

**Memorandum of Agreement Terms and Conditions for Agreements
Between A State Agency and Entity Qualified as Nonprofit under 26 U.S.C. sec.501(c)(3)
Revised April 2015**

Completion of this Agreement is required to obtain a Kentucky Brownfield Program Revolving Loan Fund loan. Personally identifiable information included on this agreement may be made available to requests under Kentucky's Open Records law [KRS 61.870 to 61.884, 61.991, 7.119, 26A.200, 15.257, 171.223, 65.055, 160.395, and 164.465].

Scope of Services:

Borrower	Loan Number
Site Name and Address	
Period Covered by This Agreement	Subborrower's Authorized Representative
Scope and Description of Cleanup Activities Funded by this loan:	
SUBGRANT COSTS:	The following documents are hereby incorporated into and made part of this Agreement:
Loan Amount: _____	<ul style="list-style-type: none"> - Map of property showing boundaries and work areas - Copy of Deed - Project Budget Sheet Summary - US EPA Revolving Loan Fund (RLF) - Terms and Conditions for 2012
Borrower Match: _____	
Required Borrower Match %: _____	
Total Project Cost: _____	

Definitions

Hereafter, the following terms used throughout this document will meet the following definitions:

DEPARTMENT: The Kentucky Department for Environmental Protection.

BORROWER:

PROJECT:

PROGRAM:

PROPERTY:

I. General Provisions

1. The DEPARTMENT acts as the financial agent and is authorized to make certain loans from these funds through a U.S. EPA Brownfields Revolving Loan Fund Cooperative Agreement.
2. The period of the loan shall be from the Loan Approval Date _____ until the Loan End Date _____
3. These funds are to be used to undertake cleanup of the PROJECT, a brownfields site with _____
4. The PROPERTY is not listed, or proposed for listing on the National Priorities List of the U.S. Environmental Protection Agency (EPA).
5. The brownfield site will be owned by the BORROWER, who will have full access to site or if the site is not owned by the BORROWER, the BORROWER must verify the OWNER has approved site access and remediation of the site.
6. The BORROWER has not caused, contributed to, permitted, or exacerbated the release of a hazardous substance or petroleum product on, or emanating from that PROPERTY.
7. The PROPERTY is subject to the jurisdiction and oversight of the DEPARTMENT (See Exhibit for Map of the Property).
8. The BORROWER is not and has never 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.
9. The making and performance by BORROWER of this Agreement does not violate any provision of law, or result in a breach of or constitute a default under any agreement, indenture or other instrument to which BORROWER is a party or by which BORROWER may be bound.
10. This Agreement has been duly authorized, executed and delivered, and is a valid and binding Agreement. This Agreement and all contracts, agreements, representations and warranties made herein shall survive the execution of this Agreement and shall continue in full force and effect so long as the loan is outstanding and unpaid.
11. If any provision or item of this Agreement is held invalid, such invalidity shall not affect other provisions or items of this Agreement which can be given effect without the invalid provisions or items, and to this end, the provisions of this Agreement are hereby declared severable.

12. The BORROWER is the current owner of the site, but is not a potentially responsible party under Section 107 of CERCLA, 42 U.S.C. Section 9607. The BORROWER is a bona fide prospective purchaser under Section 101(40) of CERCLA, 42 U.S.C. 9601(40). The DEPARTMENT has documented the BORROWER'S liability exemption in a memo dated _____, which was sent to US EPA. The BORROWER does not have contractual or familial associations with the potentially responsible party.

Or

The BORROWER is not a potentially responsible party under Section 107 of CERCLA, 42 U.S.C. Section 9607. The BORROWER is a bona fide prospective purchaser under Section 101(40) of CERCLA, 42 U.S.C. 9601(40). The DEPARTMENT has documented the BORROWER'S liability exemption in a memo dated _____, which was sent to US EPA. The BORROWER does not have prior contractual or familial associations with the potentially responsible party.

13. The BORROWER has performed or obtained copies of all Phase I and Phase II Environmental Site Assessments of the PROPERTY performed according to the ASTM International (ASTM) standards, or equivalent assessment procedures in conformance with the DEPARTMENT which verifies the presence of hazardous substances or petroleum products present in the soil, sediments and/or groundwater of the PROPERTY. The BORROWER shall be responsible for the payment of all costs and expenses related to the Assessments. The BORROWER agrees that loan funds shall not be used for the payment of any cost or expense related to the Assessments. The Assessments shall include, but are not limited to: Site background, analysis of the threat posed by the contaminant to public health, welfare and the environment and review of all past enforcement activities conducted by any governmental agency, and the site testing results.

14. The DEPARTMENT and the BORROWER mutually agree to perform this Agreement in accordance with the PROGRAM and with the PROJECT description, application, terms, conditions, plans, specifications, estimates, procedures, maps and assurances attached hereto and made a part hereof. In general, the work to be done at the site is described in the definitions as the PROJECT.

15. The BORROWER is an independent contractor for all purposes, not an employee or agent of the DEPARTMENT.

16. This Agreement, together with any referenced parts and attachments, shall constitute the entire Agreement and previous communications or agreements pertaining to the subject matter of this Agreement are hereby superseded. Any revisions, including cost adjustments, must be made by an amendment to this Agreement or other written documentation, prior to the end date of the Agreement.

17. Any cost adjustments must be made by a written amendment to this Agreement, signed by both parties, prior to the expenditure of funds or the termination date of the Agreement. Adjustments for time of performance or scope of work may be granted to the BORROWER by the DEPARTMENT in writing without the requirements of the BORROWER'S signature.

18. The BORROWER may decline this offer of financial assistance in writing at any time prior to the start of the PROJECT and before expending any allowed reimbursable funds under this loan agreement. After the PROJECT has been started or funds expended, this Agreement may be terminated, modified, or amended consistent with the provisions of this agreement.

19. Failure by the BORROWER to comply with the terms of this Agreement shall not cause the suspension of all obligations of the DEPARTMENT hereunder if, in the judgment of the Commissioner of the DEPARTMENT, such failure was due to no fault of the BORROWER. In such cases, any amount required to settle at minimum costs any irrevocable obligations properly incurred shall be eligible for assistance under this Agreement, at the DEPARTMENT'S discretion.

II. The BORROWER agrees:

1. To notify the DEPARTMENT, in writing, of acceptance of this offer by delivering to the DEPARTMENT two original Agreements duly signed by the authorized representative. This action must take place within 30 days of receipt of this Agreement. Once signed by all parties, the DEPARTMENT will return the BORROWER's copy and the Agreement is binding.
2. And understands that all loan funds provided to BORROWER shall be used solely for the PROJECT.
3. 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 this Agreement, all PROJECT documents and attachments, and the attached 2012 US EPA Revolving Loan Fund Terms and Conditions (Attachment B).
4. To provide a match, in cash or in-kind services, funds of at least 20% of the loan amount.
5. To make substantial progress on loan and match activities within six (6) months of the date of the DEP's signature of this Agreement. If the DEPARTMENT determines that the BORROWER has not made sufficient progress within this time frame, the DEPARTMENT may terminate this agreement.
6. To ensure environmental cleanups are protective of public safety, welfare and human health and the environment.
7. To carry out the PROJECT activities in accordance with all applicable state, local and federal laws, regulations, orders, writs, judgments, injunctions, decrees or awards, including, but not limited to, the following: the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. § 9601, et. seq.) (CERCLA); Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments 40 CFR Part 31; the National Oil and Hazardous Substances Contingency Plan (NCP), 40 C.F.R. Part 300; all applicable 'cross-cutting requirements', including those federal requirements agreed between the USEPA and the DEPARTMENT defined by their Cooperative Agreement No BF-95498412-0; MBE/WBE requirements found at 40 C.F.R. 31.36(e) or 40 C.F.R. 30.44(b); OSHA Worker Health & Safety Standard 29 C.F.R. 1910.120; the Uniform Relocation Act; Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. 327-333), the Anti Kickback Act (40 U.S.C. 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250. This includes, but is not limited to, carrying out procurements in compliance with 40 C.F.R. Section 31.36, having a financial management system which complies with 40 C.F.R. Section 31.20, and performing audits in accordance with 40 C.F.R. Section 31.26. Failure to comply with this provision shall not be a breach of this covenant if such failure does not have, or is not reasonably expected to have a materially adverse effect on the properties, business prospects or condition (financial or otherwise) of

BORROWER and BORROWER is acting in good faith and with reasonable dispatch to cure such noncompliance.

8. To carry out the PROJECT in accordance with the Davis-Bacon Act of 1931 (40 U.S.C. 276a-276a-5 and 42 U.S.C. 3222). CERCLA compliance with Davis-Bacon requires payment of Federal prevailing wage rates for construction, repair or alteration work funded in whole or in part with PROGRAM funds. The BORROWER must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction contract.

9. To comply with Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4 relating to Federally-assisted construction contracts.

10. To comply with the statutes prohibiting discrimination on the grounds of race, color, national origin, sex and disability. In addition, the BORROWER will undertake good faith efforts to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) to submit proposals, bids, and provide services on contracts and subcontracts for services and supplies. The BORROWER shall submit a report of such efforts.

11. The BORROWER shall be responsible for the consequences of its own acts, errors or omissions in connection with accessing the Property and taking any action thereon and those of its employees, agents, officers and representatives in connection with accessing the Property and taking any action thereon and shall be responsible for any losses, claims and liabilities that are attributable to such acts, errors or omissions.

12. To comply with all applicable local, state and federal contract and bidding requirements.

13. To submit reports and copies of other studies, reports, contracts, or documents relating to the PROJECT in accordance with the 2012 US EPA Revolving Loan Fund Terms and Conditions (Exhibit), including, but not limited to:

i. To prepare a community relations plan for DEPARTMENT review and acknowledgement and implement the approved community relations plan that which includes providing a copy of all public mail notices and agendas of all meetings or public information hearings to the DEPARTMENT, prior to commencing any response actions.

ii. A publicly available administrative record shall be established by the BORROWER and a newspaper notice be placed in the newspaper, in accordance with the attached terms and conditions;

iii. To submit the analysis of Brownfields cleanup alternatives' document for DEPARTMENT review and approval.

(a) BORROWER shall submit copies of the draft analysis of brownfields cleanup alternatives to the DEPARTMENT for review and approval and to US EPA and the DEPARTMENT'S designated environmental project manager;

(b) The BORROWER shall make the analysis of brownfields cleanup alternatives document available for review and public comment in the administrative record for a period of not less than thirty (30) days from the date of publication of a public notice which announces the availability of the document for public review;

(c) After the public comment period, the BORROWER shall respond, either in writing or via public hearing, to the specific public comments, and provide the DEPARTMENT with documentation of comments received and the BORROWER'S responses, a copy of the newspaper notice, and documentation of any changes proposed by the BORROWER to the remediation;

(d) The DEPARTMENT shall incorporate all appropriate comments into a DEPARTMENT-prepared decision document, as appropriate. The final decision document is the BORROWER'S authorization to undertake the site-specific remediation. No site work, unless authorized by the DEPARTMENT, shall occur prior to the date of the finalized decision document.

iv. To prepare Corrective Action Plan, per KRS 224.01-520 and submit them to the DEPARTMENT for review and approval and to the DEPARTMENT'S designated environmental project manager, if applicable, for review and comment. This may occur simultaneously with the submittal of the analysis of cleanup alternatives document

v. To prepare remedial design and engineering documents and submit them to the DEPARTMENT for review and approval and to the DEPARTMENT'S designated environmental project manager, if applicable, for review and comment. This may occur simultaneously with the submittal of the analysis of cleanup alternatives document.

vi. If confirmatory samples will be collected during cleanup activities to document the completeness of the cleanup, the BORROWER, through the Contractor, shall prepare a Quality Assurance Project Plan, or its equivalent (e.g. QA/QC), which sets forth the manner and method of collecting and analyzing samples and submit it to the DEPARTMENT for review and approval.

vii. The BORROWER is responsible for the completion of the community relations plan, the analysis of Brownfields cleanup, and corrective action plan referenced above.

14. To reimburse the DEPARTMENT up to but not exceeding the contract amount that the DEPARTMENT deems appropriate in the event the BORROWER fails to comply with the conditions of this Agreement as described, or fails to provide public benefits as indicated in the PROJECT application, proposal description, or this Agreement. In addition, should the BORROWER fail to comply with the conditions of this Agreement, fail to progress due to nonappropriation of funds, or fail to progress with or complete the PROJECT to the satisfaction of the DEPARTMENT, all obligations of the DEPARTMENT under this Agreement may be terminated, including further PROJECT cost payment.

15. Not to discriminate against any employee or applicant for employment because of age, race, religion, color, disability, sex, physical condition, developmental disability, sexual orientation, arrest or conviction record or national origin. Except with respect to sexual orientation, the BORROWER further agrees to take affirmative action to ensure equal employment opportunities. The BORROWER agrees to post in a conspicuous place available for employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause.

16. To cooperate fully with an audit of the Loan and the Work, if so requested from state or federal authorities.

17. In the case of an asbestos remediation project, the BORROWER must:

- i. Submit the name of the asbestos removal contractor to the DEPARTMENT to ensure that the contractor is licensed and certified under 401 KAR 58:040. If this certification expires during the course of the project, the contractor must provide verification of the new certification.
- ii. Provide a 10-day notification to the DEPARTMENT before performing any asbestos related work at the PROPERTY as required un 401 KAR 58:025.

18. To document all the uses of the loan proceeds, and maintain adequate books and accounts in accordance with generally accepted accounting principles consistently applied. BORROWER shall permit any representative of DEPARTMENT, at any reasonable time, to inspect, audit and examine such books and inspect the properties of BORROWER and shall maintain documentation on the use of the loan proceeds for a minimum of three (3) years after the completion of remediation activities supported by the loan, or for the length of the loan, whichever is greater, except that records that are subject to audit findings shall be retained three (3) 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 DEPARTMENT or its representatives.

19. To maintain documentation 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. BORROWER shall seek the written approval of the DEPARTMENT prior to disposing of records.

20. To notify the DEPARTMENT when the PROJECT is complete. 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 loan closeout documentation shall summarize the actions taken, the resources committed, the problems encountered in completion of the PROJECT, if any, identify any institutional controls required, and document that the cleanup is complete and is protective of human health and the environment. This documentation shall be submitted to the DEPARTMENT'S designated Environmental Project Manager for review and comment.

21. To obtain from the DEPARTEMNT a No Further Remediation letter under KRS 224.450-465 or a Notice of Completion letter under KRS 224.01-400 or 224.01-405, whichever is deemed by the DEPARTMENT to be most appropriate for the PROJECT. In the case of lead and asbestos, the BORROWER will provide verification of removal from a certified contractor or verification from the appropriate state agency.

22. To erect a sign on the PROJECT site stating that the PROJECT is being financed in part by the DEPARTMENT and the PROGRAM, and providing the appropriate contacts for obtaining information on activities being conducted at the site and for reporting suspected criminal activities. The sign erected on the PROPERTY shall comply with the requirements of 40 C.F.R. Part 35, Subpart O (35.6105(a)(2)(ii)) and all requirements of the state and local laws applicable to on-premise outdoor advertising, and be posted on the PROPERTY within 30 days of signing this Agreement. The sign shall be posted in a publicly visible location.

23. That the DEPARTMENT may use the PROJECT and results for marketing or promotional purposes.

24. That it is expressly understood that a failure or delay on the part of the BORROWER in the performance, in whole or in part, or any of the terms of this Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party,

the failure or delay shall not constitute a breach or default under this Agreement, however, the BORROWER shall use its best effort to ensure that the PROJECT is completed in a reasonable time without unnecessary delay.

25. And understands that any use of the PROPERTY or any activity thereon which is inconsistent with the foregoing provisions is expressly prohibited.

26. The BORROWER will provide verification of collateral for the loan in the form of cash, Tax Increment Financing (TIF) revenues, bonds, fees or other mutually agreed upon method.

27. The BORROWER understands that, in the event of a default, the cabinet may establish a lien on the property to ensure funds expended during the cleanup will be recovered. If the property is not owned by the BORROWER, the BORROWER must verify that the owner is aware that a lien may be placed on the property in order to recover cleanup funds expended for the cleanup.

III. The DEPARTMENT agrees:

1. To obligate to the BORROWER the amount of \$_____, and to tender to the BORROWER that amount as long as the BORROWER provides matching funds including eligible in-kind of at least 20% of the loan amount.
2. To supply the BORROWER with all necessary state and federal reporting forms.
3. That the BORROWER 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 DEPARTMENT reserves the right to inspect the job site or premises for insuring that the performance is progressing or has been completed in compliance with the Agreement. The DEPARTMENT takes no responsibility of supervision or direction of the performance of the Agreement to be performed by the BORROWER or the BORROWER's employees or agents. The DEPARTMENT further agrees that it will exercise no control over the selection and dismissal of the BORROWER's employees or agents.

IV. Special Condition

1. Loan Reimbursement

- i. The BORROWER may request a maximum of one reimbursement payment per month and the BORROWER shall use the form provided by the DEPARTMENT. Such requests shall include documentation of (1) work completed; (2) eligible costs, and (3) match incurred by the borrower.
- ii. The BORROWER must provide documentation that the match percentage indicated on the first page of this contract has been incurred by the BORROWER. Loan payments are contingent upon review by the DEPARTMENT and may be adjusted if costs are determined to be ineligible.
- iii. The DEPARTMENT may withhold ten percent of the total loan amount stated in this contract for final payment. The final payment request shall be made via a DEPARTMENT approved method or form.
- iv. The Loan Funds shall be payable to the BORROWER as reimbursement for allowable expenses incurred based upon the progress of the work and in accordance with the approved Project Budget (Exhibit)

attached hereto and made a part hereof. No reimbursement shall be made to the BORROWER without the written approval of the DEPARTMENT.

2. Final Report

i. The BORROWER shall complete a Final Report documenting the activities completed with the funds awarded under this Agreement, including leveraging and redevelopment accomplishments as required by ACRES. The BORROWER shall submit a copy of any Correction Action Plans funded by this grant as a component of the final report on loan activities required by the DEPARTMENT. The report shall be submitted to the DEPARTMENT along with the final request for reimbursement under this Loan Agreement.

3. Quarterly Progress Reports

i. The BORROWER shall furnish brief written progress reports to the DEPARTMENT on a quarterly basis during the cleanup. The reports are due on the 1st of month April, July, October and January of each year.

4. Changes to PROJECT Scope or Budget

i. The BORROWER shall conduct all the activities listed in the "Scope and Description of Cleanup Activities Funded by this Loan" section of this Agreement. If the BORROWER requests a modification to the scope and description of the loan activities to be conducted, the BORROWER shall submit a request for an amendment to this Agreement in writing to the DEPARTMENT before the end date of this Agreement. Such a request must be submitted before any activities are conducted that are different than those listed in this Agreement. Amendments are subject to DEPARTMENT approval and availability of funds. No additional work or expense may be undertaken until approval is received, in writing, for the scope or budget change.

ii. If the BORROWER determines that they will not need to use the full amount of their loan award, the BORROWER shall notify the DEPARTMENT in writing as soon as possible such that excess funds may be allocated to another project.

5. BORROWER In-Kind Cost Documentation

i. In order for in-kind costs to be reimbursed or count as matching funds, the BORROWER shall provide adequate documentation of staff time, equipment use, and other eligible costs. Any staff overtime charges must be approved by the DEPARTMENT prior to the work being conducted.

ii. The BORROWER shall make the request in writing that includes a justification as to why any overtime is necessary and a private company estimate for the work.

iii. Equipment rental rates may not exceed the rates established Contractor Cost Outline established by the Petroleum Storage Tank Environmental Assurance Fund under 401 KAR 42:250. The BORROWER shall clarify whether the BORROWER is requesting DEPARTMENT reimbursement or if the in-kind documentation is to apply to the 20% match.

6. Site Access

i. The BORROWER shall have legal and physical access to the site or facility to conduct all the activities described in the "Scope and Description of Grant Activities" section of this Agreement before this Agreement is executed. If circumstances change resulting in reduction of access, the BORROWER shall notify the DEPARTMENT immediately in writing.

7. Site Investigation and Corrective Action Plan

i. A corrective action plan must be approved by the DEPARTMENT before the BORROWER can obtain reimbursement for eligible activities associated with the corrective action plan from this loan. If the

corrective action plan has not already been approved, the BORROWER shall submit those reports to the DEPARTMENT'S Environmental Project Manager for review and approval.

ii. If a corrective action plan is not approved by the project manager and further work is necessary for the activity to satisfy the appropriate regulatory requirements, then the additional work must be conducted in order for that plan to be approved and eligible loan activities to be reimbursed.

iii. Costs incurred to conduct site investigation activities shall not be reimbursed by this loan. Costs to prepare the Corrective Action Plan and Analysis of Brownfield Cleanup Alternatives (ABCA) can be reimbursed by this loan if included in the "Scope and Description of Cleanup Activities Funded by this Loan" section of this Agreement.

8. Assessment and Characterization Activities

i. Lead and asbestos surveys are not reimbursable under this loan.

ii. Any investigative wastes, will be properly stored and disposed of in accordance with applicable state and federal regulations. Disposition of investigative wastes by the BORROWER must occur within six (6) months of generation of wastes.

iii. Abandonment of any wells or drill holes must be completed in accordance with state and federal regulations and only with DEPARTMENT approval. Documentation shall be noted in the final report.

9. Remedial Actions

i. Any investigation and remedial actions conducted as part of this loan shall follow the procedures and requirements included in KRS 224. Remedial actions eligible for funding are those consistent with the KRS 224 and the regulations promulgated thereto as described in the "Scope and Definitions of Loan Activities" section of this Agreement. Nothing in this Agreement shall entitle the BORROWER or any other party involved with the PROJECT to any special rights, privileges, liability exemptions, or obligations regarding their responsibility to undertake remedial actions under KRS 224 or any other state or federal environmental laws.

10. Waste Disposal

i. All wastes generated at the Site, including contaminated soil, water, and other wastes generated during response actions associated with this loan, will be disposed of properly at in a manner consistent with all state and federal laws or regulations

ii. Upon completion of activities, provide appropriate documentation to the DEPARTMENT of waste disposal activities as authorized in the Corrective Action Plan as approved by the DEPARTMENT.

iii. The DEPARTMENT reserves the right to deny payment of transportation and disposal costs not authorized by the DEPARTMENT.

11. Fees

i. If the BORROWER, as part of the approved corrective action plan, incurs costs associated with DEPARTMENT fees, those fees are eligible for reimbursement.

12. Hazardous Substances

i. Hazardous substances shall be analyzed and disposed of in accordance with all applicable state and federal requirements.

13. Petroleum or Hazardous Substance Storage Tank Removal

i. All petroleum or hazardous substance storage tank removal(s) shall be conducted in accordance with state and federal regulations.

ii. Any wastes generated during the removal and cleaning of the tanks shall be analyzed and managed in accordance with all applicable state and federal regulations. The BORROWER shall submit a copy of any report that summarizes work done with regards to petroleum or hazardous substance storage tank removal(s) as a result of loan activities to the DEPARTMENT as a component of the final report

14. Demolition Operations [Only if required by Corrective Action Plan and listed in the “Scope and Description of Loan Activities” section of this Agreement.]

- i. Disposal of waste or media containing waste shall be managed in accordance with the applicable state and federal regulations.
- ii. A BORROWER who plans to haul the demolition waste must be licensed in accordance with the applicable state and federal regulations.

15. Asbestos Abatement [Only if required by the Remedial Action Plan and listed in the “Scope and Description of Loan Activities” section of this Agreement.]

- i. Asbestos inspection, abatement, transportation, and disposal shall be conducted in accordance with federal and state regulations.

16. Abatement of Lead-Based Paint [Only if required by the Remedial Action Plan and listed in the “Scope and Description of Loan Activities” section of this Agreement.]

- i. Lead based paint inspection, remediation, transportation, and disposal shall be conducted in accordance with federal and state regulations.

V. Loan Terms

1. The Loan will bear interest at the rate of ____ per year on the total principal received from the date of project completion as determined by the DEPARTMENT through a no-further remediation letter, notice of completion or its equivalent.
2. The loan will have an amortization period of ____ years.
3. The cabinet reserves the right to enact a forgivable portion of the loan in the amount of _____ if it is determined that the project was completed according to the cabinet approved cleanup plan and was done in a timely manner. The amortization schedule attached (EXHIBIT) which reflects the full approved loan amount would be revised to reflect the enactment of the forgivable portion.
4. Payments will be made in installments as follows: semi-annual payments in February and August. The first debt service payment will be due by the 15th in the first scheduled payment month that follows the completion of the project. If the project is completed in the payment month, payment will begin the following payment month.
5. Payments shall be applied first to interest at the rate specified on the unpaid principal amount of the Loan, accrued to date of receipt of said payment, and the balance of each payment, if any, shall be applied on account of principal.
6. If payment is not received within ten days of the due date, a late fee of two per cent (2%) of the payment due, or Fifty Dollars (\$50.00), whichever is greater, shall be imposed.

7. The BORROWER will incur no penalty for early repayment of the total loan amount.

8. The BORROWER agrees to permit the DEPARTMENT or its designated representative to inspect and/or audit its records and books relative to this Agreement at BORROWER's offices.

VI. Events of Default

The following shall constitute an Event of Default under this Agreement:

- i. The Borrower assigns this Agreement or any Loan proceeds advanced hereunder or any interest herein to a third party.
- ii. 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 shall prove to be false in any material respect.
- iii. Failure of scheduled payment by BORROWER.
- iv. Use of loan proceeds for any purpose other than stated in this agreement.

Upon the occurrence of any one or more events of default and such default is not remedied within thirty (30) days, unless a longer period of time is reasonably required to cure the default, from and after written notice by certified mail, return receipt requested, from the DEPARTMENT to the BORROWERS, specifying said default or, if such default cannot be remedied within that period and remedial effort is not commenced within that period and diligently and continuously pursued, the DEPARTMENT shall have the right to proceed by appropriate judicial proceedings to enforce performance or observation of the applicable provisions of this Agreement and/or terminate this Agreement and recover damages from the Borrowers to the extent allowed by law.

VII. Rights and Obligations

The DEPARTMENT and BORROWER hereby expressly reserve the right to amend any provision of this Agreement upon mutual agreement, to consent to or waive any departure from the provisions of this Agreement. All revision requests must be made in writing and agreed upon by the DEPARTMENT.

Pricing:

(Agency to complete – insert contract amount and applicable payment information such as hourly rate and number of hours, not to exceed amounts, or budget information. Provide as much information as necessary to clearly explain the amount and method of payment for the service(s) being provided.)

Disadvantaged Business Enterprises:

If the EPA is providing funding for this AGREEMENT and the contractor will retain the services of one or more subcontractors to provide material or services, the contractor agrees to comply with the EPA's Program for Participation by Disadvantaged Enterprises in Procurement Under EPA Financial Assistance Agreements contained in 40 CFR, Part 33. The contractor agrees to use its best efforts to utilize disadvantaged business enterprises in hiring any subcontractors to fulfill the terms of the AGREEMENT. The contractor will be required to complete the Disadvantaged Business Enterprises Subcontract Report located at <http://dep.ky.gov/formslibrary/Pages/default.aspx>. This report should be submitted along with the contractor's invoice.

Cancellation clause:

Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice.

Funding Out Provision:

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.

Reduction in Contract Worker Hours

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

Access to Records

The state agency certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The contractor, as defined in KRS 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See attachment)

Effective Date:

All Memorandum of Agreements are not effective until the secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the government contract review committee. However, Memoranda of Agreements \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes only as provided under KRS 45A.700.

KRS 45A.695(7) Payments on personal service contracts and memoranda of agreements shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration cabinet or agency head, if the agency has been granted delegation authority by the secretary.

Violation of tax and employment laws

KRS 45A.485 requires the contractor to reveal to the Commonwealth, prior to the award of a contract, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Contractor must check one:

The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

The contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached

Registration with the Secretary of State by a Foreign Entity.

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by [KRS 14A.9-010](#) to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under [KRS 14A.9-030](#) unless the person produces the certificate within fourteen

(14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in [KRS 14A.9-010](#), the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within [KRS 14A.1-070](#).

For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>

Discrimination

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The contractor agrees to provide, upon request, needed reasonable accommodations. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,

regulations and orders.

6. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

7. The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Notifications

All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing and sent to the following:

Vendor (DUNS #):

Agency:

Approvals

The person signing for the BORROWER represents that he or she is authorized to execute this Agreement and bind the BORROWER, either by a duly adopted resolution or otherwise. The foregoing offer is hereby accepted on behalf of the BORROWER. The BORROWER promises to execute the purchases and activities funded in part by this loan in strict accordance with the terms and conditions of this Agreement. This contract is subject to the terms and conditions as stated. By affixing signatures below, the parties agree that electronic approvals may serve as electronic signatures.

AGREED TO BY:

ENERGY AND ENVIRONMENT CABINET

Leonard K. Peters, Secretary

Date: _____

BORROWER – BUSINESS NAME

Date: _____

BORROWER

APPROVED AS TO FORM AND LEGALITY:
ENERGY AND ENVIRONMENT CABINET

C. Michael Haines, General Counsel

Date: _____

BORROWER – BUSINESS NAME

Authorized Signatory

Date: _____

APPROVAL RECOMMENDED BY:
ENERGY AND ENVIRONMENT CABINET

R. Bruce Scott, Commissioner
Department for Environmental Protection

Date: _____

Larry C. Taylor, Director
Division of Compliance Assistance

Date: _____

DRAFT

Attachments

- A. Vendor Document Disclosure
- B. US EPA Revolving Loan Fund (RLF) Terms and Conditions for 2012
- C. Project Budget Sheet Summary
- D. Debt Repayment Schedule

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FINANCE AND ADMINISTRATION CABINET

Vendor Document Disclosure

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary to conduct a review of the records of a private vendor that holds a contract to provide goods and/or services to the Commonwealth; and

WHEREAS, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary during the course of an audit, investigation or any other inquiry by an Executive Branch agency that involves the review of documents; and

WHEREAS, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

NOW, THEREFORE, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, and 45A.230, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

I. Upon the request of an Executive Branch agency, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a private vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.

II. Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.

III. Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.

IV. If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.

V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

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Attachment C - PROJECT BUDGET SHEET SUMMARY

Activity or Expense	Loan Amount	Match Amount (including in-kind services)	Match Source	Total Cost
Reimbursement for preparation of the Analysis of Brownfield Cleanup Alternatives (ABCA)				
Remediation Oversight				
Health & Safety Site Monitoring				
Demolition (if necessary as part of the environmental remediation)				
Asbestos Abatement				
Monitoring adequacy of cleanup and overseeing activities to ensure compliance with Federal & State requirements				
Progress reporting				
Other Eligible Costs (Specify)				
Brownfield Sub-Grant Application				
Project Management				
Fencing				
TOTAL				