

# SUBGRANT AGREEMENT BROWNFIELDS CLEANUP REVOLVING LOAN FUND

## I. PARTIES

**THIS AGREEMENT** is effective **September 2, 2019**, by and between **Broadwater County Hospital District, Broadwater County, Montana**, hereinafter referred to as the "SUBGRANT RECIPIENT," and **Snowy Mountain Development Corporation (SMDC)** on behalf of **Central Montana Brownfields Coalition**, the GRANT RECIPIENT, hereinafter referred to as "SMDC".

## II. DEFINITIONS

**BRLF** – Snowy Mountain Development Corporation (SMDC) Brownfields Revolving Loan Fund (per Cooperative Agreement No: BF- 96809001) between SMDC and the United States Environmental Protection Agency.

**CERCLA** – Comprehensive Environmental Response Compensation and Liability Act, Brownfields Revitalization Act.

**Eligible Activities** – The response actions associated with actual cleanup of the site and allowable under an approved cleanup plan.

**Grant Recipient** – Snowy Mountain Development Corporation (SMDC) on behalf of Central Montana Brownfields Coalition.

**Project** – Hazardous substances and petroleum contaminants cleanup of the property described as the Townsend Star Building (Grover's Exxon) project located at 415 Broadway, Townsend, Broadwater County, Montana and defined in **Exhibit I to this Subgrant Agreement**.

**Property** – See Exhibit I

**Qualified Professional Engineer (QEP)** – Environmental Engineer designated by the Grant Recipient (SMDC) to coordinate and direct cleanup. The QEP assists the Grant Recipient in carrying out its responsibilities on a site specific basis, and works on behalf of the Grant Recipient to ensure that RLF environmental cleanup actions are conducted in accordance with applicable laws and regulations.

**Subgrant Recipient** – Broadwater County Hospital District, Broadwater County, Montana

**Site Manager** – Representative from Broadwater County Hospital District Hospital District

**Sub-Contractor(s)** – The contractor(s) hired by Broadwater County Hospital District to perform work on this project.

## III. REPRESENTATIONS AND WARRANTIES

**WHEREAS**, SMDC is the recipient of a United States Environmental Protection Agency (USEPA) grant to establish a Brownfields Revolving Loan Fund (BRLF) and authorized to make certain loans and subgrants from these funds (Loan Fund); and

**WHEREAS**, SMDC is responsible to the USEPA for proper expenditure of BRLF funds; and

**WHEREAS**, BRLF funds are to be used to undertake cleanup of brownfields sites by making loans and/or subgrants to parties willing to undertake cleanup of these sites; and

**WHEREAS**, SUBGRANT RECIPIENT is the owner of certain real property located in Broadwater County, MT, which are described in Exhibit I, incorporated herein; and

**WHEREAS** structures and soil on the Property are contaminated with hazardous substances and petroleum products; and

**WHEREAS**, the Environmental Protection Agency (EPA) has determined that the Property is eligible for cleanup activities funded under SMDC's BRLF Grant.

#### **IV. CERTIFICATIONS**

**NOW THEREFORE**, in consideration of the covenants and promises contained herein, it is mutually agreed by and between the parties as follows:

1. **SUBGRANT RECIPIENT** shall use BRLF funds only for eligible activities and in compliance with the requirements of CERCLA 104(k), 40 CFR 31, OMB Circular 87, and all other applicable Federal and State laws and regulations.
2. **SUBGRANT RECIPIENT** understands and agrees that any and all work performed on the Property which qualifies for reimbursement under SMDC's BRLF is conditioned upon the SUBGRANT RECIPIENT'S requirement of its project contractors' and subcontractors' full compliance with the approved Contract Agreement and this Agreement.
3. **SUBGRANT RECIPIENT** understands that all changes or modifications to the Contract Agreement must be approved by the Site Manager prior to the change or modification becoming effective.
4. **SUBGRANT RECIPIENT** shall ensure that the cleanup is protective of human health and the environment.
5. **SUBGRANT RECIPIENT** 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 cleanup and expenditures of BRLF funds.
6. **The SUBGRANT RECIPIENT** shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with BRLF funds and shall obtain written approval from SMDC prior to disposing of records.
7. **SUBGRANT RECIPIENT** shall provide to SMDC and authorized representatives of the Federal government, access to records relating to this subgrant.
8. **SUBGRANT RECIPIENT** shall cooperate fully with an audit of the BRLF funding and related work, if so requested from state or federal authorities or SMDC.
9. **SUBGRANT RECIPIENT** certifies that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site.

10. **SUBGRANT RECIPIENT** certifies that it is not a viable responsible party or potentially liable for the hazardous substances and petroleum contaminants at the site.
11. **SUBGRANT RECIPIENT** shall conduct cleanup activities as required by Broadwater County Hospital District's contracted Environmental Engineer and SMDC's QEP Tetra Tech.
12. **SUBGRANT RECIPIENT** shall comply with applicable EPA assistance regulations (40 CFR Part 31 for governmental entities or 40 CFR Part 30 for nonprofit organizations). All procurements conducted with BRLF funds must comply with 40 CFR Part 31.36 or 40 CFR Part 30.40-30.48, as applicable.
13. **SUBGRANT RECIPIENT** shall comply with Davis-Bacon Act prevailing wages for abatement and cleanup contracts and subcontracts awarded with BRLF funds.
14. **SUBGRANT RECIPIENT** shall comply with Federal cross-cutting requirements that include, but are not limited to, MBE/WBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.
15. **SUBGRANT RECIPIENT** may delegate project management to SMDC.

## V. SUBGRANT TERMS AND CONDITIONS

1. **Subgrant Period.** The period of the Subgrant Agreement shall be from **September 2, 2019** until **December 1, 2020**.
2. **Subgrant Amount.** Subject to the terms and conditions of this Agreement, SMDC agrees to provide BRLF funds to the SUBGRANT RECIPIENT up to the amount of **One Hundred Thousand Dollars and No/100 cents (\$100,000.00)**.
3. **Disbursement.** BRLF funds shall be payable, by draw requests, to the SUBGRANT RECIPIENT upon receipt by SMDC of the invoices for project work performed. Documentation of all funds expended by Broadwater County Hospital District must be provided to SMDC. Broadwater County Hospital District is responsible for the 20% match of BRLF funds and must submit supporting documentation with each draw request to verify the 20% match for the amount of the current draw request. SMDC shall retain 10% of total requested funding until receipt of verification (final report) that the project has been completed as required by federal, state and local regulations. All invoices for payment shall include: Hourly and/or daily rates, type of equipment used and total number of days used listed on receipts for equipment and/or services. Itemized receipts must support claims for all reimbursements and copies must be provided for payment. Any tools or equipment purchased for the project where reimbursement is solicited will become the sole property of SMDC at the completion of the project. Any tools or equipment not returned to SMDC within 30 days of completion will be billed back to the contractor for payment.

4. **Sale of Property.** In the event the SUBGRANT RECIPIENT liquidates the Property funded under this agreement, the SUBGRANT RECIPIENT agrees to reimburse SMDC the lesser of sales price (less applicable closing expenses) or 100% of the amount funded under this Subgrant Agreement. This stipulation shall remain in effect for five (5) years after closeout as identified by SMDC.

## VI. COVENANTS OF SUBGRANT RECIPIENT

1. **Performance.** All project work performed pursuant to this Agreement and with BRLF funds shall be performed by a qualified, competitively selected contractor consistent with good practices and industry standards.
2. **Contracts.** SUBGRANT RECIPIENT shall provide SMDC with copies of all bids and contracts for all work required for hazardous substances contaminant abatement and petroleum contaminant cleanup. SUBGRANT RECIPIENT agrees to comply with all local, state and federal bidding and contracting requirements.
3. **Permits, Licenses, Inspections, Compliance.** SUBGRANT RECIPIENT shall be responsible for obtaining all permits, licenses, approvals, certifications and inspections required by Federal, state or local law and to maintain such permits, licenses, approvals, certifications and inspections in current status during the term of this Agreement. SUBGRANT RECIPIENT shall also be responsible for posting, reporting, and compliance regarding **Davis-Bacon Wage Laws**.
4. **Site Access.** The SUBGRANT RECIPIENT agrees to provide SMDC access to the Property from date of execution of this Subgrant Agreement to completion of all cleanup actions.
5. **Project Completion.** The SUBGRANT RECIPIENT agrees to begin the project within 30 days of this Subgrant Agreement and will complete all work in a timely manner.
6. **Indemnification.** Throughout the term of this Agreement, the SUBGRANT RECIPIENT shall require that all project contractors agree to protect, indemnify, defend and hold harmless, SMDC, its officers, administrators, agents, employees, local partners and all other persons or legal entities to whom the SUBGRANT RECIPIENT may be liable from, for or against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses for bodily injury, including death, personal injury and property damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the SUBGRANT RECIPIENT as provided herein and caused in whole or in part by any act, error, or omission of the SUBGRANT RECIPIENT, its agents, servants, employees or assigns.
7. **Waivers.** Any forbearance by SMDC with respect to any of the terms and conditions of this Agreement and associated subgrant documents shall in no way constitute a waiver of any of SMDC's rights or privileges granted hereunder.
8. **Marketing.** SUBGRANT RECIPIENT understands that SMDC and EPA may use the Project and results for marketing or promotional purposes.

## VII. EVENTS OF DEFAULT

1. **SUBGRANT RECIPIENT** shall be deemed to be in default under this Subgrant Agreement upon the occurrence of one or more of the following events:
  - A. **Conveyance/Assignment.** The SUBGRANT RECIPIENT assigns this Agreement or any BRLF funds advanced hereunder or any interest herein to a third party, or, if the Property or any interest therein is conveyed, assigned or otherwise transferred without the prior written consent of SMDC;
  - B. **False Warranty.** Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement or the BRLF documents shall prove to be false in any material respect;
  - C. **Failure to Perform.** The SUBGRANT RECIPIENT defaults by failing to perform a term or condition of the Agreement, and fails to correct the default within a period of time specified in a written default notice sent by certified mail from SMDC to the SUBGRANT RECIPIENT. SMDC may at its discretion extend the time period for correction of the default;

In event of default or if the SUBGRANT RECIPIENT does not complete the cleanup, SMDC will access the site, ensure that the site is secure and poses no immediate threat to human health and the environment, and notify EPA and the QEP. In this event, SMDC may: (1) terminate the Subgrant Agreement; and (b) institute an action to recover damages against the SUBGRANT RECIPIENT to the full extent of the law. The SUBGRANT RECIPIENT hereby expressly waives any presentment, demand, protest or notice of any kind.

## VIII. MISCELLANEOUS

1. **Assignment.** The SUBGRANT RECIPIENT shall not assign or attempt to assign directly or indirectly any of its rights under this Agreement, or under any instrument referred to herein, without the prior written consent of SMDC. The SUBGRANT RECIPIENT shall not assign all or any portion of the Property made the subject of this Agreement without the prior written consent of SMDC.
2. **Parties to Contract.** The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Agreement is not intended to create or vest any rights in any third party or to create any third party beneficiaries.
3. **Amendments.** All amendments to this Agreement shall be in writing and signed by both parties hereto, and may not be supplemented or amended through the introduction of parol evidence.
4. **Performance.** It is expressly understood that a failure or delay on the part of the SUBGRANT RECIPIENT in the performance, in whole or in part, or any of the terms of this Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party, the failure or delay shall not constitute a breach or default under this Agreement however, the SUBGRANT RECIPIENT shall use

its best effort to insure that the Project is completed in a reasonable time without unnecessary delay.

5. **Failure of Parties.** No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder, and so custom of practice of the parties at variance with the terms hereof shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof.
6. **Representatives.** All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail, on the day mailed to the parties as follows:

TO GRANT RECIPIENT:        Snowy Mountain Development Corporation  
   613 NE Main Street  
   Lewistown, MT 59457

TO SUBGRANT RECIPIENT: Broadwater County Hospital District, Broadwater County, Montana  
   Attn: Hugh van Swearingen  
   P.O. Box 504  
   Townsend, MT 59644

Or, to such other address as a party may subsequently specify in writing to the other party.

7. This Agreement and all covenants, agreements, representations and warranties made herein shall survive the execution of this Agreement and shall continue in full force and effect until the Project is completed and documentation of all funds expended by Broadwater County Hospital District has been received by SMDC.
8. If any provision or item of this Agreement is held invalid, such invalidity shall not affect other provisions or items of this Agreement that can be given effect without the invalid provisions or items, and to this end, the provisions of this Agreement are hereby declared severable.
9. Except for the separate loan document plus any exhibits, attachments, or other documents as may be affixed hereto, made a part hereof, and properly identified herewith, this Agreement constitutes the entire contract between the parties, and shall not be otherwise affected by any other purported undertaking, whether written or oral.
10. The SUBGRANT RECIPIENT understands and agrees that any use of the Property or any activity thereon which is inconsistent with the foregoing provisions is expressly prohibited.
11. Except for applicable provisions of federal law and regulations, this Subgrant Agreement or any action brought under this Agreement shall be governed by and constructed in accordance with the laws of the State of Montana.

**IN WITNESS HEREOF**, the undersigned representative of the SUBGRANT RECIPIENT and of SMDC certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document, as of the day and year first written above.

**SUBGRANT RECIPIENT:**

Broadwater County Hospital District

By: \_\_\_\_\_  
Hugh van Swearingen  
Broadwater County Hospital District Chair  
Broadwater County, Montana

Date: \_\_\_\_\_

**BRLF GRANT RECIPIENT:**

Snowy Mountain Development Corporation

By: \_\_\_\_\_  
Robert M. Giese, Interim Executive Director  
Snowy Mountain Development Corporation  
Lewistown, Montana

Date: \_\_\_\_\_

**EXHIBIT I**

**Project:** Hazardous substances abatement, petroleum contaminant cleanup and demolition of the Property known as the "Townsend Star Building (Grover's Exxon)" situated in Broadwater County, Montana, and owned by Broadwater County Hospital District as described below.

**Legal Description:**

Lot B: TOWNSEND ORIGINAL TOWNSITE, S31, T07 N, R02 E, BLOCK 23, Lot B, AMENDED PLAT 121B; 0.185 Acres.

<b>Address</b>	415 Broadway St. Lot B, Townsend, MT 59644
<b>Latitude/Longitude</b>	46.320987° / -111.516681°
<b>Building Description</b>	Lot B: Single-Story Cinder Block building connected to the building on
	Lot C.