MEMORANDUM

To: Council Members  
From: Staff  
Date: October 21, 2011 Council Meeting  
Subject: 2011 Brownfields Assessment Coalition Grant – Memorandum of Agreement

Introduction

On September 15, 2011, Treasure Coast Regional Planning Council (TCRPC) was awarded a brownfields assessment coalition grant of $1 million from the U.S. Environmental Protection Agency (EPA) to undertake assessment activities at brownfield sites and help expedite redevelopment of priority areas. The coalition members in the successful grant proposal are Palm Beach County and the cities of West Palm Beach and Fort Pierce. 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 documenting the roles and responsibilities of the coalition members. Staff has prepared the attached Memorandum of Agreement to satisfy the grant award requirements. This Memorandum of Agreement is considered a draft and in consultation with coalition members and/or EPA may need to be modified to assure that all parties are in agreement.

Background

On October 15, 2010, TCRPC submitted a $1 million grant application to the EPA for funding under EPA’s FY 2011 Brownfields Assessment Grants Program. The Brownfields Assessment Grants Program provides funds to inventory, characterize, assess and conduct planning (including cleanup planning) and community involvement related to brownfield sites. TCRPC was one of ten recipients in Florida that secured a total of $7 million in grant funding from EPA.

Recommendation

Council should authorize the Chair to execute the attached Memorandum of Agreement or, alternatively, as determined by the Chair, to further negotiate and amend the Memorandum of Agreement in consultation with the Executive Director and Council Attorney as deemed necessary, and to execute the Memorandum of Agreement as amended.

Attachment
MEMORANDUM OF AGREEMENT
BROWNFIELDS ASSESSMENT COALITION BETWEEN
TREASURE COAST REGIONAL PLANNING COUNCIL, PALM BEACH
COUNTY, THE CITY OF WEST PALM BEACH AND THE CITY OF FORT PIERCE

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”), CITY OF WEST PALM BEACH (hereinafter “WEST PALM BEACH”), and CITY OF FORT PIERCE (hereinafter “FORT PIERCE”); 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, 2011 and ending September 30, 2014, totaling $1,000,000; and

WHEREAS, the Members have a mutual interest in continuing their collaboration and being a part of the Treasure Coast Brownfields Redevelopment Coalition (TCBRC) to support environmental assessment activities in connection with the grant award; 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

NOW, THEREFORE, in consideration of one dollar and other good and valuable consideration the receipt and sufficiency of which is acknowledged by each of the parties hereto, the parties agree as follows:

The foregoing recitals and WHEREAS clauses are true and correct and incorporated herein by reference and 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 a Brownfields Assessment Coalition known as the Treasure Coast Brownfields Redevelopment Coalition (“TCBRC”) to carry out the activities outlined in the U.S. Environmental Protection Agency (“EPA”) Cooperative Agreement No. BF 95482011-0 (the “Grant Agreement”). The TCBRC shall consist of the Treasure Coast Regional Planning Council, Palm Beach County, the City of West Palm Beach and the City of Fort Pierce. TCRPC shall serve as the Lead Agency for the TCBRC.

2. RESPONSIBILITIES OF THE COALITION MEMBERS

On September 15, 2011, the EPA awarded the Grant Agreement to TCRPC. The grant period is October 1, 2011 through September 30, 2014. As the Lead Coalition Member, TCRPC is responsible to EPA for management of the Grant 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 Grant Agreement. All Members agree that they will comply with the terms and conditions of the Grant 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 Grant 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 Grant Agreement and any changes that may be made to the Grant Agreement over the period of performance.

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

Treasure Coast Regional Planning Council
Greg Vaday, Economic Development Coordinator
421 SW Camden Avenue
Stuart, Florida 34994
(772) 221-4060
Email: gvadav@tcrpc.org

Palm Beach County Board of County Commissioners
Sherry Howard, Director
Economic Development
301 N. Olive Avenue, 10th Floor
West Palm Beach, FL 33401
(561) 355-3624
Email: showard@pbcgov.org

City of West Palm Beach
Kim Breisemeister, CRA Executive Director
P. O. Box 3366
West Palm Beach, FL 33401
(561) 822-1550
Email: kbriesemeister@wpb.org

City of Fort Pierce
Jon Ward, Director
Redevelopment Agency/Urban Development
P. O. Box 1480
Fort Pierce, FL 34954-1480
(772) 460-2200 x 277
Email: jward@city-flpierce.com

C. Activities funded through the Grant Agreement may include inventory preparation, site selection criteria development, assessments, planning (including cleanup planning) relating to brownfield sites, and 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) or otherwise contract to undertake various eligible Activities to be funded through the Grant Agreement. No Member other than TCRPC shall have any authority to obligate or commit the funds from the Grant Agreement for any purpose. On May 21, 2010 the TCRPC governing board approved a list of consultants as a result of a selection process which TCRPC initiated by issuing its Request for Expressions of Interest in October 2009. TCRPC intends to select consultants from this list to perform work and services related to the Activities. This Agreement is subject to EPA providing its written approval of this Expressions of Interest process and the resulting consultant list as complying with EPA procurement requirements of the Grant Agreement. If EPA has not delivered to TCRPC this written approval on or before October 31, 2011 this Agreement shall terminate and be null and void. 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.
D. 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 Grant Agreement. Selected sites will be submitted to EPA for prior approval to ensure eligibility.

E. 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.

F. 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, 2014 (“Expiration Date”).

   If EPA terminates the Grant 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 Grant Agreement which relate to the period prior to such termination.

4. **EXECUTION IN COUNTERPARTS:**

   This instrument 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 party 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 hereof.

7. **GOVERNING LAW AND VENUE:**

   This Agreement shall be governed by the laws of the State of Florida and the parties 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 U.S. Environmental Protection Agency 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 deemed to make the Members, partners or 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.
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:

By: _________________________

TREASURE COAST REGIONAL PLANNING COUNCIL

By: _________________________
   Ramon Trias, Chair

Date: _________________________2011
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:
SHARON R. BOCK, Clerk & Comptroller

By: _________________________
    Deputy Clerk

PALM BEACH COUNTY:

By: _________________________
    Karen T. Marcus, Chair

Date: ______________________2011
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:

By: _________________________
   City Clerk

CITY OF WEST PALM BEACH:

By: _________________________
   Geraldine Muoio, Mayor

Date: _________________2011
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:

By: _________________________
City Clerk

CITY OF FORT PIERCE

By: _________________________
Robert J. Benton, Mayor

Date: _________________2011