

TREASURE COAST REGIONAL PLANNING COUNCIL

MEMORANDUM

To: Council Members AGENDA ITEM 8D

From: Staff

Date: September 18, 2015 Council Meeting

Subject: Memorandum of Agreement for the Brownfields Assessment Coalition Grant

Introduction

On September 8, 2015, Treasure Coast Regional Planning Council (TCRPC) was awarded a brownfields assessment coalition grant from the U.S. Environmental Protection Agency (EPA) in the amount of \$500,000 (Attachment A). Council was one of ten recipients of \$4,187,300 awarded in Florida. The Brownfields Assessment Grants Program provides funding to inventory, assess, conduct cleanup planning, and perform community outreach activities related to brownfield sites. This funding will be used to conduct environmental assessments and cleanup planning of potentially contaminated sites.

Coalition members in the successful grant proposal are TCRPC, Palm Beach County, and the South Florida Regional Planning Council. As the grant recipient, TCRPC is responsible for administering the grant, being accountable to EPA for proper expenditure of the funds, and being the point of contact for coalition members. A requirement of the grant award is execution of an agreement between coalition members. A draft memorandum of agreement to satisfy the grant award requirements is attached (Attachment B). This memorandum of agreement may need to be modified in consultation with coalition members and/or EPA to assure that all parties are in agreement.

Recommendation

Council should authorize the chairman and executive director, in consultation with Council's attorney, to execute a final memorandum of agreement.

Attachments

Attachment A



Brownfields 2015 Assessment Grant Fact Sheet **Treasure Coast Regional Planning Council, Southeastern** **Florida**

EPA Brownfields Program

EPA's Brownfields Program empowers states, communities, and other stakeholders to work together to prevent, assess, safely clean up, and sustainably reuse brownfields. A brownfield site is real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. In 2002, the Small Business Liability Relief and Brownfields Revitalization Act was passed to help states and communities around the country cleanup and revitalize brownfields sites. Under this law, EPA provides financial assistance to eligible applicants through four competitive grant programs: assessment grants, revolving loan fund grants, cleanup grants, and job training grants. Additionally, funding support is provided to state and tribal response programs through a separate mechanism.

Assessment Grant

\$300,000 for hazardous substances

\$200,000 for petroleum

EPA has selected the Treasure Coast Regional Planning Council for a brownfields assessment coalition grant. Community-wide hazardous substances and petroleum grant funds will be used to perform up to 14 Phase I and up to 14 Phase II environmental site assessments, and prepare up to 10 cleanup plans. Grant funds also will be used to conduct community involvement activities, including up to 12 community meetings. Coalition partners are the South Florida Regional Planning Council and Palm Beach County.

Contacts

For further information, including specific grant contacts, additional grant information, brownfields news and events, and publications and links, visit the EPA Brownfields Web site (<http://www.epa.gov/brownfields>).

EPA Region 4 Brownfields Team
404-562-8923

EPA Region 4 Brownfields Web site
(<http://www.epa.gov/region4/rcr/a/bflr/brownfields.html>)

Grant Recipient: Treasure Coast Regional
Planning Council, FL
772-221-4060

The information presented in this fact sheet comes from the grant proposal; EPA cannot attest to the accuracy of this information. The cooperative agreement for the grant has not yet been negotiated. Therefore, activities described in this fact sheet are subject to change.

Attachment B

BROWNFIELDS ASSESSMENT COALITION MEMORANDUM OF AGREEMENT BETWEEN TREASURE COAST REGIONAL PLANNING COUNCIL, PALM BEACH COUNTY, AND SOUTH FLORIDA REGIONAL COUNCIL

THIS MEMORANDUM OF AGREEMENT, (hereinafter "Agreement"), is made and entered into as of the date of execution hereof by the last of the parties hereto to execute this Agreement and is by and between TREASURE COAST REGIONAL PLANNING COUNCIL (hereinafter "TCRPC"), PALM BEACH COUNTY (hereinafter "COUNTY"), and SOUTH FLORIDA REGIONAL PLANNING COUNCIL (hereinafter "SFRPC"); all collectively referred to herein as "Members" or, a reference to any one of them herein is in the singular as "Member."

WHEREAS, through collaboration with the Members, the TCRPC applied for and received from the U.S. Environmental Protection Agency a Brownfields Coalition Assessment grant award, starting October 1, 2015 and ending September 30, 2018, totaling \$500,000; and

WHEREAS, the Members have a mutual interest in continuing their collaboration and being a part of the Southeast Florida Brownfields Redevelopment Coalition ("COALITION") to support environmental assessment activities; and

WHEREAS, brownfields assessment activities and brownfields redevelopment provides benefits and incentives to promote the redevelopment of underutilized and/or vacant brownfield properties and promotes the reuse of existing infrastructure and overall sustainability; and

WHEREAS, the aforesaid grant award will assist the Members, through the COALITION, to continue to support environmental assessment activities and brownfield redevelopment promotion.

NOW, THEREFORE, in consideration of the mutual covenants, promises and representations herein, the Members agree as follows:

The foregoing recitals and WHEREAS clauses are true and correct and are incorporated herein by reference and are made a part hereof.

1. PURPOSE OF THE AGREEMENT:

The purpose of this Agreement is to document the roles and responsibilities of the Members involved in the COALITION, and to carry out the activities outlined in the U.S. Environmental Protection Agency ("EPA") Cooperative Agreement No. BF-00D33215-0 (the "Cooperative Agreement"). The COALITION shall consist of the Treasure Coast Regional Planning Council, Palm Beach County, and the South Florida Regional Planning Council. TCRPC shall serve as the Lead Agency for the COALITION.

2. RESPONSIBILITIES OF THE COALITION MEMBERS

On September 8, 2015, the EPA awarded the Cooperative Agreement to TCRPC. The grant period is October 1, 2015 through September 30, 2018. As the Lead COALITION Member, TCRPC is responsible to EPA for management of the Cooperative Agreement and TCRPC's compliance with the statutes, regulations, and terms and conditions of the award, and ensuring that all Members of the COALITION are in compliance with the terms and conditions of the

Cooperative Agreement. All Members agree that they will comply with the terms and conditions of the Cooperative Agreement. All Members agree to cooperate with TCRPC and agree that they shall not perform any act, fail to perform any act, or refuse to comply with any TCRPC requests which would cause TCRPC to be in violation of the terms and conditions of the Cooperative Agreement. The Members further agree as follows:

A. It is the responsibility of TCRPC to provide timely information to the other COALITION Members regarding the management of the Cooperative Agreement and any changes that may be made to the Cooperative Agreement over the period of performance.

B. The contact information for the COALITION Members is as follows:

Treasure Coast Regional Planning Council
Stephanie Heidt, Intergovernmental/Brownfields Coordinator
421 SW Camden Avenue
Stuart, Florida 34994
(772) 221-4060
Email: sheidt@terpc.org

Palm Beach County Board of County Commissioners
Greg Vaday, Principal Planner
Department of Economic Sustainability
100 South Australian Avenue – 5th Floor
West Palm Beach, FL 33406
(561) 233-3630
Email: gvaday@pbccgov.org

South Florida Regional Planning Council
Karen Hamilton, Regional Planner
3440 Hollywood Boulevard, Suite 140
Hollywood, FL 33021
(954) 985-4416
Email: khamilton@sfrpc.com

C. Activities funded through the Cooperative Agreement may include inventory preparation, site selection criteria development, assessments, planning (including cleanup planning) relating to brownfield sites, outreach materials and implementation, and other eligible activities (all collectively “Activities”). Of the COALITION Members, only TCRPC shall have the authority to retain consultant(s) and contractors to undertake various eligible Activities to be funded through the Cooperative Agreement. Any such contractors shall be procured in accordance with 40 CFR 30.36. No Member other than TCRPC shall have any authority to obligate or commit the funds from the Cooperative Agreement for any purpose.

D. The TCRPC, as Lead COALITION Member, will procure the consultant(s) in compliance with 40 CFR 31.36 requirements. The Lead COALITION Member will issue the Request for Qualifications and will be the entity responsible for receipt of the submitted proposals and selection of the award of contracts. TCRPC will consult with the other COALITION Members in making selections of consultants and contractors and negotiating

the terms of agreements with such contractors and consultants. Although it is unlikely that subgrants will be made, TCRPC may award subgrants to other Members under 40 CFR 31.37 for assessment projects in their geographic areas. Subgrantees are accountable to TCRPC for proper expenditure of funds.

E. The TCRPC, as Lead COALITION Member, in consultation with the other Members, will work to develop a site selection process based on agreed upon factors. TCRPC will select eligible sites utilizing this process and will ensure that a minimum of five sites are assessed over the life of the Cooperative Agreement. Selected sites will be submitted to EPA for prior approval to ensure eligibility.

F. Upon designation of the specific sites, it will be the responsibility of TCRPC to work with the COALITION Member in whose geographic area the site is located to finalize the scope of work for the consultant or contractor. It will be the responsibility of this COALITION Member, at its expense, to obtain all required permits, easements, and/or access agreements as may be necessary to undertake Activities at the selected site. If this COALITION Member does not have the capacity to perform these activities, TCRPC may, at the expense of this COALITION Member, assist in securing necessary site access agreements and permits.

G. The TCRPC, as Lead COALITION Member, is responsible for ensuring that other activities as negotiated in the workplan, such as community outreach and involvement, are implemented in accordance with a schedule agreed upon by TCRPC and the COALITION Member in whose geographic area the site to be assessed is located.

3. DURATION OF THIS AGREEMENT:

Except as otherwise set forth herein, this Agreement once becoming effective shall continue in force through September 30, 2018 ("Expiration Date").

If EPA terminates the Cooperative Agreement prior to the Expiration Date with or without cause, this Agreement shall terminate, however, each of the Members shall be obligated to perform and complete obligations under the Cooperative Agreement which relate to the period prior to such termination.

4. EXECUTION IN COUNTERPARTS:

This Agreement may be executed in multiple counterparts each of which shall be deemed an original and all of such counterparts shall, together constitute one and the same Agreement, and the signature of any Member to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

5. ASSIGNMENT:

This Agreement may not be assigned in whole or in part, except by the written mutual consent of all of the Members.

6. SEVERABILITY:

If any section, phrase, sentence or portion of this Agreement is, for any reason, held to be invalid by any court of competent jurisdiction, such portion shall be deemed as a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this Agreement.

7. GOVERNING LAW AND VENUE:

This Agreement shall be governed by the laws of the State of Florida and the Members agree that any litigation with respect to this Agreement shall be brought only in the State courts of Palm Beach County, Florida unless otherwise required by law.

8. SUCCESSORS AND ASSIGNS:

This Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of the Members.

9. MISCELLANEOUS:

This Agreement may be modified only by an instrument in writing signed by the Members. Except as to the EPA, nothing herein shall be construed to give any rights hereunder to anyone other than the Members. No waiver of any provision of this Agreement shall be effective unless it is in writing and signed by the Member to be charged therewith and shall only be applicable to the specific instance to which it relates and shall not be deemed a continuing or future waiver. The terms "hereof" "herein" "hereto" "hereunder" and any similar words refer to this instrument in its entirety. Nothing contained in this Agreement shall be construed as making the Members partners, or being engaged in a joint venture with one another. Any reference in this Agreement to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time. An executed facsimile or electronic copy of this Agreement shall be considered for all purposes an original.

10. Indemnification

Each Member shall be liable for its own actions and negligence and, to the extent permitted by law, County shall indemnify, defend and hold harmless TCRPC and SFRPC against any actions, claims or damages arising out of County's negligence in connection with this Agreement, and TCRPC and SFRPC shall indemnify, defend and hold harmless County against any actions, claims, or damages arising out of their respective negligence in connection with this Agreement. The foregoing indemnification shall not constitute a waiver of sovereign immunity beyond the limits set forth in Section 768.28, *Florida Statutes*, including limits on attorney's fees, nor shall the same be construed to constitute agreement by either party to indemnify the other party for such other party's negligent, willful or intentional acts or omissions. Nothing contained in this Agreement shall be construed as any Members' consent to be sued.

IN WITNESS WHEREOF, the Members hereto have ratified and accepted this Agreement as of the date set forth by the execution block adjacent to their names herein below.

ATTEST:

**TREASURE COAST REGIONAL
PLANNING COUNCIL**

By: _____

By: _____
Tod Mowery, Chairman

Date: _____ 2015

By: _____

By: _____
Michael Busha, Executive Director

Date: _____ 2015

By: _____
Keith W. Davis, General Counsel
(for Form and Legal Sufficiency)

DRAFT

IN WITNESS WHEREOF, the respective Members hereto have ratified and accepted this Agreement as of the date set forth by the execution block adjacent to their names herein below.

(COUNTY SEAL BELOW)

**PALM BEACH COUNTY, FLORIDA, a
Political Subdivision of the State of Florida**

BOARD OF COUNTY COMMISSIONERS

ATTEST: Sharon R. Bock,
Clerk & Comptroller

By: _____
Shelley Vana, Mayor

Date: _____ 2015

By: _____
Deputy Clerk

Document No.: _____

Approved as to Form
And Legal Sufficiency

Approved as to Terms and Conditions
Department of Economic Sustainability

By: _____
James Brako,
Assistant County Attorney

By: _____
Sherry Howard,
Deputy Director

Date: _____ 2015

IN WITNESS WHEREOF, the respective Members hereto have ratified and accepted this Agreement as of the date set forth by the execution block adjacent to their names herein below.

ATTEST:

**SOUTH FLORIDA REGIONAL
PLANNING COUNCIL:**

By: _____

By: _____
James Murley, Executive Director

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