{[8],[9],[6],[7]}	N/A	N/A	Up to \$35,000 ^{[6],[8],[10]}	N/A	N/A
	E-designation hazardous material remediation grant or restrictive declaration hazardous materials remediation grant ^{[1],[1],[2]}	N/A	Up to \$25,000	N/A	Up to \$35,000	N/A	Up to \$2,500	Up to \$35,000	N/A	N/A

	Standard grant award cap ^{[12][10]}	\$10,000	\$25,000	\$25,000	\$35,000 ^{[9]Z}	N/A	\$2,500	\$35,000 ^{[10]B}	N/A	N/A
Special Grants	Track one bonus cleanup grant	N/A	\$10,000	N/A	\$10,000	N/A	N/A	\$10,000	N/A	N/A
	Climate change resilience bonus cleanup grant	N/A	Up to \$10,000	N/A	Up to \$10,000	N/A	N/A	Up to \$10,000	N/A	N/A
	Brownfield green job training grant ^[4]	N/A	Up to \$6,000	N/A	Up to \$6,000	N/A	N/A	Up to \$6,000	N/A	N/A
	Green property certification grant	N/A	Up to \$1,000	N/A	Up to \$1,000	N/A	N/A	Up to \$1,000	N/A	N/A
	City pre-enrollment grant ^[4]	N/A	N/A	N/A	N/A	\$125,000	N/A	N/A	N/A	N/A
	City enrollment grant ^[4]	N/A	N/A	N/A	N/A	\$250,000 ^[13] ₁₁	N/A	N/A	N/A	N/A
	BOA strategic property bonus cleanup grant	N/A	N/A	N/A	N/A	N/A	N/A	\$10,000	N/A	N/A
	Technical assistance grant ^[4]	N/A	N/A	Up to \$5,000 ^[14] ₁₂	Up to \$5,000 ^[14] ₁₂	N/A	N/A	Up to \$5,000 ^[14] ₁₂	Up to \$10,000 ^[15] ₁₃	N/A

	BOA local match grant ^[4]	N/A	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 ^{[6]4}
	Maximum grant award	\$10,000	[\$47,000] <u>\$52,000</u>	\$25,000	[\$62,000] <u>\$67,000</u> ^{[16]14}	\$250,000	\$2,500	[\$72,000] <u>\$77,000</u> ^{[17]15}	\$10,000	\$50,000

NOTES

1 Properties for which a grant is pursued can fall into only one type. The property type may change as conditions change.

[2] The grant administration contractor may reduce the grant amount to cover the cost of administration.

3] 2 Includes e-designation hazardous material sites and restrictive declaration hazardous material sites that are enrolled in the VCP.

[4] Grants shall not be reduced to cover the cost of grant administration.

5] 3 This property type includes e-designation hazardous material sites and restrictive declaration hazardous materials sites that are also preferred community development projects and enrolled in the VCP.

[6] 4 A BOA grant recipient with an executed state assistance contract by definition also has an approved work program. A BOA grant recipient is eligible for local match grants both for step 1 and step 2 of the BOA program. A place-based community planning area with an agreement with the Office is eligible for a \$25,000 BOA local match grant.

[7] 5 Limit includes all proceeds from pre-development grant.

[8] 6 Limit includes all proceeds from the pre- development grant and the environmental investigation grant. The grant amount reflects reduced funding of the BIG program. Projects that were enrolled in the city voluntary program by April 2013 receive larger BIG grant awards.

[9] 7 A not for profit developer of a preferred community development project, or a developer of a residential building where 100% of the units are affordable, is eligible for a \$50,000 cleanup grant, which includes all proceeds of the predevelopment and environmental investigation grants.

[10] 8 A not for profit developer of a preferred community development project which is a BOA strategic site is eligible for a \$50,000 cleanup grant, which includes all proceeds from the pre-development and environmental investigation grants.

- [11] 9 For e-designation hazardous material sites and restrictive declaration hazardous material sites that are remediated pursuant to an Office-approved remedial work plan. The grant amount reflects the reduced funding of the BIG program. Projects that received a notice of satisfaction by April 2013 receive a larger BIG grant award.
- [12] 10 Limit includes all proceeds from the pre-development grant, environmental investigation grant and cleanup grant. The grant amount reflects reduced funding of the BIG program. Projects that were enrolled in the city voluntary cleanup program by April 2013 receive larger BIG grant awards.
- [13] 11 Limit includes all proceeds from the City pre-enrollment grant. If a City-supported affordable housing or industrial project is enrolled in the City voluntary cleanup program, the project would be eligible for a \$50,000 cleanup grant.
- [14] 12 Technical assistance grants for preferred community development projects are limited to not-for-profit developers.
- [15] 13 The grant pays for technical assistance with development of a BOA program application or, for a place-based community planning area, services and consultation in planning for the re-use of a development site.
- [16] 14 The maximum grant for a not-for-profit developer of a preferred community development project is [~~\$77,000~~] \$82,000.
- [17] 15 The maximum grant for a not-for-profit developer of a BOA strategic site or a strategic site of a place-based brownfield community planning organization recognized by the Office is [~~\$87,000~~] \$92,000.