

KANSAS CITY MISSOURI BROWNFIELDS ASSESSMENT COALITION

SUBGRANT AGREEMENT

THIS SUBGRANT AGREEMENT (“Agreement” or “Subgrant Agreement”) is made as of this ____ day of _____, 2014, by and between the **CITY OF KANSAS CITY, MISSOURI**, a constitutionally chartered municipal corporation of the State of Missouri, through its **DEPARTMENT OF CITY PLANNING AND DEVELOPMENT**, hereinafter referred to as (“City”) and the **JACKSON COUNTY, MISSOURI**, hereinafter referred to as (“Subgrantee” or “County”).

RECITALS

WHEREAS, the City is the recipient of a Brownfields Coalition Assessment Grant (“Grant”) from the United States Environmental Protection Agency (“EPA”) through Cooperative Agreement, No. BF-97722301, (“EPA Cooperative Agreement”);

WHEREAS, the City, the County, and the Land Clearance for Redevelopment Authority of Kansas City, Missouri (“LCRA”) have formed the Kansas City Missouri Brownfields Assessment Coalition (“Coalition”), and have each entered into a Memorandum of Agreement dated February 1, 2011 (“MOA”), to implement the Grant and the EPA Cooperative Agreement;

WHEREAS, on August 17, 2011 and April 20, 2012, representatives of the Kansas City Missouri Brownfields Assessment Coalition approved the selection of the Rock Island Rail Corridor project site (“Project Site”) and the allocation of Coalition funds from both Grant in an amount not to exceed \$150,000 for environmental site assessment services;

WHEREAS, the City is authorized by the EPA Cooperative Agreement to make certain subgrants of the Grant, and the County has requested a subgrant to perform environmental site assessment services on the Project Site;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained within this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. Definitions. The following definitions shall apply for the purposes of this Agreement:

1.1 “Memorandum of Agreement” is that certain agreement entered into by the City, Subgrantee and MARC dated February 1, 2011. It provides the process and criteria for selection and approval of Coalition sites and projects, and the equitable allocation of Grant resources.

1.2 “Project Site” is the former Rock Island Line located in Jackson County, Missouri and described by the borders of the adjacent properties listed in **Exhibit A**. Figure 1 shows the approximate location of the Project Site. The Project Site consists of an approximately 17 mile stretch of decommissioned railroad right of way (“ROW”) and stretches from near the intersection of Raytown Road and Stadium Drive in southeastern Kansas City at mile post (“MP”) 287.1 to just north of Greenwood, Missouri at MP 270.6. On the northwest end of the ROW at MP 287.1, it has the following approximate coordinates: Latitude (North) 39.325, Longitude (West) 94.301. The coordinates at the southeastern end of the subject Property corridor at MP 270.6 are Latitude (North) 38.5219, Longitude (West) 94.2115.

1.3 “Qualified Environmental Professional” or “QEP” is the party designated by the City on its behalf as the party responsible for oversight of Subgrant funded environmental assessment activities. The QEP is designated by the City and is subject to removal or replacement at any time, without notice.

2. The Agreement.

2.1 The City agrees to provide Subgrantee certain funds awarded to the City by the Grant up to a total amount not to exceed ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) (the “Agreement Funds”) to pay eligible costs, to the extent allowable under applicable laws and regulations, incurred by Subgrantee to perform approved environmental sites assessment services on the Project Site, subject to all terms and conditions of this Agreement and the EPA Cooperative Agreement. City is under no duty to make available any additional monies regardless of source.

2.1.1 No Agreement Funds may be disbursed to Subgrantee except in compliance with the conditions and procedures set forth in Section 5.0 of this Agreement.

2.1.2 Subgrantee has no rights, interests, claims, or privileges with respect to Agreement Funds not disbursed to Subgrantee other than those expressly provided by this Agreement.

2.1.3 Subgrantee has no rights, interests, claims, or privileges with respect to funds awarded by the Grant. The City has the exclusive authority under the Grant to draw down funds from EPA.

2.1.4 Upon termination of this Agreement under Section 2.4, or the expiration of the period in which Agreement Funds are available under Section 2.5, any Agreement Funds not disbursed to Subgrantee in accordance with this Agreement shall remain with the City.

2.2 Purpose of the Agreement. This Agreement provides Subgrantee funds from the Grant to perform environmental site assessment services on the Project

Site in order to identify risks to human health and the environment and to facilitate the remediation, redevelopment or reuse of the Project Site as part of a future commuter rail transit system and recreational trail facility, and otherwise the benefit the affected communities within Jackson County, Missouri.

2.3 Subgrant Activities. Agreement funds may only be used for activities authorized by the Coalition, in accordance with the MOA, on properties located within the boundaries of the EPA Cooperative Agreement and the jurisdiction of the County. Approved activities include environmental site assessment approved by the Coalition on August 17, 2011 and April 20, 2012. Additional Coalition authorizations for work on the Project Site, if any, shall be documented in writing at public meetings for which notice is published no less than 24 hours in advance, and include the approval of a general scope of project activities and the allocation of a limited amount of available funds from the Grant to perform the approved activities. No additional Agreement Funds shall be provided for additional authorized activities unless specifically provided for by an amendment to this Agreement.

2.4 Term. This Agreement shall commence as of the date first written above. The City may terminate this Agreement by giving ten (10) days written notice, if the Subgrantee substantially fails to fulfill its obligations under this Agreement through no fault of the City. In the event of termination, the Subgrantee shall return to City any and all Agreement Funds it received in excess of the total eligible services and expenses incurred up to the time of termination. The City shall notify EPA within thirty (30) days in the event this Agreement is terminated.

2.5 Subgrant Period. Notwithstanding section 2.8 above, in no event shall Subgrant funds be available for work undertaken, or eligible costs incurred, after September 30, 2014, the effective period of the Grant, unless such Grant period is extended by EPA.

3. Subgrantee Obligations

3.1 Acceptance. Subgrantee shall notify the City, in writing, of acceptance of this offer by delivering to the City five (5) originals of this Agreement executed by the Subgrantee's duly authorized representative. Once signed by all parties, this Agreement is binding.

3.2 Federally-Required Terms and Conditions. Subgrantee acknowledges that it is subject to, and agrees to comply with, all applicable terms and conditions of the EPA Cooperative Agreement, which are hereby incorporated by reference into this Agreement. Terms and conditions applicable to Subgrantee have been re-drafted and modified for the convenience of the Subgrantee and are attached as **Exhibit B**. Terms, conditions and forms applicable to each contractor and subcontractor hired by Subgrantee under this agreement are attached as **Exhibit C**. In the event of any discrepancy between the requirements of the

provisions of **Exhibit B** or **Exhibit C** and the applicable terms and conditions of the EPA Cooperative Agreement, the latter shall supersede the former.

3.3 Use of Funds. Subgrantee agrees that the receipt of any Agreement Funds under this Agreement is conditioned upon the Subgrantee's full compliance with this Agreement and the EPA Cooperative Agreement. Subgrantee shall also ensure compliance with all applicable terms of this Agreement and the EPA Cooperative Agreement by all of Subgrantee's contractors, subcontractors, agents and assignees who perform Subgrant activities. In this regard, Subgrantee may attach to each contract and subcontract under this Agreement the provisions summarized in **Exhibit C** hereto.

3.3.1 Project Costs. Subgrantee agrees and understands that all Agreement funds shall be used solely for eligible activities authorized in accordance with the MOA. Subgrantee shall pay all costs relating to authorized activities, including, but not limited to, all plans and permits.

3.3.2 Administrative Costs. Subgrantee shall not use Agreement Funds for any administrative costs, including costs of required tasks such as record retention, maintaining and operating financial management systems, accounting tasks, all indirect costs under OMB Circulars A-21 (2 CFR Part 220) and A-87 (2 CFR Part 225, and Subpart 31.2 of the Federal Acquisition Regulations). There are limited exceptions to the administrative cost prohibition if such costs are eligible "programmatic" costs (i.e., costs that are integral to achieving the purpose of the grant). Subgrantee must obtain the specific written consent of the City before incurring any programmatic costs not specifically authorized by this Agreement.

3.3.3 Prohibited Uses of Funds. Subgrantee shall not use any Agreement Funds for any costs or activities prohibited by the EPA Cooperative Agreement or applicable laws and regulations governing such funds. Examples of prohibited costs are provided in Section III.B. of the EPA Cooperative Agreement.

3.3.4 City Remedies. Subgrantee agrees and understands that in addition to any remedies otherwise available to the City under this Agreement, under law or in equity, the City may require Subgrantee to return or repay any Agreement Funds received that were used for illegal or ineligible purposes; provided the City, in no way, participated in the expenditure of such funds for illegal or ineligible purposes. In addition to any other indemnification provision herein, Subgrantee shall contractually obligate its contractors and subcontractors to agree to indemnify and hold harmless the City for any fees, penalties, claims, judgments or other costs and damages, including any demand for interest payments, as a result of the illegal or ineligible use of Agreement Funds. For purposes of this indemnity, claims against the City shall include administrative

determinations by any government agency that Agreement Funds disbursed under this Agreement were used for illegal or ineligible uses.

3.4 Eligibility Determination. Subgrantee agrees and understands that the use of Agreement Funds on the Project Site is expressly conditioned on a determination that the Project Site meets the criteria of site eligibility in accordance with Section I.B. of the EPA Cooperative Agreement. Such determination shall include verification that the site is located within the boundaries of EPA Cooperative Agreement and the jurisdiction of the County. The City will prepare and provide to Subgrantee a draft site eligibility determination of the Project Site. No Subgrant funds will be disbursed by the City until site eligibility for the Project Site has been determined by the City and confirmed by EPA.

3.5 Community Involvement.

3.5.1 Project Sheet. For each additional activity proposed for assistance by this Agreement, if any, Subgrantee shall prepare a Project Sheet to inform the public of basic project information and the reasons for Coalition assistance. The Project Sheet must describe the applicant seeking assistance, the reuse or redevelopment project, the site and its environmental conditions, a demonstration of financial need, and other relevant information to support a decision to provide Coalition assistance in accordance with the MOA. Subgrantee should use Project Sheets to make information about a proposed or approved project publicly available for Coalition meetings, public inquiries and Grant reporting activities. The City shall provide Subgrantee general instructions for applying for Coalition assistance and an example Project Sheet.

3.5.2 Subgrantee also shall implement the provisions of the Cooperative Agreement Work Plans for Subgrant projects regarding community involvement, including hosting brownfield meetings in communities affected by the site or project, advertising notices in local newspapers and other appropriate printed or electronic publications, and keeping the public informed of progress and outcomes of Coalition activities.

3.6 Projects. For each approved activity under this Agreement, Subgrantee shall prepare a Scope of Services for review and approval by City and, if applicable, the Missouri Department of Natural Resources (“MDNR”). Upon acceptance of the scope of services by the City (and, if applicable, MDNR), a copy will be provided to Subgrantee. The approved Scope of Services shall contain the following items:

3.6.1 Detailed Work Plan

3.6.2 Health and Safety Plan (if necessary)

3.6.3 Quality Assurance Project Plan (QAPP), if any samples will be collected as part a Subgrant activity, in accordance with EPA Requirements for Quality Assurance Project Plans EPA QA/R-5, EPA/240/B-01/003, March 2001, as updated or amended. Subgrantee may also utilize a Generic QAPP approved by EPA for use on Coalition projects within the County, if available.

3.6.4 Detailed Budget with estimated costs and a cost breakdown by task and budget categories (e.g., labor, supplies, equipment, laboratory analyses, etc.) The budget shall adequately describe the nature, type and quantity of all costs, and provide other information necessary to determine that such costs are eligible Project costs in accordance with the EPA Cooperative Agreement's terms and conditions. The Budget shall also identify eligible programmatic costs or in-kind contributions, if any.

3.6.5 Project Schedule. The Project completion date shall be no later than one fiscal quarter prior to the expiration of this Agreement or the EPA Cooperative Agreement, unless either is amended, or the parties otherwise agree in writing.

3.7 Site Control. Subgrantee shall secure access to all site properties on which Subgrant project activities are performed. For invasive activities on properties not owned or controlled by Subgrantee, access shall be in the form of an agreement in writing signed by the owner(s) of the relevant property(ies) and shall extend to Subgrantee's officers, employees, agents, contractors and subcontractors, and to appropriate state and federal agencies as necessary, for the duration of this Agreement. Subgrantee shall secure site access prior to the approval of Subgrant activities.

3.8 Project Management. For each Subgrant project, Subgrantee shall conduct procurement in accordance with the EPA Cooperative Agreement and applicable laws and regulations. Subgrantee shall be responsible for the management of its own Subgrant projects and the administration of its own contracts for authorized activities. Subgrantee shall also be responsible for monitoring all work under this Agreement and for ensuring that the work is performed in compliance with the relevant authorities and all other applicable federal, state and local laws, and in a professional and workmanlike manner. Subgrantee shall be responsible for enforcing the terms of its contracts. Subgrantee shall include in each contract the terms of this Agreement applicable to all contractors and subcontractors who perform work under this Agreement. The Subgrantee may hire a qualified environmental professional (QEP) to assist in these monitoring and oversight activities, and/or request advice and assistance from the City. Subgrantee shall provide each contractor with a copy of this Agreement.

3.9 Qualified Contractor. To perform Subgrant activities, Subgrantee shall hire competent professional services in compliance with applicable procurement

regulations, the EPA Cooperative Agreement' terms and conditions, and all other requirements of this Agreement. Subgrantee shall ensure that its contractors, subcontractors meet the following conditions and requirements:

3.9.1 Are not debarred from federal contracts and are otherwise qualified to undertake the work.

3.9.2 Possess all required professional certifications and registrations necessary to perform the work.

3.9.3 Demonstrate to the City's satisfaction adequate expertise, experience, capacity and reliability to perform the work.

3.9.4 Work shall not begin until the City approves the Subgrantee's qualified contractors and subcontractors. The City shall not reject Subgrantee's contractor or subcontractor without reasonable cause. Subgrantee shall be allowed a reasonable opportunity to replace a rejected contractor or subcontractor with a qualified professional that meets the above conditions.

3.10 Subgrantee shall comply with all applicable Missouri statutes and regulations in fulfilling the terms of this Agreement. Subgrantee shall comply with any and all applicable local, state or federal contract and bidding requirements.

3.11 Unless subject to the attorney-client privilege, Subgrantee shall submit to the City final copies of all reports, studies, data, or contracts relating to the Project, in addition to any reports required by the EPA Cooperative Agreement.

3.12 Subgrantee shall assist with the completion of EPA Property Profile Forms, and shall assist with updating such forms in the federal Assessment, Cleanup & Redevelopment Exchange System (ACRES) database, if requested by the City.

3.13 Subgrantee shall cooperate fully with reasonable requests by City, and any independent auditor on behalf of City, to review the Subgrant and associated activities, as necessary for the City to prepare a federal single audit in accordance with Office of Management and Budget (OMB) Circular A-133.

3.14 Subgrantee shall document all the uses of the Subgrant funds, and maintain adequate books and accounts in accordance with generally accepted accounting principles consistently applied. Subgrantee shall permit any representative of City, at any reasonable time, to inspect, audit and examine such books and inspect the properties of Subgrantee and shall maintain documentation on the use of the grant proceeds for a minimum of ten (10) years after the completion of remediation activities supported by the Subgrant, except that records that are subject to audit findings shall be retained ten (10) years after such findings have been resolved, and all such records and supporting documents shall

be made available, upon request, for inspection or audit by the City or its representatives.

3.15 Notwithstanding Section 3.13, Subgrantee shall maintain all documentation produced under this Agreement until the completion of any litigation, claim, negotiation, audit or other action involving those documents or for the record retention period set above, whichever is longer. Subgrantee shall seek the written approval of the City prior to disposing of records.

3.16 Subgrantee shall notify the City when all Subgrant activities are completed. The notice shall contain certification or documentation that the eligible activities are completed and have been performed in accordance with the terms of this Agreement. This closeout documentation shall summarize the actions taken, the resources committed, the problems encountered in completion of the Project, if any, and identify any further assessment or remedial actions recommended, or identify if any determinations of no further assessment or remedial action were made for any Project sites. This documentation shall be submitted to the City's QEP for review, comment, confirmation and approval.

3.17 Subgrantee understands that any use of the Agreement funds, or any Subgrant activity, which is inconsistent with the EPA Cooperative Agreement or any of the provisions herein, is expressly prohibited.

3.18 Misrepresentation. If Coalition approval or funding of a Subgrant Project is based upon a willful and material misrepresentation of Subgrantee, nothing in this Agreement shall be construed to preclude or limit the rights or claims of City with regard to such misrepresentation, including any rights City may have to rescind such approval, terminate this Agreement, or require return of funds paid.

3.19 Compliance with Law. Subgrantee shall carry out all activities under this Agreement in accordance with the provisions herein, and in accordance with the applicable terms and conditions of the EPA Cooperative Agreement, attached as **Exhibit A**, and all other applicable federal, state and local laws and regulations. Subgrantee shall take all action and perform all tasks necessary to comply with the requirements of these laws and regulations. Subgrantee acknowledges that these requirements are incorporated into this Agreement.

4. City Obligations.

4.1 The City shall obligate Grant funds for this Agreement in an amount not to exceed ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000.00) ("Agreement Funds").

4.2 The City agrees to review Project Sheets, Scopes of Work, procurement documents, procurement responses, disbursement requests, quarterly progress reports, draft and final deliverables of environmental reports, and any other documents or work products produced under this Agreement, and to provide

Subgrantee comments, questions or approvals, as appropriate, for each on a timely basis.

4.3 The City agrees to provide Subgrantee a draft Scope of Services and related documents prepared to perform approved environmental site assessment services on the Project Site.

4.4 The City shall be the single point of contact for purposes of all communication with the EPA concerning the Subgrant.

4.5 The City shall supply the Subgrantee with all relevant federal reporting forms.

4.6 The City acknowledges that the Subgrantee shall have sole control of the method, hours worked and time and manner of any performance under this Agreement other than as specifically provided herein. The City reserves the right to reasonably inspect any Subgrant site to ensure that authorized activities are progressing or have been completed in compliance with the Agreement, but only in a manner so as not to disrupt or impede activities on the Site. The City takes no responsibility of supervision or direction of the performance of activities under the Agreement. The City further agrees that it will exercise no control over the selection and dismissal of the Subgrantee's employees or agents.

5. Disbursement.

5.1 Conditions Precedent to Subgrant Disbursement. In addition to any other provision governing disbursement herein, the City shall not disburse Subgrant funds to Subgrantee until the following conditions precedent have been satisfied:

5.1.1 Subgrantee has executed this Agreement.

5.1.2 Subgrantee has obtained all necessary permits.

5.1.3 For additional approved activities under this Agreement, if any, Subgrantee has prepared a Project Sheet, as required by Section 3.4.1 of this Agreement, for each project related to the disbursement, and such Project Sheet has been made publicly available and considered at an advertised public meeting, and the Subgrant activities were approved in accordance with the procedures and criteria developed under the MOA.

5.1.4 Subgrantee has provided a Scope of Services, as required by Section 3.5 of this Agreement, for each approved activity related to the disbursement.

5.1.5 Subgrantee has secured access necessary for the approved activities.

5.1.6 Subgrantee has issued a notice to proceed under its executed contract or contracts with its contractor or contractors.

5.1.7 Subgrantee is otherwise in compliance with this Agreement.

5.2 Disbursement Procedures.

5.2.1 Agreement Funds shall be disbursed to Subgrantee for eligible costs of approved Subgrant activities incurred by Subgrantee upon presentation of the payable invoices and the QEP's review and approval of such costs. The City may also, but is not required to, review invoices for payment.

5.2.2 Subgrantee shall request disbursements by providing to the City invoices and backup documentation of all eligible costs, including a breakdown of all costs by approved tasks, costs incurred for the requested disbursement period, cumulative costs, and remaining balances, a description the services performed and items purchased, and clear identification of the amounts of authorized activities to be paid by the Subgrant.

5.2.3 The Subgrantee may request only one disbursement per month.

5.2.4 The City may reduce, or disallow entirely, a disbursement to the extent requested costs are determined by the City to be ineligible.

5.2.5 Upon the submittal of a complete disbursement request, the City shall either approve such request, or notify Subgrantee of any questions, within ten (10) business days. Upon approval of a disbursement request, the City shall make its best efforts to ensure that the disbursement is made within ten (10) business days.

5.2.6 No disbursements shall be made to the Subgrantee without the written approval of the City.

6. Special Conditions

6.1 QAPP Approval. No samples will be gathered and analyzed for a Subgrant activity unless governed by a QAPP approved by EPA, or approved by MDNR if authorized by EPA to approve the QAPP. The QAPP will be deemed approved by EPA if the site is enrolled in the MDNR VCP or otherwise overseen by the State of Missouri, provided the State of Missouri has a current, EPA-approved Quality Management Plan that includes the VCP or other the relevant oversight program and the State of Missouri conducts their own review of the QAPP.

6.2 Quarterly Progress Reports. The Subgrantee shall furnish written progress reports to the City on a quarterly basis during the cleanup. Reports are

due on April 15, July 15, October 15 and January 15 of each year. Progress reports shall include for each authorized project a description of the Subgrant activities performed, progress milestones achieved, and the total Agreement Funds budgeted, expended and remaining. Each report shall also include a budget table showing the total Agreement funds expended during the reporting period, expended cumulatively, and the balance remaining, for each Grant cost category: Personnel, Fringe Benefits, Travel, Equipment, Supplies, Contractual, Construction, and Other. (Most expended costs will be limited to the Contractual category). The City may request relevant additional or supplemental information, at any time.

6.3 Final Report. Within 90 days of the termination of this Agreement, the Subgrantee shall submit to the City a final progress report in the same general form as a quarterly progress report, Section 6.3. The report shall summarize the activities and projects performed with the funds awarded under this Agreement, and include a final budget table. The Subgrantee shall submit any environmental reports or documents that were created for or funded by this Agreement as a component of the final progress report. The final report shall be submitted to the City along with a final disbursement request, if necessary.

6.4 Changes to Project Scope or Budget. If the Subgrantee determines that they will not need to use the full amount of their grant award, the Subgrantee shall notify the City in writing as soon as possible such that excess funds may be allocated to another project.

6.5 In-Kind Cost Documentation. No more than ten (10) percent of the amount of this Subgrant may be used to pay the actual and eligible programmatic costs to conduct eligible activities if such costs are expressly approved in writing by the City in advance and such costs are not ineligible or prohibited administrative costs under the terms and conditions of the EPA Cooperative Agreement and applicable laws and regulations. In order for in-kind costs to be reimbursed, the Subgrantee shall provide adequate documentation of its own staff time, equipment use, and other costs for each disbursement period in which such costs are claimed.

6.6 No Effect On State Laws and Regulations. All response actions conducted as part of this Project shall follow the procedures and requirements of Missouri state law and regulations, including any risk-based corrective action rule, and or process guidance document approved by the MDNR. Nothing in this Agreement shall entitle the Subgrantee, its agents, contractors, or assigns to any special rights, privileges, licenses, liability exemptions, or obligations regarding their responsibility to undertake response actions under applicable state laws or regulation, or any other state or federal environmental laws.

7. Indemnification.

7.1 For purposes of this Section only, the following terms shall have the meanings listed:

7.1.1 “Claims” means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys' fees, including attorneys' fees incurred by the City in the enforcement of this indemnity obligation.

7.1.2 “Subgrantee's Agents” means Subgrantee's officers, employees, subconsultants, subcontractors, successors, assigns, invitees, and other agents.

7.1.3 “City” means City and its agents, officials, officers and employees.

7.1.4 “City Agents” does not include contractors or consultants under contract to the City to provide goods or services or perform work in connection with this Agreement.

7.2 Subgrantee shall contractually obligate its contractors and subcontractors to save, keep harmless, defend and indemnify the City and all its officers, officials, employees and agents, against any and all claims and costs of whatever kind and nature, including for injury to or death of any person or persons, and for loss or damage to any property (state or other) occurring in connection with or in any way incident to or arising out of the occupancy, use, service, operation or performance of work in connection with this Agreement or omissions of the Subgrantee's employees, agents or representatives regardless of whether or not caused in part by any act or omission, including negligence, of City. Subgrantee shall ensure this indemnification language is included in all contracts and subcontracts related to work to be done under this Agreement.

7.3 Nothing in this section shall apply to indemnification for professional negligence. In no event shall the language in this Section constitute or be construed as a waiver or limitation of the City's rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

8. Insurance and Public Safety Protections.

8.1 Subgrantee shall promptly take steps to protect its Contractors, Contractor's employees and the public from the risk of injury whether from the condition of the Site or Subgrantee's activities in connection with the Site. Subgrantee shall contractually require its Contractor(s) and Subcontractor(s) to purchase and maintain the following insurance for claims which may result from the operations under this Agreement by Subgrantee, Contractor, any subcontractor or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

8.1.1 Commercial General Liability Insurance. A commercial general liability insurance policy with limits of \$1,000,000.00 per occurrence and \$1,000,000.00 aggregate, written on an “occurrence” basis. The policy shall be written or endorsed to include the following provisions:

- Severability of interests coverage applying to additional insureds.
- Contractual liability.
- Per project aggregate liability limit, or where not available, the aggregate limit shall be \$2,000,000.00.
- Non-contractual liability limitation endorsement.
- Additional insured endorsement, ISO form CG2010, current edition or its equivalent.

8.1.2 Worker’s Compensation Insurance. Worker’s Compensation Insurance policies as required by applicable statutes, including employers’ liability with limits of:

Worker’s Compensation	Statutory
Employers’ Liability	\$100,000 each accident
with limits of:	\$500,000 disease-policy limit
	\$100,000 disease-each employee

8.1.3 Commercial Automobile Liability Insurance. Commercial automobile insurance liability insurance policy with a limit of \$1,000,000.00 per occurrence, covering owned, hired and non-owned automobiles, which coverage shall be on an “any auto” basis and written on an “occurrence” basis. This insurance policy will be written on a Commercial Business Auto form, or acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, with respect to acts done in connection with this Agreement by Subgrantee.

8.2 All insurance coverage must be written by companies that have an A.M. Best’s rating of “B+V” or better, and are licensed or approved by the State of Missouri to do business in Missouri.

8.3 Regardless of any approval by City, it is the responsibility of Subgrantee to contractually require its Contractor(s) and any of Contractor’s subcontractors maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Subgrantee’s Contractor(s) and Contractor’s subcontractors’ failure to maintain the required insurance in effect, City may order Subgrantee to immediately stop work and, upon fourteen (14) days’ notice and any opportunity to cure, pursue any of its remedies for breach of this Agreement as provided for herein or otherwise provided by law.

9. Prohibition Against Conveyance, Assignment and Transfer. Any and all conveyances, assignments or transfers by Subgrantee of Subgrantee's interests under this Agreement are prohibited, except upon City's prior written approval.

10. Defaults and Remedies. Subject to any extension of time permitted by this Agreement, a failure or delay by a party to perform any term or provision of this Agreement, after notice and expiration of any applicable cure period, constitutes a default of this Agreement.

10.1 Cure. Except as otherwise provided in this Agreement, if either party shall be in default of, or breach this Agreement, such party shall immediately commence to cure such default or breach within ten (10) days after receipt of written notice from the other party of such default or breach and shall diligently proceed to cure such default within such ten (10) day period or a reasonable time if such cure cannot be completed within the ten (10) day period. If the defaulting party does not promptly begin and diligently pursue a cure of the default or fails to cure the default within a reasonable time, the aggrieved party may institute proceedings to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default.

10.2 No Waiving by Delay. Any delay by a party in asserting any rights under this Section shall not operate as a waiver of such rights or deprive such party of, or limit such rights in any way. Any waiver in fact made by a party with respect to any specific default shall not be considered a waiver of the rights of such party with respect to any other defaults or with respect to the particular default except to the extent specifically waived in writing.

10.3 Delay for Causes Beyond Control of a Party. For the purposes of the provisions of this Agreement, neither City nor Subgrantee shall be considered in breach of, or default in, its obligations with respect to the beginning, prosecution and completion of the Project, if delay in the performance of such obligations is due to unforeseeable causes beyond the delayed party's control and without its fault or negligence. Unforeseeable causes shall include acts of God, acts of the public enemy, acts of the state, local or federal government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather (e.g., floods, tornadoes, or hurricanes) or delays of Contractor or subcontractors due to such causes. In the event of the occurrence of any such enforced delay, the time or times for performance of such obligations of City and Subgrantee, respectively, shall be extended for the period of the enforced delay, as determined by City and Subgrantee, respectively, provided that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after Subgrantee has or should have knowledge of any such enforced delay, have first notified the other party, in writing, of the delay and its cause, and requested an extension for the period of the enforced delay. In no event shall the duration of the Project extend beyond twenty-four (24) months from the commencement of work. Acts of the state, local or federal government shall not be considered

unforeseen if in response to the failure of Subgrantee or the City to comply with this Agreement or the applicable provisions of the EPA Cooperative Agreement.

11. US Environmental Protection Agency (EPA) Contract Requirements. The following documents are Attachments to this Agreement and are attached hereto and incorporated herein by this reference:

Exhibit B - US Environmental Protection Agency (EPA) Contract Requirements

EPA Certification Regarding Lobbying

EPA Disclosure of Lobbying Activities

EPA Certification Regarding Debarment Suspension

Employee Eligibility Verification

In addition, Subgrantee certifies that Subgrantee and , based upon representations made by its Contractor(s) and subcontractor(s), that its Contractor(s) and subcontractor(s):

11.1 Are not presently or proposed to be debarred or suspended, declared ineligible, or voluntarily excluded from Federal, State or local transactions (hereinafter individually a “public transaction”); and

11.2 Have not been rescinded or debarred from any bidding, contractual, procurement and/or non-procurement programs or other such programs with the United States Government as identified by the U.S. General Services Administration Office of Acquisition Policy; and that the Subgrantee has not been similarly rescinded or debarred from any bidding, contractual, procurement or other such programs of the State of Missouri; and

11.3 Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of (a) fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public transaction or contract under a public transaction; (b) violation of federal or state antitrust; (c) commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; or (d) making false statements or receiving stolen property; and

11.4 Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any offense; and

11.5 Have not within the preceding three years had a public transaction terminated for cause or default.

12. Environmental Compliance. Subgrantee certifies that it is not currently, nor has it been, subject to any penalties resulting from environmental non-compliance at the Property. Subgrantee shall contractually require its contractor(s) and subcontractor(s) to conduct Subgrant activities in accordance with all applicable federal, state and local laws

and the terms and conditions of the EPA Cooperative Agreement, and will modify the Subgrant activities, as necessary and as determined by the QEP and the City, based on unforeseen Site conditions or public involvement requirements. Subgrantee is responsible for obtaining all necessary permits to do the work contemplated under this Agreement.

13. General Provisions.

13.1 Time for Actions. City and Subgrantee shall each do the actions required of them, on or before the times specified in this Agreement. Unless otherwise provided, except for the disbursement of Subgrant proceeds as described in this Agreement, City shall give required approvals or disapprovals within thirty (30) days after submission of a request therefore.

13.2 Entire Agreement. This Agreement, together with the exhibits attached hereto, integrates all of the terms and conditions related or previous agreements between the parties with respect to its subject matter.

13.3 Waivers and Amendments. All waivers of the provisions of this Agreement must be in writing and signed by the City or Subgrantee, as the case may require, and all amendments hereto must be in writing and signed by the City and Subgrantee.

13.4 Nonliability of City and City Officials and Employees. No member, official or employee of City or City shall be personally liable to Subgrantee, or any successor in interest, in the event of any default or breach by City or for any amount which may become due to Subgrantee or its successors, or on any obligations under the terms of this Agreement.

13.5 Nature of Obligations. All covenants, obligations and agreements of Subgrantee contained in this Agreement shall be effective to the extent authorized and permitted by applicable law. No such covenant, obligation or agreement shall be deemed to be a covenant, obligation or agreement of any present or future commissioner, officer, agent or employee of Subgrantee in other than his or her official capacity, and no official executing this Agreement shall be liable personally for this Agreement or be subject to any personal liability or accountability by reason of the execution and delivery of this Agreement or by reason of the covenants, obligations or agreements of Subgrantee contained in this Agreement.

13.6 Notices and Demands. A notice, demand or other communication under this Agreement by either party to the other shall be in writing and shall be sufficiently given or delivered if it is dispatched by certified mail, postage prepaid, return receipt requested, or delivered personally, to the address set out below, or at such other address with respect to either party as that party may, from time to time, designate in writing and forward to the other as provided for a notice under this Section. Personal delivery to City shall be effected by delivery to the

Director of City Planning and Development, and any communication to City shall be prominently marked: **“URGENT. ATTENTION: BI-STATE ONE-KC BROWNFIELDS COALITION.”** Written notice will be effective immediately if personally delivered, or, if sent by certified mail, such notice will be effective **48** hours after deposit into the U.S. Mail. Notice addresses are as follows:

SUBGRANTEE:

Jackson County, Missouri
415 East 12th Street
Kansas City, MO 64106
Attention: Mike Sanders, County Executive

CITY:

City of Kansas City, Missouri
Department of City Planning & Development
414 E. 12th Street, 15th Floor
Kansas City, MO 64106-2795
Attention: Bob Langenkamp, AICP, Assistant City Manager/Director

QEP:

Office of the City Manager, Office of Environmental Quality
City of Kansas City, Missouri
414 E. 12th St., 24th Floor
Kansas City, Missouri 64106
Attention: Andy Savastino

13.7 Consents. Whenever any party’s consent or approval is required under this Agreement, such consent or approval shall not be unreasonably withheld or delayed.

13.8 Section Headings; Construction. The headings of sections and subsections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Section" or "Sections" refer to the corresponding Section or Sections of this Agreement. All references to "herein" or "hereof" shall mean this Agreement. All words used in this Agreement will be construed to be of such gender or number, as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be duly executed as of the day and year first written above.

SIGNATURE PAGES TO FOLLOW

THIS AGREEMENT CONTAINS INDEMNIFICATION PROVISIONS

For JACKSON COUNTY, MISSOURI

By: _____
Title: Mike Sanders, County Executive

Approved as to form:

Attorney

ACKNOWLEDGEMENT

State of Missouri)
)ss
County of Jackson)

On this ____ day of _____, 2013, before me, a Notary Public in and for the County and State aforesaid, personally appeared Mike Sanders in his capacity as County Executive, Jackson County, Missouri, who, being duly sworn, did execute the foregoing instrument by virtue of the authority vested in him in his capacity as County Executive, and he acknowledged the said instrument to be the free act and deed of Jackson County, Missouri.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year last above written.

Notary Public

My commission expires:

**For
CITY OF KANSAS CITY, MISSOURI:**

By: _____
Name: Robert Langenkamp, AICP
Title: Assistant City Manager / Director
Department of City Planning &
Development

I hereby certify that there is a balance, otherwise unencumbered, to the credit of the appropriation to which the foregoing expenditure is to be charged, and a cash balance, otherwise unencumbered, in the treasury, to the credit of the fund from which payment is to be made, each sufficient to meet the obligation hereby incurred.

Randall J. Landes
Director of Finance

Approved as to form:

Matthew Gigliotti
Assistant City Attorney

EXHIBITS TO SUBGRANT AGREEMENT

The following documents are Attachments to this Agreement and are attached hereto and incorporated herein by this reference.

<u>EXHIBIT</u>	<u>NAME OF EXHIBIT</u>
A	Project Site
B	Terms and Conditions of EPA Cooperative Agreement Applicable to Subgrantee
C	Terms and Conditions of EPA Cooperative Agreement Applicable to Contractor(s)

EXHIBIT A

PROJECT SITE

LIST OF PROPERTIES ADJACENT TO RIGHT OF WAY

EXHIBIT B

TERMS AND CONDITIONS OF EPA COOPERATIVE AGREEMENT

APPLICABLE TO SUBGRANTEE

EXHIBIT C

TERMS AND CONDITIONS OF EPA COOPERATIVE AGREEMENT

APPLICABLE TO CONTRACTOR(S)