

**PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS**

**AGENDA ITEM SUMMARY**

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**Meeting Date:** June 2, 2015                       Consent                       Regular  
    Ordinance                       Public Hearing

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**Department:** Department of Economic Sustainability

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**I. EXECUTIVE BRIEF**

**Motion and Title:** Staff recommends motion to approve: a Subgrant Agreement with the City of South Bay in the amount of \$200,000 for the period of June 2, 2015 through June 1, 2016.

**Summary:** This Subgrant Agreement provides Brownfields Revolving Loan Fund (BRLF) Program funds for environmental cleanup assistance for the City-owned brownfield redevelopment site located at 480 U.S. Highway 27 North in South Bay. The City has been working to promote the redevelopment and sale of the site and has requested County assistance through its BRLF Program. On September 2, 2014, the City adopted Resolution 11-2014 to formally designate the site a Brownfield Area under the Florida Brownfields Redevelopment Program and provide for possible financial incentives to facilitate redevelopment of the site. On April 7, 2015, the City authorized the sale of this parcel to a developer who has expressed interest in developing a restaurant at the site, contingent on site cleanup. The new project will create six (6) new jobs, represent a capital investment of approximately \$150,000, and will be located on U.S. Highway 27 North, the main distribution route in South Bay. Under the terms of the Subgrant Agreement the City will utilize the funds to undertake the remediation work within 12 months of the date of the Subgrant Agreement and will abide by all prescribed U.S. Environmental Protection Agency (EPA) terms and conditions. The City will provide in-kind services valued up to \$40,000 as the required local match. **This funding is projected to create 20 jobs and have a five (5) year Economic Sustainability Impact of \$3.12 Million. These are federal EPA funds which require a 20% local match which will be provided by the City of South Bay. No County local match is required.** (DES Administration) District 6 (JB)

**Background and Justification:** Since 2013, the County has utilized environmental site assessment grant funding provided through Treasure Coast Regional Planning Council's Brownfields Program to conduct Phase I and Phase II Environmental Site Assessment (ESA) activities on behalf of the City of South Bay at the subject site. These ESAs indicated the site was a Nana's Petroleum gasoline service station from as early as 1938 through 1993 when the underground fuel storage tanks were removed. Review of available regulatory information, coupled with the soil and groundwater assessment efforts performed by the environmental consultants identified metals and petroleum impacted soil and petroleum impacted groundwater at the site. On January 14, 2014, the Board of County Commissioners received and filed a Cooperative Agreement (R2014-0058) with EPA for the receipt of \$1,000,000 for the BRLF Program. These funds will be used in conjunction with other economic development loan programs administered by the Department of Economic Sustainability to revitalize communities and create job opportunities.

**Attachment:**  
1. Subgrant Agreement with the City of South Bay

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**Recommended By:** Jimmy DeWalt                      5-7-15  
   **Department Director**                      **Date**

**Approved By:** Sharon [Signature]                      5/21/15  
   **Assistant County Administrator**                      **Date**

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**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2015	2016	2017	2018	2019
Capital Expenditures					
Operating Costs	\$200,000				
External Revenues	(\$200,000)				
Program Income					
In-Kind Match (County)					
<b>NET FISCAL IMPACT</b>	<b>-0-</b>				

# ADDITIONAL FTE POSITIONS (Cumulative)	-0-				
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**Is Item Included In Current Budget?** Yes \_\_\_\_\_ No \_\_\_\_\_

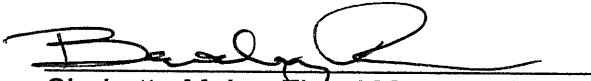
Budget Account No.:

Fund 1544 Dept 143 Unit 2108 Object 8201 Program Code/Period \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**

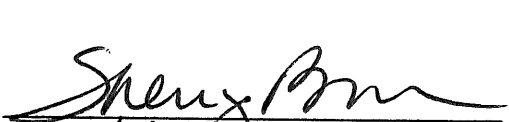
**Funding will be provided by the USEPA Brownfields Revolving Loan Fund's Competitive Grant Program.**

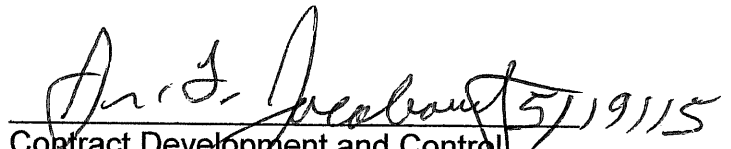
**C. Departmental Fiscal Review:**

  
 \_\_\_\_\_  
 Shairette Major, Fiscal Manager I

**III. REVIEW COMMENTS**

**A. OFMB Fiscal and/or Contract Development and Control Comments:**

  
 \_\_\_\_\_  
 OFMB  
 5/19/15

  
 \_\_\_\_\_  
 Contract Development and Control  
 5-19-15  
 B Wheeler

**B. Legal Sufficiency:**

  
 \_\_\_\_\_  
 Assistant County Attorney

**C. Other Department Review:**

\_\_\_\_\_  
Department Director

**SUBGRANT AGREEMENT  
PALM BEACH COUNTY  
BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM**

**THIS SUBGRANT AGREEMENT** ("Agreement") made and entered into \_\_\_\_\_, by and between **PALM BEACH COUNTY** (hereinafter referred to as either "County" or "Grantor"), a political subdivision of the State of Florida, with an office at 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406, with the program to be administered by the County's Department of Economic Sustainability ("DES"), and City of South Bay, a Municipal corporation organized under the laws of the State of Florida, (hereinafter referred to as "Subgrantee" or "subgrant recipient") with an address at 335 SW 2nd Avenue, South Bay, Florida 33493, and whose Federal I.D. number is 59-6000-429 and whose DUNS number is 049474331.

**WITNESSETH:**

**WHEREAS**, County has entered into a Cooperative Agreement with the United States Environmental Protection Agency (EPA) bearing Cooperative Agreement Grant Number: BF-00D12713-0 with attached Administrative Conditions and attached County Brownfields Revolving Loan fund (BRLF) Terms and Conditions-Region 4 (the foregoing Subgrant Agreement and its attachments are collectively referred to hereinafter as the "EPA Cooperative Grant Agreement"); and

**WHEREAS**, County has been approved to receive funds from the EPA pursuant to the EPA Cooperative Grant Agreement ("Grant Funds") and is authorized to make certain subgrants; and

**WHEREAS**, the Subgrantee represents and warrants that it is the fee simple title owner of a parcel of property located at 480 US Highway 27 North, South Bay, Florida 33493 (hereinafter referred to as the "Property"), which Property has been contaminated with petroleum contaminants; and

**WHEREAS**, Subgrantee has applied to County for a subgrant from the Grant Funds to use for remediation of the Property.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the parties, it is agreed by and between the parties as follows:

**ARTICLE I**  
**BASIC AGREEMENT PROVISIONS**

**Section 1.01 Recitals.**

The foregoing recitals are true and correct and incorporated herein by reference.

**Section 1.02 Effective Date and Term of Agreement.**

This Agreement shall commence on the date it has been executed by the last of the two parties hereto to execute it ("Effective Date"). Subgrantee shall have twelve (12) months after the Effective Date of this Agreement to complete the cleanup and all work related thereto. If the Subgrantee determines that the work cannot be completed within a twelve month timeframe, then the Subgrantee may submit a written request for extension, not to exceed an additional six months, to the Grantor. The reuse or redevelopment of the Property shall begin within six months of completed cleanup and all work related thereto. The Subgrantee shall have a loan from a lending institution to ensure the redevelopment reuse of the Property continues through to completion.

After commencement, this Agreement shall continue in effect until the earlier of the following: (i) completion by Subgrantee and approval by Grantor (and EPA if required) of the Remediation Work and the completion by Subgrantee of all of its other obligations under this Agreement (and approval thereof by Grantor and EPA) including but not limited to all close out matters and reports required by EPA and the EPA Grant Agreement, or (ii) termination pursuant to any other provision of this Agreement.

Notwithstanding the above paragraph or any of the other provisions of this Agreement the Subgrantee's obligations hereunder to comply with the EPA Cooperative Grant Agreement and all EPA requirements and the requirements of this Agreement that relate thereto shall survive any expiration or termination of this Agreement (regardless of who terminates and whether termination is for cause or without cause).

**Section 1.03 Subgrant Amount.**

Subject to all terms and provisions of this Agreement including but not limited to the Condition Precedent to Payment Clause hereinafter set forth, Grantor agrees to provide to Subgrantee a subgrant of up to Two Hundred Thousand Dollars (\$ 200,000.00) (referred to herein as "Subgrant Funds") to be applied by the Subgrantee towards the cleanup and related work including labor, materials, construction, and services to remove soil and/or groundwater contamination from the Property (the "Remediation Work").

**Section 1.04 Disbursement of Subgrant Funds.**

Subject to the right of Grantor to approve or disapprove the reasonableness and amount of any

expenditure and subject to the Condition Precedent to Payment Clause below, Subgrant Funds shall be disbursed to the Subgrantee as reimbursement for allowable and eligible expenses (as determined by EPA) which are incurred by the Subgrantee based upon the successful progress of the Remediation Work.

The County's obligation under this Agreement is expressly contingent upon both the release of funds under this Grant by the EPA and the execution of this Agreement by the County. The County will not be responsible for any work done or expense incurred by the Subgrantee, even work done or expenses incurred in good faith, if it occurs prior to either the release of funds by the EPA or the execution of this Agreement by the County.

Condition Precedent to Payment Clause: Notwithstanding any of provisions of this Agreement the following shall control: it shall be a condition precedent to any obligation of County to make any payment or payments to Subgrantee under this Agreement, that County has actually received the funds from EPA for the payment or payments. If EPA has not paid County for any reason whatsoever, including but not limited to, EPA's financial inability to pay or EPA's unwillingness to pay or EPA's determination that a request for payment is for ineligible or unallowable costs under the EPA Cooperative Grant Agreement or for any other reason whatsoever whether related to Subgrantee or not, the Subgrantee agrees that County shall not be liable for payment, nor be indebted to the Subgrantee. Subgrantee assumes the risk of non-payment by EPA. In no event shall County be obligated to use its own funds to pay Subgrantee under this Agreement.

## **ARTICLE II**

### **ACKNOWLEDGMENTS, REPRESENTATIONS AND WARRANTIES OF SUBGRANTEE**

#### **Section 2.01 Acknowledgments, Representations and Warranties.**

As a material inducement to County to enter into this Agreement, Subgrantee hereby acknowledges, represents, and warrants to County as follows:

- A. Subgrantee acknowledges receipt of a copy of the EPA Cooperative Grant Agreement and warrants that it will not take any action, or fail to take any action, that will cause County to be in violation of the terms of the EPA Cooperative Grant Agreement.
- B. Subgrantee acknowledges that, pursuant to the terms of the EPA Cooperative Grant Agreement, Subgrantee is required to retain fee simple title ownership of the Property throughout the entire Term that this Agreement is in effect.
- C. Subgrantee represents and warrants that the Property is not listed, or proposed for listing, on the National Priorities List of the EPA.
- D. Subgrantee represents and warrants that it is not now and never has been subject to any penalties resulting from environmental non-compliance at or on the Property or any other property adjacent thereto.
- E. Subgrantee represents and warrants that it is not a potentially liable party under the

Comprehensive Environmental Response, Compensation Liability Act, 42 USCA § 9601 et seq. (CERCLA) Section 107 pertaining to the Property. Subgrantee is advised that the investigation and/or opinion of Subgrantee's counsel is not binding on the Federal Government.

F. Subgrantee represents that simultaneously with Subgrantee's execution and delivery of this Agreement to Grantor, the Subgrantee has delivered to Grantor a copy of the Phase I, Phase II and Phase III Environmental Assessment reports for the Property performed according to the American Society for Testing and Materials (ASTM) standards (collectively, the "Assessment"). The Subgrantee acknowledges that the no portion of the Subgrant Funds shall be used for the payment of any cost or expense related to the Assessment. Subgrantee represents that the Assessment includes, but is not limited to, site background, the threat posed by the contaminant(s) to public health, welfare and the environment and all past enforcement activities conducted by any governmental agency, and the site testing results.

**Section 2.02 County Rights and Remedies.**

In the event that any of Subgrantee's acknowledgments, representations and warranties shall prove to be materially untrue, the same shall be considered a default for which the County shall have the rights and remedies identified in Article XIII hereof.

**ARTICLE III  
EVIDENCE OF AUTHORIZATION AND TITLE**

**Section 3.01 Authorization.**

Subgrantee shall deliver to Grantor simultaneously with the execution and delivery of this Agreement to Grantor or within such other time as Grantor may allow, written confirmation satisfactory to Grantor that Subgrantee's governing board has authorized the person signing this Agreement on behalf of Subgrantee to execute this Agreement.

**Section 3.02 Evidence of Title.**

Subgrantee shall deliver to Grantor simultaneously with the execution and delivery of this Agreement to Grantor or within such other time as Grantor may allow, title evidence at Subgrantee's expense (not to be reimbursed by Grantor), which shall be in the form of a current title search (certified within 30 days of the date of delivery to Grantor) by a Florida licensed title insurance company or opinion of title by an attorney licensed to practice in the State of Florida, certified to County (and others required by County) which, at a minimum, shall certify that Subgrantee is the fee simple title owner of the Property (and there shall be delivered to County with such title search or opinion of title recorded copies of all instruments currently effecting or encumbering the title to the Property). In addition, County, throughout the period of effectiveness of this Agreement, may require the Subgrantee, at its expense (not to be reimbursed by Grantor), to update this title information so that it is current (meaning that the effective date of the title search is no more than 30 days prior to its delivery to County).

## **ARTICLE IV SITE MANAGER**

### **Section 4.01 Selection and Responsibilities.**

The Subgrantee shall secure the services of a qualified environmental professional (subject to the written approval of Grantor) to act as Site Manager and who will prepare, review and shall provide written recommendations to the Grantor pertaining to the Remediation Work and shall review, coordinate, direct, and oversee the Remediation Work as it is on-going to ensure quality and to ensure that the Subgrantee complies with all requirements of this Agreement and all EPA requirements. The Subgrantee shall cause the Site Manager to deliver to Grantor all information, reports and documents, from time to time, as and when required or requested, by the Grantor or EPA or as required by other provisions of this Agreement.

The Site Manager is responsible for ensuring that the Remediation Work and the environmental activities related thereto are performed in accordance with applicable plans, procedures, this Agreement and all EPA requirements.

### **Section 4.02 Contact Information.**

The Subgrantee's Site Manager shall be Gregory Vaday. The Site Manager's telephone number is (561) 233-3630 and the mailing address is 100 South Australian, 5th Floor, West Palm Beach, FL 33406. Written notification shall be provided promptly to the Grantor in the event the Site Manager information needs to be changed or modified.

## **ARTICLE V PUBLIC PARTICIPATION**

### **Section 5.01 Public Involvement Plan.**

Unless not required by Grantor (e.g. if already completed), the Subgrantee shall prepare, within the time period required by Grantor, a Public Involvement Plan (PIP) which shall be subject to the approval of the Grantor. The Subgrantee shall ensure that public participation requirements are met. This includes developing and funding in addition to the PIP a site specific community relations plan ("CRP") which will include reasonable notice to public and private parties, opportunity for involvement, and response to comments and administrative records that are available to the public.

In addition, the PIP shall include the following:

- a. Copies of news releases and other information that explains the proposed project, such releases and information to be disseminated throughout the area surrounding the affected area.
- b. Procedures for the establishment and maintenance of a local information repository

(Administrative Record) at a location convenient to the public. The Subgrantee shall be responsible for establishing and maintaining the Administrative Record in accordance with EPA requirements. Documents in the Administrative Record shall include but not be limited to an analysis of reasonable alternatives including no action; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. Subgrantee shall keep the Administrative Record available at a location convenient to the public and make it available for inspection.

- c. Procedures on continued community involvement shall be outlined in the PIP.

## **ARTICLE VI ANALYSIS OF BROWNFIELDS CLEANUP ALTERNATIVES**

### **Section 6.01 Analysis of Brownfields Cleanup Alternatives.**

Subgrantee's Site Manager shall draft an analysis of brownfields cleanup alternatives ("ABCA") that will include information about the Property and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.), cleanup standards; applicable laws; alternatives considered; range of proven cleanup methods; evaluation of corrective measures; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the cleanup proposed. The evaluation will include an analysis of reasonable alternatives including no action. The Subgrantee shall submit copies of the draft analysis of brownfields cleanup alternatives to the Grantor for submission to EPA. The analysis and evaluation must comply with all EPA requirements. The Subgrantee agrees to accept the advice and requirements from the EPA and Grantor and shall incorporate these as revisions. The clean up method chosen must be based on this analysis and in compliance with all EPA requirements and EPA comments. Any on-site activity with the potential to impact historic properties shall require a consult with EPA regarding the potential applicability of the National Historic Preservation Act, and if applicable, the Grantor and/ or Subgrantee shall assist EPA in complying with any requirements of the Act and implementing regulations.

### **Section 6.02 Review by Public.**

If not already completed by the Effective Date, the ABCA Analysis and any revisions to it which may have been required by Grantor, Florida Department of Environmental Protection (FDEP), or EPA shall be made available for review and public comment for a period of not less than thirty (30) days from the date of publication of the public notice.



### **Section 6.03 Final Analysis.**

After the public comment period, the Subgrantee shall incorporate all appropriate comments, as required by Grantor, FDEP, or EPA, into a final analysis of brownfields cleanup alternatives document and prepare a written response to the public comments. This final analysis of brownfields cleanup alternatives shall be subject to the written approval of Grantor, FDEP and EPA and as approved is referred to herein as "Final ABCA Analysis".

## **ARTICLE VII PROJECT DOCUMENTS**

### **Section 7.01 Preparation of Project Documents.**

After the Final ABCA Analysis, the Subgrantee's Site Manager shall prepare a scope of work (including projected costs for each element of the work) containing detailed design and construction plans and specifications for the work to be done in order to remove the petroleum and hazardous materials and substances contamination (that is eligible for funding under the EPA Cooperative Grant Agreement and identified in the Final ABCA Analysis) from the Property, a budget (the Budget is the Subgrant Funds which may be subdivided for elements or components of the Remediation Work), a work schedule (not to exceed 365 days after the Effective Date), a health and safety plan (OSHA 1910-120 - 126) and a quality assurance project plan (QAPP) which sets forth and includes all items required by EPA including but not limited to the manner and method of collecting samples in compliance with EPA requirements and to assure the complete removal of such contamination from the Property and submit same to Grantor for approval. Subgrantee shall comply with 40 CFR Part 31.45 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional quality assurance requirements (Subgrantee shall also comply with such State law requirements).

### **Section 7.02 Submittal of Project Documents to Grantor.**

A. All of the foregoing documents once approved by Grantor in writing are collectively referred to in this Agreement as the "Project Documents". The Remediation Work and all related work, materials, construction, and services shall be completed in accordance with the Project Documents. The complete set of proposed project documents shall be submitted to Grantor **within 15 calendar days** after the Effective Date of this Agreement. If Grantor does not approve the proposed project documents or they are not submitted to Grantor within the foregoing time frame then, Grantor shall have the option of terminating this Agreement by providing written notice to Subgrantee, in which event, Grantor shall have no obligation whatsoever to Subgrantee under this Agreement.

B. If not previously submitted to Grantor, prior to initiation of the Remediation Work, including any cleanup activities, the Subgrantee shall provide the Grantor with a copy of the FDEP Brownfield Site Rehabilitation Agreement (BSRA) relative to the subject Property.

**ARTICLE VIII  
HAZARDOUS MATERIALS WARRANTY**

Subgrantee represents and warrants the following: (i) that Subgrantee did not, in, on or at the Property, use, generate, release, treat, process, store, handle, or dispose of any, petroleum or petroleum related substances, or hazardous substances or materials, or toxic substances or materials, or any other substance or material which are designated as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic material," "toxic pollutant," "contaminant," or "pollutant" by EPA, the Federal government, State government or any other governmental agency or authority (collectively "Hazardous Materials"), (ii) that Subgrantee has not exacerbated the Hazardous Materials contamination of the Property, (iii) that Subgrantee has taken reasonable steps with regard to the Hazardous Materials contamination of the Property, (iv) that Subgrantee is not a generator or transporter of Hazardous Materials at or around the Property or in any way that contributed to the Hazardous Materials contamination of the Property and (v) the Property is not subject to any unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA.

**ARTICLE IX  
REMEDIATION WORK**

**Section 9.01 Use of Funds.**

A. The Subgrantee understands and agrees that all of the funds from the Subgrant Funds shall be used by the Subgrantee towards the cleanup and remediation of the Property pursuant to the approved Project Documents and this Agreement and in fulfillment of the other requirements of this Agreement. If Subgrantee is a Revolving Loan Fund loan ("RLF") recipient, the Subgrantee shall supply the Grantor with a design and cleanup plan and specifications for the redevelopment of the Property and evidence of all total clean-up financing, including a firm commitment for a loan and permanent financing from an accredited lending institution, if applicable.

B. Subject to the other provisions of this Agreement including but not limited to the Condition Precedent to Payment Clause, the Subgrant Grant Funds shall be payable to the Subgrantee as reimbursement for allowable and eligible expenses (as determined by EPA) which are incurred by the Subgrantee based upon the successful progress of the Remediation Work and performance of Subgrantee's other obligations under this Agreement. The Subgrantee represents and warrants that it will not pay any Lienor (as defined in County BRLF Guidelines) for the Remediation Work or any portion thereof, prior to Subgrantee's receipt of a properly executed and effective waiver and release of lien from all Lienors providing labor, services or materials for the Remediation Work or portion thereof that is being paid for by Subgrantee.

**Section 9.02 Environmental Requirements/Compliance with Conditions and Laws.**

A. Subgrantee shall comply with and shall carry out the Remediation Work; in accordance with the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) section 104(k); the Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments 40 CFR 31 and OMB Circular A-87 for governmental recipients of subgrants or 40 CFR 30 and OMB Circular A-122 for non-profit recipients of subgrants; and all other applicable provisions of Federal, state and local laws and regulations.

B. In addition, the Subgrantee agrees with and shall comply with the following terms and conditions:

a. Subgrantee shall use funds only for eligible activities and in compliance with the requirements of CERCLA 104(k) and all applicable Federal, State and local laws and regulations.

b. Subgrantee shall ensure that the cleanup is protective of human health and the environment and may promote the creation or preservation of greenspace.

c. Subgrantee shall document how funds are used by maintaining separate records for costs incurred in regard to the Property, the Remediation Work, and expenditures of all funds disbursed to Subgrantee under this Agreement. If the Agreement includes cleanup Remediation Work of a petroleum contaminated brownfields sites(s), the Subgrantee shall maintain separate records for costs incurred at the site(s).

d. Subgrantee shall keep and maintain all plans, specifications, drawings, data, documents, papers, accounting and financial records, programmatic records, and all other data and information, (in whatever form), and supporting documentation pertaining to all matters relative to this Agreement and the Remediation Work (collectively the "Records") for a minimum of three years following completion of the Remediation Work financed all or in part with Grant funds. Notwithstanding that three years has elapsed Subgrantee shall obtain written approval from the Grantor prior to disposing of any Records. The Subgrantee is required to provide access to Records (including for inspection, copying and transcription) relating to loans and subgrants supported in whole or in part with Grant Funds to authorized representatives of the Federal government and County.

e. Subgrantee certifies that it is not currently, nor has it ever been, subject to any penalties resulting from environmental non-compliance at the Property.

f. Subgrantee certifies that it is not potentially liable under §107 of CERCLA for the site. The Subgrantee certifies that it is not a responsible party for the hazardous, non hazardous, toxic or non toxic, materials or substances that contaminates the Property.

g. Subgrantee shall conduct all cleanup activities and Remediation Work as required by the agreed upon scope of work.

h. Subgrantee shall comply with applicable EPA assistance regulations (40 CFR Part 31 for governmental entities). All procurements conducted with subgrant funds must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48.

i. If the Grant funds awarded are used in combination with non-federal sources of funds, the Subgrantee shall ensure compliance with all applicable Federal and State laws and requirements. In addition to CERCLA Section 104(k), Federal applicable laws and requirements include: 40 CFR 31 and OMB circular A-87 for governmental Subgrantees or 40 CFR 30 and OMB Circular A-122 for no-profit entities and 40 CFR 30 and OMB Circular A-21 for educational institutions that may be subgrantees.

j. The Subgrantee must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with this EPA cooperative Grant Agreement.

k. The Subgrantee shall comply with all Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements found in the EPA Grant Agreement and at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

l. If EPA elects to have Substantial Involvement in this project as the term Substantial Involvement is used in the EPA Cooperative Grant Agreement, the Subgrantee will cooperate with EPA and comply with all EPA requirements in regard thereto.

m. Neither Subgrantee nor any of its contractors, subcontractors and sub subcontractors or other parties utilized directly or indirectly by Subgrantee in connection with the performance of Remediation Work, nor the principals thereof, shall have been debarred or suspended or ineligible from federally-funded projects.

n. Subgrantee shall deliver to Grantor simultaneously with the execution and delivery of this Agreement to Grantor all information relating to Subgrantee's overall environmental compliance history including any penalties resulting from environmental non compliance at the Property.

o. Subgrantee must make ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 subpart B. Additionally, in accordance with these regulations, Subgrantee must identify all known workplaces that will be utilized in connection with this Agreement, and keep this information on file during the performance of this Agreement.

p. Subgrantee shall comply with the standards in Section 210(a)-(d) of OMB Circular A-133.

### **Section 9.03 Additional Requirements.**

In addition to the other terms, provisions and conditions in this Agreement the awarding of this Subgrant Agreement shall also be subject to the following requirements:

1. Subgrantee shall commence the Remediation Work within 365 days from the date of execution of this Agreement and shall complete and perform all of the Remediation Work within twelve months in accordance with timetable included in the schedule of work that has been approved as part of the Project Documents (not exceeding 365 days from and after the Effective Date) time being of the essence. Circumstances beyond the control of the Subgrantee, may constitute a request to extend the commencement of the work. This request must be submitted in writing.
2. All Remediation Work performed pursuant to this Agreement shall be performed in a good and workmanlike manner.
3. All changes or modifications to the Remediation Work or the Project Documents must be approved in writing by the Grantor prior to such change or modification becoming effective. All additional costs incurred, as the result of any changes shall be the responsibility of the Subgrantee (not to be reimbursed by Grantor or EPA). Grantor may unilaterally impose cleanup activities, as necessary, based on comments from the public or based upon new information acquired.
4. Subgrantee, at its sole cost and expense, and from sources other than the funds from the Subgrant Funds, shall be responsible for obtaining all permits, licenses, approvals, certifications and inspections required by federal, state or local law and to maintain such permits, licenses, approvals, certifications and inspections in current status during the term of this Agreement.
5. The Subgrantee shall notify the Grantor when the Remediation Work is complete. The notice shall contain documentation that the Remediation Work is complete and has been performed in accordance with the terms of this Agreement and all EPA requirements. This must be done through a final report or letter from the Site Manager which shall be subject to the approval of Grantor. This documentation shall be included by Subgrantee as part of the administrative record.

**ARTICLE X**  
**DAVIS BACON TERMS AND CONDITIONS**

Davis Bacon Term and Condition for Revolving Loan Fund Grants to Governmental/Quasi Governmental Organizations Attached to the EPA Cooperative Grant Agreement relating to the Davis-Bacon Act. Subgrantee shall comply with, perform, carry out, monitor, be subject to, shall be bound by, including but not limited to the following: (i) including correct wage determinations in solicitations for competitive contracts by way of requests for bids, proposals, quotes, or other methods for soliciting contracts (solicitations), new contracts, and task orders, work assignments or similar instruments issued to existing contractors (ordering instruments), (ii) wherever it requires certain provisions to be included in a subgrant they are hereby incorporated herein by reference, (iii) wherever it requires that certain provisions be included in contracts, subcontracts, task orders, work assignments or similar instruments Subgrantee shall ensure that such provisions are included, (iv) wherever it provides that RLF recipient shall or may require subgrantees or shall ensure that subgrantees comply with, perform or carry out certain provisions it shall be Subgrantee's responsibility to comply with, perform and carry out all such provisions without further request from County, in other words, by this paragraph County is requiring compliance with all such provisions, (v) wherever it provides that County as recipient may, or is required to take certain action in connection with a subgrant, the Subgrantee shall be subject to and shall comply with all such actions taken by or required by County (vi) Subgrantee shall establish, maintain, preserve and allow access to its records (including inspection, copying and transcription), (vii) Subgrantee shall require all contractors, subcontractors and others performing any work related to this subgrant to establish, maintain, preserve and allow access to their records (including inspection, copying and transcription, (viii) Subgrantee shall cause all contractors, subcontractors and others performing any work in connection with this subgrant to comply with, perform, carry out, monitor, be subject to, be bound by and to complete all provisions which are applicable to contractors, subcontractors and others performing any work in connection with this subgrant including but not limited to such contractors, subcontractors and others allowing interviews of their employees while on the job. The provisions of this paragraph related to establishing, maintaining, preserving and allowing access to records are in addition to, not in limitation of, other requirements of this Agreement pertaining thereto.

**ARTICLE XI**  
**PROHIBITED USES OF FUNDS**

No portion of the Subgrant Funds shall be used by the Subgrantee for any of the following:

1. Pre-cleanup environmental activities such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup.

2. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other Federal and State laws, unless such a permit is required as a component of the cleanup action.

3. Construction, demolition, and development activities that are not brownfields cleanup actions (e.g. marketing of property or construction of a new non-cleanup facility), and addressing public or private drinking water supplies that have deteriorated through ordinary use.

4. Job training unrelated to performing a specific cleanup at a site covered by a loan or subgrant.

5. To pay for a penalty or fine.

6. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority.

7. To pay for a response cost at a brownfields site for which the recipient of the subgrant or loan is potentially liable under CERCLA Section 107.

8. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.

9. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.

10. Management fees or similar charges-"management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities or for other similar costs that are not allowable under EPA assistance agreements. Management fees or similar charges may not be used to improve or expand the project funded under this Agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

11. Under CERCLA 104(k) (4) (B), administrative costs are prohibited costs under this Agreement and will not be reimbursed or paid to Subgrantee. Prohibited administrative costs include all indirect costs under applicable OMB Circulars incurred by Subgrantee and include but are not limited to the following:

a. Costs incurred to report quarterly performance to EPA under the EPA Cooperative Grant Agreement are eligible.

b. Ineligible grant or subgrant administration costs include direct costs for:

(i) Preparation of applications for Brownfields grants and subgrants;

- (ii) Record retention required under 40 CFR 30.53 and 40 CFR 31.42;
- (iii) Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 40 CFR 31.32 and 31.33;
- (iv) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 30.25 and 40 CFR 31.30;
- (v) Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;
- (vi) Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;
- (vii) Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and
- (viii) Close out under 40 CFR 30.71 and 40 CFR 31.50 and under the provisions of the EPA Grant Agreement.

## **ARTICLE XII INDEMNIFICATION**

### **Section 12.01 Indemnification by Subgrantee.**

Subgrantee shall, at Subgrantee's expense, indemnify and hold harmless the Grantor, Grantor's board members, officers, agents and employees (all collectively "Indemnified Parties") from any and all claims, demands, fines, penalties, losses, liabilities, expenses, damages (including but not limited to general, punitive, compensatory and other damages) and causes of action of whatsoever kind, and, all attorneys fees, paralegal fees, expert witness fees, other professional fees, charges, and costs of every kind (all attorneys fees and other fees, charges and costs being collectively referred to herein as "Attorneys Fees and Costs") which are incurred, paid, or suffered by the Indemnified Parties or any of them arising out of or related in any to: (i) any act, error, omission, or negligence or other wrongdoing of Subgrantee, its agents, employees, contractors or subcontractors including but not limited to those resulting in any personal injury, death or property damage, (ii) Subgrantee's performance, compliance with or non compliance with or default under this Agreement, (iii) Subgrantee's actions or inactions with regard to the Property, (iv) the presence, use, generation, recycling, reuse, release, emission, treatment, processing, storage (including storage in above ground and underground storage tanks), removal, cleanup, handling, transportation, disposal, escape, leakage, spillage, discharge, or injection



of any substance or material defined or designated by the EPA, or the Federal government, or State government or any other governmental authority or agency as a "hazardous substance," "hazardous material," "hazardous waste," "toxic substance," "toxic material", "toxic pollutant," "contaminant," or "pollutant" on, in, under or to and from the Property or any property that is adjacent to the Property, or (vi) Subgrantee's use or misuse of the Subgrant Funds. The Attorneys Fees and Costs which shall be payable hereunder shall include but not be limited to all Attorneys Fees and Costs incurred before, during and after suit, trial, appellate proceedings, bankruptcy proceedings, administrative proceedings, and arbitration proceedings. All the Attorneys Fees and Costs shall be payable whether any suit, trial, appellate proceedings, bankruptcy proceedings, administrative proceedings, or arbitration proceedings are actually commenced or not.

#### **Section 12.02 Obligations Survive Agreement.**

Subgrantee's obligations under this Article XII shall survive any expiration or termination of this Agreement (regardless of who terminates and whether termination is for cause or without cause).

### **ARTICLE XIII DEFAULT**

The default and remedy provisions of this Agreement are as follows:

A. If any of the following events set forth in (i)-(ix), inclusive, below occur ("Events of Default"), the Subgrantee shall be in default under this Agreement and all obligations on the part of the Grantor to make any further payment of funds hereunder shall, if the Grantor so elects, terminate and, the Grantor may, at its option, exercise any and all remedies in regard to such default(s) (all remedies being cumulative and may be exercised concurrently, independently, successively or in any order that Grantor shall determine in Grantor's sole and absolute discretion), but the Grantor may make any payments or parts of payments after the happening of any Events of Default without thereby waiving the right to exercise such remedies, and without becoming liable to make any further payment. The Events of Default include the following: (i) the Subgrantee failing to perform or comply with any of the terms, covenants, provisions or conditions contained in this Agreement or in the EPA Grant Agreement, (ii) if the Property or any interest therein is conveyed, assigned or otherwise transferred during the term of this Agreement or prior to completion of the Remediation Work, (iii) the Subgrantee incurs any costs in connection with the Remediation Work or uses any funds distributed to it from Grantor (or obtains reimbursement from Grantor for funds previously expended by Subgrantee) for any ineligible, unallowable or improper purposes which are not permitted or allowable under the EPA Grant Agreement or under the laws, regulations or policies related to the EPA Grant Agreement, (iv) Subgrantee receives an overpayment from Grantor, (v) any representation, warranty or statement made by Subgrantee, its contractors, agents and/or employees herein or in any report, certificate, financial statement or any other instrument or information (in whatever form) furnished in connection with this Agreement is false or misleading in any material respect, (vi) the Subgrantee assigns this Agreement or any Subgrant Funds or any interest therein or any of its rights or obligations under this

Agreement or subcontracts any of its obligations hereunder (including but not limited to the performance of any of the Remediation Work) without the advance written consent of Grantor (Grantor may withhold or grant any consent in its sole and absolute discretion), (vii) if any reports required by this Agreement or by the EPA Grant Agreement, or otherwise required by Grantor or EPA, have not been submitted to the Grantor or EPA when required or have been submitted with incorrect, incomplete or insufficient information, (viii) any proceeding involving the Subgrantee or the Property, is commenced under any bankruptcy, debt reorganization, insolvency, readjustment of debt, dissolution or liquidation law of the United States, or any State, but if such proceedings are instituted no Event of Default shall be deemed to have occurred hereunder if the Grantor consents in writing to such proceedings, or such proceedings are dismissed with prejudice within thirty (30) days of their commencement, or (ix) an order, judgment or decree is entered, without the application, approval or consent of the Grantor, by any court of competent jurisdiction approving the appointment of a receiver, trustee or liquidator of the Subgrantee or of all or a substantial part of its assets, and such order, judgment or decree shall continue in effect for a period of thirty (30) days.

B. Upon the occurrence of any one or more of the Events of Default enumerated above the Grantor's remedies shall include but not be limited to those set forth in (i)-(v), inclusive, which are: (i) to terminate this Agreement in whole or in part, (ii) to require that the Subgrantee immediately repay to the Grantor the amount of all funds which were used or received for ineligible, unallowable or improper purposes (including but not limited to any overpayment to Subgrantee) under the laws, rules and regulations governing the use of funds under EPA Grant Agreement, (iii) to withhold or suspend payment of all or any part of a request for payment, (iv) to exercise any corrective or remedial actions, to include but not be limited to, requesting additional information from the Subgrantee to determine the reasons for or the extent of non-compliance or lack of performance, issuing a written warning to advise that more serious measures may be taken if the situation is not corrected, advising the Subgrantee to suspend, discontinue or refrain from incurring costs for any activities in question, and (v) to commence any legal and/or equitable proceedings to include but not limited to: (aa) for damages, (bb) to enforce this Agreement, (cc) to require Subgrantee's compliance with all terms, covenants and provisions of this Agreement, or (dd) to pursue any remedies permitted at law or in equity.

#### **ARTICLE XIV GENERAL GRANT REQUIREMENTS**

##### **Section 14.01 Sign.**

The Subgrantee shall erect a sign in a prominent location on the Property stating that the Remediation Work is being financed in part by the BRLF Grant Funds and the Grantor and providing the appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign erected on the Property site shall comply with all requirements of the state and local law applicable to on-premise outdoor advertising as well as 40 CFR § 35.6105(a)(2)(ii).

**Section 14.02 Access to Records.**

A. The Subgrantee agrees to permit the Grantor, EPA and their designated representatives access to all of the Records relating to this Agreement and the Remediation Work at any time during normal business hours and upon 48 hours advance written notice for the purposes of making audits, examinations, inspections, excerpts, transcriptions, copies and any other reproductions thereof.

B. If requested by Grantor in writing, the Subgrantee agrees to deliver copies of the Records (at Subgrantee's sole expense) to the Grantor, EPA, or their designated representatives at an address or addresses designated by Grantor. If the Grantor, EPA or their representative(s) finds that the copies of the Records delivered by the Subgrantee are incomplete, inaccurate, or otherwise deficient the Subgrantee agrees to pay EPA and/or their designated representatives costs to travel to the Subgrantee's office or other location where the Records are located for the purposes of making audits, examinations, inspections, excerpts, transcriptions, copies and any other reproductions thereof. In addition, all grant related Records are subject to 40 C.F.R. § 35.6710.

**Section 14.03 Access to Property.**

The Subgrantee agrees that the Grantor, EPA and their designated representatives shall have access to all parts of the Property, at all times. The Subgrantee shall keep the Property at all times secure and safe. If for any reason Subgrantee is unable or unwilling to complete the Remediation Work, Grantor, EPA and their designated representatives, have the right to secure the Property as required by EPA requirements. All costs incurred by Grantor or EPA to secure the Property as required by EPA requirements shall be the obligation of Subgrantee and shall be paid to Grantor or EPA, as applicable, within 30 days of a written demand. Any amounts not paid within said 30 days shall bear interest at 10% per annum.

**Section 14.04 Non-Discrimination.**

Subgrantee shall comply with all federal, state and local laws and regulations prohibiting discrimination on the grounds of race, color, religion, national origin, sex, age, disability, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Subgrantee must comply with Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses and non-profit agencies), the Fair Housing Act, as well as other applicable civil rights laws and a variety of program specific statutes with non discrimination requirements. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement.

**Section 14.05 No Assignment or Transfer.**

A. Subgrantee shall not assign, subcontract, convey or transfer any obligations, rights or interests (including without limitation, moneys that may become due or moneys that are due) under

this Agreement, without the prior written consent of the Grantor which Grantor may grant or withhold in its sole and absolute discretion. Unless specifically stated to the contrary in any written consent to an assignment, subcontract, conveyance or transfer; no assignment, subcontracting, conveyance or transfer will release or discharge the assignor or transferor from any duty or responsibility under this Agreement. The Grantor may assign its rights and obligations under this Agreement, in whole or in part, without the consent of Subgrantee.

B. The Subgrantee shall not, during the term of this Agreement, sell, transfer, convey or dispose of all or any portion of the Property or any interest therein.

**Section 14.06 Lobbying.**

The Subgrantee agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The Subgrantee shall promptly submit to the Grantor and the Federal Government the required certification and disclosure forms required by Title 40 CFR Part 34. The Subgrantee shall include the language of this provision in all subcontracts exceeding \$100,000.00, if any, and shall require in such subcontracts that the subcontractor submit to Grantor and the Federal Government the required certification and disclosure forms required by Title 40 CFR Part 34. In accordance with the Byrd Anti Lobbying Amendment any recipient of grant funds who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure. The Subgrantee agrees that no funds received by the Subgrantee under this Agreement shall be used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. Subgrantee shall abide by its respective OMB Circular (A-21, A-87, or A-122) which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

**Section 14.07 Recycled Paper.**

In accordance with EPA Order 1000.25, Executive Order 13423 and 40 CFR 30.16 the Subgrantee agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this Agreement or in connection herewith and are delivered to Grantor or EPA. This requirement does not apply to reports prepared on forms supplied by EPA or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. The Subgrantee shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act ("RCRA") (42 U.S. C. 6962) and regulations promulgated in regard thereto. The regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA. These guidelines are listed in 40 CFR 247.

**Section 14.08 Historic Properties.**

The Subgrantee agrees to consult with the appropriate State of Florida Division of Historical Resources office and the State Historic Preservation Officer office in the identification and evaluation of any structures 50 years old and older which may be impacted by scheduled project activities, or properties located adjacent to the activities areas. The Subgrantee agrees to comply with efforts to identify, evaluate and appropriately design project activities to avoid or minimize adverse project impacts to any historic properties listed or which satisfy the criteria for eligibility for listing (36 CFR 60.4) in the National Register of Historic Places. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup) the Subgrantee shall consult with Grantor and EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist Grantor and EPA in complying with any requirements of the Act and implementing regulations.

**Section 14.09 MBE/WBE.**

The Subgrantee agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement which are contained in 40 CFR, Part 33. The Subgrantee accepts the Minority Business Enterprise ("MBE")/Women's Business Enterprise ("WBE") fair share objectives/goals set forth in paragraph 8 of the Administrative Conditions attached to the EPA Grant Agreement, which paragraph 8 is incorporated herein by reference (references to "paragraph 8" shall mean all paragraphs under paragraph 8). Where the term "recipient" is used under paragraph 8 it shall mean the "Subgrantee" under this Agreement for purposes of Subgrantee's compliance requirements under this Agreement. The Subgrantee agrees to make the Six Good Faith Efforts set forth in 40 CFR, Part 33, Subpart C. Pursuant to 40 CFR, Section 33.301 the Subgrantee agrees to make these six good faith efforts whenever procuring construction, equipment, services and supplies in connection with this Agreement and to require prime contractors and subcontractors to comply. Records documenting compliance with the six good faith efforts shall be retained. In the event that the Subgrantee has received written approval from the Grantor to subcontract any portion of the Remediation Work the Subgrantee shall include in all subcontracts the fair share objectives/goals and require all subcontractors to comply with the requirements of paragraph 8. The Subgrantee shall prepare and submit to Grantor and EPA Form 5700-52A "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period within which this Agreement is executed and continuing until under EPA requirements the form is no longer required to be filed. The reports must be submitted annually for each period ending September 30<sup>th</sup> and shall be delivered to County and EPA by October 30 of each year. Final MBE/WBE reports must be submitted within 90 days after the project period of the EPA Cooperative Grant Agreement ends.

**Section 14.10 Suspension and Debarment.**

A. The Subgrantee shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other

Persons" and provide documentation promptly to Grantor (or immediately upon request of Grantor). Subgrantee is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions", includes a term or condition requiring compliance with Subpart C. Subgrantee is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions.

B. Subgrantee acknowledges that failing to disclose the information required in 2 CFR 180.335 may result in delay or negation of this Agreement and pursuance of legal remedies, including suspension and debarment. Subgrantee may access the Excluded Parties List System at [www.epls.gov](http://www.epls.gov). This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension and Other Responsibility Matters".

#### **Section 14.11 Inspector General: EPA or USA.**

In addition to other access to records provisions in this Agreement, Subgrantee agrees to allow any appropriate representative of the Office of Inspector General of EPA or of the United States to: (1) examine any records of Subgrantee, any of its procurement contractors and subcontractors or any local agency administering such contract, that pertain to, and involve transactions relating to, the procurement contract, subcontract, or this Agreement; and (2) to interview any officer or employee of the Subgrantee, its agencies, its contractors or subcontractors regarding such transactions. The Subgrantee is advised that providing false, fictitious or misleading information with respect to the receipt and disbursement of the Subgrant Funds may result in criminal, civil or administrative fines and/or penalties. Subgrantee should be aware that the findings of any review, along with any audits, conducted by an inspector general of a Federal department or executive Agency and concerning the Subgrant Funds shall be posted on the inspector general's website except that information that is protected from disclosure under sections 552 and 552a of Title 5, United States Code may be redacted from the posted version.

#### **Section 14.12 EPA Cooperative Grant Agreement.**

A. The Subgrantee acknowledges having received and reviewed the entire EPA Cooperative Grant Agreement. In regard to Subgrantee's performance and obligations under this Agreement and in regard to the Remediation Work the Subgrantee, shall in addition to its other obligations under this Agreement be responsible for: (i) complying with and performing, all terms, provisions, requirements and conditions which the EPA Grant Agreement requires County to comply with and perform, and also, (ii) Subgrantee shall be responsible for complying with and performing all terms, provisions, requirements and conditions which the EPA Grant Agreement requires subgrant recipients to comply with and perform or that are required by Federal law or regulation. The foregoing (i) and (ii) shall apply even though said terms, provisions, requirements, conditions, laws or regulations may not be specifically set forth in this Agreement. (Note: Subgrantee shall submit all required reports, certifications, forms and other documents to Grantor for Grantor to submit to EPA unless EPA otherwise requires direct submittal to EPA.)

B. The Subgrantee shall not perform any act, fail to perform any act, or refuse to comply with any Grantor requests which would cause the Grantor to be in violation of the terms and conditions of EPA Cooperative Grant Agreement.

C. Without limiting Subgrantee's obligations with regard to the entire EPA Cooperative Grant Agreement, the following provisions are specifically detailed here:

1. Subgrantee agrees with and shall comply with the provisions of:
  - a. Paragraph 10, "Single Audit Act", of the Administrative Conditions attached to the EPA Cooperative Grant Agreement.
  - b. Paragraph 12, "Subaward Reporting and Compensation", of the Administrative Conditions attached to the EPA Cooperative Grant Agreement.
  - c. Paragraph 15, "Procurement", of the Administrative Conditions attached to the EPA Cooperative Grant Agreement.
2. In regard to paragraph 19 of the Administrative Conditions attached to the EPA Cooperative Grant Agreement entitled "Payment to Consultants" Subgrantee is advised that EPA participation (and therefore Grantor's participation and payments) in the salary rate (excluding overhead) paid to individual consultants retained by Subgrantee or Subgrantee's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2013, the limit is \$596.00 per day and \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the Subgrantee will pay these in accordance with its normal reimbursement practices subject to any limitation under applicable EPA requirements).
3. Under the EPA Grant Agreement the Grantor is required to provide various information and reports to EPA on many different subjects and at many different times. It shall be Subgrantee's obligation to provide all such information and reports to Grantor in sufficient time to Grantor so that Grantor may provide such information and reports to EPA on or before their due date.

## **ARTICLE XV MISCELLANEOUS**

### **Section 15.01 Entire Agreement.**

This Agreement and any Exhibits attached hereto constitute all agreements, conditions and understandings between Grantor and Subgrantee concerning the Subgrant Funds. All representations, either oral or written, shall be deemed to be merged into this Agreement. Except as herein otherwise

provided, no subsequent alteration, waiver, change or addition to this Agreement shall be binding upon Grantor or Subgrantee unless reduced to writing and signed by them.

**Section 15.02 Notices.**

All notices, consents, approvals, and elections (collectively, "notices") to be given or delivered by or to any party hereunder shall be in writing and shall be (as elected by the party giving such notice) hand delivered by messenger, courier service, or national overnight delivery service (provided in each case a receipt is obtained), telecopied or faxed, or alternatively shall be sent by United States Certified Mail, with Return-Receipt Requested. The effective date of any notice shall be the date of delivery of the notice if by personal delivery, courier services, or national overnight delivery service, or on the date of transmission with confirmed answer back if telecopier or fax if transmitted before 5PM on a business day and on the next business day if transmitted after 5PM or on a non-business day, or if mailed, upon the date which the return receipt is signed or delivery is refused or the notice designated by the postal authorities as non-deliverable, as the case may be. The parties hereby designate the following addresses as the addresses to which notices may be delivered, and delivery to such addresses shall constitute binding notice given to such party:

**To Grantor:**

Palm Beach County  
Department of Economic Sustainability  
Attn: Greg Vaday, Principal Planner  
100 Australian Avenue, Suite 500  
West Palm Beach, FL 33406

With a copy to:

Palm Beach County  
Office of the County Attorney  
Attn: James Brako, Esq.  
301 North Olive Avenue  
Suite 601  
West Palm Beach, FL 33401

**And**

With a copy to:

Environmental Protection Agency  
Attn: Margaret Olson, Project Manager, Brownfields Section  
Atlanta Federal Center – 10th Floor  
61 Forsyth Street SW  
Atlanta, GA. 30303-8960



**To Subgrantee:**

City of South Bay  
Attn: Leondrae Camel  
335 SW 2nd Avenue  
South Bay, FL 33493

or to such other person and address as a party may subsequently specify in writing to the other party, however, no such change shall be effective unless actually received by the other party.

**Section 15.03 Exclusion of Third-Party Beneficiaries.**

Except as to the Indemnified Parties and EPA, this Agreement is not intended to create or vest any rights in any third party or to create any third party beneficiaries. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including but not limited to any citizen or employees of the County and/or the Subgrantee.

**Section 15.04 Time of the Essence.**

Time is of the essence in the performance of this Agreement.

**Section 15.05 Act of God.**

It is expressly understood that a failure or delay on the part of the Grantor or Subgrantee in the performance, in whole or in part, of any of their obligations under this Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders or regulations, or matters beyond the reasonable control of such party, the failure or delay shall not constitute a breach or Event of Default under this Agreement. However, in the case of the Subgrantee failing or delaying in performance, the Grantor shall determine what extension, if any, that the Subgrantee shall be entitled to in order to complete the Remediation Work.

**Section 15.06 Palm Beach County Office of the Inspector General.**

Palm Beach County has established the Office of Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the Subgrantee, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

**Section 15.07 Waiver, Accord and Satisfaction.**

The waiver by Grantor of any default of any term, condition or covenant herein contained, or failure of Grantor to enforce at any time or for any period of time any one or more of the provisions of this Agreement, shall not be a waiver of such term, condition or covenant, or any subsequent default of the same or any other term, condition or covenant herein contained. The consent or approval by Grantor to or of any act by Subgrantee requiring Grantor's consent or approval shall not be deemed to waive or render unnecessary Grantor's consent to or approval of any subsequent similar act by Subgrantee.

**Section 15.08 Incorporation by Reference.**

Exhibits attached hereto and referenced herein shall be deemed to be incorporated into this Agreement by reference.

**Section 15.09 Headings.**

The paragraph headings or captions appearing in this Agreement are for convenience only and are not to be considered in interpreting this Agreement.

**Section 15.10 Severability.**

If any term of this Agreement or the application thereof to any person or circumstances shall be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application of such term to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

**Section 15.11 Governing Law and Venue.**

This Agreement shall be governed by and interpreted according to the laws of the State of Florida. Venue shall be in a State court of competent jurisdiction in Palm Beach County, Florida. This Agreement shall not be construed more strongly against any party regardless of who was responsible for its preparation or drafting.

**Section 15.12 Agreement Binding.**

Subject to other provisions hereof, this Agreement shall be binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

**Section 15.13 Effective Date of Agreement.**

This Agreement is expressly contingent upon the approval of Palm Beach County, and shall become effective only when signed by all parties and approved by, or on behalf of, the Palm Beach County Board of County Commissioners.

**(REMAINDER OF PAGE INTENTIONALLY LEFT BLANK)**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

WITNESSES:

Jessica Figueroa  
Witness Signature

Jessica Figueroa  
Print Witness Name

Cristal Monroy  
Witness Signature

Cristal Monroy  
Print Witness Name

(COUNTY SEAL BELOW)

ATTEST: SHARON R. BOCK,  
Clerk & Comptroller

By: \_\_\_\_\_  
Deputy Clerk

Approved as to Form and  
Legal Sufficiency

By: \_\_\_\_\_  
James Brako  
Assistant County Attorney

CITY OF SOUTH BAY

By: Joe Kyles

Print name: JOE KYLES  
Title: Mayor

(SEAL)

PALM BEACH COUNTY, FLORIDA, a  
Political Subdivision of the State of  
Florida

BOARD OF COUNTY  
COMMISSIONERS

By: \_\_\_\_\_  
Shelley Vana, Mayor  
Board of County Commissioners

Document No.: \_\_\_\_\_

Approved as to Terms and Conditions  
Department of Economic Sustainability

By: Sherry Howard  
Sherry Howard  
Deputy Director