

EXHIBIT A

185157

LOAN AGREEMENT
PORTLAND BROWNFIELD CLEANUP REVOLVING LOAN FUND

The Portland Brownfield Revolving Loan Fund (PBRLF), funded by a grant from the United States Environmental Protection Agency (USEPA), offers low cost, flexible loans and grants to assist with the remediation of brownfield properties in Portland Oregon.

The PBRLF creates a continual funding source to sustain the Portland Brownfield Program's ability to address the environmental threat of hazardous and petroleum-contaminated sites in our communities through cleanup and reuse. As repayments are made under the initial loan(s), the funds will be revolved, enabling the Portland Brownfield Program to provide financial assistance through additional loans to return other contaminated properties to productive use. The PBRLF will help to fund the remediation required for site cleanup, allow redevelopment projects to go forward, address the lingering threat to public health and the negative effect of 'brownfields' on community economic vitality, and promote economic development by increasing employment opportunities in the City of Portland.

Grey Sections depend on specific requirements of this loan agreement,
i.e. type of cleanup, dates, etc.

PARTIES

THIS AGREEMENT is made and entered into on Loan Approval Date, by and between Name of Borrower and Firm, hereinafter referred to as the "BORROWER," and the City of Portland, a municipal corporation, hereinafter referred to as the "LENDER."

DEFINITIONS

PBRLF – Portland Brownfield Revolving Loan Fund (per Cooperative agreement No BF-00J45201 between the City of Portland Brownfield Program and the United State Environmental Protection Agency.

Project – The remediation of hazardous substances, pollutants, contaminants, and/or petroleum from the Property, as defined below, in accordance with the selected Voluntary Remediation Work Plan as specified in Attachment B.

USEPA – United States Environmental Protection Agency

ODEQ – Oregon Department of Environmental Quality

Site Manager – Representative from the Oregon DEQ Brownfield Response Program will provide site assessment, and assistance for parties interested in cleaning up contaminated sites without ongoing DEQ oversight.

Voluntary Cleanup Program (VCP) – A program through which DEQ provides oversight throughout the investigation and selects or approves remedial action through a collaborative process

Prime Recipient - is the non-federal entity that receives Revolving Loan funding directly from USEPA.

Sub-Contractors and Vendors - Non-federal entities that receive revolving loan funding from a prime recipient.

Subcontractor – The general contractor for remediation or other contractors hired by the BORROWER.

Central Contractor Registration (CRR) - The Federal repository into which an entity must deposit information required for the conduct of business as a recipient

Data Universal Numbering System (DUNS) - The nine digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify business entities.

Cooperative agreement Recipient (CAR) - The recipient shall comply with and require that work done by the BORROWER with cooperative agreement funds comply with all the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k).

Comprehensive Environmental Response Compensation and Liability Act (CERCLA) - Federal law passed in December 1980 designed to impose cleanup and reporting requirements.

Eligible Activities - The response actions associated with actual cleanup of the Property, as defined below, and eligible direct administrative costs as specified in City of Portland Ordinance. For a list of eligible and ineligible activities see Attachment A

Ineligible Activities - Costs incurred prior to the execution of a loan that does not meet the listed eligible costs. For a list of eligible and ineligible activities see Attachment A

REPRESENTATIONS AND WARRANTIES

WHEREAS, the LENDER is the recipient of a USEPA grant to establish a Brownfields Revolving Loan Fund and is authorized to make certain loans from these funds;

WHEREAS, the LENDER is responsible to the USEPA for the proper expenditure of loan funds;

WHEREAS, PBRLF funds are to be used to make loans to parties willing to cleanup brownfield sites;

WHEREAS, the BORROWER is the owner of certain real property located in Portland (the Property), which property is more particularly described in Exhibit 1, incorporated herein;

WHEREAS, the Property is contaminated with a hazardous or controlled substance;

WHEREAS, the Property is not listed, or proposed for listing on the National Priorities List of the USEPA; is not subject to a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree issues or entered into by parties under CERCLA; and is not subject to jurisdiction, custody, or control by the United States government;

(Insert whichever of the two following paragraphs is appropriate, depending on the contaminants to be addressed by the loan.)

WHEREAS, the LENDER in consultation with DEQ, has determined in accordance with the CERCLA, Section 101(39)(D), and relevant USEPA grant requirements, that the Property is a brownfield site contaminated with petroleum or a petroleum product and is: 1) of relatively low risk, as compared to other petroleum-only sites in the State; and (b) a site for which there is no viable responsible party and which will be cleaned up by a person that is not potentially liable for cleaning up the site; and c) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 USC 6991b(h));

WHEREAS, the LENDER has determined in accordance with relevant USEPA grant requirements that the BORROWER is not potentially liable under section 107 of CERCLA for response costs at the Property and that the BORROWER has not caused, contributed to, permitted or exacerbated the release of hazardous substances, pollutants or contaminants on, or emanating from, the Property, and continues to meet its obligations and to exercise appropriate care with respect to hazardous substances found at the Property;

WHEREAS, the BORROWER is not currently, nor have they been subject to any penalties resulting from environmental non-compliance at or on the Property nor is the BORROWER, or its Project contractors or subcontractors currently suspended, debarred, or otherwise declared ineligible for participation in this Federal program or from the receipt of these funds; and,

WHEREAS, the BORROWER is a insert organization type, validly existing and in good standing under the laws of the State of Oregon and has all requisite power and authority to own the Property and to execute, deliver and perform all of its obligations under this agreement and the loan documents.

CERTIFICATIONS

NOW THEREFORE, in consideration of the covenants and promises contained herein, it is mutually agreed by and between the parties as follows:

- 1 The BORROWER agrees to carry out the Project and shall use loan funds only for eligible activities in compliance with CERCLA; the Uniform Administrative Requirements for Non-Profit Organizations (40 CFR Part 30); the Uniform Administrative Requirements of Grants and Cooperative agreements to States and Local Governments (40 CFR Part 31); and Office of Management and Budget (OMB) Circular A 133 Audits of States, Local Governments and Non-Profit Organizations; and in accordance with all other applicable provisions of federal, state or local laws, including the applicable laws and regulations set forth on the attached Exhibit 2, incorporated herein.
- 2 The BORROWER shall ensure that the cleanup is protective of human health and the environment.
- 3 The BORROWER agrees to enter into and conduct the brownfields cleanup in accordance with the terms of DEQ oversight authority as approved by the LENDER.
- 4 The BORROWER understands and agrees that all loan Funds provided by the LENDER shall be used to clean up the Property and that loan funds shall not be used for the payment of any cost or expense related to site assessments, except for confirmation testing and sampling in conjunction with cleanup of the site, nor for building demolition, site improvements or infrastructure unless such activities are approved and necessary to conduct the approved Voluntary Remediation Work Plan.
- 5 The BORROWER agrees to perform the Project in accordance with the VCP selected by DEQ after consideration of public comment on an analysis of cleanup alternatives and proposed the Voluntary Cleanup Work Plan.
- 6 The BORROWER agrees to prepare a detailed Design and Construction Voluntary Cleanup Work Plan with specifications for the cleanup activities, a project budget and work schedule, a quality assurance/sampling and analysis plan setting forth the manner and method of collecting samples (collectively referred to as the Project Documents) and submit the same to the LENDER and the Site Manager for approval.
- 7 All changes or modifications to the Project, project documents, work plan, budget and work schedule, and/or quality assurance/sampling and analysis plan initiated by the BORROWER shall be approved in writing by the Site Manager and the LENDER prior to such change or modification becoming effective. All additional costs incurred as a result of any such change orders shall be the responsibility of the BORROWER. In the event that unforeseen conditions are discovered during the Project implementation, the LENDER reserves the right to revise the Voluntary Remediation Work Plan and the Project Documents.

- 8 The BORROWER agrees to submit a Health and Safety Plan to the LENDER for review with the Project Documents in accordance with the Occupational Safety and Health Administration (OSHA) regulations at, 29 CFR 1910.120.
- 9 The BORROWER further understands and agrees that any and all work performed on the Property for which loan funds are used and the receipt of any loan funds under this agreement is conditioned upon the BORROWER's full compliance with the Project Documents and this agreement.
- 10 The BORROWER agrees to conduct all procurement transactions, to the maximum extent practical, in a manner that provides for open and free competition. The BORROWER agrees to award solicitations that are the most advantageous based on price, quality, and other factors considered in the bid specifications.
- 11 The BORROWER agrees to supply the LENDER with a redevelopment plan for the property, evidence of a firm commitment for a construction loan and permanent financing from a lending institution prior to closing. (insert as appropriate with future plan and timing)
- 12 The BORROWER acknowledges that Cooperative Agreement No BF-00J45201 between the LENDER and the USEPA is the source of all loan capital and regulates the use of loan funds.
- 13 The BORROWER agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The BORROWER shall include the language of this provision in documents for all contracts exceeding \$100,000, and require that contractors and sub-contractors submit certification and disclosure forms accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any entity who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
 - a All contracts awarded by the LENDER shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix at Title 40 CFR Part 30. Pursuant to Section 18 of the Lobbying Disclosure Act, the BORROWER's contractors and sub-contractors shall affirm that they are not nonprofit organizations as described in Section 501(c) (4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c) (4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
 - b The chief executive officer of this BORROWER shall ensure that no loan funds made under this agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The BORROWER shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.
- 14 The BORROWER agrees to use recycled paper for all reports, which are prepared as a part of this agreement and delivered, to the City of Portland in accordance with USEPA Order 1000.25 and Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition. This requirement does not apply to reports prepared on forms supplied by USEPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

- 15 The BORROWER shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." The BORROWER is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The BORROWER is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The BORROWER acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this agreement, or pursuance of legal remedies, including suspension and debarment. Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes USEPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."
- 16 The BORROWER, its, employees and its contractors and sub-contractors may not engage in trafficking in persons during the term of the loan agreement; procure a commercial sex act during the term of the loan agreement; or use forced labor in the performance of contracts.
- 17 The BORROWER agrees that none of funds provided under this agreement may be used for contracts to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries in accordance with FY 2011 ACORN Funding Restrictions that prohibits USEPA from using its FY 2011 appropriations to provide funds to ACORN.

LOAN TERMS AND CONDITIONS

- 18 **Loan Period.** The period of the loan shall be from LOAN START DATE until LOAN END DATE.
- 19 **Loan Amount and Rate.** Subject to the terms and conditions of this agreement, the LENDER agrees to lend to the BORROWER the principal sum of SPELL OUT LOAN AMOUNT Dollars (\$xxx,xxx). The interest rate of the loan shall be INTEREST RATE 3% percent per annum for a period of eighty four months.
- 20 **Origination Fee and Closing Costs.** The BORROWER shall pay origination fees in the amount of two percent (2%) *or negotiated amount* of the principal amount, not to exceed \$FEE AMT. The BORROWER shall pay all closing costs.
- 21 **Promissory Note.** The BORROWER's obligation to repay the loan Proceeds shall be evidenced by the Loan Promissory Note and incorporated herein. The BORROWER shall not exceed any of the costs enumerated in the approved Project Budget without the prior written approval of the LENDER.
- 22 **Project Cost Share.** The BORROWER agrees that the project budget shall reflect at least twenty percent (20%) of project costs attributed as cost share funds, which may be in the form of a contribution of money, labor, material, or services from a non-federal source (except Community Development Block Grant, which may serve as cost share) to be spent for eligible project costs. *Include if cost share applies.*
- 23 **Disbursement.** The loan funds shall be payable to the BORROWER as reimbursement for eligible activities incurred based upon the progress of the work and in accordance with the approved project budget. The BORROWER must submit to the Brownfield Program Manager an invoice that includes the following: name and address of the BORROWER, the BORROWER's Social Security or Business Tax ID Number, the date of invoice, the project name, the list of items for payment (and corresponding receipts), the list of tasks to which the reimbursement request corresponds and the total amount of payment requested

- 24 **Retainage.** The LENDER may withhold up to ten percent (10%) of each payment requested as a retainage until a Site Manager's report and certification of completion, approved by the Site Manager have been submitted.
- 25 **Repayment.** The BORROWER may elect to repay the loan prior to the loan due date without a prepayment penalty.

CONDITIONS PRECEDENT TO LOAN

- 26 **Closing.** The closing of this loan shall be subject to:
- a The LENDER's receipt of a property appraisal from the BORROWER satisfactory to the LENDER.
 - b Payment of the loan origination fee as agreed to be paid through a reduction in the first reimbursement payment to the BORROWER.
 - c Written authorization in the form of a resolution, if a corporation, authorizing the loan to the BORROWER and authorizing the BORROWER's representative to execute the loan documents on behalf of the BORROWER.
 - d Evidence by the BORROWER that no outstanding taxes, fees, charges, mortgages, liens, encumbrances or other assessments have been filed or are recorded against the Property, except those liens accepted by the LENDER.
 - e Title insurance in an amount equal to the obligation provided at the expense of the BORROWER.
- 27 **Liability Insurance.** The BORROWER shall maintain general liability insurance with a combined single limit of not less than \$500,000 for each occurrence and \$1,000,000 in the aggregate for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided in this agreement, provide that the City of Portland, and its agents, officers and employees are additional insured but only with respect to the services provided under this agreement; include a 30-day cancellation clause that provides that the insurance shall not terminate or be canceled without 30 days written notice first being given to the City Auditor; provide that coverage applies to claims between insureds on the policy; and include coverage for damages or injuries arising out of the use of automobiles or other motor vehicles by the BORROWER. The BORROWER agrees to maintain continuous, uninterrupted coverage for the duration of this agreement. Failure to maintain this insurance shall be cause for immediate termination of this agreement by the LENDER.
- 28 Identification of the BORROWER's contractor(s) and subcontractor(s) for the Project.
- 29 The LENDER's receipt of Project cost breakdown based upon estimates and prices supplied by the BORROWER's contractor(s) and subcontractor(s).
- 30 Federal Funding Accountability and Transparency Act (FFATA) required report. LENDERS and borrowers of non-Recovery Act funded grants, cooperative agreements and competitive supplements of \$25,000 or more awarded on or after October 1, 2010 must report executive compensation information before full execution of the agreement, if in the preceding fiscal year: (1) the organization received 80% or more of its annual gross revenues in Federal awards and those revenues are greater than \$24 million annually; and (2) the public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
- 31 The following requirements apply only to business entities:

- a The BORROWER and its contractors and sub-contractors shall obtain a DUNS number, which may be obtained for free here: <http://fedgov.dnb.com/webform>. The BORROWER shall obtain a DUNS number on or before full execution of this agreement. The BORROWER and its contractors and sub-contractors shall keep their DUNS information current, while this agreement is in force.
- b Every contractor/sub recipient (BORROWER) must register the program on the CCR website here: <https://www.bpn.gov/ccr/default.aspx>. Please be aware that your organization's identification information in DUNS must be consistent with the information provided for your CCR registration. .
- 32 **Security.** As security for the BORROWER's indebtedness to the LENDER, the BORROWER shall grant to the LENDER one of the following forms of security as particularly described in the Guarantee and/or Security Agreement, and incorporated herein:
- a A Deed of Trust on the Property that shall be dated prior to, or concurrently with this agreement;
 - b A Subordinate Deed of Trust on said the Property that shall be dated prior to, or concurrently with this agreement;
 - c A Lien or Security Agreement against personal property or equipment of the BORROWER that shall be dated prior to or concurrently with this agreement;
 - d A Personal Guarantee by a corporate principal that shall be dated prior to or concurrently with this agreement; or
 - e A Corporate Guarantee dated prior to or concurrently with this agreement.
- 33 The BORROWER must provide:
- a The BORROWER's current personal/business income and financial statement; and
 - b A copy of the BORROWER's tax returns for the last 2 years.

COVENANTS OF THE BORROWER

- 34 **Performance.** All Project work performed pursuant to this agreement and with the LENDER funds shall be performed by a qualified, contractor consistent with good practices and industry standards.
- 35 **Contracts.** The BORROWER shall provide the LENDER with copies of all bids and contracts for all work required under the Voluntary Remediation Work Plan.
- 36 **Subcontracts and Assignments.** The BORROWER shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the LENDER. Notwithstanding the LENDER approval of a subcontractor, the BORROWER shall remain obligated for full performance hereunder, and the LENDER shall incur no obligation other than its obligations to the BORROWER hereunder. The BORROWER agrees that if subcontractors are employed in the performance of this agreement, the BORROWER and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.

- 37 **Governing Law.** Both parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this agreement. Without limiting the generality of the foregoing, parties expressly agree to comply with: (I) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Each party's performance under this agreement is conditioned upon its compliance with the applicable provisions of ORS Chapter 279A.
- 38 **Payment to Consultants.** USEPA participation in the salary rate (excluding overhead) paid to individual consultants retained by the BORROWER or by the BORROWER's contractors or sub-contractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2011, the limit is \$596.00 per day \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with its normal travel reimbursement practices). Agreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the BORROWER with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 30.27(b) or 40 CFR 31.36(j), as applicable, for additional information.
- NOTE:** For future years' limits, the recipient may find the annual salary for Level IV of the Executive Schedule on the following Internet site: <http://www.opm.gov/oca>. Select "Salaries and Wages", and select "Executive Schedule." The annual salary is divided by 2087 hours to determine the maximum hourly rate, which is then multiplied by 8 to determine the maximum daily rate.
- 39 **Pass Through of Federal Funds.** The BORROWER, assumes liability for the BORROWER's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon the BORROWER's breach of any such conditions that require the LENDER to return funds to the USEPA, hold harmless and indemnify the LENDER for an amount equal to the funds received under this agreement.
- 40 **Project Changes.** All modifications to the Project or the Project Documents initiated by the BORROWER shall be approved in writing by the Site Manager and the LENDER prior to such change or modification becoming effective. All additional costs incurred as the result of change orders shall be the responsibility of the BORROWER. In the event that unforeseen conditions are discovered during the project implementation, the LENDER reserves the right to revise the Voluntary Remediation Work Plan and the Project Documents.
- 41 **Administrative Cost Prohibition.** The BORROWER is prohibited from using loan funds for administrative costs. Administrative costs include the BORROWER's loan administration, overhead, and all costs not directly related to the cleanup, including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges for loan administration and overhead costs.
- 42 **Cost Principles.** The cost principles of OMB Circular A-21 (Educational Institutions), A-87 (State, Local or Indian Tribal Governments), or A-122 (Non-Profit Organizations) are applicable, as appropriate, to this loan.

- 43 **Permits, licenses, inspections.** The BORROWER is responsible for obtaining all permits, licenses, approvals, certifications and inspections required by Federal, state or local law and to maintain such permits, licenses, approvals, certifications and inspections in current status during the term of this agreement.
- 44 **Site Access.** The BORROWER agrees to provide the LENDER and the Site Manager access to the Property from the date of execution of this agreement until completion of all cleanup actions. In the event the BORROWER does not complete the cleanup, the LENDER will ensure that the site is secure and poses no immediate threat to human health and the environment, and then notify USEPA and DEQ.
- 45 **Contract Administration Provisions.** The BORROWER agrees to comply with the contract administration provisions of 40 CFR, Section 33.302. The BORROWER also agrees to ensure that contractors and sub-contractors comply with those provisions.
- 46 **Small and Disadvantaged Business Utilization Requirements.** The BORROWER agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements.

For the purpose of reporting, only State of Oregon certified Minority Business Enterprises (MBE) and Woman Business Enterprises (WBE) will be considered. Certified firms can be found on the State of Oregon OMWESB website: <http://www4.cbs.state.or.us/ex/dir/omwesb/>

a The BORROWER agrees to accept the following Fair Share Objectives:

- i MBE: SUPPLIES 0.31%; SERVICES 1.69%; EQUIPMENT 1.71%
- ii WBE: SUPPLIES 0.63%; SERVICES 4.48%; EQUIPMENT 2.56%

A recipient of USEPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the requirement to apply these fair share objectives.

- b The BORROWER agrees to follow the six affirmative steps or positive efforts stated in 40 CFR 31.36(e) and retain records documenting compliance:
- i Include qualified small, minority and women's businesses on solicitation lists
 - ii Assure that these businesses are solicited whenever they are potential sources
 - iii Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of these businesses
 - iv Establishing delivery schedules, where the work permits, which will encourage these businesses to participate
 - v Using the services of the Federal agencies such as the Small Business Administration, the Office of Minority Business Enterprises of the Department of Commerce, and/or State and Local agencies to support further participation
 - vi Requiring your contractors, if they award subcontracts, to comply with the affirmative steps above.
- c The BORROWER shall require all contractors and their subcontractors to submit the following USEPA forms to BES Contract Manager with all bid packages:
- i USEPA form number 6100-2 – *DBE Program Subcontractor Participation Form*
 - ii USEPA form number 6100-3 – *DBE Program Subcontractor Performance Form*
 - iii USEPA form number 6100-4 – *DBE Program Subcontractor Utilization Form.*

Note: USEPA forms 6100-2, 6100-3 and 6100-4 maybe downloaded from USEPA's Office of Small Business Programs website <http://www.epa.gov/osbp/grants.htm>

47 **Project Completion.** The BORROWER agrees to:

- a Begin the project within sixty-days (60) of the execution of this loan agreement and will complete all work in a timely manner in accordance with the Project Documents and approved budget unless otherwise approved in writing by the LENDER.
- b Provide documents and other technical reports relative to the cleanup to the LENDER and Site Manager to confirm completion of and closeout of the cleanup action. The final closeout report shall be provided within two months after the Project's completion and shall document completed cleanup goals in compliance with the work plan, actions taken, institutional controls used (if any), resources committed, problems encountered if any, cleanup goals achieved, acreage cleaned up, and challenges encountered.
- c Perform all of its obligations and agreements under this agreement, the note and the deed of trust securing same, and any other agreements or instruments to which the BORROWER is a party and which relate to this loan or to the Project.
- d The BORROWER, if required under this agreement, agrees that it shall obtain a No Further Action determination from the Oregon Department of Environmental Quality for the Property and submit a copy to the LENDER prior to final closeout of the project.

48 **Indemnification.** Throughout the term of this agreement, the BORROWER agrees to protect, indemnify, defend, and hold harmless the LENDER, its officers, administrators, agents, servants, employees, site manager, local partners and all other persons or legal entities to whom the LENDER may be liable from, for and against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses for bodily injury, including death, personal injury and property damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the BORROWER as provided herein and caused in whole or in part by any act, error, or omission of the BORROWER, its agents, servants, employees or assigns.

49 **Signage.** The BORROWER agrees to erect a sign or sign(s) on the Property stating that the project is being financed in part by a USEPA brownfields loan and in cooperation with the City of Portland Bureau of Environmental Services and the Oregon Department of Environmental Quality. The sign or signs must also include contact details for obtaining information on activities being conducted at the Property and for reporting suspected criminal activities, Davis-Bacon Compliance, and violations of health and safety rules. Any sign(s) erected on the Property shall comply with all requirements of the state and local law applicable to on-premise outdoor advertising.

50 **Waste.** The BORROWER shall not demolish any part of the buildings or structures located on the Property or commit any waste without the prior written consent of the LENDER except as provided in the Project Documents.

51 **Waivers.** Any forbearance by the LENDER with respect to any of the terms or conditions of this agreement or the promissory note shall in no way constitute a waiver of any of the LENDER's rights or privileges granted hereunder.

EVENTS OF DEFAULT

52 The BORROWER shall be in default under this loan agreement upon the occurrence of any of the following events:

- a **Assignment.** The BORROWER assigns this agreement or any loan funds advanced hereunder or any interest herein to a third party, or, if the Property or any interest therein is conveyed, assigned or otherwise transferred without the prior written consent of the LENDER.
- b **False Warranty.** Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this agreement or the loan documents proves to be false in any material respect.
- c **Repayment.** The BORROWER fails to pay any principal amount, fee or interest on the indebtedness to the LENDER after the same becomes due and payable and such failure continues beyond ten (10) business days.
- d **Failure to Perform.** The BORROWER fails to perform a term or condition of this agreement, and fails to correct the default within a period of time specified in a written default notice sent by certified mail, return receipt requested, from the LENDER to the BORROWER. The LENDER may at its discretion extend the time period for correction of the default.
- e **Bankruptcy.** Any proceeding involving the BORROWER or the Property, and commenced under any bankruptcy or reorganization arrangement, probate, insolvency, readjustment of debt, dissolution or liquidation law of the United States, or any state. If such proceedings are instituted, no default shall have occurred hereunder unless the BORROWER either approves, consents to, or acquiesces in such proceedings, or such proceedings are dismissed within sixty (60) days of filing;
- f **Receivership.** An order, judgment or decree is entered, without the application, approval or consent of the BORROWER, by any court of competent jurisdiction approving the appointment of a receiver, trustee or liquidator of the BORROWER of all or a substantial part of its assets, and such order, judgment or decree continues in effect for a period of sixty (60) days.

In event of default or the BORROWER does not complete the cleanup, the LENDER will access the Property, ensure that the Property is secure and poses no immediate threat to human health and the environment, and notify the USEPA and the Site Manager. The LENDER may: then do one or more of the following: (a) terminate this agreement; (b) increase the interest rate to ten (10) percent and make the entire outstanding principal and interest immediately due and payable; or (c) institute an action to recover damages against the BORROWER to the full extent of the law. The BORROWER hereby expressly waives any presentment, demand, protest or notice of any kind.

REPORTING, ADMINISTRATIVE RECORDS AND AUDITS

- 53 **Required Quarterly Reports.** The BORROWER agrees to provide quarterly reports in a form provided by the LENDER beginning three months from the closing date until the end of the loan Period. The quarterly reports shall contain quantitative and qualitative information related to the progress of the Project and the budget; the progress of the associated development, the numbers of jobs created or retained as a result of the development; the amount of property taxes paid on the site, and other information as required by the LENDER. Quarterly reports are due to the BES Contract Manager July 15th, October 15th, January 15th and April 15th.

- 54 **Required Semi-Annual Reports:** The BORROWER and all contractors and sub-contractors shall report the following information semi-annually (April 15th and October 15th) to the BES Contract Manager using EPA form 5700-5A, the total amount awarded to approved MBE/WBE firms, the procurement dates, the products or services procured, and the firms' contact information. This report must be submitted even if there is no applicable procurement during the reporting period.
- 55 **Required Final Report:** The BORROWER shall provide a final report in a form provided by the LENDER 60 days after the last PBRLF payment is disbursed. The final report shall contain quantitative and qualitative information related to the budget and the completion of the Project and the associated development, the numbers of jobs created or retained resulting from the development, the amount of property taxes paid on the Property, and other information as required by the LENDER.
- 56 **Records Retention.** The BORROWER shall prepare financial and programmatic records pertaining to all matters relative to this agreement in accordance with generally accepted accounting principles and procedures.
- 57 **Cooperative Agreement Recipients (CAR)** shall also require that the BORROWER provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the Federal government
- 58 **Procurement Records.** The BORROWER must maintain records sufficient to detail the history of the procurement for this project. These records will include but are not necessarily limited to the following: the rationale supporting the chosen method of procurement, the selection of type of contract, contractor selection or rejection, and the basis for the contract price.
- 59 **Audit Record Retention Requirement.** The BORROWER and its contractors and sub-contractors shall comply with the requirements of OMB Circular A-133, "Audits of States and Local Governments, and Non Profit Organizations." The BORROWER must retain originals or copies of all paperwork pertaining to this agreement for at least three years after final payments or other pending matters (e.g., litigation and audit) are closed, whichever is longer.
- 60 **Work Product and Record.** All documents pertaining to work the BORROWER performs under this agreement shall be considered public record. The BORROWER shall provide the City Project Manager copies of data, photographs, documents, plans, copyrights, specifications, working papers and any other materials the BORROWER produces in connection with this agreement upon completion or termination of the Project.
- 61 **Financial Information Reporting.** The BORROWER's accounting system or financial reporting system shall:
- a Track the use of loan proceeds by site-specific Eligible Activities.
 - b Identify the expenditure of loan proceeds and all matching funds for the cleanup portion of the Project and for the associated development project.
 - c Maintain financial and Project records that segregate expenditures based on federal or non-federal sources of funds.
 - d Submit annual financial statement information in a form acceptable to the LENDER: and,
 - e Retain and submit copies of documented expenses in the form of receipts or other acceptable documentation.
- 62 **Project Information.** The BORROWER shall maintain Project information including properly executed contracts, invoices, correspondence and other documents sufficient to evidence in proper detail the nature and propriety of the cleanup and expenditures of loan proceeds.

63 Monitoring/Audit. The BORROWER shall do one of the following:

- a Permit the LENDER or its designated representative(s) to inspect and/or audit its records and books related to the Project at any time during normal business hours and under reasonable circumstances and to copy there from any information the LENDER desires. Except in the case of an emergency, the LENDER shall endeavor to provide notice to the BORROWER prior to exercising its rights under this provision.
- b Deliver records of have records delivered to the LENDER or its designated representative upon the LENDER's request and at not cost to the LENDER at an address designated by the LENDER. If the LENDER or its representative finds that the records delivered by the BORROWER are incomplete, the BORROWER shall pay the LENDER or its representative's reasonable costs to audit or retrieve the complete records (including but not limited to, payment for time expended, payment of copy costs, and reimbursement for travel expenses to the BORROWER's office or other location where the books or records are located). In addition, the BORROWER agrees that loan-related documents are subject to the records access provisions of 40 CFR Parts 30 and 31 as applicable. In addition the USEPA and authorized representatives of the Comptroller General shall have access to all loan-related documents. The LENDER shall provide notice to the BORROWER prior to exercising its rights under this provision.

PORTLAND BROWNFIELD REVOLVING LOAN FUND SPECIAL TERMS

- 64 The BORROWER shall provide a community relations plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the Property.
- 65 BORROWER shall document how funds are used. If a loan includes cleanup of a petroleum contaminated brownfield site, the Cooperative Agreement Recipient (CAR) shall include a term and condition requiring that the BORROWER shall maintain separate records for costs incurred at the site.
- 66 The BORROWER shall conduct cleanup activities as required by the LENDER.
- 67 The LENDER may require changes to the BORROWER's cleanup plan as necessary, subject to DEQ approval, in response to comments from the public or any new information. .
- 68 The BORROWER shall certify that they are not potentially liable under §107 of CERCLA for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the BORROWER must state the basis for that assertion. When using grant funds for petroleum-contaminated brownfields sites, The BORROWER shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. Refer to the most recent issue of USEPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for a discussion of these terms.
- 69 The BORROWER shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement. The BORROWER shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under this agreement. Failure by the BORROWER to carry out these requirements is a material breach of this agreement which may result in termination of this agreement or the pursuance of other legally available remedies. This provision shall apply to all subcontracts under this agreement.
- 70 The BORROWER shall comply with applicable USEPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations). All procurements must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48, as applicable.

- 71 The BORROWER and its contractors and sub-contractors must comply with Davis-Bacon Act prevailing wages requirements for all construction, alteration and repair contracts and subcontracts. For more detailed information on complying with Davis-Bacon, please see the Davis- Bacon Addendum to the agreement.
- 72 Other federal requirements with which the BORROWER shall comply include, but are not limited to, MBE/WBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; the Endangered Species Act; permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333); the Anti Kickback Act (40 USC 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

MISCELLANEOUS

- 73 **Assignment.** The BORROWER shall not assign or attempt to assign directly or indirectly any of its rights under this agreement, or under any instrument referred to herein, without the prior written consent of the LENDER.
- 74 **Parties to Contract.** The provisions of this agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This agreement is not intended to create or vest any rights in any third party or to create any third party beneficiaries.
- 75 **Amendments.** All amendments to this agreement shall be in writing and signed by both parties hereto, and may not be supplemented or amended through the introduction of parol evidence.
- 76 **Performance.** It is expressly understood that a failure or delay in the performance, in whole or in part, of any of the terms of this agreement, that is attributable to force majeure shall not constitute a breach or default under this agreement. However, in such an event the BORROWER shall endeavor to insure that the Project is completed without unnecessary delay.
- 77 **Failure of Parties.** No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder, shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof.
- 78 **Representatives.** All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this agreement. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail, return receipt requested, on the day mailed to the parties as follows:

TO THE BORROWER:

NAME
TITLE OF FIRM OR PERSON
ADDRESS
CITY, STATE ZIP

TO THE LENDER

NAME
ADDRESS
CITY, STATE ZIP

Or, to such other address as a party may subsequently specify in writing to the other party.

- 79 This agreement and all covenants, agreements, representations and warranties made herein shall survive the termination agreement and shall continue in full force and effect so long as the loan obligation is outstanding and unpaid.
- 80 If any provision or item of this agreement is held invalid, such invalidity shall not affect the other provisions or items of this agreement that can be given effect without the invalid provisions or items. To this end, the provisions of this agreement are hereby declared severable.
- 81 Except for any exhibits, attachments, or other documents as may be affixed hereto, made a part hereof, and properly identified herewith, this agreement constitutes the entire contract between the parties, and shall not be otherwise affected by any other purported undertaking, whether written or oral.
- 82 The BORROWER understands and agrees that any use of the Property or any activity thereon which is inconsistent with the foregoing provisions is expressly prohibited.
- 83 Except for applicable provisions of federal law and regulations, this agreement and any action brought under this agreement shall be governed by and constructed in accordance with the laws of the State of Oregon.

IN WITNESS HEREOF, the undersigned representatives of the BORROWER and of the LENDER certifies that they are fully authorized to enter into the terms and conditions of this agreement and to execute and legally bind the parties to this document, as of the date first written below.

BORROWER:

NAME OF THE BORROWER
By, BORROWER/FIRM

Name, Title

Date: _____

881781

185157

LENDER:

City of Portland
Bureau of Environmental Services, Portland Brownfield Program

By: _____

Portland Brownfield Program

Date: _____

(1) APPROVED AS TO FORM:

By: _____

Date: _____

ATTACHMENT B

185157

**GRANT AGREEMENT
PORTLAND BROWNFIELD REVOLVING LOAN FUND GRANT**

The Portland Brownfield Revolving Loan Fund (PBRLF) grant, funded by a grant from the United States Environmental Protection Agency (USEPA) Revolving Loan Fund (RLF), offers grants to assist with the remediation of brownfield properties in Portland Oregon.

The PBRLF creates a grant funding source to sustain the Portland Brownfield Program's ability to address the environmental threat of hazardous and petroleum-contaminated sites in our communities through cleanup and reuse. Grants made under the initial USEPA RLF, will enable the Portland Brownfield Program to provide financial assistance to return contaminated properties to productive use. The PBRLF grant will help to fund the remediation required for site cleanup, allow redevelopment projects to go forward, address the lingering threat to public health and the negative effect of 'brownfields' on community economic vitality, and promote economic development by increasing employment opportunities in the City of Portland.

Grey Sections depend on specific requirements of this RLF grant agreement,
i.e. type of cleanup, dates, etc

PARTIES

THIS AGREEMENT is made and entered into on Grant Approval Date, by and between Name of grant recipient and Firm, hereinafter referred to as the "GRANTEE," and the City of Portland, a municipal corporation, hereinafter referred to as the "GRANTOR."

DEFINITIONS

RLF grants – Portland Brownfield Revolving Loan Fund (per Cooperative agreement No BF-00J45201 between the City of Portland Brownfield Program and the United State Environmental Protection Agency provides subgrants to carry out assessment and/or cleanup activities at brownfields.

Project – The remediation of hazardous substances, pollutants, contaminants, and/or petroleum from the Property, as defined below, in accordance with the selected Voluntary Remediation Work Plan.

USEPA – United States Environmental Protection Agency

ODEQ – Oregon Department of Environmental Quality

Site Manager – Representative from the Oregon DEQ Brownfield Response Program will provide site assessment, and assistance for parties interested in cleaning up contaminated sites without ongoing DEQ oversight.

Voluntary Cleanup Program (VCP) – A program through which DEQ provides oversight throughout the investigation and selects or approves remedial action through a collaborative process

Prime Recipient - is the non-federal entity that receives Revolving Loan funding directly from USEPA.

Sub-Contactors and Vendors - Non-federal entities that receive revolving loan funding from a prime recipient.

Subcontractor – The general contractor for remediation or other contractors hired by the GRANTEE.

Central Contractor Registration (CRR) - The Federal repository into which an entity must deposit information required for the conduct of business as a recipient

Data Universal Numbering System (DUNS) - The nine digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify business entities.

Cooperative agreement Recipient (CAR) - The recipient shall comply with and require that work done by the GRANTEE with cooperative agreement funds comply with all the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k).

Comprehensive Environmental Response Compensation and Liability Act (CERCLA) - Federal law passed in December 1980 designed to impose cleanup and reporting requirements.

Eligible Activities - The response actions associated with actual cleanup of the Property, as defined below, and eligible direct administrative costs as specified in City of Portland Ordinance. For a list of eligible and ineligible activities see Attachment A

Ineligible Activities - Costs incurred prior to the execution of a grant that does not meet the listed eligible costs. For a list of eligible and ineligible activities see Attachment A

REPRESENTATIONS AND WARRANTIES

WHEREAS, the GRANTOR is the recipient of a USEPA grant to establish a Brownfields Revolving Loan Fund and is authorized to make certain grants from these funds;

WHEREAS, the GRANTOR is responsible to the USEPA for the proper expenditure of grant funds;

WHEREAS, PBRLF funds are to be used to make grants to parties willing to cleanup brownfield sites;

WHEREAS, the GRANTEE is the owner of certain real property located in Portland (the Property), which property is more particularly described in Exhibit 1, incorporated herein;

WHEREAS, the Property is contaminated with a hazardous or controlled substance;

WHEREAS, the Property is not listed, or proposed for listing on the National Priorities List of the USEPA; is not subject to a unilateral administrative order, a court order, an administrative order on consent or judicial consent decree issues or entered into by parties under CERCLA; and is not subject to jurisdiction, custody, or control by the United States government;

(Insert whichever of the two following paragraphs is appropriate, depending on the contaminants to be addressed by the grant.)

WHEREAS, the GRANTOR in consultation with DEQ, has determined in accordance with the CERCLA, Section 101(39)(D), and relevant USEPA grant requirements, that the Property is a brownfield site contaminated with petroleum or a petroleum product and is: 1) of relatively low risk, as compared to other petroleum-only sites in the State; and (b) a site for which there is no viable responsible party and which will be cleaned up by a person that is not potentially liable for cleaning up the site; and c) is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act (42 USC 6991b(h));

WHEREAS, the GRANTOR has determined in accordance with relevant USEPA grant requirements that the GRANTEE is not potentially liable under section 107 of CERCLA for response costs at the Property and that the GRANTEE has not caused, contributed to, permitted or exacerbated the release of hazardous substances, pollutants or contaminants on, or emanating from, the Property, and continues to meet its obligations and to exercise appropriate care with respect to hazardous substances found at the Property;

WHEREAS, the GRANTEE is not and has never been subject to any penalties resulting from environmental non-compliance at or on the Property nor is the GRANTEE, or its Project contractors or subcontractors currently suspended, debarred, or otherwise declared ineligible for participation in this Federal program or from the receipt of these funds; and

WHEREAS, the GRANTEE is a insert organization type, validly existing and in good standing under the laws of the State of Oregon and has all requisite power and authority to own the Property and to execute, deliver and perform all of its obligations under this agreement and the PBRLF grant documents.

CERTIFICATIONS

NOW THEREFORE, in consideration of the covenants and promises contained herein, it is mutually agreed by and between the parties as follows:

- 1 The GRANTEE agrees to carry out the Project and shall use PBRLF grant funds only for eligible activities in compliance with CERCLA; the Uniform Administrative Requirements for Non-Profit Organizations (40 CFR Part 30); the Uniform Administrative Requirements of Grants and Cooperative agreements to States and Local Governments (40 CFR Part 31); and Office of Management and Budget (OMB) Circular A 133 Audits of States, Local Governments and Non-Profit Organizations; and in accordance with all other applicable provisions of federal, state or local laws, including the applicable laws and regulations set forth on the attached Exhibit 2, incorporated herein.
- 2 The GRANTEE shall ensure that the cleanup is protective of human health and the environment.
- 3 The GRANTEE agrees to enter into and conduct the brownfields cleanup in accordance with the terms of DEQ oversight authority as approved by the GRANTOR.
- 4 The GRANTEE understands and agrees that all PBRLF grants provided by the GRANTOR shall be used to clean up the Property and that grant funds shall not be used for the payment of any cost or expense related to site assessments, except for confirmation testing and sampling in conjunction with cleanup of the site, nor for building demolition, site improvements or infrastructure unless such activities are approved and necessary to conduct the approved Voluntary Remediation Work Plan. See Attachment A of this agreement for a list of eligible and ineligible costs and activities.
- 5 The GRANTEE agrees to perform the Project in accordance with the VCP selected by DEQ after consideration of public comment on an analysis of cleanup alternatives and proposed the Voluntary Cleanup Work Plan.
- 6 The GRANTEE agrees to prepare a detailed Design and Construction Voluntary Cleanup Work Plan with specifications for the cleanup activities, a project budget and work schedule, a quality assurance/sampling and analysis plan setting forth the manner and method of collecting samples (collectively referred to as the Project Documents) and submit the same to the GRANTOR and the Site Manager for approval.
- 7 All changes or modifications to the Project, project documents, work plan, budget and work schedule, and/or quality assurance/sampling and analysis plan initiated by the GRANTEE shall be approved in writing by the Site Manager and the GRANTOR prior to such change or modification becoming effective. All additional costs incurred as a result of any such change orders shall be the responsibility of the GRANTEE. In the event that unforeseen conditions are discovered during the Project implementation, the GRANTOR reserves the right to revise the Voluntary Remediation Work Plan and the Project Documents.

- 8 The GRANTEE agrees to submit a Health and Safety Plan to the GRANTOR for review with the Project Documents in accordance with the Occupational Safety and Health Administration (OSHA) regulations at, 29 CFR 1910.120.
- 9 The GRANTEE further understands and agrees that any and all work performed on the Property for which grant funds are used and the receipt of any grant funds under this agreement is conditioned upon the GRANTEE's full compliance with the Project Documents and this agreement.
- 10 The GRANTEE agrees to conduct all procurement transactions, to the maximum extent practical, in a manner that provides for open and free competition. The GRANTEE agrees to award solicitations that are the most advantageous based on price, quality, and other factors considered in the bid specifications.
- 11 The GRANTEE agrees to supply the GRANTOR with a redevelopment plan for the property, evidence of a firm commitment for a construction and permanent financing from a lending institution prior to closing.
(insert as appropriate with future plan and timing)
- 12 The GRANTEE acknowledges that Cooperative Agreement No BF-00J45201 between the GRANTOR and the USEPA is the source of all grant capital and regulates the use of PBRLF grant funds.
- 13 The GRANTEE agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The GRANTEE shall include the language of this provision in documents for all contracts exceeding \$100,000, and require that contractors and sub-contractors submit certification and disclosure forms accordingly. In accordance with the Byrd Anti-Lobbying Amendment, any entity who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
 - a All contracts awarded by the GRANTOR shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix at Title 40 CFR Part 30. Pursuant to Section 18 of the Lobbying Disclosure Act, the GRANTEE's contractors and sub-contractors shall affirm that they are not nonprofit organizations as described in Section 501(c) (4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c) (4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.
 - b The chief executive officer of this GRANTEE shall ensure that no grant funds made under this agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The GRANTEE shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.
- 14 The GRANTEE agrees to use recycled paper for all reports, which are prepared as a part of this agreement and delivered, to the City of Portland in accordance with USEPA Order 1000.25 and Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition. This requirement does not apply to reports prepared on forms supplied by USEPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

- 15 The GRANTEE shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." The GRANTEE is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The GRANTEE is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The GRANTEE acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this agreement, or pursuance of legal remedies, including suspension and debarment. Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes USEPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."
- 16 The GRANTEE, its, employees and its contractors and sub-contractors may not engage in trafficking in persons during the term of the grant agreement; procure a commercial sex act during the term of the grant agreement; or use forced labor in the performance of contracts.
- 17 The GRANTEE agrees that none of funds provided under this agreement may be used for contracts to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries in accordance with FY 2011 ACORN Funding Restrictions that prohibits USEPA from using its FY 2011 appropriations to provide funds to ACORN.

CONDITIONS PRECEDENT TO PORTLAND BROWNFIELD REVOLVING LOAN FUND GRANT

- 18 **Liability Insurance.** The GRANTEE shall maintain general liability insurance with a combined single limit of not less than \$500,000 for each occurrence and \$1,000,000 in the aggregate for bodily injury and property damage. It shall include contractual liability coverage for the indemnity provided in this agreement, provide that the City of Portland, and its agents, officers and employees are additional insured but only with respect to the services provided under this agreement; include a 30-day cancellation clause that provides that the insurance shall not terminate or be canceled without 30 days written notice first being given to the City Auditor; provide that coverage applies to claims between insureds on the policy; and include coverage for damages or injuries arising out of the use of automobiles or other motor vehicles by the GRANTEE. The GRANTEE agrees to maintain continuous, uninterrupted coverage for the duration of this agreement. Failure to maintain this insurance shall be cause for immediate termination of this agreement by the GRANTOR.
- 19 Identification of the GRANTEE's contractor(s) and subcontractor(s) for the Project.
- 20 The GRANTOR's receipt of Project cost breakdown based upon estimates and prices supplied by the GRANTEE's contractor(s) and subcontractor(s).
- 21 Federal Funding Accountability and Transparency Act (FFATA) required report. GRANTORS and GRANTEES of non-Recovery Act funded grants , cooperative agreements and competitive supplements of \$25,000 or more awarded on or after October 1, 2010 must report executive compensation information before full execution of the agreement, if in the preceding fiscal year: (1) the organization received 80% or more of its annual gross revenues in Federal awards and those revenues are greater than \$24 million annually; and (2) the public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.
- 22 The following requirements apply only to business entities:

- a The GRANTEE and its contractors and sub-contractors shall obtain a DUNS number, which may be obtained for free here: <http://fedgov.dnb.com/webform>. The GRANTEE shall obtain a DUNS number on or before full execution of this agreement. The GRANTEE and its contractors and sub-contractors shall keep their DUNS information current, while this agreement is in force.
- b Every contractor/sub recipient (GRANTEE) must register the program on the CCR website here: <https://www.bpn.gov/ccr/default.aspx>. Please be aware that your organization's identification information in DUNS must be consistent with the information provided for your CCR registration.

COVENANTS OF THE GRANTEE

- 23 **Performance.** All Project work performed pursuant to this agreement and with the GRANTOR funds shall be performed by a qualified, contractor consistent with good practices and industry standards.
 - 24 **Contracts.** The GRANTEE shall provide the GRANTOR with copies of all bids and contracts for all work required under the Voluntary Remediation Work Plan.
 - 25 **Subcontracts and Assignments.** The GRANTEE shall not subcontract, assign or transfer any of the work scheduled under this agreement, without the prior written consent of the GRANTOR. Notwithstanding the GRANTOR approval of a subcontractor, the GRANTEE shall remain obligated for full performance hereunder, and the GRANTOR shall incur no obligation other than its obligations to the GRANTEE hereunder. The GRANTEE agrees that if subcontractors are employed in the performance of this agreement, the GRANTEE and its subcontractors are subject to the requirements and sanctions of ORS Chapter 656, Workers' Compensation.
 - 26 **Governing Law.** Both parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this agreement. Without limiting the generality of the foregoing, parties expressly agree to comply with: (i) Title VI of Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659.425; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. Each party's performance under this agreement is conditioned upon its compliance with the applicable provisions of ORS Chapter 279A.
 - 27 **Payment to Consultants.** USEPA participation in the salary rate (excluding overhead) paid to individual consultants retained by the GRANTEE or by the GRANTEE's contractors or sub-contractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2011, the limit is \$596.00 per day \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with its normal travel reimbursement practices). Agreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the GRANTEE with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 30.27(b) or 40 CFR 31.36(j), as applicable, for additional information.
- NOTE:** For future years' limits, the recipient may find the annual salary for Level IV of the Executive Schedule on the following Internet site: <http://www.opm.gov/oca>. Select "Salaries and Wages", and select "Executive Schedule." The annual salary is divided by 2087 hours to determine the maximum hourly rate, which is then multiplied by 8 to determine the maximum daily rate.

- 28 **Pass Through of Federal Funds.** The GRANTEE, assumes liability for the GRANTEE's breach of any federal statutes, rules, program requirements and grant provisions applicable to the federal funds, and shall, upon the GRANTEE's breach of any such conditions that require the GRANTOR to return funds to the USEPA, hold harmless and indemnify the GRANTOR for an amount equal to the funds received under this agreement.
- 29 **Project Changes.** All modifications to the Project or the Project Documents initiated by the GRANTEE shall be approved in writing by the Site Manager and the GRANTOR prior to such change or modification becoming effective. All additional costs incurred as the result of change orders shall be the responsibility of the GRANTEE. In the event that unforeseen conditions are discovered during the project implementation, the GRANTOR reserves the right to revise the Voluntary Remediation Work Plan and the Project Documents.
- 30 **Administrative Cost Prohibition.** The GRANTEE is prohibited from using grant funds for administrative costs. Administrative costs include the GRANTEE's administration, overhead, and all costs not directly related to the cleanup, including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges for grant administration and overhead costs.
- 31 **Cost Principles.** The cost principles of OMB Circular A-21 (Educational Institutions), A-87 (State, Local or Indian Tribal Governments), or A-122 (Non-Profit Organizations) are applicable, as appropriate, to this grant.
- 32 **Permits, licenses, inspections.** The GRANTEE is responsible for obtaining all permits, licenses, approvals, certifications and inspections required by Federal, state or local law and to maintain such permits, licenses, approvals, certifications and inspections in current status during the term of this agreement.
- 33 **Site Access.** The GRANTEE agrees to provide the GRANTOR and the Site Manager access to the Property from the date of execution of this agreement until completion of all cleanup actions. In the event the GRANTEE does not complete the cleanup, the GRANTOR will ensure that the site is secure and poses no immediate threat to human health and the environment, and then notify USEPA and DEQ.
- 34 **Contract Administration Provisions.** The GRANTEE agrees to comply with the contract administration provisions of 40 CFR, Section 33.302. The GRANTEE also agrees to ensure that contractors and sub-contractors comply with those provisions.
- 35 **Small and Disadvantaged Business Utilization Requirements.** The GRANTEE agrees to comply with the requirements of USEPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements.
- a For the purpose of reporting, only State of Oregon certified Minority Business Enterprises (MBE) and Woman Business Enterprises (WBE) will be considered. Certified firms can be found on the State of Oregon OMWESB website: <http://www4.cbs.state.or.us/ex/dir/omwesb/>
 - b The GRANTEE agrees to accept the following Fair Share Objectives:
 - i MBE: SUPPLIES 0.31%; SERVICES 1.69%; EQUIPMENT 1.71%
 - ii WBE: SUPPLIES 0.63%; SERVICES 4.48%; EQUIPMENT 2.56%
 - iii A recipient of USEPA financial assistance agreement in the amount of \$250,000 or less for any single assistance agreement, or of more than one financial assistance agreement with a combined total of \$250,000 or less in any one fiscal year, is exempt from the requirement to apply these fair share objectives.
 - c The GRANTEE agrees to follow the six affirmative steps or positive efforts stated in 40 CFR 31.36(e) and retain records documenting compliance:

- i Include qualified small, minority and women's businesses on solicitation lists
 - ii Assure that these businesses are solicited whenever they are potential sources
 - iii Divide total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of these businesses
 - iv Establishing delivery schedules, where the work permits, which will encourage these businesses to participate
 - v Using the services of the Federal agencies such as the Small Business Administration, the Office of Minority Business Enterprises of the Department of Commerce, and/or State and Local agencies to support further participation
 - vi Requiring your contractors, if they award subcontracts, to comply with the affirmative steps above.
- d The GRANTEE shall require all contractors and their subcontractors to submit the following USEPA forms to BES Contract Manager with all bid packages:
- i USEPA form number 6100-2 – *DBE Program Subcontractor Participation Form*
 - ii USEPA form number 6100-3 – *DBE Program Subcontractor Performance Form*
 - iii USEPA form number 6100-4 – *DBE Program Subcontractor Utilization Form.*
- e **Note:** USEPA forms 6100-2, 6100-3 and 6100-4 maybe downloaded from USEPA's Office of Small Business Programs website <http://www.epa.gov/osbp/grants.htm>

36 Project Completion. The GRANTEE agrees to:

- a Begin the project within sixty-days (60) of the execution of this grant agreement and will complete all work in a timely manner in accordance with the Project Documents and approved budget unless otherwise approved in writing by the GRANTOR.
- b Provide documents and other technical reports relative to the cleanup to the GRANTOR and Site Manager to confirm completion of and closeout of the cleanup action. The final closeout report shall be provided within two months after the Project's completion and shall document completed cleanup goals in compliance with the work plan, actions taken, institutional controls used (if any), resources committed, problems encountered if any, cleanup goals achieved, acreage cleaned up, and challenges encountered.
- c Perform all of its obligations and agreements under this agreement, the note and the deed of trust securing same, and any other agreements or instruments to which the GRANTEE is a party and which relate to this grant or to the Project.
- d The GRANTEE, if required under this agreement, agrees that it shall obtain a No Further Action determination from the Oregon Department of Environmental Quality for the Property and submit a copy to the GRANTOR prior to final closeout of the project.

- 37 Indemnification.** Throughout the term of this agreement, the GRANTEE agrees to protect, indemnify, defend, and hold harmless the GRANTOR, its officers, administrators, agents, servants, employees, site manager, local partners and all other persons or legal entities to whom the GRANTOR may be liable from, for and against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses for bodily injury, including death, personal injury and property damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the GRANTEE as provided herein and caused in whole or in part by any act, error, or omission of the GRANTEE, its agents, servants, employees or assigns.

- 38 **Signage.** The GRANTEE agrees to erect a sign or sign(s) on the Property stating that the project is being financed in part by a USEPA brownfields RLF grant and in cooperation with the City of Portland Bureau of Environmental Services and the Oregon Department of Environmental Quality. The sign or signs must also include contact details for obtaining information on activities being conducted at the Property and for reporting suspected criminal activities, Davis-Bacon Compliance, and violations of health and safety rules. Any sign(s) erected on the Property shall comply with all requirements of the state and local law applicable to on-premise outdoor advertising.
- 39 **Waste.** The GRANTEE shall not demolish any part of the buildings or structures located on the Property or commit any waste without the prior written consent of the GRANTOR except as provided in the Project Documents.
- 40 **Waivers.** Any forbearance by the GRANTOR with respect to any of the terms or conditions of this agreement or the promissory note shall in no way constitute a waiver of any of the GRANTOR's rights or privileges granted hereunder.

REPORTING, ADMINISTRATIVE RECORDS AND AUDITS

- 41 **Required Quarterly Reports.** The BORROWER agrees to provide quarterly reports in a form provided by the LENDER beginning three months from the closing date until the end of the loan Period. The quarterly reports shall contain quantitative and qualitative information related to the progress of the Project and the budget; the progress of the associated development, the numbers of jobs created or retained as a result of the development; the amount of property taxes paid on the site, and other information as required by the LENDER. Quarterly reports are due to the BES Contract Manager July 15th, October 15th, January 15th and April 15th.
- 42 **Required Semi-Annual Reports:** The BORROWER and all contractors and sub-contractors shall report the following information semi-annually (April 15th and October 15th) to the BES Contract Manager using EPA form 5700-5A, the total amount awarded to approved MBE/WBE firms, the procurement dates, the products or services procured, and the firms' contact information. This report must be submitted even if there is no applicable procurement during the reporting period.
- 43 **Required Final Report:** The BORROWER shall provide a final report in a form provided by the LENDER 60 days after the last PBRLF payment is disbursed. The final report shall contain quantitative and qualitative information related to the budget and the completion of the Project and the associated development, the numbers of jobs created or retained resulting from the development, the amount of property taxes paid on the Property, and other information as required by the LENDER.
- 44 **Records Retention.** The BORROWER shall prepare financial and programmatic records pertaining to all matters relative to this agreement in accordance with generally accepted accounting principles and procedures.
- 45 **Cooperative Agreement Recipients (CAR)** shall also require that the BORROWER provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the Federal government
- 46 **Procurement Records.** The BORROWER must maintain records sufficient to detail the history of the procurement for this project. These records will include but are not necessarily limited to the following: the rationale supporting the chosen method of procurement, the selection of type of contract, contractor selection or rejection, and the basis for the contract price.

- 47 **Audit Record Retention Requirement.** The GRANTEE and its contractors and sub-contractors shall comply with the requirements of OMB Circular A-133, "Audits of States and Local Governments, and Non Profit Organizations." The GRANTEE must retain originals or copies of all paperwork pertaining to this agreement for at least three years after final payments or other pending matters (e.g., litigation and audit) are closed, whichever is longer.
- 48 **Work Product and Record.** All documents pertaining to work the GRANTEE performs under this agreement shall be considered public record. The GRANTEE shall provide the City Project Manager copies of data, photographs, documents, plans, copyrights, specifications, working papers and any other materials the GRANTEE produces in connection with this agreement upon completion or termination of the Project.
- 49 **Financial Information Reporting.** The GRANTEE's accounting system or financial reporting system shall:
- a Track the use of PBRLF grant proceeds by site-specific Eligible Activities.
 - b Identify the expenditure of PBRLF grant proceeds and all matching funds for the cleanup portion of the Project and for the associated development project.
 - c Maintain financial and Project records that segregate expenditures based on federal or non-federal sources of funds.
 - d Submit annual financial statement information in a form acceptable to the GRANTOR: and,
 - e Retain and submit copies of documented expenses in the form of receipts or other acceptable documentation.
- 50 **Project Information.** The GRANTEE shall maintain Project information including properly executed contracts, invoices, correspondence and other documents sufficient to evidence in proper detail the nature and propriety of the cleanup and expenditures of PBRLF grant proceeds.
- 51 **Monitoring/Audit.** The GRANTEE shall do one of the following:
- a Permit the GRANTOR or its designated representative(s) to inspect and/or audit its records and books related to the Project at any time during normal business hours and under reasonable circumstances and to copy there from any information the GRANTOR desires. Except in the case of an emergency, the GRANTOR shall endeavor to provide notice to the GRANTEE prior to exercising its rights under this provision.
 - b Deliver records of have records delivered to the GRANTOR or its designated representative upon the GRANTOR's request and at not cost to the GRANTOR at an address designated by the GRANTOR. If the GRANTOR or its representative finds that the records delivered by the GRANTEE are incomplete, the GRANTEE shall pay the GRANTOR or its representative's reasonable costs to audit or retrieve the complete records (including but not limited to, payment for time expended, payment of copy costs, and reimbursement for travel expenses to the GRANTEE's office or other location where the books or records are located). In addition, the GRANTEE agrees that PBRLF grant-related documents are subject to the records access provisions of 40 CFR Parts 30 and 31 as applicable. In addition the USEPA and authorized representatives of the Comptroller General shall have access to all grant-related documents. The GRANTOR shall provide notice to the GRANTEE prior to exercising its rights under this provision.

PORTLAND BROWNFIELD REVOLVING LOAN FUND GRANT SPECIAL TERMS

- 52 The GRANTEE shall provide a community relations plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the Property.

- 53 GRANTEE shall document how funds are used. If a PBRLF grant includes cleanup of a petroleum contaminated brownfield site, the Cooperative Agreement Recipient (CAR) shall include a term and condition requiring that the GRANTEE shall maintain separate records for costs incurred at the site.
- 54 The GRANTEE shall conduct cleanup activities as required by the GRANTOR.
- 55 The GRANTOR may require changes to the GRANTEE's cleanup plan as necessary, subject to DEQ approval, in response to comments from the public or any new information. .
- 56 The GRANTEE shall certify that they are not potentially liable under §107 of CERCLA for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the GRANTEE must state the basis for that assertion. When using grant funds for petroleum-contaminated brownfields sites, The GRANTEE shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. Refer to the most recent issue of USEPA's *Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants* for a discussion of these terms.
- 57 The GRANTEE shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement. The GRANTEE shall carry out applicable requirements of 40 CFR part 33 in the award and administration of contracts awarded under this agreement. Failure by the GRANTEE to carry out these requirements is a material breach of this agreement which may result in termination of this agreement or the pursuance of other legally available remedies. This provision shall apply to all subcontracts under this agreement.
- 58 The GRANTEE shall comply with applicable USEPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations). All procurements must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48, as applicable.
- 59 The GRANTEE and its contractors and sub-contractors must comply with Davis-Bacon Act prevailing wages requirements for all construction, alteration and repair contracts and subcontracts. For more detailed information on complying with Davis-Bacon, please see the Davis- Bacon Addendum to the agreement.
- 60 Other federal requirements with which the GRANTEE shall comply include, but are not limited to, MBE/WBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; the Endangered Species Act; permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333); the Anti Kickback Act (40 USC 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

MISCELLANEOUS

- 61 **Assignment.** The GRANTEE shall not assign or attempt to assign directly or indirectly any of its rights under this agreement, or under any instrument referred to herein, without the prior written consent of the GRANTOR.
- 62 **Parties to Contract.** The provisions of this agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This agreement is not intended to create or vest any rights in any third party or to create any third party beneficiaries.
- 63 **Amendments.** All amendments to this agreement shall be in writing and signed by both parties hereto, and may not be supplemented or amended through the introduction of parol evidence.
- 64 **Performance.** It is expressly understood that a failure or delay in the performance, in whole or in part, of any of the terms of this agreement, that is attributable to force majeure shall not constitute a breach or default under this agreement. However, in such an event the GRANTEE shall endeavor to insure that the Project is completed without unnecessary delay.
- 65 **Failure of Parties.** No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder, shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof.
- 66 **Representatives.** All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this agreement. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail, return receipt requested, on the day mailed to the parties as follows:
- TO THE GRANTEE: NAME
 TITLE OF FIRM OR PERSON
 ADDRESS
 CITY, STATE ZIP
- TO THE GRANTOR NAME
 ADDRESS
 CITY, STATE ZIP
- Or, to such other address as a party may subsequently specify in writing to the other party.
- 67 This agreement and all covenants, agreements, representations and warranties made herein shall survive the termination agreement and shall continue in full force and effect so long as the loan obligation is outstanding and unpaid.
- 68 If any provision or item of this agreement is held invalid, such invalidity shall not affect the other provisions or items of this agreement that can be given effect without the invalid provisions or items. To this end, the provisions of this agreement are hereby declared severable.
- 69 Except for any exhibits, attachments, or other documents as may be affixed hereto, made a part hereof, and properly identified herewith, this agreement constitutes the entire contract between the parties, and shall not be otherwise affected by any other purported undertaking, whether written or oral.

- 70 The GRANTEE understands and agrees that any use of the Property or any activity thereon which is inconsistent with the foregoing provisions is expressly prohibited.
- 71 Except for applicable provisions of federal law and regulations, this agreement and any action brought under this agreement shall be governed by and constructed in accordance with the laws of the State of Oregon.

IN WITNESS HEREOF, the undersigned representatives of the GRANTEE and of the GRANTOR certifies that they are fully authorized to enter into the terms and conditions of this agreement and to execute and legally bind the parties to this document, as of the date first written below.

GRANTEE:

NAME OF THE GRANTEE
By, GRANTEE/FIRM

Name, Title

Date: _____

GRANTOR:

City of Portland
Bureau of Environmental Services, Portland Brownfield Program

By: _____

Portland Brownfield Program

Date: _____

APPROVED AS TO FORM:

By: _____

Date: _____

ATTACHMENT A: ELIGIBLE AND INELIGIBLE COSTS AND ACTIVITIES

The BORROWER may use a PBRLF loan for the following activities:

- A. Completing an Analysis of Brownfields Cleanup Alternatives (ABCA), including conducting a Risk Analysis;
- B. VCP program fees associated with the cleanup;
- C. Purchasing environmental insurance associated with the cleanup; and
- D. Conducting the voluntary cleanup work plan identified in the DEQ-approved voluntary cleanup pathway. The voluntary cleanup work plan will specify all activities necessary to complete a cleanup protective of human health and the environment, together with a cost estimate for conducting the voluntary remediation work. The voluntary cleanup work plan will specifically identify the eligible project costs.

The following are examples of common eligible project costs if they are part of an approved VCP agreement. Such costs include, but are not limited to:

- A. Installation of fences, warning signs, or other security or site control precautions;
- B. Installation of drainage controls;
- C. Stabilization of berms, dikes or impoundments; or drainage or closing of lagoons;
- D. Capping of contaminated soils;
- E. Using chemicals and other materials to retard the spread of the release or mitigate its effects;
- F. Excavation, consolidation or removal of contaminated soils;
- G. Removal of drums, barrels, tanks, or other bulk containers that contain or may contain hazardous substances, pollutants or contaminants, including petroleum;
- H. Removal of source materials, including free product recovery;
- I. Containment, treatment or disposal of hazardous materials and petroleum contamination;
- J. Site monitoring activities, including sampling and analysis, that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;
- K. Site assessment activities that are reasonable, necessary and incidental to the cleanup process, such as confirmation sampling; and
- L. Costs associated with meeting public participation, worker health and safety, and programmatic management requirements.

The following are examples of known ineligible project costs. Such costs include, but are not limited to:

- A. Pre-cleanup environmental assessment;
- B. Clean up of naturally occurring substances;
- C. Monitoring and data collection for the purpose of permit compliance required under other federal and state laws;
- D. Development activities that are not part of the cleanup;
- E. Repairing or improving public or private drinking water supplies that have deteriorated through ordinary use;
- F. A cleanup cost at a brownfields site for which the recipient of the grant or loan is potentially liable under CERCLA section 107;
- G. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the voluntary remediation work plan;
- H. Construction, demolition and development activities that are not cleanup actions (e.g., marketing of property or construction of a new non-cleanup facility);
- I. Complying with a cost-sharing or matching requirement for another federal grant (absent statutory authorization);
- J. Support of lobbying efforts of the recipient.
- K. Administrative costs as any part of a loan or grant; and
- L. Payment of a penalty or fine.