

NEW YORK CITY BROWNFIELD INCENTIVE GRANT PROGRAM

GRANT AGREEMENT

This **GRANT AGREEMENT** (“**Agreement**”) dated as of _____, 20__, by and between **BROWNFIELD REDEVELOPMENT SOLUTIONS, INC.**, as grant administration contractor (“**Administrator**”), having its principal office at _____, and _____ (“**Grantee**”), having its principal office at _____.

WHEREAS, Local Law No. 27 of 2009 amended the New York City Charter to create the Office of Environmental Remediation (“**OER**”) within the Office of the Mayor of the City of New York (“**City**”) and authorized its director, *inter alia*, to develop and administer a financial incentive program to encourage public or private entities to identify, investigate, remediate, and redevelop brownfields in support of the City’s economic development; and

WHEREAS, Chapter 14 of Title 43 of the Rules of the City of New York, Subchapter 2 (the “**Rules**”) establishes the “*New York City Brownfield Incentive Grant Program*” (“**BIG Program**”), for the purpose of enabling OER to award grants to support and advance brownfield projects across the City of New York; and

WHEREAS, the Rules set forth eligibility requirements for properties, applicants and types of BIG Program grants; and

WHEREAS, the Administrator has entered into an agreement with New York City Economic Development Corporation (“**NYCEDC**”) to assist with the administration of the BIG Program, and is the designated “grant administration contractor” pursuant to § 43-1416(f) of the Rules; and

WHEREAS, the Rules contain a list of eligible services and activities that can be funded or reimbursed with BIG Program grant funds; and

WHEREAS, the Administrator has established a list of qualified vendors and contractors (“**Qualified Vendors**”) for performance of eligible services and activities, the cost of which is being funded or reimbursed in whole or in part by certain types of BIG Program grants ; and

WHEREAS, Grantee has submitted an application requesting BIG Program grant funds for eligible services and activities; and

WHEREAS, § 43-1421(a) of the Rules provides that “[b]rownfield incentive grants require an executed agreement between the grantee and the grant administration contractor prior to the disbursement of funds”; and

WHEREAS, OER and the Administrator have approved the Grantee’s application for BIG Program grant funding as and to the extent hereinafter set forth, and on the terms and conditions contained in this Agreement.

NOW THEREFORE, the Grantee and the Administrator, intending to be legally bound hereto, agree as follows:

1. Grant

1.1 The types of grants which may be awarded under the BIG Program are as follows:

- (i) Pre-development design grant.
- (ii) Environmental investigation grant.
- (iii) Cleanup grant.
- (iv) E-designation hazardous material remediation grant or restrictive declaration hazardous material remediation grant.
- (v) Environmental insurance grant.
- (vi) Track-one bonus cleanup grant.
- (vii) Brownfield opportunity area (“BOA”) strategic property bonus cleanup grant.
- (viii) Technical assistance grant for preferred community development projects.
- (ix) Technical assistance grant for development of new BOA areas.
- (x) BOA local match grant.

1.2 The type and amount of the grant(s) to be awarded under this Agreement, (the “**Grant(s)**”), a description of the project to be funded by the Grant(s) (the “**Project**”), a description of the Project site (the “**Property**”), and any administration fee that the Administrator is entitled to deduct from the Grant(s) (the “**Administrator’s Fee**”) as described in Section 1.3 below, are set forth in **Schedule A** to this Agreement.

1.3 Under its agreement with NYCEDC, the Administrator is entitled to deduct a fee for the services it renders in connection with certain of the BIG Program grants described in Section 1.1 above. The Administrator’s Fee may vary depending upon the type of Grant(s) awarded. If the Grant(s) to be awarded under this Agreement is/are subject to Administrator’s Fee(s), the amount of such fee(s) shall be set forth in Schedule A, and the Administrator shall deduct the Administrator’s Fee(s) from such Grant(s) prior to disbursement of the Grant(s) to the Grantee.

1.4 A description of the eligible services and/or activities in connection with the Project to be funded by the Grant(s) (the “**Eligible Services**”) is set forth in **Schedule B** to this Agreement. Where Qualified Vendor(s) will perform Eligible Services in connection with the Project, (i) the Qualified Vendor(s) are set forth in **Schedule B** and (ii) the minimum performance standards for the Eligible Services to be performed by Qualified Vendor(s) are set forth in **Schedule C, Table 3** (the “**Minimum Performance Standards**”).

1.5 Based upon the application for the Grant(s) and all required supporting documentation submitted in connection therewith (collectively, the “**Grant**

Application”) and the finding by OER and the Administrator that Grantee is eligible for the Grant(s), the Administrator hereby agrees to pay the Grant(s) to the Grantee in accordance with the terms of this Agreement and subject to the availability of funding as set forth in Section 4 of this Agreement.

2. Term of Agreement

- 2.1 The term of this Agreement shall be from the Effective Date (as hereinafter defined) until the earlier of (i) disbursement of the Grant(s) awarded under this Agreement in accordance with Section 5 of this Agreement, or (ii) termination of this Agreement, as hereinafter provided (the “**Term**”). Except as otherwise provided below with respect to delays in performance of the Eligible Services subject to a Force Majeure Extension (as hereinafter defined), the Term may only be extended by prior written consent of the Administrator and OER and for good cause shown, the determination of which shall be in the sole discretion of the Administrator and OER.
- 2.2 **Force Majeure Extension.** For the purposes of this Agreement, a party shall not be considered in default with respect to its obligations hereunder because of a delay in performance arising from a Force Majeure Event, as hereinafter defined in Section 2.3 (a “**Force Majeure Extension**”). It is the purpose and intent of this provision that in the event of the occurrence of any such delay, the time or times for performance of that party’s obligations shall be extended for the period of the delay; *provided, however,* that such delay is actually caused by or results from the Force Majeure Event. The time for completion of any specified obligation hereunder shall be tolled for a period of time up to but not exceeding the period of delay resulting from the occurrence of a Force Majeure Event. During any Force Majeure Event that affects only a portion of a Project, each party shall to the maximum extent feasible continue to perform its obligations unaffected by the Force Majeure Event. The existence of an event or occurrence of a Force Majeure Event shall not prevent the Administrator from declaring a default or the occurrence of an Event of Default by the Grantee if the event that is the basis of the Event of Default is not a result of the Force Majeure Event.
- 2.3 “**Force Majeure Event**” means causes that are beyond the reasonable control and not substantially due to the fault or negligence of the party seeking to excuse delay or failure of performance of an obligation hereunder by reason thereof, including, but not limited to, third-party litigation that enjoins implementation of the Project; declarations of public emergency; acts of nature (as to weather-related events, limited to severe and unusual events or natural occurrences such as hurricanes, tornadoes, earthquakes, and floods); acts of the public enemy; acts of terrorism; acts of war; fire; epidemics; quarantine restrictions; blackouts, power failures, or energy shortages; governmental embargoes; and strikes or similar labor action by equipment or material suppliers or transporters, or unavailability of necessary materials (*provided* that neither Grantee or the Qualified Vendor has any commercially reasonable alternatives to avoid the impact thereof on the progress of the Project.)

2.4 If a Force Majeure Extension has been in effect for at least nine (9) months from the date of the occurrence of the Force Majeure Event, then the Administrator at its option and in its sole discretion may elect to terminate the Grant and this Agreement on thirty (30) days written Notice (as hereinafter defined) to Grantee.

3. Grantee Representations and Warranties. Grantee makes the following representations and warranties, as of the Effective Date (as hereinafter defined) and during the Term of this Agreement:

3.1 Grantee is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation, and is qualified to do business and is in good standing in the State of New York. Grantee has all requisite power and authority to authorize, execute, deliver and perform this Agreement in accordance with its terms.

3.2 Grantee has reviewed the Rules and is not aware of any facts that would render Grantee ineligible for the Grant(s) pursuant to the eligibility criteria, rules and regulations applicable to BIG Program and to the particular type of Grant(s), including but not limited to the provisions of § 43-1418(c) of the Rules.

3.3 The Property meets the eligibility criteria set forth in § 43-1418(b) of the Rules.

3.4 The Project is an eligible project pursuant to the eligibility criteria, rules and regulations applicable to BIG Program and to the particular type of Grant(s), including but not limited to the provisions of § 43-1418(d) of the Rules.

3.5 Without limiting the generality of the representation made in Section 3.2 above, neither Grantee nor any of Grantee's principals and/or owners, as the case may be, is debarred from receiving federal, New York State, or New York City contracts or funds. Grantee is not in arrears to the City upon any debt, contract or taxes and is not a defaulter, as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City or by NYCEDC, nor is there any proceeding pending relating to the responsibility or qualification of the Grantee to receive public contracts. Grantee represents that it has paid all applicable New York City income, excise and other taxes for all years it has conducted business activities in New York City.

3.6 The Grant Application submitted by Grantee is true, complete and correct in all material respects. No material change has occurred in the circumstances of the Grantee, or any of its principals or affiliated persons or entities, or in the description of the Project, since the date of submission of the Grant Application (or the dates of submission of any supporting documentation in connection therewith) that would otherwise require revision of the Grant Application or any such supporting documentation. Such Grant Application and such supporting documentation do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make any statement contained in such Grant Application or such supporting documentation not misleading.

- 3.7 The authorization, execution and delivery of this Agreement, and compliance with the provisions hereof, do not and will not conflict with or constitute a violation of or default under any statute, indenture, mortgage, deed of trust or other agreement or instrument to which Grantee is bound, or, to the knowledge of Grantee, any order, rule or regulation of any court or governmental agency or body having jurisdiction over Grantee or any of its activities or properties, including but not limited to the Project and the Property.
- 3.8 Grantee has not been asked to pay, and has neither offered to pay, nor paid, any illegal consideration, whether monetary or otherwise, in connection with the procurement of this Agreement.

4. Funding Availability

- 4.1 Grantee expressly acknowledges and agrees that the receipt of the Grant(s) is subject to the availability of BIG Program funds to the City in an amount sufficient to fund the Grant(s). The Administrator is acting as a conduit of BIG Program funds and may only disburse such funds as have been made available by the City to the Administrator for disbursement to the Grantee. The Administrator cannot and does not guaranty that BIG Program funds will be available.
- 4.2 Grantee expressly acknowledges and agrees that (i) the Grant(s) will cover only a percentage of the cost of the Project, (ii) that the City, OER, NYCEDC, and the Administrator are not responsible or liable in any way for the costs or progress of the Project in the event the Grant(s) are not available for disbursement, and (iii) that the Project is not dependent on the availability of the Grant(s).
- 4.3 Grantee hereby waives all claims arising out of or in connection with the unavailability of BIG Program funds and the Grant(s), and hereby covenants not to sue the City, OER, NYCEDC, the Administrator, and their officers, directors, members, and employees or any of them, in the event the Grant(s) are not available for disbursement.
- 4.4 The Administrator may terminate this Agreement on five (5) business days prior written Notice to Grantee, in the event the BIG Program funding is discontinued or in insufficient to fund the Grant(s).

5. Disbursement of the Grant(s); Release

- 5.1 The Administrator's obligation to make a disbursement of the Grant(s) to the Grantee shall be subject to the following conditions:
- (i) The Grantee shall have complied with, and shall then be in compliance with, all the terms, covenants and conditions of this Agreement;
 - (ii) With respect to Grant(s) of the types described in Subsection 1.1(i) through (ix) of this Agreement, Grantee shall have demonstrated

satisfactory completion of Eligible Services by the Qualified Vendor(s) in compliance with all applicable Minimum Performance Standards;

- (iii) With respect to Grant(s) of the type described in Subsection 1.1(x) of this Agreement, Grantee shall have demonstrated compliance with all of the requirements for such grant;
- (iv) The Grantee shall have submitted a complete and accurate requisition for disbursement with the certifications required by Subsection 5.2 of this Agreement;
- (v) Sufficient funds have been disbursed to the Administrator to pay the Grant(s);
- (vi) With respect to Grant(s) subject to the deduction of Administrator's Fee(s), disbursement of the Grant(s) shall be subject to the Administrator's deduction of the Administrator's Fee(s) prior to disbursement of the Grant(s);
- (vii) All matters incident to the Grant(s) and the disbursement thereof shall be satisfactory to the Administrator; and
- (viii) The Grantee's acceptance and endorsement of any check for any Grant(s) hereunder shall constitute a certification by the Grantee that the representations and warranties made by Grantee in Section 3 of this Agreement are true as of the date of such acceptance and endorsement, and shall be deemed a release as provided in Subsection 5.3 of this Agreement.

5.2 All requisitions submitted by the Grantee hereunder shall contain (i) Grantee's acknowledgement that the City, OER, NYCEDC, and the Administrator are entitled to rely on the certifications contained therein; and (ii) Grantee's agreement to indemnify and hold harmless the City, OER, NYCEDC, and the Administrator, and their officers, directors, members, and employees in connection with their reliance thereon, which indemnification shall survive disbursement of the Grant(s) requisitioned.

5.3 Upon acceptance by the Grantee of the Grant(s) to be paid under this Agreement, the Grantee agrees that it shall be deemed to have fully released the City, OER, NYCEDC and the Administrator from any and all claims, demands and causes of action whatsoever which the Grantee has or may have against the City, OER, NYCEDC and the Administrator in connection with this Agreement and, upon the request of the City, OER, NYCEDC or the Administrator shall execute a release to such effect.

6. Indemnification

6.1 Grantee agrees to indemnify and hold harmless the City, OER, NYCEDC, the Administrator, and their officers, directors, members, and employees, from any and all claims, damages, losses, costs and expenses to which the City, OER, NYCEDC and the Administrator, or their officers, directors, members, and employees, may be

subject or which they may suffer or incur allegedly arising out of or in connection with any and all services and activities performed by the Grantee or its employees, agents, subcontractors (including Qualified Vendor(s)), or consultants relating to the Grant(s), including but not limited to, all such services and activities that are performed using Grant(s) funds.

- 6.2 Where Qualified Vendor(s) perform or will perform Eligible Services in connection with the Project, Grantee shall require each Qualified Vendor performing such Eligible Services to agree in writing (i) to indemnify and hold harmless the City, OER, NYCEDC, the Administrator, and their officers, directors, members, and employees, from any and all claims, damages, losses, costs and expenses to which the City, OER, NYCEDC and the Administrator, or their officers, directors, members, and employees, may be subject or which they may suffer or incur allegedly arising out of or in connection with any and all services and activities performed by the Qualified Vendor or its employees, agents, subcontractors or consultants relating to the Grant(s), including but not limited to, all such services and activities that are performed using Grant(s) funds, and (ii) to maintain insurance of a type, amount of coverage and from a carrier that is adequate for the nature and scope of the services and activities performed by the Qualified Vendor, and that names as additional insureds the City, OER, NYCEDC, the Administrator, and their officers, directors, members, and employees, as their interests may appear. Except as to indemnification and insurance, nothing in any writing by a Qualified Vendor or in this Agreement shall be deemed or construed to create a contractual relationship between the Qualified Vendor and the City, OER, NYCEDC, or the Administrator.
- 6.3 The indemnification requirements of this Section 6 shall be in addition to and not in limitation of any other requirements in this Agreement, and all such indemnification requirements in this Agreement shall survive the expiration or earlier termination of this Agreement.

7. Project Reporting; Records

- 7.1 Pursuant to §43-1421 of the Rules, Grantee agrees to provide (or to cause its Qualified Vendor(s) to provide, as the case may be) data related to the Project, the Property, the Eligible Services, or the utilization of Grant(s) funds, as and to the extent requested by the Administrator, OER or NYCEDC, and in a form acceptable to them. The information requested may include details of the outcome of the Project following completion of the Eligible Services, including, without limitation, whether the proposed development was constructed, whether a government remediation program was utilized for the cleanup, and updates of Project information previously requested of and supplied by Grantee.
- 7.2 Grantee recognizes and acknowledges that such reporting may be requested from time to time during the Term, as well as any time after the expiration or earlier termination of this Agreement, completion of the Project, or completion of

performance of the Eligible Services. Grantee's agreement to such continuing reporting requirements is a material inducement for the award of the Grant(s).

7.3 The Grantee and its Qualified Vendor(s) shall keep and maintain full and accurate books, records and other documents relevant to the Project for a minimum of six (6) years following expiration or termination of this Agreement, and such books, records and other documents shall be subject to audit, review, and inspection by the Administrator, OER, NYCEDC, and the City Comptroller, or their respective agents and representatives, at all reasonable hours for a period of six (6) years following expiration or termination of this Agreement.

7.4 The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement.

8. Assignment

8.1 Neither the Grant(s) nor this Agreement may be assigned or delegated by the Grantee without the prior written consent of the Administrator, which Administrator may grant or withhold in its sole discretion.

8.2 In the event of an assignment and/or delegation by the Grantee to which the Administrator is willing to consent, the permitted assignee shall agree in writing with the Administrator to assume, perform, and be bound by the covenants, obligations, and agreements contained in this Agreement.

9. Prior Agreements Superseded; All Modifications in Writing

9.1 This Agreement constitutes the sole and complete agreement of the parties and supersedes any and all prior understandings or written or oral agreements between the parties to this Agreement with respect to its subject matter. No other agreement, statement, or promise relating to the subject matter of this Agreement that is not contained in it shall be valid or binding.

9.2 In the event of a conflict between this Agreement and the Rules, the Rules shall supersede and control.

9.3 No modification, waiver, amendment, discharge, or change of this Agreement shall be valid unless the same is in writing, duly approved by the Administrator and OER, and signed by Grantee and the Administrator.

10. Governing Law; Venue; Jury Trial Waiver. The validity of this Agreement and of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by and construed in accordance with the laws, rules and regulations of the City of New York (including but not limited to the Rules) and of the State of New York, without regard to conflict of laws principles. All disputes and claims arising out of or in connection with this Agreement or the Grant(s) shall be heard and determined either in

the federal courts sitting in the City and County of New York, or in the State courts of the State of New York sitting in the City and County of New York, and Grantee hereby waives any right to object to such venue or to move for a change of venue. Grantee waives any and all rights it may have to trial by jury in connection with all claims and disputes arising out of or in connection with the Grant(s) or this Agreement. The provisions of this Section 10 shall survive the expiration or earlier termination of this Agreement.

11. Grantee Default; Remedies

11.1 Any one or more of the following events shall constitute a Grantee “**Event of Default**”:

- (i) Misapplication or misuse of Grant(s) funds for any purpose other than to pay for the performance of Eligible Services as and to the extent provided in this Agreement;
- (ii) Failure to complete the performance of the Eligible Services within the time for completion set forth in Schedule B, where the delay in performance is not excused by a Force Majeure Event, and the continued failure to complete the performance of such Eligible Services within sixty (60) days of Administrator’s written Notice of such default to Grantee;
- (iii) Any breach of the representations and warranties in Section 3 of this Agreement;
- (iv) Submission of false, falsified or misleading requisitions for disbursement or supporting documentation;
- (v) Grantee or Grantee’s Qualified Vendor becomes insolvent, files for bankruptcy or is adjudged a debtor in possession;
- (vi) An unpermitted assignment of this Agreement by Grantee;
- (vii) Failure to satisfy the applicable Minimum Performance Standards in the performance of the Eligible Services, where such failure is not corrected and the applicable Minimum Performance Standards met within sixty (60) days of Administrator’s written Notice of such failure to Grantee;
- (viii) Failure to comply with the reporting requirements of Section 7 of this Agreement, where such reporting requirement is not satisfied within thirty (30) days of Administrator’s written Notice of such failure to Grantee;
- (ix) Grantee’s failure to comply with any of the terms and conditions contained in this Agreement, where such failure is not corrected within sixty (60) days of Administrator’s written Notice of such failure to Grantee; and

- (x) Grantee or any of its officers, directors, partners, five percent (5%) or greater shareholders, or principals are indicted or convicted under any state or federal law of a felony in connection with the Project or in any way relating to the use of the Grant(s) funds.
- 11.2 Upon the occurrence of an Event of Default, the Administrator, at its option, may elect to terminate this Agreement and the Grant(s) by providing the Grantee with five (5) business days prior written Notice of termination, and take whatever other action at law or in equity as may appear necessary or desirable to enforce the performance or observance of any rights, remedies, obligations, agreements, or covenants of Grantee hereunder, including but not limited to, seeking specific performance by the Grantee, and including but not limited to the recovery of reasonable attorneys fees incurred. Without limiting the generality of the foregoing, upon termination of this Agreement by reason of an Event of Default by Grantee, the Administrator shall have the right to recover Grant(s) funds paid to the Grantee.
- 11.3 No remedy conferred by any of the provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies shall not constitute a waiver of the right to pursue other available remedies.
- 11.4 Any failure or delay by the Administrator in asserting any of its rights or remedies as to any breach or default or Event of Default shall not operate as a waiver of such breach or default or Event of Default, or of any such rights or remedies, or to deprive the Administrator (or the City, OER or NYCEDC, as the case may be) of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

12. Investigations

A. The Grantee agrees to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

B. 1. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or

license entered into with the City, or State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State, or;

2. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C. 1. The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

2. If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Paragraph E below without the City incurring any penalty or damages for delay or otherwise.

D. The penalties that may attach after a final determination by the commissioner or agency head may include but shall not exceed:

1. The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

2. The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below, in addition to any other information that may be relevant and appropriate:

1. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
2. The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
3. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
4. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph D above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Paragraph (C)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. Definitions

1. The term "license" or "permit" as used in this Section shall be defined as a license, permit, franchise, or concession not granted as a matter of right.
2. The term "person" as used in this Section shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
3. The term "entity" as used in this Section shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City, or otherwise transacts business with the City.
4. The term "member" as used in this Section shall be defined as any person associated with another person or entity as a partner, director, officer, principal, or employee.

G. In addition to and notwithstanding any other provision of this Agreement, the commissioner or agency head may in his or her sole discretion terminate this Agreement upon not less than three (3) days written notice in the event the Grantee fails to promptly report in writing to the City Commissioner of Investigation any solicitation of money, goods, requests for future employment or other benefits or thing of value, by or on behalf of any employee of the City or other person or entity for any purpose that may be related to the procurement or obtaining of this Agreement by the Grantee, or affecting the performance of this Agreement.

H. The provisions of this Section 12 shall survive the expiration or earlier termination of this Agreement.

13. Publication of Certain Information

A. The City, OER, NYCEDC and/or Administrator shall have the right, at any time and from time to time, without the consent of the Grantee and without any liability to compensate the Grantee therefor, to print, publish or otherwise disseminate, in advertisements, articles or any other medium, whether oral or written, the following information in connection with the Grant(s), for the purpose of promoting the activities and program of the City, OER, NYCEDC and/or Administrator: (i) name and address of the Grantee; (ii) business type/industry; (iii) amount of Grant(s); and (iv) description of the Project.

B. Anything in this Section 13 to the contrary notwithstanding, nothing contained herein shall be deemed to limit the right of the City, OER, NYCEDC or Administrator, without the consent of the Grantee and without any liability to compensate the Grantee therefor, to release any information concerning the Grantee, the Grant(s) or the Project as shall be required in connection with any judicial or administrative proceeding or as otherwise required of the City, OER, NYCEDC or Administrator under applicable law.

14. Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

15. Recitals and Schedules Incorporated by Reference. The Recitals and all Schedules annexed to this Agreement are hereby made a part of this Agreement by this reference hereto.

16. No Waiver

16.1 No waiver or discharge by the Administrator of any obligation to be performed by the Grantee under this Agreement or any breach thereof shall be valid unless such waiver or discharge is in writing and signed by the Administrator.

16.2 Failure of the Administrator to insist on strict observance or performance of the requirements of this Agreement by Grantee on any one occasion shall not constitute or be construed as a waiver of the Administrator's right or ability to insist on strict performance by Grantee at any other time.

17. Non-Liability of Officers, Directors, Members, Employees and Agents of the City, OER, NYCEDC, and the Administrator. No officer, director, member, employee, or agent of the City, OER, NYCEDC, or the Administrator shall be personally liable to Grantee or to any Qualified Vendor or their successors or assigns for any obligation under the terms of this Agreement or breach thereof. No claim shall be made by Grantee or any Qualified Vendor or their successors or assigns against any officer, director, member, employee, or agent of the City, OER, NYCEDC, or the Administrator in their personal capacity for, or on account of, anything done or omitted in connection with this Agreement.

18. Third Party Beneficiaries. Grantee agrees that the City, OER, and NYCEDC are intended beneficiaries of this Agreement, and that each of them, as a third party beneficiary, shall be entitled to enforce the provisions of this Agreement, in addition to the Administrator.

19. Notice. A notice, demand or other communication required to be given under this Agreement by any party to the other (“**Notice**”) shall be in writing and shall be sufficiently given or delivered if dispatched by United States Registered or Certified Mail, postage prepaid and return receipt requested, or delivered by overnight courier or delivered personally (with receipt acknowledged), or by facsimile transmission (with receipt acknowledged) to the parties at their respective addresses set forth herein, or at such other address or addresses with respect to the parties or their counsel as any party may, from time to time, designate in writing and forward to the others as provided in this Section. Such Notices shall be effective on the earlier of actual receipt by the addressee or the addressee’s refusal to accept delivery.

As to the Grantee: _____

With a copy to: _____

As to the Administrator: Brownfield Redevelopment Solutions, Inc.
739 Stokes Road, Units A&B
Medford, New Jersey 08055

From time to time either party may designate a different person or address for all the purposes of this Notice provision by giving the other party no less than ten (10) days notice in advance of such change of address in accordance with the provisions hereof.

IN WITNESS HEREOF, the Grantee and Administrator, intending to be legally bound, execute this Agreement to be effective on the day and year last written below (the “**Effective Date**”).

[INSERT GRANTEE NAME]

DATE _____

BY _____

ADMINISTRATOR:
BROWNFIELD REDEVELOPMENT SOLUTIONS, INC.

DATE _____

BY _____

MICHELE CHRISTINA, PRESIDENT