Agenda Item is more than 174 pages. Documents can be viewed in Minutes.

Agenda Item #: **3I-1**

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	**April 5, 2016**	**[X] Consent**	**[ ] Regular**
		[ ] Ordinance	**[ ] Public Hearing**
Department:	**Department of Economic Sustainability**		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to Receive and File: Various documents executed in connection with a loan made to West Palm Beach Community Redevelopment Agency (WPBCRA) under the Palm Beach County Brownfields Revolving Loan Fund (BRLF) Program as follows:

A) Brownfields Cleanup Revolving Loan Fund Program Loan Agreement with WPBCRA for $350,000;
B) Mortgage and Security Agreement with WPBCRA for $350,000;
C) Promissory Note from WPBCRA for $350,000;
D) Guaranty Agreement with the City of West Palm Beach for $350,000; and
E) Further Assurances and Errors and Omissions Statement from WPBCRA and City of West Palm Beach.

Summary: On December 14, 2015, the Department of Economic Sustainability (DES) closed a loan with WPBCRA in the amount of $350,000 for environmental cleanup of a WPBCRA-owned Brownfield redevelopment site located at 2401 Broadway in West Palm Beach in the Northwood/Pleasant City Community Redevelopment Area. The cleanup site is part of an assemblage of land on the western boundary of Northwood Village generally referred to as the Anchor Site comprising approximately three (3) acres. The cleanup funds were received from the U.S. Environmental Protection Agency under its Revolving Loan Fund Program and delivered through the BRLF. The WPBCRA is actively working to promote the redevelopment and sale of the site and estimates the redevelopment project will create 75 to 100 new jobs and provide an estimated annual payroll of $3.5 Million.

In accordance with County PPM CW-0-051, all delegated contracts, agreements and grants must be submitted by the initiating Department as a receive and file agenda item. Certain documents have been fully executed on behalf of the Board of County Commissioners (BCC) by the County Administrator, or designee, in accordance with Agenda Item 5H-1 as approved by the BCC on September 22, 2015. These executed documents are now being submitted to the BCC to receive and file. **These are Federal funds which require a 20% local match to be provided by the borrower.** District 7 (JB)

Background and Justification: The BRLF administered by DES offers financial assistance to qualifying borrowers (private or public entities) and subgrantees (non-profit organizations, local governments, etc.) to cleanup properties that have been designated brownfields, creating opportunities for employment and revitalizing the community. A Brownfield is defined as: real property, the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminant.

Attachments:
1. Documents as listed in A through E above

Recommended By: Edward W. Lowery 3/17/2016
Department Director **Date**

Approved By: 3-29-16
Assistant County Administrator **Date**

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures					
Grant Expenditures	$350,000				
External Revenues	($350,000)				
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT	-0-				

# ADDITIONAL FTE POSITIONS (Cumulative)					

Is Item Included In Current Budget? Yes __X__ No _____

Fund 1544 Dept 143 Unit 2109 Object 8201 Program Code/Period _____

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

The source of funds is U.S. EPA Brownfields Revolving Loan Fund Program. Program income fees from this allocation are indeterminable at this time.

C. Departmental Fiscal Review: 3/17/16
Shairette Major, Fiscal Manager II

III. REVIEW COMMENTS

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

OFMB 3/18 3/21

Contract Development and Control 3/24/16 3/24/16

B. Legal Sufficiency:

3/28/16
Assistant County Attorney

C. Other Department Review:

Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT)

PALM BEACH COUNTY
BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM
LOAN AGREEMENT

WPB No. 16590

THIS LOAN AGREEMENT ("Agreement") made and entered into this 14 day of December, 2015 by and between **PALM BEACH County** (hereinafter referred to as either "County" or "Lender"), 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 **WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public agency under Chapter 163, Part III, Florida Statutes, duly authorized transact business within the State of Florida (the "Borrower"), whose principal address is 401 Clematis St., West Palm Beach, FL 33401, Florida and whose Federal Employer Identification Number is 59-6000448.

WITNESSETH:

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

WHEREAS, County has been approved to receive funds from the EPA pursuant to the EPA Cooperative Grant Agreement ("EPA Funding") and is authorized to make certain loans to parties willing to undertake approved response actions of the Brownfields sites; and

WHEREAS, Borrower represents and warrants that it is the fee simple title owner of a parcel of property located in the City of West Palm Beach at 2401 Broadway, 2425 Broadway, 2501 Broadway, 2505 Broadway, 2501 Pinewood Avenue, 701 23rd St., 609 24th St., 604 25th St., and 610 25th St. (hereinafter referred to as the "Property"), being more particularly described in the legal description attached hereto and made a part hereof as Exhibit "A" (the "Premises"); and

WHEREAS, the Property has been contaminated with petroleum impacts to soil and groundwater and was designated by City Commission of West Palm Beach Resolution 483-03 as a Brownfield Area; and

WHEREAS, Borrower has entered into a Brownfields Site Rehabilitation Agreement with the Florida Department of Environmental Protection (FDEP) ("Cleanup Agreement") in which Borrower has agreed to conduct cleanup activities regarding the environmental contamination (the "Remediation") of the Property consistent with state and federal laws and rules, conduct the site rehabilitation in a timely manner according to the Rehabilitation Schedule (as defined in the Cleanup Agreement), and designating the Property with Brownfield Site Identification Number BF-00D12713; and

WHEREAS, the Borrower has requested that County grant financing to the Borrower in the

form of a U.S. EPA Brownfields Revolving Loan Fund loan ("the Loan") in the principal amount of Three Hundred Fifty Thousand and 00/100 Dollars ($350,000.00) (the "Loan Amount") for approved environmental cleanup activities and related closing expenses. The County has agreed to grant financing subject to all terms, conditions and provisions in this Agreement and all other Loan Documents (as hereinafter defined); and

WHEREAS, Borrower agrees to continuously retain fee simple ownership of the Property until the following have been completed: (i) completion of the activities established by the Remediation Work Plan (Work Plan) attached hereto as Exhibit "B", (ii) approval by County, the FDEP, and EPA of all work as set forth in the Work Plan; (iii) completion of all closeout matters with respect to the Property; and (iv) redevelopment is committed; and

WHEREAS, Borrower and the Lender desire to set forth herein the mutually agreed upon terms and conditions of the Loan and the disbursement of the Loan Funds.

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"). Borrower shall have twelve (12) months after the Effective Date of this Agreement to complete the cleanup and all work related thereto. If the Borrower determines that the work cannot be completed within a twelve (12) month timeframe, then the Borrower may submit to the Lender a written request for extension, which extension shall be granted provided it does not exceed an additional ninety (90) days.

After commencement, this Agreement shall continue in effect until the earlier of the following: (i) completion by Borrower and approval by Lender (and EPA if required) of the Work Plan and the completion by Borrower of all of its other obligations under this Agreement (and approval thereof by Lender 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 Borrower'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 Loan Amount.

Subject to all terms and provisions of this Agreement including but not limited to the Condition Precedent to Payment Clause set forth in Article IV, Lender agrees to provide to Borrower a Loan of up

to Three Hundred Fifty Thousand and no/100 Dollars ($350,000.00) (referred to herein as "Loan Funds" or "Budget") to be applied by the Borrower towards the cleanup and related work including preparing an analysis of brownfields cleanup alternatives, developing a community relations plan and completing all approved Work Plan cleanup activities.

Section 1.04 Loan Closing.

The "Closing" or "Closing Date" shall mean the date when all contingencies to Closing are satisfied, including but not limited to execution and delivery of all Loan Documents as hereinafter defined, after which the proceeds of the Loan may be disbursed in accordance with this Agreement.

ARTICLE II
ACKNOWLEDGMENTS, REPRESENTATIONS AND WARRANTIES OF Borrower

Section 2.01 Acknowledgments, Representations and Warranties.

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

A. Borrower 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. Borrower acknowledges that, pursuant to the terms of the EPA Cooperative Grant Agreement, Borrower is required to retain fee simple title ownership of the Property throughout the entire Term that this Agreement is in effect.

C. Borrower represents and warrants that the Property is not listed, or proposed for listing, on the National Priorities List of the EPA.

D. Borrower is not a generator or transporter of the contamination at the Property and Borrower has not caused or contributed to the contamination of the Property.

E. Borrower is not an owner or operator of the site, as defined by Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

F. Borrower 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.

G. Borrower 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. Borrower is advised that the investigation and/or opinion of Borrower's counsel is not binding on the Federal Government.

H. Borrower represents that simultaneously with Borrower's execution and delivery of this Agreement to Lender, the Borrower has delivered to Lender 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 Borrower acknowledges that the no portion of the Loan Funds shall be used for the payment of any cost or

expense related to the Assessment. Borrower 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 Borrower'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 XV hereof.

ARTICLE III
EVIDENCE OF AUTHORIZATION AND TITLE

Section 3.01 Authorization.

Borrower shall deliver to Lender simultaneously with the execution and delivery of this Agreement to Lender or within such other time as Lender may allow, written confirmation satisfactory to Lender that Borrower is the authorized person signing this Agreement on behalf of Borrower to execute this Agreement.

Section 3.02 Evidence of Title.

Borrower shall deliver to Lender simultaneously with the execution and delivery of this Agreement to Lender or within such other time as Lender may allow, title evidence at Borrower's expense (not to be reimbursed by Lender), which shall be in the form of a current title search (certified within 30 days of the date of delivery to Lender) 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 Borrower 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 Borrower, at its expense (not to be reimbursed by Lender), 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
BASIC LOAN TERMS AND CONDITIONS

Section 4.01 General Loan Provisions.

The following provisions shall apply to County's Loan to Borrower. Borrower acknowledges that there are additional requirements not stated in this section relative to the County's Loan to Borrower.

A. Use of Proceeds. The proceeds of the Loan shall be used for those purposes allowed pursuant to this Agreement.

B. EPA Release of EPA Funding. The County's obligation under this Agreement is expressly contingent upon both the release of EPA Funding 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 Borrower, even work done or expenses incurred in good faith, if it occurs prior to either the

release of EPA Funding by the EPA or the execution of this Agreement by the County. Certain costs may be reimbursed at Closing but will not be reimbursed if there is not a Closing.

C. Condition Precedent to Payment. Subject to the right of Lender to approve or disapprove the reasonableness and amount of any expenditure and subject to the Condition Precedent to Payment Clause below, Loan Funds shall be disbursed to the Borrower on a reimbursement basis for allowable and eligible expenses (as determined by EPA) which are incurred by the Borrower based upon the successful progress of the Work Plan. 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 Borrower 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 Borrower or not, the Borrower agrees that County shall not be liable for payment, nor be indebted to the Borrower. Borrower assumes the risk of non-payment by EPA. In no event shall County be obligated to use its own funds to pay Borrower under this Agreement.

D. Note. The obligation of the Borrower to repay the Loan shall be evidenced by a promissory note of even date herewith in the principal amount of the Loan payable to the order of the Lender (the "Note"). The Loan shall be paid over a term of ten (10) years in monthly installments of principal and interest upon such terms as stated in the Notes.

E. Collateral. Borrower shall provide a Mortgage and Security Agreement with Assignment of Leases & Rents with regard to the Property, together with the guaranty of the full faith and credit of the City of West Palm Beach as security for the Loan.

F. Fees. The Borrower shall have paid to Lender a non-refundable master document fee in the amount of $1,000 and a non-refundable processing fee in the amount of $200, payable upon acceptance of Lender's commitment. The Borrower shall pay to Lender at Closing an origination and administration fee of $10,500, equivalent to 3% of the total Loan Amount. The Borrower shall be responsible for payment of all costs of closing of any kind or nature, including due diligence costs incurred by Lender, the reasonable attorneys' fees and costs of Lender's counsel and all other costs or fees incurred by Lender in connection with the Closing. Such fees shall be paid at Closing from the proceeds of the Loan, and the net proceeds of the Loan will be distributed to Borrower as provided hereunder.

G. Cost Share. Borrower acknowledges that the EPA Cooperative Grant Agreement requires a twenty percent (20%) cost share obligation. Borrower agrees to provide and expend funds sufficient to meet its cost share obligation. Borrower shall not use BRLF Program funds to meet its cost share obligation. Borrower shall create, maintain and keep records to demonstrate sufficient eligible cost share compliance. If, in the sole opinion of Lender, Borrower fails to make specific and adequate arrangements to meet Borrower's cost share responsibility, Lender may withhold an additional twenty percent (20%) of Borrower's approved requests for reimbursement, exclusive of any retainage, in order to satisfy Borrower's cost share requirement.

H. Nature and Place of Payments. All payments shall be made by the Borrower, without setoff or counterclaim, in lawful money of the United States in immediately available funds, free and clear of and without deduction for any taxes, fees, or other charges of any nature whatsoever imposed

by any taxing authority and must be received by the Lender by its due date pursuant to the terms of the Notes. All payments due hereunder shall be made to the Lender.

I. Prepayment. Borrower shall have the right of prepayment of all or any portion of the Loan without premium or penalty.

J. Forgiveness. By executing this agreement, Lender and Borrower concur that the remaining Fifty Thousand Dollars ($50,000) (the "Forgivable Loan Amount") of this Loan shall be forgiven provided the following conditions have been met:

a. The Remediation shall have been completed in all material respects to the satisfaction of Lender;

b. Three Hundred Thousand Dollars ($300,0000) of principal of this loan has been fully and timely repaid, together with interest and any other costs associated with collection on, or legal filings related to, the Loan;

c. Lender has received a release from further obligation related to the original EPA Funding, and provided a close-out documentation by EPA; and

d. All other provisions of this Agreement have been followed, and no Event of Default has occurred and continues upon such date.

Section 4.02 Loan Disbursements.

A. Subject to the provisions of this Agreement, and also subject to the terms and conditions of the EPA Cooperative Grant Agreement and other Loan Documents, the Lender shall make and the Borrower shall accept the Loan in actual expense disbursements for Remediation not exceeding in the aggregate (the "Loan Amount") submitted with required documentation (e.g. invoices) of the associated elements or components of the Work Plan completed. Upon the Closing Date, an initial payment shall be made to Lender, if applicable, for reimbursement and/or payment to Lender for allowable fees, costs and expenses as set forth herein (the "Initial Payment").

B. Borrower hereby requests and authorizes Lender to make advances directly to itself for payment and reimbursement of all interest, charges, costs and expenses, if any, incurred by Lender in connection with the Loan, pursuant to this Agreement or other Loan Documents, including, but not limited to (i) interest due on the Loan, service charges, or any other fees due to Lender in connection with the Loan; (ii) all title examination, survey, escrow, filing, search, recording and registration fees and charges; (iii) all documentary stamp and other taxes and charges imposed by law on the issuance or recording of any of the Loan Documents including amendments thereto; (iv) all appraisal fees; (v) all title, casualty, liability, payment, performance or other insurance or bond premiums; (vi) all fees and disbursements for legal services including, without limitation, the County Attorney's costs and fees, and all reasonable outside counsel engaged in connection with the preparation, negotiation, enforcement or administration of this Agreement or any of the Loan Documents; and (vii) any amounts required to be paid by Borrower under this Agreement, the Mortgage or any Loan Document after the occurrence of a Default (all of which are herein referred to as "Loan Expenses").

C. Lender shall not be obligated to make the Loan disbursements unless Lender is satisfied, in its sole discretion, that the conditions precedent to the making of the Loan disbursement has been

satisfied by the Borrower. Anything in this Agreement or any other agreement made with respect to the Loan to the contrary notwithstanding, any disbursement of the Loan or approval given by Lender, herein or therein, whether or not before or after inspection of the work performed pursuant to the Work Plan by the Site Manager identified in Article VI herein, shall not be deemed to be an approval by Lender of any work performed thereon or approval or acceptance by Lender of any work or materials done or furnished with respect thereto or a representation by Lender as to the fitness of such work or materials.

D. All conditions and requirements of this Agreement relating to the obligations of Lender to disburse the Loan are for the sole benefit of Lender and no other person or party (including, without limitation, the Site Manager, Professional Engineers, General Contractor and subcontractors and materialmen engaged in the remediation of the property) shall have the right to rely on the satisfaction of such conditions and requirements by Borrower as a condition precedent to Lender making the disbursement of the Loan. Lender shall have the absolute right, in its sole discretion, to waive any such condition or requirement as a condition precedent to making any disbursement of the Loan.

Section 4.03 Loan Documents.

The Loan Documents referenced herein shall include this Agreement; the Note; the Mortgage, Security Agreement & Assignment of Leases and Rents; the Guaranty Agreement; the Further Assurances; each as hereinafter defined, and all other documents required hereunder (individually and collectively the "Loan Documents").

The Loan, the Note and the performance by the Borrower of the terms, provisions and obligations hereof and under any other of the Loan Documents shall be secured by the liens, security interests and such other undertakings created therein by or described in the following instruments of even date herewith from the Borrower to the Lender (collectively the "Collateral"):

(1) The Note (as hereinafter defined);

(2) That certain Mortgage and Security Agreement with Assignment of Leases and Rents with regard to the Property (the "Mortgage"), which shall represent a first mortgage lien (as defined herein);

(3) This Agreement;

(4) That certain Guaranty Agreement (the "Guaranty Agreement") from the City of West Palm Beach (collectively the "Guarantor");

(5) [Intentionally omitted]

(6) Any and all amendments and modifications to any of the foregoing documents; and

(7) Any other of the Loan Documents pursuant to or required by this Agreement or any other of the aforementioned documents and instruments.

Section 4.04 Contingencies to Closing and Making the Initial Payment.

Borrower agrees that, for and on its own behalf and for the purposes set forth herein, that the Closing of the Loan and the Initial Payment of the Loan to be made on the Closing Date are subject to the prior satisfaction of each of the following conditions precedent with proof thereof to be furnished to

Lender, and agrees that such proof shall be in form, content and sufficiency acceptable to Lender and its counsel:

(1) Execution of this Loan Agreement.

(2) Execution of each of the Loan Documents.

(3) [Intentionally omitted]

(4) Satisfaction and compliance with any requirements, including those within the Project Documents, as may be imposed by EPA in connection with the closing of the Loan, including, but not limited to, the provision of all environmental and remediation reports and related agreements, which shall be acceptable to the County and EPA in the discretion of each, and satisfaction of any and all administrative conditions contained in the EPA Cooperative Grant Agreement as if Borrower was the Recipient thereof.

(5) Borrower shall have provided to Lender an ALTA Lender's extended coverage policy of title insurance with such endorsements as Lender may require, issued by a title company acceptable to Lender and in a form, amount, and content satisfactory to Lender, insuring or agreeing to insure that Lender's Mortgage and/or other security document on the Property is or will be upon recordation a valid lien on the Property free and clear of all defects, liens, encumbrances and exceptions, except for the Permitted Liens and those as specifically accepted by Lender in writing.

(6) Financial statements of Borrower and Guarantor in form reasonably acceptable to Lender.

(7) Satisfaction of any financial covenants contained herein.

(8) Such other information concerning the Borrower and its business, operations and condition (financial and otherwise) as Lender may reasonably request.

(9) Acceptable resolutions of the Borrower approving the execution and delivery of the Loan Documents and such other certificates as Lender may require.

(10) A certificate of the Borrower certifying the incumbency, the names and true signatures of the person or persons authorized to execute and deliver the Loan Documents.

(11) A copy of the Borrower's Articles of organization, Bylaws and other organizational documents evidencing the valid formation and existence of the Borrower in good standing, all existing amendments thereto, certified as of the date of this Agreement as being accurate and complete, together with good standing certificate.

(12) An opinion of counsel for the Borrower and Guarantor covering such matters as Lender may reasonably request and in form and substance acceptable to Lender and its counsel.

(13) Policies or certificates of insurance acceptable to Lender evidencing all insurance required under this Loan Agreement.

(14) All fees and costs due at the Initial Payment pursuant to this Agreement shall have been paid in full.

(15) All acts and conditions (including, without limitation, the obtaining of any necessary governmental and regulatory approvals and consents including, without limitation, all necessary building and construction permits and the making of any required filings, recording, or registrations) required to be done and performed and to have happened prior to the execution, delivery, and performance of the Loan Documents and to constitute the same as legal, valid, and binding obligations, enforceable in accordance with their respective terms, shall have been done and performed and shall have happened in due and strict compliance with all applicable laws.

(16) The remediation contract or contracts in a form consistent with all required EPA regulations including, but not limited to, the Davis-Bacon Act.

(17) Such other documents, certificates, affidavits and other documents as are reasonably required of Lender consistent with the terms of this Loan Agreement.

Section 4.05 Conditions to Making Succeeding Actual Expense Disbursements.

The obligation of Lender to make succeeding actual expense disbursements pursuant to this Agreement is subject to the following conditions precedent:

(a) Prior to each succeeding actual expense disbursement of the Loan by Lender to Borrower pursuant to this Agreement, Borrower, shall, upon request of Lender, furnish Lender with evidence satisfactory to Lender, showing bills, receipts, invoices and other evidence as may reasonably be required by Lender to substantiate the actual incurrence by Borrower of (i) eligible costs incurred in connection with the implementation of the Work Plan (hereinafter referred to as Project Costs), and (ii) any eligible costs allowed by Lender and EPA, other than the cost of Remediation, incurred by Borrower in connection with the Loan or the Work Plan (hereinafter referred to as Other Project Costs).

(b) The request by Borrower to Lender for a disbursement of the Loan shall be signed by a duly authorized representative of Borrower (such request being hereinafter referred to as the "Request for Disbursement"). The Request for Disbursement shall be delivered to Lender not less than seven (7) business days prior to the date upon which disbursement of the Loan is requested and shall be accompanied by such other information and documents as may be requested or required by Lender.

(c) The Borrower shall, if required by Lender, deliver to Lender a written statement executed by the Site Manager identified below certifying to the amount of all outstanding balances due but unpaid for work completed in connection with the Work Plan as of the date immediately preceding the date of each invoice request, and a written statement executed by each subcontractor and materialman engaged in the Work Plan, certifying to the amount of all outstanding balances due but unpaid for work in connection with the Work Plan, and owed to each subcontractor and materialman by the Borrower as of the date immediately preceding the date of each invoice request.

(d) Borrower in its ownership of the Property shall comply with all federal, state and local government ("Governmental Authorities") requirements (e.g. applicable laws, rules, restrictions, orders and regulations), and Borrower shall have delivered to Lender all necessary certificates, authorizations, permits and licenses which are required to permit the implementation and completion of the Work Plan in advance thereof, as issued by the Governmental Authorities.

(e) The continued satisfaction of those contingencies to close contained in Section 4.04 hereof.

ARTICLE V
INSURANCE

Unless otherwise specified in this Agreement, Borrower, and any contractor that is used related to this Agreement, shall maintain on a primary basis, at its sole expense, in full force and effect at all times during the life of this Agreement or the performance of work hereunder, insurance limits, coverages or endorsements required herein. Borrower, and any contractor that is used related to this Agreement, agrees that the requirements contained herein, as well as County's review or acceptance of insurance, is not intended to and shall not in any manner limit nor qualify Borrower's liabilities and obligations under this Agreement. When requested, Borrower shall agree to provide an affidavit or Certificate of Insurance evidencing insurance, self-insurance and/or sovereign immunity status, which County agrees to recognize as acceptable for the above mentioned coverages. Compliance with the foregoing requirements shall not relieve Borrower of its liability and obligations under this Agreement.

Section 5.01 Commercial General Liability.

(a) Borrower. Without waiving the right to sovereign immunity as provided by *s.768.28 F.S.,* Borrower acknowledges to be self-insured for General Liability under Florida sovereign immunity statutes with coverage limits of $200,000 Per Person and $300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event Borrower maintains third-party Commercial General Liability in lieu of exclusive reliance of self-insurance under *s.768.28 F.S.*, Borrower shall agree to maintain said insurance policies at limits not less than $500,000 combined single limit for bodily injury or property damage. Borrower agrees its coverage will not contain any restrictive endorsement(s) excluding or limiting Premises/Operations, Personal Injury, Product/Completed Operations, Independent Borrowers, Broad Form Property Damage, X-C-U Coverage, Contractual Liability, Cross Liability or Severability of Interests. Coverage shall be provided on a primary basis.

(b) Contractors. Borrower agrees to cause any contractor of Borrower to maintain Commercial General Liability at a limit of liability not less than **$1,000,000** Each Occurrence **$2,000,000** Annual Aggregate. Borrower agrees that any contractor's coverage will not contain any restrictive endorsement(s) excluding or limiting Premises/Operations, Personal Injury, Product/Completed Operations, Independent Contractor's, Broad Form Property Damage, X-C-U Coverage, Contractual Liability, Cross Liability or Severability of Interests. Coverage shall be provided on a primary basis.

Section 5.02 Business Automobile Liability.

(a) Borrower. Without waiving the right to sovereign immunity as provided by *s.768.28 F.S.,* Borrower acknowledges to be self-insured for Business Automobile Liability under Florida sovereign immunity statutes with coverage limits of $200,000 Per Person and $300,000 Per Occurrence; or such monetary waiver limits that may change and be set forth by the legislature. In the event Borrower maintains third-party Business Auto Liability in lieu of exclusive reliance of self-insurance under *s.768.28 F.S.*, Borrower shall agree to maintain said insurance policies at limits not less than $500,000 combined single limit for bodily injury or property damage. Coverage shall include liability for owned, non-owned & hired automobiles. In the event Borrower does not own automobiles, Borrower shall maintain coverage for hired & non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.

Coverage shall be provided on a primary basis.

(b) Contractor. Borrower agrees to cause any contractor of Borrower to maintain Business Automobile Liability at a limit of liability not less than **$1,000,000** Each Occurrence. Coverage shall include liability for owned, non-owned & hired automobiles. In the event any contractor does not own automobiles, Borrower agrees to cause any contractor to maintain coverage for hired & non-owned Business Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy. Coverage shall be provided on a primary basis.

Section 5.03 Worker's Compensation & Employer's Liability.

(a) Borrower. Borrower agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statutes Chapter 440. Coverage shall be on a primary basis.

(b) Contractor. The Borrower agrees to cause any contractor of Borrower to maintain Worker's Compensation & Employers Liability Insurance in accordance with Florida Statute 440. Coverage shall be on a primary basis.

Section 5.04 Pollution Legal Liability.

Borrower shall maintain Pollution Liability, or similar Environmental Impairment Liability, at a minimum limit not less than **$1,000,000** per occurrence, **$2,000,000** annual aggregate providing coverage for damages including, but not limited to, third-party liability, clean up, corrective action including assessment, remediation and defense costs. When a self-insured retention or deductible exceeds $10,000, the County reserves the right, but not the obligation, to review and request a copy of the Contractor's most recent annual report or audited financial statements in evaluating the acceptability of a higher self-insured retention or deductible in relationship to the Contractor's financial condition. The pollution liability policy shall be endorsed to include "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents" as an Additional Insured.

Section 5.05 Additional Insured Endorsement.

Borrower and any Contractor that is used, shall endorse the County as an Additional Insured on the Commercial General Liability with a CG 2010 Additional Insured - Owners, Lessees, or Borrowers, or similar endorsement providing equal or broader Additional Insured coverage. The additional insured shall read "Palm Beach County Board of County Commissioners, a Political Subdivision of the State of Florida, its Officers, Employees and Agents." Coverage shall be provided on a primary basis.

Section 5.06 Umbrella or Excess Liability.

Borrower and any contractor of Borrower may satisfy the minimum liability limits required above for Commercial General Liability and Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for the Commercial General Liability and Business Auto Liability. Borrower agrees to endorse County as an "Additional Insured" on the Umbrella or Excess Liability, unless the Certificate of

Insurance states the Umbrella or Excess Liability provides coverage on a pure/true "Follow-Form" basis.

Section 5.07 Deductibles, Coinsurance Penalties, & Self-Insured Retention.

Borrower agrees to be fully and solely responsible for any costs or expenses as a result of a coverage deductible, coinsurance penalty, or self-insured retention; including any loss not covered because of the operation of such deductible, coinsurance penalty, self-insured retention, or coverage exclusion or limitation.

Section 5.08 Waiver of Subrogation.

Borrower hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Borrower shall notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy which includes a condition to the policy specifically prohibiting such an endorsement or voids coverage should Borrower enter into such an agreement on a pre-loss basis.

Section 5.09 Right to Review.

Borrower agrees the County reserves the right, but not the obligation, to review or revise any insurance requirement, not limited to limits, coverages and endorsements based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work/ specifications affecting the applicability of coverage. Additionally, the County reserves the right, but not the obligation, to review and reject any insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage due to its poor financial condition or failure to operating legally in the State of Florida.

Section 5.10 No Representation of Coverage Adequacy.

The coverages, limits or endorsements required herein protect the primary interests of the County, and the Borrower agrees in no way should these coverages, limits or endorsements required be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the Borrower against any loss exposures, whether as a result of the Project or otherwise.

Section 5.11 Certificate of Insurance.

Borrower shall provide County with Certificate(s) of Insurance that clearly evidence the Borrower's insurance contains the minimum coverages, limits, and endorsements set forth herein. In addition, Borrower agrees to notify County of any cancellation, non-renewal or material change taking place during the life of this agreement. In the event the County is notified that a required insurance coverage will cancel or expire during the period of this Agreement, the Borrower agrees to furnish County prior to the expiration of such insurance, a new Certificate of Insurance evidencing replacement coverage. When notified by County, the Borrower agrees not to continue work pursuant to this Agreement, unless all required insurance remains in effect.

The Borrower agrees the County reserves the right to withhold payment to Borrower until evidence of reinstated or replacement coverage is provided to the County.

The Certificate(s) of Insurance shall include the following information:

Certificate(s) of Insurance Borrower and any contractor related to this Agreement agree to provide County a Certificate(s) of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect. In addition, Borrower agrees to notify County of any cancellation, non-renewal or material change taking place during the life of this Agreement. The Certificate Holder address shall read: **PALM BEACH County, a political subdivision of the State of Florida, c/o Department of Economic Sustainability, 100 Australian Avenue, Suite 500, West Palm Beach, FL 33406.**

ARTICLE VI
SITE MANAGER

Section 6.01 Selection and Responsibilities.

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

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

Section 6.02 Contact Information.

The Borrower's Site Manager shall be Vincent Wooten. The Site Manager's telephone number is (561) 822-1444 and the mailing address is c/o West Palm Beach Community Redevelopment Agency, 401 Clematis St., 2nd Fl., West Palm Beach, FL 33401. Written notification shall be provided promptly to the Lender in the event the Site Manager information needs to be changed or modified.

ARTICLE VII
PUBLIC PARTICIPATION

Section 7.01 Community Relations Plan.

The Borrower shall prepare at its expense, within the time period required by Lender, a site-specific Community Relations Plan (CRP) which shall be subject to the approval of the Lender. The Borrower shall ensure that public participation requirements are met. The CRP must provide for reasonable public notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site.

ARTICLE VIII
ANALYSIS OF BROWNFIELDS CLEANUP ALTERNATIVES

Section 8.01 Analysis of Brownfields Cleanup Alternatives.

Borrower'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 Borrower shall submit copies of the draft analysis of brownfields cleanup alternatives to the Lender for submission to EPA. The ABCA must comply with all EPA requirements. The Borrower agrees to accept the advice and requirements from the EPA and Lender and shall incorporate these as revisions. The cleanup 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 Lender and/or Borrower shall assist EPA in complying with any requirements of the Act and implementing regulations.

Section 8.02 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 Lender, 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 8.03 Final Analysis.

After the public comment period, the Borrower shall incorporate all appropriate comments, as required by Lender, 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 Lender, FDEP and EPA and as approved is referred to herein as "Final ABCA Analysis".

ARTICLE IX
PROJECT DOCUMENTS

Section 9.01 Preparation of Project Documents.

After the Final ABCA Analysis, the Borrower'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 remediation work to be done at the Property (that is eligible for funding under the EPA Cooperative Grant Agreement and identified in the Final ABCA Analysis), a budget (the budget is the Loan Funds which may be subdivided for elements or components of the Remediation Work Plan), a work schedule (not to exceed twelve (12) months 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 Lender for approval. Borrower 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 (Borrower shall also comply with such State law requirements).

Section 9.02 Submittal of Project Documents to Lender.

A. All of the foregoing documents once approved by Lender in writing are collectively referred to in this Agreement as the "Project Documents". The Work Plan 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 Lender within forty five (45) calendar days after the Effective Date of this Agreement. If Lender does not approve the proposed project documents or they are not submitted to Lender within the foregoing time frame then, Lender shall have the option of terminating this Agreement by providing written notice to Borrower, in which event, Lender shall have no obligation whatsoever to Borrower under this Agreement.

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

ARTICLE X
HAZARDOUS MATERIALS WARRANTY

Borrower represents and warrants the following: (i) that Borrower 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 Borrower has not exacerbated the Hazardous Materials contamination of the Property, (iii) that Borrower has taken reasonable steps with regard to the Hazardous Materials contamination of the Property, (iv) that Borrower 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 XI
REMEDIATION WORK PLAN

Section 11.01 Use of Funds.

A. The Borrower understands and agrees that all of the funds from the Loan Funds shall be used by the Borrower 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. The Borrower shall supply the Lender with a design and cleanup plan (Work Plan) and specifications for the redevelopment of the Property and evidence of all total cleanup financing.

B. Subject to the other provisions of this Agreement including but not limited to the Condition Precedent to Payment Clause, the Loan Funds shall be payable to the Borrower as reimbursement for allowable and eligible expenses (as determined by EPA) which are incurred by the Borrower based upon the successful progress of the Work Plan and performance of Borrower's other

obligations under this Agreement. The Borrower represents and warrants that it will not pay any Lienor (as defined in County BRLF Guidelines) for the Work Plan or any portion thereof, prior to Borrower's receipt of a properly executed and effective waiver and release of lien from all Lienors providing labor, services or materials for the Work Plan or any portion thereof that is being paid for by Borrower.

Section 11.02 Environmental Requirements/Compliance with Conditions and Laws.

A. Borrower shall comply with and shall carry out the Work Plan 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 Loans or 40 CFR 30 and OMB Circular A-122 for non-profit recipients of Loans; and all other applicable provisions of Federal, state and local laws and regulations.

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

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

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

d. Borrower 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 Work Plan (collectively the "Records") for a minimum of three years following completion of the Work Plan financed all or in part with EPA Funding. Notwithstanding that three years has elapsed Borrower shall obtain written approval from the Lender prior to disposing of any Records. The Borrower is required to provide access to Records (including for inspection, copying and transcription) relating to loans and Loans supported in whole or in part with EPA Funding to authorized representatives of the Federal government and County.

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

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

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

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

i. If the EPA Funding awarded is used in combination with non-federal sources of funds, the Borrower 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 Borrowers 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 Borrowers.

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

k. The Borrower 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 Borrower will cooperate with EPA and comply with all EPA requirements in regard thereto.

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

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

o. Borrower 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, Borrower 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. Borrower shall comply with the standards in Section 210(a)-(d) of OMB Circular A-133.

Section 11.03 Additional Requirements.

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

A. Borrower shall commence the Work Plan within forty five (45) days from the date of execution of this Agreement and shall complete and perform all of the Work Plan within twelve (12) months in accordance with timetable included in the schedule of work that has been approved as part of the Project Documents (not exceeding twelve (12) months from and after the Effective Date) time being of the essence. Circumstances beyond the control of the Borrower, may constitute a request to extend the commencement of the work. This request must be submitted in writing.

B. All Remediation performed pursuant to this Agreement shall be performed in a good and workmanlike manner.

C. All changes or modifications to the Work Plan or the Project Documents must be approved in writing by the Lender prior to such change or modification becoming effective. All additional costs incurred, as the result of any changes shall be the responsibility of the Borrower (not to be reimbursed by Lender or EPA). Lender may unilaterally impose cleanup activities, as necessary, based on comments from the public or based upon new information acquired.

D. Borrower, at its sole cost and expense, and from sources other than the funds from the Loan 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.

E. The Borrower shall notify the Lender when the Work Plan is complete. The notice shall contain documentation that the Work Plan 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 Lender. This documentation shall be included by Borrower as part of the administrative record.

ARTICLE XII
DAVIS BACON TERMS AND CONDITIONS

Davis Bacon Terms and Conditions for Revolving Loan Fund Grants to Governmental/Quasi Governmental Organizations Attached to the EPA Cooperative Grant Agreement relating to the Davis- Bacon Act. Borrower 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 loan 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 Borrower shall ensure that such provisions are included, (iv) wherever it provides that RLF recipient (County) shall or may require Borrowers or shall ensure that Borrowers comply with, perform or carry out certain provisions it shall be Borrower'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 loan, the Borrower shall be subject to and shall comply with all such actions taken by or required by County (vi) Borrower shall establish, maintain, preserve and allow access to its records (including inspection, copying and transcription), (vii) Borrower shall require all contractors, subcontractors and others performing any work related to this loan to establish, maintain, preserve and allow access to their records (including inspection, copying and transcription, (viii) Borrower shall cause all contractors, subcontractors and others performing any work in connection with this loan 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 loan 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 XIII
PROHIBITED USES OF FUNDS

No portion of the Loan Funds shall be used by the Borrower 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 Borrower. Prohibited administrative costs include all indirect costs under applicable OMB Circulars incurred by Borrower 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 Loan administration costs include direct costs for:

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

(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 XIV
INDEMNIFICATION

Section 14.01 Indemnification by Borrower.

Borrower and Lender acknowledge the protections of sovereign immunity contained in Florida Statutes 768.28, and acknowledge that such statute permits actions at law to recover money damages up to the limits set forth in such statute caused by the negligent or wrongful acts or omissions of the Borrower or Borrower's employee acting within the scope of the employee's office or employment. Borrower agrees to be responsible, to the extent and limits provided in Florida Statutes Section 768.28, for any and all claims, losses, liabilities, expenses, and damages (including but not limited to general, punitive, compensatory and other damages) 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 Lender, Lender's board members, officers, agents and employees (all collectively "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 Borrower, its agents, employees, contractors or subcontractors including but not limited to those resulting in any personal injury, death or property damage, (ii) Borrower's performance, compliance with or noncompliance with or default under this Agreement, (iii) Borrower'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) Borrower's use or misuse of the Loan 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. The parties acknowledge that the foregoing shall not constitute an agreement by either party to indemnify the other for such other party's actions or negligence, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

Section 14.02 Obligations Survive Agreement.

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

ARTICLE XV
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 Borrower shall be in default under this Agreement and all obligations on the part of the Lender to make any further payment of funds hereunder shall, if the Lender so elects, terminate and, the Lender 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 Lender shall determine in Lender's sole and absolute discretion), but the Lender 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 Borrower 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 Work Plan, (iii) the Borrower incurs any costs in connection with the Work Plan or uses any funds distributed to it from Lender (or obtains reimbursement from Lender for funds previously expended by Borrower) 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) Borrower receives an overpayment from Lender, (v) any representation, warranty or statement made by Borrower, 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 Borrower assigns this Agreement or any Loan 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 Work Plan) without the advance written consent of Lender (Lender 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 Lender or EPA, have not been submitted to the Lender or EPA when required or have been submitted with incorrect, incomplete or insufficient information, (viii) any proceeding involving the Borrower 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 Lender 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 Lender, by any court of competent jurisdiction approving the appointment of a receiver, trustee or liquidator of the Borrower 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 Lender'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 Borrower immediately repay to the Lender the amount of all funds which were used or received for ineligible, unallowable or improper purposes (including but not limited to any overpayment to Borrower) 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 Borrower 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 Borrower 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 Borrower's compliance with all terms, covenants and provisions of this Agreement, or (dd) to pursue any remedies permitted at law or in equity.

ARTICLE XVI
GENERAL REQUIREMENTS

Section 16.01 Sign.

The Borrower shall erect a sign in a prominent location on the Property stating that the Remediation is being financed in part by the EPA Funding and the Lender 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 16.02 Access to Records.

A. The Borrower agrees to permit the Lender, EPA and their designated representatives access to all of the Records relating to this Agreement and the Work Plan 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 Lender in writing, the Borrower agrees to deliver copies of the Records (at Borrower's sole expense) to the Lender, EPA, or their designated representatives at an address or addresses designated by Lender. If the Lender, EPA or their representative(s) finds that the copies of the Records delivered by the Borrower are incomplete, inaccurate, or otherwise deficient the Borrower agrees to pay EPA and/or their designated representatives costs to travel to the Borrower'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 16.03 Access to Property.

The Borrower agrees that the Lender, EPA and their designated representatives shall have access to all parts of the Property, at all times. The Borrower shall keep the Property at all times secure and safe. If for any reason Borrower is unable or unwilling to complete the Work Plan, Lender, EPA and their designated representatives, have the right to secure the Property as required by EPA requirements. All costs incurred by Lender or EPA to secure the Property as required by EPA requirements shall be the obligation of Borrower and shall be paid to Lender 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 16.04 Non-Discrimination.

Borrower 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. Borrower 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 nondiscrimination requirements. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement.

The Borrower acknowledges that it is the express policy of the Board of County Commissioners of Palm Beach County, Florida that the County shall not conduct business with nor appropriate any funds to any organization that practices discrimination on the basis of race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation, gender identity and expression, or genetic information. In compliance with the County's requirements as contained in Resolution R-2014-1421, the Borrower has either submitted a copy of its written non-discrimination policy which is consistent with the policy detailed above, or has submitted an executed statement affirming that its non-discrimination policy is in conformance with the policy detailed above.

In furtherance of such policy, the Borrower shall not, on the basis of race, color, ancestry, disability, national origin, religion, age, familial status, marital status, sex, gender, sexual orientation,

gender identity and expression, or genetic information, exclude any person from the benefits of, or subject any person to discrimination under, any activity carried out by the performance of this Agreement. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement.

Section 16.05 No Assignment or Transfer.

A. Borrower 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 Lender which Lender 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 Lender may assign its rights and obligations under this Agreement, in whole or in part, without the consent of Borrower.

B. The Borrower 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 16.06 Lobbying.

The Borrower agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The Borrower shall promptly submit to the Lender and the Federal Government the required certification and disclosure forms required by Title 40 CFR Part 34. The Borrower 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 Lender 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 Borrower agrees that no funds received by the Borrower 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. Borrower 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 16.07 Recycled Paper.

In accordance with EPA Order 1000.25, Executive Order 13423 and 40 CFR 30.16 the Borrower 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 Lender 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 Borrower 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 16.08 Historic Properties.

The Borrower 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 Borrower 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 Borrower shall consult with Lender and EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist Lender and EPA in complying with any requirements of the Act and implementing regulations.

Section 16.09 MBE/WBE.

The Borrower 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 Borrower 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 "Borrower" under this Agreement for purposes of Borrower's compliance requirements under this Agreement. The Borrower 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 Borrower 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 Borrower has received written approval from the Lender to subcontract any portion of the Remediation Work Plan the Borrower shall include in all subcontracts the fair share objectives/goals and require all subcontractors to comply with the requirements of paragraph 8. The Borrower shall prepare and submit to Lender 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 30th 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 16.10 Suspension and Debarment.

A. The Borrower 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 Lender (or immediately upon request of Lender). Borrower 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. Borrower is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions.

B. Borrower 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. Borrower may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension and Other Responsibility Matters".

Section 16.11 Inspector General: EPA or USA.

In addition to other access to records provisions in this Agreement, Borrower 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 Borrower, 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 Borrower, its agencies, its contractors or subcontractors regarding such transactions. The Borrower is advised that providing false, fictitious or misleading information with respect to the receipt and disbursement of the Loan Funds may result in criminal, civil or administrative fines and/or penalties. Borrower 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 Loan 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 16.12 EPA Cooperative Grant Agreement.

A. The Borrower acknowledges having received and reviewed the entire EPA Cooperative Grant Agreement. In regard to Borrower's performance and obligations under this Agreement and in regard to the Work Plan the Borrower, 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 Cooperative Grant Agreement requires County to comply with and perform, and also, (ii) Borrower shall be responsible for complying with and performing all terms, provisions, requirements and conditions which the EPA Grant Agreement requires loan 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: Borrower shall submit all required reports, certifications, forms and other documents to Lender for Lender to submit to EPA unless EPA otherwise requires direct submittal to EPA.)

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

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

1. Borrower 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 Lender is required to provide various information and reports to EPA on many different subjects and at many different times. It shall be Borrower's obligation to provide all such information and reports to Lender in sufficient time to Lender so that Lender may provide such information and reports to EPA on or before their due date.

ARTICLE XVII
MISCELLANEOUS

Section 17.01 Entire Agreement.

This Agreement and any Exhibits attached hereto constitute all agreements, conditions and understandings between Lender and Borrower concerning the Loan 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 Lender or Borrower unless reduced to writing and signed by them.

Section 17.02 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 Lender:
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 Borrower:

West Palm Beach Community Redevelopment Agency
Attn: Executive Director
401 Clematis Street
West Palm Beach, FL 33401

And

With a copy to:

West Palm Beach Community Redevelopment Agency
Attn: CRA Counsel
401 Clematis Street
West Palm Beach, FL 33401

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 17.03 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 Borrower.

Section 17.04 Time of the Essence.

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

Section 17.05 Act of God.

It is expressly understood that a failure or delay on the part of the Lender or Borrower 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 Borrower failing or delaying in performance, the Lender shall determine what extension, if any, that the Borrower shall be entitled to in order to complete the Work Plan.

Section 17.06 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 Borrower, 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 17.07 Waiver, Accord and Satisfaction.

The waiver by Lender of any default of any term, condition or covenant herein contained, or failure of Lender 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 Lender to or of any act by Borrower requiring Lender's consent or approval shall not be deemed to waive or render unnecessary Lender's consent to or approval of any subsequent similar act by Borrower.

Section 17.08 Incorporation by Reference.

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

Section 17.09 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 17.10 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 17.11 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 17.12 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 17.13 Effective Date of Agreement.

This Agreement is expressly contingent upon the approval of the 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 caused this Loan Agreement to be executed as of the day and year first above written.

Attest:

By: _____
CRA Secretary

Borrower:
WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY

By: _____
Geraldine Muoio, Chair

CRA COUNSEL'S OFFICE
Approved as to form and legality
By: _____

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

The foregoing Loan Agreement was acknowledged before me this 14 day of December, 2015, by Geraldine Muoio, Chair of the West Palm Beach Community Redevelopment Agency, who is personally known to me, as an act of the Agency.

Signature: _____
Notary Public – State of Florida

Print Name: Jomekeyia L. McNeil

(NOTARY SEAL)

JOMEKEYIA L. MCNEIL
Commission # FF 162359
Expires January 5, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

LENDER:

PALM BEACH County, FLORIDA, a political subdivision of the State of Florida

By: Its Board of County Commissioners

By: _____
Shannon LaRocque
Assistant County Administrator

Approved as to Form and Legal Sufficiency

By: _____
James Brako, Esq.
Assistant County Attorney

Approved as to Terms and Conditions

By: _____
Sherry Howard, Deputy Director
Department of Economic Sustainability

GUARANTOR ADHERENCE

The undersigned Guarantor executes as of the day and year first above written for purposes of evidencing their adherence to this Loan Agreement as it applies to the undersigned as Guarantors of the Loan in accordance with the terms and conditions of this Loan Agreement.

CITY OF WEST PALM BEACH;
A municipal corporation of the State of Florida

By: Geraldine Muoio
Geraldine Muoio, Mayor

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

The foregoing Guarantor Adherence was acknowledged before me this 14 day of December, 2015, by Geraldine Muoio, Mayor of the City of West Palm Beach, who is personally known to me, as an act of the City.

JOMEKEYIA L. MCNEIL
Commission # FF 162359
Expires January 5, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

Signature: Jomekeyia L. McNeil
Notary Public – State of Florida

Print Name: Jomekeyia L. McNeil

(NOTARY SEAL)

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: VSM

Exhibit "A"

LEGAL DESCRIPTION

PROPERTY LEGAL DESCRIPTIONS

PARCEL 1: 610 25TH Street, West Palm Beach FL
74-43-43-09-05-048-0050
Lots 5, 6 and 7, Block 48, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 2: 2505 Broadway, West Palm Beach FL
74-43-43-09-05-048-0010
Lots 1 and 2, Block 48, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 3: 604 25th Street, West Palm Beach FL
74-43-43-09-05-048-0030
Lots 3 and 4, Block 48, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 4: 2401 Broadway , West Palm Beach FL
74-43-43-09-05-049-0070
Lots 7, 8, 9, 10 and 11 Block 49, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida; Less any portion for roadway.

PARCEL 5: 2501 Broadway, West Palm Beach FL
74-43-43-09-05-048-0110
Lots 11 through 14, Block 48, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 6: 609 27th St., West Palm Beach FL
74-43-43-09-05-048-0080
Lots 8, 9 and 10, Block 48, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 7: 701 23rd St., West Palm Beach FL
74-43-43-09-05-053-0010
Lots 1, 2 and 3, Block 53, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 8: 2501 Pinewood Rd., West Palm Beach FL
74-43-43-09-05-053-0040
Lots 4 through 21, Block 53, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida;

and

Lot 22, Re-subdivision of Lots 22-26, Block 53, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 9: 2425 Broadway, West Palm Beach FL
74-43-43-09-05-049-0010
Lots 1, 2, 3, 4, 5 and unnumbered Lot lying immediately west of said Lot 5, All in Block 49, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

Exhibit "B"

WORK PLAN

October 16, 2015

Terracon

Mr. Jon Ward, Executive Director
Community Redevelopment Agency (CRA)
City of West Palm Beach
401 Clematis Street
West Palm Beach, FL 33401

Telephone: 561-822-1450
E-mail: JWard @wpb.org

RE: Proposal for Brownfields RLF Cleanup Services
Phase I (Programmatic Services) and
Phase II (Remedial Work) Environmental Services
Northwood Anchor Site
2401 Broadway Avenue
West Palm Beach, Florida
Terracon Proposal No. PHD150111

Dear Mr. Ward:

Terracon Consultants, Inc. (Terracon) appreciates the opportunity to submit this proposal to the City of West Palm Beach Community Redevelopment Agency, CRA, (client) to provide Brownfields Cleanup Services under Palm Beach County's United States Environmental Protection Agency (EPA) Revolving Loan Fund (RLF) Grant. Terracon has based the technical specifications of this proposal on the remedial information included in the Analysis of Brownfields Cleanup Alternatives (ABCA) prepared for the Treasure Coast Regional Planning Council (TCRPC).

A. PROJECT INFORMATION

The site, known as the Northwood Anchor site, is located at 2401 Broadway Avenue in West Palm Beach, Palm Beach County, Florida. This site is identified with Palm Beach County Property Appraiser's office parcel control number 74-43-43-09-05-049-0070. The site, formerly a gasoline service station, has documented petroleum impacts to soil and groundwater.

Our Brownfields RLF cleanup teaming partner, Cardno, conducted Brownfields assessment and remedial planning for the site on behalf of the Treasure Coast Regional Planning Council (TCRPC) since approximately 2005, when initial site assessment efforts began. In February 2009, supplemental site assessment efforts were conducted and a Combined Brownfields Site Assessment Report and Remedial Action Plan (BSAR/RAP) was prepared. Additional information was provided to address comments from the Florida Department of Environmental Protection (FDEP) and the RAP was approved in a letter dated April 2011. The remedial strategy included in-situ bio-augmentation of the microbial population using concurrent

injections of a *pseudomonas* bacteria / nutrient mix (Petrox®) and an oxygen release compound (ORC-A®). This approach biologically degrades petroleum hydrocarbons into water and carbon dioxide.

No assessment or remedial efforts were conducted since 2008 and, due to the passage of time, since assessment efforts were conducted, site monitoring wells were re-sampled in early 2014 and a Supplemental Site Assessment Report prepared. The 2014 data indicated that the dissolved petroleum compounds reported for the groundwater samples had significantly increased since 2008. Based on the updated data, a significant modification to the remedial approach was needed. In May 2014, an Analysis of Brownfields Cleanup Alternatives (ABCA), which evaluated four potential remedial alternatives for the site, was prepared. The ABCA, while following EPA guidelines, also met the requirements outlined in Chapter 62-780.700(3), Florida Administrative Code (FAC). The ABCA concluded that use of air sparge/soil vapor extraction (AS/SVE) remedial technology appeared to be the most cost effective technology with the highest degree of reliability, of those evaluated. In September 2014, a RAP Approval Order was issued for the ABCA for use of AS/SVE remediation technology.

The approval letter dated September 4, 2014 stated that the technology was approved, however, the FDEP added the following statement, "However, implementation of this RAP will not result in a complete cleanup to the applicable cleanup target levels referenced in Chapter 62-777, F.A.C., or site specific target levels. A subsequent phase of remedial design will be necessary to accomplish the necessary comprehensive cleanup in accordance with Chapter 62-780, F.A.C". The ABCA presented a remedial technology to address the affected areas but the feasibility analysis included in the ABCA does not provide for the inclusion of extensive engineering details to specify equipment and their operations. Terracon's proposal is based on the information provided in the ABCA, however, Terracon cannot provide firm site specific pricing based on the limited design included in the ABCA. Terracon understands the comment from the FDEP that AS/SVE can have trouble achieving groundwater cleanup target levels as specified in Chapter 62-777, FAC. If a restricted closure, where groundwater impacts can remain in place above the GCTL is acceptable, this may not be an issue, however, if the FDEP requires the remedial effort to achieve GCTLs, a modification, or "polishing" method may be required to supplement the AS/SVE. It is noted that the design calculations provided within the ABCA calculated the size of the vacuum system to be smaller than FDEP requirements; this proposal compensates for the rule requirements (vacuum must be at least 150% of the air sparge supply) and increases the anticipated equipment design requirements. This costs developed in this proposal are budgetary numbers developed from comparison to similar sites and are not firm estimates. Final costs will be developed upon completion of equipment design, receipt of construction estimates, calculation of carbon usage for emission control, etc.

The Northwood Anchor site has been determined by Palm Beach County and the City of West Palm Beach CRA to be a suitable site for use of the County's RLF Cleanup loan program for remediation. Efforts associated with the Brownfields Cleanup project will be divided into two phases. The first phase involves Programmatic elements to meet Terms and Conditions of the

RLF program and provide remedial and reuse planning and the second phase involves implementation of the approved remedial efforts and reporting.

B. SCOPE OF SERVICES

The tasks required to facilitate remediation of the project site are separated into two distinct phases. Phase I includes Programmatic Support tasks to meet the Terms and Conditions of the RLF program requirements. Phase II tasks include implementation of the approved remedial efforts and associated reporting as detailed below. Note: the scope of work for implementing the selected remedial strategy (AS/SVE) is estimated based on the approved ABCA and may require modification as final design efforts are completed. Further, exact costs associated with AS/SVE remedial system construction and related tasks are not finalized as contractor quotes have not been obtained for these services. Upon receipt of construction costs from selected subcontractor(s), updated costs will be provided. The following scope of services will be completed by our consulting team.

Phase I - Programmatic Tasks

A) **Site-Specific Quality Assurance Project Plan**: A Site-Specific Quality Assurance Project Plan (SSQAPP) modification will be developed for implementing remedial activities at the site. The SSQAPP will be prepared in accordance with EPA Region IV's guidelines for Quality Assurance documents and in accordance with the Terms and Conditions of the Palm Beach County's EPA Cooperative Agreement. The SSQAPP will be completed and submitted to the EPA Project Officer for approval prior to conducting the remediation program.

The previously approved SSQAPP from former work at the property will be utilized as a reference document for this submittal; since work is under a new grant program with variables to consultant and grantee staff, the document will be defined as an Addendum under the Palm Beach County RLF Grant.

B) **Analysis of Brownfields Cleanup Alternatives (ABCA)**: The Terracon team will prepare a revised Analysis of Brownfields Cleanup alternatives (ABCA) as applicable for remedial activities at the above referenced project in accordance with and as required by the EPA Terms and Conditions of the BCRLF cooperative agreement. The ABCA follows applicable EPA guidelines and will present current cleanup alternatives for the project.

The ABCA requires a public comment period prior to implementation of remedial activities at the property.

C) **Additional Programmatic Support**. In addition to preparing EPA required documents outlined above, programmatic assistance is anticipated to support the administration of the grant funding, as it relates to site remediation and reporting requirements. Additional support of this

project is provided to assist the CRA and Palm Beach County on an as-needed basis and may include the following services:

- Coordination and meetings with FDEP regarding remedial activities, schedules, previously approved Brownfield Site Rehabilitation Agreement and final approvals
- Assistance with general EPA reporting requirements including Davis Bacon documentation and reporting

In addition to the programmatic tasks described above, a Community Involvement Plan (CIP) is required by EPA; it is our understanding this document will be completed by others and therefore was not included.

Phase II – Remedial Tasks

Terracon has a commitment to the safety of all its employees. As such, and in accordance with Terracon's *Incident and Injury Free®* safety culture, in addition to a site-specific health and safety plan (HASP) we will prepare a "Pre-Task Plan" to identify the potential site safety and job hazards associated with the work proposed at this site. Prior to commencement and during the on-site activities, we will re-evaluate potential job hazards and appropriate safe working procedures. At this time, we anticipate that an Occupational Safety and Health Administration (OSHA) Level D work uniform consisting of hard hats, safety glasses, protective gloves, and steel-toed boots will be required by all personnel in the work area. It may become necessary to upgrade this level of protection to include respiratory protection and/or protective coveralls, at additional cost, while sampling activities are being conducted if petroleum or chemical constituents encountered in soils or groundwater represent an increased risk for personal exposure.

Prior to intrusive activities, Terracon will contact Sunshine 811, for notifying local utilities, so they may locate their member underground utility lines prior to the initiation of site work. The property owner will be requested to provide any information available regarding privately owned underground improvements (storage tank and piping systems, electrical lines, water /irrigation lines, septic systems, etc.)

The approved remedial method, AS/SVE, will involve the injection of air within the affected aquifer to facilitate volatilization of dissolved hydrocarbons and a transfer of the volatile compounds from the phreatic zone to the vadose zone in a gaseous form. Once in the vadose zone soils, the soil vapors will be captured using the SVE system. The captured vapors will then be treated by way of granular activated carbon (GAC) to ensure that organic vapor emissions do not exceed established emission standards. A particular challenge to design and construction of the remediation system is that the AS/SVE system lines will have to extend south slightly under the Northwood Road right-of-way to effectively remediate the southern extent of the plume. This will require cutting trenches along sidewalks and grassed easements during system construction; however, the trenches will be immediately backfilled and conditions

restored (i.e. concrete replaced) to match existing site conditions. A temporary electrical drop will be required to support operation of the system including the air compressor and vacuum blower systems.

The following tasks will be conducted in association with remediation:

A) **System Design and Permitting**: System design will include providing detailed, scaled, drawings of the AS/SVE remediation system that was conceptually approved by the FDEP in the ABCA. The specifications of equipment and materials to be utilized will be designed upon receipt of approval to proceed. The construction drawings will be of sufficient detail as to materials and methods of construction to serve as project construction drawings, and to provide for fair and competitive bids from contractors. Typical construction drawings will include: cover page, site vicinity map, remedial system compound layout, AS well and SVE well details, piping layout, piping trench cross-section, piping and instrumentation diagram (P&ID), electrical controls diagram and equipment pad layout.

   Pilot testing is not anticipated to be conducted in advance of system installation. The system will be evaluated upon installation and adjustments to the system, if necessary, will be made at that time.

B) **Contractor Bids**: Prepare and distribute bid specification packages to obtain price quotes from three pre-qualified remedial contractors for installation and start-up of the AS/SVE system. Evaluate contractor quotes and select contractor.

C) **Remediation System Construction**:

- Obtain applicable permits from the City of West Palm Beach to place the equipment, and from the Florida Department of Transportation (if required) to access the right-of-way area abutting the property along the north side of Northwood Road.
- Installation of vertical air sparge wells AS-1 through AS-9 and 30-degree-inclined air sparge wells AS-10, AS-11 and AS-12 at locations shown within the ABCA. It is anticipated that the AS wells will be installed to a depth of approximately 25 feet below ground surface (bgs) and constructed of 1-inch diameter Schedule 40 polyvinylchloride (PVC) with a 2-feet of 0.01-inch machine slotted well screen at the deepest portion of the well, extending from approximately 23 to 25 feet bgs.
- Installation of vertical SVE wells SVE-1 through SVE-20 at the locations shown within the ABCA. The design in the ABCA states that the SVE wells are to be constructed of 2-inch diameter Schedule 40 PVC with a 0.02-inch machine slotted well screen from approximately 5 to 10 feet bgs, but screen lengths may be extended depending on system design.

- Wells and/or piping sections will be fitted with valves, gauges and sample ports, as needed, to measure, track, and control system operations. Manholes will be installed to access well heads.
- The ABCA indicates that the AS and SVE wells will have a lateral spacing of 15 feet which will be confirmed and revised, if needed, during system design. The design presented is anticipated to have an overlapping zone of influence of each well.
- Provide temporary fencing around site boundaries during construction.
- Excavate trenching approximately 24 to 30 inches wide and 24 inches deep to install individual piping from the equipment compound (or trailer) to each AS and SVE wellhead. Piping for each system will be manifolded at the equipment compound. The piping manifold will be equipped with valves to adjust flow rates, ports to collect vapor samples, and vacuum gauges to measure vacuum pressure. Provide piping and valve connections at wellheads. Native soils will be used to fill the trenches, and excess soils will be properly disposed. Cover will include an approximately 8 to 10-inch layer of limerock compacted to 95% of a modified proctor verified by density testing. A 4-inch thick layer of concrete will be placed at surface in the trenches of in the sidewalk of the Northwood Road right-of-way. Surfacing for other trenches was not specified in the ABCA but will be evaluated after the system is installed for potential short circuiting of vacuum.
- As an option, excess soils and cuttings from trenching and well installation may be placed in a roll-off type container (covered with visqueen), characterized and disposed of at a licensed landfill. For budgeting purposes we have assumed that 10 cubic yards of impacted soil may require disposal.
- The ABCA did not specify specific types of equipment or motor sizes for the remedial equipment. The remedial system will be incorporated into a treatment system that includes the following typical components:
  - Air compressor (60 acfm)
  - Vacuum blower (40 acfm)
  - Piping manifold for 20 vacuum extraction points and 12 air sparging points
  - Control panel
  - Knockout tank
  - Emissions control (method unspecified; cost unspecified- final design will be affected by flowrate of vacuum system) – Costs based on estimate to utilize 16 drums containing 250 lbs of carbon over a period of 2-months)
- Establish a new electrical service and connection for equipment in the compound (or trailer), and establish a service account with a local electric company to pay monthly bills when the system is operational.
- Establish a telephone service to pay monthly bills for the remedial equipment telemetry.
- Place equipment trailer and piping manifold on site. Secure unit. If fencing is warranted, it can be provided as an additional service.

D) **Remediation System Startup**: Perform one week of remedial equipment startup testing in accordance with the manufacturer's recommendations. The tasks associated with equipment startup are as follows.

- On a daily basis, measure pressure and flow rate and adjust to verify the SVE vacuum radius of influence meets or exceeds the AS radius of influence. Adjustments will be made to maximize system performance.
- Monitor the treatment compound/trailer area with an explosimeter on a daily basis.
- On a daily basis, collect SVE effluent vapor samples for analysis of Volatile Organic Compounds (VOC) by EPA Method 18.
- As-built drawings of the remediation system, certified by a registered professional engineer, will be provided within six weeks of system start-up. Copies of the manufacturer's warranty and maintenance schedule will be included with the as-built drawings. A start-up report will be provided with the as-built drawings.

E) **Operation & Maintenance and Active Remediation Monitoring (ARM)**:

- Conduct monthly site visits to perform necessary maintenance of the treatment system components according to the manufacturer's specifications, monitor system components, make adjustments to maximize operation, and collect air emission samples for laboratory analysis for discharge from the SVE System required samples for laboratory analysis for VOC by EPA Method 18. Note, for the first three weeks of system operation, it will be necessary to conduct weekly site visits including weekly collection of air emission samples to ensure emission standards are not exceeded. Operation of the remedial system is estimated to be 18 months.
- Collect groundwater samples from existing monitoring wells MW-B3, MW-B4, TBE-3W, TBE-4W, TBE-5W, TBE-6DW, TBE-7R and TBE-8 on a quarterly basis.
- Analyze the collected groundwater samples for VOC using EPA Method 8260, polynuclear aromatic hydrocarbons (PAH) by EPA Method 8270 and total recoverable petroleum hydrocarbons (TRPH) by the FL-PRO Method using an approved a Florida Department of Health (FDOH)-certified and National Environmental Laboratory Accreditation Conference (NELAC) compliant subcontracted laboratory.
- Prepare quarterly remediation status reports providing discussion of remediation monitoring data and sampling data and site map displays. An annual report will be provided after the fourth quarter event that summarizes the site conditions and system performance.
- Telemetry will allow remote system monitoring and resolution of minor problems. In the event of an alarm or shutdown condition, Terracon will respond within 48 hours.

F) **Post Active Remediation Monitoring (PARM)**: At such time that the concentrations of petroleum compounds in the groundwater are below groundwater cleanup target levels (GCTLs), estimated to be 19 months, the remedial system will be shut down and post active remediation monitoring (PARM) conducted to monitor contaminant rebound. The following tasks will be conducted during PARM:

- Collect groundwater samples from existing monitoring wells MW-B3, MW-B4, TBE-3W, TBE-4W, TBE-5W, TBE-6DW, TBE-7R and TBE-8 on a quarterly basis.
- Analyze the collected groundwater samples for VOC using EPA Method 8260, PAH by EPA Method 8270 and TRPH by the FL-PRO Method.
- Prepare quarterly monitoring reports providing discussion of the analysis and groundwater flow direction data and site map displays.

C. SCHEDULE

Brownfields Programmatic tasks will begin immediately following our receipt of written notification to proceed. We anticipate that Programmatic work (Phase I) work tasks A, B and C will require 6 to 8 weeks to complete, dependent on EPA approval. Once the QAPP has been approved by the EPA, Remedial (Phase II) work tasks will begin starting with tasks A which are anticipated to take 6 to 8 weeks to complete. Task B - Construction of the remedial system will require about 6 to 8 weeks. It is anticipated that the remedial system will operate and active remedial monitoring (ARM) conducted for 18 months. Post active remedial monitoring (PARM) will be conducted for a one year period following completion of the active remedial effort.

D. COMPENSATION

The scope of services will be performed on a combination of lump sum and time and material basis, as a function of the task being addressed. As noted earlier, exact costs associated with AS/SVE remedial system construction and related tasks will go out for bid. At such time that bid costs are received from subcontractor(s), an updated cost for remedial installation will be provided to you.

If, as a result of these services, additional work is required outside the scope of this proposal, you will be contacted, and upon request, proposed costs for additional work will be provided. Client authorization will be obtained prior to commencement of any additional work outside the scope of this proposal.

ESTIMATED PROJECT COST	
PHASE I - Programmatic Support	
Task A) Site-Specific Quality Assurance Project Plan (SSQAPP)	$3,000.00
Task B) Updated Analysis of Brownfields Cleanup Alternatives (ABCA)	$3,000.00
Task C) Additional Programmatic Support	$5,000.00
Phase I Subtotal	**$11,000.00**
PHASE II - Remediation	
Task A) System Design and Permitting/ Contractor Selection, Preparation of As-builts*	$11,000.00
Task B) Remediation System Construction:	
Construction - (labor, materials, trenching, etc.) - $60,000**	
Well Installation (12 AS wells and 20 SVE wells) - $24,000	
Professional Oversight - $12,000	
IDW Disposal (if needed) - $2,500	$98,500.00
Task C) Remediation System Start-up and Oversight	$12,000.00
Task D) Operation & Maintenance and ARM (assumes 18 month of operation and lease of remedial trailer)	
System Rental - Estimated $4,000/month for 18 months - $72,000	
Utility costs (Electrical, phone (telemetry) usage - $20,000	
1st Year Operation/Sampling (Monthly O&M, Quarterly Sampling 8 MW's) - $50,000	
2nd Year Operation/Sampling (O&M for 2 quarters) - $25,000	
System repairs and contingency - $5,000 per year	$172,000.00
Task E) PARM (12 months)/ Site Closure upon completion	$22,000.00
Phase II Subtotal	**$315,500.00**
ESTIMATED TOTAL	***$326,500.00***

*Pilot testing is not included in the scope of services but has an estimated fee of $10,000 - $12,000.
** Surfacing of affected area with asphalt to prevent short circuiting of vacuum is not included in the cost but as an estimated fee of $10,000.

Estimates based on conceptual design as specified in the ABCA. Contingencies include subsequent modification to remedial approach to bring site to below GCTLs; vacuum motor size unknown which affects vacuum flow rate and emission control requirements.

The project cost summary is based on the scope of services outlined in this proposal. This proposal and cost estimate were prepared based on the following assumptions:

- The CRA will provide to Terracon, prior to mobilization, legal right of entry to the site (and other areas if required) to conduct the scope of services.

- The CRA will notify Terracon, prior to mobilization, of any restrictions, special site access requirements, or known potentially hazardous conditions at the site (e.g., hazardous materials or processes, specialized protective equipment requirements, unsound structural conditions, etc.).

- Utilities on private land that are not located by public companies will be located by property owner/operator.

- Work can be performed during normal business hours (Monday through Friday, 8:00 am to 5:00 pm).

- Traffic control services are not required.

- The site is readily accessible by truck. Access will be provided to areas where site activities may be interrupted.

If any of these assumptions or conditions are not accurate or change during the project, the stated fee is subject to change. Please contact us immediately if you are aware of any inaccuracies in these assumptions and conditions, so we may revise the proposal or fee.

E. AUTHORIZATION

The terms, conditions, and limitations stated in our Continuing Professional Services Agreement with the City of West Palm Beach (contract No. 15075, procurement No. 13-14-403) and sections of this proposal incorporated therein, shall constitute the exclusive terms and conditions and services to be performed for this project. The work will be carried out under a work authorization issued by the City of West Palm Beach. Note: the Schedule B form for Small Business Commitment is not included in this proposal but will be provided at such time that contractor bids for remedial system construction are provided.

We appreciate the opportunity to provide this proposal and look forward to working with you on this project. If you have any questions or comments regarding this proposal or require additional services, please give me a call.

Sincerely,
Terracon Consultants, Inc.

Andrew Petric, P.G.
Project Manager

Belinda Richard
Regional Brownfields Manager

Steven A. Harrison, P.G.
Environmental Services Department Manager

Exhibit A
Northwood Anchor Site
RLF Cleanup Loan
Work Plan, Budget and Schedule

Revised 09.24.15 – Assume November 2015 Start

CATEGORY	APPROVED BUDGET AMOUNT	TIMING
PHASE I - Programmatic Support		
Task A: Site-Specific Quality Assurance Project Plan (SSQAPP)	**$3,000.00**	November 2015 – December 2015 ***
Task B: Updated Analysis of Brownfields Cleanup Alternatives (ABCA)	**$3,000.00**	November 2015 – December 2015 ***
Task C: Additional Programmatic Support	**$5,000.00***	As Needed
PHASE II - Remediation		
Task A: System Design and Permitting/ Contractor Selection, Preparation of As-builts (pilot testing not included)	**$11,000.00**	January 2016 – February 2016
Task B: Remediation System Construction (not including surfacing of affected area)**	**$98,500.00****	April 2016 – May 2016
Task C: Remediation System Start-up and Oversight	**$12,000.00****	May 2016 – June 2016
Task D: Operation & Maintenance and ARM (assumes 18 month of operation and lease of remedial trailer)	**$172,000.00****	June 2016 – November 2017
Task E: PARM (12 months)/ Site Closure upon completion	**$22,000.00****	December 2017 – February 2019***
Sub-Total	**$326,500.00**	---
Cost-Share Requirement	$0.00	---
Approved Budget Amount	**$326,500.00**	---

*To be invoiced on a time and materials basis in accordance with contract.
** Fees provided in these sections are based on assumptions provided throughout the agreement. These assumptions may change as additional system design is performed. The budget numbers are based on experience with sites of similar nature and will be finalized upon completion of the revised ABCA and system design and agency approvals.
*** Indicates that time includes regulatory review and approval.
**** Indicates that County may be responsible for bidding out and contracting remedial construction contractor

The above referenced Tasks and subparts thereof are referred to and described in the Proposal for Brownfields RLF Cleanup Services of Terracon dated October 16, 2015 addressed to the City of West Palm Beach Community Redevelopment Agency (the "Proposal").

The Proposal provides a more detailed description of the work and services to be provided for each of the Tasks and their subparts than the brief description set forth above. It shall be the obligation of BORROWER to require Terracon to provide the work and services described above and all work and services as described in the Proposal, all of which together, are collectively

referred to herein as the "Work Plan". The Approved Budget Amount to accomplish all of the Work Plan shall be $326,500.00 notwithstanding anything in the Proposal to the contrary and notwithstanding anything in the Proposal that describes the allocated amounts as estimated or describes the $326,500.00 amount as Estimated Project Total. The maximum amount to be disbursed by LENDER to BORROWER under the Note and the Loan Documents shall not exceed the total sum of $326,500.00 and the maximum amount to be disbursed by LENDER to BORROWER for each Task and each sub part of a Task shall not exceed the amount set forth above. In addition, if BORROWER actually incurs less cost to complete a Task, or subpart thereof, than the amount allocated above, then LENDER shall only disburse to BORROWER the amount incurred by BORROWER.

The Project Schedule is shown above in this Work Plan and Budget under TIMING and shall control over the schedule shown in the Proposal. BORROWER shall cause all Tasks and subparts thereof to be completed in compliance with all Government Requirements and the Grant Agreement and be approved by all applicable Government Authority by the deadlines shown above. Failure to do so shall constitute a default of BORROWER, provided however, BORROWER may apply to LENDER for extensions of time which LENDER may grant or deny in LENDERS's sole and absolute discretion.

Exhibit "C"

EPA COOPERATIVE GRANT AGREEMENT

U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

GRANT NUMBER (FAIN): 00D12713 **MODIFICATION NUMBER:** 0 **PROGRAM CODE:** BF	**DATE OF AWARD** 09/26/2013
TYPE OF ACTION New	**MAILING DATE** 10/03/2013
PAYMENT METHOD: ASAP	**ACH#** 40836

RECIPIENT TYPE: County	**Send Payment Request to:** Las Vegas Finance Center
RECIPIENT:	**PAYEE:**
Palm Beach Co. Government 301 N. Olive Ave. West Palm Beach, FL 33401 **EIN:** 59-6000785	Palm Beach Co Government 301 N. Olive Ave. West Palm Beach, FL 33401

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Melanie Borkowski 301 N. Olive Ave. West Palm Beach, FL 33401 **E-Mail:** mborkows@pbcgov.org **Phone:** 561-233-3687	Margaret Olson 61 Forsyth Street Atlanta, GA 30303-8960 **E-Mail:** olson.margaret@epa.gov **Phone:** 404-562-8601	Laura Fowler Grants & Audit Management Section **E-Mail:** fowler.laura@epa.gov **Phone:** 404-562-8427

PROJECT TITLE AND DESCRIPTION

Brownfields Assessment and Cleanup cooperative Agreements

This action approves an award in the amount of $1,000,000 to Palm Beach County, Florida for its Revolving Loan Fund (RLF) to issue loans and sub-grants to cleanup Brownfields properties contaminated with hazardous substances and petroleum products, and prudently manage the RLF. These funds will also be used for community involvement activities to encourage redevelopment of site(s) so the future reuse of the property(ies) will create/retain jobs and does not pose a threat to human health and the environment.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
10/01/2013 - 09/30/2018	10/01/2013 - 09/30/2018	$1,200,000.00	$1,200,000.00

NOTICE OF AWARD

Based on your Application dated 06/14/2013 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards $1,000,000. EPA agrees to cost-share 80.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $1,000,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	**ORGANIZATION / ADDRESS**
61 Forsyth Street Atlanta, GA 30303-8960	U.S. EPA, Region 4 Resource Conservation and Recovery Act Division 61 Forsyth Street Atlanta, GA 30303-8960

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Digital signature applied by EPA Award Official Shirley White Grayer - Chief - Grants & Audit Management Section - Grants Management Officer	**DATE** 09/26/2013

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$	$ 1,000,000	$ 1,000,000
EPA In-Kind Amount	$	$	$ 0
Unexpended Prior Year Balance	$	$	$ 0
Other Federal Funds	$	$	$ 0
Recipient Contribution	$	$ 200,000	$ 200,000
State Contribution	$	$	$ 0
Local Contribution	$	$	$ 0
Other Contribution	$	$	$ 0
Allowable Project Cost	$ 0	$ 1,200,000	$ 1,200,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 101(39) CERCLA: Sec. 104(k)(3)	40 CFR PART 31

Fiscal

Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1304VT3038	13	E4	04V2AG7	301D79	4114	G400OL00	-	500,000
-	1304VT3038	13	E4	04V2AG7	301D79XBP	4114	G400OS00	-	500,000
									1,000,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$48,010
2. Fringe Benefits	$19,200
3. Travel	$9,600
4. Equipment	$0
5. Supplies	$4,800
6. Contractual	$163,950
7. Construction	$0
8. Other	$954,440
9. Total Direct Charges	$1,200,000
10. Indirect Costs: % Base	$0
11. Total (Share: Recipient 20.00 % Federal 80.00 %.)	$1,200,000
12. Total Approved Assistance Amount	$1,000,000
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$1,000,000
15. Total EPA Amount Awarded To Date	$1,000,000

Administrative Conditions

1. DRUG-FREE WORKPLACE CERTIFICATION

The recipient organization of this EPA assistance agreement must make an 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, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=701081165f70316effa8ebf67df73de0&rgn=div5&view=text&node=2:1.2.11.11.2&idno=2

2. LOBBYING AND LITIGATION

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient 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.

3. LOBBYING

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding $100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient 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.

4. MANAGEMENT FEES AND SIMILAR CHARGES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "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 which are not allowable under this assistance agreement. 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.

5. RECYCLING

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. 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.

In accordance with the polices set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to 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.

6. UNLIQUIDATED OBLIGATIONS

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the end of the reporting quarter. The following reporting period end dates shall be used for interim reports: 3/31, 6/30, 9/30, or 12/31.

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at http://www.epa.gov/ocfo/finservices/forms.htm. All FFRs must be submitted to the Las Vegas Finance Center: US EPA, Las Vegas Finance Center, 4220 S. Maryland Pkwy, Bld C, Rm 503, Las Vegas, NV 89119, or by Fax to: 702-798-2423 or LVFC-grants@epa.gov

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

7. EPA PARTICIPATION

This award and the resulting ratio of funding is based on estimated costs requested in the application. EPA participation in the final total allowable program/project costs (outlays) shall not exceed the statutory limitation 80% of total allowable program/project costs or the total funds awarded, whichever is lower.

8. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

General Compliance, 40 CFR, Part 33
The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

Fair Share Objectives, 40 CFR, Part 33, Subpart D
A recipient must negotiate with the appropriate EPA award official, or his/her designee, air share objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

Accepting the Fair Share Objectives/Goals of Another Recipient
The dollar amount of this assistance agreement is $250,000, or more; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is $250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the State of Florida as follows:

MBE: CONSTRUCTION 9.00%; SUPPLIES 9.00%; SERVICES 9.00%; EQUIPMENT 9.00%
WBE: CONSTRUCTION 3.00%; SUPPLIES 3.00%; SERVICES 3.00%; EQUIPMENT 3.00%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as State of Florida .

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404
The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

Six Good Faith Efforts, 40 CFR, Part 33, Subpart C
Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever

procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Require DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE Reporting, 40 CFR, Part 33, Sections 33.502 and 33.503
The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE /WBE accomplishments.** The reports must be submitted **semiannually** for the periods ending March 31st and September 30th for:

Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and All other recipients not identified as annual reporters (40 CFR Part 30 and 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to: EPA, REGION 4, Grants Management Office, 61 Forsyth Street SW, Atlanta, GA 30303-8960

Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your **grant cannot be officially closed without all MBE /WBE reports.**

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at www.epa.gov/osbp .

Contract Administration Provisions, 40 CFR, Section 33.302
The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

Bidders List, 40 CFR, Section 33.501(b) and (c)
Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

9. SUSPENSION AND DEBARMENT

Recipients shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 CFR Part

1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information at http://www.sam.gov. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

10. SINGLE AUDIT ACT

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends $500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. The recipient MUST submit the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: http://harvester.census.gov/fac/

11. TRAFFICKING IN PERSONS

a. **Provisions applicable to a recipient that is a private entity** .

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not–
   i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
   ii. Procure a commercial sex act during the period of time that the award is in effect; or
   iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
   i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
   ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either–
      A. Associated with performance under this award; or
      B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

b. **Provision applicable to a recipient other than a private entity** . We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity–
   1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
   2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either–
      i. Associated with performance under this award; or
      ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR 1532.

c. **Provisions applicable to any recipient** .

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
   i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
   ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. **Definitions. For purposes of this award term:**

1. "Employee" means either:
   i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
   ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":
   i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
   ii. Includes:
      A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
      B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

12. SUBAWARD REPORTING AND COMPENSATION

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if --

i. the total Federal funding authorized to date under this award is $25,000 or more;

ii. in the preceding fiscal year, you received--

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration Central Contractor Registration/System for Award Management profile available at www.sam.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received–

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. subawards,

and

ii. the total compensation of the five most highly compensated executives of any subrecipient.

e.Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.

ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

v. *Above-market earnings on deferred compensation which is not tax-qualified.*

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

13. CENTRAL CONTRACTOR REGISTRATION /SYSTEM FOR AWARD MANAGEMENT & UNIVERSAL IDENTIFIER REQUIREMENTS

A. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site http://www.sam.gov.

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

a. A Governmental organization, which is a State, local government, or Indian tribe;

b. A foreign public entity;

c. A domestic or foreign nonprofit organization;

d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

14. REIMBURSEMENT LIMITATION

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

15. PROCUREMENT

The cost of professional services contracts and/or small purchases procured in compliance with the minimum standards for procurement under grants (see 40 CFR 31.36) are allowable costs for reimbursement with grant funds. No grant funds may used to reimburse the federal share of any procurement action(s) found to be in noncompliance with the grant procurement regulations. (Note: all project expenditures are deemed to include both the federal and nonfederal shares).

16. PAYMENT METHODS

a. The Debt Collection Improvement Act of 1996 requires that Federal payments be made by electronic funds transfer. In order to comply with the Act, a recipient must receive payments via one of two electronic methods available to them:

Automated Standard Application for Payments (ASAP)

The ASAP system is the preferred method of payment for EPA grantees. ASAP enrollment is highly encouraged for organizations that have multiple grants/cooperative agreements and for those with a frequent need to request funds. If your organization uses multiple bank accounts for EPA grants/cooperative agreements, you must enroll in ASAP. If you are interested in receiving funds electronically via ASAP, please complete the ASAP Initiate Enrollment form located at http://www.epa.gov/ocfo/finservices/forms.htm and email it to LVFC-grants@epa.gov or fax it to LVFC at 702-798-2423

Under this payment mechanism, the Recipient initiates, via ASAP, an electronic payment request which is approved or rejected based on the amount of available funds authorized by EPA in the Recipient's account. Approved funds are credited to the recipient organization at the financial institution identified on the recipient's ASAP enrollment application. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Las Vegas Finance Center, at (702) 798-2485, or by visiting www.fms.treas.gov/asap.

Electronic Funds Transfer (EFT)

Under this payment mechanism, the EPA Las Vegas Finance Center will obtain your organization's banking information from your System for Award Management (SAM) registration. Upon completion of required Regional training, a Las Vegas Finance Center Representative will send you an email message with your EFT Control Number and payment information. Additional information concerning EFT can be obtained by contacting the EPA Las Vegas Finance Center at (702) 798-2485, or by visiting http://www.epa.gov/ocfo/finservices/payinfo.htm

NOTE: If your banking information is not correct or changes at any time prior to the end of your agreement, please update your SAM registration and notify the EPA Las Vegas Finance Center as soon as possible so the new banking information can be retrieved. This is vital to ensure proper and timely deposit of funds.

b. In accepting this assistance agreement, the recipient agrees to draw cash only as needed for its disbursement. Failure on the part of the recipient to comply with this condition may cause the undisbursed

portions of the assistance agreement to be revoked and financing method changed to a reimbursable basis.

17. AWARD ACCEPTANCE LANGUAGE

Based on your Application dated ***06/14/2013*** including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards ***$1,000,000.*** EPA agrees to cost share ***80%*** of all approved budget period costs incurred, up to and not exceeding total federal funding of ***$1,000,000.*** Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

18. CIVIL RIGHTS OBLIGATIONS

General
This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 424B or Standard Form 424D, as applicable. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

Statutory Requirements
In carrying out this agreement, the recipient must comply with:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
- The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

If the recipient is conducting an education program under this agreement, it must also comply with:

- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:

- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

Regulatory Requirements
The recipient agrees to comply with all applicable EPA civil rights regulations, including:

- For Title IX obligations, 40 C.F.R. Part 5; and
- For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
- As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

TITLE VI - LEP, Public Participation and Affirmative Compliance Obligation

- As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "*Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.*" The guidance can be found at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pd*
- If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf.
- In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to

implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

19. PAYMENT TO CONSULTANTS

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a 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 recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

Programmatic Conditions

1. Electronic and Information Technology Accessibility

Recipients and subrecipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology ("EIT"). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient's websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities. Recipients may wish to consult the latest Section 508 guidelines issued by the US Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0(see http://www.access-board.gov/sec508/guide/index.htm).

2. Geospatial Data Standards

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards, unless otherwise directed by the EPA Project Officer. Information on these standards may be found at www.fgdc.gov.

3. Sufficient Progress

EPA may terminate the assistance agreement for failure of the recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.

4. Recipient Performance Reporting

Recipients subject to 40 C.F.R. Part 31 (other than recipients of State or Tribal Program grants under 40 C.F.R. Parts 35 Subparts A or B)

In accordance with 40 C.F.R. §31.40, the recipient agrees to submit performance reports that include brief information on each of the following areas: 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement workplan for the period; 2) the reasons for slippage if established outputs/outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs.

In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

5. Brownfields Revolving Loan Fund (RLF)

Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfields RLF capitalization Grants awarded under CERCLA § 104(k) and those that chose to transition to §104(k).
They do not apply to pre-FY 2003 grants subject to §104(d).

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2013 competition for Brownfields RLF cooperative agreements. However, the CAR may not expend ("draw down") funds to carry out this agreement until EPA's award official approves the final work plan.

2. In implementing this agreement, the cooperative agreement recipient shall comply with and require that work done by borrowers and subgrant recipients with cooperative agreement funds comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR will ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR will ensure cleanups are protective of human health and the environment.

3. The CAR must consider whether it is required to have borrowers or subgrant recipients conduct cleanups under a State or Tribal response program. If the CAR chooses not to require borrowers and subgrant recipients to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) on each loan or subgrant to ensure the proposed cleanup is protective of human health and environment.

4. *If the CAR is not subject to a State or Tribal Response Program, then the CAR is strongly urged to consider joining such program. Regardless, the CAR is required to consult with the EPA and any applicable State/Tribal programs to ensure the proposed cleanup is protective of human health and the environment.*

5. Information submitted to EPA under this cooperative agreement may be subject to the Freedom of Information Act (FOIA). EPA recommends that recipients do not provide confidential business information ("CBI") to the Agency. However, if confidential business information is included, it will be treated in accordance with 40 CFR 2.203. Recipients must clearly indicate which portion(s) of the information submitted to EPA the recipient claims as CBI. EPA will evaluate such claims in accordance with 40 CFR Part 2. If no claim of confidentiality is made, EPA is not required to make the inquiry to the recipient otherwise required by 40 CFR 2.204(c)(2) prior to disclosure. Unless otherwise required by Federal, State, or local law, the CAR and its borrowers and subgrantees are not required to permit public access to their own records. 40 C.F.R. 30.53; 40 C.F.R. 31.42. See 40 C.F.R. part 2 for EPA's general information-disclosure procedures.

II. SITE/BORROWER/SUBGRANTEE ELIGIBLIITY

A. Brownfields Site Eligibility

1. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, the identity of the owner, and the date of acquisition.

2. If the site is excluded from the general definition of a brownfield site, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.

3. For any petroleum-contaminated brownfields site, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (refer to EPA's *Proposal Guidelines*

for Brownfields Revolving Loan Fund Grants dated September 2011 for discussion of this element) documenting that:

a. a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum sites in the State;
b. the State determines there is "no viable responsible party" for the site;
c. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and
d. the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate state petroleum program official.

4. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion to reach each determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

5. If the State chooses not to make the determinations described in 3.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

6. EPA will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in "3" above.

B. Borrower and Subgrant Recipient Eligibility

1. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites *owned* by the eligible entity or nonprofit organization at the time the subgrant is awarded. Eligible subgrant recipients include eligible entities as defined under CERCLA § 104(k)(1) and nonprofit organizations as defined in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.

2. The subgrant recipient must retain ownership of the site throughout the period of performance of the subgrant. For the purposes of this agreement, the term "owns" means fee simple title unless EPA approves a different arrangement. **However, the CAR may not provide a subgrant to itself or another component of its own unit of government or organization.**

3. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principle. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30 percent, provided that the total amount of the principal forgiven for that loan shall not exceed $200,000. Eligible entities include those identified in CERCLA § 104(k)(1) and nonprofit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. **Private, for-profit entities are not eligible for discounted loans.**

4. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a loan or grant recipient is potentially liable under CERCLA § 107. The CAR may rely on its own investigation which can include an opinion from the subgrant recipient's or borrower's counsel. However, the CAR must advise the borrower or subgrant recipient that the investigation and/or opinion of the subgrant recipient's or borrower's counsel is not binding on the Federal Government.

5. For approved eligible petroleum-contaminated brownfields sites, the person cleaning up the site must be a person who is not potentially liable for cleaning up the site. For brownfields grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.

6. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrant recipients.

7. A borrower or subgrant recipient must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The CAR, in consultation with the EPA, must consider this history in its analysis of the borrower or subgrant recipient as a cleanup and business risk.

8. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrant recipient.

C. **Obligations for Grant Recipients , Borrowers, or Subgrantees Asserting a Limitation on Liability from CERCLA § 107**

1. Grant recipients, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a grant, loan, or subgrant based on a liability protection from CERCLA as a: (1) bona fide prospective purchaser (BFPP), (2) contiguous property owner (CPO), or (3) innocent landowner (ILO) (known as the "landowner liability protections"), must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible grant recipient, borrower, or subgrantee. These include, but are not limited to the following:

    a. All grant recipients, borrowers, or subgrantees asserting a BFPP, CPO or ILO limitation on liability must perform (or have already performed) "all appropriate inquiry," as found in section 101(35)(B) of CERCLA, on or before the date of acquisition of the property.

    b. Grant recipients, borrowers, or subgrantees seeking to qualify as bona fide prospective purchasers or contiguous property owners must not be potentially liable, or affiliated with any other person that is potentially liable for response costs at the facility through;
        (a) any direct or indirect familial relationship; or
        (b) any contractual, corporate, or financial relationships; or
        (c) a reorganized business entity that was potentially liable or otherwise liable under CERCLA § 107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.

    c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:

        i. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;

        ii. taking reasonable steps to stop any continuing hazardous substance releases, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance;

        iii. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;

        iv. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and

        v. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) [see CERCLA § §101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B).].

    d. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§101(35), 101(40), 107(b), 107(q) and 107(r).

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of an RLF agreement is five years, unless otherwise extended by EPA at the CAR's request.

2. If after 2 years from the date of award, EPA determines that the recipient has not made sufficient progress in

implementing its cooperative agreement the recipient must implement a corrective action plan approved by the EPA Project Officer or EPA may terminate this agreement for material non-compliance with its terms. Sufficient progress is indicated by the grantee having made loan(s) and/or subgrant(s), but may also be demonstrated by a combination of all the following: hiring of all key personnel, the establishment and advertisement of the RLF, and the development of one or more potential loans/subgrants.

B. Substantial Involvement

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.

   a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; reviewing and approving of procedures for loan and subgrant recipient selection; review of project phases; and approving substantive terms included in professional services contracts.

   b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I. B.1. under *EPA and/or State Approvals of Brownfields Sites* above. The CAR may also request technical assistance from EPA to determine if sites qualify as brownfields sites and to determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition prohibits a grant or loan recipient from using grant funds to clean up a site if the recipient is potentially liable under §107 of CERCLA for that site.

   c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.

   d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subgrants.

   e. EPA may waive any of the provisions in term and condition II. B.1, with the exception of property-specific funding determinations. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:

   a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.

   b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with EPA.

   c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

3. The CAR will provide project updates to the State Brownfields or Voluntary Cleanup Program (VCP) contact on a regular basis.

   a. The CAR will make the State aware of all site-specific sampling and/or cleanup activities to be initiated (if applicable).

   b. The CAR will provide the State an opportunity to review and comment on all technical reports, including QAPPs, sampling plans, ABCAs, cleanup plans, and other technical reports.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR is responsible for establishing an RLF team that will implement the Program and for coordinating the team's activities as outlined below.

2. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields cleanup activities at a particular site, if they do not have such a professional on staff.

3. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund

manager for services performed must be consistent with 40 CFR Part 31.

4. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel should review all loan/subgrant agreements prior to execution.

5. The CAR is responsible for ensuring that borrowers and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrant recipients are consistent with the terms and conditions of this agreement.

D. Quarterly Progress Reports

1. The CAR must submit progress report on a quarterly basis to the EPA Project Officer. Quarterly progress report must include:
    a. A narrative summary of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
    b. An update on project schedules and milestones.
    c. A list of the loans and/or sub-grants awarded during the reporting quarter.
    d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); cost share updates; and total remaining funds.

2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.

3. *Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and must relate EPA-funded activities to the objectives and milestones agreed upon in the work plan.*

4. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., loan signed, cleanup started) and any final accomplishments (i.e., cleanup completed, contaminants removed, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

2. *The CAR must obtain approval from the EPA Project Officer before expending cooperative agreement funds to purchase adequate computer supplies to complete on-line reporting activities.*

F. Final Report

1. The CAR must submit a final report at the end of the period of performance in order to finalize the closeout of the grant. This final report must capture the site names, what work was done at each site and how much funding was spent at each site. It should also provide information that documents the outreach efforts done by the CAR and other activities that help explain where the funding was utilized. See Section VII for more details on final report and closeout.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. CERCLA § 104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

B. **Eligible Uses of the Funds for the Cooperative Agreement Recipient , Borrower, and/or Subgrant Recipients**

1. To the extent allowable under the EPA approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to capitalize the RLF and conduct cleanups.

    a. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers or subgrant recipients at brownfields sites.

    b. At least 50% of the funds must be used by the CAR to provide loans for the cleanup of eligible brownfields sites and for eligible programmatic costs for managing the RLF. Up to 50% can be used for subgrants to clean up eligible brownfield sites under the RLF and for eligible programmatic costs for managing subgrant(s). (Note: cleanup subgrants are limited to $200,000 per site). (Note: when implemented as a policy change, the CAR may request a waiver to the 50% cap on subgrant funds. Please consult with your Regional Project Officer.)

    c. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA §104(k)(3)(B)(c):

        i. The extent the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

        ii. The extent the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

        iii. The extent the subgrant will facilitate the use or reuse of existing infrastructure; and

        iv. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

    The CAR must maintain sufficient records to support and document these determinations .

2. The CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include direct costs for:

    a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k);

    b. Ensuring that a RLF cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);

    c. Limited site characterization including confirming the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed;

    d. Preparing an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action;

    e. Ensuring that public participation requirements are met. This includes preparing a community relations plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments;

    f. Establishing an administrative record for each site;

    g. Developing a Quality Assurance Project Plan (QAPP) as required by Part 31 and Part 30 regulations. The specific requirement for a QAPP is outlined in U.S. EPA Order 53601.1, April 1984, as amended on May 5, 2000;

h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable Federal and State environmental requirements;

i. Ensuring that the site is secure if a borrower or subgrant recipient is unable or unwilling to complete a brownfields cleanup;

j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. The loan or subgrant may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section C.

k. Any other eligible programmatic costs including costs incurred by the recipient in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subgrants to the extent allowable in III. D. 2.; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrant recipients; and

l. Subgrantee progress reporting to the CAR is an eligible programmatic cost.

3. *Local Governments Only: If included in the EPA approved work plan, no more than 10% of the funds awarded by this agreement may be used by the CAR itself for monitoring of health and institutional controls. The CAR must maintain records on funds that will be used to carry out these tasks as identified in the work plan.*

4. If the CAR makes a subgrant to a local government that includes an amount (not to exceed 10% of the subgrant) for brownfields program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the limits on the amount of subgrant funds that may be expended for this purpose.

C. **Ineligible Uses of the Funds for the Cooperative Agreement Recipient , Borrower, and/or Subgrant Recipients**

1. Cooperative agreement funds shall <u>not</u> be used by the CAR, borrower and/or subgrant recipient for any of the following activities:

a. Environmental assessment activities, including Phase I and Phase II Environmental Site Assessments.

b. 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.

c. Construction, demolition, and development activities that are not integral to the cleanup actions, and addressing public or private drinking water supplies that have deteriorated through ordinary use.

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

e. To pay for a penalty or fine.

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

g. To pay for a response cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA § 107.

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

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

2. Under CERCLA §104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include <u>all indirect costs</u> under applicable OMB Circulars incurred by the CAR and subgrantees.

a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform*

Administrative Requirements for Grants contained in 40 CFR Part 30 or 40 CFR part 31. Direct costs for grant and subgrant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grantee or subgrant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant 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.

   ix. Borrowers are subject to the CERCLA § 104(k)(4)(B) administrative cost prohibition requirements. The CAR must ensure that loan agreements prohibit borrowers and subgrantees from using loans financed with cooperative agreement funds for administrative costs.

c. Prohibited administrative costs for the borrower (including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges) are those incurred for loan administration and overhead costs.

d. Direct costs for loan administration are ineligible even if the borrower is required to carry out the activity under the loan agreement. Ineligible loan administration costs include expenses for:

   i. Preparation of applications for loans and loan agreements;

   ii. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;

   iii. Maintaining and operating financial management and personnel systems;

   iv. Preparing payment requests and handling payments; and

   v. Audits.

e. Overhead costs by the borrower that do not directly clean up brownfields site contamination or comply with laws applicable to the cleanup are ineligible administrative costs. Examples of overhead costs that would be ineligible in loans include expenses for:

   i. Salaries, benefits and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);

   ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and

   iii. Supplies and equipment not used directly for cleanup at the site.

iv. Costs incurred by the borrower for procurement are eligible only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls.

v. Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.

4. Cooperative agreement funds may not be used for any of the following properties:

   a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);

   b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;

   c. Facilities that are subject to the jurisdiction, custody or control of the United States government except land held in trust by the United States government for an Indian tribe; or

   d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

5. The CAR must not include management fees or similar charges in excess of the direct costs or at the rate provided for by the terms of the agreement negotiated with EPA. The term "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.

D. **Use of Program Income**

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.

2. The CAR may use program income from fees, interest payments from loans, and other forms of eligible program income to meet its cost-share. The CAR shall not use repayments of principal of loans to meet the CAR's cost-share requirement. Repayments of principal must be returned to the CAR's Brownfields cleanup revolving fund.

3. The CAR that elects to use program income to cover all or part of an RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with applicable OMB cost principles when charging costs against program income. For any cost determined by the EPA to have been an ineligible use of program income, the recipient shall reimburse the RLF or the EPA. EPA will notify the recipient of the time period allowed for reimbursement.

4. Loans or subgrants made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct funding from EPA in combination with non Federal sources of funds are also subject to the same terms and conditions of this agreement.

5. The CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income.

E. **Post Cooperative Agreement Program Income**

1. After the end of the award period, the CAR shall use program income in a manner consistent with the terms and conditions of a "close out" agreement negotiated with EPA. In accordance with 40 CFR 31.42(c)(3), the CAR

shall maintain appropriate records to document compliance with the requirements of the close out agreement (i.e., records relating to the use of post-award program income). EPA may request access to these records or may negotiate post-close-out reporting requirements to verify that post-award program income has been used in accordance with the terms and conditions of the close out agreement.

F. **Interest-Bearing Accounts**

1. The CAR must deposit advances of grant funds and program income (e.g., fees, interest payments, repayment of principal) in an interest bearing account.

2. Interest earned on advances, CARs and subgrant recipients are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating to remitting interest on advances to EPA on a quarterly basis.

3. Interest earned on program income is considered additional program income.

V. RLF ENVIRONMENTAL REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR shall prepare an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The alternatives may - as national or regional policies direct - additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The clean up method chosen must be based on this analysis.

2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the grantee shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

B. Quality Assurance (QA) Requirements

1. If environmental samples are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) 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 QA requirements.

2. ***QAPP:*** *The CAR, or its service agent/contractor(s), must have an* ***EPA approved Quality Assurance Project Plan (QAPP)*** *in place before beginning any verification or confirmation sampling, if needed, funded wholly or in part by this agreement, that includes sampling and analysis of environmental media. The CAR should allow EPA adequate time (generally 45 days) for review and approval. The QAPP should be consistent with the EPA Region 4 "Brownfields Quality Assurance Project Plans (QAPPs) Interim Instructions: Generic QAPP and Site Specific QAPP for Brownfields Site Assessments and/or Cleanups," July 2010, and later revisions.*

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. All RLF loan and subgrant cleanup activities require a site-specific community relations plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site.

D. Administrative Record

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include the analysis of brownfield cleanup alternatives; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

E. Implementation of RLF Cleanup Activities

1. The CAR shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subgrant agreement shall contain terms and conditions, subject to any required approvals by the regulatory oversight authority, that allow the CAR to change cleanup activities as necessary based on comments from the public or any new information acquired.

2. If the borrower or subgrant recipient is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

F. Completion of RLF Cleanup Activities

1. The CAR shall ensure that the successful completion of an RLF cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanups are complete. This documentation needs to be included as part of the administrative record.

2. *For the purposes of these terms and conditions, contaminants are considered cleaned up when a "clean" or "no further action" letter (or its equivalent) has been issued by the state or tribe under its voluntary response program (or its equivalent) for cleanup activities at the property; or the [cooperative agreement] recipient or property owner, upon the recommendation of an environmental professional, has determined and documented that on-property work is finished and any needed institutional or engineering controls are in place and functional On-going operation and maintenance activities or monitoring may continue after a "cleaned up" designation has been made.*

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet long-term brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.

2. The CAR shall not incur costs under this cooperative agreement for loans, subgrants or other eligible costs until an RLF grant work plan *and RLF implementation plan, if applicable* has been submitted to and approved by U.S. EPA. *Though the workplan must identify tasks and milestones for establishing and operating the RLF, more detailed information may be submitted in supplemental documents, e.g., an "implementation plan."* The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:

    a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any subgrants competitively, it must document the basis for that decision and inform EPA.

    b. Establishing appropriate project selection criteria consistent with Federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.

    c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrant recipients receive RLF financing.

    d. Developing a formal protocol for potential borrowers or subgrant recipients to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrant recipient to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrant recipients for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.

    e. Requiring that borrowers or subgrant recipients submit information describing the borrower's or subgrant

recipient's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.

f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.

g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrant recipient.

B. Inclusion of Special Terms and Conditions in RLF Loan and Subgrant Documents

1. The CAR shall ensure that the borrower or subgrant recipient meets the cleanup and other program requirements of the RLF grants by including the following special terms and conditions in RLF loan agreements and subgrant awards:

   a. Borrowers or subgrant recipients shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable Federal and State laws and regulations. See Section I.A.2.

   b. Borrowers or subgrant recipients shall ensure that the cleanup protects human health and the environment.

   c. Borrowers or subgrant recipients shall document how funds are used. If a loan or subgrant includes cleanup of a petroleum-contaminated brownfields site(s), the CAR shall include a term and condition requiring that the borrower or subgrant recipient maintain separate records for costs incurred at that site(s).

   d. Borrowers or subgrant recipients shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with RLF funds. Borrowers or subgrant recipients shall obtain written approval from the CAR prior to disposing of records. Cooperative agreement recipients shall also require that the borrower or subgrant recipient provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the Federal government.

   e. Borrowers or subgrant recipients shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan.

   f. Borrowers or subgrant recipients shall certify that they are not potentially liable under § 107 of CERCLA for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrant recipient must state the basis for that assertion. When using grant funds for petroleum-contaminated brownfields sites, borrowers or subgrant recipients shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. Refer to the most recent issue of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for a discussion of these terms. The CAR may consult with EPA for assistance with this matter.

   g. Borrowers or subgrant recipients shall conduct cleanup activities as required by the CAR.

   h. Subgrant recipients shall comply with applicable EPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations). All procurements conducted with subgrant funds must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48, as applicable.

   i. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that borrowers and subgrant recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA § 104(k), Federal applicable laws and requirements include: 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 40 CFR 30 and OMB Circular A-21 for educational institutions that are recipients of subgrants.

   j. The CAR must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA grant funds. For more detailed information on complying

with Davis-Bacon, please see the Davis- Bacon Addendum to these terms and conditions. *(See attached Davis Bacon provision below.)*

k. Federal cross-cutting requirements include, but are not limited to, MBE/WBE requirements found 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.

C. Default

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for: (1) documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and (2) securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

D. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

    a. The affected party,

    b. Any member of his immediate family,

    c. His or her partner, or

    d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VII. DISBURSEMENT, PAYMENT AND CLOSEOUT

For the purposes of these terms and conditions, the following definitions apply: "payment" is the U.S. EPA's transfer of funds to the CAR; the CAR incurs an "obligation" when it enters into a loan agreement with the borrower or subgrant recipient; "disbursement" is the transfer of funds from the CAR to the borrower or subgrant recipient. "Close out" refers to the process that the U.S. EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed, and, to establish a closeout agreement to govern the use of program income.

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 40 CFR.§31.21(c) after it incurs an obligation or has an eligible programmatic expense. EPA will make payments to the CAR on a schedule which minimizes the time elapsing between transfer of funds from EPA and disbursement by the recipient to the borrower or subgrant recipient to pay costs incurred or to meet a "progress payment" schedule. The recipient may request payments when it receives a disbursement request from a borrower or subgrant recipient based on the borrower or subgrant recipient's incurred costs under the "actual expense" method or the schedule for disbursement under the "schedule" disbursement method. The CAR shall disburse accrued program income to meet all or part of this obligation or eligible programmatic expenses prior to requesting payment from EPA. A waiver from this requirement may be granted by EPA after a written request is submitted that adequately justifies drawing down

cooperative agreement funds prior to accrued program income.

B. Methods of Disbursement

1. The CAR may choose to disburse funds to the borrower by means of 'actual expense' or 'schedule.' If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower's incurred costs.

    a. An 'actual expense' disbursement approach requires the borrower to submit documentation of the borrower's expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.

    b. A 'schedule' disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower or subgrantee on the basis of an agreed upon schedule (e.g., progress payments) provided the schedule minimizes the time elapsing between disbursement by the CAR and the subgrant/loan recipient's payment of costs incurred in carrying out the subgrant/loan. In unusual circumstances, disbursement may occur upon execution of the loan or subgrant. The CAR shall submit documentation of disbursement schedules to EPA.

    c. If the disbursement schedule of the loan/subgrant agreement calls for disbursement of the entire amount of the loan/subgrant upon execution, the CAR shall demonstrate to the U.S. EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan/subgrant. Further, the CAR shall include an appropriate provision in the loan/subgrant agreement which ensures that the borrower/recipient uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

    d. Subgrant funds must be disbursed to the subgrant recipient in accordance with 40 CFR 31.21 or 40 CFR 30.22, as applicable.

C. Schedule for Closeout

1. There are two fundamental criteria for closeout:

    a. Final payment of funds from EPA to the CAR following expiration of the terms of the agreement or expenditure of the funds awarded; and

    b. Completion of all cleanup activities funded by the amount of the award.

2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities funded by the initial amount of the award are complete.

3. The CAR must negotiate a closeout agreement with EPA to govern the use of program income after closeout. Eligible uses include continuing to operate an RLF for brownfields cleanup and/or other brownfields activities.

4. The closeout agreement will require that any assessments or cleanups financed with program income be consistent with the CERCLA §107 prohibitions and site eligibility limitations for the effective period of the closeout agreement.

D. Compliance with Closeout Schedule

1. If a CAR fails to comply with the closeout schedule, any cooperative agreement funds not obligated under loan agreement to a borrower or subgrant recipient may be subject to federal recovery, and the cooperative agreement award may be amended to reflect the reduced amount of the cooperative agreement.

E. Final Requirements

1. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.

    a. The CAR must submit the following documentation:

        1. The Final Report as described in II.F.

2. A Final Federal Financial Report (FFR - SF425). Submitted to:

U.S. EPA Las Vegas Finance Center
4220 S. Maryland Pkwy, Bldg. C., Room 503
Las Vegas, NV 89119
Fax: (702) 798-2423
http://www.epa.gov/ocfo/finservices/payinfo.html

3. A Final MBE/WBE Report (EPA Form 5700-52A) to the regional office.

b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region

F. Recovery of RLF Assets

1. In case of termination for cause or convenience, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under 40 CFR 31.43 and CERCLA § 104(k) when the Agency determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the Agency's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

G. Loan Guarantees

1. If the CAR chooses to use the RLF funds to support a loan guarantee approach, the following terms & conditions apply:

   a. The CAR shall:

      i. document the relationship between the expenditure of CERCLA § 104(k) funds and cleanup activities;
      ii. maintain an escrow account expressly for the purpose of guaranteeing loans, by following the payment requirement described under the Escrow Requirements term and condition below; and
      iii. ensure that cleanup activities guaranteed by RLF funds are carried out in accordance with CERCLA § 104(k) and applicable Federal and State laws and will protect human health and the environment.

   b. Payment of funds to a CAR shall not be made until a guaranteed loan has been issued by a participating financial institution. Loans guaranteed with RLF funds shall be made available as needed for specified cleanup activities on an "actual expense" or "schedule" basis to the borrower or subgrant recipient (See Section on Methods of Disbursement). The CAR's escrow arrangement shall be structured to ensure that the CERCLA § 104(k) funds are properly "disbursed" by the recipient for the purposes of the assistance agreement as required by 40 CFR 31.20(b)(7) and 31.21(c). If the funds are not properly disbursed, the CERCLA § 104(k) funds that the recipient places in an escrow account will be subject to the interest recovery provisions of 40 CFR 31.21(i).

   c. To ensure that funds transferred to the CAR are disbursements of assisted funds, the escrow account shall be structured to ensure that:

      i. the recipient cannot retain the funds;
      ii. the recipient does not have access to the escrow funds on demand;
      iii. the funds remain in escrow unless there is a default of a guaranteed loan;
      iv. the organization holding the escrow (i.e., the escrow agency), shall be a bank or similar financial institution that is independent of the recipient; and
      v. there must be an agreement with financial institutions participating in the guaranteed loan program which documents that the financial institution has made a guaranteed loan to clean up a brownfields site in exchange for access to funds held in escrow in the event of a default by the borrower or subgrant recipient.

d. Federal Obligation to the Loan Guarantee Program

i. Any obligations that the CAR incurs for loan guarantees in excess of the amount awarded under the cooperative agreement are the CAR's responsibility. This limitation on the extent of the Federal Government's financial commitment to the CAR's loan guarantee program shall be communicated to all participating banks and borrower or subgrant recipient.

e. Repayment of Guaranteed Loans

i. Upon repayment of a guaranteed loan and release of the escrow amount by the participating financial institution, the CAR shall return the cooperative agreement funds placed in escrow to the U.S. EPA. Alternatively, the CAR may, with EPA approval,

1) Guarantee additional loans under the terms and conditions of the agreement or,
2) amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfields related activities.

Davis Bacon Term and Condition for
Revolving Loan Fund Grants to Governmental/Quasi-Governmental Organizations

DAVIS BACON PREVAILING WAGE TERM AND CONDITION

The following terms and conditions specify how Recipients will assist EPA in meeting its Davis Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the Recovery Act or any other statute which makes DB applicable to EPA financial assistance. If a Recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, they should contact the regional Brownfields Coordinator or Project Officer for guidance.

1. Applicability of the Davis Bacon Prevailing Wage Requirements.

For the purposes of this term and condition, EPA has determined that all construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings, is subject to DB.

With regard to remediation of petroleum contamination, following consultation with the U.S. Department of Labor, EPA has determined that for remediation of petroleum contamination at brownfields sites, DB prevailing wage requirement apply when the project includes:

Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination,

Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or

Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

In the above circumstances, all the laborers and mechanics employed by contractors and subcontractors will be covered by the DB requirements for all construction work performed on the site. Other cleanup activities at brownfields sites contaminated by petroleum such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will normally not trigger DB requirements. However, if a RLF Recipient encounters a unique situation at a site (e.g. unusually extensive excavation) that presents uncertainties regarding DB applicability, the RLF Recipient must discuss the situation with EPA before authorizing work on that site.

Note: If an RLF Recipient encounters a unique situation at a petroleum or hazardous substance site that presents uncertainties regarding DB applicability, the RLF Recipient must discuss the situation with EPA before advising a borrower or subgrantee that DB does not apply.

2. Obtaining Wage Determinations.

(a) The RLF Recipient is responsible for obtaining DB wage determinations from DOL and ensuring the borrowers and subgrantees include the 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).

(b) Unless otherwise instructed by EPA on a project specific basis, the RLF Recipient shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. RLF Recipients must obtain wage determinations for specific localities at www.wdol.gov.

(i) For solicitations, new contracts and ordering instruments for the excavation and removal of hazardous substances, construction of caps, barriers and similar activities the RLF Recipient shall use the "Heavy Construction" Classification.

(ii) For solicitations, new contracts and ordering instruments for the construction of structures which house treatment equipment. and abatement or contamination in buildings (other than residential structures less than 4 stories in height) the RLF Recipient shall use "Building Construction" classification.

(iii) When soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the Recipient shall use "Residential Construction" classification.

(iv) For solicitations, new contracts and ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant the Recipient shall use the "Building Construction" classification.

(v) For solicitations, new contracts and ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant the Recipient shall use the "Heavy Construction" classification.

Recipients must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with an RLF Recipient, EPA determines that DB applies to a unique situation involving a Brownfields site contaminated with petroleum (e.g. unusually extensive excavation) the Agency will advise the Recipient which General wage determination to use based on the nature of the construction activity at the site.

(b) RLF Recipients shall include a term and condition in all loans and subgrants which ensures that the borrower or subgrantee complies with the above requirements for including wage determinations in solicitations, new contracts and ordering instruments. The RLF Recipient must ensure that prime contracts entered into by borrowers and subgrantees contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the borrower or subgrantee's solicitation remains open, the RLF Recipient shall require that the borrower or subgrantee monitor www.wdol.gov. on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The RLF Recipient shall require that the borrower or subgrantee amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the RLF Recipient may, on behalf of the borrower or subgrantee, request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the RLF Recipient.

(ii) If the borrower or subgrantee does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless EPA, at the request of the RLF Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The RLF Recipient shall ensure that borrowers and subgrantees monitor www.wdol.gov on a weekly basis if the borrower or subgrantee does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current. If the applicable wage determination changes, the RLF

Recipient shall provide the borrower or subgrantee with the current wage determination from www.wdol.gov.

(iii) If the borrower or subgrantee carries out Brownfields cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the RLF Recipient shall ensure that the borrower or subgrantee inserts the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) RLF Recipients shall ensure that borrowers and subgrantees review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a a borrower or subgrantee's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the borrower or subgrantee has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the RLF Recipient shall require that the borrower or subgrantee either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The RLF Recipient must ensure that the borrower or subgrantee compensates the contractor for any increases in wages resulting from the use of DOL's revised wage determination. RLF Recipients may, but are not required to, provide additional loan or subgrant funds to the borrower or subgrantee for this purpose.

3. Contract and Subcontract Provisions

(a) The RLF Recipient shall ensure that borrowers and subgrantees insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to DB, the following labor standards provisions.

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the RLF Recipient obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. RLF Recipients shall require that the contractor and subcontractors include the name of the RLF Recipient employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The RLF Recipient, on behalf of EPA, shall require that contracts and subcontracts entered into by borrowers and subgrantees provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve, upon the request or the RLR Recipient an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the RLF Recipient and the borrower or subgrantee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the RLF Recipient to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the award official or will notify the award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, ***and the RLF Recipient and borrower or subgrantee*** do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the RLF Recipient shall provide a report on the disagreement which includes submissions by all interested parties to the EPA Award Official. The Award Official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Award Official or will notify the Award Official within the 30-day period that additional time is necessary. The Award Official will direct that the RLF Recipient take appropriate action to implement the Administrator's determination.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(1) Withholding. The RLF Recipient, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause the borrower or subgrantee to withhold from the contractor under the affected contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or RLF Recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
(2) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is

enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the borrower or subgrantee and to the RLF Recipient who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the RLF Recipient for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the RLF Recipient.

(B) Each payroll submitted to the RLF Recipient shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, ***Recipient, borrower or subgrantee***, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment

as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.
(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), ***the RLF Recipient, borrower or subgrantee and EPA***, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provisions for Contracts in Excess of $100,000

(a) Contract Work Hours and Safety Standards Act. ***The RLF Recipient shall ensure that subgrantees and borrowers*** insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFF 4.6 . As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The RLF Recipient shall upon written request from the Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld by the borrower or subgrantee, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the RLF Recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the RLF Recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

Note: RLF Recipients may require that borrowers or subgrantees verify that contractors and subcontractors comply with DB provisions or conduct compliance verification itself. RLF Recipients must ensure that borrowers and subgrantees understand the compliance verification requirements and can interpret prevailing wage determinations

properly before placing the responsibility for compliance verification on borrowers or subgrantees. Moreover, the RLF Recipient remains accountable to EPA for ensuring that the borrowers' and subgrantees' contractors and subcontractors comply with DB.

(a). The RLF Recipient periodically interview, or require that borrowers or subgrantees interview, a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The RLF Recipient must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The RLF Recipient shall establish and follow, or ensure that borrowers or subgrrantees establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the RLF Recipient, or the borrower or subgrantee, must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. RLF Recipients, or borrowers or subgrantees, must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. RLF Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements that it uncovers itself or that is reported to it by a borrower or subgrantee. All interviews shall be conducted in confidence.

(c). The RLF Recipient shall conduct, or require that borrowers or subgrantees periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The RLF Recipient shall establish and follow or ensure that borrowers or subgrantees follow a spot check schedule based on an assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the RLF Recipient must spot check, or require that borrowers or subgrantees spot check, payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date of the contract or subcontract. RLF Recipients must conduct, or require that borrowers or subgrantees conduct, more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the RLF Recipient shall verify, or require that borrower or subgrantees verify, evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The RLF Recipient shall periodically review, or require that borrowers or subgrantees periodically review, contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) RLF Recipients must immediately report, or require that borrowers or subgrantees immediately report, potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at ***http://www.dol.gov/esa/contacts/whd/america2.htm***.

WHEN RECORDED MAIL TO:
Palm Beach County
Department of Economic Sustainability
100 Australian Avenue, Suite 500
West Palm Beach, FL 33406
(561) 355-3624

E-RECORDED simplifile
ID: E2016005341G B28100 P1685
County: PALM BEACH
Date: 2/17/16 Time: 10:08 AM

NOTE TO CLERK OF CIRCUIT COURT: THIS INSTRUMENT SECURES A PROMISSORY NOTE IN THE PRINCIPAL AMOUNT OF $350,000.00 AND DOCUMENTARY STAMP TAX IS BEING PAID HEREON. BECAUSE THE HOLDER OF THE PROMISSORY NOTE SECURED BY THIS INSTRUMENT AND THE HOLDER OF THIS INSTRUMENT IS A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, NO INTANGIBLES TAX IS REQUIRED TO BE PAID ON THIS INSTRUMENT PURSUANT TO SECTION 199.183(1), F.S.

MORTGAGE AND SECURITY AGREEMENT
(With Assignment of Leases and Rents and Assignment of Interest in Licenses, Permits, and Agreements)

Maximum Principal Indebtedness Not To Exceed $350,000.000

THIS MORTGAGE AND SECURITY AGREEMENT with Assignment of Leases & Rents and Assignment of Interest in Licenses, Permits, and Agreements (hereinafter referred to as the "Agreement" or the "Mortgage") made as of this 14 day of December, 2015 by **WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY**, a public agency under Chapter 163, Part III, Florida Statutes (the "Mortgagor" or the "Mortgagor" as the context so requires) having an address of 401 Clematis St., West Palm Beach, FL 33401; in favor of **PALM BEACH COUNTY,** a political subdivision of the State of Florida, with an office at Department of Economic Sustainability, 100 Australian Avenue, Suite 500, West Palm Beach, FL 33406 (the "Mortgagee" or the "Mortgagee" as the context so requires).

WITNESSETH:

WHEREAS, Mortgagor is the owner in fee simple of certain real property located in the City of West Palm Beach, County of Palm Beach, State of Florida as more particularly described on Exhibit A attached hereto and made a part hereof, and as improved on the date hereof (the "Premises");

WHEREAS, Mortgagor has applied to Mortgagee for a certain Brownfields Cleanup Revolving Loan Fund Program Loan Agreement (the "Loan") in the original principal amount of $350,000.00 (the "Loan Amount") and, in accordance with a Loan Agreement dated of even date herewith (the "Loan Agreement"), Mortgagor has executed and delivered a certain Promissory Note of even date herewith, in the principal sum of the Loan Amount made payable to the order of Mortgagee (the "Note");

WHEREAS, the Mortgagee has entered into a Cooperative Agreement with the United States Environmental Protection Agency (EPA) bearing Cooperative Agreement Grant Number: BF-00D12713-0 with Administrative Conditions and attached Mortgagee Brownfields Revolving Loan Fund (BRLF) Terms and Conditions-Region 4 (the foregoing Cooperative Agreement and its attachments are collectively referred to hereinafter as the "EPA Cooperative Grant Agreement") attached hereto as Exhibit C and incorporated by reference herein; and

WHEREAS, Mortgagee has been approved to receive funds from the EPA pursuant to the EPA Cooperative Grant Agreement ("EPA Funding") and is authorized to make certain loans to parties willing to undertake approved response actions of the Brownfields sites; and

WHEREAS, Mortgagor represents and warrants that it is the fee simple title owner of a parcel of property located in the City of West Palm Beach at 2401 Broadway, 2425 Broadway, 2501 Broadway, 2505 Broadway, 2501 Pinewood Avenue 701 23rd St., 609 24th St., 604 25th St., and 610 25th St. (hereinafter referred to as the "Property"), being more particularly described in the legal description attached hereto and made a part hereof as Exhibit "A" (the "Premises"); and

WHEREAS, Mortgagor has entered into a Brownfields Site Rehabilitation Agreement with the Florida Department of Environmental Protection (FDEP) ("Cleanup Agreement") in which Mortgagor has agreed to conduct cleanup activities regarding the environmental contamination (the "Remediation") of the Property consistent with state and federal laws and rules, conduct the site rehabilitation in a timely manner according to the Rehabilitation Schedule (as defined in the Cleanup Agreement), and designating the Property with Brownfield Site Identification Number BF-00D12713; and

WHEREAS, the Mortgagor has requested that Mortgagee grant financing to the Mortgagor in the form of a U.S. EPA Brownfields Revolving Loan Fund loan ("the Loan") in the principal amount of Three Hundred Fifty Thousand and 00/100 Dollars ($350,000.00) (the "Loan Amount") for approved environmental cleanup activities and related closing expenses. The Mortgagee has agreed to grant financing subject to all terms, conditions and provisions in this Agreement and all other Loan Documents (as hereinafter defined); and

WHEREAS, Mortgagor is required to execute and deliver this Mortgage as security as a covenant and condition to Mortgagor obtaining the loan, and Mortgagor agrees that it is in the best interests of Mortgagor to execute and deliver this Mortgage.

NOW, THEREFORE , in order to secure the payment of an indebtedness secured by the Loan, together with all interest thereon, and all other sums, advances, expenses and charges that may or shall become due hereunder or under the Note or any of the other agreements between the Mortgagor and the Mortgagee relating to the Loan (the "Debt"), Mortgagor does hereby grant, assign, convey, mortgage and pledge to Mortgagee, its successors and assigns, the Premises, and all of Mortgagor's estate, right, title and interest therein;

TOGETHER with all right, title and interest of Mortgagor, including any after-acquired title or reversion, in and to the ways, easements, streets, alleys, passages, water, water courses, riparian rights, oil, gas and other mineral rights, gaps, gores, rights, hereditaments, liberties and privileges thereof, if any, and in any way appertaining to the Premises;

TOGETHER with all right, title and interest of Mortgagor in and to all buildings and improvements of every kind and description now or hereafter erected or placed on the Premises including, without limitation, all materials intended for construction, reconstruction, alteration and repair of such improvements now or hereafter erected thereon by Mortgagor, all of which materials shall be deemed to be included within the Premises (as hereinafter defined) immediately upon the delivery thereof to the Premises, and all fixtures and articles of personal property now or hereafter owned by Mortgagor and attached to or contained in and used in connection with the Premises, including, without limitation, all furniture, apparatus, machinery, equipment, motors, elevators, fittings, radiators, furnaces, stoves, microwave ovens, awnings, shades, screens, blinds, office equipment, trash and garbage removal equipment, carpeting and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air-conditioning, conveyor, security, sprinkler and other equipment, and all fixtures and appurtenances thereof; and all renewals or replacements thereof or articles in substitution therefor, whether or not the same are or shall be attached to such improvements in any manner; it being intended that all the above-described property owned by Mortgagor and placed by Mortgagor on the Premises shall, so far as permitted by law, be deemed to be fixtures and a part of the realty, and security for the indebtedness of Mortgagor to Mortgagee hereinafter described and secured by this Mortgage, and as to the balance of the above-described property, this Mortgage is hereby deemed to be as well a Security Agreement for the purpose of creating hereby a security interest in such property, securing such indebtedness, for the benefit of Mortgagee; all of the property described in this paragraph is hereinafter sometimes collectively called the "Improvements";

TOGETHER with any and all warranty claims, maintenance contracts and other contract rights, instruments, documents, chattel papers and general intangibles with respect to or arising from the Premises, the Improvements and the balance of the Premises, and all cash and non-cash proceeds and products thereof; and

TOGETHER with all the rights, interests and privileges which Mortgagor has or may have or in the future may have in and to any licenses, permits and agreements relating to the ownership of, construction of improvements on and operation of the Premises including, but not limited to, building permits, zoning and land development approvals, occupancy permits or similar permits from any governmental unit allowing the use and occupancy of the Premises as intended, environmental permits, sewer and water permits and any and all other licenses, permits and agreements which Mortgagor currently has or may in the future come into possession of which are convenient and/or necessary and/or intended to be a benefit to the Mortgagor in the development and operation of the Premises; and

TOGETHER with all proceeds of and any unearned premiums on any insurance policies covering the Premises, including without limitation the right to receive and apply the proceeds of any insurance, judgments or settlements made in lieu thereof, for damage to the Premises; and

TOGETHER with all awards and other compensation heretofore or hereafter to be made to the present and all subsequent owners of the Premises for any taking by eminent domain, either permanent or temporary (a "Taking"), of all or any part of the Premises or any easement or other appurtenance thereof, including severance and consequential damages and change in grade of streets (collectively, "Taking Proceeds"), and any and all refunds of impositions or other charges relating to the Premises or the indebtedness secured by this Mortgage.

TO HAVE AND TO HOLD, all and singular, the Premises, whether now owned or held or hereafter acquired by Mortgagor, with the appurtenances thereunto belonging, unto Mortgagee, its successors and assigns, forever. Mortgagor does hereby warrant to Mortgagee, its successors and assigns, that Mortgagor has good and indefeasible estate in fee simple, and has good right to mortgage, assign and grant a security interest in the Premises in manner and form as above written; that title to the Premises is free and clear of all defects, liens and encumbrances except for real estate taxes and assessments and rights of way, easements, and other instruments of record and all existing leases approved by the Mortgagee in writing (the "Permitted Exceptions") and that Mortgagor will warrant and defend the Premises, with the appurtenances thereunto belonging to Mortgagee, its successors and assigns, forever, against all liens, security interests, encumbrances, defects, claims and demands whatsoever.

Mortgagor has executed and delivered this Mortgage to secure the following:

(a) Payment of principal, interest and all other charges under the Note, as the same may be amended, extended, supplemented, modified and/or renewed, and all replacements and substitutions therefor, together with interest thereon at a rate or rates which may vary from time to time as specified in the Note, with principal and interest payable in accordance with the terms of the Note, and all accrued but unpaid interest and the entire unpaid principal amount being due and payable, in accordance with the terms of the Note;

(b) Payment of any and all amounts or charges required to be paid pursuant to this Mortgage or any of the other Loan Documents (as hereinafter defined);

(c) Payment to Mortgagee of all sums expended or advanced by Mortgagee pursuant to this Mortgage or any of the other Loan Documents;

(d) Payment of any and all amounts advanced by Mortgagee with respect to the Premises for the payment of taxes, assessments, insurance premiums or costs incurred in the protection of the Premises;

(e) Performance and observance of each covenant and agreement of Mortgagor contained herein or in any of the other Loan Documents; and

(f) Payment to Mortgagee of any and all other liabilities and indebtedness of Mortgagor to Mortgagee in connection with the Loan, direct or contingent, now or hereafter owing to Mortgagee, other than as provided in subparagraphs (a) through (e) above.

PROVIDED, HOWEVER, that if Mortgagor shall pay or cause to be paid to Mortgagee the principal, interest and all other charges under the Note on or before the date on which the outstanding principal balance of the Note is due and payable in full in accordance with the terms of the Note, and in the manner stipulated therein and herein, all without deduction or credit for taxes or other charges paid by Mortgagor, and if Mortgagor shall have kept, performed and observed all of the covenants and conditions contained in this Mortgage and all of the other Loan Documents, then this Mortgage shall cease, determine and be void, but otherwise shall remain in full force and effect.

Mortgagor further covenants and agrees as follows:

1. Payment of Indebtedness. Mortgagor shall pay promptly the indebtedness evidenced by the Note at the time and in the manner provided herein and in the Note, and all other sums and charges payable when due by Mortgagor pursuant to the Note, this Mortgage and any of the other Loan Documents.

2. Tax and Insurance Escrows. Mortgagor shall timely pay all real estate taxes, general and special assessments and premiums for insurance required hereunder. Upon a default hereunder or under any of the Loan Documents, Mortgagee may require a deposit by Mortgagor of the sums described herein by notice to Mortgagor (i) for so long as a default in the obligations of Mortgagor or any other person under this Mortgage or any of the Loan Documents continues, or (ii) if Mortgagor fails to deliver to Mortgagee upon request therefor proof of payment of the sums described herein no later than five (5) days prior to the last day for payment of such sums without penalty or interest, such proof being in form satisfactory to Mortgagee in Mortgagee's sole and absolute discretion.

3. Protection Against Charges. Except for the Permitted Exceptions, Mortgagor shall keep the Premises free from liens of every kind, except only for real estate taxes and general and special assessments which are not yet due and payable, and special taxes, if any, as provided in Paragraph 7 hereof, and shall pay, before delinquency and before any penalty for non-payment attaches thereto, all taxes, assessments, and other governmental or municipal or public dues, charges, fines or impositions which are or hereafter may be levied against the Premises or any part thereof.

4. Insurance and Casualty Damage.

(a) Mortgagor shall keep, or cause to be kept, all of the following insurance policies with respect to the Premises in companies, forms, amounts and coverage reasonably satisfactory to Mortgagee satisfactory in its reasonable discretion, containing waiver of subrogation and standard Florida mortgagee endorsements in favor of Mortgagee and providing for thirty (30) days' written notice to Mortgagee in advance of cancellation of said policies for non-payment of premiums or any other reason or for material modification of said policies, and ten (10) days' written notice to Mortgagee in advance of payment of any insurance claims under said policies to any person:

(i) Insurance against loss or damage by fire and such other hazards, casualties and contingencies (including, without, limitation, so-called all risk coverages) as Mortgagee reasonably may require, in an amount equal to the greater of (1) the Loan Amount, or (2) the replacement cost of the Premises, with a replacement cost endorsement and in such amounts so as to avoid the operation of any coinsurance clause, for such periods and otherwise as Mortgagee reasonably may require from time to time.

(ii) Commercial general liability insurance, including, without limitation, so-called assumed and contractual liability coverage and claims for bodily injury, death or property damage, naming Mortgagee as an additional insured, in such amounts as Mortgagee reasonably may from time to time require.

(iii) Intentionally omitted.

(iv) If the Premises is located in a flood hazard zone as designated pursuant to the Flood Disaster Protection Act of 1973, the Mortgagor will maintain flood insurance for the Loan Amount or the maximum amount of flood insurance satisfactory to Mortgagee.

Mortgagor shall deliver renewal certificates of all insurance required above, together with written evidence of full payment of the annual premiums therefor at least thirty (30) days prior to the expiration of the existing insurance. Any such insurance may be provided under so-called "blanket" policies, so long as the amounts and coverages thereunder will, in Mortgagee's sole judgment, provide protection equivalent to that provided under a single policy meeting the requirements hereinabove. All policies of insurance shall be issued by a financially sound and generally recognized insurer lawfully doing business in the State of Florida and acceptable to Mortgagee having an A.M. Best Company rating of A-VIII or better. If at any time, Mortgagee is not in receipt of written evidence that all insurance required hereunder is in full force and effect, Mortgagee shall have the right with reasonable notice to Mortgagor to take such action as Mortgagee deems reasonably necessary to protect its interest in the Premises, including without limitation, the obtaining of such insurance coverage as Mortgagee in Mortgagee's reasonable discretion deems appropriate, and all reasonable expenses incurred by Mortgagee in connection with such action or in obtaining such insurance and keeping it in effect shall be paid by Mortgagor to Mortgagee upon demand.

As long as Mortgagor maintains insurance policies and coverages with respect to the Premises in accordance with the provisions of this Agreement (as amended from time to time, which are issued by insurance carriers reasonably satisfactory to Lender, and with such endorsements as this Agreement requires, Mortgagor's obligations to maintain insurance coverages on the Premises under this Section 4(a) is deemed satisfied to the extent that the required coverage is provided by insurance policies maintained under the provisions of the Loan Documents . Mortgagor shall give Lender prompt notice of any lapse in such insurance coverage. Nothing contained in this paragraph shall release Mortgagor from its covenant to insure the Premises under the Loan Documents.

(b) Notice. In case of any material damage or destruction of the Premises, or any part thereof, or any interest therein or right accruing thereto, Mortgagor shall promptly give to Mortgagee written notice generally describing the nature and extent of such damage or destruction which has resulted or which may result therefrom. Mortgagee may appear in any such proceedings and negotiations and Mortgagor shall promptly deliver to Mortgagee copies of all notices and pleadings in any such proceedings. Mortgagor will in good faith, file and prosecute all claims necessary for any award or payment resulting from such damage or destruction. All reasonable costs and expenses incurred by Mortgagee in exercising its rights under this section shall constitute indebtedness secured by this Mortgage.

(c) Application of Insurance Proceeds. Upon occurrence of any loss or damage to all or any portion of the Premises resulting from fire, vandalism, malicious mischief or any other casualty or physical harm (a "Casualty") in excess of $50,000.00, Mortgagee may elect, subject to the provisions set forth below, to collect, retain and apply as a Loan prepayment all proceeds (the "Proceeds") of any insurance policies collected or claimed as a result of such Casualty after deduction of all expenses of collection and settlement, including attorney's and adjusters' fees and charges. Mortgagor hereby authorizes, Mortgagee, at Mortgagee's option, to collect, adjust and compromise any losses in excess of $50,000.00 under any insurance with respect to the Premises which is kept, or caused to be kept, by Mortgagor, and hereby irrevocably appoints Mortgagee as its attorney-in-fact, coupled with an interest, for such purposes. Any Proceeds remaining after payment in full of the Loan and all other sums due Mortgagee hereunder shall be paid by Mortgagee to Mortgagor without any allowance for interest thereon.

In the event such Proceeds as applied above, would not fully discharge the Loan, then Mortgagor shall deposit with Mortgagee cash, letters of credit, surety bonds or equivalent assurances of the availability of funds with which to pay for the restoration or rebuilding of the Premises. Such letters of credit, surety bonds or equivalent assurances shall in all respects be in form, substance, execution and sufficiency acceptable to Mortgagee in its reasonable discretion. Mortgagor shall promptly proceed with restoration of the Premises resulting from any such Casualty.

If the Mortgagee shall receive and retain insurance proceeds, the lien of this Mortgage shall be reduced only by the amount thereof received and retained by Mortgagee and actually applied by Mortgagee in reduction of the Loan.

5. Maintenance of Improvements.

(a) Except for the construction or replacement of existing Improvements and pursuant to the Remediation; none of the Improvements, where they currently exist and as shall be hereafter erected, shall be structurally or otherwise materially altered, removed or demolished, nor on, in or about the Premises be severed, removed, sold, mortgaged or otherwise encumbered, without the prior written consent of Mortgagee in each case, which is not to be unreasonably withheld, conditioned or delayed; except, however, that Mortgagor shall have the right, without such consent, to remove and dispose of, free from the lien of this Mortgage such Improvements as from time to time may become worn out or obsolete, provided that simultaneously with or prior to such removal, such Improvements shall be replaced with other new Improvements of like kind and quality, and by such removal, the Mortgagor shall be deemed to have subjected the replacement Improvements to the lien of this Mortgage. Any Improvements which are demolished or destroyed in whole or in part shall be replaced promptly by similar Improvements of comparable quality, condition and value as those demolished or destroyed, thereupon becoming part of the Premises free from any other lien or security interest or encumbrance on or reservation of title to such property. Mortgagor shall not permit, commit or suffer any waste or impairment of the Premises or any part thereof, deterioration of the Premises or any part thereof (reasonable wear and tear excepted), and shall keep and maintain (or cause to be kept and maintained) the same in good repair and condition. Mortgagor shall make (or cause to be made) all necessary and proper repairs and replacements so that all components of the Premises will, at all times, be in good condition, fit and proper for the respective purposes for which they were erected or installed, other than for matters of health and safety prior to the demolition thereof.

(b) Mortgagor hereby grants to Mortgagee and its agents the right in their reasonable discretion and upon reasonable prior notice, but Mortgagee shall have no obligation, to enter upon the Premises at any time for the purpose of inspecting and appraising the Premises and conducting tests and surveys thereof. In the event that Mortgagor shall fail fully to comply with any of the requirements of this Paragraph 5, without prejudice to any other right or remedy that may be available to Mortgagee in such event, Mortgagee shall have the right to recover, as damages for such failure, an amount equivalent to the cost required to restore the Premises to the condition hereby required.

(c) Mortgagor hereby covenants and agrees to comply with, and to cause all occupants of all or any portion of the Premises to comply with, all applicable zoning, building, use and environmental restrictions and all laws, rules, statutes, ordinances, regulations, orders and requirements, including, without limitation, environmental matters and notices of violation of all governmental authorities having jurisdiction over the Premises or the maintenance, use and operation thereof, and all applicable restrictions, agreements and requirements, whether or not of record (collectively, "Laws"). Mortgagor will deliver to Mortgagee within ten (10) days after receipt thereof any additional permits or renewals, issued and approved or disapproved with respect to the Premises. Except to the extent resulting from Mortgagee's acts or omissions after taking possession of the Premises and to the extent and limits provided in Florida Statutes Section 768.28, Mortgagor hereby indemnifies Mortgagee and its officers, directors, shareholders, employees, agents and partners and their respective heirs, successors and assigns (collectively, "Indemnified Parties") and agrees to defend and hold the Indemnified Parties harmless from and against any and all claims, demands, loss, cost, damage, liability or expense incurred or suffered by the Indemnified Parties arising from any failure of the Premises to comply with Laws, or from any failure of Mortgagor to obtain, maintain or renew, or to have obtained, maintained or renewed, any permit or approval required with respect to the Premises, unless such failure results from the illegal act, gross negligence, or willful misconduct of an Indemnified Party. The foregoing indemnification and agreement shall survive the release of this Mortgage and the payment or other satisfaction of the indebtedness secured hereby. The parties acknowledge that the foregoing shall not constitute an agreement by the Borrower to indemnify the Lender for the Lender's actions or negligence, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

Upon any default by the Mortgagor in satisfying its obligations under this paragraph 5 after thirty (30) days prior written notice from Mortgagee, Mortgagee at its option may put the Premises into reasonable condition and repair, and all sums paid by Mortgagee for such purposes shall, together with interest thereon, be added to the amount secured hereunder and be payable on demand, provided, however, if such default cannot reasonably be cured within said 30 day period, and Mortgagor promptly commences such cure within the 30 day period, then within such additional period during which Mortgagor diligently pursues and prosecutes such cure to completion, such default shall not be deemed to be an Event of Default and Mortgagee shall not have the option to put the Premises into reasonable repair and condition. Mortgagor will not, without obtaining the prior written consent of the Mortgagee (not to be unreasonably withheld, conditioned, or delayed), initiate, join in or consent to any private restrictive covenant, zoning ordinance, or other public or private restrictions, limiting or defining the uses that may be made of the Premises or any part thereof, except that Mortgagor may grant to tenants of the Premises exclusive use clauses in their respective leases.

6. Hazardous Materials and Wetlands.

(a) Without limiting the generality of any provision herein or in any of the Loan Documents, Mortgagor hereby represents and warrants to Mortgagee that, except as otherwise stated in the environmental reports delivered to Lender in connection with the Loan (the "Environmental Reports"), a list of which being attached hereto as Exhibit D, neither Mortgagor nor, to the best knowledge and belief of Mortgagor, any previous owner or user of the Premises, has used, generated, stored or disposed of in violation of Environmental Law (as defined below) in, on, under, around or above the Premises, any Regulated Material (defined herein as flammable explosives, radioactive materials, solid waste, hazardous substances, hazardous waste, hazardous materials, asbestos containing materials, petroleum or any fraction thereof, pollutants, irritants, contaminants, toxic substances, or any other materials respectively defined as such in, or regulated by, any applicable Environmental Law (as hereinafter defined), that, to the best knowledge and belief of Mortgagor, the Premises is not currently in violation of any Environmental Law (defined herein as any federal, state or local law, regulation or ordinance, as each may be validly interpreted and applied by the appropriate governmental entity, governing any Regulated Material for the protection of human health, safety or the environment, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 and the Emergency Planning and Community Right-to-Know Act of 1986, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Air Act, the Federal Water Pollution Control Act, the Safe Drinking Water Act and the Oil Pollution Act of 1990). Mortgagor shall keep and maintain, and shall cause all tenants and any other persons present on or occupying the Premises ("Tenants"), employees, agents, contractors and subcontractors of Mortgagor and Tenants, to keep and maintain the Premises, including, without limitation, the soil and ground water thereof, in compliance with, and not cause or knowingly permit the Premises, including the soil and ground water thereof, to be in violation of any federal, state or local laws, ordinances or regulations relating to industrial hygiene or to the environmental conditions thereon (including but not limited to any Environmental Law). Neither Mortgagor nor Tenants nor any employees, agents, contractors and subcontractors of Mortgagor or Tenants or any other persons occupying or present on the Premises shall (i) use, generate, manufacture, store or dispose of in violation of Environmental Law on, under or about the Premises or transport to or from the Premises any Regulated Material, except as such may be required to be used, stored, or transported in connection with the permitted uses of the Premises and then only to the extent permitted by law after obtaining all necessary permits and licenses therefor; or (ii) perform, cause to be performed or permit any fill activities or other acts which would in any way destroy, eliminate, alter, obstruct, interfere with, or otherwise affect any Wetlands, as defined in 33 C.F.R. Section 328.3 and in any comparable state and local law, statute, ordinances, rule or regulation ("Wetlands"), in violation of any federal, state or local laws, statutes, ordinances, rules or regulations pertaining to such Wetlands ("Wetlands Law").

(b) Mortgagor further represents and warrants to Mortgagee that to the best of its knowledge, except as otherwise stated in the Environmental Reports:

(1) Underground storage tanks are not and have not been located on the Premises.

(2) All permits required under any applicable Environmental Law applicable to the Premises have been obtained and are in full force and effect.

(3) No event has occurred with respect to the Premises which, with the passage of time or the giving of notice, or both, would constitute a violation of any applicable Environmental Law or non-compliance with any Environmental Permit.

(4) There are no agreements, consent orders, decrees, judgments, license or permit conditions or other orders or directives of any federal, state or local court, governmental agency or authority relating to the past, present or future ownership, use, operation, sale, transfer or conveyance of the Premises which require any change in the present condition of the Premises or any work, repairs, construction, containment, clean up, investigations, studies, removal or other remedial action or capital expenditures with respect to the Premises.

(5) There are no actions, suits, claims or proceedings, pending or threatened, which could cause the incurrence of expenses or costs of any name or description or which seek money damages, injunctive relief, remedial action or any other remedy that arise out of, relate to or result from (i) a violation or alleged violation with respect to the Premises or Mortgagor of any applicable Environmental Law or non-compliance or alleged non-compliance with any Environmental Permit, (ii) the presence of any Regulated Material or a Release or the threat of a Release of any Regulated Material on, at or from the Premises or any property adjacent to or within the immediate vicinity of the Premises or (iii) human exposure to any Regulated Material, noises, vibrations or nuisances of whatever kind to the extent the same arise from the condition of the Premises or the ownership, use, operation, sale, transfer or conveyance thereof.

(c) Mortgagor shall immediately advise Mortgagee in writing of: (i) any notices (whether such notices are received from the Environmental Protection Agency, or any other federal, state or local governmental agency or regional office thereof) of violation or potential violation which are received by Mortgagor of any applicable federal, state or local laws, ordinances, or regulations relating to any Environmental Law or any Wetlands Law; (ii) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened against the Mortgagor or the Mortgage Property pursuant to any Environmental Law or Wetlands Law; (iii) all claims made or threatened by any third party against Mortgagor or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Environmental Law or Wetlands Law (the matters set forth in clauses (i), (ii) and (iii) above are hereinafter referred to as "Environmental or Wetlands Claims"); and (iv) discovery by Mortgagor of any occurrence or condition on any real property adjoining or in the vicinity of the Premises that could cause the Premises or any part thereof to be classified as in violation of any Environmental Law or Wetlands Law or any regulation adopted in accordance therewith, or to be otherwise subject to any restrictions on the ownership, occupancy, transferability or use of the Premises under any Environmental Law or Wetlands Law.

(d) Mortgagee shall have the right but not the obligation to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Environmental or Wetlands Claims, and to have its reasonable attorneys' and consultants' fees in connection therewith paid by Mortgagor upon demand.

(e) Except to the extent resulting from Mortgagee's acts or omissions after taking possession of the Premises and to the extent and limits provided in Florida Statutes Section 768.28; Mortgagor shall be solely responsible for, and each hereby jointly and severally indemnifies and agrees to defend and hold harmless Mortgagee, its directors, officers, employees, agents, successors and assigns and any other person or entity claiming by, through, or under Mortgagee, from and against, any loss, damage, cost, expense or liability directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal, or presence (whether prior to or during the term of the loan secured by this Mortgage) of Regulated Materials on, under or about the Premises (whether by Mortgagor or a predecessor in title or any Tenants, employees, agents, contractors or subcontractors of Mortgagor or any predecessor in title or any third persons at any time occupying or present on the Premises), including, without limitation: (i) the cost of any required or necessary repair, cleanup or detoxification of the Premises, including the soil and ground water thereof, and the preparation and implementation of any closure, remedial or other required plans; (ii) damage to any Wetlands or natural resources; and (iii) all reasonable costs and expenses incurred by Mortgagee in connection with

clauses (i) and (ii) including but not limited to reasonable attorneys' and consultants' fees; provided, however, that nothing contained in this paragraph shall be deemed to create or give any rights to any person other than Mortgagee and its successors and assigns, it being intended that there shall be no third party beneficiary of such provisions, or preclude Mortgagor from seeking indemnification from, or otherwise proceeding against, any third party including, without limitation, any tenant or predecessor in title to the Premises.

(f) Any reasonable costs or expenses reasonably incurred by Mortgagee for which Mortgagor is responsible or for which Mortgagor has indemnified Mortgagee shall be paid to Mortgagee on demand, and failing prompt reimbursement, shall earn interest at the Default Interest Rate set forth in the Loan Documents.

(g) Mortgagor shall take any and all remedial action in response to the presence of any Regulated Materials or Wetlands on, under, or about the Premises, required pursuant to any settlement agreement, consent decree or other governmental proceeding; furthermore, Mortgagor shall take such additional steps as may be necessary to preserve the value of Mortgagee's security under the Loan Documents.

(h) Upon Mortgagee's request, based upon a reasonable belief by Mortgagee of a change in the status of the Premises concerning Regulated Material, Mortgagor shall retain, at Mortgagor's sole cost and expense, a licensed geologist, industrial hygienist or an environmental consultant (referred to hereinafter as the "Consultant") acceptable to Mortgagee to conduct a baseline investigation of the Premises for the presence of Regulated Materials or Wetlands ("Environmental Audit"). The Environmental Audit shall be performed in a manner reasonably calculated to discover the presence of Regulated Materials contamination or Wetlands; provided, however, such investigation shall be of a scope and intensity no greater than a baseline investigation conducted in accordance with the general standards of persons providing such services taking into consideration the known uses of the Premises and Premises in the vicinity of the Premises and any factors unique to the Premises. The Consultant shall concurrently deliver the results of its investigation in writing directly to Mortgagor and Mortgagee. Such results shall be kept confidential by both Mortgagor and Mortgagee unless legally compelled or required to disclose such results or disclosure is reasonably required in order to pursue rights or remedies provided herein or at law.

(i) If Mortgagor fails to pay for or obtain an Environmental Audit as provided for herein, Mortgagee may, but shall not be obligated to, obtain the Environmental Audit, whereupon Mortgagor shall immediately reimburse Mortgagee all its reasonable costs and expenses in so doing, together with interest on such sums at the Default Interest Rate.

(j) Mortgagor covenants to reasonably cooperate with the Consultant and to allow entry and reasonable access to all portions of the Premises for the purpose of Consultant's investigation upon no less than forty-eight (48) hours prior written notice. Mortgagor covenants to comply, at its sole cost and expense, with all recommendations contained in the Environmental Audit reasonably required to bring the Premises into compliance with all Environmental Laws and Wetlands Laws, including any recommendation for additional testing and studies to detect the quantity and types of Regulated Materials or Wetlands present, if Mortgagee requires the implementation of the same.

7. Changes in Tax Laws. If at any time any governmental authority, whether federal, state or municipal, or any agency or subdivision of any of them, shall require Internal Revenue or other documentary stamps on the Note, this Mortgage or any of the other Loan Documents, or upon the passage of any law of the State of Florida deducting from the value of land for the purposes of real estate taxation the amount of any lien thereon, or changing in any way the laws for the taxation of mortgages or debts secured by mortgages for federal, state or local purposes, or the manner of the collection of any such taxes so as to impose, in any such event, a tax (other than a franchise or an income tax) upon or otherwise to substantially and adversely affect the value of this Mortgage, then all indebtedness secured hereby shall become due and payable at the election of Mortgagee thirty (30) days after the mailing of notice of such election to Mortgagor; provided, however, this Mortgage, the Note and the other Loan Documents shall be and remain in effect if Mortgagor lawfully may pay, and does in fact pay, when payable, for such stamps and taxes, including interest and penalties thereon, to or for Mortgagee. Mortgagor further agrees to deliver to Mortgagee, at any time, upon demand, such evidence as may be

required by any government agency having jurisdiction in order to determine whether the obligation secured hereby is subject to or exempt from any such tax.

8. Indemnification for Costs. Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against all reasonable costs, liabilities and expenses, including but not limited to reasonable attorneys' fees and expenses to the fullest extent not then prohibited by applicable law, and, subject to Section 6 above, costs of any Environmental Audit, title search, continuation of abstract and preparation of survey, incurred by reason of any action, suit, proceeding, hearing, motion or application before any court or administrative body, including an action to foreclose or to collect any indebtedness or obligation secured hereby, or incurred in connection with any extra-judicial collection procedure, in and to which Mortgagee may be or become a party by reason hereof, including, without limitation, any Taking, bankruptcy, probate and administration proceedings, as well as any other proceeding wherein proof of claims required to be filed by law or in which it becomes necessary to defend or uphold the terms of and the lien created by this Mortgage.

9. Taking.

(a) In the event all or any part of the Premises shall be damaged or taken as a result of a Taking, either temporarily or permanently, Mortgagor shall assign, transfer and set over unto Mortgagee the Taking Proceeds or any claim for damages for any of the Premises taken or damaged under the power of eminent domain, and agrees that in the event the whole or any part of the Premises is taken by eminent domain proceedings, then all sums awarded as damages for the Taking shall be applied in reduction of the indebtedness secured by this Mortgage, but without imposition of the prepayment premium to such application. Any and all reasonable costs and expenses, including, without limitation, reasonable attorneys' fees and expenses to the fullest extent not then prohibited by applicable law, incurred by Mortgagee by reason of any condemnation, threatened condemnation or proceedings thereunder shall be secured hereby and Mortgagor shall reimburse Mortgagee therefor immediately, or Mortgagee shall have the right, at its option, to deduct such costs and expenses from any Taking Proceeds paid to Mortgagee hereunder. In the event that the Premises is wholly condemned, Mortgagee shall receive from Mortgagor and/or from the Taking Proceeds payment of the entire amount of the then outstanding indebtedness secured by this Mortgage.

(b) Subject to paragraph (a) of this Section, Mortgagor will immediately notify Mortgagee of the actual or threatened commencement of any Taking proceedings affecting all or any part of the Premises, including any easement therein or appurtenance thereof, including severance and consequential damage and change in grade of streets, and will deliver to Mortgagee copies of any and all papers served in connection with any such proceedings. Mortgagor further covenants and agrees to make, execute and deliver to Mortgagee, from time to time upon request, free, clear and discharged of any encumbrances of any kind whatsoever, any and all further assignments or other instruments deemed necessary by Mortgagee for the purpose of validly and sufficiently assigning the Taking Proceeds and all other awards and compensation heretofore and hereafter to be made to Mortgagor, including the assignment of any award from the United States Government at any time after the allowance of the claim therefor, the ascertainment of the amount thereof and the issuance of the warrant for payment thereof, for any Taking, either permanent or temporary, under any such proceedings. In the event of a Taking, Mortgagee shall not be limited to the rate of interest paid on the award by the condemning authority but shall be entitled to receive out of the Taking Proceeds interest on the entire unpaid principal sum under the Note and the other Loan Documents at the applicable rate(s) provided therein. Mortgagor hereby assigns to Mortgagee so much of the balance of the Taking Proceeds payable by the condemning authority as is required to pay such interest.

(c) Subject to paragraph (a) of this Section, Mortgagor hereby irrevocably authorizes and appoints Mortgagee its attorney-in-fact, coupled with an interest, to collect and receive any such Taking Proceeds from the authorities making the same, to appear in any proceeding therefor, to give receipts and acquittances therefor, and to apply the same to payment on account of the indebtedness secured hereby whether then matured or not. Mortgagor shall execute and deliver to Mortgagee on demand such assignments and other instruments as Mortgagee may require for such purposes.

10. Estoppel Certificate. Within ten (10) days after request by Mortgagee, Mortgagor shall furnish to Mortgagee a written statement, duly acknowledged, of the aggregate amount of indebtedness secured by this Mortgage, confirming (to the extent true) that no right of offset exists under the Loan

Documents or otherwise, and stating either that no defenses exist against the indebtedness secured hereby, or, if such defenses are alleged to exist, the nature thereof, and any other information which Mortgagee may reasonably request.

11. Title Warranty; Title Evidence. Mortgagor hereby confirms the warranties and representations as to title to the Premises made in the granting clause of this Mortgage, and agrees to pay the costs of title evidence satisfactory to Mortgagee showing title to the Premises to be as herein warranted. In the event of any subsequent change in title to the Premises, other than a change expressly permitted by the Loan Documents, Mortgagor agrees to pay the cost of (i) an extension or endorsement to such title evidence showing such change in title, and (ii) changing any and all insurance and other records in connection with the servicing of the loan secured hereby made necessary by such change in title.

12. Mortgagee's Reliance. Mortgagee, in advancing any payment relating to taxes, assessments and other governmental or municipal charges, fines, impositions or liens asserted against the Premises, shall have the right to do so according to any bill, statement or estimate procured from the appropriate public office without inquiry into the accuracy or validity thereof. Mortgagee shall have the right to make any such payment whenever Mortgagee, in its sole discretion, shall deem such payment to be necessary or desirable to protect the security intended to be created by this Mortgage upon ten (10) days notice to Mortgagor. In connection with any such advance, Mortgagee, at its option, shall have the right to and is hereby authorized to obtain, at Mortgagor's sole cost and expense, a continuation report of title prepared by a title insurance company of Mortgagor's choice.

13. Default. Each of the following events shall be deemed to be an "Event of Default" hereunder:

(a) Mortgagor shall fail to make payment of any sum of money due and payable under this Mortgage of the indebtedness evidenced by the Note, or any sum of money due and payable under any of the other Loan Documents within five (5) days of notice of nonpayment; or

(b) Mortgagor or any guarantor of the Loan (each an "Obligor", collectively the "Obligors"), shall file a voluntary petition in bankruptcy or under any bankruptcy act or similar law, state or federal, whether now or hereafter existing, or make an assignment for the benefit of creditors or file an answer admitting insolvency or inability to pay its or their debts generally as they become due, or shall fail to obtain a vacation or stay of any such proceedings which are involuntary within ninety (90) days after the institution of such proceedings, as hereinafter provided; or

(c) Any plan of liquidation or reorganization is filed by or on behalf of an Obligor, or either in any bankruptcy, insolvency or other judicial proceeding, or a trustee or a receiver shall be appointed for the Premises in any involuntary proceeding and such trustee or receiver shall not be discharged or such jurisdiction relinquished, vacated or stayed on appeal or otherwise within ninety (90) days after the appointment thereof; or

(d) Failure of Mortgagor to commence, diligently pursue and/or complete actions as and when provided in Paragraphs 5 or 6 above; or

(e) Any sale or transfer of the Premises in violation of Paragraph 21 of this Mortgage; or

(f) The occurrence of an involuntary transfer in violation of this Mortgage; or

(g) Any violation of the representations and warranties, or the filing of formal charges or commencement of proceedings as contemplated by Paragraph 33 of this Mortgage; or

(h) Default shall be made in the due observance or performance of any of the other covenants, agreements or conditions required to be kept, performed or observed by Mortgagor under this Mortgage, and such default is not cured within thirty (30) days after written notice thereof has been delivered to Mortgagor by Mortgagee; provided, however if such default cannot reasonably be cured within the thirty (30) day period, and Mortgagor promptly commences such cure within the thirty (30) day period, then within such additional period during which Mortgagor diligently pursues and prosecutes such cure to completion and so long as the value of the Premises is not impaired; or

(i) Mortgagor ceases to exist, whether by merger, dissolution, or other reason; or

(j) the occurrence of any Event of Default by any Obligor under the Loan Documents.

If Default shall be made in the due observance or performance of any of the covenants, agreements or conditions required to be kept, performed or observed by Mortgagor or any other party under the Note, or any of the other Loan Documents, and such default is not cured within the applicable grace period, if any, expressly provided for therein; then and upon any such Event of Default, the entire amount of the indebtedness hereby secured, shall, at the option of Mortgagee, become immediately due and payable, without execution or other process and without further notice or demand, all of which are hereby expressly waived. Thereafter, the indebtedness hereby secured shall, at the option of Mortgagee, bear interest at the Default Interest Rate payable on demand. Acceleration of maturity, once claimed hereunder by Mortgagee, may, at the option of Mortgagee, be rescinded by written acknowledgment to that effect by Mortgagee, but the tender and acceptance of partial payments alone shall not in any way affect or rescind such acceleration of maturity, nor extend or affect the grace period, if any.

14. Rights and Remedies Upon Default: Upon the occurrence of any Event of Default hereunder, the Mortgagee may, at its option, exercise any one or more of the following rights and remedies:

(a) Right to Take Possession of Premises. The Mortgagor agrees to surrender possession of the Premises to the Mortgagee within ten (10) days of written demand, and the Mortgagee shall thereupon have the right to enter and take possession of the Premises, to lease the Premises, the Improvements, or any part thereof, to collect all Rents, rental insurance proceeds and business interruption insurance proceeds (if any) and to apply the same on account of the Loan, whether then matured or not, after payment of all proper costs, charges and expenses, including, but not limited to, (1) Taxes and other impositions, (2) any premiums for fire, public liability and other insurance coverage affecting the Premises, the Improvements, or any part thereof and (3) any and all other reasonable costs, charges and expenses which it may be necessary or advisable for the Mortgagee to pay in the management, operation and maintenance of the Premises, the Improvements, or any part thereof, including, but not limited to, the cost of making repairs, alterations, and tenant improvements, commissions for renting the Premises, the Improvements, or any part thereof and reasonable legal expenses incurred in enforcing claims, preparing papers or any other services that may be required, or otherwise as a court of competent jurisdiction may direct. After taking possession of the Premises, the Mortgagee may dispossess, by summary proceedings or otherwise, any tenants, subtenants or occupants of the Land, the Improvements or any part thereof then or thereafter in default in the payment of any Rent, and the Mortgagor hereby irrevocably appoints the Mortgagee as the Mortgagee's agent and attorney-in-fact (which agency shall be deemed to be coupled with an interest), with full power of substitution, for such purpose. In the event that the Mortgagor is then an occupant of the Premises, the Improvements or any part thereof, Mortgagor agrees to surrender possession thereof to the Mortgagee within ten (10) days following written demand, and if the Mortgagor remains in possession thereof after such demand, such possession shall be as tenant of the Mortgagee, and the Mortgagor agrees to pay monthly in advance to the Mortgagee such rent for the Premises, the Improvements or any part thereof so occupied as the Mortgagee may reasonably demand, and in default of so doing, the Mortgagor may also be dispossessed by summary proceedings or otherwise.

(b) Right to Foreclose Mortgage. The Mortgagee may foreclose this Mortgage and sell, if permitted by law, or petition to be sold, the Premises in one parcel or in such parcels, manner or order as a court of competent jurisdiction may direct. If permitted by law, Mortgagee may foreclose this Mortgage for any portion of the Debt or any other sums secured hereby which are then due and payable, subject to the continuing lien of this Mortgage for the balance of the Debt not then due. If any real property transfer tax or real property transfer gains tax shall be due and payable upon the conveyance of the Premises pursuant to a judicial sale in any action, suit or proceeding brought to foreclose this Mortgage or by deed in lieu of foreclosure, the Mortgagor will pay or cause the same to be paid. In the event that the Mortgagor fails to pay any such tax within twenty (20) days after notice and demand for payment is given by the Mortgagee, the Mortgagee is hereby authorized to pay the same, and any amount thereof so paid by the Mortgagee, together with all reasonable costs and expenses incurred by the Mortgagee in connection with such payment, including, but not limited to, reasonable attorneys' fees

and disbursements, and interest on all such amounts, costs and expenses at the Default Interest Rate shall be paid by the Mortgagor to the Mortgagee on demand. Until paid by the Mortgagor, all such amounts, reasonable costs and expenses, together with interest thereon, shall be secured by this Mortgage and may be added to the judgment in any suit brought by the Mortgagee against the Mortgagor hereon.

(c) Right to Appointment of Receiver. In any action to foreclose this Mortgage, the Mortgagee shall be entitled, without notice, without regard to the adequacy of any security for the indebtedness secured hereby and without regard to the solvency of any person, firm or company who is or may become liable for the payment of all or any part of the Debt secured hereby, to have a receiver appointed with all the rights and powers permitted under the laws of the State of Florida. In addition, the receiver shall be entitled to take any and all action necessary or deemed advisable to lease the Premises, including, without limitation, making reasonable improvements or tenant improvements and adding the cost of same to the Debt secured hereby. In the event that a receiver of the Premises is appointed hereunder, such receiver shall also have and may enforce all of the rights and remedies of the Mortgagee under subparagraph (a) hereof.

(d) Additional Rights and Remedies. The rights and remedies of the Mortgagee hereunder shall be in addition to Mortgagee's rights and remedies under the laws of the State of Florida. Nothing contained in this Mortgage shall be construed as requiring the Mortgagee to pursue any particular right or remedy for the purpose of procuring the satisfaction of the obligations and Debt secured hereby, and the Mortgagee may exercise any or all of Mortgagee's rights and remedies under this Mortgage, the instruments evidencing the Debt, or otherwise provided by law, in Mortgagee's sole discretion. No failure of the Mortgagee to insist upon strict performance by the Mortgagor of any of Mortgagor's covenants or obligations under this Mortgage, the Note, the Loan Documents, and no delay by the Mortgagee in exercising any of Mortgagee's rights or remedies hereunder, thereunder or otherwise provided by law, shall be deemed to be a waiver of such covenants or obligations or to preclude the exercise of such rights or remedies, and the Mortgagee, notwithstanding any such failure or delay, shall have the right thereafter to insist upon the strict performance by the Mortgagor of any and all of its covenants and obligations under this Mortgage and the instruments evidencing the Debt, and to exercise any and all of its rights and remedies hereunder, thereunder or otherwise provided by law.

15. Right to Cure Defaults/Costs of Collection. If an Event of Default occurs and is continuing, the Mortgagee may, at its discretion, remedy the same and for such purpose shall have the right to enter upon the Premises or any portion thereof without thereby becoming liable to Mortgagor, any tenant or any other person in possession thereof holding under Mortgagor. If Mortgagee shall remedy such a default or appear in, defend, or bring any action or proceeding to protect Mortgagee's interest in the Premises or to foreclose this Mortgage or collect the Debt, or take any other action of any kind to protect its interest in the Premises or collect the Debt (including without limitation taking possession, monitoring, appointing a receiver, or collecting rents), the reasonable costs and expenses thereof (including reasonable attorneys' fees to the extent permitted by law) with interest at the Default Interest Rate, shall be paid by Mortgagor to Mortgagee upon demand. All such reasonable costs and expenses incurred by Mortgagee in remedying such default or in appearing in, defending, or bringing any such action or proceeding, or in taking any other action shall be paid by Mortgagor to Mortgagee upon demand, with interest at the Default Interest Rate for the period after notice from Mortgagee that such costs or expenses were incurred to the date of payment to Mortgagee. All such costs and expenses incurred by Mortgagee pursuant to the terms of this Mortgage, with interest, shall be secured by this Mortgage.

16. Future Advances. This Mortgage shall secure any and all advances (however evidenced and whether or not obligatory and including those made on a revolving basis) made by Mortgagee to Mortgagor within 20 years after the date hereof to the same extent as though those advances were made on the date hereof even though there may be no indebtedness outstanding at the time any such advance is made; provided that, while the total amount of indebtedness secured hereby may increase or decrease from time to time, the total amount at any one time secured hereby shall not exceed a maximum principal amount of $25,000,000 plus interest thereon and advances made hereunder for the payment of taxes, liens and insurance with respect to any part of the Premises. This Section shall not, however, obligate Mortgagee to make any such advances.

17. Non-Waiver. The failure of Mortgagee to insist upon strict performance of any term of this Mortgage shall not be deemed to be a waiver of any term of this Mortgage. Mortgagor shall not be relieved of Mortgagor's obligation to pay the Debt at the time and in the manner required by reason of (a) failure of Mortgagee to comply with any request of Mortgagor to take any action to foreclose this Mortgage or otherwise enforce any of the provisions hereof or of the Note, this Mortgage or any other Loan Documents, (b) the release, regardless of consideration, of the whole or any part of the Premises or any other security for the Debt, or (c) any agreement or stipulation between Mortgagee and any subsequent owner or owners of the Premises or other person extending the time of payment or otherwise modifying or supplementing the Note, this Mortgage or any other Loan Documents, without first having obtained the consent of Mortgagor; and in the latter event, Mortgagor shall continue to be obligated to pay the Debt at the time and in the manner provided in the Note, this Mortgage or any other Loan Documents, as so extended, modified and supplemented, unless expressly released and discharged by Mortgagee. Regardless of consideration, and without the necessity for any notice to or consent by the holder of any subordinate lien, encumbrance, right, title or interest in or to the Premises, Mortgagee may release any person at any time liable for the payment of the Debt or any portion thereof or any part of the security held for the Debt and may extend the time of payment or otherwise modify the terms of any instrument evidencing the Debt and/or this Mortgage, including, without limitation, a modification of the interest rate payable on the principal balance on the Note without in any manner impairing or affecting this Mortgage or the lien thereof or the priority of this Mortgage, as so extended and modified, as security for the Debt over any such subordinate lien, encumbrance, right, title or interest. Mortgagee may resort for the payment of the Debt to any of the other Loan Documents in such order and manner as Mortgagee, in its discretion, may elect. Mortgagor's obligations shall not be impaired or altered by the taking of any other or additional security for or guarantee of the Debt or any part thereof, or by the failure to hold, protect, or realize upon any other additional security or guarantee, or by the release of same. Mortgagee may take action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Mortgagee thereafter to foreclose this Mortgage. Mortgagee shall not be limited exclusively to the rights and remedies herein stated but shall be entitled to every additional right and remedy now or hereafter afforded by law. The rights of Mortgagee under this Mortgage shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Mortgagee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

18. Waiver. Mortgagor shall not, and anyone claiming through or under Mortgagor shall not, set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the final and absolute sale of the Premises, or the final and absolute placing into possession thereof, immediately after such sale, of the purchaser or purchasers thereof, and Mortgagor, for itself and all who may claim through or under it, waive, if and to the fullest extent not prohibited by applicable law, all benefits and protections under such appraisement, valuation, stay, extension and redemption laws.

19. Marshalling of Assets. Mortgagor hereby waives for itself and, to the fullest extent not prohibited by applicable law, for any subsequent lienor, any right to apply for an order, decree, judgment, or ruling requiring or providing for a marshalling of assets which would require Mortgagee to proceed against certain of the Premises before proceeding against any of the other Premises. Mortgagee shall have the right to proceed, in its sole discretion, against the Premises in such order and in such portions as Mortgagee may determine, without regard to the adequacy of value or other liens on any such Premises. No such action shall in any way be considered as a waiver of any of the rights, benefits, liens or security interests created hereby or by any of the Loan Documents.

20. Subrogation. If the indebtedness hereby secured or any part thereof, including any amounts advanced by Mortgagee, are used directly or indirectly to pay off, discharge or satisfy, in whole or in part, any prior lien or encumbrance upon the Premises or any part thereof, then Mortgagee shall be subrogated to such other liens or encumbrances and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same, whether or not any such lien, encumbrance or additional security is canceled of record upon such payment or advancement or otherwise, and in addition to the security afforded by this Mortgage and the other Loan Documents.

21. Sale or Transfer. Except as otherwise set forth in the Loan Agreement, Mortgagor, without the prior written consent of Mortgagee, shall not create, effect, consent to, attempt, contract for,

agree to make, suffer or permit any conveyance, sale, assignments, transfer, lien, pledge, encumbrance, mortgage, security interest or alienation of all or any portion of, or any ownership or beneficial interest in, the Premises or the Mortgagor, whether effected directly, indirectly, voluntarily, involuntarily, by operation of law or otherwise. If any of the foregoing shall occur without Mortgagee's prior written consent, unless such consent is not otherwise specifically required by the terms of the Loan Agreement. then the same shall conclusively be deemed to increase the risk to Mortgagee and immediately constitute an Event of Default hereunder.

22. Mortgagee's Cost of Collection or Performance. If any action or proceeding is commenced by or against Mortgagee, including, without limitation, condemnation proceedings, proceedings involving the foreclosure of this Mortgage or of any other liens or encumbrances, the enforcement or interpretation of contracts, leases or other documents relating to the Premises, or any other proceeding of any nature, legal or otherwise, affecting the Premises or any part thereof, or the title thereto, or the validity or priority of the lien of this Mortgage, Mortgagee shall have the right to appear, defend, prosecute, retain counsel, and take such action as Mortgagee shall determine. In addition, upon an Event of Default hereunder, Mortgagee is authorized, but not obligated, to discharge Mortgagor's obligations hereunder. Mortgagor shall pay to Mortgagee, promptly upon demand, all costs, including, without limitation, "late charges" payable under the Note, out-of-pocket expenses and reasonable attorneys' fees and expenses, to the fullest extent not prohibited by applicable law, and the costs of any environmental examination and analysis, title examination, supplemental examination of title or title insurance, that may be incurred by Mortgagee in connection with any proceedings affecting the Premises, or any part thereof, to cause the enforcement of the covenants or agreements of Mortgagor contained herein or in any of the other Loan Documents, or with or without the institution of an action or proceeding, or that may otherwise be incurred by Mortgagee in the performance of any other action by Mortgagee authorized by this Mortgage. All such costs, expenses and attorneys' fees and expenses, and any other moneys advanced by Mortgagee to protect the Premises shall, to the fullest extent not prohibited by applicable law, bear interest from the date of payment thereof at the Default Interest Rate until repaid by Mortgagor, and shall be repaid by Mortgagor to Mortgagee immediately upon demand. Notwithstanding that the indebtedness secured hereby shall not have been declared due and payable upon any Event of Default, Mortgagor hereby agrees that if an Event of Default has occurred, pursuant to the terms hereof, Mortgagee shall be entitled to receive interest thereon at the Default Interest Rate, to be computed from the due date through actual receipt and collection of the amount then in default. The preceding sentence shall not be construed as an agreement or privilege to extend the time for performance of any obligation under the Mortgage or any of the other Loan Documents, nor as a waiver of any other right or remedy accruing to Mortgagee by reason of any such default.

23. Partial Release. Mortgagee, without notice, and without regard to any consideration paid therefor, and notwithstanding the existence at the time of any inferior liens thereon, shall have the right to release (a) any part of the security for the indebtedness secured hereby, including, without limitation, the interest under this Mortgage in and to any of the Premises, or (b) any person liable for any indebtedness secured hereby, without affecting the priority of any part of the security and the obligations of any person not expressly released, and shall have the right to agree with any party remaining liable for such indebtedness or having any interest therein to extend the time for payment of any part or all of the indebtedness secured hereby. Such agreement shall not in any way release or impair the lien hereof, but shall extend the lien hereof as against all parties having any interest in such security.

24. Non-Waiver. In the event Mortgagee (a) releases, as aforesaid, any part of such security or any person liable for any indebtedness secured hereby; (b) grants an extension of time for any payments of the indebtedness secured hereby; (c) takes other or additional security for the payment thereof; (d) accepts partial payments; or (e) otherwise exercises or waives or fails to exercise any right granted herein or in any of the other Loan Documents, no such act or omission shall constitute a waiver of any default, or extend or affect the grace period, if any, release Mortgagor, subsequent owners of the Premises or any part thereof, or makers or guarantors of the Note, this Mortgage, or any of the other Loan Documents, or preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted for any Event of Default.

25. No Merger of Estates. There shall be no merger of the lien, security interest or other estate or interest created by this Mortgage with the fee estate in the Premises by reason that any such interest created by this Mortgage may be held, directly or indirectly, by or for the account of any person

who shall own the fee estate or any other interest in the Premises. No such merger shall occur unless and until all persons at the time having such concurrent interests shall join in a written instrument effecting such merger, and such instrument shall be duly recorded.

26. Further Assurances. Upon request of Mortgagee, Mortgagor shall execute, acknowledge and deliver to Mortgagee, in form reasonably satisfactory to Mortgagee any supplemental mortgage, security agreement, financing statement, assignment of leases, rents, income and profits from the Premises, affidavit, continuation statement or certification as Mortgagee may request in order to protect, preserve, maintain, continue and extend the lien and security interest hereunder or the priority hereof. Mortgagor hereby irrevocably appoints Mortgagee its attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney, at its option, to execute, acknowledge and deliver on behalf of Mortgagor, its successors and assigns, any such documents if Mortgagor shall fail so to do within ten (10) days after request by Mortgagee. Notwithstanding the foregoing, Mortgagor shall in no event be required to take any action under this section as and to the extent the same would materially and adversely change any material obligation or material right of Mortgagor contained in this Agreement or in any of the other Loan Documents. Mortgagor shall pay to Mortgagee on demand all reasonable costs and expenses incurred by Mortgagee in connection with the preparation, execution, recording and filing of any such documents.

27. Application of Proceeds. Prior to the last scheduled payment under the Note which includes the payment of all outstanding principal, all payments made by Mortgagor under the Note, this Mortgage or any of the other Loan Documents and received by Mortgagee shall be applied by Mortgagee against interest on the indebtedness secured hereby until the occurrence of an Event of Default after which such payments shall be applied by Mortgagee to the following items and in such order as Mortgagee may determine in its sole discretion: (a) advances by Mortgagee for payment of taxes, assessments, insurance premiums and other costs and expenses, as set forth in this Mortgage, the Note or any of the other Loan Documents; (b) any amounts which may be overdue under the Note, this Mortgage or any of the other Loan Documents; (c) interest on the indebtedness secured hereby; and (d) outstanding principal under the Note.

28. UCC Security Agreement. This Mortgage is hereby deemed to be as well a Security Agreement and creates a security interest in and to the Collateral (as such term is defined in Exhibit B attached hereto and made a part hereof) securing the indebtedness secured by this Mortgage. Without derogating any of the provisions of this instrument, Mortgagor to the extent permitted by law hereby:

(a) grants to Mortgagee a security interest in and to all Collateral, including without limitation the items referred to above, together with all additions, accessions and substitutions and all similar property hereafter acquired and used or obtained for use on or in connection with the Premises. The proceeds of the Collateral are intended to be secured hereby; however, such intent shall never constitute an expressed or implied consent on the part of Mortgagee to the sale of any or all Collateral;

(b) agrees that the security interest hereby granted shall secure the payment of the indebtedness specifically described herein together with payment of any future debt or advancement owing by Mortgagor to Mortgagee with respect to the Premises;

(c) except as otherwise provided herein, agrees not to remove from the Premises, sell, convey, mortgage or grant a security interest in, or otherwise dispose of or encumber, any of the Collateral or any of the Mortgagor's right, title or interest therein, without first obtaining Mortgagee's written consent; Mortgagee shall have the right, at its sole option, to require Mortgagor to apply the proceeds from the disposition of Collateral in reduction of the indebtedness secured hereby;

(d) agrees that if Mortgagor's rights in the Collateral are voluntarily or involuntarily transferred, except as expressly permitted herein, whether by sale, creation of a security interest, attachment, levy, garnishment or other judicial process, without the prior written consent of Mortgagee, such transfer shall constitute an Event of Default hereunder;

(e) agrees that upon the occurrence of any Event of Default and during the continuance of an Event of Default, Mortgagee shall have all rights and remedies contemplated hereunder, including, without limitation, the right to take possession of the Collateral, and for this purpose Mortgagee shall have the right to enter upon any premises on which any or all of the Collateral is situated

without being deemed guilty of trespass and without liability for damages thereby occasioned, and take possession of and operate the Collateral or remove it therefrom after the occurrence of an Event of Default and during the continuance of an Event of Default. Mortgagee shall have the further right, as Mortgagee may reasonably determine, to repair, refurbish or otherwise prepare the Collateral for sale, lease or other use or disposition, and to sell at public or private sale or otherwise dispose of, lease or utilize the Collateral and any part thereof in any manner authorized or permitted by law and to apply the proceeds thereof toward payment of any reasonable costs and expenses incurred by Mortgagee including, to the fullest extent not prohibited by applicable law, reasonable attorneys' fees and expenses, and toward payment of the indebtedness secured hereby, in such order and manner as Mortgagee may determine. To the extent any notice is required and cannot be waived, Mortgagor agrees that if such notice is deposited for mailing, postage prepaid, certified or registered mail, to the owner of record of the Premises, directed to such owner at the last address actually furnished to Mortgagee at least ten (10) days before the time of sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirements for giving of such notice; and

(f) authorizes Mortgagee to file without the Mortgagor's signature, in the jurisdiction where this agreement will be given effect, financing statements covering the Collateral and the proceeds of the Collateral. To the extent permitted by law, a carbon, photographic or other reproduction of this instrument or any financing statement executed in accordance herewith shall be sufficient as a financing statement.

29. Assignment of Contracts.

(a) Mortgagor hereby transfers and assigns unto Mortgagee, its successors and assigns, all the rights, interests and privileges which Mortgagor has or may have or in the future may have in and to any licenses, permits and agreements relating to the ownership of, construction of improvements on and operation of the Premises including, but not limited to, building permits, zoning and land development approvals, occupancy permits or similar permits from any governmental unit allowing the use and occupancy of the Premises as intended, environmental permits, sewer and water permits and any and all other licenses, permits and agreements which Mortgagor currently has or may in the future come into possession of which are convenient and/or necessary and/or intended to be a benefit to the Mortgagor in the development and operation of the Premises.

(b) This assignment is made as collateral security for the payment of the Note and the performance by Mortgagor of its obligations under the Loan Documents. This Assignment shall secure the Loan Documents as they may from time to time be hereafter modified, extended and renewed, and shall be security for all increases, extensions, amendments or modifications of the Note and all additional loans made hereafter, if any, by Mortgagee to Mortgagor or its successors and assigns and secured by the Premises which is the subject of the Mortgage.

(c) The acceptance of this assignment and the taking of any action by Mortgagee under any of licenses, permits and agreements hereby assigned shall not constitute a waiver of any rights of Mortgagee under any of the Loan Documents.

(d) Anything to the contrary notwithstanding and after an uncured Event of Default (as defined in each of the respective Loan Documents), Mortgagor hereby assigns to Mortgagee any award made hereafter to it in any court procedure involving any of the licenses, permits and agreements in any bankruptcy, insolvency or reorganization proceedings in any state or federal court; and any and all payments made. Mortgagor hereby appoints Mortgagee as its irrevocable attorney-in-fact to appear in any action or to collect any such award or payment after default by Mortgagor as aforesaid.

(e) In the event of an uncured Event of Default by Mortgagor in the Loan Documents, and upon expiration of any notice or grace period set forth therein, Mortgagor hereby expressly authorizes Mortgagee, at Mortgagee's option, without notice and demand on the Mortgagor and without releasing Mortgagor from any obligation herein or under the Mortgage or under other documents securing the indebtedness, (i) to enter and take possession of the Premises and to manage and operate the same, (ii) to exercise its rights under any of the licenses, permits and agreements so assigned in order to allow the Mortgagee to construct improvements on or to operate the Premises, and (iii) to perform such other acts in connection with the management and operation of the Premises as Mortgagee in its discretion may deem proper to protect the security hereof until all indebtedness secured hereby is paid in full, (iv) either

with or without taking possession of the Premises, in its own name, to do and to take any such action which it may deem appropriate to exercise the Mortgagor's rights under the licenses, permits and agreements hereby assigned to allow for the continued development and operation of the Premises and to apply any moneys received, less costs and expenses of operation, the collection, including reasonable attorneys fees, in such order as the Mortgagee may determine, to the payment of any indebtedness from time to time outstanding under the Note. Any income received from the Premises by the Mortgagee in excess of the amount necessary to meet all obligations of the Mortgagor secured hereby, including any accelerated indebtedness shall be paid over to the Mortgagor upon the recording of the satisfaction or release of the Premises from this Assignment as hereinafter provided.

(f) The entering upon and taking possession of the Premises and taking any action pursuant to the licenses, permits and agreements, the receipt by Mortgagee of any rents, issues or profits pursuant to this instrument and the application thereof as aforesaid, shall not cure any default by Mortgagor or waive, modify or affect any notice of default hereunder or under the Loan Documents, invalidate any act done pursuant to such notice, or affect foreclosure or sale proceedings under the Mortgage or any sale pursuant thereto.

(g) Mortgagee shall not be obligated to perform or discharge any obligations under the licenses, permits and agreements hereby assigned. Until Mortgagee exercises any rights granted to it hereunder with respect to any license, permit or agreement, Mortgagor hereby agrees to indemnify Mortgagee for, and to save it harmless from, any and all liability, loss or damage, which Mortgagee may or might incur under the said licenses, permits and agreements hereby assigned or by reason of this Assignment from any and all claims and demands whatsoever as may be asserted against the Mortgagee by reason of any alleged obligation or undertaking on Mortgagee's part to perform or discharge any of the terms of said licenses, permits and agreements hereby assigned. Should the Mortgagee incur any such liability, loss or damage under any of the licenses, permits and agreements hereby assigned or by reason of this Assignment, or in defense against any such claims or demands, the indemnified amount thereof, including costs, expenses and reasonable attorneys fees, together with interest thereon at the rate payable on default under the Note, shall become part of the debt secured by this Assignment. The existence of this Assignment shall not place responsibility for the control, care, management or repair of the Premises upon Mortgagee, or make Mortgagee responsible or liable for any negligence in the management, operation, upkeep, repair or control of the Premises resulting in loss or injury or death to any tenant, licensee, employee or other person.

(h) At the Mortgagor's sole cost and expense, the Mortgagor will appear in and defend any action growing out of or in any manner connected with any of the licenses, permits and agreements hereby assigned or the obligations or liabilities thereunder of the Mortgagor, any or all of the licenses, permits and agreements, and the Mortgagee, if made a party to any such action, may employ counsel and incur and pay necessary costs and expenses and reasonable attorneys fees and all such sums, with interest, at the rate payable upon default under the Note, shall become part of the debt secured by this assignment.

(i) Mortgagor covenants and represents that Mortgagor will fulfill or perform the conditions and covenants of the licenses, permits and agreements to be fulfilled and performed by the Mortgagor under said licenses, permits and agreements; that Mortgagor will give prompt notice to Mortgagee of any notice of default by the Mortgagor under the licenses, permits and agreements received by the Mortgagor together with a complete copy of any such notice; that Mortgagor shall at the sole cost and expense of the Mortgagor enforce the performance or observance of the covenants and conditions in the licenses, permits and agreements to be performed and observed by the lessees thereunder; that Mortgagor has title to and full right to assign such licenses, permits and agreements; that the licenses, permits and agreements are in full force and effect; that no other assignment of any interest therein has been made, except as otherwise set forth herein and pursuant to the Permitted Debt (as defined in the Loan Agreement); that there are no existing defaults under the provisions thereof.

(j) Mortgagor hereby authorizes Mortgagee to give notice in writing of this assignment at any time to any issuer of any license or permit or to any other party who is party to any agreement so assigned hereunder.

30. Notices. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been

properly given (i) if hand delivered, effective upon receipt, or (ii) if delivered by overnight courier service, effective on the day of receipt or refusal to accept receipt, as the case may be, (iii) if mailed by United States registered or certified mail, postage prepaid, return receipt requested, effective two (2) business days after deposit in the United States mails addressed, if to Mortgagor, to Mortgagor's address listed above with a copy to CRA Counsel c/o City Attorney's Office, PO Box 3366, West Palm Beach, FL 33402-3366 , or if to Mortgagee, to Mortgagee's address listed above with copy to Palm Beach County, Florida, c/o County Attorney's Office, 301 N. Olive Avenue, Suite 601, West Palm Beach, FL 33401 , Attn: James Brako , Esq.; or at such other address or to such other addressee as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

31. Loan Documents. The term "Loan Documents" as used herein collectively refers to (a) the Note, (b) this Mortgage, (c) the Loan Agreement, (d) the Guaranty Agreement, (e) any and all other documents and/or agreements evidencing, securing or relating to the loan contemplated by the Loan Agreement.

32. Survival and Conflicts. In the event of any inconsistency or conflict between any provisions of the Loan Documents and the EPA Cooperative Grant Agreement, Cleanup Agreement, and all documents and agreements of the U.S. EPA and FDEP related thereto (collectively the "Cleanup Documents"), the provisions of the Cleanup Documents shall prevail and apply.

33. Anti-Forfeiture. Mortgagor hereby further expressly represents and warrants to Mortgagee that to the best of Mortgagor's knowledge there has not been committed by Mortgagor or any other person involved with the Premises or the Mortgagor any act or omission affording the federal government or any state or local government the right and/or remedy of forfeiture as against the Premises or any part thereof or any monies paid in performance of its obligations under the Note or under any of the other Loan Documents, and Mortgagor hereby covenants and agrees not to commit, permit or suffer to exist any act or omission affording such right and/or remedy of forfeiture. In furtherance thereof, Mortgagor hereby indemnifies Mortgagee and agrees to defend and hold Mortgagee harmless from and against any loss, damage or other injury, including without limitation, attorneys' fees and expenses, to the fullest extent not prohibited by applicable law, and all other costs and expenses incurred by Mortgagee in preserving its lien, security interest and other rights and interests in the Premises and any additional collateral under any of the Loan Documents in any proceeding or other governmental action asserting forfeiture thereof, by reason of, or in any manner resulting from, the breach of the covenants and agreements or the warranties and representations set forth in the preceding sentence. Without limiting the generality of the foregoing, the filing of formal charges or the commencement of proceedings against Mortgagor, Mortgagee, any guarantor, any additional collateral under any of the Loan Documents or all or any part of the Premises under any federal or state law in respect of which forfeiture of the Premises or any part thereof or of any monies paid in performance of Mortgagor's obligations under the Loan Documents is a potential result shall, at the election of the Mortgagee in its absolute discretion, constitute an Event of Default hereunder without notice or opportunity to cure.

34. Assignment of Leases and Rents.

(a) Waiver Until Default. Unless and until an Event of Default shall have occurred and shall continue, or unless otherwise expressly agreed in writing, Mortgagor shall be entitled to receive, collect and enjoy the rents, issues and profits of the Premises and to exercise all of the rights of landlord, provided, however, that from and after the time of such an Event of Default and during the continuation thereof, Mortgagee shall, without application for the appointment of a receiver or other process of law, become immediately entitled to enter upon the Premises, to receive, collect and enjoy the rents, issues and profits due or to become due from the Premises and to exercise the rights hereinafter granted.

(b) Collection of Rents. Subject to paragraph 34(a) above, the Mortgagee shall have the power and authority:

(i) to enter upon and take possession of the Premises and to demand, collect and receive from the tenants or other occupants now or at any time hereafter in possession of the Premises or of any part thereof, rents now due or to become due;

(ii) to endorse the name of the Mortgagor or of any subsequent owner of the Premises on any checks, notes or other instruments for the payment of money, to deposit the same in bank accounts, and to give any and all acquittances or any other instrument in relation thereto in the name of the Mortgagor or in the name of the Mortgagee;

(iii) to institute, prosecute, settle, or compromise any summary or legal proceedings for the recovery of such rents, profits, or for the recovery, in whole or in part of the Premises, either in its name or in the name of the Mortgagor;

(iv) to institute, prosecute, settle or compromise any other proceedings for the protection of the Premises, for the recovery of any damage to the Premises, or for the abatement of any nuisance thereon, either in its name or in the name of the Mortgagor; and

(v) to defend against any legal proceedings brought against the Mortgagor or against the then owners of the Premises arising out of the operation of the Premises.

(c) Authority to Lease and Manage. Subject to paragraph 34(a) above, the Mortgagee shall have the power and authority:

(i) to lease, rent, and manage the Premises, or any part thereof;

(ii) to employ an agent to lease, rent and manage the Premises whose compensation shall be paid out of the gross rents collected;

(iii) to make any changes or improvements deemed necessary or expedient for the leasing or the renting of the Premises;

(iv) to keep and maintain the Premises in good condition;

(v) to purchase all equipment or supplies necessary or desirable in the operation and maintenance of the Premises;

(vi) to pay for all utilities, maintenance, repairs, and other items relating to operating the Premises;

(vii) to pay taxes, assessments, water and sewer rates, and meter charges due and unpaid or which may be due and payable;

(viii) to pay the indebtedness herein described;

(ix) to pay the premiums on all policies of insurance covering the Premises;

(x) to comply with orders of any governmental departments having jurisdiction over the Premises;

(xi) to remove any mechanics' liens, security interest, or other liens against the Premises; and

(xii) in general, to pay all charges and expenses in the operation of the Premises.

(d) Appointment of Attorney in Fact. Subject to paragraph 34(a) above, the Mortgagor shall execute such documents as Mortgagee may require Mortgagor to execute in order to effectuate the purposes of this Agreement, including, but not limited to, the execution of letters to all tenants advising them to forward all rents and income payments to Mortgagee (or the Mortgagee's designee), and Mortgagor further appoints Mortgagee as its attorney-in-fact, and authorizes it to execute, issue and deliver any notices or documents on behalf of Mortgagor to the tenants or occupants of the Premises or otherwise in order to effectuate the purposes of the assignment hereinabove set forth.

(e) Payment of Expenses. Subject to paragraph 34(a) above, the Mortgagee shall have the authority to pay the cost of all the matters herein mentioned out of the rents and other revenues received from the Premises and the cost of any such expenditures and of any payment which may be made by the Mortgagee under any of the provisions of this Agreement, shall be deemed secured by the Mortgage herein made and provided or other mortgages held by Mortgagee against the Premises and/or

other real property of the Mortgagor and such costs may be retained by the Mortgagee out of the rents of the Premises.

(f) Liability of Mortgagee. The Mortgagee shall in no way be liable for any act done or any thing omitted by it in furtherance of or arising under this Agreement except to the extent caused by the gross negligence, willful misconduct, or illegal act of Mortgagee. Nothing herein contained shall be construed to prejudice any right the Mortgagee may now have, or which may arise in the future by reason of the default of the Mortgagor:

(i) to institute or to prosecute any proceedings to foreclose the Mortgage herein made and provided, or any other mortgages held by Mortgagee against the Premises and/or other real property of the Mortgagor; or

(ii) to enforce any lien of the Mortgagee on any other collateral given by the Mortgagor to secure repayment of the Debt or given by the Mortgagor to secure any other obligation of the Mortgagor with the Mortgagee.

(g) Transfer of Leases: Subject to paragraph 34(a) above, the Mortgagor hereby assigns, transfers, and sets over to the Mortgagee all leases and sub-leases made to the various tenants in the Improvements, and all of Mortgagor's right, title and interest therein as collateral for the Debt. In connection with such assignment Mortgagor hereby authorizes and empowers Mortgagee to continue present leases, or to lease any one or more apartments, offices or rental space therein upon such terms and conditions as the Mortgagee may deem just and proper, and, if necessary, to execute, acknowledge and deliver any and all instruments in writing necessary to effectuate the purpose of this Agreement. The Mortgagee shall have full power and authority to do and perform all acts or things necessary to be done in and about the Premises, as fully and to all intents and purposes as the Mortgagor might or could do if present, with full power of substitution and revocation, hereby ratifying and confirming all that the Mortgagee shall lawfully do or cause to be done by virtue hereof.

(h) Modification of Leases: The Mortgagor hereby agrees that it will not cancel, modify or surrender any lease with a term in excess of one year now existing in respect to any portion of the Real Estate, nor reduce any rents, or change, modify or waive any existing lease, nor accept any prepayment of rent in excess of one month without providing Mortgagee with written notice thereof.

(i) Failure to Repair: It is understood and agreed that the Mortgagee shall in no way be responsible or liable for any failure or refusal to make repairs to the Premises. The Mortgagee shall in no way be responsible personally for any debt incurred in respect to the Premises.

(j) Rights of Mortgagee in Collateral: It is understood and agreed by the parties that this Assignment shall in no manner prejudice the Mortgagee or estop the Mortgagee in any way in the exercise of its rights as Mortgagee under the Mortgage herein made and provided, as the plaintiff in any foreclosure action, or in connection with the exercise of its rights in any other collateral which may now or hereafter be held by the Mortgagee to secure the Debt or which may otherwise be held by the Mortgagee. This Assignment shall at all times be subject to the exercise of any of such rights which the Mortgagee may have through any proceedings which the Mortgagee may be entitled to take in connection with the Premises or other collateral.

35. Miscellaneous. The Premises is located in the State of Florida, and this Mortgage and the rights and indebtedness secured hereby shall, without regard to the place of contract or payment, be construed and enforced according to the laws of Florida. Nothing herein contained nor any transaction related hereto shall be construed or so operate as to require Mortgagor to do any act contrary to law, and if any clauses or provisions herein contained operate or would prospectively operate to invalidate this Mortgage, in whole or in part, or any of the Mortgagor's obligations hereunder, such clauses and provisions only shall be held void and of no force or effect as though not herein contained, and the remainder of this Mortgage shall remain operative and in full force and effect. All of the obligations, rights and covenants herein contained shall run with the land, and shall bind and inure to the benefit of Mortgagor, its successors and permitted assigns, and Mortgagee and any subsequent holder of the Note. Whenever used, the singular number shall include the plural and the plural numbers shall include the singular, and the use of any gender shall include all genders, all as the context may reasonably require.

MORTGAGOR HEREBY, AND MORTGAGEE BY ITS ACCEPTANCE HEREOF, EACH WAIVES THE RIGHT OF A JURY TRIAL IN EACH AND EVERY ACTION ON THIS MORTGAGE OR ANY OF THE OTHER LOAN DOCUMENTS, IT BEING ACKNOWLEDGED AND AGREED THAT ANY ISSUES OF FACT IN ANY SUCH ACTION ARE MORE APPROPRIATELY DETERMINED BY A JUDGE SITTING WITHOUT A JURY; FURTHER, MORTGAGOR HEREBY CONSENTS AND SUBJECTS ITSELF TO THE JURISDICTION OF COURTS OF THE STATE OF FLORIDA AND, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, TO THE VENUE OF SUCH COURTS IN THE COUNTY IN WHICH THE PREMISES IS LOCATED.

36. Offsets, Counterclaims and Defenses. Any Mortgagee of this Mortgage, the Note or any other Loan Document shall take the same free and clear of all offsets, counterclaims or defenses of any nature whatsoever which Mortgagor may have against any Mortgagor of this Mortgage, the Note or any other Loan Document and the Debt, other than as required by law, and no such offset, counterclaim or defense shall be interposed or asserted by Mortgagor in any action or proceeding brought by any such Mortgagee upon this Mortgage, the Note or any other Loan Document and/or the Debt and any such right to interpose or assert any such offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by Mortgagor to the extent Mortgagor may bring a separate action for such offset, counter claim or defense.

37. Prepayment After Event of Default. If an Event of Default shall occur under this Mortgage and if by reason thereof Mortgagee elects to declare the entire principal balance hereof to be immediately due and payable, or if an action is commenced for the foreclosure of this Mortgage, then in such event the prepayment consideration in the Note provided for shall become due and payable on the date of such election in the same manner as though Mortgagor had exercised such right of prepayment as herein set forth. If any such event occurs prior to the earliest date upon which Mortgagor has a right of prepayment, then in such event the prepayment consideration applicable upon the earliest date on which Mortgagor had such right of prepayment shall apply and Mortgagor also shall pay to Mortgagee a sum equal to interest which would have accrued on the principal balance of the Debt at the rate specified in the Note from the date of payment to the end of the period during which prepayment is prohibited. The amount of such prepayment consideration computed on the principal balance as of the date aforesaid, shall be added to and secured by this Mortgage and shall be recoverable by the Mortgagee in the same manner as the principal balance hereof and in addition thereto, in any action brought for the foreclosure of this Mortgage.

PROVIDED, THAT THE CONDITION OF THIS MORTGAGE IS SUCH that if Mortgagor shall pay all of the indebtedness secured hereby, then thereupon this Mortgage shall be released of record by Mortgagee, at the cost and expense of Mortgagor, and thereafter the Mortgage shall be void. The foregoing shall not affect the covenants, agreements, indemnifications and warranties in this Mortgage which expressly survive the release hereof, which shall remain in full force and effect.

38. Patriot Act. Mortgagor hereby represents and warrants to Mortgagee that neither Mortgagor nor any of its officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in Mortgagor) is or will be an entity or person: (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("EO13224"); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of Specifically Designated National and Blocked Persons (which list may be published from time to time in various mediums including, but not limited to, the OFAC website); (iii) who commits, threatens to commit or supports "terrorism", as is defined in EO 13223; or (iv) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described in clauses (i)-(iv) above are herein referred to as "Prohibited Persons"). Mortgagor covenants and agrees that neither Mortgagor nor any of its officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in Mortgagor) will: (i) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person; or (ii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO 13224. Mortgagor further covenants and agrees to deliver (from time to time) to Mortgagee any such certification or other evidence as may be requested by Mortgagee in its sole and absolute discretion, confirming that: (i) neither Mortgagor nor its officers, directors, shareholders, partners, members or affiliates (including the

indirect holders of equity interests in Mortgagor) is a Prohibited Person; and (ii) neither Mortgagor nor its officers, directors, shareholders, partners, members or affiliates (including the indirect holders of equity interests in Mortgagor) has engaged in any business, transaction or dealings with a Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person.

[REMAINDER OF PAGE INTENTIONALLY BLANK; SIGNATURE PAGES IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Mortgage and Security Agreement with Assignment of Leases and Rents to be duly executed and delivered as of the date first above written.

Attest:

By: _____
CRA Secretary

MORTGAGOR:
WEST PALM BEACH COMMUNITY
REDEVELOPMENT AGENCY

By: _____
Geraldine Muoio, Chair

CRA COUNSEL'S OFFICE
Approved as to form and legality
By: _____

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

The foregoing Mortgage was acknowledged before me this 14 day of December, 2015, by Geraldine Muoio, Chair of the West Palm Beach Community Redevelopment Agency, who is personally known to me, as an act of the Agency.

Signature: _____
Notary Public – State of Florida

Print Name: Jomekeyia L. McNeil

(NOTARY SEAL)

JOMEKEYIA L. MCNEIL
Commission # FF 162359
Expires January 5, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

MORTGAGEE:

PALM BEACH COUNTY, FLORIDA,
a political subdivision of the State of Florida
By: Its Board of County Commissioners

By: _____
Shannon LaRocque
Assistant County Administrator

Approved as to Form and
Legal Sufficiency:

By: _____
James Brako, Esq.
Assistant County Attorney

Approved as to Terms and Conditions:

By: _____
Sherry Howard, Deputy Director
Department of Economic Sustainability

STATE OF FLORIDA)
)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this 11th day of December ~~2015~~, by Shannon LaRocque, as Assistant County Administrator of Palm Beach County, Florida, on behalf of the Board of County Commissioners of Palm Beach County, Florida, a political subdivision of the State of Florida. She is personally known to me or ~~who has produced~~ _____ ~~as identification~~.

Signature: _____
Name: [Print or type] _____
Title: Notary Public
Serial No., if any: _____
My commission expires: _____

BARBARA S. KENNEDY
MY COMMISSION # EE 828575
EXPIRES: August 27, 2016
Bonded Thru Notary Public Underwriters

EXHIBIT A

LEGAL DESCRIPTION

PROPERTY LEGAL DESCRIPTIONS

PARCEL 1: 610 25TH Street, West Palm Beach FL
74-43-43-09-05-048-0050
Lots 5, 6 and 7, Block 48, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 2: 2505 Broadway, West Palm Beach FL
74-43-43-09-05-048-0010
Lots 1 and 2, Block 48, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 3: 604 25th Street, West Palm Beach FL
74-43-43-09-05-048-0030
Lots 3 and 4, Block 48, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 4: 2401 Broadway , West Palm Beach FL
74-43-43-09-05-049-0070
Lots 7, 8, 9, 10 and 11 Block 49, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida; Less any portion for roadway.

PARCEL 5: 2501 Broadway, West Palm Beach FL
74-43-43-09-05-048-0110
Lots 11 through 14, Block 48, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 6: 609 27th St., West Palm Beach FL
74-43-43-09-05-048-0080
Lots 8, 9 and 10, Block 48, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 7: 701 23rd St., West Palm Beach FL
74-43-43-09-05-053-0010
Lots 1, 2 and 3, Block 53, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 8: 2501 Pinewood Rd., West Palm Beach FL
74-43-43-09-05-053-0040
Lots 4 through 21, Block 53, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida;

and

Lot 22, Re-subdivision of Lots 22-26, Block 53, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

PARCEL 9: 2425 Broadway, West Palm Beach FL
74-43-43-09-05-049-0010
Lots 1, 2, 3, 4, 5 and unnumbered Lot lying immediately west of said Lot 5, All in Block 49, Northwood Addition to West Palm Beach (Plat No. 4), according to the Plat thereof, as recorded in Plat Book 9, Page 47, of the Public Records of Palm Beach County, Florida.

EXHIBIT "B"

COLLATERAL

"**As-Extracted Collateral**" means all "as-extracted collateral", as that term is defined in the UCC.

"**Chattel Paper**" means all "chattel paper", as that term is defined in the UCC, including without limitation any writings which evidence both a monetary obligation and a security interest in or a lease of specific good.

"**Collateral**" means all tangible and intangible property of the Mortgagor at the Premises, including without limitation all Accounts, As-Extracted Collateral, Chattel Paper, Commercial Tort Claims, Deposit Accounts, Documents, Farm Products, Fixtures, General Intangibles, Goods (including, without limitation, Inventory and Equipment), Instruments, Investment Property, Letter of Credit Rights related thereto, whether presently owned or hereafter acquired, together with all Proceeds and products thereof.

"**Commercial Tort Claims**" means tort claims of the Mortgagor arising from time to time.

"**Commodity Account**" means "commodity account", as that terms is defined in the UCC.

"**Copyrights**" means all copyrights, all registrations thereof, and applications in connection therewith pending with the United States Copyright Office or a similar office in any other jurisdiction.

"**Deposit Accounts**" means all demand, time, savings, passbook or like accounts maintained with a bank, savings and loan association, credit union or like institution in connection with the Loans.

"**Documents**" means all "documents", as that term is defined in the UCC, including but not limited to a "document of title", as that term is defined in the UCC, and any and all receipts of the kind described in Article 7 of the UCC.

"**Equipment**" means all machinery, apparatus, equipment, fittings and other tangible personal property (other than Inventory) of every kind and description used in the Mortgagor's operations of the Project in which Mortgagor has an interest, whether or not affixed to realty, including without limitation all motor vehicles, trucks, trailers, handling and delivery equipment, cranes, hoisting equipment, fixtures, office machines and furniture, together with all accessions, replacements, rights under any manufacturer's warranties relating to the foregoing and any other rights or property of the Mortgagor used in the operation of the Project that is "equipment" within the meaning of the UCC.

"**Equity Interest**" shall mean (i) in the case of any corporation, all capital stock (whether common or preferred) and any securities exchangeable for or convertible into capital stock, (ii) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited), (iii) in the case of an association or other business entity, any and all shares, interests, participations, rights or other equivalents of corporate stock (however designated) in or to such association or entity, and (iv) any other interest or participation that confers on a person or entity the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity, and including, in all of the foregoing cases described in clauses (i), (ii), (iii) or (iv), any warrants, rights or other options to purchase or otherwise acquire any of the interests described in any of the foregoing cases.

"**Fixtures**" means Goods that have become so related to the Premises that an interest in them arises under real property law.

"**GAAP**" means generally accepted accounting principles in the United States of America in effect from time to time.

"**General Intangibles**" means all "general intangibles", as that term is defined in the UCC, including without limitation all choses in action, causes of action, designs, plans, goodwill, tax refunds, Patents, Copyrights, Trademarks, licenses, franchises and all rights under license agreements for use of the same.

"**Goods**" means all things that are moveable when a security interest attaches.

"**Instruments**" means "instruments", as that term is defined in the UCC, including without limitation bills of exchange, notes and all negotiable instruments, all certificated securities, all certificates of deposit and any other writing which evidences a right to payment of money in connection with the Project and is a type which is in the ordinary course of business transferred by delivery with any necessary endorsement or assignment.

"**Inventory**" means all Goods intended for sale or lease by the Mortgagor, of every nature, kind and description wherever located, including without limitation raw materials, work in process and finished Goods and all Goods returned or reclaimed from customers, together with any other rights or property of the Mortgagor that is "inventory" within the meaning of the UCC.

"**Investment Property**" means (i) all securities, or securities certificates or uncertificated securities representing securities, (ii) security entitlements, (iii) Securities Accounts, (iv) commodity contracts, or (v) Commodity Accounts.

"**Letter of Credit Right**" means any right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is entitled to demand payment or performance that relates to the Project.

"**Liens**" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or otherwise), or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever (including without limitation the filing of any financing statement under the UCC or comparable law of any jurisdiction in respect of any of the foregoing).

"**Patents**" means all letters patent, reissues and extensions thereof, applications for letters patent and all divisions, continuations and continuations-in-part thereof of the United States or any other jurisdiction that relates to the Project.

"**Proceeds**" means all "proceeds", as that term is defined in the UCC, including without limitation whatever is received upon the use, lease, sale, exchange, collection, any other utilization of any disposition of any property whether or not in cash, all rental or lease payments, Accounts, Chattel Paper, Instruments, Documents, General Intangibles, Equipment, Inventory, substitutions, additions, accessions, replacements, products and renewals of, for, or to such property and all insurance therefor.

"**Securities Account**" means all "securities accounts", as that term is defined in the UCC.

"**Trademarks**" means all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and the goodwill associated therewith, now existing or hereafter adopted or acquired, and all registrations and recordings thereof, and all applications in connection therewith, whether in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other jurisdiction.

"**UCC**" means the Uniform Commercial Code as in effect in the State of Florida as of the date hereof.

EXHIBIT C

EPA Cooperative Grant Agreement

U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

GRANT NUMBER (FAIN): 00D12713	
MODIFICATION NUMBER: 0	**DATE OF AWARD** 09/26/2013
PROGRAM CODE: BF	
TYPE OF ACTION New	**MAILING DATE** 10/03/2013
PAYMENT METHOD: ASAP	**ACH#** 40836

RECIPIENT TYPE:
County

Send Payment Request to:
Las Vegas Finance Center

RECIPIENT:
Palm Beach Co. Government
301 N. Olive Ave.
West Palm Beach, FL 33401
EIN: 59-6000785

PAYEE:
Palm Beach Co Government
301 N. Olive Ave.
West Palm Beach, FL 33401

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Melanie Borkowski 301 N. Olive Ave. West Palm Beach, FL 33401 **E-Mail:** mborkows@pbcgov.org **Phone:** 561-233-3687	Margaret Olson 61 Forsyth Street Atlanta, GA 30303-8960 **E-Mail:** olson.margaret@epa.gov **Phone:** 404-562-8601	Laura Fowler Grants & Audit Management Section **E-Mail:** fowler.laura@epa.gov **Phone:** 404-562-8427

PROJECT TITLE AND DESCRIPTION
Brownfields Assessment and Cleanup cooperative Agreements

This action approves an award in the amount of $1,000,000 to Palm Beach County, Florida for its Revolving Loan Fund (RLF) to issue loans and sub-grants to cleanup Brownfields properties contaminated with hazardous substances and petroleum products, and prudently manage the RLF. These funds will also be used for community involvement activities to encourage redevelopment of site(s) so the future reuse of the property(ies) will create/retain jobs and does not pose a threat to human health and the environment.

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
10/01/2013 - 09/30/2018	10/01/2013 - 09/30/2018	$1,200,000.00	$1,200,000.00

NOTICE OF AWARD

Based on your Application dated 06/14/2013 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards $1,000,000. EPA agrees to cost-share 80.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $1,000,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	**ORGANIZATION / ADDRESS**
61 Forsyth Street Atlanta, GA 30303-8960	U.S. EPA, Region 4 Resource Conservation and Recovery Act Division 61 Forsyth Street Atlanta, GA 30303-8960

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Digital signature applied by EPA Award Official	DATE
Shirley White Grayer - Chief - Grants & Audit Management Section - Grants Management Officer	09/26/2013

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$	$ 1,000,000	$ 1,000,000
EPA In-Kind Amount	$	$	$ 0
Unexpended Prior Year Balance	$	$	$ 0
Other Federal Funds	$	$	$ 0
Recipient Contribution	$	$ 200,000	$ 200,000
State Contribution	$	$	$ 0
Local Contribution	$	$	$ 0
Other Contribution	$	$	$ 0
Allowable Project Cost	$ 0	$ 1,200,000	$ 1,200,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 101(39) CERCLA: Sec. 104(k)(3)	40 CFR PART 31

Fiscal

Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1304VT3038	13	E4	04V2AG7	301D79	4114	G400OL00	-	500,000
-	1304VT3038	13	E4	04V2AG7	301D79XBP	4114	G400OS00	-	500,000
									1,000,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$48,010
2. Fringe Benefits	$19,200
3. Travel	$9,600
4. Equipment	$0
5. Supplies	$4,800
6. Contractual	$163,950
7. Construction	$0
8. Other	$954,440
9. Total Direct Charges	$1,200,000
10. Indirect Costs: % Base	$0
11. Total (Share: Recipient 20.00 % Federal 80.00 %.)	$1,200,000
12. Total Approved Assistance Amount	$1,000,000
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$1,000,000
15. Total EPA Amount Awarded To Date	$1,000,000

Administrative Conditions

1. DRUG-FREE WORKPLACE CERTIFICATION

The recipient organization of this EPA assistance agreement must make an 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, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=701081165f70316effa8ebf67df73de0&rgn=div5&view=text&node=2:1.2.11.11.2&idno=2

2. LOBBYING AND LITIGATION

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The recipient 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.

3. LOBBYING

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding $100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient 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.

4. MANAGEMENT FEES AND SIMILAR CHARGES

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "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 which are not allowable under this assistance agreement. 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.

5. RECYCLING

In accordance with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962) any State agency or agency of a political subdivision of a State which is using appropriated Federal funds shall comply with the requirements set forth. 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.

In accordance with the polices set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to 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.

6. UNLIQUIDATED OBLIGATIONS

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the end of the reporting quarter. The following reporting period end dates shall be used for interim reports: 3/31, 6/30, 9/30, or 12/31.

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at http://www.epa.gov/ocfo/finservices/forms.htm. All FFRs must be submitted to the Las Vegas Finance Center: US EPA, Las Vegas Finance Center, 4220 S. Maryland Pkwy, Bld C, Rm 503, Las Vegas, NV 89119, or by Fax to: 702-798-2423 or LVFC-grants@epa.gov

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

EPA may take enforcement actions in accordance with 40 CFR 31.43 if the recipient does not comply with this term and condition.

7. EPA PARTICIPATION

This award and the resulting ratio of funding is based on estimated costs requested in the application. EPA participation in the final total allowable program/project costs (outlays) shall not exceed the statutory limitation 80% of total allowable program/project costs or the total funds awarded, whichever is lower.

8. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

General Compliance, 40 CFR, Part 33
The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

Fair Share Objectives, 40 CFR, Part 33, Subpart D
A recipient must negotiate with the appropriate EPA award official, or his/her designee, air share objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

Accepting the Fair Share Objectives/Goals of Another Recipient
The dollar amount of this assistance agreement is $250,000, or more; or the total dollar amount of all of the recipient's non-TAG assistance agreements from EPA in the current fiscal year is $250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **State of Florida** as follows:

MBE: CONSTRUCTION 9.00%; SUPPLIES 9.00%; SERVICES 9.00%; EQUIPMENT 9.00%
WBE: CONSTRUCTION 3.00%; SUPPLIES 3.00%; SERVICES 3.00%; EQUIPMENT 3.00%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as **State of Florida** .

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404
The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

Six Good Faith Efforts, 40 CFR, Part 33, Subpart C
Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever

procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Require DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

MBE/WBE Reporting, 40 CFR, Part 33, Sections 33.502 and 33.503
The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE /WBE accomplishments.** The reports must be submitted **semiannually** for the periods ending March 31st and September 30th for:

Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and All other recipients not identified as annual reporters (40 CFR Part 30 and 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to: EPA, REGION 4, Grants Management Office, 61 Forsyth Street SW, Atlanta, GA 30303-8960

Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE /WBE reports.

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at www.epa.gov/osbp.

Contract Administration Provisions, 40 CFR, Section 33.302
The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

Bidders List, 40 CFR, Section 33.501(b) and (c)
Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

9. SUSPENSION AND DEBARMENT

Recipients shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 CFR Part

1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. Recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipients may access suspension and debarment information at http://www.sam.gov. This system allows recipients to perform searches determining whether an entity or individual is excluded from receiving Federal assistance. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

10. SINGLE AUDIT ACT

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends $500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. The recipient MUST submit the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: http://harvester.census.gov/fac/

11. TRAFFICKING IN PERSONS

a. **Provisions applicable to a recipient that is a private entity** .

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not–
   i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
   ii. Procure a commercial sex act during the period of time that the award is in effect; or
   iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity –
   i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
   ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either–
      A. Associated with performance under this award; or
      B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

b. **Provision applicable to a recipient other than a private entity** . We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity–
   1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
   2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either–
      i. Associated with performance under this award; or
      ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR 1532.

c. **Provisions applicable to any recipient** .

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
   i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
   ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. **Definitions. For purposes of this award term:**

1. "Employee" means either:
   i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
   ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

3. "Private entity":
   i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
   ii. Includes:
      A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
      B. A for-profit organization.

4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

12. SUBAWARD REPORTING AND COMPENSATION

I. Reporting Subawards and Executive Compensation.

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if --

i. the total Federal funding authorized to date under this award is $25,000 or more;

ii. in the preceding fiscal year, you received--

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration Central Contractor Registration/System for Award Management profile available at www.sam.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received--

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. subawards,

and

ii. the total compensation of the five most highly compensated executives of any subrecipient.

e.Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus.

ii. *Awards of stock, stock options, and stock appreciation rights.* Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. *Earnings for services under non-equity incentive plans.* This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

v. *Above-market earnings on deferred compensation which is not tax-qualified.*

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

13. CENTRAL CONTRACTOR REGISTRATION /SYSTEM FOR AWARD MANAGEMENT & UNIVERSAL IDENTIFIER REQUIREMENTS

A. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM). Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site http://www.sam.gov.

2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).

3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

a. A Governmental organization, which is a State, local government, or Indian tribe;

b. A foreign public entity;

c. A domestic or foreign nonprofit organization;

d. A domestic or foreign for-profit organization; and

e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4. Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

14. REIMBURSEMENT LIMITATION

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

15. PROCUREMENT

The cost of professional services contracts and/or small purchases procured in compliance with the minimum standards for procurement under grants (see 40 CFR 31.36) are allowable costs for reimbursement with grant funds. No grant funds may used to reimburse the federal share of any procurement action(s) found to be in noncompliance with the grant procurement regulations. (Note: all project expenditures are deemed to include both the federal and nonfederal shares).

16. PAYMENT METHODS

a. The Debt Collection Improvement Act of 1996 requires that Federal payments be made by electronic funds transfer. In order to comply with the Act, a recipient must receive payments via one of two electronic methods available to them:

Automated Standard Application for Payments (ASAP)

The ASAP system is the preferred method of payment for EPA grantees. ASAP enrollment is highly encouraged for organizations that have multiple grants/cooperative agreements and for those with a frequent need to request funds. If your organization uses multiple bank accounts for EPA grants/cooperative agreements, you must enroll in ASAP. If you are interested in receiving funds electronically via ASAP, please complete the ASAP Initiate Enrollment form located at http://www.epa.gov/ocfo/finservices/forms.htm and email it to LVFC-grants@epa.gov or fax it to LVFC at 702-798-2423

Under this payment mechanism, the Recipient initiates, via ASAP, an electronic payment request which is approved or rejected based on the amount of available funds authorized by EPA in the Recipient's account. Approved funds are credited to the recipient organization at the financial institution identified on the recipient's ASAP enrollment application. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Las Vegas Finance Center, at (702) 798-2485, or by visiting www.fms.treas.gov/asap.

Electronic Funds Transfer (EFT)

Under this payment mechanism, the EPA Las Vegas Finance Center will obtain your organization's banking information from your System for Award Management (SAM) registration. Upon completion of required Regional training, a Las Vegas Finance Center Representative will send you an email message with your EFT Control Number and payment information. Additional information concerning EFT can be obtained by contacting the EPA Las Vegas Finance Center at (702) 798-2485, or by visiting http://www.epa.gov/ocfo/finservices/payinfo.htm

NOTE: If your banking information is not correct or changes at any time prior to the end of your agreement, please update your SAM registration and notify the EPA Las Vegas Finance Center as soon as possible so the new banking information can be retrieved. This is vital to ensure proper and timely deposit of funds.

b. In accepting this assistance agreement, the recipient agrees to draw cash only as needed for its disbursement. Failure on the part of the recipient to comply with this condition may cause the undisbursed

portions of the assistance agreement to be revoked and financing method changed to a reimbursable basis.

17. AWARD ACCEPTANCE LANGUAGE

Based on your Application dated ***06/14/2013*** including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards ***$1,000,000***. EPA agrees to cost share ***80%*** of all approved budget period costs incurred, up to and not exceeding total federal funding of ***$1,000,000***. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

18. CIVIL RIGHTS OBLIGATIONS

General

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Standard Form 424B or Standard Form 424D, as applicable. These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing EPA regulations.

Statutory Requirements

In carrying out this agreement, the recipient must comply with:

- Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
- Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
- The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.

If the recipient is conducting an education program under this agreement, it must also comply with:

- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance.

If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:

- Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

Regulatory Requirements

The recipient agrees to comply with all applicable EPA civil rights regulations, including:

- For Title IX obligations, 40 C.F.R. Part 5; and
- For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 C.F.R. Part 7.
- As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator, and providing notices of non-discrimination.

TITLE VI - LEP, **Public Participation and Affirmative Compliance Obligation**

- As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "*Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons.*" The guidance can be found at *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2004_register&docid=fr25jn04-79.pd*
- If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at http://edocket.access.gpo.gov/2006/pdf/06-2691.pdf.
- In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to

implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

19. PAYMENT TO CONSULTANTS

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a 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 recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 31.36(j) or 30.27(b).

Programmatic Conditions

1. Electronic and Information Technology Accessibility

Recipients and subrecipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology ("EIT"). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient's websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities. Recipients may wish to consult the latest Section 508 guidelines issued by the US Access Board or W3C's Web Content Accessibility Guidelines (WCAG) 2.0(see http://www.access-board.gov/sec508/guide/index.htm).

2. Geospatial Data Standards

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards, unless otherwise directed by the EPA Project Officer. Information on these standards may be found at www.fgdc.gov.

3. Sufficient Progress

EPA may terminate the assistance agreement for failure of the recipient to make sufficient progress so as to reasonably ensure completion of the project within the project period, including any extensions. EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period, and/or the availability of funds necessary to complete the project.

4. Recipient Performance Reporting

Recipients subject to 40 C.F.R. Part 31 (other than recipients of State or Tribal Program grants under 40 C.F.R. Parts 35 Subparts A or B)

In accordance with 40 C.F.R. §31.40, the recipient agrees to submit performance reports that include brief information on each of the following areas: 1) a comparison of actual accomplishments to the outputs/outcomes established in the assistance agreement workplan for the period; 2) the reasons for slippage if established outputs/outcomes were not met; and 3) additional pertinent information, including, when appropriate, analysis and information of cost overruns or high unit costs.

In accordance with 40 C.F.R. § 31.40 (d), the recipient agrees to inform EPA as soon as problems, delays or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the assistance agreement work plan.

5. Brownfields Revolving Loan Fund (RLF)

Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfields RLF capitalization Grants awarded under CERCLA § 104(k) and those that chose to transition to §104(k).
They do not apply to pre-FY 2003 grants subject to §104(d).

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2013 competition for Brownfields RLF cooperative agreements. However, the CAR may not expend ("draw down") funds to carry out this agreement until EPA's award official approves the final work plan.

2. In implementing this agreement, the cooperative agreement recipient shall comply with and require that work done by borrowers and subgrant recipients with cooperative agreement funds comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR will ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR will ensure cleanups are protective of human health and the environment.

3. The CAR must consider whether it is required to have borrowers or subgrant recipients conduct cleanups under a State or Tribal response program. If the CAR chooses not to require borrowers and subgrant recipients to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) on each loan or subgrant to ensure the proposed cleanup is protective of human health and environment.

4. *If the CAR is not subject to a State or Tribal Response Program, then the CAR is strongly urged to consider joining such program. Regardless, the CAR is required to consult with the EPA and any applicable State/Tribal programs to ensure the proposed cleanup is protective of human health and the environment.*

5. Information submitted to EPA under this cooperative agreement may be subject to the Freedom of Information Act (FOIA). EPA recommends that recipients do not provide confidential business information ("CBI") to the Agency. However, if confidential business information is included, it will be treated in accordance with 40 CFR 2.203. Recipients must clearly indicate which portion(s) of the information submitted to EPA the recipient claims as CBI. EPA will evaluate such claims in accordance with 40 CFR Part 2. If no claim of confidentiality is made, EPA is not required to make the inquiry to the recipient otherwise required by 40 CFR 2.204(c)(2) prior to disclosure. Unless otherwise required by Federal, State, or local law, the CAR and its borrowers and subgrantees are not required to permit public access to their own records. 40 C.F.R. 30.53; 40 C.F.R. 31.42. See 40 C.F.R. part 2 for EPA's general information-disclosure procedures.

II. SITE/BORROWER/SUBGRANTEE ELIGIBLIITY

A. Brownfields Site Eligibility

1. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, the identity of the owner, and the date of acquisition.

2. If the site is excluded from the general definition of a brownfield site, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.

3. For any petroleum-contaminated brownfields site, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (refer to EPA's *Proposal Guidelines*

for Brownfields Revolving Loan Fund Grants dated September 2011 for discussion of this element) documenting that:

a. a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum sites in the State;
b. the State determines there is "no viable responsible party" for the site;
c. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and
d. the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate state petroleum program official.

4. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion to reach each determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

5. If the State chooses not to make the determinations described in 3.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

6. EPA will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in "3" above.

B. **Borrower and Subgrant Recipient Eligibility**

1. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites *owned* by the eligible entity or nonprofit organization at the time the subgrant is awarded. Eligible subgrant recipients include eligible entities as defined under CERCLA § 104(k)(1) and nonprofit organizations as defined in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.

2. The subgrant recipient must retain ownership of the site throughout the period of performance of the subgrant. For the purposes of this agreement, the term "owns" means fee simple title unless EPA approves a different arrangement. **However, the CAR may not provide a subgrant to itself or another component of its own unit of government or organization.**

3. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principle. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30 percent, provided that the total amount of the principal forgiven for that loan shall not exceed $200,000. Eligible entities include those identified in CERCLA § 104(k)(1) and nonprofit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. **Private, for-profit entities are not eligible for discounted loans.**

4. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a loan or grant recipient is potentially liable under CERCLA § 107. The CAR may rely on its own investigation which can include an opinion from the subgrant recipient's or borrower's counsel. However, the CAR must advise the borrower or subgrant recipient that the investigation and/or opinion of the subgrant recipient's or borrower's counsel is not binding on the Federal Government.

5. For approved eligible petroleum-contaminated brownfields sites, the person cleaning up the site must be a person who is not potentially liable for cleaning up the site. For brownfields grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.

6. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrant recipients.

7. A borrower or subgrant recipient must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The CAR, in consultation with the EPA, must consider this history in its analysis of the borrower or subgrant recipient as a cleanup and business risk.

8. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrant recipient.

C. **Obligations for Grant Recipients , Borrowers, or Subgrantees Asserting a Limitation on Liability from CERCLA § 107**

1. Grant recipients, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a grant, loan, or subgrant based on a liability protection from CERCLA as a: (1) bona fide prospective purchaser (BFPP), (2) contiguous property owner (CPO), or (3) innocent landowner (ILO) (known as the "landowner liability protections"), must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible grant recipient, borrower, or subgrantee. These include, but are not limited to the following:

    a. All grant recipients, borrowers, or subgrantees asserting a BFPP, CPO or ILO limitation on liability must perform (or have already performed) "all appropriate inquiry," as found in section 101(35)(B) of CERCLA, on or before the date of acquisition of the property.

    b. Grant recipients, borrowers, or subgrantees seeking to qualify as bona fide prospective purchasers or contiguous property owners must not be potentially liable, or affiliated with any other person that is potentially liable for response costs at the facility through;
        (a) any direct or indirect familial relationship; or
        (b) any contractual, corporate, or financial relationships; or
        (c) a reorganized business entity that was potentially liable or otherwise liable under CERCLA § 107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.

    c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:

        i. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;

        ii. taking reasonable steps to stop any continuing hazardous substance releases, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance;

        iii. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;

        iv. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and

        v. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) [see CERCLA § §101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B).].

    d. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§101(35), 101(40), 107(b), 107(q) and 107(r).

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of an RLF agreement is five years, unless otherwise extended by EPA at the CAR's request.

2. If after 2 years from the date of award, EPA determines that the recipient has not made sufficient progress in

implementing its cooperative agreement the recipient must implement a corrective action plan approved by the EPA Project Officer or EPA may terminate this agreement for material non-compliance with its terms. Sufficient progress is indicated by the grantee having made loan(s) and/or subgrant(s), but may also be demonstrated by a combination of all the following: hiring of all key personnel, the establishment and advertisement of the RLF, and the development of one or more potential loans/subgrants.

B. Substantial Involvement

1. The U.S. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.

   a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; reviewing and approving of procedures for loan and subgrant recipient selection; review of project phases; and approving substantive terms included in professional services contracts.

   b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I. B.1. under *EPA and/or State Approvals of Brownfields Sites* above. The CAR may also request technical assistance from EPA to determine if sites qualify as brownfields sites and to determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition prohibits a grant or loan recipient from using grant funds to clean up a site if the recipient is potentially liable under §107 of CERCLA for that site.

   c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.

   d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subgrants.

   e. EPA may waive any of the provisions in term and condition II. B.1, with the exception of property-specific funding determinations. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:

   a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or for rights, authorities, and actions under CERCLA or any Federal statute.

   b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable Federal and State laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with EPA.

   c. The CAR remains responsible for ensuring costs are allowable under applicable OMB Circulars.

3. The CAR will provide project updates to the State Brownfields or Voluntary Cleanup Program (VCP) contact on a regular basis.

   a. The CAR will make the State aware of all site-specific sampling and/or cleanup activities to be initiated (if applicable).

   b. The CAR will provide the State an opportunity to review and comment on all technical reports, including QAPPs, sampling plans, ABCAs, cleanup plans, and other technical reports.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR is responsible for establishing an RLF team that will implement the Program and for coordinating the team's activities as outlined below.

2. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields cleanup activities at a particular site, if they do not have such a professional on staff.

3. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund

manager for services performed must be consistent with 40 CFR Part 31.

4. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel should review all loan/subgrant agreements prior to execution.

5. The CAR is responsible for ensuring that borrowers and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrant recipients are consistent with the terms and conditions of this agreement.

D. Quarterly Progress Reports

1. The CAR must submit progress report on a quarterly basis to the EPA Project Officer. Quarterly progress report must include:
   a. A narrative summary of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
   b. An update on project schedules and milestones.
   c. A list of the loans and/or sub-grants awarded during the reporting quarter.
   d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); cost share updates; and total remaining funds.

2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.

3. *Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and must relate EPA-funded activities to the objectives and milestones agreed upon in the work plan.*

4. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., loan signed, cleanup started) and any final accomplishments (i.e., cleanup completed, contaminants removed, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

2. *The CAR must obtain approval from the EPA Project Officer before expending cooperative agreement funds to purchase adequate computer supplies to complete on-line reporting activities.*

F. Final Report

1. The CAR must submit a final report at the end of the period of performance in order to finalize the closeout of the grant. This final report must capture the site names, what work was done at each site and how much funding was spent at each site. It should also provide information that documents the outreach efforts done by the CAR and other activities that help explain where the funding was utilized. See Section VII for more details on final report and closeout.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. CERCLA § 104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

B. **Eligible Uses of the Funds for the Cooperative Agreement Recipient , Borrower, and/or Subgrant Recipients**

1. To the extent allowable under the EPA approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to capitalize the RLF and conduct cleanups.

    a. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers or subgrant recipients at brownfields sites.

    b. At least 50% of the funds must be used by the CAR to provide loans for the cleanup of eligible brownfields sites and for eligible programmatic costs for managing the RLF. Up to 50% can be used for subgrants to clean up eligible brownfield sites under the RLF and for eligible programmatic costs for managing subgrant(s). (Note: cleanup subgrants are limited to $200,000 per site). (Note: when implemented as a policy change, the CAR may request a waiver to the 50% cap on subgrant funds. Please consult with your Regional Project Officer.)

    c. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA §104(k)(3)(B)(c):

        i. The extent the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

        ii. The extent the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

        iii. The extent the subgrant will facilitate the use or reuse of existing infrastructure; and

        iv. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

    The CAR must maintain sufficient records to support and document these determinations .

2. The CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include direct costs for:

    a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k);

    b. Ensuring that a RLF cleanup complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);

    c. Limited site characterization including confirming the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed;

    d. Preparing an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action;

    e. Ensuring that public participation requirements are met. This includes preparing a community relations plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments;

    f. Establishing an administrative record for each site;

    g. Developing a Quality Assurance Project Plan (QAPP) as required by Part 31 and Part 30 regulations. The specific requirement for a QAPP is outlined in U.S. EPA Order 53601.1, April 1984, as amended on May 5, 2000;

h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable Federal and State environmental requirements;

i. Ensuring that the site is secure if a borrower or subgrant recipient is unable or unwilling to complete a brownfields cleanup;

j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. The loan or subgrant may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section C.

k. Any other eligible programmatic costs including costs incurred by the recipient in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subgrants to the extent allowable in III. D. 2.; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrant recipients; and

l. Subgrantee progress reporting to the CAR is an eligible programmatic cost.

3. *Local Governments Only: If included in the EPA approved work plan, no more than 10% of the funds awarded by this agreement may be used by the CAR itself for monitoring of health and institutional controls. The CAR must maintain records on funds that will be used to carry out these tasks as identified in the work plan.*

4. If the CAR makes a subgrant to a local government that includes an amount (not to exceed 10% of the subgrant) for brownfields program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the limits on the amount of subgrant funds that may be expended for this purpose.

C. **Ineligible Uses of the Funds for the Cooperative Agreement Recipient , Borrower, and/or Subgrant Recipients**

1. Cooperative agreement funds shall <u>not</u> be used by the CAR, borrower and/or subgrant recipient for any of the following activities:

a. Environmental assessment activities, including Phase I and Phase II Environmental Site Assessments.

b. 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.

c. Construction, demolition, and development activities that are not integral to the cleanup actions, and addressing public or private drinking water supplies that have deteriorated through ordinary use.

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

e. To pay for a penalty or fine.

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

g. To pay for a response cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA § 107.

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

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

2. Under CERCLA §104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include <u>all indirect costs</u> under applicable OMB Circulars incurred by the CAR and subgrantees.

a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform*

Administrative Requirements for Grants contained in 40 CFR Part 30 or 40 CFR part 31. Direct costs for grant and subgrant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grantee or subgrant recipient is required to carry out the activity under the grant agreement. Costs incurred to report quarterly performance to EPA under the grant 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.

   ix. Borrowers are subject to the CERCLA § 104(k)(4)(B) administrative cost prohibition requirements. The CAR must ensure that loan agreements prohibit borrowers and subgrantees from using loans financed with cooperative agreement funds for administrative costs.

c. Prohibited administrative costs for the borrower (including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges) are those incurred for loan administration and overhead costs.

d. Direct costs for loan administration are <u>ineligible</u> even if the borrower is required to carry out the activity under the loan agreement. Ineligible loan administration costs include expenses for:

   i. Preparation of applications for loans and loan agreements;

   ii. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;

   iii. Maintaining and operating financial management and personnel systems;

   iv. Preparing payment requests and handling payments; and

   v. Audits.

e. Overhead costs by the borrower that do not directly clean up brownfields site contamination or comply with laws applicable to the cleanup are ineligible administrative costs. Examples of overhead costs that would be <u>ineligible</u> in loans include expenses for:

   i. Salaries, benefits and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);

   ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and

   iii. Supplies and equipment not used directly for cleanup at the site.

iv. Costs incurred by the borrower for procurement are eligible only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls.

v. Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.

4. Cooperative agreement funds may not be used for any of the following properties:

   a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);

   b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;

   c. Facilities that are subject to the jurisdiction, custody or control of the United States government except land held in trust by the United States government for an Indian tribe; or

   d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

5. The CAR must not include management fees or similar charges in excess of the direct costs or at the rate provided for by the terms of the agreement negotiated with EPA. The term "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.

D. **Use of Program Income**

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.

2. The CAR may use program income from fees, interest payments from loans, and other forms of eligible program income to meet its cost-share. The CAR shall not use repayments of principal of loans to meet the CAR's cost-share requirement. Repayments of principal must be returned to the CAR's Brownfields cleanup revolving fund.

3. The CAR that elects to use program income to cover all or part of an RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with applicable OMB cost principles when charging costs against program income. For any cost determined by the EPA to have been an ineligible use of program income, the recipient shall reimburse the RLF or the EPA. EPA will notify the recipient of the time period allowed for reimbursement.

4. Loans or subgrants made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct funding from EPA in combination with non Federal sources of funds are also subject to the same terms and conditions of this agreement.

5. The CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income.

E. **Post Cooperative Agreement Program Income**

1. After the end of the award period, the CAR shall use program income in a manner consistent with the terms and conditions of a "close out" agreement negotiated with EPA. In accordance with 40 CFR 31.42(c)(3), the CAR

shall maintain appropriate records to document compliance with the requirements of the close out agreement (i.e., records relating to the use of post-award program income). EPA may request access to these records or may negotiate post-close-out reporting requirements to verify that post-award program income has been used in accordance with the terms and conditions of the close out agreement.

F. Interest-Bearing Accounts

1. The CAR must deposit advances of grant funds and program income (e.g., fees, interest payments, repayment of principal) in an interest bearing account.

2. Interest earned on advances, CARs and subgrant recipients are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating to remitting interest on advances to EPA on a quarterly basis.

3. Interest earned on program income is considered additional program income.

V. RLF ENVIRONMENTAL REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR shall prepare an analysis of brownfields cleanup alternatives which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The alternatives may - as national or regional policies direct - additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The clean up method chosen must be based on this analysis.

2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the grantee shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

B. Quality Assurance (QA) Requirements

1. If environmental samples are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) 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 QA requirements.

2. ***QAPP:*** *The CAR, or its service agent/contractor(s), must have an* ***EPA approved Quality Assurance Project Plan (QAPP)*** *in place before beginning any verification or confirmation sampling, if needed, funded wholly or in part by this agreement, that includes sampling and analysis of environmental media. The CAR should allow EPA adequate time (generally 45 days) for review and approval. The QAPP should be consistent with the EPA Region 4 "Brownfields Quality Assurance Project Plans (QAPPs) Interim Instructions: Generic QAPP and Site Specific QAPP for Brownfields Site Assessments and/or Cleanups," July 2010, and later revisions.*

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. All RLF loan and subgrant cleanup activities require a site-specific community relations plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site.

D. Administrative Record

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include the analysis of brownfield cleanup alternatives; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the administrative record available at a location convenient to the public and make it available for inspection.

E. Implementation of RLF Cleanup Activities

1. The CAR shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subgrant agreement shall contain terms and conditions, subject to any required approvals by the regulatory oversight authority, that allow the CAR to change cleanup activities as necessary based on comments from the public or any new information acquired.

2. If the borrower or subgrant recipient is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

F. Completion of RLF Cleanup Activities

1. The CAR shall ensure that the successful completion of an RLF cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanups are complete. This documentation needs to be included as part of the administrative record.

2. *For the purposes of these terms and conditions, contaminants are considered cleaned up when a "clean" or "no further action" letter (or its equivalent) has been issued by the state or tribe under its voluntary response program (or its equivalent) for cleanup activities at the property; or the [cooperative agreement] recipient or property owner, upon the recommendation of an environmental professional, has determined and documented that on-property work is finished and any needed institutional or engineering controls are in place and functional. On-going operation and maintenance activities or monitoring may continue after a "cleaned up" designation has been made.*

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet long-term brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.

2. The CAR shall not incur costs under this cooperative agreement for loans, subgrants or other eligible costs until an RLF grant work plan *and RLF implementation plan, if applicable* has been submitted to and approved by U.S. EPA. *Though the workplan must identify tasks and milestones for establishing and operating the RLF, more detailed information may be submitted in supplemental documents, e.g., an "implementation plan."* The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:

    a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any subgrants competitively, it must document the basis for that decision and inform EPA.

    b. Establishing appropriate project selection criteria consistent with Federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.

    c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrant recipients receive RLF financing.

    d. Developing a formal protocol for potential borrowers or subgrant recipients to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrant recipient to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrant recipients for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.

    e. Requiring that borrowers or subgrant recipients submit information describing the borrower's or subgrant

recipient's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.

f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.

g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrant recipient.

B. Inclusion of Special Terms and Conditions in RLF Loan and Subgrant Documents

1. The CAR shall ensure that the borrower or subgrant recipient meets the cleanup and other program requirements of the RLF grants by including the following special terms and conditions in RLF loan agreements and subgrant awards:

a. Borrowers or subgrant recipients shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable Federal and State laws and regulations. See Section I.A.2.

b. Borrowers or subgrant recipients shall ensure that the cleanup protects human health and the environment.

c. Borrowers or subgrant recipients shall document how funds are used. If a loan or subgrant includes cleanup of a petroleum-contaminated brownfields site(s), the CAR shall include a term and condition requiring that the borrower or subgrant recipient maintain separate records for costs incurred at that site(s).

d. Borrowers or subgrant recipients shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with RLF funds. Borrowers or subgrant recipients shall obtain written approval from the CAR prior to disposing of records. Cooperative agreement recipients shall also require that the borrower or subgrant recipient provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the Federal government.

e. Borrowers or subgrant recipients shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan.

f. Borrowers or subgrant recipients shall certify that they are not potentially liable under § 107 of CERCLA for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrant recipient must state the basis for that assertion. When using grant funds for petroleum-contaminated brownfields sites, borrowers or subgrant recipients shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. Refer to the most recent issue of EPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for a discussion of these terms. The CAR may consult with EPA for assistance with this matter.

g. Borrowers or subgrant recipients shall conduct cleanup activities as required by the CAR.

h. Subgrant recipients shall comply with applicable EPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations). All procurements conducted with subgrant funds must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48, as applicable.

i. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that borrowers and subgrant recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA § 104(k), Federal applicable laws and requirements include: 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 40 CFR 30 and OMB Circular A-21 for educational institutions that are recipients of subgrants.

j. The CAR must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA grant funds. For more detailed information on complying

with Davis-Bacon, please see the Davis- Bacon Addendum to these terms and conditions. *(See attached Davis Bacon provision below.)*

k. Federal cross-cutting requirements include, but are not limited to, MBE/WBE requirements found 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.

C. Default

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for: (1) documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and (2) securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

D. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a grant or subgrant to a subgrant recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

    a. The affected party,

    b. Any member of his immediate family,

    c. His or her partner, or

    d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

    Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VII. DISBURSEMENT, PAYMENT AND CLOSEOUT

For the purposes of these terms and conditions, the following definitions apply: "payment" is the U.S. EPA's transfer of funds to the CAR; the CAR incurs an "obligation" when it enters into a loan agreement with the borrower or subgrant recipient; "disbursement" is the transfer of funds from the CAR to the borrower or subgrant recipient. "Close out" refers to the process that the U.S. EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed, and, to establish a closeout agreement to govern the use of program income.

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 40 CFR.§31.21(c) after it incurs an obligation or has an eligible programmatic expense. EPA will make payments to the CAR on a schedule which minimizes the time elapsing between transfer of funds from EPA and disbursement by the recipient to the borrower or subgrant recipient to pay costs incurred or to meet a "progress payment" schedule. The recipient may request payments when it receives a disbursement request from a borrower or subgrant recipient based on the borrower or subgrant recipient's incurred costs under the "actual expense" method or the schedule for disbursement under the "schedule" disbursement method. The CAR shall disburse accrued program income to meet all or part of this obligation or eligible programmatic expenses prior to requesting payment from EPA. A waiver from this requirement may be granted by EPA after a written request is submitted that adequately justifies drawing down

cooperative agreement funds prior to accrued program income.

B. **Methods of Disbursement**

1. The CAR may choose to disburse funds to the borrower by means of 'actual expense' or 'schedule.' If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower's incurred costs.

    a. An 'actual expense' disbursement approach requires the borrower to submit documentation of the borrower's expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.

    b. A 'schedule' disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower or subgrantee on the basis of an agreed upon schedule (e.g., progress payments) provided the schedule minimizes the time elapsing between disbursement by the CAR and the subgrant/loan recipient's payment of costs incurred in carrying out the subgrant/loan. In unusual circumstances, disbursement may occur upon execution of the loan or subgrant. The CAR shall submit documentation of disbursement schedules to EPA.

    c. If the disbursement schedule of the loan/subgrant agreement calls for disbursement of the entire amount of the loan/subgrant upon execution, the CAR shall demonstrate to the U.S. EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan/subgrant. Further, the CAR shall include an appropriate provision in the loan/subgrant agreement which ensures that the borrower/recipient uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

    d. Subgrant funds must be disbursed to the subgrant recipient in accordance with 40 CFR 31.21 or 40 CFR 30.22, as applicable.

C. **Schedule for Closeout**

1. There are two fundamental criteria for closeout:

    a. Final payment of funds from EPA to the CAR following expiration of the terms of the agreement or expenditure of the funds awarded; and

    b. Completion of all cleanup activities funded by the amount of the award.

2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities funded by the initial amount of the award are complete.

3. The CAR must negotiate a closeout agreement with EPA to govern the use of program income after closeout. Eligible uses include continuing to operate an RLF for brownfields cleanup and/or other brownfields activities.

4. The closeout agreement will require that any assessments or cleanups financed with program income be consistent with the CERCLA §107 prohibitions and site eligibility limitations for the effective period of the closeout agreement.

D. **Compliance with Closeout Schedule**

1. If a CAR fails to comply with the closeout schedule, any cooperative agreement funds not obligated under loan agreement to a borrower or subgrant recipient may be subject to federal recovery, and the cooperative agreement award may be amended to reflect the reduced amount of the cooperative agreement.

E. **Final Requirements**

1. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.

    a. The CAR must submit the following documentation:

        1. The Final Report as described in II.F.

2. A Final Federal Financial Report (FFR - SF425). Submitted to:

U.S. EPA Las Vegas Finance Center
4220 S. Maryland Pkwy, Bldg. C., Room 503
Las Vegas, NV 89119
Fax: (702) 798-2423
http://www.epa.gov/ocfo/finservices/payinfo.html

3. A Final MBE/WBE Report (EPA Form 5700-52A) to the regional office.

b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region

F. Recovery of RLF Assets

1. In case of termination for cause or convenience, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under 40 CFR 31.43 and CERCLA § 104(k) when the Agency determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the Agency's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

G. Loan Guarantees

1. If the CAR chooses to use the RLF funds to support a loan guarantee approach, the following terms & conditions apply:

a. The CAR shall:

i. document the relationship between the expenditure of CERCLA § 104(k) funds and cleanup activities;
ii. maintain an escrow account expressly for the purpose of guaranteeing loans, by following the payment requirement described under the Escrow Requirements term and condition below; and
iii. ensure that cleanup activities guaranteed by RLF funds are carried out in accordance with CERCLA § 104(k) and applicable Federal and State laws and will protect human health and the environment.

b. Payment of funds to a CAR shall not be made until a guaranteed loan has been issued by a participating financial institution. Loans guaranteed with RLF funds shall be made available as needed for specified cleanup activities on an "actual expense" or "schedule" basis to the borrower or subgrant recipient (See Section on Methods of Disbursement). The CAR's escrow arrangement shall be structured to ensure that the CERCLA § 104(k) funds are properly "disbursed" by the recipient for the purposes of the assistance agreement as required by 40 CFR 31.20(b)(7) and 31.21(c). If the funds are not properly disbursed, the CERCLA § 104(k) funds that the recipient places in an escrow account will be subject to the interest recovery provisions of 40 CFR 31.21(i).

c. To ensure that funds transferred to the CAR are disbursements of assisted funds, the escrow account shall be structured to ensure that:

i. the recipient cannot retain the funds;
ii. the recipient does not have access to the escrow funds on demand;
iii. the funds remain in escrow unless there is a default of a guaranteed loan;
iv. the organization holding the escrow (i.e., the escrow agency), shall be a bank or similar financial institution that is independent of the recipient; and
v. there must be an agreement with financial institutions participating in the guaranteed loan program which documents that the financial institution has made a guaranteed loan to clean up a brownfields site in exchange for access to funds held in escrow in the event of a default by the borrower or subgrant recipient.

d. Federal Obligation to the Loan Guarantee Program

i. Any obligations that the CAR incurs for loan guarantees in excess of the amount awarded under the cooperative agreement are the CAR's responsibility. This limitation on the extent of the Federal Government's financial commitment to the CAR's loan guarantee program shall be communicated to all participating banks and borrower or subgrant recipient.

e. Repayment of Guaranteed Loans

i. Upon repayment of a guaranteed loan and release of the escrow amount by the participating financial institution, the CAR shall return the cooperative agreement funds placed in escrow to the U.S. EPA. Alternatively, the CAR may, with EPA approval,

1) Guarantee additional loans under the terms and conditions of the agreement or,
2) amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfields related activities.

Davis Bacon Term and Condition for
Revolving Loan Fund Grants to Governmental/Quasi-Governmental Organizations

DAVIS BACON PREVAILING WAGE TERM AND CONDITION

The following terms and conditions specify how Recipients will assist EPA in meeting its Davis Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the Recovery Act or any other statute which makes DB applicable to EPA financial assistance. If a Recipient has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, they should contact the regional Brownfields Coordinator or Project Officer for guidance.

1. Applicability of the Davis Bacon Prevailing Wage Requirements.

For the purposes of this term and condition, EPA has determined that all construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings, is subject to DB.

With regard to remediation of petroleum contamination, following consultation with the U.S. Department of Labor, EPA has determined that for remediation of petroleum contamination at brownfields sites, DB prevailing wage requirement apply when the project includes:

Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination,

Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or

Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

In the above circumstances, all the laborers and mechanics employed by contractors and subcontractors will be covered by the DB requirements for all construction work performed on the site. Other cleanup activities at brownfields sites contaminated by petroleum such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will normally not trigger DB requirements. However, if a RLF Recipient encounters a unique situation at a site (e.g. unusually extensive excavation) that presents uncertainties regarding DB applicability, the RLF Recipient must discuss the situation with EPA before authorizing work on that site.

Note: If an RLF Recipient encounters a unique situation at a petroleum or hazardous substance site that presents uncertainties regarding DB applicability, the RLF Recipient must discuss the situation with EPA before advising a borrower or subgrantee that DB does not apply.

2. Obtaining Wage Determinations.

(a) The RLF Recipient is responsible for obtaining DB wage determinations from DOL and ensuring the borrowers and subgrantees include the 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).

(b) Unless otherwise instructed by EPA on a project specific basis, the RLF Recipient shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. RLF Recipients must obtain wage determinations for specific localities at www.wdol.gov.

(i) For solicitations, new contracts and ordering instruments for the excavation and removal of hazardous substances, construction of caps, barriers and similar activities the RLF Recipient shall use the "Heavy Construction" Classification.

(ii) For solicitations, new contracts and ordering instruments for the construction of structures which house treatment equipment. and abatement or contamination in buildings (other than residential structures less than 4 stories in height) the RLF Recipient shall use "Building Construction" classification.

(iii) When soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the Recipient shall use "Residential Construction" classification.

(iv) For solicitations, new contracts and ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant the Recipient shall use the "Building Construction" classification.

(v) For solicitations, new contracts and ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant the Recipient shall use the "Heavy Construction" classification.

Recipients must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with an RLF Recipient, EPA determines that DB applies to a unique situation involving a Brownfields site contaminated with petroleum (e.g. unusually extensive excavation) the Agency will advise the Recipient which General wage determination to use based on the nature of the construction activity at the site.

(b) RLF Recipients shall include a term and condition in all loans and subgrants which ensures that the borrower or subgrantee complies with the above requirements for including wage determinations in solicitations, new contracts and ordering instruments. The RLF Recipient must ensure that prime contracts entered into by borrowers and subgrantees contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the borrower or subgrantee's solicitation remains open, the RLF Recipient shall require that the borrower or subgrantee monitor www.wdol.gov. on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The RLF Recipient shall require that the borrower or subgrantee amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the RLF Recipient may, on behalf of the borrower or subgrantee, request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the RLF Recipient.

(ii) If the borrower or subgrantee does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless EPA, at the request of the RLF Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The RLF Recipient shall ensure that borrowers and subgrantees monitor www.wdol.gov on a weekly basis if the borrower or subgrantee does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current. If the applicable wage determination changes, the RLF

Recipient shall provide the borrower or subgrantee with the current wage determination from www.wdol.gov.

(iii) If the borrower or subgrantee carries out Brownfields cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the RLF Recipient shall ensure that the borrower or subgrantee inserts the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) RLF Recipients shall ensure that borrowers and subgrantees review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a a borrower or subgrantee's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the borrower or subgrantee has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the RLF Recipient shall require that the borrower or subgrantee either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The RLF Recipient must ensure that the borrower or subgrantee compensates the contractor for any increases in wages resulting from the use of DOL's revised wage determination. RLF Recipients may, but are not required to, provide additional loan or subgrant funds to the borrower or subgrantee for this purpose.

3. Contract and Subcontract Provisions

(a) The RLF Recipient shall ensure that borrowers and subgrantees insert in full in any contract in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to DB, the following labor standards provisions.

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the RLF Recipient obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. RLF Recipients shall require that the contractor and subcontractors include the name of the RLF Recipient employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The RLF Recipient, on behalf of EPA, shall require that contracts and subcontracts entered into by borrowers and subgrantees provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve, upon the request or the RLR Recipient an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the RLF Recipient and the borrower or subgrantee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the RLF Recipient to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the award official or will notify the award official within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, ***and the RLF Recipient and borrower or subgrantee*** do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the RLF Recipient shall provide a report on the disagreement which includes submissions by all interested parties to the EPA Award Official. The Award Official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the Award Official or will notify the Award Official within the 30-day period that additional time is necessary. The Award Official will direct that the RLF Recipient take appropriate action to implement the Administrator's determination.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(1) Withholding. The RLF Recipient, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause the borrower or subgrantee to withhold from the contractor under the affected contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or RLF Recipient take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.
(2) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is

enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the borrower or subgrantee and to the RLF Recipient who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the RLF Recipient for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the RLF Recipient.

(B) Each payroll submitted to the RLF Recipient shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, ***Recipient, borrower or subgrantee***, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment

as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended and 29 CFR part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), ***the RLF Recipient, borrower or subgrantee and EPA***, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provisions for Contracts in Excess of $100,000

(a) Contract Work Hours and Safety Standards Act. ***The RLF Recipient shall ensure that subgrantees and borrowers*** insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFF 4.6 . As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The RLF Recipient shall upon written request from the Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld by the borrower or subgrantee, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the RLF Recipient shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the RLF Recipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

Note: RLF Recipients may require that borrowers or subgrantees verify that contractors and subcontractors comply with DB provisions or conduct compliance verification itself. RLF Recipients must ensure that borrowers and subgrantees understand the compliance verification requirements and can interpret prevailing wage determinations

properly before placing the responsibility for compliance verification on borrowers or subgrantees. Moreover, the RLF Recipient remains accountable to EPA for ensuring that the borrowers' and subgrantees' contractors and subcontractors comply with DB.

(a). The RLF Recipient periodically interview, or require that borrowers or subgrantees interview, a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The RLF Recipient must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The RLF Recipient shall establish and follow, or ensure that borrowers or subgrrantees establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the RLF Recipient, or the borrower or subgrantee, must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. RLF Recipients, or borrowers or subgrantees, must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. RLF Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements that it uncovers itself or that is reported to it by a borrower or subgrantee. All interviews shall be conducted in confidence.

(c). The RLF Recipient shall conduct, or require that borrowers or subgrantees periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The RLF Recipient shall establish and follow or ensure that borrowers or subgrantees follow a spot check schedule based on an assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the RLF Recipient must spot check, or require that borrowers or subgrantees spot check, payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date of the contract or subcontract. RLF Recipients must conduct, or require that borrowers or subgrantees conduct, more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the RLF Recipient shall verify, or require that borrower or subgrantees verify, evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d). The RLF Recipient shall periodically review, or require that borrowers or subgrantees periodically review, contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) RLF Recipients must immediately report, or require that borrowers or subgrantees immediately report, potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at ***http://www.dol.gov/esa/contacts/whd/america2.htm***.

EXHIBIT D
ENVIRONMENTAL REPORTS

"Phase I ESA for the Northwood Redevelopment Area, Railway Easement East to Broadway, 25th Street South to Northwood Road"
Completed for TCRPC
Prepared by TBE Group, Inc.
September 2004

Phase II Environmental Site Assessment
Completed for TCRPC
Prepared by TBE Group, Inc.
January 2005

"Phase I ESA for Northwood Anchor Site, 3 Blocks (RR to Broadway Avenue)"
Completed for TCRPC and the West Palm Beach CRA
Prepared by TBE Group, Inc.
December 2006

Phase I ESA for 550-602 Northwood Road
Completed for TCRPC and the West Palm Beach CRA
Prepared by TBE Group, Inc.
December 2006

Phase I ESA: January 2008 Northwood Redevelopment Area (*Note: We started putting dates as part of the area because the boundaries were changing)*
Completed for TCRPC and the West Palm Beach CRA
Prepared by TBE Group, Inc.
January 2008

Preliminary Brownfields Site Assessment Report
Completed for TCRPC and the West Palm Beach CRA
Prepared by TBE Group, Inc.
May 2008

Supplemental Brownfields Site Assessment Report
Completed for TCRPC and the West Palm Beach CRA
Prepared by TBE Group, Inc.
September 2008

Preliminary Remedial Action Plan, Northwood Redevelopment Area, West of Broadway Avenue
Completed for TCRPC and the West Palm Beach CRA
Prepared by TBE Group, Inc.
September 2008

Combined Brownfields Site Assessment Report and Remedial Action Plan, Northwood Anchor Site
Completed for TCRPC and the West Palm Beach CRA
Prepared by TBE Group, Inc.
February 2009

Revised Brownfields Site Assessment Report and Remedial Action Plan, Northwood Anchor Site, 2401 Broadway Avenue
Completed for TCRPC
Prepared by Cardno TBE
May 2014

PALM BEACH COUNTY
BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM
PROMISSORY NOTE

Principal: $350,000

Date: December 14, 2015

RE: West Palm Beach Community Redevelopment Agency

FOR VALUE RECEIVED, the undersigned, **WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY** a public agency under Chapter 163, Part III, Florida Statutesduly authorized to transact business within the State of Florida, with an address of 401 Clematis St., West Palm Beach, FL 33401 ("**Borrower**"), in connection with a certain U.S. Environmental Protection Agency ("EPA") Revolving Loan Fund Program loan in the principal amount of THREE HUNDRED FIFTY THOUSAND & 00/100 DOLLARS ($350,000.00) (the "**Loan**"), promise(s) to pay to the order of **PALM BEACH COUNTY**, a political subdivision of the State of Florida, together with any other holder hereof ("**Holder**") with an address of 100 Australian Avenue, Suite 500, West Palm Beach, Florida 33406, or such other place as Holder may from time to time designate in writing, the principal sum of THREE HUNDRED FIFTY THOUSAND & 00/100 DOLLARS ($350,000.00) together with interest thereon (the **"Loan Amount**"), to be paid in lawful money of the United States of America, as follows:

1. This Note shall bear interest computed at the stated rate of three percent (3%) (the "**Rate**") on the outstanding balance of principal hereunder.

2. Repayment hereunder shall occur as follows: Commencing on the first day of the first month following the earlier of (a) the disbursement in full of the Loan Amount to Borrower or on behalf of Borrower, or (b) January 1, 2017; and continuing on the first day of each month thereafter, Borrower shall make principal and interest payments based on the ten (10) year amortization schedule established until November 30, 2025, at which time all principal, accrued interest, late fees and advances shall be due and payable (the "**Maturity Date**). On the Maturity Date, Borrower shall make a final payment and at which time all principal, accrued interest, late fees and advances shall be due and payable. Interest shall be calculated monthly pursuant to Section 1 above. The foregoing payments shall be made as referenced on Schedule A, attached hereto.

3. Borrower shall have the right of prepayment of all or any portion of the Loan without penalty or premium.

4. After maturity or acceleration, this Note shall bear interest at a rate of four percent (4%) in excess of the Rate until paid in full.

THIS NOTE is executed pursuant to the terms and conditions of that certain Loan Agreement dated of even date herewith between Borrower and Holder (the "Loan Agreement"), and is secured by Lender herein and in all other documents referenced hereunder,

including the Loan Agreement, the Mortgage Agreement, the Security Agreement, the Guaranty Agreement, , and all other documents required hereunder (collectively the "Loan Documents"). The foregoing and all other agreements, instruments and documents delivered in connection therewith and herewith are collectively referred to as the "Loan Documents."

THIS NOTE has been executed and delivered in, and is to be governed by and construed under the laws of, the State of Florida, as amended, except as modified by the laws and regulations of the United States of America.

Nothing contained herein, nor any transaction related hereto, shall be construed or so operate as to require the Borrower to pay interest at a greater rate than is now lawful in such case to contract for, or to make any payment, or to do any act contrary to ethical law. Should any interest or other charges paid by the Borrower, or parties liable for the payment of this Note, in connection with the Loan Documents result in the computation or earning of interest in excess of the maximum rate of interest that is legally permitted under applicable law, any and all such excess shall be and the same is hereby waived by the Holder, and any and all such excess shall be automatically credited against and in reduction of the balance due under this indebtedness, and a portion of said excess which exceeds the balance due under this indebtedness shall be paid by the Holder to the Borrower.

Holder shall have the right to declare the total unpaid balance hereof to be immediately due and payable in advance of the Maturity Date upon the failure of the Borrower to pay when due or within the applicable grace period any payment of principal or interest or other amount due hereunder; or upon the occurrence of an Event of Default pursuant to any other Loan Documents now or hereafter evidencing, securing or guaranteeing payment of this Note. Exercise of this right shall be without notice to Borrower or to any other person liable for payment hereof, notice of such exercise being hereby expressly waived.

Any payment hereunder not paid when due or within the applicable grace period (at maturity, upon acceleration or otherwise) shall bear interest at the highest rate allowed by applicable law from the due date until paid.

Provided Holder has not accelerated this Note as provided herein, Borrower shall pay Holder a late charge of five (5%) percent of any required payment which is not received by Holder within ten (10) days of when said payment is due. The parties agree that said charge is a fair and reasonable charge for the late payment and shall not be deemed a penalty.

In the event that this Note is collected by law or through attorneys at law, or under advice therefrom, Borrower agrees, to pay all costs of collection including reasonable attorneys' fees, whether or not suit is brought, and whether incurred in connection with collection, trial, appeal, bankruptcy or other creditors proceedings or otherwise.

Acceptance of partial payments or payments marked "payment in full" or "in satisfaction" or words to similar effect shall not affect the duty of Borrower to pay all obligations due hereunder, and shall not affect the right of Holder to pursue the remedies available to it under any Loan Documents.

By executing this agreement, Lender and Borrower concur that the remaining Fifty Thousand Dollars ($50,000) (the "Forgivable Loan Amount") of this Loan shall be forgiven provided the following conditions have been met:

a. Three Hundred Thousand Dollars ($300,0000) of principal of this loan has been fully and timely repaid, together with interest and any other costs associated with collection on, or legal filings related to, the Loan;

b. The Remediation, as such term is defined in the Loan Agreement, shall have been completed in all material respects to the satisfaction of Lender;

c. Lender has received a release from further obligation related to the original EPA Funding, and provided a close-out documentation by EPA; and

d. All other provisions of this Agreement have been followed, and no Event of Default under this Note or any Loan Document has occurred and continues upon such date.

Any notice to be given or to be served upon any party hereto in connection with this Note, whether required or otherwise, may be given in any manner permitted under the Loan Documents.

THE UNDERSIGNED jointly and severally waive(s) presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note and agree(s) to perform and comply with each of the covenants, conditions, provisions and agreements of any of the undersigned as contained in every instrument now evidencing or securing said indebtedness. No extension of the time for the payment of this Note shall operate to release, discharge, modify, change or affect the original liability under this Note, either in whole or in part of any of the undersigned not a party to such agreement.

THE UNDERSIGNED further jointly and severally hereby waive(s), to the extent authorized by law, any and all homestead and other exemption rights which otherwise would apply to the debt evidenced by this Note.

BORROWER WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS NOTE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR HOLDER'S EXTENDING CREDIT TO BORROWER AND NO WAIVER OR LIMITATION OF HOLDER'S RIGHTS UNDER THIS PARAGRAPH SHALL BE EFFECTIVE UNLESS IN WRITING AND MANUALLY SIGNED ON HOLDER'S BEHALF.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, this Promissory Note has been duly executed by the undersigned, as of the date set forth above.

BORROWER:

Attest:

West Palm Beach Community Redevelopment Agency;
a public agency under Chapter 163, Florida Statute

CRA Secretary

By: _____
Geraldine Muoio, Chair

CRA Counsel's Office
Approved as to form and legality
By: _____

2659525v4

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

The foregoing Promissory Note was acknowledged before me this 14 day of December, 2015, by Geraldine Muoio, Chair of the West Palm Beach Community Redevelopment Agency, who is personally known to me, as an act of the Agency.

Signature: _____
Notary Public – State of Florida

Print Name: Jomekeyia L. McNeil

(NOTARY SEAL)

JOMEKEYIA L. MCNEIL
Commission # FF 162359
Expires January 5, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

2659525v4

SCHEDULE A

AMORTIZATION SCHEDULE

No.	Beginning Balance	Payment	Principal	Interest	Ending Balance
1	$ 350,000.00	$ 3,379.63	$ 2,504.63	$ 875.00	$ 347,495.37
2	$ 347,495.37	$ 3,379.63	$ 2,510.89	$ 868.73	$ 344,984.49
3	$ 344,984.49	$ 3,379.63	$ 2,517.16	$ 862.46	$ 342,467.32
4	$ 342,467.32	$ 3,379.63	$ 2,523.46	$ 856.16	$ 339,943.86
5	$ 339,943.86	$ 3,379.63	$ 2,529.77	$ 849.85	$ 337,414.10
6	$ 337,414.10	$ 3,379.63	$ 2,536.09	$ 843.53	$ 334,878.01
7	$ 334,878.01	$ 3,379.63	$ 2,542.43	$ 837.19	$ 332,335.58
8	$ 332,335.58	$ 3,379.63	$ 2,548.79	$ 830.83	$ 329,786.79
9	$ 329,786.79	$ 3,379.63	$ 2,555.16	$ 824.46	$ 327,231.63
10	$ 327,231.63	$ 3,379.63	$ 2,561.55	$ 818.07	$ 324,670.08
11	$ 324,670.08	$ 3,379.63	$ 2,567.95	$ 811.67	$ 322,102.13
12	$ 322,102.13	$ 3,379.63	$ 2,574.37	$ 805.25	$ 319,527.76
13	$ 319,527.76	$ 3,379.63	$ 2,580.81	$ 798.81	$ 316,946.95
14	$ 316,946.95	$ 3,379.63	$ 2,587.26	$ 792.36	$ 314,359.70
15	$ 314,359.70	$ 3,379.63	$ 2,593.73	$ 785.89	$ 311,765.97
16	$ 311,765.97	$ 3,379.63	$ 2,600.21	$ 779.41	$ 309,165.76
17	$ 309,165.76	$ 3,379.63	$ 2,606.71	$ 772.91	$ 306,559.05
18	$ 306,559.05	$ 3,379.63	$ 2,613.23	$ 766.39	$ 303,945.82
19	$ 303,945.82	$ 3,379.63	$ 2,619.76	$ 759.86	$ 301,326.06
20	$ 301,326.06	$ 3,379.63	$ 2,626.31	$ 753.31	$ 298,699.74
21	$ 298,699.74	$ 3,379.63	$ 2,632.88	$ 746.74	$ 296,066.87
22	$ 296,066.87	$ 3,379.63	$ 2,639.46	$ 740.16	$ 293,427.41
23	$ 293,427.41	$ 3,379.63	$ 2,646.06	$ 733.56	$ 290,781.35
24	$ 290,781.35	$ 3,379.63	$ 2,652.67	$ 726.95	$ 288,128.68

25	Dec-17	$ 288,128.68	$ 3,379.63	$ 2,659.30	$ 720.32	$ 285,469.37
26	Jan-18	$ 285,469.37	$ 3,379.63	$ 2,665.95	$ 713.67	$ 282,803.42
27	Feb-18	$ 282,803.42	$ 3,379.63	$ 2,672.62	$ 707.00	$ 280,130.80
28	Mar-18	$ 280,130.80	$ 3,379.63	$ 2,679.30	$ 700.32	$ 277,451.51
29	Apr-18	$ 277,451.51	$ 3,379.63	$ 2,686.00	$ 693.62	$ 274,765.51
30	May-18	$ 274,765.51	$ 3,379.63	$ 2,692.71	$ 686.91	$ 272,072.80
31	Jun-18	$ 272,072.80	$ 3,379.63	$ 2,699.44	$ 680.18	$ 269,373.35
32	Jul-18	$ 269,373.35	$ 3,379.63	$ 2,706.19	$ 673.43	$ 266,667.16
33	Aug-18	$ 266,667.16	$ 3,379.63	$ 2,712.96	$ 666.66	$ 263,954.20
34	Sep-18	$ 263,954.20	$ 3,379.63	$ 2,719.74	$ 659.88	$ 261,234.46
35	Oct-18	$ 261,234.46	$ 3,379.63	$ 2,726.54	$ 653.08	$ 258,507.92
36	Nov-18	$ 258,507.92	$ 3,379.63	$ 2,733.36	$ 646.26	$ 255,774.56
37	Dec-18	$ 255,774.56	$ 3,379.63	$ 2,740.19	$ 639.43	$ 253,034.37
38	Jan-19	$ 253,034.37	$ 3,379.63	$ 2,747.04	$ 632.58	$ 250,287.33
39	Feb-19	$ 250,287.33	$ 3,379.63	$ 2,753.91	$ 625.71	$ 247,533.43
40	Mar-19	$ 247,533.43	$ 3,379.63	$ 2,760.79	$ 618.83	$ 244,772.63
41	Apr-19	$ 244,772.63	$ 3,379.63	$ 2,767.69	$ 611.93	$ 242,004.94
42	May-19	$ 242,004.94	$ 3,379.63	$ 2,774.61	$ 605.01	$ 239,230.33
43	Jun-19	$ 239,230.33	$ 3,379.63	$ 2,781.55	$ 598.07	$ 236,448.78
44	Jul-19	$ 236,448.78	$ 3,379.63	$ 2,788.50	$ 591.12	$ 233,660.27
45	Aug-19	$ 233,660.27	$ 3,379.63	$ 2,795.48	$ 584.15	$ 230,864.80
46	Sep-19	$ 230,864.80	$ 3,379.63	$ 2,802.46	$ 577.16	$ 228,062.33
47	Oct-19	$ 228,062.33	$ 3,379.63	$ 2,809.47	$ 570.15	$ 225,252.86
48	Nov-19	$ 225,252.86	$ 3,379.63	$ 2,816.49	$ 563.13	$ 222,436.37

49	Dec-19	$ 222,436.37	$ 3,379.63	$ 2,823.54	$ 556.09	$ 219,612.83
50	Jan-20	$ 219,612.83	$ 3,379.63	$ 2,830.59	$ 549.03	$ 216,782.24
51	Feb-20	$ 216,782.24	$ 3,379.63	$ 2,837.67	$ 541.95	$ 213,944.57
52	Mar-20	$ 213,944.57	$ 3,379.63	$ 2,844.76	$ 534.86	$ 211,099.80
53	Apr-20	$ 211,099.80	$ 3,379.63	$ 2,851.88	$ 527.74	$ 208,247.93
54	May-20	$ 208,247.93	$ 3,379.63	$ 2,859.01	$ 520.61	$ 205,388.92
55	Jun-20	$ 205,388.92	$ 3,379.63	$ 2,866.15	$ 513.47	$ 202,522.77
56	Jul-20	$ 202,522.77	$ 3,379.63	$ 2,873.32	$ 506.30	$ 199,649.45
57	Aug-20	$ 199,649.45	$ 3,379.63	$ 2,880.50	$ 499.12	$ 196,768.95
58	Sep-20	$ 196,768.95	$ 3,379.63	$ 2,887.70	$ 491.92	$ 193,881.24
59	Oct-20	$ 193,881.24	$ 3,379.63	$ 2,894.92	$ 484.70	$ 190,986.32
60	Nov-20	$ 190,986.32	$ 3,379.63	$ 2,902.16	$ 477.46	$ 188,084.16
61	Dec-20	$ 188,084.16	$ 3,379.63	$ 2,909.42	$ 470.21	$ 185,174.74
62	Jan-21	$ 185,174.74	$ 3,379.63	$ 2,916.69	$ 462.93	$ 182,258.05
63	Feb-21	$ 182,258.05	$ 3,379.63	$ 2,923.98	$ 455.64	$ 179,334.07
64	Mar-21	$ 179,334.07	$ 3,379.63	$ 2,931.29	$ 448.33	$ 176,402.78
65	Apr-21	$ 176,402.78	$ 3,379.63	$ 2,938.62	$ 441.00	$ 173,464.16
66	May-21	$ 173,464.16	$ 3,379.63	$ 2,945.97	$ 433.66	$ 170,518.20
67	Jun-21	$ 170,518.20	$ 3,379.63	$ 2,953.33	$ 426.29	$ 167,564.87
68	Jul-21	$ 167,564.87	$ 3,379.63	$ 2,960.71	$ 418.91	$ 164,604.15
69	Aug-21	$ 164,604.15	$ 3,379.63	$ 2,968.12	$ 411.51	$ 161,636.04
70	Sep-21	$ 161,636.04	$ 3,379.63	$ 2,975.54	$ 404.09	$ 158,660.50
71	Oct-21	$ 158,660.50	$ 3,379.63	$ 2,982.97	$ 396.65	$ 155,677.53
72	Nov-21	$ 155,677.53	$ 3,379.63	$ 2,990.43	$ 389.19	$ 152,687.09
73	Dec-21	$ 152,687.09	$ 3,379.63	$ 2,997.91	$ 381.71	$ 149,689.19
74	Jan-22	$ 149,689.19	$ 3,379.63	$ 3,005.40	$ 374.22	$ 146,683.78
75	Feb-22	$ 146,683.78	$ 3,379.63	$ 3,012.92	$ 366.70	$ 143,670.87
76	Mar-22	$ 143,670.87	$ 3,379.63	$ 3,020.45	$ 359.17	$ 140,650.42
77	Apr-22	$ 140,650.42	$ 3,379.63	$ 3,028.00	$ 351.62	$ 137,622.42
78	May-22	$ 137,622.42	$ 3,379.63	$ 3,035.57	$ 344.05	$ 134,586.85
79	Jun-22	$ 134,586.85	$ 3,379.63	$ 3,043.16	$ 336.46	$ 131,543.69
80	Jul-22	$ 131,543.69	$ 3,379.63	$ 3,050.77	$ 328.85	$ 128,492.92
81	Aug-22	$ 128,492.92	$ 3,379.63	$ 3,058.39	$ 321.23	$ 125,434.53
82	Sep-22	$ 125,434.53	$ 3,379.63	$ 3,066.04	$ 313.58	$ 122,368.49
83	Oct-22	$ 122,368.49	$ 3,379.63	$ 3,073.70	$ 305.92	$ 119,294.78
84	Nov-22	$ 119,294.78	$ 3,379.63	$ 3,081.39	$ 298.23	$ 116,213.39

85	Dec-22	$ 116,213.39	$ 3,379.63	$ 3,089.09	$ 290.53	$ 113,124.30
86	Jan-23	$ 113,124.30	$ 3,379.63	$ 3,096.82	$ 282.81	$ 110,027.49
87	Feb-23	$ 110,027.49	$ 3,379.63	$ 3,104.56	$ 275.06	$ 106,922.93
88	Mar-23	$ 106,922.93	$ 3,379.63	$ 3,112.32	$ 267.30	$ 103,810.61
89	Apr-23	$ 103,810.61	$ 3,379.63	$ 3,120.10	$ 259.52	$ 100,690.51
90	May-23	$ 100,690.51	$ 3,379.63	$ 3,127.90	$ 251.72	$ 97,562.61
91	Jun-23	$ 97,562.61	$ 3,379.63	$ 3,135.72	$ 243.90	$ 94,426.89
92	Jul-23	$ 94,426.89	$ 3,379.63	$ 3,143.56	$ 236.06	$ 91,283.33
93	Aug-23	$ 91,283.33	$ 3,379.63	$ 3,151.42	$ 228.20	$ 88,131.91
94	Sep-23	$ 88,131.91	$ 3,379.63	$ 3,159.30	$ 220.32	$ 84,972.62
95	Oct-23	$ 84,972.62	$ 3,379.63	$ 3,167.19	$ 212.43	$ 81,805.42
96	Nov-23	$ 81,805.42	$ 3,379.63	$ 3,175.11	$ 204.51	$ 78,630.31
97	Dec-23	$ 78,630.31	$ 3,379.63	$ 3,183.05	$ 196.57	$ 75,447.26
98	Jan-24	$ 75,447.26	$ 3,379.63	$ 3,191.01	$ 188.61	$ 72,256.25
99	Feb-24	$ 72,256.25	$ 3,379.63	$ 3,198.99	$ 180.64	$ 69,057.27
100	Mar-24	$ 69,057.27	$ 3,379.63	$ 3,206.98	$ 172.64	$ 65,850.28
101	Apr-24	$ 65,850.28	$ 3,379.63	$ 3,215.00	$ 164.62	$ 62,635.28
102	May-24	$ 62,635.28	$ 3,379.63	$ 3,223.04	$ 156.58	$ 59,412.25
103	Jun-24	$ 59,412.25	$ 3,379.63	$ 3,231.10	$ 148.53	$ 56,181.15
104	Jul-24	$ 56,181.15	$ 3,379.63	$ 3,239.17	$ 140.45	$ 52,941.98
105	Aug-24	$ 52,941.98	$ 3,379.63	$ 3,247.27	$ 132.35	$ 49,694.71
106	Sep-24	$ 49,694.71	$ 3,379.63	$ 3,255.39	$ 124.23	$ 46,439.32
107	Oct-24	$ 46,439.32	$ 3,379.63	$ 3,263.53	$ 116.09	$ 43,175.79
108	Nov-24	$ 43,175.79	$ 3,379.63	$ 3,271.69	$ 107.93	$ 39,904.10
109	Dec-24	$ 39,904.10	$ 3,379.63	$ 3,279.87	$ 99.76	$ 36,624.24
110	Jan-25	$ 36,624.24	$ 3,379.63	$ 3,288.07	$ 91.56	$ 33,336.17
111	Feb-25	$ 33,336.17	$ 3,379.63	$ 3,296.29	$ 83.34	$ 30,039.89
112	Mar-25	$ 30,039.89	$ 3,379.63	$ 3,304.53	$ 75.09	$ 26,735.36
113	Apr-25	$ 26,735.36	$ 3,379.63	$ 3,312.79	$ 66.83	$ 23,422.57
114	May-25	$ 23,422.57	$ 3,379.63	$ 3,321.07	$ 58.55	$ 20,101.50
115	Jun-25	$ 20,101.50	$ 3,379.63	$ 3,329.37	$ 50.25	$ 16,772.13
116	Jul-25	$ 16,772.13	$ 3,379.63	$ 3,337.70	$ 41.93	$ 13,434.43
117	Aug-25	$ 13,434.43	$ 3,379.63	$ 3,346.04	$ 33.58	$ 10,088.39
118	Sep-25	$ 10,088.39	$ 3,379.63	$ 3,354.41	$ 25.22	$ 6,733.99
119	Oct-25	$ 6,733.99	$ 3,379.63	$ 3,362.79	$ 16.83	$ 3,371.20
120	Nov-25	$ 3,371.20	$ 3,379.63	$ 3,371.20	$ 8.42	$ 0.00

GUARANTY AGREEMENT

WPB No. 16590
WPB Res. No. 336-15

FOR VALUE RECEIVED and to induce PALM BEACH COUNTY, FLORIDA, a political subdivision of the State of Florida, with an address of ("Lender") to make a loan in the total principal amount of Three Hundred Fifty Thousand & 00/100 Dollars ($350,000.00) to West Palm Beach Community Redevelopment Agency , a body corporate and politic organized pursuant to Chapter 163, Florida Statute with a business address of 401 Clematis St., West Palm Beach, FL 33401 (the "Borrower"), the CITY OF WEST PALM BEACH, a municipal corporation of the State of Florida, having a business address of 401 Clematis St., West Palm Beach, FL 33401 ("Guarantor") hereby agrees, as follows:

(a) To irrevocably and unconditionally guarantee to Lender, its successors and assigns the due performance and prompt payment, whether at maturity or by acceleration or otherwise, of all of the present and future debts, liabilities and/or obligations of the Borrower to Lender (the "Guaranteed Obligations") under and pursuant to that certain Loan Agreement dated on even date herewith between Borrower and Lender (the "Loan Agreement"), and as evidenced by that certain Promissory Note dated on even date executed by Borrower and held by Lender (the "Note"), and all other documents executed in connection therewith (collectively the "Loan Documents"), together with interest on the Guaranteed Obligations, and all legal and other costs or expenses paid or incurred by Lender in the enforcement thereof against the Borrower or Guarantor. The Guaranteed Obligations shall include, without limitation, (i) full payment of all sums due under the Note, as and when the same shall be due thereunder, (ii) the obligations of Borrower as set forth in the Cleanup Agreement, (iii) the obligations of Borrower as set forth in the Mortgage dated the date hereof, and (iv) the Borrower's due and punctual performance and observation of all other terms, covenants and conditions of the Loan Documents, whether according to the present terms thereof, at any earlier or accelerated date or dates as provided therein, or pursuant to any extension of time or to any change or changes in the terms, covenants, or conditions thereof now or hereafter made or granted.

(b) To the extent and limits provided in Florida Statutes Section 768.28, to irrevocably and unconditionally indemnify Lender, , against loss, cost or expense caused by the assertion by the Borrower of any defense to the Guaranteed Obligations or other obligations or the assertion by Guarantor of any defense to Guarantor's obligations hereunder. The parties acknowledge that the foregoing shall not constitute an agreement by the Borrower to indemnify the Lender for the Lender's actions or negligence, nor a waiver of sovereign immunity, nor a waiver of any defense the parties may have under such statute, nor as consent to be sued by third parties.

1. This is a guaranty of payment and performance, and not of collection, and as such Guarantor waives any right or claim of right to cause a marshaling of the Borrower's assets or to cause Lender to proceed against any of the security for the Guaranteed Obligations or for the obligations guaranteed thereby before proceeding against Guarantor. To the extent that this guaranty is a guaranty of payment, this Guaranty shall be of the Guarantor's full faith and credit.

2. Guarantor hereby unconditionally guarantees timely lien-free completion of the work to which reference is made in the Cleanup Agreement (as such term is defined in the Loan Agreement) pursuant to and subject to the stipulations, agreements, conditions and covenants contained and set forth in the Cleanup Agreement.

3. Guarantor agrees that liability hereunder shall be unaffected by (i) any amendment or modification of the provisions of the Loan Agreement, Note or any instrument made to or with Guarantor by the Borrower or other persons, including but not limited to the extension of the time of any payment; (ii) any sale, assignment or foreclosure of any of the property securing Guaranteed Obligations; (iii) any exculpatory provision in any instruments limiting Lender's recourse to property encumbered by the Guaranteed Obligations or to any other security, or limiting Lender's rights to a deficiency judgment against the Borrower; (iv) the release of the Borrower or any other persons from performance or observance of any of the agreements, covenants, terms or conditions contained in any of said instruments by operation of law or otherwise; (v) the release in whole or in part of any security for the Guaranteed Obligations; or (vi) Lender's failure to file any UCC financing statements (or Lender's improper recording or filing of any thereof) or to otherwise perfect, protect, secure or insure any security interest or lien given as security for the Guaranteed Obligations; and in any such case, whether with or without notice to Guarantor and with or without consideration.

4. Guarantor fully understands that this Guaranty is a continuing Guaranty; that it applies to all future debts, liabilities and obligations of the Borrower of or related to the Guaranteed Obligations, as well as those now outstanding and to those made on or about the date of this Guaranty. Guarantor has the right to terminate the continuing nature of this Guaranty at any time upon written notification to Lender by certified or registered mail, return receipt requested. Termination shall apply only to debts incurred by the Borrower after written notice of termination is received by Lender and shall not apply to or affect my responsibility under this Guaranty for all of the Guaranteed Obligations existing as of the date the notice is received.

5. Guarantor agrees that the Lender, in its sole and absolute discretion, without notice to or further assent of the Guarantors and without in any way releasing, affecting, or impairing the obligations and liabilities of the Guarantors hereunder, may deal with other parties as if this Guaranty were not in effect. Without limiting the generality of the foregoing, the Lender may: (i) waive compliance with, or any defaults under, or grant any other indulgences with respect to, the Guaranteed Obligations, (ii) modify, amend, or change any provisions of the Guaranteed Obligations, (iii) grant extensions or renewals of (or with respect to) the Guaranteed Obligations or effect any release, compromise, or settlement in connection with the Guaranteed Obligations, (iv) agree to the substitution, exchange, release, or other disposition of all or any part of any collateral, (v) make advances for the purpose of performing any term or covenant contained in the Guaranteed Obligations with respect to which other parties are in default, and (vi) assign or otherwise transfer the Guaranteed Obligations or this Guaranty or any interest therein or herein.

6. Guarantor agrees that any payments required to be made by the Borrower hereunder shall become due on demand immediately upon the happening of any Event of Default under the Loan Documents, and Guarantor waives (i) presentment and demand for payment, notice of dishonor, and protest of non-payment, (ii) notice of acceptance of this Guaranty, (iii) notice of any default hereunder or under any Guaranteed Obligation and of all indulgences, (iv) demand for observance or performance of, or enforcement of, any terms of provisions of this Guaranty or

any Guaranteed Obligation, and (v) all other notices and demands otherwise required by law which the Guarantor may lawfully waive.

7. Notwithstanding anything to the contrary contained in this Guaranty, until such time as the Guaranteed Obligations are satisfied in full, the Guarantor hereby unconditionally and irrevocably waives, releases and abrogates (to the extent permitted by law) any and all rights they may now or hereafter have under any agreement, at law or in equity (including, without limitation, any law subrogating Guarantor to the rights of the the Lender), to assert any claim against or seek contribution, indemnification or any other form of reimbursement from the Borrower or any other party liable for payment of any or all of the Guaranteed Obligations for any payment made by the Guarantor under or in connection with this Guaranty or otherwise. Guarantor agrees it will not exercise, until such time as the Guaranteed Obligations are satisfied in full (a) any rights which such Guarantor either may acquire by way of subrogation under this Guaranty or any other guaranty, by any payment made hereunder or otherwise, (b) any right of contribution any Guarantor may have against any other Guarantor of the Guaranteed Obligations, (c) any right to enforce any remedy which any Guarantor now has or may hereafter have against the Borrower or (d) any benefit of, and any right to participate in, any security now or hereafter held by the Administrative Agent or the Lender.

8. Guarantor further agrees that, to the extent the waiver of its rights of subrogation and contribution as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation any Guarantor may have against the Borrower or against any collateral or security, and any rights of contribution any Guarantor may have against any other guarantor, shall be junior and subordinate to any rights the Lender or any Lender may have in any such collateral or security, and to any right the the Lender may have against such other guarantor. The Lender may use, sell or dispose of any item of collateral or security as it sees fit without regard to any subrogation rights any Guarantor may have, and upon any such disposition or sale any rights of subrogation any Guarantor may have shall terminate. If any amount shall be paid to any Guarantor on account of such subrogation rights any time when the Loan shall not have been paid in full, such amount shall be held in trust for and shall forthwith be paid over to the Administrative Agent to be credited and applied against the Loan balance, whether matured or unmatured, in accordance with the terms of the Loan Documents.

9. No delay on Lender's part in exercising any right, power or privilege under any instrument securing the Guaranteed Obligations or this Guaranty, or any other document made to or with Lender by the Borrower shall operate as a waiver of any such privilege, power or right.

10. This Guaranty cannot be modified orally. This Guaranty is a personal obligation of Guarantor. Guarantor has been advised by counsel of our choosing as to the nature and consequences of the liabilities undertaken pursuant to the terms hereof.

11. Guarantor represents, warrants and covenants:

(a) that (i) the Guarantor will derive substantial benefit, directly or indirectly, from the Loan and from the making of this Guaranty by the Guarantor; (ii) the Guarantor is familiar with, and has independently reviewed books and records regarding, the financial condition of the Borrower and is familiar with the value of any and all collateral intended to be created as a security for the Guaranteed Obligations; however, the Guarantor is not relying on such financial condition or the collateral as an inducement to enter this Guaranty; (iii) this Guaranty is duly

authorized and valid, and is binding upon and enforceable against the Guarantor; (iv) the Guarantor is not, and the execution, delivery and performance by the Guarantor of this Guaranty will not cause the Guarantor to be, in violation of or in default with respect to any law or in default (or at risk of acceleration of indebtedness) under any agreement or restriction by which the Guarantor is bound or affected; (v) except as disclosed in writing to the Lender on or prior to the date of the Guaranty, there is no litigation pending or, to the knowledge of the Guarantor, threatened before or by any tribunal against or affecting the Guarantor; (vi) the Guarantor acknowledges and agrees that the Guarantor may be required to perform the Guaranteed Obligations in full without assistance or support any other person or entity; (vii) the Guarantor fully understands the provisions contained in the Loan Documents; and (viii) the Guarantor will indemnify the Lender from any loss, cost or expense as a result of any representation or warranty of the Guarantor being false, incorrect, incomplete or misleading in any material respect;

(b) neither the Lender nor any other party has made any representation, warranty or statement to the Guarantor in order to induce the Guarantor to execute this Guaranty; and

(c) all representations and warranties made by the Guarantor herein shall survive the execution hereof.

15. Legal Proceedings.

(a) The Guarantor agrees that if this Guaranty is enforced by suit or otherwise, the Guarantor will reimburse the Lender for all reasonable expenses it incurs in that connection, including but not limited to attorneys' fees.

(b) If the Lender is required to rescind or refund any payment received on account of the Guaranteed Obligations as a result of a determination that such payment constituted a preference or a fraudulent conveyance under the bankruptcy laws or for any similar reason (a "Rescinded Payment"), then, to the extent permitted by law, the Guarantor's liability to the Lender shall continue in full force and effect, or the Guarantor's liability to the Lender shall be reinstated, as the case may be, as if the Rescinded Payment had not been received by the Lender.

(c) **Service of Process**. GUARANTOR HEREBY IRREVOCABLY CONSENTS TO THE JURISDICTION OF THE COURTS OF THE COUNTY OF PALM BEACH, FLORIDA IN CONNECTION WITH ANY PROCEEDING ARISING OUT OF (OR RELATING TO) THE GUARANTY, OR ANY DOCUMENT DELIVERED PURSUANT TO THE GUARANTY OR ANY OF THE LOAN DOCUMENTS. IN ANY LITIGATION, GUARANTOR WAIVES PERSONAL SERVICE OF ANY SUMMONS, COMPLAINT, OR OTHER PROCESS, AND AGREES THAT SERVICE MAY BE MADE BY CERTIFIED OR REGISTERED MAIL DIRECTED TO SUCH GUARANTOR.

(d) **Waiver of Jury Trial**. GUARANTOR HEREBY (I) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY A JURY, AND (II) WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN, KNOWINGLY AND VOLUNTARILY, BY GUARANTOR, AND THIS WAIVER IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE. THE LENDER IS

HEREBY AUTHORIZED AND REQUESTED TO SUBMIT THIS AGREEMENT TO ANY COURT HAVING JURISDICTION OVER THE SUBJECT MATTER AND THE PARTIES HERETO, SO AS TO SERVE AS CONCLUSIVE EVIDENCE OF THE GUARANTOR'S HEREIN CONTAINED WAIVER OF THE RIGHT TO TRIAL BY JURY. FURTHER, GUARANTOR HEREBY CERTIFIES THAT NO REPRESENTATIVE OR AGENT OF THE LENDER (INCLUDING THE LENDER'S COUNSEL) HAS REPRESENTED, EXPRESSLY OR OTHERWISE, TO THE GUARANTOR THAT THE LENDER WILL NOT SEEK TO ENFORCE THIS WAIVER OF RIGHT TO TRIAL BY JURY PROVISION.

(e) Guarantor, to the extent permitted by law, waives the right to interpose any setoff, recoupment, counterclaim, or cross-claim in connection with any action to enforce collection of this Guaranty. If the Guarantor claims any such rights, it shall assert them only in a separate action. The separate action shall not be consolidated with any action brought by the Lender to enforce its rights under any of the Loan Documents. This provision shall not apply to counterclaims which are compulsory under the applicable rules of civil procedure.

(f) If any party defaults with respect to any Guaranteed Obligation, or if the Lender accelerates the Guaranteed Obligations, the Lender shall have the right, without prior notice to the Guarantor, to set off, appropriate, and apply against any or all Guaranteed Obligations, any moneys, securities, or other property of the Guarantor then held or received by the Lender or in transit to the Lender, all of the Guarantor's deposits, balances (general or special), sums, and credits with the Lender, and all claims of the Guarantor against the Lender.

16. Miscellaneous.

(a) The rights and duties of the parties under this Guaranty shall be governed by the laws of the State of Florida (without regard to its principles of conflicts of laws).

(b) Any agreement hereafter made shall be ineffective to change or modify this Guaranty, in whole or in part, unless such an agreement is in writing and signed by the party against whom enforcement of the change or modification is sought.

(c) No waiver by the Lender of any breach of any term or covenant contained in this Guaranty shall operate as a waiver of such term or covenant itself, or of any subsequent breach. No delay or omission by the Lender in exercising any such right or remedy shall operate as a waiver. No waiver of any rights and remedies shall be deemed made by the Lender unless in writing and duly signed by the Lender. Any such written waiver shall apply only to the particular instance involved and shall not impair the further exercise of such right or remedy or of any other right or remedy of the Lender and no single or partial exercise of any right or remedy shall preclude other or further exercise of such right or remedy or any other right or remedy.

(d) No right or remedy herein conferred upon the Lender is intended to be exclusive of any other right or remedy set forth in this Guaranty or in any instrument or document delivered in connection with or pursuant to this Guaranty, and every such right or remedy shall be cumulative and shall be in addition to every other such right or remedy contained herein and therein or now or hereafter existing at law, in equity, by statute, or otherwise.

(e) This Guaranty shall be binding upon the Guarantor and its heirs, successors and assigns, and shall inure to the benefit of the Lender and its successors and assigns. The Guarantor may not assign this Guaranty without the prior written consent of Lender.

(f) Any notice or other communication required or permitted to be given hereunder shall be in writing, and shall be delivered to the parties at the addresses set forth above (or to such other addresses as the parties may specify by due notice to the others). Notices or other communications given by certified mail, return receipt requested, postage prepaid, shall be deemed given three (3) days after the date of mailing. Notices or other communications given by Federal Express or another nationally recognized overnight courier service shall be deemed to be given on the following Business Day. Notices or other communications sent in any other manner shall be deemed given only when actually received.

(g) The captions of the various sections and subsections of this Guaranty have been inserted only for the purposes of convenience; such captions are not a part of this Guaranty and shall not be deemed in any manner to modify, explain, enlarge or restrict any of the provisions of this Guaranty.

(h) The invalidity or unenforceability of any provision of this Guaranty shall not affect or impair the validity or enforceability of any other provision.

(i) If the Guarantor fails to perform timely any of their obligations under this Guaranty, the Lender shall have the right (but not the obligation) to perform them. The Lender's performance shall be for the account of the Guarantor and at the Guarantor's expense and risk.

(j) If the Lender incurs or spends any amounts to perform any of the Guarantor's obligations under this Guaranty, all such amounts (including reasonable attorneys' fees), together with interest from the date the amount is advanced until the date it is repaid, at the highest rate set forth in the Loan Documents, shall be added to the Guaranteed Obligations, and shall be repaid by the Guarantor to the Lender on demand.

(k) This Guaranty is continuing in nature, and obligates the Guarantor with respect to Guaranteed Obligations presently in existence as well as Guaranteed Obligations that will first be created in the future. The Lender may rely on the continuing nature of this Guaranty.

(l) Capitalized terms used but not defined herein shall have the same meaning herein as in the Loan Agreement.

SIGNATURE PAGE IMMEDIATELY FOLLOWS

IN WITNESS WHEREOF, Guarantor has executed this Guaranty Agreement on the 14 day of December, 2015.

Signed, sealed and delivered
in the presence of:

GUARANTOR:

City of West Palm Beach,
a municipal corporation of the State of Florida

By: _____
City Clerk

By: _____
Geraldine Muoio, Mayor

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: _____

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

The foregoing Guaranty was acknowledged before me this 14 day of December, 2015, by Geraldine Muoio, Mayor of the City of West Palm Beach, who is personally known to me, as an act of the City.

JOMEKEYIA L. MCNEIL
Commission # FF 162359
Expires January 5, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

Signature: _____
Notary Public – State of Florida

Print Name: Jomekeyia L. McNeil

(NOTARY SEAL)

FURTHER ASSURANCES & ERRORS AND OMISSIONS STATEMENT

WHEREAS, West Palm Beach Community Redevelopment Agency("Borrower") has applied to Palm Beach County ("Lender") for a certain Brownfield Redevelopment Loan Program Fund Loan in the principal amount of $350,000.00 (the "Loan Amount") and, in accordance with a Loan Agreement dated of even date herewith, Borrower has executed and delivered a certain Promissory Note of even date herewith, in the principal sum of the Loan Amount made payable to the order of Lender (the "Note");

WHEREAS, the Loan is guaranteed by the undersigned guarantor the City of West Palm Beach (the "Guarantor", together with the Borrower, the "Obligors") pursuant to that certain guaranty agreement dated on even date herewith and in favor of Lender (the "Guaranty");

NOW THEREFORE; the Obligors jointly and severally covenant and agree, as follows:

1. To execute such other documents and assurances as legal counsel to Palm Beach County may require in order to ensure compliance with the Secretary of Environmental Protection Agency's requirements and procedures in connection with the closing of the Loan; and

2. To execute all documents necessary to correct any errors or omissions in the documents executed this day in connection with the Loan.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the parties hereto have caused this Further Assurances & Errors and Omissions Statement to be executed as of the day and year first above written.

Attest:

Borrower:
WEST PALM BEACH COMMUNITY REDEVELOPMENT AGENCY

By: _____
CRA Secretary

By: _____
Geraldine Muoio, Chair

CRA COUNSEL'S OFFICE
Approved as to form and legality
By: _____

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

The foregoing statement was acknowledged before me this 14 day of December, 2015, by Geraldine Muoio, Chair of the West Palm Beach Community Redevelopment Agency, who is personally known to me, as an act of the Agency.

JOMEKEYIA L. MCNEIL
Commission # FF 162359
Expires January 5, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

Signature: _____
Notary Public – State of Florida

Print Name: _____

(NOTARY SEAL)

IN WITNESS WHEREOF, the parties hereto have caused this Further Assurances & Errors and Omissions Statement to be executed as of the day and year first above written.

Attest:

CITY CLERK

CITY OF WEST PALM BEACH;
A municipal corporation of the State of Florida

By: _____
Geraldine Muoio, Mayor

CITY COUNSEL'S OFFICE
Approved as to form and legality
By: _____

STATE OF FLORIDA }
COUNTY OF PALM BEACH } SS:

The foregoing statement was acknowledged before me this 14 day of December, 2015, by Geraldine Muoio, Mayor of the City of West Palm Beach, who is personally known to me, as an act of the City.

JOMEKEYIA L. MCNEIL
Commission # FF 162359
Expires January 5, 2019
Bonded Thru Troy Fain Insurance 800-385-7019

Signature _____
Notary Public - State of Florida

Print Name: Jomekeyia L. McNeil

(NOTARY SEAL)