

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	September 27, 2016	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Ordinance	<input type="checkbox"/> Public Hearing
Department:	Department of Economic Sustainability		

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to Receive and File: Amendment No. 1 to Subgrant Agreement (R2015-0745) with the City of South Bay under the Brownfields Revolving Loan Fund (BRLF) Program



Summary: 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. The attached document has been executed on behalf of the Board of County Commissioners (BCC) by the County Administrator, or designee, in accordance with Resolution(s)/Agenda Item(s) 31-10 as approved by the BCC on October 16, 2012. This executed document is now being submitted to the BCC to receive and file. (District 6) (JB)

Background and Justification:

On June 2, 2015, the County entered into a Subgrant Agreement (R2015-0745) with the City of South Bay to provide \$200,000 under the Brownfields Revolving Loan Fund (BRLF) Program for environmental cleanup assistance for the City-owned Brownfield redevelopment site located at 480 U.S. Highway 27 North in South Bay. The City intends to sell this property to a developer who has expressed interest in developing a restaurant at the site contingent on site cleanup. The new project will create six (6) new jobs, represent a capital investment of approximately \$150,000. Amendment No. 1 to the Subgrant Agreement, dated July 30, 2015, modifies the nondiscrimination provision, provides for a new Site Manager, provides for the County's hiring, oversight and payment of a contractor, and provides insurance requirements for the contractor.

Attachments: Document as listed above.

Recommended By:		
	Department Deputy Director	Date

Approved By:		
	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	\$200,000				
External Revenues	(\$200,000)				
Program Income					
In-Kind Match (County)					
NET FISCAL IMPACT					

# ADDITIONAL FTE POSITIONS (Cumulative)					
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Is Item Included In Current Budget? Yes No

Fund 1544 Dept 143 Unit 2108/PET1 Object 8201 Program Code/Period N/A: \$200,0000

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

The source of \$200,000 for the City of South Bay project is EPA-Brownfields Revolving Loan Fund Program grant funds.

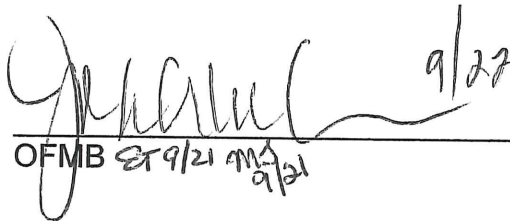
C. Departmental Fiscal Review:




 Shairette Major, Fiscal Manager II

III. REVIEW COMMENTS

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



 OFMB 8/21/16
 9/21/16



 Contract Development and Control

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

 Department Director

**AMENDMENT NO. 1
TO SUBGRANT AGREEMENT
PALM BEACH COUNTY
BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM**

THIS AMENDMENT NO. 1 ("First Amendment"), entered into 7-30-2015, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter referred to as either "County" or "Grantor"), with an office at 100 Australian Avenue, Suite 500, West Palm Beach, Florida, 33406, and the City of South Bay, a Municipal corporation organized under the laws of the State of Florida, (hereinafter referred to as "Subgrantee" or "subgrant recipient"), with an address at 335 SW 2nd Avenue, South Bay, Florida, 33493.

WITNESSETH

WHEREAS, the parties entered into a Subgrant Agreement (R2015-0745) on June 2, 2015 (the "Agreement"), under which the County is to provide Subgrant Funds to the Subgrantee for remediation of the Property; and

WHEREAS, the Subgrantee has requested that the County take the responsibility for all duties with regard to the contractor including hiring, oversight, and payment from Subgrant Funds; and

WHEREAS, the parties desire to amend the Agreement to modify the nondiscrimination provision, provide for a new Site Manager, provide for County's hiring, oversight and payment of a contractor, and provide insurance requirements for the contractor.

NOW, THEREFORE, in consideration of the promises and mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby amend the Agreement as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Unless otherwise defined herein, all defined terms as used in this First Amendment shall have the same meaning and effect as in the Agreement.
2. Article IV, Section 4.02, Contact Information, is hereby deleted in its entirety and replaced with the following:

Section 4.02 Contact Information.

The Subgrantee's Site Manager shall be David J. Mendez, P.E, Senior Project Manager/Civil Engineer. The Site Manager's telephone number is (305) 448-1711, Ext. 3411, and the mailing address is 335 SW 2nd Avenue, South Bay, FL 33493. Written notification shall be provided promptly to the Grantor in the event the Site Manager information needs to be changed or modified.

3. Article XIV, Section 14.04, Non-Discrimination, is hereby deleted in its entirety and replaced with the following:

Section 14.04, Non-Discrimination.

Subgrantee shall comply with all federal, state and local laws and regulations prohibiting discrimination on the grounds of race, color, religion, national origin, sex, age, disability, ancestry, marital status, familial status, sexual orientation, gender identity or expression, or genetic information. Subgrantee must comply with Title VI of the Civil Rights Act of 1964, Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the

Americans with Disabilities Act (prohibiting disability discrimination in employment and in services provided by State and local governments, businesses and non-profit agencies), the Fair Housing Act, as well as other applicable civil rights laws and a variety of program specific statutes with nondiscrimination requirements. Upon receipt of evidence of such discrimination, the County shall have the right to terminate this Agreement.

Subgrantee 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 Subgrantee 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 Subgrantee 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.

4. Article IX, Remediation Work, is hereby modified by adding Section 9.04, Project Implementation, as follows:

Section 9.04 Project Implementation.

Notwithstanding anything to the contrary in this Agreement, the County's Department of Economic Sustainability (DES) shall facilitate performance of certain portions of the Remediation Work (or "Project") on behalf of Subgrantee. FDO has agreed to be responsible for the Project as specified herein and shall not be responsible for any other portions of the Agreement. DES shall coordinate with the Subgrantee, Site Manager, and the County's Department of Facilities Development and Operations (FDO) as necessary regarding terms of the Agreement. DES' and FDO's responsibilities shall include the following:

- a. FDO shall procure the contractor either through one of FDO's annual contracts or by utilizing a separate bid solicitation.
- b. DES/FDO shall provide on-site monitoring to ensure compliance with the Project specifications and the Scope of Work.
- c. DES shall be responsible for Davis-Bacon compliance.
- d. FDO shall ensure that contractor has current and adequate insurance as required in Section 16.02 herein.
- e. FDO shall approve and process contractor's payment requests. Subgrantee authorizes the County to pay contractor directly from Subgrant Funds upon approval of contractor's invoices by both FDO and DES. Further action regarding approval of payments to contractor is not required of Subgrantee.
- f. FDO and DES shall monitor the project to ensure compliance with EPA and other governmental regulations.
- g. DES is solely responsible for compliance with all applicable Grant requirements.

5. Article XVI, Insurance, is hereby added as follows:

**ARTICLE XVI
INSURANCE**

Section 16.01 Subgrantee's Insurance.

A. Without waiving the right to sovereign immunity as provided by Florida Statute §768.28, Subgrantee acknowledges to be self-insured for General Liability and 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.

B. In the event Subgrantee maintains third-party Commercial General Liability and Business Auto Liability in lieu of exclusive reliance of self-insurance under Florida Statute §768.28, Subgrantee shall maintain said insurance policies at limits not less than \$500,000 combined single limit for bodily injury or property damage

C. Subgrantee agrees to maintain or to be self-insured for Worker's Compensation & Employer's Liability insurance in accordance with Florida Statute 440.

D. When requested, Subgrantee 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.

E. Compliance with the foregoing requirements shall not relieve Subgrantee of its liability and obligations under this Agreement.

Section 16.02 Contractor's Insurance.

A. County shall require contractors to maintain at their sole expense and on a primary basis during the life of this Agreement or the performance of work hereunder, insurance coverages, limits and endorsements as required herein. County shall obtain acknowledgement from contractors that the insurance requirements herein as well as County's review or acknowledgement, is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the contractor pursuant to this Agreement.

B. Contractor shall maintain Commercial General Liability at a limit of liability not less than **\$1,000,000** Each Occurrence **\$2,000,000** Annual Aggregate. 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.

C. Contractor shall 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 contractor does not own automobiles, contractor 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.

D. Contractor shall maintain Worker's Compensation & Employers Liability Insurance in accordance with Florida Statute 440. Coverage shall be on a primary basis.

E. Contractor shall agree to 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.

F. Contractor shall endorse the County as an Additional Insured on the Commercial General Liability with a CG 2010 Additional Insured - Owners, Lessees, or Contractors, 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.

G. Contractor 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. Contractor shall 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.

H. Contractor shall 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.

I. Contractor shall waive 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 contractor 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 contractor enter into such an agreement on a pre-loss basis.

J. Subgrantee and Contractor shall acknowledge that 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.

K. The coverages, limits or endorsements required herein protect the primary interests of the County, and the contractor shall agree that 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 contractor against any loss exposures, whether as a result of the Project or otherwise.

L. Contractor shall provide County with Certificate(s) of Insurance that clearly evidence that contractor's insurance contains the minimum coverages, limits, and endorsements set forth herein. In addition, contractor 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 contractor shall furnish County prior to the expiration of such insurance, a new Certificate of Insurance evidencing replacement coverage. When notified by County, contractor shall not continue work pursuant to this Agreement, unless all required insurance remains in effect.

M. Contractor shall agree that County and/or the Subgrantee reserves the right to withhold payment to contractor until evidence of reinstated or replacement coverage is provided to the County.

N. Contractor and any contractor related to this Agreement shall 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, Contractor shall notify County of any cancellation, non-renewal or material change taking place during the life of this contract. The Certificate Holder address shall read:

PALM BEACH COUNTY
c/o Department of Economic Sustainability
Attn: Director
100 Australian Avenue – Suite 500
West Palm Beach, FL 33406

6. Except as modified by this First Amendment, the Agreement remains unmodified and in full force and effect, and the parties hereby ratify, conform and adopt the Agreement, as amended, in accordance with the terms thereof. This First Amendment is expressly contingent upon the approval of the Palm Beach County Board of County Commissioners and shall become effective only when signed by all parties and approved by the Palm Beach County Board of County Commissioners.

(The remainder of this page is intentionally left blank)

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

WITNESSES:

CITY OF SOUTH BAY

Carol Thompson
Witness Signature

By: Leondrae D. Camel

CAROL THOMPSON
Print Witness Name

Print name: Leondrae D. Camel
Title: City Manager

[Signature]
Witness Signature

(SEAL)

ALAN CHIN LEE
Print Witness Name

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

BOARD OF COUNTY COMMISSIONERS

By: Shannon R. LaRocque
Shannon R. LaRocque
Assistant County Administrator

Date: 7-30-15

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Department of Economic Sustainability

By: [Signature]
James Brako
Assistant County Attorney

By: [Signature]
Sherry Howard
Deputy Director