

BROWNFIELD REVOLVING LOAN FUND
SECONDARY SUBGRANT AGREEMENT

THIS BROWNFIELD REVOLVING LOAN FUND SECONDARY SUBGRANT AGREEMENT (Secondary Subgrant Agreement) is dated December 16, 2009, by and between the Roanoke Chapter, National Railway Historical Society (Secondary Subgrantee or RCNRHS), and the Economic Development Authority of the City of Roanoke, Virginia, an industrial development authority organized and existing under the laws of the Commonwealth of Virginia (Primary Subgrantee or EDA).

WITNESSETH:

WHEREAS, the City of Roanoke's comprehensive plan, *Vision 2001-2020*, recognizes the redevelopment of underused commercial and industrial property (brownfields) as a strategic economic development initiative;

WHEREAS, real and perceived environmental conditions can hinder the reuse potential of these properties due to uncertainty of costs and liability associated with the assessment and cleanup of such environmental conditions;

WHEREAS, the City of Roanoke, Virginia (Grantee or City) has pursued brownfield grant funds from the U. S. Environmental Protection Agency (Grantor or EPA) and the Virginia Department of Environmental Quality (DEQ), including an EPA Brownfield Revolving Loan Fund (RLF) grant to remove uncertainty from brownfield sites and serve as an incentive to prospective developers by making available subgrants and/or loans to carry out cleanup activities at brownfield sites in the City;

WHEREAS, by Resolution No. 37931-101807, adopted October 18, 2007, the Council of the City of Roanoke, Virginia (Council) authorized the City Manager to execute a Cooperative Agreement with the EPA for the City to receive \$1,200,000 (which includes a \$200,000 match from the City) for a Brownfield Revolving Loan Fund to capitalize a revolving loan fund and provide subgrants and/or loans to carry out cleanup activities at brownfield sites in the City. Such Resolution also authorized the City Manager to enter into other agreements, including subgrant agreements with the EDA and/or other entities in order to develop and implement the Brownfield Revolving Loan Fund Program;

WHEREAS, in order to develop and implement the RLF Program, the City entered into a Cooperative Agreement with a date of award of September 5, 2007, between the EPA and the City which provides for the RLF monies and sets forth various terms and obligations under that Cooperative Agreement (Cooperative Agreement);

WHEREAS, in order to implement and administer the above mentioned Cooperative Agreement and make RLF funds available to various entities, the City entered into a Primary Subgrant Agreement for Implementation and Administration of a Brownfield Revolving Loan Fund dated September 3, 2009, with the EDA, (Primary Subgrant Agreement), which incorporated the Cooperative Agreement. Such Primary Subgrant Agreement requires the EDA and any entities receiving funds through the EDA, either by way of grants and/or loans, to comply with the applicable terms and provisions of the Cooperative Agreement. A copy of the Primary Subgrant

Agreement, together with the Cooperative Agreement between the City and the EPA, which was incorporated into the Primary Subgrant Agreement, are attached hereto and made a part hereof as Exhibit 1;

WHEREAS, the EDA has the legal authority to and has agreed to implement and administer the RLF by issuing subgrants and/or loans under the RLF, through the Primary Subgrant Agreement;

WHEREAS, the RCNRHS has made an Application to the EDA for a Subgrant to use for cleanup activities of certain real property located at 1402 Jefferson Street, SE, Roanoke, Virginia, and identified by Tax Map No. 4039003 (Property), and which Property is anticipated to be used for an office/archive and other commercial uses;

WHEREAS, RCNRHS's Application sets forth certain cleanup work to be taken in connection with the Property, such work together with other related work are referred to as the Project;

WHEREAS, the EDA, with the assistance of the City and approval of the EPA, has deemed the RCNRHS as an eligible entity for an RLF Subgrant; and

WHEREAS, the EDA, based on the undertakings of RCNRHS, has determined to make a one time RLF Subgrant to RCNRHS, all subject to and in accordance with the terms of this Secondary Subgrant Agreement.

NOW, THEREFORE, the parties, in consideration of the promises and obligations contained herein, mutually agree that the above recitals are incorporated into this Secondary Subgrant Agreement and further mutually agree as follows:

SECTION 1. IMPLEMENTATION AND ADMINISTRATION OF RLF GRANT BY EDA.

The EDA has agreed with the City to administer the RLF as a Subgrantee for the City in accordance with the applicable provisions of the Cooperative Agreement for the purposes of promoting economic development in the City. However, the EDA's obligations under this Secondary Subgrant Agreement are not general obligations of the EDA, but are special obligations of the EDA limited to those funds which are provided to the EDA by the City and received by the EDA under the terms set forth in the Primary Subgrant Agreement.

SECTION 2. PURPOSE OF RLF GRANT.

The purpose of the RLF grant under this Secondary Subgrant Agreement is to provide RCNRHS with the sum of Two Hundred Thousand Dollars (\$200,000.00) in order to assist with the cleanup of the contamination and/or hazardous substances on the Property. Such cleanup will be for abatement of asbestos containing material (ACM) and lead based paint (LBP), and related activities, as set forth in the documents listed below, which were submitted as part of RCNRHS's Application for the RLF grant. Accordingly, the documents listed below are incorporated herein by reference and made a part hereof:

- A. Asbestos Containing Material Survey by Baratta & Associates, Inc., dated June 17, 2008.
- B. Lead-Based Paint Inspection by Baratta & Associates, Inc., dated June 19, 2008.

SECTION 3. TERM OF SECONDARY SUBGRANT AGREEMENT.

The term of this Secondary Subgrant Agreement shall be for a period of one (1) year from the date of this Secondary Subgrant Agreement, from January 20, 2010, through January 20, 2011, at which time it will terminate, unless sooner terminated pursuant to the terms of such Secondary Subgrant Agreement or by law. Provided, however, the parties may mutually agree to extend such Secondary Subgrant Agreement for an additional period of time as may be agreed to among the EDA, RCNRHS, the City, and the EPA.

SECTION 4. AGREEMENT SUBJECT TO FUNDING.

This Secondary Subgrant Agreement is subject to funding and/or appropriations from federal, state, and/or local governments and/or agencies and/or from the Council of the City of Roanoke. If any such funding is not provided, withdrawn, or otherwise not made available for such Agreement, the RCNRHS agrees that the EDA may terminate such Agreement on seven (7) days written notice to RCNRHS, without any penalty or damages being incurred by the EDA or by any of the other government entities involved. The RCNRHS further agrees to comply with any and all applicable requirements and provisions of any grants and/or agreements providing for such funding.

SECTION 5. OBLIGATIONS OF THE EDA.

Subject to the terms of this Secondary Subgrant Agreement, together with the applicable provisions of other agreements referred to and/or incorporated into this Secondary Subgrant Agreement, and subject to the EDA receiving the RLF money from the City, the EDA will provide such RLF grant monies to the RCNRHS which have been approved and authorized by the EDA, the City, and the EPA in accordance with all such terms and provisions of any such agreements, and provided that the RCNRHS has complied with the various obligations under any such agreements. As previously stated, the EDA's obligations hereunder are not general obligations of the EDA, but are special obligations of the EDA limited to those funds which are provided by the City and received by the EDA under the terms set forth in this Secondary Subgrant Agreement.

SECTION 6. OBLIGATIONS OF RCNRHS.

RCNRHS agrees and promises that in order to qualify to receive, to continue to receive, and to retain the RLF grant monies under this Secondary Subgrant Agreement, RCNRHS will do, have performed, and/or provide each of the following, all of which are deemed material to this Secondary Subgrant Agreement:

- A. RCNRHS acknowledges and agrees that the RLF monies provided through the Cooperative Agreement and the Primary Subgrant Agreement mentioned above, which monies will be provided from the EPA, are the only source of funds available for any

grants or other purposes under this Secondary Subgrant Agreement and that RCNRHS will only look to such funds for any funds pursuant to this Secondary Subgrant Agreement.

- B. RCNRHS acknowledges and agrees that neither the EDA nor the City are under any obligation to lend or provide any of their own funds for any of the matters set forth in this Secondary Subgrant Agreement.
- C. RCNRHS warrants and represents that the RCNRHS and the Property does and shall meet the eligibility criteria as established and set forth in the Cooperative Agreement and the Primary Subgrant Agreement mentioned in this Secondary Subgrant Agreement, and the EPA is required to approve in writing such eligibility prior to the execution of this Secondary Subgrant Agreement.
- D. RCNRHS warrants and represents that it owns the Property and that it will provide to the EDA, the City, and/or the EPA, sufficient evidence of such ownership in fee and will provide information and documentation of any encumbrances on such Property.
- E. RCNRHS agrees to and shall strictly comply with all applicable terms and provisions of the Cooperative Agreement and Primary Subgrant Agreement referred to in this Secondary Subgrant Agreement, including any of the laws, rules, regulations, and procedures referred to or referenced therein, including any amendments and/or changes that may be made during the term of this Secondary Subgrant Agreement. Furthermore, if there should be any conflict between any such items and any other terms of this Secondary Subgrant Agreement, the more stringent terms shall apply unless otherwise provided by law or regulation.
- F. RCNRHS warrants and represents that it shall not at any time in the future generate or transport hazardous substances, pollutants, or contaminants on or to the Property in violation of any laws, rules, or regulations and that it will not at any time in the future cause, contribute, permit, or exacerbate the release of hazardous substances, pollutants, or contaminants on or from the Property.
- G. RCNRHS shall develop and comply with a Cleanup Plan for the ACM and LBPs to be cleaned up from the Property with the RLF monies. Such Cleanup Plan shall comply with all applicable federal, state, and local laws, rules, regulations, and regulatory requirements for assessment, management, and disposal of such materials and shall include the specific regulations for ACM and LBP work. Such Cleanup Plan shall include the following items:
 - 1. Be approved by the EPA brownfield staff, the applicable regulatory agency(ies) for abatement of ACM and LBP, the City staff, and any additional approvals that may reasonably be required by the EDA and/or the City.
 - 2. Such Cleanup Plan must be in compliance and conformance with the ACM and LBP documents referred to in Section 2 above.

3. RCNRHS agrees to provide the Cleanup Plan for Regulatory Program technical review by the applicable Regulatory Agency(ies). RCNRHS shall provide EDA and the City one (1) copy each of all DEQ and/or EPA required Project Documents and submittals, and copy EDA and the City on all correspondence to DEQ and/or EPA.
 4. RCNRHS's Cleanup Plan shall include cleanup standards, approved by the Regulatory Agency(ies), that are protective of human health and the environment based on the proposed future land use on the Property. If the cleanup levels are based on land use or engineering controls, those controls shall be clearly documented in the Plan along with language for restrictive covenants that will be placed on the Property, and recorded in the Clerk's Office of the Circuit Court for the City of Roanoke.
- H. RCNRHS agrees to provide an Assessment of Brownfield Cleanup Alternatives (ABCA) to the EDA and City for review, approval, and for submittal to the EPA for review and approval. RCNRHS shall provide EDA three (3) copies of the ABCA, one for the City, one for submittal to EPA, and one for the EDA's records. The ABCA and Cleanup Plan may be formatted as one document.
- I. No work on the Property will be reimbursed to RCNRHS until RCNRHS provides written documentation to the EDA that the Cleanup Plan has been approved by the EDA, the City, and any applicable Regulatory Agency(ies), and that the ABCA has been approved by the EPA, the EDA, and the City.
- J. RCNRHS shall immediately report to the EDA and the City, in writing, any potential changes in the Cleanup Plan, the ABCA, and/or the Project documents, or the discovery of hazardous substances, pollutants, or contaminants not identified in the Cleanup Plan or in the ABCA. All changes in or modifications to the Cleanup Plan or the ABCA shall be reviewed and approved as set forth below prior to such change or modification becoming effective. RCNRHS shall be responsible for all additional costs incurred as the result of any changes or modifications.
1. EPA Brownfield Program shall approve all changes in or modifications to the ABCA and/or ABCA related elements of a consolidated Cleanup Plan.
 2. Regulatory Agency(ies) shall approve all changes.
 3. EDA and the City shall review and approve all changes for consistency with RCNRHS's Application.
- K. Final Report – RCNRHS shall provide a final report to the EDA and the City that documents the completion of cleanup activities on the Property. The final report may be for a specific phase of a multi-phased project and may be a copy of a final report prepared for the Regulatory Agency(ies). The final report shall include:

1. Narrative description of the work performed.
 2. Records of waste material removed from the site and copies of disposal manifests.
 3. Records of material treated on-site.
 4. Results of any confirmation samples collected and discussion of sampling results compared to cleanup levels established in the Cleanup Plan.
 5. Copies of documents describing land use controls to be used for the Project.
 6. Certification of completion of the cleanup by a Qualified Environmental Professional as defined by 40 CFR Part 312.10.10.
- L. RCNRHS shall provide prior to the start of any work on the Project a Project Budget to the EDA and the City for approval that shall document how funds will be used. The Project Budget shall document expense categories, milestones for payments, and values that are eligible for reimbursement in accordance with the Cooperative Agreement. The RCNRHS shall also:
1. Keep all expenditures to be reimbursed from the Subgrant funds within the approved Project Budget. RCNRHS shall not exceed any of the costs listed in the approved Project Budget that are intended for reimbursement without the prior written approval of the EDA, the City, and the EPA.
 2. Provide that all changes or modifications to the Project Budget shall be approved in writing by the EDA, the City, and the EPA prior to such changes or modifications becoming effective. Additional costs incurred as the result of any such changes, if not approved as set forth above shall be the sole responsibility of the RCNRHS.
 3. The milestones for payments in the Project Budget shall not be more than three (3) without the prior written approval of the EDA and the City.
- M. RCNRHS shall assist the EDA and the City with the development and implementation of a Community Relations Plan (CRP) that describes measures that will be taken to keep adjacent owners and the general public informed of the Cleanup Plan. The CRP will be reviewed by EPA and at a minimum the CRP shall include the following items along with other actions that may be required by the EDA, the City, and/or EPA upon review of the CRP:
1. The provision of all Project plans and reports to the EDA and the City for inclusion as part of a public information repository. The repository will also include:
 - a. RCNRHS's Application

- b. Copy of the Phase I (All Appropriate Inquiry Report) and Phase II Environmental Site Assessment, as applicable, of the Property.
 - c. Other related/similar documents that support the development of the Cleanup Plan, and/or provided to the City or EDA as part of the Application process.
 2. Development of a Project page on the City's website.
 3. RCNRHS notification of adjacent property owners.
 4. RCNRHS notification of applicable neighborhood organizations.
 5. 30-day public comment period for the ABCA, including a public advertisement and a public hearing on such matter.
- N. RCNRHS shall provide a detailed Project Schedule to the EDA and the City and maintain and update such Schedule during the term of the Secondary Subgrant Agreement. RCNRHS shall begin cleanup activity within six months after the date of such Agreement and all cleanup activities shall be completed within one year after the date of such Agreement.
- O. RCNRHS shall erect a sign on the Property, approved by the EDA and the City stating that the Work is being financed in part through the City's Brownfield Program using an EPA Brownfield RLF Grant awarded through the EDA. The sign shall include the City's logo, a brief description of the Project, contact information for the City and RCNRHS points of contact, and other information or images as deemed appropriate by RCNRHS. The sign shall be erected within 30-days after the date of such Agreement.
- P. RCNRHS shall provide the EDA and the City with plans, specifications, and/or other detailed documents used for bidding and contracting for the Project.
- Q. RCNRHS shall provide the EDA and the City with copies of all proposals, bids, insurance certificates (including Workers Compensation and Professional/Pollution Liability, as needed), licenses, permits, contracts, etc. for all work required for the Project. RCNRHS shall have appropriate insurance in amounts of at least \$1,000,000 primary coverage and an additional \$2,000,000 in umbrella or excess coverage for all such items. The EDA and/or the City may require RCNRHS to provide additional insurance coverage. Furthermore, the EDA and the City shall be named as additional insureds on all such insurance policies, unless otherwise agreed to by the EDA or the City.
- R. RCNRHS agrees that any sampling work required as part of the Project shall be performed in accordance with a Project specific Quality Assurance Project Plan (QAPP) or an addendum to the City's Generic QAPP prepared for the Project and approved by the EPA.
- S. RCNRHS, at the its sole cost and expense, and from sources other than Loan funds (unless directly related to the Project Cleanup), shall be responsible for obtaining all

permits, licenses, approvals, certifications, insurance, and inspections required by federal, state, or local law and shall maintain such permits, licenses, approvals, certifications, insurance, and inspections in a current status during the term of this Secondary Subgrant Agreement.

SECTION 7. PAYMENT OF EDA'S FEES.

RCNRHS promises and agrees it shall pay all reasonable fees, costs, and expenses of the EDA in connection with this matter, including any action necessary to collect reimbursement hereunder or litigation of any type, all of which includes the reasonable fees of the EDA's counsel. **Payment of such items shall not be made from any RLF Grant funds.** The EDA will submit statements to RCNRHS for such items and RCNRHS shall pay such statements within 30 days after receipt.

SECTION 8. COMPLIANCE WITH LAWS, REGULATIONS, AND IMMIGRATION LAW.

RCNRHS agrees to and shall comply with all applicable federal, state, and local laws, ordinances, and regulations, including all applicable licensing requirements. RCNRHS further agrees that RCNRHS does not, and shall not during the performance of this Secondary Subgrant Agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

SECTION 9. INCORPORATION OF EPA AND FEDERAL TERMS.

RCNRHS agrees to fully, properly, and timely provide and perform all work, services, materials, and other items required for this Project in accordance with the Secondary Subgrant Agreement for this Project, including all the terms and conditions of the Primary Subgrant Agreement and the Cooperative Agreement and all other applicable laws, rules, and regulations, including any amendments and/or changes that may be made during the term of this Secondary Subgrant Agreement. Furthermore, if RCNRHS discovers that there are any conflicts between the terms and provisions of such documents and any other Secondary Subgrant Agreement documents, RCNRHS shall immediately notify the EDA and the City, in writing, of any such conflict(s). However, the provisions of these documents are intended to be and shall be construed to be consistent with all other terms and provisions in the Secondary Subgrant Agreement documents, but if a court or agency of competent jurisdiction determines that a conflict should exist between them, and to the extent of any such conflict, the more stringent requirements shall apply unless otherwise required by the EPA rules and regulations, the law, or the federal or state agencies involved in this Project, in which case those items will take precedence in that order unless otherwise required by law. RCNRHS agrees RCNRHS is solely responsible for ensuring that RCNRHS has reviewed this Secondary Subgrant Agreement, the Primary Subgrant Agreement, the Cooperative Agreement, and all the terms and conditions of those Agreements and laws and regulations referred to therein. RCNRHS is specifically advised that RCNRHS is considered to be the same as a Cooperative Agreement Recipient (CAR) as referred to in the Cooperative Agreement. Some of the federal provisions that may be applicable include the following items:

- A. The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.) ("CERCLA").

- B. Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments, 40 CFR Part 30 and OMB Circular A-122. All procurements with subgrant funds shall be made in accordance with 40 CFR Part 30.40-48.
- C. The National Oil and Hazardous Substances Contingency Plan (“NCP”), 40 CFR. Part 300.
- D. Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors’ Labor Relations on Federal and Federally-funded Construction Projects, as amended by Executive Order 13208.
- E. The Davis-Bacon Act of 1931 (CERCLA § 104(g)(1), 40 USC. §§ 276a to 276a-5 and 42 USC. § 3222 as set forth in CERCLA § 104 (g)). RCNRHS must obtain recent and applicable wage rates from the U.S. Department of Labor for incorporation in the contract(s) for cleanup work.
- F. All applicable “cross-cutting requirements” described in this section, including those federal requirements agreed between the EPA and City set forth in the Cooperative Agreement, which include, but are not limited to the following:
 - 1. Good faith efforts to give opportunities for qualified Small Business Enterprises (SBE), Minority Business Enterprises (MBE) and Women-Owned Business Enterprises (WBE) in compliance with requirements found at 40 CFR Part 31.36(e).
 - 2. OSHA Worker Health & Safety Standard 29 CFR Part 1910.120.
 - 3. Uniform Relocation Act.
 - 4. Historic Preservation Act.
 - 5. Endangered Species Act.
 - 6. Permits required by Section 404 of the Clean Water Act.
 - 7. Executive Order 11246, Equal Employment Opportunity and implementing regulations at 41 CFR Part 60-4.
 - 8. Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333)
 - 9. The Anti Kickback Act (40 USC 276c).
 - 10. Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

SECTION 10. OTHER PROGRAM/PROJECT REQUIREMENTS.

In addition to the other requirements of this Secondary Subgrant Agreement, RCNRHS shall also comply with the applicable provisions of 40 CFR Part 31. Such other requirements include, but are not necessarily limited to, the following:

- A. Debarment and Suspension – RCNRHS shall not employ or otherwise engage any debarred, suspended, or ineligible contractors or subcontractors to conduct any activities under this Secondary Subgrant Agreement. RCNRHS will consult appropriate references, including, but not limited to, the Excluded Parties Listing Service website at <http://epls.arnet.gov>, to ascertain the status of any third parties prior to engaging their services. RCNRHS shall submit to the EDA and the City the names of any contractors and subcontractors selected under this Secondary Subgrant Agreement, including a certification by RCNRHS that it has determined that none of such entities are presently debarred, suspended, or ineligible.

- B. Conflict of interest – No employee, officer or agent of RCNRHS shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when:
 - 1. The employee, officer or agent,
 - 2. Any member of his immediate family,
 - 3. His or her partner, or
 - 4. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.

RCNRHS's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from contractors, potential contractors, or parties to subagreements.

- C. RCNRHS certifies that it is not now, and has not in the past, been subject to any penalties resulting from environmental non-compliance connected with the Property.

- D. RCNRHS further certifies that it is not potentially liable under Section 107 of CERCLA for the Property or that, if it is, it qualifies for a limitation or defense to liability under CERCLA.

- E. Grant funds shall not be used by RCNRHS for any lobbying or fund raising purposes. RCNRHS agrees to comply with 40 CFR Part 34, New Restrictions on Lobbying. RCNRHS shall submit completed copies of EPA "Certification Regarding Lobbying" form and/or Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions and in accordance with the Cooperative Agreement.

- F. RCNRHS shall only use the RLF grant funds provided to it under this Secondary Subgrant Agreement for only allowable project costs that are approved by the EDA, the City, and the EPA. Any such expenditures or costs not so approved shall be the sole responsibility of RCNRHS.

SECTION 11. DISTRIBUTION OF RLF GRANT FUNDS.

- A. The total amount of RLF grant funds that RCNRHS may receive under this Secondary Subgrant Agreement shall not exceed \$200,000.00. The EDA will make such grant funds available only on a reimbursement basis and upon proper documentation that RCNRHS has met its obligations under this Secondary Subgrant Agreement and is entitled to receive such grant funds. RCNRHS acknowledges that this is a reimbursement grant and that RCNRHS may only receive such grant funds on a pass through basis and only such amount as the City may receive from the EPA and that the EDA receives from the City, with both the City and the EDA being specifically relieved of any responsibility for any amounts not received from the EPA or any other federal or state agency providing funding for the RLF grant funds and/or for this particular Project.

- B. RCNRHS shall submit written reimbursement requests to the EDA and the City showing that the progress of the Project is in accordance with the approved Project Budget, and reasonably reflects the RCNRHS's actual incurred eligible costs. Reimbursement requests shall be submitted at milestones as defined in the approved Project Budget. Such reimbursement request shall include the following:
 - 1. A summary sheet stating the period of performance, the work performed, the amount of the payment request, and the total amount requested to-date.
 - 2. Itemized invoices from all contractors, consultants, suppliers, etc. that provide a detailed justification for charges requested for reimbursement, including compliance with any wage requirements, like the Davis-Bacon Act.
 - 3. Identification of invoiced items performed by MBEs or WBEs.
 - 4. Lien waivers.
 - 5. Other supporting data, documents, and information as requested by the EDA, the City, and/or the EPA.

- C. The EDA may withhold up to five (5%) percent of each payment requested as a retainage until the Final Report has been submitted and approved by the EDA, the City, and the EPA.

- D. RCNRHS shall use funds it receives to promptly pay for eligible and approved Project costs incurred, and any interest accumulated from such RLF monies shall be handled as required by the Cooperative Agreement. RCNRHS specifically agrees that it shall only request reimbursement for eligible costs as provided for in the Cooperative Agreement, and shall use such funds only for eligible activities and in compliance with the requirement of CERCLA Section 104(k).

SECTION 12. REPORTING, ADMINISTRATIVE RECORDS, NOTICES, AND AUDITS

- A. RCNRHS shall provide written reports on work progress and financial status to the EDA and the City. Monthly reports shall be submitted to the EDA and the City on or before the tenth of the following month. The report shall summarize work performed, progress towards established milestones, distribution of funds, and use of DBEs/WBEs. The EDA will provide reporting forms to the RCNRHS.

1. **Financial Information Reporting.** RCNRHS agrees that it shall maintain adequate financial records consistent with generally accepted principles consistently applied by the RCNRHS to document how funds it receives are used. RCNRHS shall provide the following financial reporting information to the EDA and the City:
 - a. RCNRHS shall maintain financial and programmatic records pertaining to all matters relative to this Secondary Subgrant Agreement in accordance with generally accepted accounting principles and procedures and to retain all of its' records and supporting documentation applicable to such Agreement.
 - b. Accounting system records that track the use of funds by eligible site-specific Project Costs. The records shall segregate expenditures based on federal or non-federal sources of funds.
 - c. An audit or acceptable alternative audit information such as deposit slips and cancelled checks, showing the receipts and expenditures of the RLF monies. Accounts and records related to the RLF monies shall be made available to the EDA, the City, and the EPA, through any authorized representatives, for the purpose of copying, review, examination, and audit.
- B. RCNRHS shall submit to the EDA and the City monthly reports on or before the tenth of the following month of good faith efforts to procure services from MBE/WBEs on a form provided by the EDA.
- C. RCNRHS shall maintain Project information, including properly executed contracts, invoices, correspondence and other documents sufficient to evidence in proper detail the nature and propriety of the expenditures of RLF funds. RCNRHS shall maintain Project and related financial information for at least three (3) years following the close-out of the Project or the completion of any litigation, claim, negotiation, audit or other action involving those documents. RCNRHS shall obtain written approval from EDA and the City prior to disposing of records.
- D. **Notices.** RCNRHS shall deliver promptly to EDA and the City copies of all notices, requests, subpoenas, inquiries or other documents received from any governmental agency or other entity concerning: any the violation or alleged violation of any environmental laws; the storage, use or disposal of any environmentally regulated substances; or the violation or alleged violation of any other law, ordinance, governmental regulation, or court order, including the violation or alleged violation of RCNRHS's payment or nonpayment of any taxes.
- E. RCNRHS shall permit the EDA, the City, and/or the EPA, or their designated representatives to inspect, copy, and/or audit RCNRHS's records and books relative to this Secondary Subgrant Agreement at any time during normal

business hours and under reasonable circumstances and to provide copies at no cost to the EDA, the City, and/or the EPA of any requested information and documents.

SECTION 13. CLOSEOUT.

Upon completion of the Project, RCNRHS shall take the following measures to close out the Project.

- A. Project Completion Notice – RCNRHS agrees that it will notify EDA and the City upon substantial completion of the Project. EDA and the City will inspect the Project status and confirm that work is substantially complete prior to submittal of the Final Report.
- B. Cleanup Completion Confirmation – RCNRHS shall obtain confirmation from the applicable Regulatory Agency and submit to EDA and the City an appropriate confirmation or assurance of proper completion of all cleanup work.
- C. Final Financial Report – RCNRHS shall provide a final accounting of Project expenses and requests for reimbursement.
- D. Any other information, documents, or actions to be taken by RCNRHS that may be requested by the EDA, the City, and/or the EPA.
- E. Release of Retainage - upon the completion of items A, B, C, and D above and submittal of required progress reports and other documents required by this Secondary Subgrant Agreement, and final approval by the EDA, the City, and the EPA, the EDA shall release any retainage amount.

SECTION 14. SUSPENSION AND TERMINATION.

In the event RCNRHS fails to comply with any term of the Secondary Subgrant Agreement, the EDA may immediately suspend or terminate, in whole or in part, in EDA's sole discretion, such Agreement or take other remedial action in accordance with the Cooperative Agreement. This Secondary Subgrant Agreement may also be terminated, without cause, for the convenience of EDA in accordance with the Cooperative Agreement and/or by seven (7) days written notice from the EDA to RCNRHS. Any such termination and/or suspension may require RCNRHS to return and/or repay RLF monies to the EDA, the City, and/or the EPA, as provided in the Cooperative Agreement and/or in any other federal law or regulation.

SECTION 15. THIRD-PARTY CONTRACTS.

The EDA, City, and EPA shall not be obligated or liable hereunder to any entity not a party to this Secondary Subgrant Agreement or to the Agreements incorporated herein. RCNRHS shall be solely responsible for any agreements and contracts RCNRHS enters into in connection with this Project.

SECTION 16. INDEPENDENT CONTRACTOR.

Services performed under this Secondary Subgrant Agreement shall be performed on an independent contractor basis and under no circumstances shall such Agreement be construed as establishing any employee/employer relationship. RCNRHS shall be completely responsible for its activities in performing services hereunder and shall be considered an independent contractor.

SECTION 17. COOPERATION.

Each party agrees to cooperate with the other in a reasonable manner to carry out the intent and purpose of this Secondary Subgrant Agreement.

SECTION 18. SEVERABILITY.

If any term of this Secondary Subgrant Agreement is found to be void or invalid, such invalidity shall not affect the remaining terms of this Secondary Subgrant Agreement, which will continue in full force and effect. The parties intend the remaining provisions of the Secondary Subgrant Agreement be enforced to the fullest extent permitted by applicable law.

SECTION 19. AUTHORITY TO SIGN.

The persons who have executed this Secondary Subgrant Agreement on behalf of the parties represent and warrant they are duly authorized to execute this Secondary Subgrant Agreement on behalf of their respective entity.

SECTION 20. COUNTERPART COPIES.

This Secondary Subgrant Agreement may be executed in any number of counterpart copies, each of which shall be deemed an original, but all of which together shall constitute a single instrument.

SECTION 21. SUCCESSORS.

The Secondary Subgrant Agreement shall be binding upon each of the parties, and their assigns, purchasers, trustees, and successors.

SECTION 22. NONDISCRIMINATION.

- A. During the performance or term of this Secondary Subgrant Agreement, RCNRHS agrees as follows:
 - 1. RCNRHS will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of RCNRHS. RCNRHS agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

2. RCNRHS in all solicitations or advertisements for employees placed by or on behalf of RCNRHS will state RCNRHS is an equal opportunity employer.
 3. Notices, advertisements, and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- B. RCNRHS will include the provisions of the foregoing Section A (1, 2, and 3) in every subcontract or purchase order of over \$10,000 that is entered into as part of the Project after the date that this Secondary Subgrant Agreement receives final approval from the Subgrantor so that the provisions hereof will be binding upon each subcontractor or vendor.

SECTION 23. ASSIGNMENT.

RCNRHS agrees not to assign or transfer any part of this Secondary Subgrant Agreement without the prior written consent of the EDA, the City, and the EPA, which will not be unreasonably withheld, and any such assignment shall not relieve Subgrantee from any of its obligations under this Agreement.

SECTION 24. AMENDMENTS.

The EDA may, from time to time, require changes in the obligations of RCNRHS hereunder. In such event or events, such changes which are mutually agreed upon by and between the EDA, the City, the EPA, and RCNRHS shall be incorporated by written amendment to this Secondary Subgrant Agreement.

SECTION 25. INDEMNITY.

RCNRHS shall indemnify and hold harmless the EDA, the City, and their officers, agents, and employees against any and all liability, losses, damages, claims, causes of action, suits of any nature, costs, and expenses, including reasonable attorney's fees, resulting from or arising out of RCNRHS's or its employees, agents, or subcontractors actions, activities, or omissions, negligent or otherwise, on or near the Property or the area where the work is performed or arising in any way out of or resulting from any of the work or items to be provided or done under this Secondary Subgrant Agreement, and this includes, without limitation, any fines or penalties, violations of federal, state, or local laws or regulations, personal injury, wrongful death, or property damage claims or suits.

SECTION 26. FORUM SELECTION AND CHOICE OF LAW.

This Secondary Subgrant Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Virginia, without application of Virginia's conflict of law provisions, and any applicable federal laws. Venue for any litigation, suits, and claims arising from or connected with this Agreement shall only be proper in the Roanoke City Circuit Court, or in the Roanoke City General District Court if the amount in controversy is within the jurisdictional limit of such court or the United States District Court for the Western District of

Virginia, Roanoke Division, if a federal question exists. All parties to this Secondary Subgrant Agreement voluntarily submit themselves to the jurisdiction and venue of such courts, regardless of the actual location of such parties. The provisions of this Secondary Subgrant Agreement shall not be construed in favor of or against either party, but shall be construed according to their fair meaning as if both parties jointly prepared this Secondary Subgrant Agreement.

SECTION 27. NONWAIVER.

Each party agrees any party's waiver or failure to enforce or require performance of any term or condition of this Secondary Subgrant Agreement or any party's waiver of any breach of this Secondary Subgrant Agreement by any other party extends to that instance only. Such waiver or failure is not and shall not be a waiver of any of the terms or conditions of this Secondary Subgrant Agreement or a waiver of any other breaches of the Secondary Subgrant Agreement by any party and does not bar the non-defaulting party from requiring the defaulting party to comply with all the terms and conditions of this Secondary Subgrant Agreement and does not bar the non-defaulting party from asserting any and all rights and/or remedies it has or might have against the defaulting party under this Secondary Subgrant Agreement or by law.

SECTION 28. CAPTIONS AND HEADINGS.

The section captions and headings are for convenience and reference purposes and shall not affect in any way the meaning or interpretation of this Secondary Subgrant Agreement..

SECTION 29. NOTICES.

All notices hereunder must be in writing and shall be deemed validly given if sent by certified mail, return receipt requested or by a nationally recognized overnight courier, addressed as follows (or any other address the party to be notified may have designated to the sender by like notice):

If to EDA, to:

Chair, Economic Development Authority
of the City of Roanoke, Virginia
c/o Harwell M. Darby, Jr., Esquire
Glenn, Feldmann, Darby & Goodlatte
37 Campbell Avenue S.W.
Roanoke, Virginia 24011
Fax No. 540-224-8050

With a copy to the City:

Senior City Planner
Attention: Ian Shaw
166 Noel C. Taylor Municipal Building
215 Church Avenue, S.W.
Roanoke, VA 24011
Fax No. 540-853-1230

If to RCNRHS, to:

President
Roanoke Chapter, National Railway Historical Society
Attention: Jeffry L. Sanders
P. O. Box 13222
Roanoke, VA 24032-3222

With a copy to:

Treasurer
Roanoke Chapter, National Railway Historical Society
Attention: James Cosby
P. O. Box 13222
Roanoke, VA 24032-3222

Notice shall be deemed delivered upon the date of personal service, two days after deposit in the United States mail, or the day after delivery to a nationally recognized overnight courier.

SECTION 30. RECOVERY OF FUNDS PAID FOR UNAUTHORIZED AND/OR UNAPPROVED WORK.

RCNRHS shall repay to the EDA and/or the City any funds RCNRHS may have received for this Project or for any work connected with this Project if any such items were not properly authorized and approved by the EDA, the City, and the EPA and any other federal, state, or local agency. Such repayment obligation shall also apply to any funds the EDA and/or the City may have to repay to any federal or state agency due to the actions and/or omissions of RCNRHS and/or any of its contractors, subcontractors, representatives, or agents, including but not limited to any reporting and/or record keeping requirements.

SECTION 31. THIRD PARTY BENEFICIARY STATUS.

RCNRHS agrees that the City is a third party beneficiary of this Secondary Subgrant Agreement and that the EDA and the City shall each be deemed to be a third party beneficiary of any contracts or agreements that RCNRHS may enter into that involve any RLF monies and/or any work to be provided for the Project. As such, the City may, but is not required to, enforce this Secondary Subgrant Agreement, and the EDA and/or the City may, but are not required to, enforce any contracts or agreements RCNRHS may enter into as set forth above. RCNRHS shall notify each of the entities it contracts with as set forth above of the EDA's and the City's rights under this section.

SECTION 32. MBE, WBE, AND SBRA.

RCNRHS shall comply with the applicable provisions of the Cooperative Agreement for Minority Business Enterprises (MBE), Women's Business Enterprises (WBE), Small Businesses in Rural Areas (SBRAs), and business related entities as set forth in such Cooperative Agreement.

SECTION 33. REPORTS, RECORDS, AND AUDITS.

RCNRHS agrees to maintain all books, records and other documents relating to this Secondary Subgrant Agreement for a period of three (3) years after the end of each fiscal year included in this Secondary Subgrant Agreement. The EDA, the City, and/or the EPA, or their authorized employees, agents, representatives, and/or auditors shall have full access to and the right to examine, copy, and/or audit any of such materials during the term of the Contract and during such retention period, upon written notice to RCNRHS. Any requested copies of and documents (including electronic data) shall be provided at no cost to the EDA, the City, and/or the EPA.

SECTION 34. PAYMENTS TO OTHERS BY RCNRHS.

RCNRHS agrees that RCNRHS will comply with the requirements of Section 2.2-4354 of the Virginia Code regarding RCNRHS's payment to other entities and RCNRHS will take one of the two actions permitted therein within seven (7) days after receipt of amounts paid to RCNRHS by the EDA and/or the City. RCNRHS further agrees that RCNRHS shall indemnify and hold the EDA and/or the City harmless for any lawful claims resulting from the failure of RCNRHS to make prompt payments to all persons supplying RCNRHS equipment, labor, tools, or material in connection with the work provided for in this Secondary Subgrant Agreement. In the event of such claims, the EDA and/or the City may, in the EDA and/or the City's sole discretion, after providing written notice to RCNRHS, withhold from any payment request or final payment the unpaid sum of money deemed sufficient to pay all appropriate claims and associated costs in connection with the Secondary Subgrant Agreement and make such payment, if the EDA and/or the City determine it to be appropriate to do so.

SECTION 35. ENTIRE AGREEMENT.

This Secondary Subgrant Agreement, together with any exhibits, attachments, and referenced items constitutes the entire agreement of the parties and supersedes all prior agreements between the parties. No amendment to this Secondary Subgrant Agreement shall be valid unless made in writing and signed by the appropriate parties.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have executed this Secondary Subgrant Agreement by their authorized representatives.

WITNESS:

ROANOKE CHAPTER, NATIONAL RAILWAY HISTORICAL SOCIETY

CHARLES E. SANDERS, JR
Charles E. Sanders
Printed Name and Title SECRETARY

By [Signature]
JERRY L. SANDERS, President
Printed Name and Title

WITNESS:

ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF ROANOKE, VIRGINIA

[Signature]
Linda D. Frith, Secretary

By [Signature]
Charles E. Hunter, III, Chair

Approved as to Form:

Approved as to Execution:

[Signature]
Counsel for EDA
Date: 12-16-2009

[Signature]
Counsel for EDA
Date: 01-20-2010

IN WITNESS WHEREOF, the parties have executed this Secondary Subgrant Agreement by their authorized representatives.

WITNESS:

ROANOKE CHAPTER, NATIONAL RAILWAY HISTORICAL SOCIETY

Charles E. Salmon
CHARLES E. SALMON, JR.
Printed Name and Title
SECRETARY

By Jerry L. Sanders
JERRY L. SANDERS, President
Printed Name and Title

WITNESS:

ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF ROANOKE, VIRGINIA

Linda D. Frith
Linda D. Frith, Secretary

By Charles E. Hunter, III
Charles E. Hunter, III, Chair

Approved as to Form:

Approved as to Execution:

Ann Sage
Counsel for EDA
Date: 12-16-2009

Ann Sage
Counsel for EDA
Date: 01-20-2010

