

RESOLUTION NO. 2011-271

Adopted by the Sacramento City Council

May 12, 2011

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.

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Exhibit A - Subgrant Agreement For Site Remediation

Adopted by the City of Sacramento City Council on May 12, 2011 by the following vote:

Ayes: Councilmembers Ashby, Cohn, D Fong, R Fong, McCarty, Sheedy, and Mayor Johnson.

Noes: None.

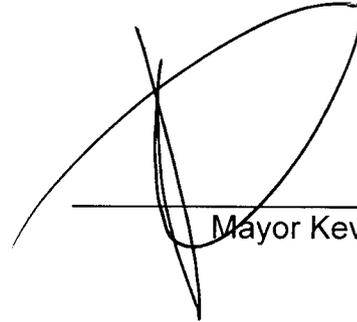
Abstain: None.

Absent: Councilmembers Pannell and Schenirer.

Attest:



Shirley Concolino, City Clerk



Mayor Kevin Johnson

**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 12th Street
 Sacramento, CA 95814
- CITY: The City of Sacramento
 Economic Development Department
 915 I Street, 3rd 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.

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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