§ 970-r. State assistance for brownfield opportunity areas. 1. Definitions. a. "Applicant" shall mean the municipality, community board and/or community based organization submitting an application for state assistance or a nomination for designation in the manner authorized by this section.

b. "Commissioner" shall mean the commissioner of the department of environmental conservation.

c. "Community based organization" shall mean a not-for-profit corporation exempt from taxation under section 501(c)(3) of the internal revenue code whose stated mission is promoting reuse of brownfield sites or community revitalization within a specified geographic area in which the community based organization is located; which has twenty-five percent or more of its board of directors residing in the community in such area; and represents a community with a demonstrated financial need. "Community based organization" shall not include any not-for-profit corporation that has caused or contributed to the release or threatened release of a contaminant from or onto the brownfield site, or any not-for-profit corporation that generated, transported, or disposed of, or that arranged for, or caused, the generation, transportation, or disposal of contamination from or onto the brownfield site. This definition shall not apply if more than twenty-five percent of the members, officers or directors of the not-for-profit corporation are or were employed or receiving compensation from any person responsible for a site under title thirteen or title fourteen of article twenty-seven of the environmental conservation law, article twelve of the navigation law or under applicable principles of statutory or common law liability.

d. "Brownfield site" shall have the same meaning as set forth in section 27-1405 of the environmental conservation law.

e. "Department" shall mean the department of state.

f. "Contamination" or "contaminated" shall have the same meaning as provided in section 27-1405 of the environmental conservation law.

g. "Municipality" shall have the same meaning as set forth in subdivision fifteen of section 56-0101 of the environmental conservation law.

h. "Community board" shall have the same meaning as set forth in section twenty-eight hundred of the New York city charter.

i. "Secretary" shall mean the secretary of state.

j. "Nomination" shall mean a written plan for redevelopment and revitalization of any area (i) wherein one or more known or suspected brownfield sites are located and (ii) that contains the elements required for brownfield opportunity area designation as determined in accordance with subdivision three of this section. It is not necessary that all, or any, of the services used to identify, prepare, create, or develop the elements required for designation be funded through this section.

2. State assistance for pre-nomination study for brownfield opportunity areas. a. Within the limits of appropriations therefor, the secretary is authorized to provide, on a competitive basis, financial assistance to municipalities, to community based organizations, to community boards, or to municipalities and community based organizations acting in cooperation to prepare a pre-nomination study for a brownfield opportunity area designation. Such financial assistance shall not exceed ninety percent of the costs of such pre-nomination study for any such area.

b. Activities eligible to receive such assistance shall include, but are not limited to, the assembly and development of basic information about:

(1) the borders of the proposed brownfield opportunity area;

(2) the number and size of known or suspected brownfield sites;

(3) current and anticipated uses of the properties in the proposed brownfield opportunity area;

(4) current and anticipated future conditions of groundwater in the

proposed brownfield opportunity area;

(5) known data about the environmental conditions of the properties in the proposed brownfield opportunity area;

(6) ownership of the properties in the proposed brownfield opportunity area and whether the owners are participating in the brownfield opportunity area planning process; and

(7) preliminary descriptions of possible remediation strategies, reuse opportunities, necessary infrastructure improvements and other public or private measures needed to stimulate investment, promote revitalization, support job growth, reduce greenhouse gas emissions, increase climate resilience, enhance community health and environmental conditions, and achieve environmental justice.

c. Funding preferences shall be given to applications for such assistance that relate to areas having one or more of the following characteristics:

(1) areas for which the application is a partnered application by a municipality and a community based organization;

(2) areas with concentrations of known or suspected brownfield sites;

(3) areas for which the application demonstrates support from a municipality and a community based organization;

(4) areas showing indicators of economic distress including low resident incomes, high unemployment, high commercial vacancy rates, depressed property values; and

(5) areas with known or suspected brownfield sites presenting strategic opportunities to stimulate economic development, community revitalization or the siting of public amenities.

d. The secretary, upon the receipt of an application for such assistance from a community based organization not in cooperation with the local government having jurisdiction over the proposed brownfield opportunity area, shall request the municipal government to review and state the municipal government's support or lack of support; provided, however, in the city of New York, such statement shall be provided by the community board or boards for the district or districts in which the proposed area is located. The municipal government's or community board's statement shall be considered a part of the application.

e. Each application for assistance shall be submitted to the secretary in a format, and containing such information, as prescribed by the secretary but shall include, at a minimum, the following:

(1) a statement of the rationale or relationship between the proposed assistance and the criteria set forth in this subdivision for the evaluation and ranking of assistance applications;

(2) the processes by which local participation in the development of the application has been sought;

(3) the process to be carried out with the state assistance including, but not limited to, the goals of and budget for the effort, the work plan and timeline for the attainment of these goals, and the intended process for community participation in the process;

(4) the manner and extent to which public or governmental agencies with jurisdiction over issues that will be addressed in the data gathering process will be involved in this process;

(5) other planning and development initiatives proposed or in progress in the proposed brownfield opportunity area; and

(6) for each community based organization which is an applicant or a co-applicant, a copy of its determination of tax exempt status issued by the federal internal revenue service pursuant to section 501 of the internal revenue code, a description of the relationship between the community based organization and the area that is the subject of the application, its financial and institutional accountability, its experience in conducting and completing planning initiatives and in working with the local government associated with the proposed brownfield opportunity area.

f. Prior to making an award for assistance, the secretary shall notify the temporary president of the senate and speaker of the assembly.

g. Following notification to the applicant that assistance has been awarded, and prior to disbursement of funds, a contract shall be executed between the department and the applicant or co-applicants. The secretary shall establish terms and conditions for such contracts as the secretary deems appropriate, including provisions to define: applicant's work scope, work schedule, and deliverables; fiscal reports on budgeted

and actual use of funds expended; and requirements for submission of a final fiscal report. The contract shall also require the distribution of work products to the department, and, for community based organizations, to the applicant's municipality. Applicants shall be required to make the results publicly available.

3. State assistance for nominations to designate brownfield opportunity areas. a. Within the limits of appropriations therefor, the secretary is authorized to provide, on a competitive basis, financial assistance to municipalities, to community based organizations, to community boards, or to municipalities and community based organizations acting in cooperation to prepare a nomination for designation of a brownfield opportunity area. Such financial assistance shall not exceed ninety percent of the costs of such nomination for any such area. A nomination study must include sufficient information to designate the brownfield opportunity area. The contents of the nomination study shall be developed based on pre-nomination study information, if conducted, which shall principally consist of an area-wide study, documenting the historic brownfield uses in the area proposed for designation.

b. An application for such financial assistance shall include an indication of support from owners of brownfield sites in the proposed brownfield opportunity area. All residents and property owners in the proposed brownfield opportunity area shall receive notice in such form and manner as the secretary shall prescribe.

c. No application for such financial assistance shall be considered unless the applicant demonstrates that it has, to the maximum extent practicable, solicited and considered the views of residents of the proposed brownfield opportunity area, the views of state and local officials elected to represent such residents and the local organizations representing such residents.

d. Activities eligible to receive such financial assistance shall include the identification, preparation, creation, development and assembly of information and elements to be included in a nomination for designation of a brownfield opportunity area, including but not limited

to:

(1) the borders of the proposed brownfield opportunity area;

(2) the location and size of each known or suspected brownfield site in the proposed brownfield opportunity area;

(3) the identification of strategic sites within the proposed brownfield opportunity area;

(4) the type of potential developments anticipated for sites within the proposed brownfield opportunity area proposed by either the current or the prospective owners of such sites;

(5) local legislative or regulatory action which may be required to implement a plan for the redevelopment of the proposed brownfield opportunity area;

(6) priorities for public and private investment in infrastructure, open space, economic development, housing, or community facilities in the proposed brownfield opportunity area;

(7) identification and mapping of current and anticipated uses of the properties and groundwater in the proposed brownfield opportunity area;

(8) existing detailed assessments of individual brownfield sites and, where the consent of the site owner has been obtained, the need for conducting on-site assessments;

(9) known data about the environmental conditions of properties in the proposed brownfield opportunity area;

(10) ownership of the known or suspected brownfield properties in the proposed brownfield opportunity area to the extent such information is publicly available;

(11) descriptions of possible remediation strategies, reuse opportunities, brownfield redevelopment, necessary infrastructure improvements and other public or private measures needed to stimulate investment, promote revitalization, support job growth, reduce greenhouse gas emissions, increase climate resilience, enhance community health and environmental conditions, and achieve environmental justice;

(12) the goals and objectives, both short term and long term, for the economic revitalization of the proposed brownfield opportunity area;

(13) the publicly controlled and other developable lands and buildings within the proposed brownfield opportunity area which are or could be made available for residential, industrial and commercial development; and

(14) a community participation strategy to maximize public awareness and to solicit and consider the views of residents, businesses and other stakeholders of the proposed brownfield opportunity area.

e. Funding preferences shall be given to applications for such assistance that relate to areas having one or more of the following characteristics:

(1) areas for which the application is a partnered application by a municipality and a community based organization;

(2) areas with concentrations of known or suspected brownfield sites;

(3) areas for which the application demonstrates support from a municipality and a community based organization;

(4) areas showing indicators of economic distress including low resident incomes, high unemployment, high commercial vacancy rates, depressed property values; and

(5) areas with known or suspected brownfield sites presenting strategic opportunities to stimulate economic development, community revitalization or the siting of public amenities.

f. Each application for such assistance shall be submitted to the secretary in a format, and containing such information, as prescribed by the secretary but shall include, at a minimum, the following:

(1) a statement of the rationale or relationship between the proposed assistance and the criteria set forth in this section for the evaluation and ranking of assistance applications;

(2) the processes by which local participation in the development of the application has been sought;

(3) the process to be carried out under the state assistance including, but not limited to, the goals of and budget for the effort, the work plan and timeline for the attainment of these goals, and the intended process for public participation in the process;

(4) the manner and extent to which public or governmental agencies with jurisdiction over issues that will be addressed in the data gathering process will be involved in this process;

(5) other planning and development initiatives proposed or in progress in the proposed brownfield opportunity area;

(6) for each community based organization which is an applicant or a

co-applicant, a copy of its determination of tax exempt status issued by the federal internal revenue service pursuant to section 501 of the internal revenue code, a description of the relationship between the community based organization and the area that is the subject of the application, its financial and institutional accountability, its experience in conducting and completing planning initiatives and in working with the local government associated with the proposed brownfield opportunity area; and

(7) the financial commitments the applicant will make to the brownfield opportunity area for activities including, but not limited to, marketing of the area for business development, human resource services for residents and businesses in the brownfield opportunity area, and services for small and minority and women-owned businesses.

g. An application for such assistance from a community based organization not in cooperation with the local government having jurisdiction over the proposed brownfield opportunity area, shall include a resolution from the city, town, or village with planning and land use authority in which the brownfield opportunity area is proposed, stating support or lack of support; provided, however, in the city of New York, such resolution shall be provided by the community board or boards for the district or districts in which the proposed area is located. The resolution from each city, town, village, or community board shall be considered a part of the application.

h. Prior to making an award for assistance, the secretary shall notify the temporary president of the senate and speaker of the assembly.

i. Following notification to the applicant that assistance has been awarded, and prior to disbursement of funds, a contract shall be executed between the department and the applicant or co-applicants. The secretary shall establish terms and conditions for such contracts as the secretary deems appropriate, including provisions to define: applicant's work scope, work schedule, and deliverables; fiscal reports on budgeted and actual use of funds expended; and requirements for submission of a final fiscal report. The contract shall also require the distribution of work products to the department, and, for community based organizations,

to the applicant's municipality. Applicants shall be required to make the results publicly available. Such contract shall further include a provision providing that if any responsible party payments become available to the applicant, the amount of such payments attributable to expenses paid by the award shall be paid to the department by the applicant; provided that the applicant may first apply such responsible party payments toward any actual project costs incurred by the applicant.

3-a. State assistance for activities to advance brownfield opportunity area revitalization. a. Within amounts appropriated therefor, the secretary is authorized to provide, on a competitive basis, financial assistance to municipalities, to community based organizations, to community boards, or to community based organizations acting in cooperation with a municipality, to conduct predevelopment activities within a designated brownfield opportunity area to advance the goals and priorities of the brownfield opportunity area program set forth in the nomination of such area. Such financial assistance shall not exceed ninety percent of the costs of such activities. Activities eligible to receive such assistance shall include: development and implementation of marketing strategies; development of plans and specifications; real estate services; building condition studies; infrastructure analyses; zoning and regulatory updates; environmental, housing and economic studies, analyses and reports; renewable energy feasibility studies, legal and financial services; and public outreach.

b. Funding preferences shall be given to applications for such assistance that relate to areas having one or more of the following characteristics:

(1) areas showing indicators of economic distress including low resident incomes, high unemployment, high commercial vacancy rates, depressed property values; and

(2) areas with known or suspected brownfield sites presenting strategic opportunities to stimulate economic development, community revitalization or the siting of public amenities.

c. Prior to making an award for assistance, the secretary shall notify

the temporary president of the senate and speaker of the assembly.

d. Following notification to the applicant that assistance has been awarded, and prior to disbursement of funds, a contract shall be executed between the department and the applicant or co-applicants. The secretary shall establish terms and conditions for such contracts as the secretary deems appropriate, including provisions to define: applicant's work scope, work schedule, and deliverables; fiscal reports on budgeted and actual use of funds expended; and requirements for submission of a final fiscal report. The contract shall also require the distribution of work products to the department, and, for community based organizations, to the applicant's municipality. Applicants shall be required to make the results publicly available. Such contract shall further include a provision providing that if any responsible party payments become available to the applicant, the amount of such payments attributable to expenses paid by the award shall be paid to the department by the applicant; provided that the applicant may first apply such responsible party payments toward any actual project costs incurred by the applicant.

4. Designation of brownfield opportunity area. Upon completion of a nomination for designation of a brownfield opportunity area, it shall be forwarded by the applicant to the secretary, who shall determine whether it is consistent with the provisions of this section. The secretary may review and approve a nomination for designation of a brownfield opportunity area at any time. If the secretary determines that the nomination is consistent with the provisions of this section, the brownfield opportunity area shall be designated. If the secretary determines that the nomination is not consistent with the provisions of this section, the secretary shall make recommendations in writing to the applicant of the manner and nature in which the nomination should be amended.

5. Priority and preference. The designation of a brownfield opportunity area pursuant to this section is intended to serve as a planning tool. It alone shall not impose any new obligations on any property or property owner. To the extent authorized by law, projects in

brownfield opportunity areas designated pursuant to this section shall receive a priority and preference when considered for financial assistance pursuant to articles fifty-four and fifty-six of the environmental conservation law. To the extent authorized by law, projects in brownfield opportunity areas designated pursuant to this section may receive a priority and preference when considered for financial assistance pursuant to any other state, federal or local law.

6. State assistance for brownfield site assessments in brownfield opportunity areas. a. Within the limits of appropriations therefor, the secretary of state, is authorized to provide, on a competitive basis, financial assistance to municipalities, to community based organizations, to community boards, or to municipalities and community based organizations acting in cooperation to conduct brownfield site assessments. Such financial assistance shall not exceed ninety percent of the costs of such brownfield site assessment.

b. Brownfield sites eligible for such assistance must be owned by a municipality, or volunteer as such term is defined in section 27-1405 of the environmental conservation law.

c. Brownfield site assessment activities eligible for funding include, but are not limited to, testing of properties to determine the nature and extent of the contamination (including soil and groundwater), environmental assessments, the development of a proposed remediation strategy to address any identified contamination, and any other activities deemed appropriate by the commissioner in consultation with the secretary of state. Any environmental assessment shall be subject to the review and approval of such commissioner.

d. Applications for such assistance shall be submitted to the secretary in a format, and containing such information, as prescribed by the secretary in consultation with the commissioner.

e. Funding preferences shall be given to applications for such assistance that relate to areas having one or more of the following characteristics:

(1) areas for which the application is a partnered application by a municipality and a community based organization;

(2) areas with concentrations of known or suspected brownfield sites;

(3) areas for which the application demonstrates support from a municipality and a community based organization;

(4) areas showing indicators of economic distress including low resident incomes, high unemployment, high commercial vacancy rates, depressed property values; and

(5) areas with known or suspected brownfield sites presenting strategic opportunities to stimulate economic development, community revitalization or the siting of public amenities.

f. The secretary, upon the receipt of an application for such assistance from a community based organization not in cooperation with the local government having jurisdiction over the proposed brownfield opportunity area, shall request the municipal government to review and state the municipal government's support or lack of support. The municipal government's statement shall be considered a part of the application.

g. Prior to making an award for assistance, the secretary shall notify the temporary president of the senate and the speaker of the assembly.

h. Following notification to the applicant that assistance has been awarded, and prior to disbursement of funds, a contract shall be executed between the department and the applicant or co-applicants. The commissioner shall establish terms and conditions for such contracts as the commissioner deems appropriate in consultation with the secretary of state, including provisions to define: applicant's work scope, work schedule, and deliverables; fiscal reports on budgeted and actual use of funds expended; and requirements for submission of a final fiscal report. The contract shall also require the distribution of work products to the department, and, for community based organizations, to the applicant's municipality. Applicants shall be required to make the results publicly available. Such contract shall further include a provision providing that if any responsible party payments become available to the applicant, the amount of such payments attributable to

expenses paid by the award shall be paid to the department by the applicant; provided that the applicant may first apply such responsible party payments towards actual project costs incurred by the applicant.

7. Amendments to designated area. Any proposed amendment to a brownfield opportunity area designated pursuant to this section shall be proposed, and reviewed by the secretary, in the same manner and using the same criteria set forth in this section and applicable to an initial nomination for the designation of a brownfield opportunity area.

8. Community participation requirements. a. All applications for state assistance for pre-nomination or nomination study or applications for designation of a brownfield opportunity area shall demonstrate that the following community participation activities have been or will be performed by the applicant:

(1) identification of the interested public and preparation of a contact list;

(2) identification of major issues of public concern;

(3) public notice and newspaper notice of (i) the intent of the municipality and/or community based organization to undertake a pre-nomination or nomination study or apply for designation of a brownfield opportunity area, and (ii) the availability of such application and any supporting documents in a manner convenient to the public.

b. Application for designation of a brownfield opportunity area shall provide the following minimum community participation activities:

(1) a comment period of at least thirty days on a draft nomination;

(2) a public meeting on an application;

(3) public access to such application, nomination, and any supporting documents in the manner convenient to the public.

9. Financial assistance; advance payment. Notwithstanding any other law to the contrary, financial assistance pursuant to this section provided by the commissioner and the secretary pursuant to an executed contract may include an advance payment up to twenty-five percent of the contract amount.

10. The secretary shall establish criteria for brownfield opportunity area conformance determinations for purposes of the brownfield redevelopment tax credit component pursuant to clause (ii) of subparagraph (B) of paragraph five of subdivision (a) of section twenty-one of the tax law. In establishing criteria, the secretary shall be guided by, but not limited to, the following considerations: how the proposed use and development advances the designated brownfield opportunity area plan's vision statement, goals and objectives for revitalization; how the density of development and associated buildings and structures advances the plan's objectives, desired redevelopment and priorities for investment; and how the project complies with zoning and other local laws and standards to guide and ensure appropriate use of the project site.