



# City of Sacramento City Council

915 I Street, Sacramento, CA, 95814 5  
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**Meeting Date:** 5/12/2011

**Report Type:** Consent

**Title: Brownfields Grant Agreement: 800 K and L Streets Environmental Clean-up**

**Report ID:** 2011-00414

**Location:** 8th and K/L Street, District 1

**Recommendation:** (City Council/Redevelopment Agency) Adopt1) a City Resolution a) approving a \$250,000 United States Environmental Protection Agency (US EPA) Brownfields Revolving Loan Fund (BRLF) grant to the Redevelopment Agency of the City of Sacramento for the environmental clean-up on Agency-owned properties located on the 800 blocks of K and L streets and b) authorizing the Interim City Manager, or his designee to approve the Subgrant Agreement for Site Remediation with the Redevelopment Agency of the City of Sacramento; 2) a Redevelopment Agency Resolution: a) accepting a \$250,000 BRLF grant from the City of Sacramento for the environmental clean-up on Agency-owned properties on the 800 Block of K and L streets, b) authorizing the Executive Director, or her designee to approve the Subgrant Agreement for Site Remediation with the City of Sacramento, c) approving a contract with Ninyo and Moore in the amount not to exceed \$20,500 to conduct a Soil Gas Assessment, Soil and Groundwater Management Plan, and develop Hazardous Materials Abatement Specifications and Abatement Drawings and d) directing staff to solicit bids for the environmental clean-up work.

**Contact:** Denise Malvetti, Sr. Development Project Manager, (916) 808-7064, Economic Development Department

**Presenter:** None

**Department:** Economic Development Dept / City and Redevelopment Agency Joint Report

**Division:** Downtown Development

**Dept ID:** 18001021

**Attachments:**

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- 1-Description/Analysis
- 2-City Resolution
- 3-Exhibit to Resolutions
- 4-Agency Resolution
- 5-Ninyo Moore Contract

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**City Attorney Review**

Approved as to Form  
Michael T. Sparks  
5/4/2011 4:56:52 PM

**City Treasurer Review**

Prior Council Financial Policy Approval or  
Outside City Treasurer Scope  
Russell Fehr  
4/22/2011 12:13:15 PM

**Approvals/Acknowledgements**

Department Director or Designee: Jim Rinehart - 5/3/2011 3:39:08 PM

Assistant City Manager: John Dangberg - 5/4/2011 4:32:27 PM

## Description/Analysis

**Issue:** It has long been the desire of the City and the Redevelopment Agency to redevelop the 800 block of K and L streets. In order assure the redevelopment of those blocks, the Redevelopment Agency acquired several properties between 2006 and 2008. In October 2010, the Redevelopment Agency entered into Exclusive Right to Negotiate Agreements with a development team comprised of David S. Taylor Interests, CIM and Domus Development for the redevelopment of the properties into a mixed-use development.

In order to prepare the sites for future development, the Redevelopment Agency recently commissioned a Phase II Environmental Site Assessment and a Hazardous Building Assessment on the Agency-owned properties on the 800 blocks of K and L streets. The buildings were found to contain various hazardous substances including asbestos containing building materials (ACMs), lead-based paints (LBPs) and miscellaneous hazardous building materials (fluorescent light tubes, light ballasts, mercury switches, Freon refrigeration systems, etc). These substances must be abated in order to allow for future development.

The City recently received an additional \$400,000 BRLF funds to assist other public agencies and non-profits with environmental clean-up activities. Staff recommends a grant of \$250,000 to the Redevelopment Agency of the City of Sacramento to conduct the necessary clean-up work to prepare the site for development. Although the US EPA limits site specific grants to \$200,000, the City has received a waiver approval from the US EPA to grant the Agency \$250,000.

**Policy Considerations:** The action recommended in this report is consistent with previously approved City policies to assist commercial projects and promote infill development.

This action is also consistent with the Merged Downtown Implementation Plan goals of eliminating blight and stimulating economic growth. Further, the redevelopment of the 800 Block of K and L streets was identified as a priority in the Merged Downtown Implementation Plan Proposed Redevelopment Program.

**Environmental Considerations:** All actions contained in this report, including the award and acceptance of a grant, in furtherance of Brownfields clean-up and associated actions are exempt under section 15330 of the California Environmental Quality Act (CEQA) Guidelines (tit. 14 Cal. Code Reg. 1500 – 15387) because the underlying action consists of a minor cleanup action taken to prevent, minimize, stabilize, mitigate, or eliminate the release or threat of release of a hazardous waste or substance, which is a small or medium removal action costing \$1 million or less.

**Sustainability:** The recommended actions are consistent with the Sustainability Master Plan. Any future development on this site would be considered to be an infill development, which will provide multiple benefits including providing mixed income housing options close to jobs, reducing the need to build new development on the urban fringe, increasing the viability of and dependency on alternative modes of transportation, preserving natural resources, and providing for efficient use of land, services and infrastructure.

**Commission/Committee Action:** Not applicable.

**Rationale for Recommendation:** The City and Agency's goal for the 800 blocks of K and L streets is to redevelop the Agency-owned properties into a vibrant mixed-use development including residential, retail, and commercial uses. In order for this goal to be realized, the site must be rid of all hazardous materials.

**Financial Considerations:** Since 2007, the City of Sacramento has been awarded \$1,400,000 in BRLF grant funds (G18334500, fund 2702) to contribute to the environmental clean-up of projects in the City. The proposed action in this report will grant \$250,000 of the BRLF funds to the Redevelopment Agency of the City of Sacramento to clean-up the hazardous materials on the Agency-owned properties on the 800 block of K and L streets. This City has waived the twenty percent (20%) match requirement for this grant since the match requirement with US EPA has been met.

**Emerging Small Business Development (ESBD):** The proposed consultant, Ninyo and Moore is not a certified emerging small business, however, they were selected to conduct a Soil Gas Assessment, Soil and Groundwater Management Plan, and develop Hazardous Materials Abatement Specifications and Abatement Drawings because of their familiarity with the site as they completed the Phase II Environmental Site Assessment and Hazardous Building Assessment. Federal MBE/WBE requirements will apply to the future environmental clean-up work.



## RESOLUTION NO.

Adopted by the Sacramento City Council

### **APPROVING A \$250,000 BROWNFIELDS REVOLVING LOAN FUND (BRLF) GRANT TO THE REDEVELOPMENT AGENCY OF THE CITY OF SACRAMENTO FOR ENVIRONMENTAL CLEAN-UP AT 800-816 K AND 801-815 L STREETS**

#### **BACKGROUND**

- A. A “brownfield” is generally defined as a site which is unused or underutilized due to the (actual or perceived) presence of hazardous substances. Brownfields redevelopment is a fiscally-sound way to bring investment back to Sacramento’s neglected neighborhoods and business corridors, cleanup the environment, reuse infrastructure, eliminate blight, and relieve pressure on the urban fringe.
- B. The City Council previously authorized establishment of a Brownfield Cleanup Revolving Loan Fund (BRLF) to promote the cleanup of brownfield sites within the City for future development of such sites and on July, 15, 2008, the City Council accepted grant funding from the U.S. Environmental Protection Agency (EPA) to fund the City’s BRLF program. The City Manager was authorized by Resolution 2008-475 to establish the grant fund and project accounts to receive and administer the funds.
- C. The Redevelopment Agency of the City of Sacramento requested the clean-up funds in a letter dated April 4, 2011.
- D. The Redevelopment Agency of the City of Sacramento has received site eligibility approval from EPA.
- E. The City has waived the match requirement for this grant.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. A \$250,000 United States Environmental Protection Agency (US EPA) Brownfields Revolving Loan Fund (G18334500, fund 2702) grant to the Redevelopment Agency of the City of Sacramento for the environmental clean-up on Agency-owned properties located on the 800 blocks of K and L streets is approved.
- Section 2. The Interim City Manager or his designee is authorized to execute the Subgrant Agreement for Site Remediation with the Redevelopment Agency of the City of Sacramento.
- Section 3. The Subgrant Agreement for Site Remediation with the Redevelopment

Agency of the City of Sacramento is attached as Exhibit A and is made a part of this resolution.

**Table of Contents:**

Exhibit A - Subgrant Agreement For Site Remediation



**CITY OF SACRAMENTO  
BROWNFIELDS CLEANUP REVOLVING LOAN FUND PROGRAM**

**SUBGRANT AGREEMENT FOR SITE REMEDIATION**

THIS AGREEMENT is entered as of the \_\_\_ day of \_\_\_\_\_, 2011, by and between the Redevelopment Agency of the City of Sacramento (hereinafter called “SUBGRANTEE”), and the CITY OF SACRAMENTO, (hereinafter (“CITY”)), as of the date first above written.

WHEREAS, CITY is a recipient of U.S. Brownfields Cleanup Revolving Loan Funds (U.S. RLF) and is authorized to make certain low-interest loans and subgrants from these funds; and

WHEREAS, using said U.S. RLF, CITY has established guidelines for the Sacramento Brownfields Cleanup Revolving Loan Fund Program (hereinafter the “BCRLF Program”) (Exhibit A) to assist property owners and developers to remediate properties in the City of Sacramento; and

WHEREAS, the SUBGRANTEE has completed the SUBGRANT pre-qualification and application requirements for the BCRLF program (Exhibit B); and

WHEREAS, SUBGRANTEE wishes to receive a SUBGRANT from CITY to be used for remediation of SUBGRANTEE’s Property; and

WHEREAS, CITY is willing to subgrant to SUBGRANTEE certain of the BCRLF Program funds for that purpose on the terms and conditions herein contained; and

NOW, THEREFORE, CITY and SUBGRANTEE, intending to be legally bound, agree as follows:

I. **SUBGRANT**

A. **SUBGRANT.** CITY hereby agrees to SUBGRANT to SUBGRANTEE the principal sum of Two Hundred and Fifty Thousand and No Cents Dollars (\$250,000) to be used for the purpose described herein.

B. **COLLATERAL TERMS.** In accepting the SUBGRANT, the SUBGRANTEE agrees:

1. The SUBGRANT funds shall be maintained in the custody of CITY until said funds, or portions thereof, are disbursed to SUBGRANTEE, or any Contractor for the benefit of SUBGRANTEE, in accordance with the terms of this

AGREEMENT.

2. SUBGRANTEE shall have no control over the SUBGRANT funds that are in the custody of CITY
  3. In the event of SUBGRANTEE's material default of this AGREEMENT, the CITY shall retain any undisbursed SUBGRANT funds, and SUBGRANTEE will be required to return all previously disbursed SUBGRANT funds in accordance with Sections IV and VII of this AGREEMENT.
- C. TERM. The term of this AGREEMENT shall be one year.
- D. PURPOSE.
1. The SUBGRANT funds shall be used only for approved removal of hazardous substances from SUBGRANTEE's property located at 800-816K and 801-815 L Street (APNs 006-0098-022; 006-098-003 and 004; 006-0098-024; 006-0098-006, 007 and 008; 006-0096-021; and 006-0098-014) (the "Property", Exhibit "C"), except that up to 15% of the SUBGRANT funds may be used for developing the following required documents (collectively referred to as the "Project Documents"):
    - a. Work Plans
    - b. Engineering Evaluation/Cost Analysis (EE/CA)
    - c. Project Budget
    - d. Responsiveness Summary
    - e. Schedule
  2. The Project Documents are subject to the CITY's approval, which approval shall not be unreasonably withheld. SUBGRANTEE shall submit the Project Documents to the CITY not later than [pick a date]. SUBGRANTEE shall not begin removal of the hazardous substances unless the CITY has approved the Project Documents.
  3. SUBGRANTEE understands and agrees that any and all work performed on the Property for which SUBGRANT funds are used and the receipt of the SUBGRANT under this Agreement is conditioned upon the SUBGRANTEE's full compliance with the

Project Documents and this AGREEMENT.

- E. REMEDICATION AGREEMENT. SUBGRANTEE intends to enter into an agreement with a qualified contractor (hereinafter referred to as “Contractor”) to execute the Work Plan. SUBGRANTEE shall attach and incorporate a copy of this AGREEMENT and the BCRLF Program guidelines to any agreement between SUBGRANTEE and the Contractor.
  
- F. CONTRACTOR QUALIFICATIONS AND INSURANCE. SUBGRANTEE affirms that Contractor will be required to examine the Property, will be fully familiar with local conditions, and will be able to execute the Work Plan. Contractor shall perform the Work Plan consistent with the level of care and skill exercised by similar contractors performing comparable services under comparable circumstances. Contractor shall possess a Hazardous Substance Removal and Remedial Action License Certification and the appropriate license from the California Contractor’s State License Board for the past twenty-four (24) months prior to date of the Remediation Agreement. Contractor shall maintain and keep in force insurance, including, but not limited to pollution, general liability, and automobile insurance with a minimum of \$1,000,000 coverage per accident or claim, property insurance and workman’s compensation. Insurance shall be placed with an insurer with an AM. Bests’ rating of no less than A:VII
  
- G. TRANSACTION FEES AND CLOSING COSTS.
  - 1. SUBGRANTEE shall pay all closing costs, if any, by cash or check at the occurrence of closing of the SUBGRANT.
  
  - 2. Before closing of the SUBGRANT, the SUBGRANTEE shall submit the following documents, any of which may be waived by the CITY:
    - a. Property Appraisal
  
    - b. Opinion of SUBGRANTEE’s legal counsel that SUBGRANTEE, if a corporation, is in good standing and that all documents executed by SUBGRANTEE are valid and enforceable in accordance with their respective terms.
  
    - c. Written authorization in the form of a resolution, authorizing the SUBGRANT to SUBGRANTEE, and authorizing the SUBGRANTEE’s representatives to execute the SUBGRANT documents on behalf of

SUBGRANTEE.

- d. Title Report, and evidence that no outstanding taxes, fees, charges, mortgages, liens, encumbrances or other assessments have been filed or recorded against the Property, or that the CITY waives exceptions on the Title Report.
  - e. Title Insurance provided at the expense of the SUBGRANTEE.
  - f. Evidence of insurance coverage with limits of liability determined by the CITY. All insurance coverage required by the section shall remain in full force and effect during the term of the SUBGRANT.
  - g. Performance Bond
  - h. CITY's receipt of Project Cost breakdown based upon estimates and prices supplied by SUBGRANTEE.
  - i. Evidence of a firm commitment for a construction loan and permanent financing from an accredited lending institution.
3. Transaction Fees. CITY, may, at its option, charge transaction fees for document preparation and recording and all other services related to the Property including, but not limited to subordination, sale or other transfer, demand notices, refinancing, reconveyance, and litigation. SUBGRANTEE shall pay or reimburse CITY on demand for all present or future documentary stamp taxes, if any, required by any state as a condition of filing a financial statement covering collateral which is the subject of this AGREEMENT.
4. Upon Default. Upon default arising from provisions of Section VI, SUBGRANTEE promises to pay CITY all collection and attorney's fees and expenses actually incurred by the CITY, whether or not litigation is commenced, including but not limited to attorney's fees and penalties and/or fees due under this AGREEMENT.
- H. SECURITY. As security for SUBGRANTEE's obligation to repay disbursed SUBGRANT funds in the event of default, CITY reserves the right to require SUBGRANTEE to execute a PROMISSORY NOTE and a DEED OF TRUST to secure such indebtedness if it arises.

- I. INSPECTION AND RIGHT TO STOP WORK. CITY may inspect work at the Property during and upon completion of remediation, with SUBGRANTEE to provide notice to CITY when completion is imminent (not later than five days prior). CITY shall select a Site Manager who shall perform duties including, but not limited to, coordination, oversight and inspection of the BCRLF Project Response Action. CITY shall, at all times, have the right, but not the obligation, to enter the Property during the execution of the Work Plan. If CITY finds that the work is unsatisfactory or is not substantially in accordance with the Work Plan, CITY shall have the right to stop work, and order work replacement by SUBGRANTEE at SUBGRANTEE's expense. CITY shall not be obligated to make any disbursements of the SUBGRANT funds until all work is satisfactory to the CITY.
- J. DISBURSEMENT OF SUBGRANT FUNDS. The SUBGRANT funds shall be disbursed to SUBGRANTEE or the Contractor in monthly installments as reimbursement for allowable expenses incurred by SUBGRANTEE or the Contractor based upon the progress of the work and in accordance with the approved Project Budget and Schedule. No installments shall be advanced to SUBGRANTEE or the Contractor without the written approval of the Site Manager.
- K. PROGRESS PAYMENTS AND RETENTION. All requests by SUBGRANTEE for progress payments will be on a reimbursement basis and shall be approved by the SUBGRANTEE's Licensed Environmental Professional (LEP) and submitted to the CITY for review and approval of the Site Manager and CITY. The reimbursement payment will be made within 30 days of receipt of the request. The CITY reserves the right to withhold up to ten percent (10%) of each payment as retention. Any withheld funds will be released after submitting a Construction Completion Report and receipt of a Certificate of Completion, approved by the Site Manager, and receipt of properly executed lien waivers.
- L. ADHERENCE TO BUDGET. SUBGRANTEE agrees to keep all expenditures from SUBGRANT funds within the approved Budget. SUBGRANTEE shall not exceed any of the costs enumerated in the approved Project Budget without the prior written approval of the Site Manager and CITY.
- II. REPRESENTATIONS AND WARRANTIES. SUBGRANTEE makes the following representations and warranties to CITY, which representations and warranties shall survive the execution of this AGREEMENT.

- A. CLEANUP PLANNING REQUIREMENTS. The following provisions will apply for AGREEMENTS executed prior to the preparation of an Engineering Evaluation and Cost Analysis.
1. SUBGRANTEE shall comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations 41 CFR 60-4 relating to Federally assisted construction contracts.
  2. SUBGRANTEE shall provide the CITY with a copy of Phase I and Phase II Environmental Assessment of the Property performed according to the American Society of Testing and Materials (ASTM) Standards. SUBGRANTEE shall be responsible for the payment of all costs and expenses related to the Assessment, and SUBGRANT funds shall not be used for payment of any such costs or expenses. The Assessment shall include, but is not limited to site background, the threat posed to by the contaminant to public health, welfare, and the environment and all past activities conducted by any government agency, and the site testing results.
  3. CITY shall prepare and implement a Community Relations Plan or Public Participation Plan (CRP) with the assistance and cooperation of SUBGRANTEE. The CRP shall be submitted to the U.S. Environmental Protection Agency (EPA) for review prior to implementation. The CRP shall include the following:
    - a. Copies of interviews conducted with residents and community leaders, local officials, and public interest groups.
    - b. Copies of news releases and other information which explains the proposed project to be disseminated throughout the area surrounding the affected area.
    - c. Procedures for the establishment of a local information repository at or near the potential site that includes public information supplied by both the CITY and the SUBGRANTEE related to the proposed response action. SUBGRANTEE shall supply CITY with any additional information that would assist CITY in documenting the BCRLF Response Action.
  4. After CITY has prepared the CRP, the SUBGRANTEE shall draft an 'analysis of brownfields cleanup alternatives' document that contains 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 cleanup proposed.

5. SUBGRANTEE shall make the draft analysis of brownfields cleanup alternatives document available for review and public comment for a period of not less than thirty (30) days from the date of publication of a public notice which announces the availability of the document for public review.
6. SUBGRANTEE shall also submit copies of the draft analysis of brownfields cleanup alternatives to the State for review and approval and to CITY's designated Site Manager, if applicable, for review and comment.
7. After the public comment period, SUBGRANTEE shall incorporate all appropriate comments into a final analysis of brownfields cleanup alternatives document and prepare a written response to the public comments if appropriate.
8. SUBGRANTEE shall prepare remedial design and engineering documents and submit them to the State for review and approval and to CITY's designated Site Manager, if applicable, for review and comment. This may occur simultaneously with the submittal of the analysis of cleanup alternatives document.
9. Prior to the initiation of any cleanup activities, SUBGRANTEE shall prepare a detailed budget for the proposed cleanup activities and submit it to CITY and EPA for approval.

B. ENVIRONMENTAL WARRANTIES. The SUBGRANTEE certifies that:

1. The Property is not listed, or proposed for listing on the National Priorities List of the EPA;
2. SUBGRANTEE is not responsible for the existing environmental hazards as generator or transporter of the contamination pursuant to the Comprehensive Environmental Response Compensation and Liability Act of 1980 as amended (CERCLA);
3. SUBGRANTEE certifies that it is not an owner operator of the site pursuant to CERCLA. If SUBGRANTEE is or becomes an owner

operator of the site pursuant to CERCLA prior to the execution of this AGREEMENT, the SUBGRANTEE shall certify that it falls under a CERCLA statutory exemption from liability, or that EPA could use its enforcement discretion as deemed necessary and appropriate by the said agency.

4. SUBGRANTEE has entered into an appropriate State response program and has received approvals required by that program and has or will submit copies of the State approvals to CITY and EPA.
  5. If SUBGRANTEE will collect environmental samples using SUBGRANT funds, SUBGRANTEE shall prepare a Quality Assurance Project Plan which sets forth the manner and method of collecting samples to assure the complete removal of all hazardous substances and submit it to EPA for review and approval.
- C. LEGAL STATUS. SUBGRANTEE is a public body, corporate and politic permitted to operate in the State of California.
- D. NO VIOLATION. The making and performance by SUBGRANTEE of this AGREEMENT does not violate any provision of Federal or State law, or City of Sacramento ordinance, or result in a breach of or constitute a default under any agreement, indenture or other instrument to which SUBGRANTEE is a party or by which SUBGRANTEE may be bound.
- E. AUTHORIZATION. This AGREEMENT has been duly authorized, executed and delivered, and is a valid and binding agreement of SUBGRANTEE.
- F. LITIGATION. There are no pending or threatened actions or proceedings before any court or administrative agency which may adversely affect the financial condition or operation of SUBGRANTEE other than those heretofore disclosed by SUBGRANTEE to CITY in writing.
- G. CORRECTNESS OF FINANCIAL STATEMENT. The financial statement dated June 2, 2010, heretofore delivered by SUBGRANTEE to CITY presents fairly the financial condition of SUBGRANTEE, and has been prepared by a Certified Public Accountant in accordance with generally accepted accounting principles consistently applied. SUBGRANTEE shall provide CITY with the financial statement for the most recent fiscal year ending December 31, 2010, not more than 30 days after it is completed. As of the date of such financial statement, and since such date, there has been no material adverse change in the condition or operation of SUBGRANTEE, nor has SUBGRANTEE mortgaged,

pledged or granted security interest in or encumbered any of SUBGRANTEE's assets or properties since such date.

H. NO ADDITIONAL SUBORDINATION. The obligations of SUBGRANTEE under this AGREEMENT will not be further subordinated in right of payment to any obligation of SUBGRANTEE, other than that which may be provided under this AGREEMENT, unless otherwise acknowledged or agreed to by CITY in writing.

III. CONDITIONS PRECEDENT. The obligation of CITY to make this SUBGRANT contemplated hereunder is subject to the following conditions:

A. EPA APPROVALS. The execution of the SUBGRANT is subject the approval of the U.S. Environmental Protection Agency of this AGREEMENT.

B. APPROVAL OF CITY'S LEGAL COUNSEL. All legal matters incidental to CITY's commitment to issue the SUBGRANT hereunder shall be satisfactory to the CITY's City Attorney, including the form, validity and enforceability of this AGREEMENT.

C. COMPLIANCE. The representations and warranties contained herein shall be true on and as of the date of the signing of this AGREEMENT with the same effect as though such representations and warranties had been made on and as of such date, and on such date no event of default as defined in Article VI herein ("EVENTS OF DEFAULT") and no condition, event or act which, with the giving of notice or the lapse of time or both would constitute an EVENT OF DEFAULT, shall have occurred and be continuing or shall exist.

D. SUBMISSION OF REMEDIATION CONTRACTS. SUBGRANTEE shall submit to CITY copies of all bids and remediation contracts to be conducted by Contractors and Subcontractors for all work required under the Work Plan approved by the appropriate regulatory agency.

IV. AFFIRMATIVE COVENANTS. SUBGRANTEE covenants that so long as this AGREEMENT is in effect, or SUBGRANTEE is obligated to return any funds disbursed hereunder, SUBGRANTEE shall do the following:

A. ACCOUNTING RECORDS. SUBGRANTEE shall document all the uses of the SUBGRANT funds, and maintain adequate books and accounts in accordance with generally accepted accounting principles consistently applied. SUBGRANTEE shall seek the written approval of CITY prior to disposing of records. SUBGRANTEE shall maintain documentation on

the use of the SUBGRANT funds for a minimum of three (3) years after the completion remediation activities supported by the SUBGRANT, or for the term of the SUBGRANT, whichever is greater, except as follows:

1. Records that are subject to audit findings shall be retained three years after such findings have been resolved.
2. SUBGRANTEE shall permit any representative of CITY, at any reasonable time, to inspect, audit and examine such books and inspect the properties of SUBGRANTEE. All such records and supporting documents shall be made available, upon request, for inspection or audit by the CITY or its representatives.

B. FINANCIAL STATEMENTS AND ONGOING REPORTING.

SUBGRANTEE shall furnish to CITY:

1. Quarterly reports which document that they are in compliance with all relevant Federal and State environmental regulations and that they meet the requirements of the BCRLF Program.
2. Project Specific quarterly financial statements to the BCRLF Program, including basic accounting and control mechanisms to track use of funds and document that the funds are spent for legitimate authorized uses. SUBGRANTEE's accounting system must track site-specific costs, and track cost activity and operable unit if applicable.
3. Such other information as CITY may reasonably request from time to time.

C. INSPECTION OF RECORDS. SUBGRANTEE agrees to permit the CITY or its designated representative to inspect and/or audit its records and books relative to this AGREEMENT at any time during normal business hours and under reasonable circumstances, and to copy therefrom any information that CITY desires relevant to this AGREEMENT. CITY shall provide written notice to the SUBGRANTEE prior to the execution of this provision. SUBGRANTEE agrees to deliver the records or to have the records delivered to CITY or its designated representative at an address designated by such party within the City of Sacramento. If CITY or its representative finds that the records delivered are incomplete, SUBGRANTEE agrees to pay CITY's or its representative's cost to travel to the SUBGRANTEE's office, or to other location where books or records are located, to audit or retrieve the complete records.

D. COMPLIANCE WITH ALL LAWS. SUBGRANTEE shall carry out the Project in accordance Federal cross-cutting requirements of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) 104 (k), and all other applicable provisions of Federal, State, and Local laws, including, but not limited to: Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (40 CFR Part 31); Cooperative Agreements for Superfund Response Actions (40 CFR Part 35, Subpart O); the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR Part 300); Minority Business Enterprises and Women-Owned Business Enterprises (MBE/WBE) requirements (40 CFR 30.44(b) or 31.36(e); Occupational Health and Safety Administration (OSHA) Worker Safety Standard (29 CFR 1910.120); Permits required by Section 404 of Clean Water Act; Executive Order 11246, Equal Opportunity; and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act (40 USC 327-333); the Anti-Kickback Act (40 USC 276c); Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250; and the EPA RLF Administrative Manual, EPA Publication xxx, Chapter 7.

E. PREVAILING WAGES.

1. SUBGRANTEE shall carry out the Project in accordance with the Davis-Bacon Act of 1931 (CERCLA 104(g)(1), 40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222). The Davis-Bacon Act requires payment of Federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with BCRLF funds. SUBGRANTEE must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction contract.
2. SUBGRANTEE and its Contractor shall comply with the requirements of the California Labor Code including but not limited to hours of labor, nondiscrimination, payroll records, apprentices, workers' compensation and prevailing wages. SUBGRANTEE shall ensure that all workers, laborers and mechanics employed in construction, alteration, installation, demolition or repair work done under this AGREEMENT are paid not less than the general prevailing rate of per diem wages, including holidays and overtime work, for each craft, classification or type of worker by the Contractor or by any Subcontractor doing the work. The appropriate wage determinations can be obtained from the California Department of Industrial Relations

(<http://www.dir.ca.gov>) and are available for inspection at CITY's offices. SUBGRANTEE or its Contractor shall post, at each job site, a copy of the prevailing rate of per diem wages.

SUBGRANTEE and/or its Contractor shall forfeit fifty dollars (\$50.00) for each calendar day or portion thereof for each worker paid less than the stipulated prevailing rates.

3. In the event of a conflict between the Federal prevailing wages and State prevailing wages, the higher wage rate shall be paid.
  4. If SUBGRANTEE or its Contractor or Subcontractor fails to pay the applicable prevailing wage rate, SUBGRANTEE shall indemnify, defend and hold harmless CITY and its officials, officers, employees and agents against any resulting actions, demands, suits, claims or losses.
- F. INSURANCE. In addition to Contractor's insurance requirements, SUBGRANTEE shall maintain and keep in force insurance of the types and amounts necessary to protect the security for SUBGRANTEE's obligation or indebtedness to CITY, including, but not limited to general liability and automobile liability insurance with a minimum of \$1,000,000 coverage per accident or claim, property insurance and workman's compensation, if applicable, and fire insurance for the value of the property, and coverage for pollution incidents that may be evidenced by pollution legal liability insurance. The workman's compensation policy shall include a waiver of subrogation in favor of CITY. Insurance coverage shall be primary as respects any other insurance or self-insurance available to the CITY. Insurance shall be placed with an AM. Bests' rating of no less than A:VII. The City of Sacramento, its officers, employees and agents, shall be named as "Loss Payee" on a property insurance policy and "Additional Insured" on a general liability policy; and SUBGRANTEE shall deliver to CITY from time to time at CITY's request certificates of insurance or policies setting forth all business insurance then in effect. Policies shall be endorsed to provide that the CITY shall be provided with thirty (30) days written notice of any cancellation, suspension or reduction in limits.
- G. MAINTENANCE. SUBGRANTEE shall keep the Property and business operations in good repair and condition, and from time to time make necessary repairs, renewals and replacements thereto so that the Property shall be fully and efficiently preserved and maintained.
- H. TAXES AND OTHER LIABILITIES. SUBGRANTEE shall pay and discharge when due any and all indebted obligations, assessments, taxes real and personal, including federal and state payroll and income taxes,

except such as SUBGRANTEE may in good faith contest or as to which a bona fide dispute may arise; provided provision is made to the satisfaction of CITY for eventual payment thereof in the event that it is found that the same is an obligation of SUBGRANTEE.

- I. LITIGATION. SUBGRANTEE shall promptly give notice in writing to CITY of any litigation pending or threatened against SUBGRANTEE or the Property in excess of Five Thousand Dollars (\$5,000.00).
  
- J. NON-DISCRIMINATION AND EQUAL OPPORTUNITY. SUBGRANTEE will comply with all Federal, State and Local laws prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, SUBGRANTEE will undertake good faith efforts to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies. SUBGRANTEE shall submit a report of such efforts on the CITY-provided form.
  
- K. DEBARMENT AND SUSPENSION. The SUBGRANTEE certifies that SUBGRANTEE and Contractor:
  - 1. Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from Federal, State or local (hereinafter “public) transactions;
  - 2. Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction; violation of Federal or State antitrust or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  - 3. Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under paragraph IV.K.2, above; and
  - 4. Have not within the preceding three years had a public transaction terminated for cause or default.
  
- L. ENVIRONMENTAL COMPLIANCE. SUBGRANTEE certifies that

SUBGRANTEE and Contractor are not currently, nor have been, subject to any penalties resulting from environmental non-compliance at the Property. SUBGRANTEE further certifies that they will conduct their remediation activities in accordance with the BCRLP Program Guidelines, and will modify the cleanup activities, as necessary and as determined by CITY, based on unforeseen site conditions or public involvement requirements.

- M. NOTICE TO CHANGE IN WORK PLANS. SUBGRANTEE will immediately report in writing any potential changes to the Work Plan referenced in Section I.D and the discovery of pollutants not identified in the Work Plan. All changes or modification to the Project or the Project Documents shall be approved in writing by the Site Manager and/or the State regulatory Agency, where appropriate, and CITY prior to such change or modification becoming effective. All additional costs incurred as the result of any Change Orders shall be the responsibility of SUBGRANTEE. In the event that unforeseen conditions are discovered during the project implementation, CITY reserves the right to revise the BCRLF Response Action and the Project Documents, which the SUBGRANTEE must implement.
- N. START AND COMPLETION OF PROJECT. SUBGRANTEE will begin the project within thirty days after execution of this AGREEMENT and will complete all work included in the Work Plan within twelve (12) months following the commencement of work. SUBGRANTEE agrees to complete the work in a timely manner in accordance with the Work Plan and Budget. SUBGRANTEE shall notify CITY when the Project is complete. The notice shall contain certification or documentation necessary to establish the following, and shall be submitted to the Site Manager and/or the State regulatory Agency, where appropriate, for review and approval:
1. Certificate of Completion has been issued for the Project by SUBGRANTEE's LEP;
  2. A Construction Completion Report developed by the SUBGRANTEE's LEP in accordance with Section 300.165 of the NCP and all applicable EPA guidance (40 CFR 300.165). This report shall summarize the actions taken, the resources committed and the problems encountered in completion of the Project, if any.
  3. Identify any institutional controls required.
- O. PROJECT SIGNAGE. SUBGRANTEE shall erect a sign on the Property

stating that work is being financed in part by the U.S. BCRLF and the Sacramento BCRLF and appropriate contacts for obtaining information about the activities being conducted on the Property. The sign shall comply with all State and Local law applicable to signs.

- P. **RETURN OF SUBGRANT FUNDS.** If SUBGRANTEE is required to return any SUBGRANT funds to CITY due to SUBGRANTEE's defaulting on this AGREEMENT, the SUBGRANTEE shall punctually pay the principal and any interest of the amount required to be repaid (the "LOAN") at the times and place and in the manner specified by CITY pursuant to Section VII.C of this AGREEMENT.
- V. **NEGATIVE COVENANTS.** SUBGRANTEE further covenants that so long as this AGREEMENT is in effect, SUBGRANTEE will not without prior written consent of CITY use SUBGRANT funds other than for activities approved under the BCRLF Program Guidelines and for the activities stated under Section I.D. SUBGRANT funds will not be used for administrative or programmatic activities.
- VI. **EVENTS OF DEFAULT.**
- A. The following shall constitute EVENTS OF DEFAULT:
1. SUBGRANTEE assigns this AGREEMENT or any proceeds advanced hereunder or any interest herein to a third party, or if the Property or any interest conveyed, assigned or otherwise transferred, without the prior written consent of CITY.
  2. SUBGRANTEE fails to pay any principal or interest due on the LOAN under this AGREEMENT.
  3. Any representation or warranty made by SUBGRANTEE hereunder proves to be false or misleading in any material respect.
  4. Use of the proceeds of the SUBGRANT for a purpose other than that stated in Section I.D.
  5. Default by SUBGRANTEE in the performance of any other term, covenant or agreement contained herein which is not cured within 30 days from its occurrence.
  6. Default by SUBGRANTEE under the terms of any agreement or instrument pursuant to which SUBGRANTEE has borrowed money from any person or entity.

7. The failure of SUBGRANTEE to promptly pay and discharge any judgment or levy of any attachment, execution or other process against the assets of SUBGRANTEE, and such judgment be not satisfied, or such levy or other process be not removed within 30 days after the entry or levy thereof, or at least 5 days prior to the time of any proposed sale under any such judgment or levy.
8. SUBGRANTEE shall be adjudicated as bankrupt or insolvent, or shall consent to or apply for the appointment of a receiver, trustee or liquidator of itself or any of its property, or shall admit in writing its inability to pay its debts generally as they become due, or shall make a general assessment for the benefit of creditors, or shall file a voluntary petition in bankruptcy or a voluntary petition or an answer seeking reorganization or arrangement in a proceeding under any bankruptcy law, or SUBGRANTEE or its directors or majority stockholders shall take action looking into the dissolution, liquidation, or reorganization of SUBGRANTEE.
9. Sale or transfer of the Property prior to completion of the remediation work, without prior approval of CITY.
10. Failure of SUBGRANTEE to complete WORK PLAN.

B. SURRENDER OF FUNDS. If an EVENT OF DEFAULT shall occur, any undisbursed SUBGRANT funds under this AGREEMENT shall be surrendered by SUBGRANTEE and shall become immediately due and payable to CITY without presentment, notice or demand, all of which are hereby expressly waived by SUBGRANTEE, and the obligations, if any of CITY to permit further disbursements hereunder shall immediately cease and terminate.

C. SECURE SITE. In the EVENT OF DEFAULT, the SUBGRANTEE shall secure the site. The cost of securing the site is the responsibility of SUBGRANTEE. If SUBGRANTEE fails to secure the site within 24 hours, CITY may do so at the SUBGRANTEE's sole cost.

D. CITY ACCESS. In the EVENT OF DEFAULT or failure to complete the Work Plan, SUBGRANTEE grants CITY site access to, at CITY's discretion, complete the Work Plan.

VII. REMEDIES OF CITY. Upon the occurrence of any one or more of the EVENT OF DEFAULT and at any time thereafter:

A. CITY may exercise, singly or in combination, any or all of the rights,

powers and privileges provided in this Article VII and all other remedies available to CITY under this AGREEMENT, at law or in equity, at any time and from time to time, and such exercise shall not constitute a waiver of any of CITY's rights or remedies thereunder whether or not the SUBGRANTEE is required to return any of the SUBGRANT funds and whether or not CITY shall have instituted any foreclosure proceedings or other actions for the enforcement of its rights under this AGREEMENT.

- B. CITY shall be entitled to exercise all other remedies provided to CITY under this AGREEMENT or otherwise available under California law, including, but not limited to:
  - 1. The appointment of a receiver;
  - 2. The institution of a suit in equity or other appropriate proceedings for specific performance or an injunction against a violation of this AGREEMENT; and
  - 3. Taking possession of the Property and performing any and all work and labor necessary to complete the Work Plan in which event expenditures therefore may be deemed a LOAN to SUBGRANTEE, payable on demand, bearing interest at the maximum rate allowed by law.
- C. If, as the result of any EVENTS OF DEFAULT, the SUBGRANTEE is required to return previously disbursed SUBGRANT funds under Section IV.P, such amounts shall be deemed a LOAN payable on demand, bearing interest at the maximum rate allowed by law.
- D. CITY may, but shall not be obligated to, set-off against any and all SUBGRANTEE's property in which it has a security interest.

VIII. **INDEMNIFICATION.** SUBGRANTEE shall, at SUBGRANTEE's expense, defend, indemnify, and otherwise hold CITY, its officers, employees and agents harmless against any and all claims, demands, losses, expenses, damages (general, punitive or otherwise) and causes of action (whether legal or equitable in nature) asserted by any person, firm, corporation, or other entity and arising out of or caused by this AGREEMENT, or SUBGRANTEE's actions or inactions with regard to the Property, or by the use of the SUBGRANT funds. SUBGRANTEE shall pay CITY upon demand all claims, judgments, damages, lawsuits or expenses (including legal expenses) incurred by CITY as a result of any legal action arising out of or caused by this AGREEMENT, or by the use of the SUBGRANT funds.

IX. MISCELLANEOUS,

- A. WAIVER. No delay or failure of CITY shall affect any right, power or privilege hereunder; nor shall any single or partial exercise thereof of any abandonment or discontinuance of steps to enforce such a right, power or privilege affect such right, power or privilege. The rights and remedies of CITY hereunder are cumulative and not exclusive. Any waiver, permit, consent or approval of any kind by CITY of any breach or default hereunder, or any such waiver of any provisions or conditions hereof, must be in writing and shall be effective only to the extent set forth in writing.
- B. SUCCESSORS. This AGREEMENT shall be binding upon the permitted assigns or successors of SUBGRANTEE and CITY. This AGREEMENT shall not be assigned or transferred by SUBGRANTEE without the written consent of CITY and any purported assignment or transfer without such prior written consent shall be void.
- C. NOTICES. All notices, requests and demands given to or made upon the respective parties under this AGREEMENT shall be deemed to have been given or made when deposited in the mail, first class postage prepaid, and addressed as follows:
- SUBGRANTEE:       Redevelopment Agency of the City of Sacramento  
                          801 12<sup>th</sup> Street  
                          Sacramento, CA 95814
- CITY:                   The City of Sacramento  
                          Economic Development Department  
                          915 I Street, 3<sup>rd</sup> Floor  
                          Sacramento, CA 95814
- D. COSTS AND ATTORNEY’S FEES. SUBGRANTEE will reimburse CITY for all costs, expenses and reasonable attorneys’ fees expended or incurred by CITY in enforcing this AGREEMENT, in actions for declaratory relief in any way related to this AGREEMENT, or in collecting any sum which becomes due the CITY as a LOAN under Section VII.C.
- E. CALIFORNIA LAW APPLICABLE. This AGREEMENT shall be construed in accordance with the laws of the State of California. Venue for any actions arising from this AGREEMENT shall be Sacramento County.
- F. EXHIBITS. All Exhibits mentioned in this AGREEMENT shall be

deemed incorporated herein by reference as though fully set forth herein.

G. RELATIONSHIP. The relationship of CITY and SUBGRANTEE is that of subgrantor and subgrantee. No party hereto intends to create any other relationship hereby, and the parties disavow and negate any intention to create a partnership or joint venture hereby.

H. ENTIRE AGREEMENT.

1. The terms and conditions of this AGREEMENT, all exhibits attached and any documents expressly incorporated by reference represents the entire AGREEMENT between the parties with respect to the subject matter of this AGREEMENT. This AGREEMENT shall supersede any prior SUBGRANT agreements, oral or written, regarding the subject matter of this AGREEMENT between CITY and SUBGRANTEE. No other SUBGRANT agreement, contract, statement, or promise relating to the subject matter of this AGREEMENT shall be valid or binding except by a written amendment to this AGREEMENT.
2. If any conflicts arise between the terms and conditions of this AGREEMENT and the terms and conditions of the attached exhibits or any documents expressly incorporated by reference, the terms and conditions of this AGREEMENT shall control.
3. If any part of this AGREEMENT is determined to be illegal or unenforceable, all other parts shall be given effect separately and shall be in effect.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed the date first hereinabove written.

**CITY OF SACRAMENTO (“CITY”)**

By: \_\_\_\_\_  
William H. Edgar, Interim City Manager

**Attested By:**

\_\_\_\_\_  
City Clerk

**Approved as to form:**

\_\_\_\_\_  
City Attorney

**Redevelopment Agency of the City of  
Sacramento (“SUBGRANTEE”)**

By: \_\_\_\_\_  
La Shelle Dozier, Executive Director

**Approved as to form:**

\_\_\_\_\_  
Agency Counsel



## **RESOLUTION NO. 2011-**

**Adopted by the Redevelopment Agency of the City of Sacramento**

**ACCEPTING A \$250,000 BROWNFIELDS REVOLVING LOAN FUND (BRLF) GRANT, APPROVING AN AGREEMENT WITH NINYO AND MOORE, AND DIRECTING STAFF TO SOLICIT BIDS FOR ENVIRONMENTAL CLEAN-UP AT 800-816 K AND 801-815 L STREETS**

### **BACKGROUND**

- A. The Redevelopment Agency of the City of Sacramento (Agency) has adopted the Merged Downtown Sacramento Redevelopment Plan (Redevelopment Plan) and an Implementation Plan for the Merged Downtown Sacramento Redevelopment Project Area (Project Area).
- B. The proposed Project is consistent with the goals and objectives outlined in the Merged Downtown Redevelopment Area Implementation Plan (2009-2014) by eliminating blight, stimulating economic growth; and it was also specifically listed in the Redevelopment Program section of the Implementation Plan as 800 Block of K/L Mixed-use Project.
- C. In 2004, the JKL Corridor Workshop identified the 700/800 blocks of K and L Streets as a critical location for revitalization of K Street, with a focus on mixed-use development including ground floor retail; housing; cultural and commercial uses envisioned on this property to eliminate blight, stimulate economic growth and provide for a range of housing types.
- D. Between 2006 and 2008 the Redevelopment Agency of the City of Sacramento acquired and currently owns the following properties on 800 block of K and L Streets: 006-0098-022; 006-098-003 and 004; 006-0098-024; 006-0098-006, 007 and 008; 006-0096-021; and 006-0098-014.
- E. The buildings were found to contain various hazardous substances including asbestos containing building materials (ACMs), lead-based paints (LBPs) and miscellaneous hazardous building materials.
- F. In order for the properties to be suitable for future development the hazardous materials must be removed.
- G. The proposed actions in furtherance of Brownfields clean-up and associated actions are exempt under section 15330 of the California Environmental Quality Act (CEQA) Guidelines (tit. 14 Cal. Code Reg. 1500 – 15387).

**BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE REDEVELOPMENT AGENCY RESOLVES AS FOLLOWS:**

- Section 1. All of the evidence presented having been duly considered, including the environmental findings above, the findings are adopted and approved.
- Section 2. The Executive Director, or her designee, is authorized to accept a Brownfields Revolving Loan Fund grant in an amount not to exceed \$250,000 from the City of Sacramento.
- Section 3. The Executive Director, or her designee, is authorized the execute Subgrant Agreement for Site Remediation attached hereto as Exhibit A in substantially complete form.
- Section 4. The Executive Director, or her designee is authorized to approve a contract with Ninyo and Moore in the amount not to exceed \$20,500 to conduct a Soil Gas Assessment, Soil and Groundwater Management Plan, and develop Hazardous Materials Abatement Specifications and Abatement Drawings.
- Section 5. Following completion of the Soil Gas Assessment, Soil and Groundwater Management Plan, and develop Hazardous Materials Abatement Specifications and Abatement Drawings, Staff is directed to solicit bids for the environmental clean-up.



**CONTRACT**  
**For**  
**NINYO & MOORE**  
*Soil Gas Assessment – 800 Block of K Street Properties*

Effective Date:	May 12, 2011
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AS OF THE ABOVE-WRITTEN “EFFECTIVE DATE”, AND IN CONSIDERATION OF THEIR MUTUAL OBLIGATIONS, THE AGENCY AND CONTRACTOR (DEFINED BELOW) ENTER INTO THIS “CONTRACT” AND AGREE AS FOLLOWS:

1. “Agency” is/are the following selected agency/agencies, which are public bodies, corporate and politic, and which has/have the address of 801 12<sup>th</sup> Street, Sacramento, California 95814:

	AGENCY	
SELECT	<input checked="" type="checkbox"/> Redevelopment Agency of the City of Sacramento	<input type="checkbox"/> Redevelopment Agency of the County of Sacramento
	<input type="checkbox"/> Housing Authority of the City of Sacramento	<input type="checkbox"/> Housing Authority of the County of Sacramento
	<input type="checkbox"/> Sacramento Housing and Redevelopment Agency	

2. “Contractor” and Contractor’s name and address for its principal place of business are the following:

Name	Ninyo & Moore Geotechnical and Environmental Sciences Consultants
Address	1956 Webster Street, Suite 400, Oakland, CA 94612

Contractor is the following legal entity (select one):

<input type="checkbox"/> Sole Proprietor/Individual(s)	<input checked="" type="checkbox"/> Corporation	<input type="checkbox"/> Nonprofit Corporation	<input type="checkbox"/> General Partnership
<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Limited Liability Partnership	<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Other:

Contractor is organized in (select one):

<input type="checkbox"/> California	
<input type="checkbox"/> in the following state and is licensed to do its business in California	State

3. “Funding Source” is the source of funding that the Agency is using to pay the Contract payments. Contractor must comply with each and every requirement of the Funding Source. Agency will cooperate with Contractor in determining the applicable requirements of the Funding Source. The Funding Source is :

Funding Source	CFDA#	Award #	Award Year	Jurisdiction	Amount
Brownfields Grant				<input type="checkbox"/> Federal <input type="checkbox"/> State <input checked="" type="checkbox"/> Local	\$20,500.00
				<input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local	
				<input type="checkbox"/> Federal <input type="checkbox"/> State <input type="checkbox"/> Local	

“Attachments” for this Contract are the following, which are incorporated in this Contract as if included in full in the body of this document:

ATTACHMENT NO. CHECK APPLICABLE BOX	DESCRIPTION OF ATTACHMENT (Attachments marked N/A or stricken are not included)
1	Contract Provisions (This Contract is <i>invalid</i> without the Contract Provisions attachment)
<input checked="" type="checkbox"/> yes #__ <input type="checkbox"/> no	Federal Requirements
<input type="checkbox"/> yes #__ <input checked="" type="checkbox"/> no	CDBG and Other Federal Requirements
<input type="checkbox"/> yes #__ <input checked="" type="checkbox"/> no	Payments
<input type="checkbox"/> yes #__ <input checked="" type="checkbox"/> no	General Conditions for Limited Construction Work (If this Contract is for construction work, it is <i>invalid</i> without the General Conditions for Limited Construction Work attached.)
<input type="checkbox"/> yes #__ <input checked="" type="checkbox"/> no	Attachment for Architectural Services (If this Contract is for architectural services, it is <i>invalid</i> without the Attachment for Architectural Services attached.)
<input type="checkbox"/> yes #__ <input checked="" type="checkbox"/> no	Other

Unless expressly stated otherwise, the Attachments shall supersede any provisions of this Contract with which they conflict.

4. “Scope of Work” for this Contract is the following [This contract is *invalid* unless this section is completed. In addition to the Scope of Work here, there may be a detailed Scope of Work attached if that attachment is written by the Agency and the attachment must be in the same form as the following table, including all categories and tasks.]:

“PERFORMING PARTY”	“TASK/OBLIGATION”:	“DEADLINE”
Contractor	<ul style="list-style-type: none"> <li>Develop a Hazardous Materials Abatement Specification and Associated Abatement drawings for identified hazardous materials/components (ACBMs, LBPs, and miscellaneous building materials). The abatement specification will include a proposed sequencing of abatement activities.</li> </ul>	
	<ul style="list-style-type: none"> <li>Develop a SGMP that identifies appropriate handling and protection of human health measures to be taken in the event that impacted soil or groundwater are encountered during construction.</li> </ul>	
	<ul style="list-style-type: none"> <li>Results of the Phase II ESA also indicated that impacted groundwater resulting from a release of at least one offsite source appears to have migrated beneath the site. Volatilization of volatile organic compounds (VOCs) from the groundwater may have occurred, potentially resulting in the presence of VOCs in the soil vapor beneath the site.</li> <li>In the context of this scenario we propose the following scope of work: Advance soil gas probes at six locations to a depth of 3 feet below ground surface (bgs). The probes will be placed in locations representative of the site and will include both basement areas, and areas where no basements exist (current structures are built on grade). Actual locations will be finalized at the time of field work subsequent to review of accessibility issues and the presence of existing utilities.</li> </ul>	
Contractor	“COMPLETION DATE”: The date for completion of all of Contractor’s Tasks/Obligations under this Contract	12/31/11
Contractor	“BILLING DATE”: Contractor must submit the final bill for all work under this Contract. Agency will not pay bills submitted after the Billing Date	1/31/12
Agency	“FINAL DATE”: Agency must make final payment for all bills submitted in accordance with the terms of this Contract.	3/1/12

5. “Contract Price” is the maximum amount that the Agency is required to pay Contractor under this Contract. The Contract Price for this Contract is the following:

CONTRACT PRICE	\$20,500.00
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6. "Payment Schedule" for this Contract, by which schedule Agency must make payments under this Contract, is following:

SELECT ONE	DATE, TIME PERIOD OR PERFORMANCE TO BE COMPLETED AS CONDITION OF PAYMENT		MAXIMUM AMOUNT OF PERIODIC PAYMENT:
	(Only one payment schedule is selected, the others not selected included):		
	Monthly payments, Payable		Amount
	In the amounts and on the dates stated in Attachment ___ Payment		Stated in attachment
X	According to the following Schedule of Tasks, periodic payment upon Contractor's completion of each respective task:		Amount
	Preparation of abatement specifications and drawings (for use in bid documents to solicit contractor bids and for use as part of the abatement plan)		\$5,000.00
	Soil and Groundwater Management Plan		\$3,800.00
	Installation and sampling of the soil gas probes, conducting a subsurface vapor intrusion model and preparing a report of findings. The soil gas investigation includes all labor and subcontractor costs (analytical laboratory, concrete coring, and utility clearance)		\$11,700.00
	As billed by Contractor, for work actually performed and services actually provided		According to the fees and rates stated in Attachment ___ Payment
	Allowed Reimbursable Expenses N/A		Maximum Amount
			\$

Contractor shall not be reimbursed for expenses that are not specifically included in the Payment Schedule. Notwithstanding any other provision, reimbursable travel expenses shall not exceed the rates allowed by the Internal Revenue Service Standard Mileage Reimbursement and shall not include expenses for travel within a forty-five (45) mile radius from the Agency's place of business. Notwithstanding any other provision, reimbursable expenses shall not include any pro-rated overhead costs and expenses, facsimile or telecopier charges, copying costs (unless extraordinary and approved in advance by the Agency), courier charges, local and long distance telephone charges, and ordinary office and business supplies.

7. "Special Provisions" are the following provisions or additional recitals, which are a part of the contract only if approved by Agency counsel as indicated by the accompanying initials.

SPECIAL PROVISION	AGENCY COUNSEL
N/A	

THIS CONTRACT IS EXECUTED in Sacramento, California as of the date first above written.

REDEVELOPMENT AGENCY OF  
THE CITY OF SACRAMENTO:  
By:

CONTRACTOR:  
By:

John Dangberg, as Designated Signatory

Name:		Name:	
Title:		Title:	
		Tax ID Number:	

Contractor must file a Conflict of Interest Statement with the Agency Clerk, unless this box is checked by the Agency signatory indicating that the Contractor is excluded from filing under the Agency Conflict of Interest Code.

**CERTIFICATION OF AUTHORITY**

I certify under penalty of perjury under the laws of the State of California that I am fully authorized to execute the attached document for Contractor in the capacity I have stated, and that such execution is sufficient to bind the Contractor. Executed in \_\_\_\_\_, California, on \_\_\_\_\_.

\_\_\_\_\_  
Contractor's Signatory

## ATTACHMENT 1 CONTRACT PROVISIONS

1. **CONTRACT CONTENTS, PRECEDENCE AND DEFINITIONS.** This Contract consists of this Contract document and all of the Attachments named in this Contract. Except for matters required by law or expressly stated otherwise, the provisions of the attachments supersede any provisions of the body of this Contract with which they conflict. Unless otherwise defined in this Attachment 1, capitalized terms shall have the definitions stated in this Contract.

2. **SCOPE OF WORK.** Notwithstanding the wording of the Scope of Work, unless a Task/Obligation is expressly described in the Scope of Work as one that is not mandatory, each Task/Obligation described in the Scope of Work is the mandatory obligation of the Performing Party, and it must be completed on or before its respective Deadline. As the context indicates the Task/Obligation must be performed at or delivered to the Location stated in the Scope of Work.

3. **CONTRACT TERM AND TIME OF PERFORMANCE.** The "Contract Term" shall begin on the date of this Contract and shall end at 5:00 p.m. on the Final Date or upon completion of all services, whichever shall first occur. The Final Date is the date for completion of all obligations of the parties under this Contract.

a) Certain of the Contract requirements, as expressly stated in this Contract, shall survive the completion or termination of this Contract.

b) The Contractor acknowledges that Contractor is not entitled to compensation for any work done or costs incurred prior to the date of this Contract or subsequent to the Completion Date. This contract cannot be revived, amended or extended by agreement made after the Final Date.

4. **COMPENSATION, REIMBURSEMENT AND METHOD OF PAYMENT.** Notwithstanding any other provision of this Contract, the parties agree that the total compensation and reimbursement for all services and expenses required during the term of this Contract shall not exceed the Contract Price. Agency shall pay the Contractor in the amounts and at the times specified in the Payment Schedule. Agency is not obligated to make any payment under this Contract for work Contractor has not yet performed or goods not delivered. Agency is not obligated to make any payment under this Contract for so long as Contractor is in material default of this Contract. Except as specified in writing in this Contract, Agency is not obligated or liable under this Contract to any party other than the Contractor.

5. **INSURANCE COVERAGE REQUIREMENTS.** During the Contract Term, Contractor must maintain the following insurance coverage from insurance providers licensed to do business in California and having an industry rating that is reasonably acceptable to Agency. Failure to maintain the required insurance is a material breach of this Contract. Before beginning any work under this Contract, Contractor must provide Agency with certificates of insurance or copies of the insurance policies demonstrating the required coverage, and the required endorsements naming Agency as an additional insured. Contractor must assure that such certificates and endorsements are in a form reasonably acceptable to the Agency and reflect fulfillment of all of the requirements of this Contract. Contractor must assure that the coverage afforded under the policies can only be canceled after thirty (30) days prior written notice to the Agency of the pending cancellation. Contractor must mark such notice to the attention of the Agency's Procurement Services Office at the following address:

SACRAMENTO HOUSING & REDEVELOPMENT AGENCY  
801 12<sup>th</sup> Street – Procurement Services (PS)  
Sacramento, California 95814

a) The required insurance coverage is the following: (i) One Million Dollars (\$1,000,000) or more of comprehensive general liability coverage including, without limitation, coverage for contractual liability, public liability and property damage and having a deductible of Twenty-five Thousand Dollars (\$25,000) or less; (ii) if motor vehicles are used in connection with this Contract, Three Hundred Thousand Dollars (\$300,000) or more of automobile liability coverage having a deductible of Five Thousand Dollars (\$5,000 ) or less; and statutory limits or more of workers compensation coverage for all employees of Contractor and all others doing Contract work. The general liability and automobile policies shall be endorsed to name the Agency as an additional insured.

b) Cancellation: Contractor will provide the Agency with the cancellation clause and/or any amendatory endorsements that modify or change the policy cancellation clause of the insurance policies in force. It is the Contractor's responsibility to notify the Agency of any notice of cancellation, non-renewal or non-payment of premium in accordance with your policy provisions. In the event insurance is cancelled or not renewed, the Contractor shall notify the Agency within forty eight (48) hours of such cancellation or non-renewal.

### \_\_\_\_ Contractor's Initials

c) Contractor is in material breach of this Contract for so long as Contractor fails to maintain all of the required insurance. Agency has the right, but not the obligation, to pay any delinquent insurance premiums and any other charges to reinstate or maintain the required insurance policies and coverage. Upon Agency's demand, Contractor must immediately reimburse Agency for any and all costs incurred by Agency in so obtaining or maintaining insurance. If Agency does incur such costs, Agency shall have the right to withhold such amount from any payment due to Contractor under this Contract and to reduce the compensation payable to Contractor under this Contract by such amount.

**6. BILLING PROCEDURES AND CONDITIONS.** Agency must make the payments due under this Contract, as provided in Part I, subject to the following provisions.

a) Agency must pay the Contract Price to Contractor for performance of Contractor's obligations under this Agreement, or so much of the Contract Price as may be due for services actually performed and materials actually supplied by Contractor under this Contract. Agency must make such payments within thirty (30) days following delivery by Contractor to Agency of invoices stating the amount then due and specifying the services performed for which payment is due. Agency is not required to make such payment more frequently than specified as the Time for Payment. Contractor will not be paid for expenses or overhead as separate items of cost unless such items are specifically listed in the Payment Schedule, and then not to exceed the amounts so provided. In any event, Agency is not required to pay Contractor a total amount for goods, services and expenses which exceed the Contract Price.

b) Contractor may make requests for payment, after the Completion Date and through the Billing Date, for services performed or materials provided to the Contract work on or before the Completion Date. The Agency shall make payments due under this Contract on or before the Final Date.

c) As a condition for payment, Contractor must submit billing statements, in duplicate, not less than ten (10) business days before the date of a requested payment. Such billing statements shall specify the dates on which the work was performed; the nature of the work performed; the percentage of the total work performed; the name of the individual performing each element of the work; the respective hourly billing rates; a list of all expenses for which reimbursement is sought; and the requested payment date.

d) Within ten (10) days following a written request received from Agency, Contractor must provide a bill to Agency for all work done as of the request date. Agency is entitled to make similar requests at intervals of not less than thirty (30) days following the initial request.

**7. INDEMNIFICATION.** Contractor shall indemnify, save harmless and defend the Housing Authority of the City of Sacramento, the Housing Authority of the County of Sacramento, the Redevelopment Agency of the City of Sacramento, the Redevelopment Agency of the County of Sacramento, the Sacramento Housing and Redevelopment Agency, the City of Sacramento and the County of Sacramento, their respective officers, directors, commissioners, advisory committee members, agents, and employees from liability, claims, demands, attorney's fees or litigation and related costs, including without limitation, court costs and investigator, witness, arbitrator and mediator fees, for any and all injury or damages to persons including hired independent contractors or property, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, and its officers, employees or agents.

Agency shall indemnify, defend and save harmless the Contractor, its officers, agents and employees from liability, claims, demands, attorney's fees or litigation and related costs, including without limitation, court costs and investigator, witness, arbitrator and mediator fees, for any injury or damages to persons or property directly related to this Contract and directly caused by the negligence, recklessness, or willful misconduct of Agency, or of its officers, employees, or agents acting within the scope of their authority.

8. **NO WAIVER OF RIGHTS AND REMEDIES.** Agency's failure, at any time, to object to any breach of covenant or obligation, to any failure of performance, or to any other default on the part of the Contractor shall not constitute a continuing waiver of subsequent breaches or defaults. Agency's making of any payment to the Contractor shall not, under any circumstances, be considered as a waiver by Agency. Agency's making of any payment while any breach or default by Contractor exists shall in no way impair any right or remedy available to Agency related to such breach or default, including without limitation, the right to withhold future payments.

9. **HIRING OF OTHERS.** Unless consultants, specialists, experts or other third parties are listed in the Scope of Work, Contractor must not employ any of them or incur any obligation to pay any of them for services performed under this Contract without the prior written approval of Agency. Agency's written approval shall not create any obligation of the Agency with regard to any such third party. Contractor has no authority to, and must not purport to, employ, hire or contract with any such third party as agent of the Agency or otherwise on behalf of Agency.

10. **TERMINATION OF CONTRACT FOR CAUSE.** If either party fails to fulfill its obligations under this Contract in a timely and proper manner or violates any of the covenants, agreements, or stipulations of this Contract, and if such failure or violation is material and substantial, the other party shall have the right to terminate this Contract by written notice to the defaulting party.

a) If Contractor defaults and Agency terminates the Contract, all finished or unfinished work, products, documents, electronic media, data, studies, artwork, renderings, models, software programs, and reports prepared by Contractor under this Contract shall, at the option of Agency, become property of the Agency, upon payment to Contractor of just and equitable compensation for such work which is completed and which is reasonably satisfactory to Agency. Agency's exercise of its option to own such properties does not relieve Contractor of liability to Agency for damages on account of Contractor's default, and Agency may withhold any payments to Contractor for the purpose of setoff until such time as the exact amount of damages due Agency from Contractor is determined.

b) If Agency defaults and Contractor terminates the Contract, upon Contractor's submission of the billings and receipts required by this Contract, Agency must pay to Contractor an amount which bears the same ratio to the total compensation under this Contract as the services actually performed by Contractor bear to the total services of Contractor covered by this Contract, less payments of compensation previously made. (By way of example if the work is eighty percent complete, Agency must pay eighty percent of the compensation less any amounts previously paid for the work.) In addition, Agency must reimburse Contractor for all unreimbursed expenses that are reimbursable under this Contract upon Contractor's submission of the billings and receipts required by this Contract for reimbursement. If less than fifty percent (50%) of the services covered by this Contract have been performed as of the termination date, Agency must also pay Contractor for that portion of the actual out-of-pocket expenses incurred by Contractor during the Contract period which are directly attributable to the uncompleted portion of the services covered by this Contract.

11. **TERMINATION FOR CONVENIENCE OF AGENCY.** Agency may terminate this Contract, at any time and without cause, by a notice in writing from Agency to Contractor. Upon such termination, Agency must pay Contractor the same amounts as Agency would have paid under Section 10.b) as a termination for Agency default.

12. **CHANGES.** Agency may, from time to time, request changes in the Scope of Work to be performed by Contractor. Such changes, including any increase or decrease in Contractor's compensation, must be by written amendment to this Contract executed in advance by Agency and Contractor.

13. **PERSONNEL, FACILITIES AND EQUIPMENT.** Contractor represents that he has, or will, secure at his own expense all personnel, facilities and equipment required in performing the services under this Contract. Such personnel must not be Agency employees or have any contractual relationship with Agency, except with Agency's prior written approval.

a) All the services required under this Contract will be performed by Contractor or under his supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such services.

b) No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

14. **SUBCONTRACTING.** Contractor must not enter into any subcontract for performance of the services covered by this Contract without the prior written consent of Agency. In any event, Contractor shall be as fully responsible to Agency for the acts and omissions of his subcontractors and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by him. In any event, Contractor must insert in each subcontract appropriate provisions requiring compliance with the labor standards provisions, insurance and other relevant provisions of this contract.

15. **EQUAL EMPLOYMENT OPPORTUNITY REQUIREMENTS.** During the performance of this Contract, Contractor agrees as follows:

a) Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by Agency setting forth the provisions of this nondiscrimination clause.

b) Contractor will, in all solicitations or advertisements for employees placed by or on behalf of Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

16. **INTERESTS OF OFFICIALS.** No member of the governing body of Agency, and no other officer, employee or agent of Agency who exercises any functions or responsibilities in connection with the carrying out of the project to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract. No member of the governing body of the locality in which the project is situated, and no other public official of such locality, who exercises any functions or responsibilities in the review or approval of the carrying out of the project to which this Contract pertains, shall have any personal interest, direct or indirect, in this Contract. If federal funds are expended by the Agency for this Contract, no member of or delegate to the Congress of the United States, and no Resident Commissioner, shall be admitted to any share or part of this Contract or to any benefit arising from this Contract. Contractor covenants that he presently has no interest and shall not acquire any interest, direct or indirect, in any portion of the project to which this Contract pertains, or any other interest which would conflict in any manner or degree with the performance of his services under this Contract. Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed by Contractor.

17. **CONFLICTS OF INTEREST STATEMENT.** Contractor shall, upon Agency request, complete and submit a conflict of interest statement to the Agency in form approved by the Agency.

18. **MONITORING AND REPORTING.** Agency may monitor the adequacy of Contractor's performance in any manner which Agency deems most effective. Contractor must cooperate with Agency in such monitoring. If requested by the Agency staff, in writing, Contractor must provide Agency with detailed reports outlining the most current status involving all Agency activities and projects being handled by Contractor. Such reports may be required no more often than monthly. Agency shall have the right to audit such reports, including the right to review all records of Contractor related to such reports.

19. **OWNERSHIP OF PROFESSIONAL AND TECHNICAL INFORMATION.** All professional and technical information, in the form of original designs, drawings, data, computations, specifications, report texts, estimates, writings, artwork, renderings, models, software programs, and any other material, data and information collected or developed in connection with the work under this Contract, and all original documents shall be forwarded to and become the sole property of Agency. Neither Contractor nor any of its associates or consultants shall have any rights or interest in such information, documents and material. Contractor and its associates and consultants may retain such copies or reproductions, at their expense, of the original documents as necessary for their files, records and reference.

20. **NO INTELLECTUAL PROPERTY RIGHTS OR ARTIST'S RIGHTS IN CONTRACT WORK.** In any event, without the prior written approval of the Agency, Contractor and any person or entity acting on behalf of Contractor shall not obtain nor have, and expressly waives, any rights, in law or in equity, in any intellectual property developed in furtherance of this Agreement, including without limitation, copyright, trademark, service mark, patent or rights of an artist in a work of art. Artists preparing any artwork under this Agreement waive any rights to notice or to take any action regarding the use,

removal, relocation or destruction of any artwork so prepared. Contractor represents and acknowledges that Contractor has or shall obtain such waivers in writing for all persons or entities doing work under this Agreement

21. **COMPLIANCE WITH LAWS.** Contractor must comply with all applicable laws, ordinances and codes of the federal, state and local governments, and must commit no trespass on any public or private property in performing any of the work embraced by this Contract.

22. **ASSIGNABILITY.** Contractor is prohibited from assigning and waives all rights to assign or transfer any interest in this Contract without the prior written approval of Agency. Any purported assignment of any of Contractor's rights and obligations under this Contract without the prior written consent of the Agency is a breach of this Contract.

23. **AGENCY COOPERATION.** Agency will reasonably cooperate with Contractor regarding this Contract. As and when requested by Contractor, Agency will furnish to Contractor any and all pertinent information which Agency may possess during the time of performance of Contractor's duties under this Contract.

24. **CONFIDENTIALITY.** All information prepared or assembled by the Contractor under this Contract is confidential. Contractor must not make this information available to any individual or organization without the prior written approval of Agency. Contractor must immediately forward to Agency all requests for information related to this Contract made by a third party to Contractor. Contractor must not disclose or permit the disclosure of any confidential information of the Agency, except to its agents, employees and other consultants, approved by Agency, who need such confidential information for the proper performance of their duties related to this Contract or on behalf of the Agency.

25. **CONTRACTOR'S STATUS.** Contractor for all purposes under this Agreement is an independent Contractor and must maintain any and all licenses required by law for the performance of Contractor's obligations under this Contract. Except as expressly stated in this Contract, Agency is prohibited from directing the methods of Contractor's work under this Contract, requiring Contractor's use of an Agency office for Contractor's performance or setting regular working hours for Contractor or Contractor's employees.

26. **CONTRACT CONSTRUCTION AND ENFORCEABILITY.** The existence, validity, construction and operation of this Contract, and all its representations, terms and conditions shall conform to the laws of the State of California, exclusive of its conflicts of law rules. Throughout this contract, the use of singular and plural forms, or the various gender forms, shall each include the other as the context may indicate. If any provision of this Contract is held in whole or in part to be unenforceable for any reason, the remainder of that provision and the entire Contract will be severable and remain in effect.

27. **NOTICES.** Any notices, bills, invoices, or reports required by this Contract shall be sufficient if sent by the parties in the United States mail, postage paid, to the address of the other party as indicated in this Contract.

28. **ENTIRE CONTRACT.** This Contract contains the entire agreement of the parties. No other agreement, statement or promise made on or before the date of this Contract will be binding on the parties. No changes to this Contract are valid unless they are made by written amendment duly executed by the parties.

29. **VENUE.** Unless otherwise agreed in writing by the parties, the venue for all actions related to this Contract is Sacramento County, California.

REVISED 2/25/11

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