

GRANT AGREEMENT

THIS GRANT AGREEMENT (this "Agreement") is entered into as of this ____ day of _____, 200__, by and between **DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT**, a principal department of the State of Maryland (the "Department"), and **P & L INVESTMENTS III, LLC**, a District of Columbia limited liability company (the "Recipient").

RECITALS

1. Pursuant to the provisions of the Maryland Economic Assistance Authority and Fund, codified as Sections 5-1401 through 5-1411 of Article 83A of the Annotated Code of Maryland (the "Act"), the Department has determined to make a grant to the Recipient in the amount of \$250,000 or 25% of eligible expenses, pursuant to the terms of this Agreement (the "Grant").

2. The Grant proceeds will be used to reimburse the Recipient for eligible remediation costs under the RAP or Interim Plan (both defined below) (for the property located at 11931 Jericho Road, Kingsville, Baltimore County, Maryland (the "Property"). Such costs shall hereinafter be referred to as the "Remediation".

3. The Recipient plans to enter the Property into the Voluntary Cleanup Program under Sections 7-501 through 7-516 of the Environmental Article of the Annotated Code of Maryland (the "VCP").

4. If the Property is accepted into the VCP, the Recipient will either submit to the Maryland Department of the Environment ("MDE") a Response Action Plan ("RAP") for the Property or an interim removal action work plan for the Property (the "Interim Plan").

NOW, THEREFORE, in consideration of the foregoing recitals and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

DEFINITIONS

All accounting terms not specifically defined herein shall have the meanings determined by generally accepted accounting principles, consistently applied. All terms previously defined in this Agreement are incorporated herein by reference. Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement:

“Application” means the Application from the Recipient to the Department, dated July 30, 2006, together with any amendments thereto.

“Assessment Grant Agreement” means the grant agreement between the Recipient and the Department executed in connection with the funding of the assessments for the Property to enter it into the VCP.

“Completion Date” means _____.

“Default” means any default under Article V of this Agreement.

“Governmental Authority” means the United States, the State, or any of their political subdivisions, agencies, departments, commissions, boards, bureaus or instrumentalities, including any local authority having jurisdiction over any aspect of the Project.

“Laws” means federal, state and local laws, statutes, rules, ordinances, regulations, codes, licenses, authorizations, decisions, injunctions, interpretations, orders or decrees of any court or Governmental Authority having jurisdiction as may be in effect from time to time.

“State” means the State of Maryland.

“Taxes” means all taxes, water rents, sewer rents, assessments, utility charges (whether public or private), and other governmental or municipal or public dues, charges, and levies.

ARTICLE II

TERMS OF THE GRANT AND DISBURSEMENTS

2.01. The Grant. Subject to the terms and conditions of this Agreement and the Act, the Department agrees to provide the Grant to the Recipient.

2.02. Disbursements.

(a) In General. Subject to the Recipient's continued compliance with all of the terms and conditions of this Agreement, the continued satisfaction of all conditions precedent to disbursing Grant proceeds, and the continued non-existence of a Default or any event, circumstance, act or omission which with the giving of notice, the passage of time, or both, would constitute a Default, the Department shall disburse the sums requested by the Recipient in a completed Request for Disbursement, the form of which is attached hereto as Exhibit A.

(b) Amount of Disbursements. The sum of all disbursements shall not exceed the lesser of the amount of the Grant or 25% of the costs of the Remediation.

(c) Disbursements to the Recipient. Disbursements shall be made directly from the Department to the Recipient pursuant to this Agreement by check. The Department shall only disburse Grant proceeds upon presentation by the Recipient of invoices or bills for the costs of the Remediation.

(d) Conditions to Disbursements. The obligation of the Department to make any disbursements of the Grant proceeds, including the first through the final disbursement for the Remediation costs, is subject to the satisfaction of the following conditions as of the date the disbursement is made:

(i) Receipt of Request for Disbursement. The Department shall have received and approved a completed Request for Disbursement, together with all attachments.

(ii) Representation True. No representation or warranty of the Recipient contained in this Agreement shall be or have become materially incorrect or inaccurate.

(iii) No Defaults. There shall be no breach, default or event of default under the terms of this Agreement, or any Default hereunder, and no event, circumstance, act, or omission shall exist which with the giving of notice, the passage of time, or both, would constitute a Default under the terms of this Agreement.

(iv) Solvency Certification. If requested by the Department, the Recipient shall deliver to the Department satisfactory evidence that no (i) petition in bankruptcy, voluntary or otherwise, (ii) assignment for the benefit of creditors, (iii) petition seeking reorganization or arrangement under bankruptcy laws of the United States or of any state, or (iv) other action brought under the aforesaid bankruptcy laws, is pending against the Recipient.

(v) Closing Checklist. The Department's receipt and approval of all of the items set forth in Articles I through III on the Pre-Closing and Closing Checklist attached hereto as Exhibit B.

(vi) VCP and Inculpable Personal Letters. The Department's receipt of a copy of the letter from MDE stating that the Property has been accepted into the VCP and a copy of a letter stating that the Recipient is an "inculpable person" as that term is defined in the VCP.

(e) The Recipient's right to receive Grant funds shall terminate 60 days after the Completion Date.

(f) Availability of Funds. Disbursements of Grant funds are subject to the continuing availability of funds for such purpose, and compliance with all applicable Laws.

(g) Upon disbursement of the Grant proceeds, the Recipient shall be deemed to have issued each of the representations and warranties contained in Section 4.01 of this Agreement.

ARTICLE III

RESERVED

ARTICLE IV
REPRESENTATIONS, WARRANTIES
AND COVENANTS OF THE GRANTOR

4.01. Representations and Warranties. The Recipient represents and warrants as follows:

(a) Due Organization. That the Recipient: (i) Is a limited liability company duly organized and validly existing under the laws of the State of Delaware; (ii) Is in good standing and qualified to do business in the State of Maryland; (iii) Has the power to own its property and to carry on its business as now being conducted; (iv) Is duly qualified to do business and is in good standing in the State and in each jurisdiction in which the character of properties owned by it or the transaction of its business makes such qualification necessary; and (v) Has delivered a true and complete copy of its articles of organization and operating agreement, together with all amendments, to the Department.

(b) Due Authorization. The Recipient has the full power and authority to enter into this Agreement, to accept the Grant proceeds as contemplated by this Agreement, and to perform and comply with the terms, conditions, and agreements set forth in this Agreement, all of which has been duly authorized by all proper and necessary membership action of the Recipient. No consent or approval of any other person or public authority or regulatory body is required as a condition to the validity of this Agreement, or, if required, the same has been obtained.

(c) Validity of Agreement. This Agreement has been properly executed by the Recipient and: (i) Will not violate any provision of law, any order of any court or agency of government, or any provision of the Recipient's articles of organization or operating agreement; (ii) Will not violate any provision, or result in a breach, of any existing contract or agreement binding on the Recipient; or (iii) Constitutes the valid and legally binding obligation of the Recipient, and is fully enforceable against the Recipient in accordance with its terms.

(d) No Litigation. There is no controversy or litigation of any nature now pending or, to the best of the Recipient's knowledge, threatened in any court or before any governmental agency which: (i) Questions the validity or enforceability of

this Agreement, or any action taken, or to be taken, under it; (ii) Is likely to have a material adverse effect on the Recipient or on the Recipient's ability to perform any of its obligations under this Agreement; or (iii) Affects the Property.

(e) Voluntary Cleanup Program. The Recipient intends to enter the Property into the VCP.

(f) No Defaults. There is no Default on the part of the Recipient under this Agreement, and no event has occurred or is continuing which, with notice, or the passage of time, or both, would constitute a Default under this Agreement.

(g) Compliance With Laws. The Recipient has complied with all Laws.

(h) State Drug Policy. The Recipient is in compliance with the State's policy concerning drug and alcohol free workplaces, as set forth in COMAR 01.01.1989.18 and 21.11.08.

(i) Application. All information contained in any financial statement, the Application, schedule, report, certificate, opinion, or any other document given to the Department was true and complete in all material respects as of the date of the information was given to the Department. The Recipient is aware of no event which would require any amendment to any of the above in order to make the information true and complete in all material respects and not misleading in any material respect as of the date of this Agreement, and the Recipient is aware of no event or other fact which should have been, and has not been, reported to the Department as material information.

(j) Taxes. All Taxes imposed upon the Recipient and its properties, operations, and income have been paid and discharged prior to the date when any interest or penalty would accrue for the nonpayment thereof, except for those Taxes being contested in good faith and by appropriate proceedings by the Recipient.

4.02. Recipient's Covenants. The Recipient covenants as follows:

(a) Use of Grant Proceeds. The Recipient shall use the Grant proceeds solely to pay a portion of the costs of the Remediation.

(b) Payment of Environmental Remediation Company. The Recipient will promptly pay the company that performs the Remediation all amounts justly due it.

(c) State Drug Policy. The Recipient shall comply with the State's policy concerning drug and alcohol free workplaces, as set forth in COMAR 01.01.1989.18 and 21.11.08, for the term of this Agreement.

(d) Books and Records. The Recipient shall keep and maintain any books, records, and other documents that may be required by the Department for grants under the Act, and as may be reasonably necessary to reflect and disclose fully the amount and sources of all funds required to complete the Remediation and the amount and disposition of all funds received by the Recipient in connection with the Remediation. All books, records and other documents shall be maintained at the offices of Recipient for inspection, copying, audit and examination at all reasonable times by any duly authorized representative of the Department. All books, records and other documents shall be maintained until the first to occur of (i) three years after completion of the Remediation or (ii) the completion of an audit of the Grant by the State.

(e) Taxes. The Recipient shall promptly pay in full and discharge all Taxes imposed upon the Recipient and its properties, operations, and income prior to the date when any interest or penalty would accrue for the nonpayment thereof, except for those Taxes being contested in good faith and by appropriate proceedings by the Recipient.

(f) Press Releases. Without the prior consent of the Department, the Recipient shall not issue any press releases in connection with the Grant, the State, or the Department.

(g) Further Assurances. At any time, and from time to time, upon request by the Department, the Recipient, at its sole expense, will make, execute, and deliver any instrument or document which may, in the opinion of the Department, be necessary in order to effectuate or complete the obligations of the Recipient under this Agreement.

(h) Indemnification. The Recipient releases the State and the Department from, agrees that the State and the Department shall not have any liability for, and agrees to protect, indemnify and save harmless the State and the Department from and against, any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature incurred by, or asserted or imposed against, the State and the Department, as a result of or in connection with the Remediation, the Property, or the Grant. All money expended by the State or the Department as a result of such liabilities, suits, actions, claims, demands, losses, expenses or costs, together with interest at the rate of 12% per annum from the date of such payment, shall

constitute an indebtedness of the Recipient and shall be immediately and without notice due and payable by the Recipient to the State and the Department. This Section 3.02(h) shall survive termination of this Agreement and repayment of Grant in full.

(i) Compliance With Laws. The Recipient will comply with all Laws.

(j) Contractor's Non-Discrimination/ Minority Enterprises.

(i) The Recipient covenants that it will not discriminate on the basis of race, color, sex, religion, or national or ethnic origin in its hiring of contractors to carry out any portion of Remediation. The Recipient further covenants that it shall prohibit its contractors from engaging in such discrimination in the hiring of subcontractors to carry out any portion of the Remediation.

(ii) The Recipient agrees to support the State's interest in expanding procurement opportunities for contractors and vendors who are minority business enterprises ("MBE"), as that term is defined in § 14-301 of the State Finance and Procurement Article as it relates to the Remediation. The Recipient will designate an individual to identify procurement opportunities for the Remediation and to work cooperatively with the Department's Equal Opportunity Office to identify MBEs that have the capacity to provide goods and services for the Remediation. (Contact the Equal Opportunity office at (410) 767-6469, 217 East Redwood Street, 11th Floor, Baltimore, MD 21202.) The Recipient shall submit a list, in the form attached as Exhibit C to this Agreement, updated at least annually, of the minority businesses from which goods and services were procured, and the nature and dollar amount of goods or services.

(k) Good Standing. The Recipient shall maintain its existence as a Maryland limited liability company and its good standing and qualification to do business in the State.

(l) Notification of Certain Events. The Recipient shall provide the Department written notice of the possible occurrence of any of the following events, at least 30 days prior to the anticipated occurrence of the event: (i) The sale or transfer all or substantially all of the Recipient's business assets, (ii) The commencement of any proceeding to dissolve or liquidate the Recipient; (iii) A change in the form of business entity through which the Recipient presently conducts its business; (iv) A merger or consolidation involving the Recipient; (v) Dissolution, by operation of law, or in any other manner, voluntarily or otherwise, of the Recipient; or (vi) The sale, assignment, or transfer of any direct or indirect interest in the Recipient.

(m) RAP or Interim Plan. No later than 30 days after the Recipient receives MDE's approval of the Interim Plan or RAP, the Recipient shall provide the Department a copy of the MDE approved Interim Plan or RAP.

(n) No Further Requirements Determination. If MDE approves the Interim Plan, no later than 60 days after the Completion Date, the Recipient shall submit to the Department a copy of MDE's No Further Determination for the Property.

(o) Certification of Completion. If MDE approves a RAP for the Property, no later than 60 day after the Completion Date, the Recipient shall submit to the Department a copy of MDE's Certificate of Completion for the Property.

(p) VCP. The Property will be entered into the VCP no later than one year after the disbursement of the grant proceeds under the Assessment Grant Agreement.

(q) Remediation. The Recipient shall complete the Remediation no later than the Completion Date.

ARTICLE V **DEFAULT AND REMEDIES**

5.01. Defaults. A Default shall have occurred if:

(a) The Recipient fails to pay the amount of the Grant as provided in Section 3.01 above or any other amount owed by the Recipient to the Department under the terms of this Agreement; or

(b) Any Grant proceeds are used for any purpose other than as authorized in this Agreement; or

(c) The Recipient breaches any covenant, agreement, provision, representation or warranty made in this Agreement; or

(d) Any statement or representation made in any certificate, report or opinion (including legal opinions), financial statement or other instrument furnished in connection with this Agreement (including a Request for Disbursement) proves to have been incorrect in any material respect when made; or

(e) The Recipient fails to comply with any requirement of any Governmental Authority within 30 days after written notice of the requirement is made; or if any proceeding is commenced or action taken to enforce any remedy for a violation of any requirement of a Governmental Authority;

(f) Any court of competent jurisdiction makes a final order (i) adjudicating the Recipient a bankrupt, (ii) appointing a trustee or receiver over a substantial part of the property of the Recipient, (iii) approving a petition for, or affecting an arrangement in, bankruptcy, a reorganization pursuant to federal bankruptcy law, or any other judicial modification or alterations of the rights of the Department or of other creditors of the Recipient, (iv) assuming custody or sequestering any substantial part of the property of the Recipient, or (v) attaching or garnishing any substantial part of the property of the Recipient; or if the Recipient (A) files such petition, or (B) takes or consents to any other actions seeking any such judicial order, or (C) makes an assignment for the benefit of creditors, or (D) fails to pay debts generally as they become due, or (E) makes an admission in writing of inability to pay debts generally as they become due; or

(g) There is a default under the Assessment Grant Agreement.

5.02. Remedies.

(a) Upon the occurrence of any Default, the Department may:

(i) Require immediate prepayment of the entire amount of the Grant;
and

(ii) At any time or from time to time proceed to protect and enforce all rights and remedies available to the Department under this Agreement by suit or by any other appropriate proceedings, whether for specific performance of any covenant or agreement contained in the Agreement, or damages, or other relief, or proceed to take any action authorized or permitted under applicable law or regulations; and

(iii) Suspend or terminate the Recipient's authority to receive any undisbursed Grant proceeds at any time by notice to the Grant. If termination occurs, the Recipient's authority to receive Grant proceeds shall terminate as of the date of the notice of termination and the Recipient shall have no right, title or interest in or to any remaining Grant proceeds.

(b) All remedies provided for in this Agreement are cumulative and shall be in addition to any and all other rights and remedies available to the Department at law or in equity. The exercise of any right or remedy by the Department shall not in any way constitute a cure or waiver of any Default by the Recipient, nor invalidate any act done pursuant to any notice of Default, nor prejudice the Department in the exercise of those rights.

(c) The failure of the Department to insist upon performance of any term of this Agreement shall not be deemed to be a waiver of any term of this Agreement. No act of the Department shall be construed as an election to proceed under any one provision in this Agreement to the exclusion of any other provision.

(d) If the Department suspends or terminates this Agreement, the rights and remedies available to the Department shall survive such suspension or termination.

ARTICLE VI
MISCELLANEOUS

6.01. Notices.

(a) All amendments, notices, requests, objections, waivers, rejections, agreements, approvals, disclosures and consents of any kind made pursuant to this Agreement shall be in writing.

(b) Any such communication shall be deemed effective for all purposes as of the date the communication is (1) mailed, postage prepaid, by registered or certified mail, return receipt requested, to be delivered only to the office of the addressee, or (2) sent by over-night courier to be delivered only to the office of the addressee, addressed as follows:

(i) Communications to the Department shall be mailed to:

Department of Business and Economic Development
Division of Financing Programs
217 East Redwood Street, 22nd Floor
Baltimore, Maryland 21202
Attention: Finance Program Accounting and Administration

With a copy to the Counsel to the Department, on the 11th Floor at the same address.

(ii) Communications to the Recipient shall be mailed to:

Gary J. Silversmith
2600 Virginia Avenue Suite 606
Washington, DC 20037

(c) The Recipient and the Department may each change their respective addresses specified in (b) above by sending written notice to the other party.

6.02. Assignment. No right, benefit, or advantage inuring to the Recipient under this Agreement and no burden imposed on the Recipient under this Agreement may be assigned without the prior written consent of the Department.

6.03. Successors Bound. This Agreement shall inure to the benefit of, and shall be binding upon, each of the parties hereto and their respective successors and permitted assigns.

6.04. Severability. The invalidity of any article, section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, subsections, clauses or provisions hereof.

6.05. Entire Agreement. This Agreement constitutes the entire agreement between the Recipient and the Department and supersedes all prior oral and written agreements, representations, and negotiations between the parties hereto with respect to the Grant.

6.06. Amendment of Agreement. This Agreement, or any part hereof, may be amended from time to time hereafter only in writing executed by the Department and the Recipient.

6.07. Headings; Section References. The headings of each Section in this Agreement are for convenience only and do not constitute a part of this Agreement. All references in this Agreement to particular sections refer to sections of this Agreement, unless otherwise noted.

6.08. Disclaimer of Relationships. The Recipient acknowledges that the obligation of the Department is limited to making the Grant as set forth in this Agreement. Nothing in this Agreement, nor any act of either the Department or the Recipient, shall be deemed by either of them, or by third persons, to create any

relationship of third-party beneficiary, principal and agent, limited or general partnership, or joint venture, or any other relationship whatsoever between the Recipient and the Department.

6.09. Governing Law. This Agreement is subject to, and shall be construed in accordance with, the laws of the State.

6.10. Term of Agreement. Except as otherwise provided in this Agreement, unless sooner terminated by the mutual consent of the Recipient and the Department, this Agreement shall continue and remain in full force and effect until the earlier to occur of the date (1) the Grant is repaid in full to the satisfaction of the Department (2) three years following the disbursement of the Grant proceeds.

6.11. WAIVER OF JURY TRIAL. THE RECIPIENT HEREBY VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER AND IN CONNECTION WITH THE GRANT OR THIS AGREEMENT.

[SIGNATURES APPEAR ON THE NEXT PAGE.]

IN WITNESS WHEREOF, the Recipient and the Department have caused this Agreement to be executed, sealed and delivered as of the day and year first above written.

WITNESS: **DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT**

Name: _____ By: _____(SEAL)
Title: _____ David W. Edgerley
Secretary

WITNESS: **P & L INVESTMENTS III, LLC**

Name: _____ By: _____(SEAL)
Title: _____ Gary J. Silversmith
Operating Manager

STATE OF MARYLAND, CITY/COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this _____ day of _____, 200____, before me, a Notary Public of the State of Maryland, in and for the State and City/County aforesaid, personally appeared David W. Edgerley, who acknowledged himself to be the Secretary of Business and Economic Development of the State of Maryland, a principal department of the State of Maryland, known or satisfactorily proven to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the foregoing Agreement on behalf of the **DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT** for the purposes therein contained as the duly authorized Secretary of Business and Economic Development of the State of Maryland.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission expires: _____

STATE OF _____, CITY/COUNTY OF _____, TO WIT:

I HEREBY CERTIFY that on this ____ day of _____, 200____, before me, a Notary Public in and for the State of _____, personally appeared Gary J. Silversmith, who acknowledged himself to be the Operating Manager of P & L Investments III, LLC, known or satisfactorily proven to me to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the foregoing Agreement on behalf of **P & L INVESTMENTS III, LLC**, for the purposes therein contained as its duly authorized Operating Manager.

AS WITNESS my hand and Notarial Seal.

Notary Public

My Commission expires: _____

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EXHIBIT A

REQUEST FOR DISBURSEMENT

1. Project Name: P & L Investments III, LLC Remediation
2. Recipient: **P & L INVESTMENTS III, LLC**
3. Request No.: _____
4. Date: _____
- 5.

Description of Environmental Remediation	Actual Cost (& Contract # if applicable)	Amount Requested from Department in this Request

INSTRUCTIONS:

- (1) Copies of invoices or bills for the Remediation must be attached to this Request for Disbursement.
- (2) The Department will not honor a request that exceeds the lesser of the amount of the Grant or 25% of the Remediation costs.

CERTIFICATION:

P & L INVESTMENTS III, LLC hereby certifies that:

1. All conditions set forth in the Agreement to be satisfied prior to disbursement of the Grant funds have been met.

2. No Default exists under the Agreement.

3. The representations and warranties made by the Recipient in the Agreement remain true and correct as of the date of this disbursement request.

4. The sum of the amount of the Grant funds requested in this Request for Disbursement or any previous Request for Disbursement, does not exceed 25% of the Remediation costs.

WITNESS:

P & L INVESTMENTS III, LLC

Name: _____
Title: _____

By: _____(SEAL)
Gary J. Silversmith
Operating Manager

Date: _____

GRANT AGREEMENT

EXHIBIT B

PRE-CLOSING AND CLOSING CHECKLIST

EXHIBIT C

List of Minority Contractors, Subcontractors, and Vendors Used in Project.

<u>Name and Address of Minority Business Providing Goods or</u>	<u>MDOT MBE Certification # or Federal SBA</u>	<u>Nature of Goods or Services</u>	<u>Dollar Amount</u>
1.			
2.			
3.			
<u>Total Dollar Amount</u>			