LOCAL GOVERNMENTS CAPITAL IMPROVEMENTS REVOLVING LOAN PROGRAM (CAP)

G U I D E L I N E S

The Local Governments Capital Improvements Revolving Loan Program (CAP) administered by the Mississippi Development Authority (MDA) is designed for making loans to counties or municipalities (Applicant) to finance capital improvements in Mississippi. Applicants are encouraged to use these loans in connection with state and federal programs. Funding for loans to Applicants is derived from the issuance of state bonds. The State Legislature enacted CAP during the regular 1994 session. (See Section 57-1-301 through 57-1-335 et seq., Mississippi Code, Annotated.)

ELIGIBILITY

Eligible Applicants

Application for assistance must be submitted by the governing authority of the county or an incorporated municipality.

Eligible Projects

Projects that are eligible for assistance must be for capital improvements in Mississippi's counties and municipalities. (Section 57-1-301)

- Construction or repair of water and sewer facilities
- Construction or repair of drainage systems for industrial development
- Improvements in fire protection
- Construction of new buildings for economic development purposes
- Renovation or repair of existing buildings for economic development purposes
- Construction or repair of access roads for industrial development
- Purchase of buildings for economic development purposes
- Construction or repair of railroad spurs for industrial development

- Construction of any county or municipally-owned health care facilities, excluding any county health departments

- Construction, purchase, renovation or repair of any building to be utilized as an auditorium or convention center

- Construction of multipurpose facilities for tourism development

- Loans to a county to aid in retiring interest-bearing loans utilized for the purchase of a motion picture sound stage

- Construction, repair and renovation of parks, swimming pools and recreational and athletic facilities. (Not intended to be used for school districts or for commercial purposes, such as health clubs, skating rinks, miniature golf courses, etc.)

- Remediation of brownfield agreement sites in accordance with Sections 49-35-1 through 47-35-25

ALLOWABLE COSTS

- Construction costs (including reasonable and customary site work for buildings, right of ways, easements, etc.).

- Up to 6% of the principal loan amount may be used for parking lots with new construction, renovation, and/or purchase of a building; and construction, repair and renovation of parks, swimming pools and recreational and athletic facilities.

- Up to 4% of the principal loan amount may be used for fencing, recreational landscaping, and security lighting.

- Up to 8% of the principal loan amount may be used for design work, i.e., engineer or architect excluding brownfield projects. Engineering and/or architectural costs above 8% must be paid from other funding sources.

- Up to 10% of the principal loan amount may be used for a Mississippi Department of Environmental Quality (MDEQ) approved Brownfield Consulting Firm's fees for brownfield projects during the cleanup phase. Consultant fees above 10% must be paid from other funding sources.

DISALLOWED COSTS

- Remediation costs shall not include: costs incurred after the issuance of a No Further Action letter under Section 49-35-15, Mississippi Code of 1972, costs incurred before the executed brownfield agreement, costs incurred for any legal services or litigation costs, and any funds provided by any federal, state or local governmental agency or political subdivision.

- Administration fees and legal fees for all capital improvements loans including brownfield projects.

- The operating expenses, monitoring expenses and maintenance expenses incurred after the brownfield cleanup phase.

MATCHING FUND REQUIREMENTS

The construction or renovation of economic development buildings for speculative purposes requires a 50/50 match. The match must be in cash or in-kind assets.

RESERVE FUND

For water and wastewater improvement loans, a reserve fund must be established for maintenance of the system(s). The reserve fund shall be established at the time of loan closing. Before loan approval, the Applicant must provide documentation to MDA concerning the establishment of the maintenance fund. These systems must be owned by the applicant executing the loan agreement.

PROJECT REQUIREMENTS

The Applicant must be an incorporated municipality or a county.

The Applicant must follow all state procurement and purchase laws. If an applicant has not advertised for bids within 120 days after receiving loan approval, the state will have the option to recall the CAP funds.

If two separate local units of government jointly fund a project, the Applicants must have an inter-local agreement with the Attorney General's approval.

The Applicant's certified public accountant, auditor, or fiscal officer must verify on official letterhead that the financials reflect the applicant's ability to repay the loan. The verification must include the source of repayment, i.e., surcharge or other verifiable means of repayment.

The Applicant's certified public accountant, auditor, or fiscal officer must furnish to MDA the most current annual audit and the latest financial summary reflecting any additional long-term debt or any changes in their financial position since the last annual audit was prepared.

The Public Service Commission must be consulted regarding water and wastewater projects.

Fire protection loans shall be made to enhance structural fire fighting capabilities. Loans for fire trucks must meet the National Fire Protection Association standards.

If applicable, an access road for industrial development must follow state aid requirements. CAP loan funds are not to be utilized on major highway projects.

If applicable, official certification of preliminary project plans and specifications from the project engineer and the operating railroad indicating that the project meets American Railway Engineering and Maintenance-of-way Association (AREMA) and Federal Railroad Administration (FRA) standards and other necessary compliance requirements.

The Applicant may not purchase a building that has been constructed in the last six months.

The Applicant may not purchase an existing building or facility for more than the appraised value.

Recreational sites developed with CAP assistance cannot be converted to uses other than their original scope/intent during the life of the loan.

There must be consultation with the Energy Division of MDA on equipment that uses electricity or gas, and alternate fuel systems must be considered.

If applicable, the Applicant will be required to obtain one appraisal and two review appraisals no more than three months prior to loan closing on buildings or facilities to be purchased.

The Applicant may not acquire buildings or facilities from individuals, companies, or corporations, and subsequently lease them to the seller (previous owner) within five years of acquisition. This is not applicable to Downtown improvements.

The Applicant will be required to retain title on all capital improvements and brownfield sites until the loan has been repaid.

The Applicant will not be allowed to utilize CAP loan proceeds to make a loan to any private entity, public entity, or individual(s).

If applicable, the Applicant must obtain written approval from the MDA-appointed legal counsel stating that the project qualifies for a tax-exempt status.

The Applicant must give public notice, as required. (All applicants must use the attached Public Notice and it must have been published within the last six months prior to submittal of the loan application.)

Once the publication process is complete, a certified copy of the Applicant's minutes must be submitted showing their decision to proceed with the loan.

The Applicant must fulfill the requirements of the standard application, which must be submitted to MDA for review and acceptance.

Before loan approval for remediation of a brownfield site, the Applicant must provide MDA with an executed copy of the brownfield agreement between the Applicant and the Executive Director of MDEQ.

Within thirty days after the brownfield agreement is executed and before any loan disbursements are released, the Applicant shall provide a copy of deed, clear certificate of title or other instrument certifying that the property is owned by the Applicant and subject to a brownfield site agreement.

During the brownfield clean-up process, the CAP funds must be expended within one year from the date of the loan approval, unless a waiver is granted upon good cause shown.

The Applicant will be responsible for the operating and maintenance (O&M) of the brownfield site and for any post remediation monitoring required under the brownfield

agreement.

Any amendments, changes or violations of the brownfield agreement site must be reported to MDA and MDEQ within 10 business days.

The applicant shall include in all contracts with Participating Parties a provision that each Participating Party agrees that any duly authorized representative of MDA and/or MDEQ shall, at all reasonable times, have access to any portion of the Project in which such Participating Party is involved until the completion of all brownfield agreement requirements.

If applicable, the Applicant must provide an award letter or documentation verifying other funding sources.

For Downtown Improvements only, an applicant must meet the following requirements:

1. Shall be a Mississippi Main Street Association member in good standing
2. Shall be a Certified Main Street, Small Town Main Street or Urban Main Street Program in good standing or in the process of becoming a certified program
3. Applicant must submit a letter from the Main Street Association stating that the applicant is a Main Street member in good standing and a Certified Main Street, Small Town Main Street or Urban Main Street Program in good standing or in the process of becoming a certified program.
4. Comply with their local Main Street building codes, covenants and ordinances
5. May apply up to $350,000 per project to purchase and renovation only (no new construction)
6. Property vacant for one year or more
7. Can be commercial, retail or manufacturing
8. Restrict housing to 2nd floor and up
9. Limit facade improvements up to 8% of the principal loan amount. Facade improvements above 8% must be paid from other funding sources.

LOANS

General Loan Limitations

An Applicant may borrow up to $1,000,000 per calendar year. The minimum loan amount allowed per project is $30,000. The maximum CAP loan indebtedness allowed per Applicant is $2,500,000 outstanding principal balance. Loans for the construction, repair and renovation of parks, swimming pools and recreational and athletic facilities shall not exceed $250,000 per project. Loans for remediation of brownfield agreement sites in accordance with Sections 49-35-1 through 49-35-25 shall not exceed $250,000 per site. Loans for Downtown improvements are limited to $350,000 per project.

All loans shall have annual interest computed daily on the outstanding loan balance. Daily interest begins to accrue at the time of the first disbursement.

The Applicant will be required to expend all CAP loan funds within one year from the date of loan approval, unless a waiver is granted upon good cause shown. Projects shall not exceed two years. If the funds are not expended within the two years, MDA will have the option to adjust the loan to the actual disbursements and recall the remaining funds.

Before releasing any CAP Funds, the Applicant shall provide title insurance on all real property acquisitions or title opinion on all other projects from the Applicant's attorney.

Loan Terms

The term of any loan must be reasonable and shall not exceed 20 years. The loan amount allowed will be determined by the Applicant's ability to repay the loan within acceptable terms. The rate of interest on all CAP loans is calculated according to the actuarial method. CAP loans that qualify for tax-exempt status shall be at 2% per annum; and taxable CAP loans shall be at 3% per annum. The interest on any loans converted from non-interest bearing loans on sound stages to other eligibility categories will be changed to an applicable interest-bearing rate. The loan term for fire trucks shall not exceed 10 years.

SPECIAL PROVISIONS

Under the 2005 Regular Legislative Session, $2,500,000 shall be used only to provide loans to the counties and incorporated municipalities for remediation of a brownfield agreement sites under Sections 49-35-1 through 49-35-25.

AUDIT

Funds provided under the CAP Loan Program are subject to audit by the State Department of Audit, MDA and/or MDEQ.

PENALTIES

An Applicant which fails to meet repayment obligations shall cause all or part of its sales tax allocation and/or homestead exemption reimbursement to be withheld and may be subject to other penalties. (Section 57-1-303(4))

DELINQUENT NOTICE PROCESS

Each month, invoices will be sent to communities with an active CAP loan status. Payments are due on the first of each month. Failure to submit timely payments may result in the following procedures:

1) If a community is 60 days delinquent, CSD may issue a letter stating the catch-up amount, terms of their loan agreement and explain the process for turning collection over to the State Auditor.
2) If a community is 90 days delinquent, CSD may issue the same letter with the new catch-up amount.
3) If a community is 120 days delinquent, CSD may issue the same letter with the new catch-up amount.
4) If a community is 150 days delinquent, CSD may issue a letter stating in 30 days if catch-up payment amount has not been received, then CSD will turn the community over to the state auditor.
5) If a community is 180 days delinquent, CSD may request the State Auditor to audit the receipts and expenditures of the loan (Section 57-1-303(5)). If the State Auditor finds that the county or municipality is in arrears in payments, he shall immediately notify the Executive Director of the Department of Finance and Administration who shall withhold all future payments to the county of homestead exemption reimbursements under Section 27-33-77 and all sums allocated to the county or the municipality under Section 27-65-75 until such time as the county or the municipality is again current in its loan payments as certified by the Mississippi Development Authority.

ADDITIONAL INFORMATION

Program inquiries and applications should be directed to:

Mississippi Development Authority
Community Services Division
Post Office Box 849
Jackson, Mississippi 39205
Telephone: (601) 359-3179 Fax: (601) 359-3108

These guidelines may be amended by MDA at any time. MDA, in its discretion, may temporarily waive any requirement of the guidelines to the extent that the result of such action is to promote the public purpose of the Act and is not prohibited by State Law.