

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date:	November 22, 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 approve: Amendment 003 to a Subgrant Agreement (R2015-0745) with the City of South Bay.

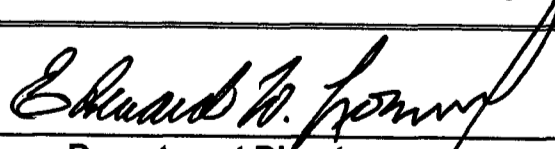
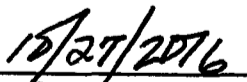
Summary: On June 2, 2015, the County entered into a Subgrant Agreement (R2015-0745) with City of the South Bay to provide \$200,000 in U.S. Environmental Protection Agency (EPA) funds under the Brownfields Revolving Loan Fund (BRLF) Program. The Funds were provided to clean up a site located at 480 U.S. Highway 27 North in South Bay. The City has requested additional time to meet the Florida Environmental Protection Agency's monitoring requirements. This amendment provides 18 additional months to the term of the Subgrant Agreement to enable completion of the monitoring requirements. **These are Federal EPA funds which require a 20% local match which will be provided by the City of South Bay. No County local match is required. District 6 (JB)**

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

Amendment No. 1 to the Subgrant Agreement with the City of South Bay was executed on July 30, 2015, and Amendment 001/Reinstatement of said Subgrant Agreement was executed on August 10, 2016. The second Amendment was erroneously misnumbered and, as such, this Amendment is the third one to be executed.

Attachments:

1. Amendment 003 to Subgrant Agreement
2. Amendment 001/Reinstatement of Subgrant Agreement of August 10, 2016
3. Amendment No. 1 to Subgrant Agreement of July 30, 2015
4. Agreement (R2015-0745) with the City of South Bay
5. Letter of September 14, 2016, from the City of South Bay requesting a time extension

Recommended By:		
	Department Director	Date

Approved By:		
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2017	2018	2019	2020	2021
Capital Expenditures					
Operating Costs					
External Revenues					
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 _____

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

☞ No Fiscal Impact

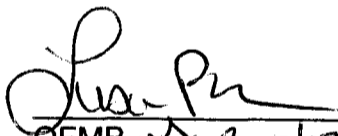
C. Departmental Fiscal Review:



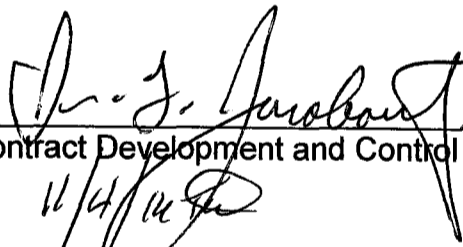
 Shairette Major, Fiscal Manager II
 10/27/16

III. REVIEW COMMENTS

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



 OFMB 10/28 10/27
 et



 Contract Development and Control
 11/4/16

B. Legal Sufficiency:



 Assistant County Attorney

C. Other Department Review:

Department Director

**AMENDMENT 003 TO SUBGRANT AGREEMENT
PALM BEACH COUNTY
BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM**

THIS AMENDMENT 003 TO SUBGRANT AGREEMENT (the "Third Amendment") is made and entered into _____, 20__ by and between Palm Beach County, a political subdivision of the State of Florida ("County" or "Grantor") and City of South Bay, a Municipal corporation organized under the laws of the State of Florida ("Subgrantee" or "subgrant recipient").

WITNESSETH:

WHEREAS, County and Subgrantee entered into an Agreement dated June 2, 2015 (R2015-0745) wherein County agreed to provide \$200,000 of United States Environmental Protection Agency (EPA) County Brownfields Revolving Loan Funds (BRLF) for remediation of property located at 480 US Highway 27 North, South Bay, Florida 33493 (hereinafter referred to as the "Property"); and

WHEREAS, the parties entered into Amendment No. 1 to Subgrant Agreement on July 30, 2015 ("Amendment No. 1"), wherein the County assumed certain of the Subgrantee's responsibilities with regard to the contractor; and

WHEREAS, the parties entered into a second amendment to the Subgrant Agreement but the amendment was misnumbered and was approved and executed by both parties as Amendment 001 to and Reinstatement of Subgrant Agreement dated August 10, 2016 ("Amendment 001/Reinstatement"); and

WHEREAS, Amendment 001/Reinstatement provided for extension of the Term of the Agreement to December 1, 2016, which extension was requested by Subgrantee pursuant to the six month extension option set forth in Article 1, Section 1.02 of the Agreement; and

WHEREAS, the Subgrantee has requested an additional eighteen (18) month extension to the Term of the Agreement in order to provide for adequate monitoring of the site; and

WHEREAS, the County and the Subgrantee desire to extend the Term for eighteen (18) months and to add required County language.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them in the Agreement.
2. Article I, Section 1.02 of the Agreement is hereby modified to provide that the Term of the Agreement shall expire June 1, 2018, unless further extended by written amendment to this Agreement.
3. Article XV of the Agreement is hereby modified to add Section 15.14, Public Records, as follows:

Section 15.14 Public Records.

Notwithstanding anything contained herein, as provided under Section 119.0701, F.S., if the Subgrantee: (i) provides a service; and (ii) acts on behalf of the County as provided under Section 119.011(2) F.S., the Subgrantee shall

comply with the requirements of Section 119.0701, Florida Statutes, as it may be amended from time to time. The Subgrantee is specifically required to:

A. Keep and maintain public records required by the County to perform services as provided under this Agreement.

B. Upon request from the County's Custodian of Public Records, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The Subgrantee further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.

C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the agreement term and following completion of the Agreement, if the Subgrantee does not transfer the records to the public agency.

D. Upon completion of the Agreement the Subgrantee shall transfer, at no cost to the County, all public records in possession of the Subgrantee unless notified by County's representative/liason, on behalf of the County's Custodian of Public Records, to keep and maintain public records required by the County to perform the service. If the Subgrantee transfers all public records to the County upon completion of the Agreement, the Subgrantee shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the Subgrantee keeps and maintains public records upon completion of the Agreement, the Subgrantee shall meet all applicable requirements for retaining public records. All records stored electronically by the Subgrantee must be provided to County, upon request of the County's Custodian of Public Records, in a format that is compatible with the information technology systems of County, at no cost to County.

Failure of the Subgrantee to comply with the requirements of this section shall be a material breach of this Agreement. County shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. Subgrantee acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE SUBGRANTEE HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE SUBGRANTEE'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT RECORDS REQUEST, PALM BEACH COUNTY PUBLIC AFFAIRS DEPARTMENT, 301 N. OLIVE AVENUE, WEST PALM BEACH, FL 33401, BY E-MAIL AT RECORDSREQUEST@PBCGOV.ORG OR BY TELEPHONE AT 561-355-6680.

Except as modified by this Third Amendment and previously, the Agreement remains unmodified and in full force and effect in accordance with the terms thereof, and the County and the Subgrantee hereby ratify, confirm, and adopt the Agreement as amended hereby.

This Third Amendment is expressly contingent upon the approval of the County and shall become effective only when signed by all parties and approved by, or on behalf of by a person with delegated authority, the Palm Beach County Board of County Commissioners (the "Effective Date of the Third Amendment").

IN WITNESS WHEREOF, Subgrantee and the County have caused this Third Amendment to be executed on the date first above written.

WITNESSES:

Claudia Caro
Witness Signature

Claudia Caro
Print Witness Name

Hasmine Mitchell
Witness Signature

Hasmine Mitchell
Print Witness Name

CITY OF SOUTH BAY

By: Joe Kyles

Print name: Joe Kyles

Title: Mayor

(SEAL)

(COUNTY SEAL BELOW)

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

ATTEST: SHARON R. BOCK,
Clerk & Comptroller

BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Mayor

Document No. : _____

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Department of Economic Sustainability

By: _____
James Brako
Assistant County Attorney

By: Sherry Howard for
Sherry Howard
Deputy Director

**AMENDMENT 001 TO AND REINSTATEMENT OF SUBGRANT AGREEMENT
PALM BEACH COUNTY
BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM**

AUG 10 2016

THIS AMENDMENT 001 TO AND REINSTATEMENT OF SUBGRANT AGREEMENT (the "First Amendment") is made and entered into by and between Palm Beach County, a political subdivision of the State of Florida ("County" or "Grantor") and City of South Bay, a Municipal corporation organized under the laws of the State of Florida ("Subgrantee" or "subgrant recipient").

WITNESSETH:

WHEREAS, County and Subgrantee entered into an Agreement dated June 2, 2015 (R2015-0745) wherein County agreed to provide \$200,000 of United States Environmental Protection Agency (EPA) County Brownfields Revolving Loan Funds (BRLF) for remediation of property located at 480 US Highway 27 North, South Bay, Florida 33493 (hereinafter referred to as the "Property"); and

WHEREAS, the Agreement provided the Subgrantee the option of requesting a six (6) month extension to the Agreement if the Subgrantee could not complete the Remediation Work within twelve months after the Effective Date of the Agreement; and

WHEREAS, the original term of the Agreement ended June 1, 2016, but Subgrantee requested approval of the six month extension option; and

WHEREAS, County and Subgrantee desire to reinstate the Agreement and extend the term for six months, to provide for further extensions if such are necessary for the completion of the Remediation Work, and to identify a new Site Manager; and

WHEREAS, the County and the Subgrantee acknowledge and agree that during the period from June 1, 2016, until the Effective Date of this First Amendment, the parties were and are bound by the terms of the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. The foregoing recitals are true and correct and incorporated herein by reference. Terms not defined herein shall have the same meaning as ascribed to them in the Agreement.

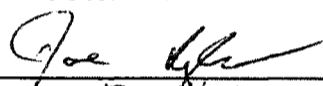
2. Article I, Section 1.02 of the Agreement is hereby modified to provide that the Term of the Agreement shall expire December 1, 2016, unless further extended by written amendment to this Agreement.
3. Article IV, Section 4.02 of the Agreement is hereby modified to remove Greg Vaday and replace him with Carol Thompson as the Subgrantee's Site Manager. The Site Manager's telephone number is (561) 233-3674. The mailing address remains unchanged.
4. Article XV, Section 15.02 of the Agreement is hereby modified to remove provide that Notices to the Grantor shall be sent to Carol Thompson in place of Greg Vaday.

Except as modified by this First Amendment, the Agreement remains unmodified and in full force and effect in accordance with the terms thereof, and the County and the Subgrantee hereby ratify, confirm, and adopt the Agreement as amended hereby.

This First Amendment is expressly contingent upon the approval of the County and shall become effective only when signed by all parties and approved by, or on behalf of by a person with delegated authority, the Palm Beach County Board of County Commissioners (the "Effective Date of the First Amendment").

IN WITNESS WHEREOF, Subgrantee and the County have caused this First Amendment to be executed on the date first above written.

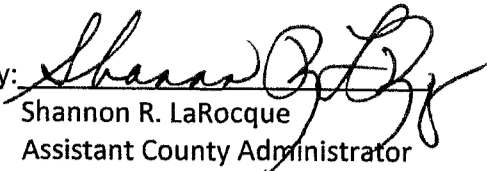
CITY OF SOUTH BAY

By: 
Print name: Joe Kyles
Title: MAYOR

(SEAL)

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

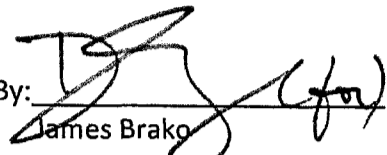
**FOR ITS BOARD OF COUNTY
COMMISSIONERS**

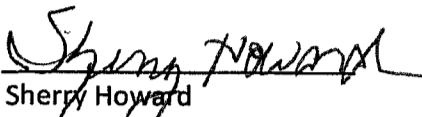
By: 
Shannon R. LaRocque
Assistant County Administrator

AUG 10 2016

Approved as to Form and
Legal Sufficiency

Approved as to Terms and Conditions
Department of Economic Sustainability

By: 
James Brako
Assistant County Attorney

By: 
Sherry Howard
Deputy 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:

Carol Thompson
Witness Signature

CAROL THOMPSON
Print Witness Name

[Signature]
Witness Signature

ALAN CHIN LEE
Print Witness Name

CITY OF SOUTH BAY

By: [Signature]

Print name: Leondrae D. Camel
Title: City Manager

(SEAL)

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

BOARD OF COUNTY COMMISSIONERS

By: [Signature]
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

Z:\EDO\Brownfields Revolving Loan Fund\Grant Documents\South Bay\Amend 1.062615.JB app.062915.docx

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

R201540745

JUN 02 2015

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

WITNESSETH:

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

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

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

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

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

ARTICLE I
BASIC AGREEMENT PROVISIONS

Section 1.01 Recitals.

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

Section 1.02 Effective Date and Term of Agreement.

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

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

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

Section 1.03 Subgrant Amount.

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

Section 1.04 Disbursement of Subgrant Funds.

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

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

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

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

ARTICLE II
ACKNOWLEDGMENTS, REPRESENTATIONS AND WARRANTIES OF SUBGRANTEE

Section 2.01 Acknowledgments, Representations and Warranties.

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

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