

**FY2020 U.S. EPA Revolving Loan Fund Grant for
Washington County, Wisconsin**

Cooperative Agreement No. BF-00E02895-0

**Quarterly Report No. 3
3rd Quarter – Fiscal Year 2021
April 1, 2021 – June 30, 2021**

Submitted by:
Debora M. Sielski, Deputy Director
Washington County Planning & Parks Department

July 30, 2021

**FY2020 U.S. EPA Revolving Loan Fund Grant for
Washington County, Wisconsin
Cooperative Agreement BF-00E02895-0**

A. Project Title

FY2020 U.S. EPA Revolving Loan Fund Grant for Washington County, Wisconsin

B. Name of Grant Recipient

Washington County Planning & Parks Department
333 E. Washington Street, Suite 2300
West Bend, WI 53095-2003

C. Cooperative Agreement No.

No. BF-00E02895-0
FY2020 U.S. EPA Revolving Loan Fund Grant for Washington County, Wisconsin
Budget Period: 08/17/2020 – 09/30/2025
Project Period: 08/17/2020 - 09/30/2025
Grant Amount:
 \$800,000 – EPA Amount This Action
 \$160,000 – Recipient Contribution Match
 \$960,000 – Allowable Project Costs

D. Project Contact(s)

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**FY2020 U.S. EPA Revolving Loan Fund Grant for
Washington County, Wisconsin
Cooperative Agreement BF-00E02895-0**

**Quarterly Report No. 3
3rd Quarter – Fiscal Year 2021
April 1, 2021 through June 30, 2021**

1.0 PROGRAM INTRODUCTION

This report provides a summary of activities completed by Washington County, Wisconsin (the County) during the 3rd Quarter of Fiscal Year (FY) 2021 (April 1, 2021 through June 30, 2021) for implementation of the United States Environmental Protection Agency (U.S. EPA) Revolving Loan Fund Grant for Washington County, Wisconsin awarded by the U.S. EPA in 2020.

The Washington County Planning and Parks Department is responsible for administering the grant. Washington County will lead this Revolving Loan Fund coalition grant with seven (7) coalition members: City of Hartford, City of West Bend, Village of Germantown, Village of Jackson, Village of Kewaskum, Village of Richfield, and the Village of Slinger.

2.0 BUDGET OVERVIEW

The County's U.S. EPA Implementation Work Plan describes four (4) tasks that must be completed in order for the EPA to consider the RLF a success.

Task Number	Task Name
1	Establish the Revolving Loan Fund
2	Market the Revolving Loan Fund
3	Site Selection, Program Operations and Oversight
4	Cleanup Loans and Subgrants

The U.S. EPA awarded Washington County a Revolving Loan Fund (RLF) grant of \$800,000 in 2020. This grant is matched by a 20% non-federal cost share (\$160,000) from an approval allocation by the Washington County Board of Supervisors. The County's match of \$160,000 will be utilized for the cleanup loans and subgrants. The total budget is \$960,000 plus an in-kind contribution commitment of \$41,464.

There were no reallocation requests submitted to the U. S. EPA Project Officer during the reporting quarter.

Current Budget - 3rd Q FY2021 (4/1/2021 - 6/30/2021)

Task No.	Task Description	Approved Budget as of 4/1/2021	No Reallocation Requests this Quarter	Current U.S. EPA Approved Budget as of 6/30/2021
1	Establish the RLF	\$19,800.00	\$0.00	\$19,800.00
2	Marketing the RLF	\$44,000.00	\$0.00	\$44,000.00
3	Site Selection, Program Operations and Oversight	\$154,200.00	\$0.00	\$154,200.00
4	Cleanup Loans and Subgrants	\$742,000.00	\$0.00	\$742,000.00
	Total U.S. EPA Grant	\$960,000	\$0.00	\$960,000

3.0 MODIFICATIONS TO THE WORK PLAN

There were no modifications to the Work Plan during the 3rd Quarter of FY 2021, April 1, 2021 through June 30, 2021. Below are the current deliverables for the Implementation Work Plan.

Work Plan Modifications - 3rd Q FY2021 (4/1/2021 - 6/30/2021)

Cleanup Loans and Subgrants	# of Deliverables in Implementation Work Plan	Approved Deliverables as of 6/30/2021	# Modifications to Work Plan Deliverables this Quarter	Current # of Deliverables as of 6/30/2021
Cleanup Loans	3 @ \$220,500	3	0	3
Subgrants	1 @ \$70,000	1	0	1

4.0 STATUS OF PROGRAM ACTIVITIES

This section of the report describes the status of each task throughout the 3rd Quarter of FY 2021, April 1, 2021 through June 30, 2021 including a summary of projects and activities approved, completed or in progress. This report also provides an estimated degree of completion of each task, provides a list of deliverables associated with each task and a summary of scheduled activities to be performed during the 4th Quarter of FY 2021. These tasks will provide support in brownfield cleanup activities and assist in creating jobs, the cleanup of distressed areas, the elimination of blight and increase the tax base.

4.1 TASK 1 – ESTABLISH THE REVOLVING LOAN FUND

A. Task Description

This task includes the development of a service agreement between Washington County and EDWC and memorandums of agreement with coalition partners. In addition, the County and Economic Development Washington County (EDWC) will work with the Site Redevelopment Committee (SRC) to create a comprehensive program policies and procedures manual that will be specialized to brownfield site applications and used to review and approve loan and subgrant applications. The County will also complete a qualifications-based procurement process to hire a qualified environmental professional.

This task has a current budget of \$19,800.

B. New Activities or Projects Approved for Implementation by U.S. EPA During the Fiscal Quarter

None.

C. Activities In Progress or Completed Activities During the Fiscal Quarter

1st Quarter of FY2021

Throughout the 1st Quarter of FY2021, Washington County worked with EDWC to formalize a Service Agreement with the County. The Agreement was not finalized within Q1. The formalization of the Service Agreement is in progress and is expected to be completed within Quarter 2 FY2021.

2nd Quarter of FY2021

During the 2nd Quarter of FY2021, Washington County worked on finalizing the Service Agreement contract with EDWC as Loan Manager for the Revolving Loan Fund. Washington County has also been developing the Request for Qualifications to hire a Qualified Environmental Professional (QEP).

3rd Quarter of FY2021

During the 3rd Quarter of FY2021, The Project Manager met with EDWC to discuss and finalize the Request for Qualifications to hire a qualified environmental professional (see Attachment A). The RFQ was posted for bid by the Purchasing Department and sent to multiple Engineering/Environmental Companies on June 10th, 2021 to obtain a Qualified Environmental Professional.

D. Deliverables

Below is a list of the proposed deliverables for this Task.

3rd Quarter of FY2021

During the 3rd Quarter of FY2021, the Request for Qualifications was posted for bid.

Task 1 Progress – Establish the Revolving Loan Fund	
Activity	Deliverable
Formalize Service Agreement with County, SRP and EDWC	Agreement
Formalize Memorandum of Agreements (MOAs) with Coalition Members	MOAs
Develop EPA RLF Comprehensive Policies and Procedures Manual	SRP RLF Policies and Procedure Manual
Create Brownfield RLF Loan Application Documents	Application Forms/Loan Agreements templates including terms and conditions
Perform QBP and Contract QEP & Planning Consultant	Contract

E. Percent Complete and Scheduled Activities

This task is currently approximately 28% complete.

2nd Quarter of FY2021

The formalization of the Service Agreement between Washington County and EDWC is in progress and is expected to be completed within the 2nd Quarter of FY2021. The County will finalize the qualifications-based procurement request and begin the process to hire a qualified environmental professional during the 2nd Quarter of FY2021.

3rd Quarter of FY2021

The County will finalize the qualifications-based procurement request and begin the process to hire a qualified environmental professional during the 3rd Quarter of FY2021. The County will work with the Coalition Partners to formalized MOAs during the 3rd Quarter of FY2021.

4th Quarter of FY2021

During the 4th Quarter of FY2021, the County will hire a Qualified Environmental Professional to assist with the implementation of the Revolving Loan Fund Grant as well as other County Brownfield funding sources. As of July 30th, Stantec Consulting Services was awarded the Request for Qualifications to hire a qualified environmental professional. The County Project Manager will be working with Stantec during the 4th Quarter to negotiate an agreement for the work.

The County will work with the Coalition Partners to formalize MOAs throughout the 4th Quarter of FY2021.

4.2 TASK 2 – MARKET THE REVOLVING LOAN FUND

A. Task Description

Task 2 will focus on creating a Marketing Plan for the RLF Program. The focus of this Marketing Plan will target challenging brownfield sites where there may not be current market interest. Existing SRP outreach and marketing efforts will be used to promote the RLF Program including public meetings and marketing site specific RLF opportunities.

This task has a current budget of \$44,000.

B. New Activities or Projects Approved for Implementation by U.S. EPA During the Fiscal Quarter

None.

C. Activities In Progress or Completed Activities During the Fiscal Quarter

1st Quarter of FY2021

None.

2nd Quarter of FY2021

None.

3rd Quarter of FY2021

None.

D. Deliverables

Below is a list of the proposed deliverables for this Task.

Task 2 Progress – Market the Revolving Loan Fund	
Activity	Deliverable
Promote/market/provide updates on the RLF	Press releases, website updates, fact sheets, marketing materials, meeting summaries
Create Marketing Plan for SRP RLF	Marketing Plan
Link SRP RLF to EDWCs brownfield redevelopment website	Website update
Outreach and marketing efforts – public meetings, market site specific RLF opportunities	None

3rd Quarter of FY2021

There were no deliverables during the 3rd Quarter of FY2021.

E. Percent Complete and Scheduled Activities

This task is currently approximately 0% complete.

4th Quarter of FY2021

Once the Qualified Engineering Professional (QEP) is hired, the County will work with the QEP and EDWC to initiate the development of the Marketing Plan during the 4th Quarter of FY2021.

4.3 TASK 3 – SITE SELECTION, PROGRAM OPERATIONS AND OVERSIGHT

A. Task Description

This task includes the SRP RLF Committee reviewing and approving loans to eligible applicants based on cleanup project eligibility, as approved by the U.S. EPA, applicant credit worthiness, and demonstrated project economic, community and environmental benefits. The SRC will review and approve subgrants. Task 3 also includes Analysis of Brownfields Cleanup Alternatives (ABCAs) and Community Involvement Plans (CIPs) being prepared and a Decision Memorandum completed for each project. In addition, this task includes project oversight and grant administration.

This task has a current budget of \$154,200.

B. New Activities or Projects Approved for Implementation by U.S. EPA During the Fiscal Quarter

None.

C. Activities In Progress or Completed Activities During the Fiscal Quarter

1st Quarter of FY2021

None.

2nd Quarter of FY2021

On March 18, 2021, the County Project Manager attended the Brownfields Revolving Loan Fund Committee (BRLFC) meeting with the EDWC and provided an introduction to the Site Redevelopment Program, an overview of the US EPA RLF Grant and a description of the roles and responsibilities of the BRLFC.

3rd Quarter of FY2021

None.

D. Deliverables

Below is a list of the proposed deliverables for this Task.

3rd Quarter of FY2021

There were no deliverables during the 3rd Quarter of FY2021.

Task 3 Progress – Site Selection, Program Operations and Oversight	
Activity	Deliverable
Meeting with Loan/subgrant applicants	None
Review applications based on SRC RLF Policies & Procedures Manual, SRP Standards, anticipated cleanup project eligibility, applicant credit worthiness, and demonstrated project economic, community and environmental benefits.	None
Complete eligibility determinations for each project for the EPA review	Eligibility Determination
Develop ABCA and Community Relations Plan for EPA review	ABCA and Community Relations Plan for each site
Conduct required community involvement activities described in the approved CIP following project initiation	Press releases, letters, emails, meeting summaries
Notify Landowners and Communities of Cleanup Schedules and Project Progress	Press releases, letters, emails, meeting summaries
Conduct 30-day Public Comment Periods on Analysis of Brownfields Cleanup Alternatives (ABCAs)	Press releases, summary of public comment
Respond to Questions and Public Comment	Summary of public comments
Create Bilingual Outreach Materials	Bilingual materials
Create Technical Presentations, Exhibits, handouts for Meetings	Meeting presentations, exhibits, handouts
Develop Decision Memorandum for EPA review	Decision Memorandum for each site
Loan Underwriting	None
SRP RLF Committee- Loan Review, Structure Discussion, Approval	None
Negotiate Term Sheet, Development of Loan Documents, Closure of Loan	Loan Documents
SRC- Subgrant approval process, Development of Subgrant Documents	Subgrant Documents
Site Visits and Monitoring Project Related to State and Federal Requirements	Update Summary in Quarterly and Annual Report
Tracking loans and subgrants	Update Summary in Quarterly and Annual Report
Update ACRES	Property Profiles (online)
SRC Meetings	Meeting agendas and minutes
Grant Administration and Tracking Overall Progress, Program Income of SRP RLF Program	Update Summary in Quarterly and Annual Report
Attend National Brownfields Conferences	None

E. Percent Complete and Scheduled Activities

This task is currently approximately 0% complete.

4.4 TASK 4 – CLEANUP LOANS AND SUBGRANTS

A. Task Description

This task includes executing and disbursing loans and subgrants. Employing risk-based lending practices, the County Finance Department with assistance from the Loan Manager will carry out the managed disbursement of approved loans and subgrants to approved applicants for the site cleanup work being performed by the applicants. Activities under this task will be funded by federal grant award funds and the designated match dollars.

This task has a current budget of \$742,000.

B. New Activities or Projects Approved for Implementation by U.S. EPA During the Fiscal Quarter

None. There were no loans and/or subgrants during this reporting quarter.

C. Activities In Progress or Completed Activities During the Fiscal Quarter

1st Quarter of FY2021

None.

2nd Quarter of FY2021

None.

3rd Quarter of FY2021

None.

D. Deliverables

Below is a list of the proposed deliverables for this Task.

Task 4 Progress – Cleanup Loans and Subgrants	
Activity	Deliverable
Execute Loans and Subgrants	Estimate 3 loans averaging \$220,500 each
Execute Subgrants	Estimate 1 subgrants averaging \$70,000 each
Disbursement of Approved Loans and Subgrants	Summary in Quarterly Reports

3rd Quarter of FY2021

There were no deliverables during the 3rd Quarter of FY2021.

F. Percent Complete and Scheduled Activities

This task is currently approximately 0% complete.

5.0 SCHEDULE AND PROJECT MILESTONES

A list of major milestones achieved during the project to date are summarized below.

Task	Date	1st Quarter FY2021 - Activity or Milestone Description
	5/7/2020	County Project Manager send out press release announcing award of U.S. EPA FY2020 RLF grant
	9/22/2020	U.S. EPA awards Cooperative Agreement to Washington County
1	11/11/2020	Meeting with EDWC and County to discuss service agreement
1	11/12/2020	U.S. EPA RLF Kick off meeting
1	12/9/2020	U.S. EPA Transition Conference Call
1	12/9/2020	Conference call with EDWC and County to discuss service agreement

Task	Date	2nd Quarter FY2021 - Activity or Milestone Description
1	1/21/2021	US EPA Service Agreement contract review with EDWC and the County
1	1/29/2021	County Submits Quarterly Report to US EPA
1	2/4/2021	Review Service Agreement with the County and EDWC
1	2/16/2021	Executed Service Agreement with EDWC
3	3/18/2021	County attends Brownfields Revolving Loan Fund Committee meeting with the EDWC - Introduction and presentation of US EPA RLF Grant

Task	Date	3rd Quarter FY2021 - Activity or Milestone Description
1	4/29/2021	County submits Quarterly Report to US EPA
1	5/5/2021	Meeting with EDWC to discuss the Request for Qualifications
1	6/1/2021	Meeting with EDWC to discuss the Request for Qualifications
1	6/7/2021	Meeting with EDWC to finalize the Request for Qualifications
1	6/10/2021	Request for Qualifications posted for bid and sent to Engineering Firms

6.0 PROBLEMS ENCOUNTERED/ASSISTANCE NEEDED

None.

7.0 BUDGET INFORMATION

A. Summary of Grant Expenses by Category for the Reporting Period 4/1/2021-6/30/2021

A summary of grant expenses by category is provided below, including the approved project budget, amounts expended during the 3rd Quarter of FY2021 (April 1, 2021 through June 30, 2021), total amounts expended through June 30, 2021, and the budget remaining as of June 30, 2021.

3rd Q - FY2021 (April 1, 2021 – June 30, 2021)

Budget Categories	Approved Project Budget as of 4/1/2021	Previously Expended	Current Quarter Expenditures by Category	Cumulative Expenditures by Category	Balance Remaining by Category
Personal	\$ 33,300	\$ -	\$ -	\$ -	\$ 33,300
Travel	\$ 5,600	\$ -	\$ -	\$ -	\$ 5,600
Contractual	\$ 189,600	\$ -	\$ -	\$ -	\$ 189,600
Loans	\$ 661,500	\$ -	\$ -	\$ -	\$ 661,500
Subgrants	\$ 70,000	\$ -	\$ -	\$ -	\$ 70,000
SUBTOTALS	\$ 960,000	\$ -	\$ -	\$ -	\$ 960,000
EPA RLF Grant Subtotal	\$ 800,000	\$ -	\$ -	\$ -	\$ 800,000
Match Subtotal	\$ 160,000	\$ -	\$ -	\$ -	\$ 160,000
RLF PROJECT TOTAL	\$ 960,000	\$ -	\$ -	\$ -	\$ 960,000

B. Summary of Grant Expenses by Category for the Reporting Period 4/1/2021 – 6/30/2021.

A summary of grant expenses by task is provided below, including the approved project budget, amounts expended during the 3rd Quarter of FY2021 (April 1, 2021 through June 30, 2021), total amounts expended through June 30, 2021, and the budget remaining as of June 30, 2021.

3rd Q - FY2021 (April 1, 2021 – June 30, 2021)

Task No.	Task Description	Approved Budget as of 4/1/2021	Previously Expended	Current Quarter Expenditures by Task	Cumulative Expended (through 6/30/2021)	Budget Remaining as of 6/30/2021	Percent Budget Expended
1	Establish the RLF	\$ 19,800	\$ -	\$ -	\$ -	\$ 19,800	0%
2	Marketing the RLF	\$ 44,000	\$ -	\$ -	\$ -	\$ 44,000	0%
3	Site Selection, Program Operations and Oversight	\$ 54,200	\$ -	\$ -	\$ -	\$ 154,200	0%
4	Cleanup Loans and Subgrants	\$ 742,000	\$ -	\$ -	\$ -	\$ 742,000	0%
TOTAL		\$ 960,000	\$ -	\$ -	\$ -	\$ 960,000	0%

C. Grant Reimbursements

A summary of grant reimbursements through the U.S. EPA Automated Standard Application for Payment (ASAP) System is based on reimbursements requested by the County for invoices already paid. The summary table includes the amounts reimbursed by date, total reimbursed, and grant funds remaining.

1st Quarter of FY2021

There were no grant reimbursements for this reporting quarter.

2nd Quarter of FY2021

There were no grant reimbursements for this reporting quarter.

3rd Quarter of FY2021

There were no grant reimbursements for this reporting quarter.

D. Leveraged Activities

1st Quarter of FY2021

There were no leveraged activities for this reporting quarter.

2nd Quarter of FY2021

There were no leveraged activities for this reporting quarter.

3rd Quarter of FY2021

There were no leveraged activities for this reporting quarter.

An ongoing summary of leveraged activities for the U.S. EPA Revolving Loan Fund Grant will be included in the Washington County Site Redevelopment Program Summary of Leveraged Funding. This currently includes leveraged activities from the FY 2014 and FY2017 Community-Wide Coalition Assessment Grants for Hazardous Substance & Petroleum Brownfields and will highlight leveraged activities for this U.S. EPA Revolving Loan Fund Grant. Leveraged resources to date total over **\$67 million**.

E. In-Kind Contributions

Below is a summary of In-Kind contribution reported for the 3rd Quarter of FY2021.

FY2020 Brownfield RLF Grant In-Kind Contributions					
Name	Title	Budgeted In-Kind Contribution	Previous In-Kind Contribution	Total In-Kind Q3 FY2021	Total Cumulative In-Kind
Washington County In-Kind					
Deb Sielski	Deputy Director	\$ 15,446	\$ 7,366.97	\$ 4,973.42	\$ 12,340.39
Hannah Keckeisen	Planner	\$ -	\$ 3,048.59	\$ 529.40	\$ 3,577.98
Bill Kurer	Purchasing Manager	\$ -	\$ -	\$ 471.44	\$ 471.44
Kathie Wild	Grants Administrator	\$ 4,222	\$ -	\$ -	\$ -
Mike Vander Sanden	GIS Coordinator	\$ 602	\$ -	\$ -	\$ -
Joe Steier	Land Use and Planning Analyst	\$ -	\$ -	\$ -	\$ -
Fay Fitts	Administrative Secretary	\$ 291	\$ -	\$ -	\$ -
Brad Stern	County Attorney	\$ 1,823	\$ -	\$ 171.00	\$ 171.00
Total County In-Kind		\$ 22,384	\$ 10,415.56	\$ 6,145.26	\$ 16,560.81
EDWC RLF Committee					
Christian Tscheschlok	Executive Director	\$ -	\$ 282.36	\$ -	\$ 282.36
Dan Anhalt	Senior Director	\$ -	\$ 776.49	\$ -	\$ 776.49
7 Core Committee Members		\$ 5,000	\$ -	\$ -	\$ -
City of Hartford					

Justin Drew	Director of Community Development	\$ 1,224	\$ -	\$ -	\$ -
City of West Bend					
Jay Shambeau	City Administrator	\$ 1,225	\$ -	\$ -	\$ -
Mark Piotrowicz	City Planner/Operations Manager	\$ 1,632	\$ -	\$ -	\$ -
Adam Gitter	Economic Development Manager	\$ 439	\$ -	\$ -	\$ -
Village of Germantown					
Steve Kreklow	Village Administrator	\$ 1,823	\$ -	\$ -	\$ -
Village of Jackson					
John Walther	Village Administrator	\$ 1,625	\$ -	\$ -	\$ -
Village of Kewaskum					
Matt Heiser	Village Administrator	\$ 881	\$ -	\$ -	\$ -
Village of Richfield					
Jim Healy	Village Administrator	\$ 995	\$ -	\$ -	\$ -
Village of Slinger					
Margaret Wilber	Village Administrator	\$ 1,248	\$ -	\$ -	\$ -
Jim Haggerty	DPW Dir/V. Engineer	\$ 324	\$ -	\$ -	\$ -
	Total Partner In-Kind	\$ 16,416	\$ 1,058.85	\$ -	\$ 1,058.85
	TOTAL IN-KIND	\$ 38,800	\$ 11,474.41	\$ 6,145.26	\$ 17,619.66

8.0 PERFORMANCE OUTPUTS AND OUTCOMES

This section summarizes performance outputs and outcomes for the County FY2020 Revolving Loan Fund Grant. Outputs and Outcomes include:

1st Quarter of FY2021

There were no outputs or outcomes completed for this reporting quarter.

2nd Quarter of FY2021

There were no outputs or outcomes completed for this reporting quarter.

3rd Quarter of FY2021

There were no outputs or outcomes completed for this reporting quarter.

9.0 ATTACHMENTS

- A. Request for Qualifications – Qualified Environmental Professional US EPA and County Funded Brownfield Services



FINANCE DEPARTMENT

Margaret M. Hamers, Finance Director

PURCHASING

Bill Kurer, Purchasing Manager

Roy Hartmann, Buyer

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**Request for Qualifications (RFQu)
Qualified Environmental Professional
US EPA and County Funded Brownfield Services
Washington County WI
RFQu #PP21-32
June 10, 2021**

Washington County is now using DemandStar for its quote, bid, proposal and RFQu solicitations. Firms may register at no charge with DemandStar through the Wisconsin Association for Public Procurement (WAPP) association agreement with DemandStar at: <https://www.demandstar.com/beta/wapp/registration>. To ensure notification of future solicitation opportunities with Washington County, firms must be registered and maintain your registration through DemandStar. For assistance in registering with DemandStar, please contact DemandStar at 866-273-1863 or via email to support@demandstar.com.

Sealed qualification responses are invited from qualified environmental professional (QEP) consulting firms to provide project management, environmental inventory, project reporting, and assessment implementation related to the United States Environmental Protection Agency (US EPA) brownfield grants and County brownfields assessment and revolving loan funds, including but not limited to:

1. **US EPA FY2020 Revolving Loan Fund Grant (EPA_RLF)**
2. **Washington County Brownfield Revolving Loan Fund (CO_RLF)**
3. **Washington County Brownfield Assessment Fund (CO_AF)**
4. **Potential US EPA FY2022 Brownfield Coalition Assessment Grant – if awarded. (EPA_AG)**

The RFQu packet for this request will be available starting **June 10, 2021** through the County's website at www.washcowisco.gov (from the home page, scroll right to the Bids and Proposals link) or you may access the RFQu packet through DemandStar at <https://network.demandstar.com/agencies/wisconsin/washington-county/procurement-opportunities/54aa69d8-692e-403e-8a39-7e157b7a50a9/>. Sealed qualification responses **must** be received in the Washington County Purchasing Office, Room 2049 of the Herbert J. Tennes Government Center located at 432 East Washington Street, West Bend WI 53095 **by 2:00 PM (CT) on or before July 14, 2021**.

The intent of this RFQu is to comply with local, state and federal qualifications based procurement requirements specified in 40 CFR 31.36. The County is seeking qualified firms to assist with implementation of brownfield assessment and revolving loan funds. The successful consultant will bring experience and insight to a partnership with the County to implement these grants and funding sources. Accepted firm will also be required to furnish an acceptable Certificate of Insurance upon award for this project.

Washington County reserves the right to waive any informalities or technicalities and to reject any and all responses or parts thereof deemed to be unsatisfactory or not in the County's best interest. Furthermore, Washington County reserves the right to cancel any contract for failure of the successful firm to comply with the terms, conditions and specifications of this request and/or contract. Washington County reserves the right to award this request to the responsible, responsive firm whose response is overall most advantageous to the County and complies with the specifications, service and can meet the requirements of this request.

Bill Kurer
Washington County
Purchasing Manager

Publish: June 10, 2021, June 17, 2021, June 24, 2021

General RFQu Information

1. Washington County requires a high level of service from any firm who is looking to do business with the County. Quality, service, past track record, and financial benefits to the County are all critical factors that Washington County considers when doing business and in continuing business with firms. This is especially important when it comes to the requirements of this request. Dissatisfaction of any sort may result in Washington County discontinuing the contract with a firm.
2. Washington County is a tax-exempt municipality under WI Stats 77.54(9a)(b)(m).
3. Successful firm shall provide a certificate of insurance upon award as per the requirements of Exhibit "A" attached. Proof of Insurance is required when award is made.
4. All qualification submissions shall be binding for one hundred eighty (180) calendar days following the qualifications opening date unless the firm(s), upon the request of the County, agree to an extension.
5. Firms may withdraw their qualifications submission at any time before the qualifications due date and time by written request for withdrawal to the Purchasing Manager and by presenting proper identification upon request. Faxed and emailed qualification submissions will be rejected. Late qualification submissions will not be accepted and will remain unopened and returned to sender.
6. Standard Terms and Conditions are included with this request and are hereby made a part of it.
7. Firms responding to this request must be able to perform all the items specified in this request. Partial responses to this request are not allowed.
8. If the firm receives an RFQu packet from any source or entity other than DemandStar, the firm is responsible to register themselves as a bidder through DemandStar as indicated above, retrieve the online RFQu documents, (if you don't retrieve them from the DemandStar website, you won't receive notices of future addenda that may be issued for this request) and check the DemandStar website to retrieve any addenda issued for this request prior to submitting your response to this request. Failure to do so in no way obligates the County to issue addendum or other information concerning this request to the firm.
9. No reimbursement will be made by the County for any cost incurred in preparing responses to this solicitation, or for cost incurred before a formal notice to proceed is issued if a contract is awarded.
10. All questions resulting in further clarification or modification to this RFQu document will be handled by written addenda. Questions shall be directed to the Purchasing Office via email to purchasing1@washcowisco.gov. Questions must be asked at least 5 business days prior to the qualifications due date. Questions received after this time may not be answered. Any changes as a result of issues raised will be made by written addenda and posted under this project listing on the DemandStar website (same website address where you obtained the RFQu document from). It is the firm's responsibility to check the DemandStar website for addenda prior to submitting your response to this request. Oral and other interpretations or clarifications will be without legal effect.
11. All materials submitted in conjunction with this request may be subject to public inspection pursuant to Wisconsin Public Records Law Wis. Stat 19.31-19.39. Information contained within the submitted materials that are alleged to be confidential or proprietary in nature, or that are alleged to be trade secrets as defined in Wis. Stat. 134.90(1)(c), shall be clearly marked as such. Submissions shall not contain a blanket confidentiality clause. Marking materials as confidential, proprietary, or as trade secrets does not guaranty that these materials will not be released pursuant to a lawful open records request. Washington County generally will not release information contained in a submission until a contract has been fully executed.
12. The selected provider shall indemnify, hold harmless and defend Washington County, its officers, agents, and employees from and against all claims, damages, losses, and expense, including attorneys' fees arising out of or resulting from the performance of the work under the contract.

13. It is mutually understood and agreed and it is the intent of the parties that an independent contractor relationship will be established under the terms and conditions of the agreement; that employees of the selected contractor are not nor shall be deemed employees of Washington County and that employees of Washington County are not nor shall be deemed to be employees of the selected contractor.
14. Each firm, by submitting a response, certifies that it is not a party to any collusive action with Washington County personnel and/or Consultants. Each firm also certifies that it is not a party to any collusive action with any other party submitting a response to this solicitation.
15. The County reserves the right to reject any or all qualification submissions or parts thereof, to waive any technicality in any qualification submission and accept any qualification submission deemed to be the most advantageous to the County.
16. This request and possible resulting contract shall be interpreted under the laws of the State of Wisconsin. Any disputes or claims that arise under this contract shall be litigated in the Circuit Court of Washington County, WI.
17. **NON-INTEREST OF COUNTY EMPLOYEES AND OFFICIALS: No representative on the evaluation committee, County official or employee shall have any financial interest, either direct or indirect, in the proposal or contract or shall exercise any undue influence in the awarding of the contract.**
18. Exhibits are provided as guiding documents only. The County reserves the right to modify, change or further negotiate any and all plans shown.

Project Information and Background

The County, through this RFQu is seeking a qualified environmental consulting firm to provide assistance in implementing three Brownfields funds with the possibility of a fourth (if awarded):

- 1. US EPA FY2020 Revolving Loan Fund Grant (EPA_RLF)**
- 2. Washington County Brownfield Revolving Loan Fund (CO_RLF)**
- 3. Washington County Brownfield Assessment Fund (CO_AF)**
- 4. Potential US EPA FY2022 Brownfield Coalition Assessment Grant – if awarded. (EPA_AG)**

In 2013, Washington County, in partnership with EDWC, formed a coalition to apply for a US EPA Brownfield Coalition Assessment Grant for Hazardous Substance and Petroleum Brownfields. In May 2014, Washington County was awarded the \$600,000 grant to complete a county-wide inventory and prioritization of sites that have redevelopment potential, and perform Phase I and Phase II Environmental Site Assessments (ESAs) on priority sites. The Site Redevelopment Program (SRP) has received additional funding:

- **US EPA FY2017 Brownfield Coalition Assessment Grant** - A \$600,000 FY2017 US EPA Brownfield Assessment Grant was awarded to the County to update the site inventory and site prioritization, perform Phase I ESA and Phase II ESAs on priority sites, complete remedial action plans and redevelopment plans for selected sites, and perform community outreach and education. This funding source has been closed.
- **US EPA FY2020 Revolving Loan Fund Grant (EPA_RLF)** - Washington County was awarded a \$960,000 US EPA FY2020 Revolving Loan Fund to sustain and support the program. The fund will provide low interest loans and grants to complete remediation and redevelopment activities.
- **Washington County Brownfield Revolving Loan Fund (CO_RLF)** - In March 2020, the Washington County Board of Supervisors approved \$1,000,000 to create a County Brownfield Revolving Loan Fund to finance brownfield cleanup activities that will support the creation of jobs, the cleanup of brownfield sites, the elimination of blight, and increase the tax base.
- **Washington County Brownfield Assessment Fund (CO_AF)** - In March 2020, the Washington County Board of Supervisors approved \$600,000 to establish a County Brownfield Environmental Assessment Fund to complete Phase I and Phase II Environmental Site Assessments, Remedial Action Plans, and Redevelopment Plans.
- **US EPA FY2022 Brownfield Coalition Assessment Grant (EPA AG if awarded)** – It is anticipated that the County will apply for a \$600,000 US EPA FY2022 Assessment Grant if available.

To date, with the two US EPA assessment grants, the SRP has been successful in supporting the redevelopment of 32 brownfield acres and the construction of 294 new housing units with a \$62 million investment in construction. More information on the successes of the Washington County Site Redevelopment Program can be found [here](#).

The Site Redevelopment Committee (SRC) was established to oversee implementation of the SRP. The SRC is a formal committee authorized by the County Board of Supervisors and subject to all public meetings, public records and other requirements. The committee is comprised of representatives from all of the coalition partners (cities of West Bend and Hartford and villages of Slinger, Germantown, Richfield, Kewaskum, and Jackson and Washington County), economic development organizations, County Board Supervisors and a commercial real estate professional.

Project Goal

The intent of this RFQu is to comply with local, state, and US EPA federal qualifications based procurement requirements specified in 40 CFR 31.36. Washington County is seeking qualified environmental firms to assist with implementation of US EPA and County brownfield funds.

Type of Contract and Contract Term

The County intends to award a contract to one full-service firm to serve as a partner in achieving the goals of implementing the services outlined in the following Scope of Services. A contract will be awarded to the firm to implement the below Scope of Services. The contract period will generally coincide with the FY2020 US EPA RLF grant as outlined in the Cooperative Agreement BF-00E02895 with a project period end date of 9/30/2025. The County will consider extending the contract with the awarded firm if the US EPA RLF grant is extended beyond this date, as allowed by the US EPA.

Scope of Services and Deliverables

This RFQu is to solicit for a qualified environmental consultant who is expected to provide a wide range of services to the County for various funding sources. See below Scope of Services and Deliverables for each funding source. The successful consultant will be a part of the SRP Project Management Team (PMT). The SRP PMT is comprised of County staff, EDWC staff, and QEP and planning consultants.

Although the below Scope of Services is outlined according to the four funding sources, it is the intent of the County and SRC that there is a seamless representation of Site Redevelopment Program projects. With that in mind, the selected firm will attend SRC and PMT quarterly meetings where projects funded from the various sources will be discussed. In addition, the selected firm will be responsible for the development of 2-3 fact sheets per year with the County SRP Project Manager, EDWC and QEP contributing having similar formatting of previous fact sheets. The selected firm should outline their methodology to separate invoicing appropriately for meeting attendance and fact sheet development.

1. US EPA FY2020 Revolving Loan Fund Grant (EPA_RLF)

Overview

Washington County was awarded a \$960,000 US EPA FY2020 Revolving Loan Fund to clean up brownfield properties for future use and redevelopment. Washington County in partnership with seven local government coalition members and Economic Development Washington County (EDWC) will work together to create and capitalize a Site Redevelopment Program Revolving Loan Fund to issue loans and subgrants to address and reduce the threat of hazardous substances, petroleum and other contaminants by remediating and rehabilitating contaminated properties. It is anticipated that there will be approximately three initial loans and one subgrant as part of the US EPA Revolving Loan Fund.

The County will act as the grant manager, responsible for all activities related to the technical and administrative operation of the US EPA RLF grant award. The County will use existing SRP partnerships, including its connection to EDWC to establish and implement the RLF Program. County responsibilities include but are not limited to:

- Serving as fiscal agent
- Assisting in development of the Policies and Procedures Manual and application documents
- Working with QEP & EDWC in creation of a marketing plan
- Grant management
- Staffing the SRC
- Reviewing documents prepared by QEP including eligibility determinations, ABCAs, CIPs and decision memorandums
- Measuring results
- Review and submit required grant reporting
- Loan portfolio reporting

With over eight years of experience managing successful revolving loan fund programs, Economic Development Washington County (EDWC) will serve as Loan Manager, using its existing RLF Committee and program structure as a foundation for the SRP's US EPA-funded RLF Program. As Loan Manager, EDWC will be responsible for the timely expenditure of RLF funds, and maintenance of all program income during and beyond the 5-year grant period. EDWC responsibilities include but are not limited to:

- Serving as Loan Manager
- Lead the development of the Policies and Procedures Manual and application documents
- Working with QEP & County in creation of a marketing plan
- RLF Program Marketing and Promotion
- Staffing SRP RLF Committee
- Loan Application Process
- Underwriting and development of negotiation term sheets and loan documents
- Loan review and structure Discussion (Approval by SRP RLF Committee)
- Loan closing process
- Economic and Fiscal Impact Analysis
- Loan servicing
- Loan defaults, forbearance and remedies
- Loan penalties, amendments, modifications and write-offs
- Disbursement of subgrants

The SRC will assist in achieving long-term outcomes by constructing the program's policies and procedures manual for loan terms and application approval guidelines that will be executed by the SRP Brownfield RLF Program Committee. The manual will also outline policies and procedures for subgrants. The SRC will also review and approve subgrants.

The QEP will be responsible for abiding by all of the requirements and related conditions including State and Federal laws outlined in the US EPA Cooperative Agreement BF-00E02895, Implementation Work Plan and accompanying Terms & Conditions (See Exhibit C). The QEP will sub-consult with a redevelopment planning consultant to provide technical assistance as necessary. The QEP is expected to perform the following Scope of Services (not all inclusive list):

Qualified Environmental Professional – Scope of Services

- Assisting in development of the Policies and Procedures Manual
- Lead the creation of the Marketing Plan
- Assist in the RLF Program Marketing and Promotion
- Serve on SRP Brownfield RLF Committee as needed
- Attend quarterly SRC meetings and provide presentations/updates on redevelopment sites as needed
- Site eligibility Determination Development and Approval
- Development of Analysis of Brownfield Clean up Alternative (ABCAs)
- Development and implementation of Community Relations Plan (CIPs)
- Develop Decision Memorandum
- Determine loan and subgrant applicant's enrollment and compliance with US EPA RLF requirements and State and Federal requirements including Davis-Bacon (See Exhibit C)
- Utilize Existing Project Tracker in Survey 123 for tracking work on funded redevelopment sites
- Site visits and construction monitoring (review invoices, closure report and track project construction progression)
- Measuring results and tracking the impact of the SRP
- Lead in developing quarterly and annual grant reporting
- Complete ACRES entries of all sites
- Professional planning firm (PPF) to develop fact sheets, with the County SRP Project Manager, EDWC and QEP contributing

Qualified Environmental Professional – Deliverables

- Marketing Plan for the RLF
- Eligibility Determinations
- Analysis Brownfield Clean up Alternative (ABCAs)
- Community Relations Plan (CIPs)
- Decision Memorandum
- Complete SRP Fact Sheets
- Complete measured results
- Quarterly and annual grant reports
- ACRES entries
- Site tracking

2. Washington County Brownfield Revolving Loan Fund (CO_RLF)

Overview

In March 2020, the Washington County Board of Supervisors approved \$1,000,000 to create a County Brownfield Revolving Loan Fund to finance brownfield cleanup activities that will support the creation of jobs, the cleanup of brownfield sites, the elimination of blight, and increase the tax base. It is anticipated that there will be approximately five initial loans provided through this funding source.

The County will act as the fiscal agent and is responsible for borrower and portfolio reporting.

The SRC will determine eligibility criteria to align with the established SRP program goals.

The EDWC will serve as Loan Manager, with the SRP Brownfields RLF Committee reviewing and approving loans. (See Exhibit D for Draft Heads of Terms) EDWC responsibilities include but are not limited to:

- Marketing & Promotion
- Underwriting and terms
- Loan Approval (SRP Brownfields RLF Committee)
- Executing loan documents and servicing
- Loan amendments and modifications
- Portfolio health analysis and reporting

The QEP will act as a resource to the County/EDWC as requested during SRP Brownfields RLF Committee meetings. The QEP is expected to attend these meetings only as requested and free of charge.

3. Washington County Brownfield Assessment Fund (CO_AF)

Overview

In March 2020, the Washington County Board of Supervisors approved \$600,000 to establish a County Brownfield Environmental Assessment Fund to complete Phase I and Phase II Environmental Site Assessments, Remedial Action Plans, and Redevelopment Plans. (See Exhibit E – Framework for the Washington County Brownfields Assessment Fund)

The County will act as the fund administrator, responsible for all activities related to the technical and administrative operation of the County Brownfield Assessment Fund. County responsibilities include but are not limited to:

- Work with PMT to determine initial project eligibility
- Staffing the SRC which generally meets on a quarterly basis. County SRP Project Manager has primary responsibility for all components of the SRC meetings, except those identified for EDWC and the QEP.
- Development of Site Access Agreements. The County will work with individual Coalition Partners in which sites are performed that include on-site inspections, testing, or the physical entry onto the properties.
- County SRP Project Manager is responsible for project oversight including managing the consultant activities, reviewing environmental site assessments, reports and plans, and preparing required reports and other correspondence as needed.

The EDWC will serve as part of the PMT. EDWC responsibilities include but are not limited to:

- Review and provide input into QEP-led remedial action planning and brownfields site or area-wide reuse/redevelopment plans.
- Complete ROI Impact Analysis for brownfield redevelopment projects impacted by the County Brownfield Assessment Fund
- Assist in community outreach as appropriate to better connect potential businesses, developers and other end-users with brownfield sites that can be a focus for redevelopment and reuse.
- If requested, EDWC will provide input on meeting agendas and prepare presentations for the SRC meetings and public community meetings as necessary.
- EDWC staff will attend all quarterly SRC Committee meetings and participate in quarterly meetings with PMT.
- **The QEP will be assisting in the assessment of eligible projects. The QEP is expected to perform the following Scope of Services (not all inclusive list):**

Qualified Environmental Professional – Scope of Services

- Assist as part of the PMT and Coalition Partners in determining initial project eligibility (Site Screening Checklist and meetings w/Coalition Partners)
- Development of Project Funding Needs and Requests for SRC meetings
- The successful firm should possess the required licensure, certifications, qualifications and related experience to conduct and prepare all environmental site assessments, site investigations, hazardous building materials surveys, remedial action options, remedial action plans, and perform surveying and geotechnical studies.
- The successful firm should possess the resources to complete these studies or identify a qualified sub-consultant to conduct and prepare implementation plans; demolition/remediation/abatement specifications; material management plans; onsite inspection; and remedial documentation associated with adaptive reuse/renovation and associated costs. QEP must be compliant with all state and federal regulations, including the WI DNR, NEPA/WEPA, and the Army Corps of Engineers. These include, but are not limited to

the Chapter NR 700 Wisconsin Administrative Code Rule series requirements and related Wisconsin Department of Natural Resources guidance; local, state and federal permitting requirements (National/Wisconsin Environmental Policy Act (NEPA/WEPA), which include endangered species, endangered resources, waterways and wetlands, historical/archaeological sites, Army Corps of Engineers navigable waters, etc.), the All Appropriate Inquiries Rule and ASTM International standards

- The successful firm should have knowledge and experience in appropriate health and safety requirements related to investigation and remediation/abatement of contaminated media and construction/demolition debris
- Provide project specific status updates to the County SRP Project Manager on generally a monthly basis
- Utilize Existing Project Tracker in Survey 123 for tracking work on funded redevelopment sites
- Assist the County SRP Project Manager in site ranking and prioritization as necessary for SRC to determine appropriate funding priorities
- Provide oversight to professional planning firm (PPF) in the preparation of brownfields site or area wide reuse/redevelopment plans
- Prepare presentations as appropriate for meetings providing implementation status and solicit input from SRC members on specific sites or revitalization needs.
- QEP and PPF to attend quarterly SRC and PMT meetings
- Professional planning firm (PPF) to develop fact sheets, with the County SRP Project Manager, EDWC and QEP contributing

Qualified Environmental Professional – Deliverables

- Project requests to the SRC including project costs
- Monthly updates on project specific status to the County SRP Project Manager
- Completed assessment work and reports on project sites including Phase I ESAs, Phase II ESAs, Site Investigation Reports, Hazard Material Surveys and Remedial Action Planning Reports and site or area-wide reuse/redevelopment plans
- Complete fact sheets with similar formatting of previous fact sheets
- Attend quarterly SRC and PMT meetings including presentations as necessary
- Site tracking

4. Potential FY2022 US EPA Brownfields Assessment Coalition Grant (EPA_AG)

Overview

In anticipation of the County applying for a \$600,000 US EPA FY2022 Brownfield Coalition Assessment Grant (if funding is available), the QEP will assist the County in preparing the US EPA Coalition Assessment Grant free of charge. The QEP will assist the County in implementing the grant if awarded.

The County will act as the grant project manager and grant administrator, responsible for all activities related to the technical and administrative operation of implementing the EPA Assessment Grant. County responsibilities include but are not limited to:

- Amend Contract with selected firm
- County SRP Project Manager is responsible for project oversight including managing the consultant activities, reviewing environmental site assessments, reports and plans, and preparing required reports and other correspondence as needed
- Prepare and review required quarterly reports, quarterly ACRES reporting and other correspondence with EPA Project Officer
- Work with PMT and Coalition Partners to determine initial project eligibility
- Execute property access agreements. The County will work with individual Coalition Partners in which sites are performed that include on-site inspections, testing, or the physical entry onto the properties.
- Staffing the SRC which generally meets on a quarterly basis. County SRP Project Manager has primary responsibility for all components of the SRC meetings, except those identified for EDWC and the QEP.
- Preparation of website updates, success stories and other on-line communications

The EDWC will serve as part of the PMT. EDWC responsibilities include but are not limited to:

- Review and provide input into QEP-led remedial action planning and brownfields site or area-wide reuse/redevelopment plans.

- Complete ROI Impact Analysis for brownfield redevelopment projects impacted by the County Brownfield Assessment Fund
- Assist in community outreach as appropriate to better connect potential businesses, developers and other end-users with the brownfields site that can be a focus for redevelopment and reuse.
- If requested, EDWC will provide input on meeting agendas and prepare presentations for the SRC meetings and public community meetings as necessary.
- EDWC staff will continue attending all quarterly SRC Committee meetings and participate in quarterly meetings with PMT.

The QEP will be assisting in the assessment and testing of eligible projects. The QEP is expected to perform the following Scope of Services (not all inclusive list):

Qualified Environmental Professional – Scope of Services

- Assist with quarterly and annual reporting requirements and quarterly updates to the ACRES database
- Update Brownfields Inventory and Prioritization that was completed in 2018
- Assist as part of the PMT and Coalition Partners in determining initial project eligibility (Site Screening Checklist and meetings w/Coalition Partners)
- Development of Project Funding Needs and Requests for SRC meetings
- Prepare site and property owner eligibility determination request forms
- Conduct and prepare all environmental site assessments, site investigations, hazardous building materials surveys, remedial action options, remedial action plans, and perform surveying and geotechnical studies.
- Prepare a QAPP
- Provide project specific status updates to the County SRP Project Manager on generally a monthly basis
- Utilize Existing Project Tracker in Survey 123 for tracking work on funded redevelopment sites
- Assist the County SRP Project Manager in site ranking and prioritization as necessary for SRC to determine appropriate funding priorities
- Provide oversight to professional planning firm (PPF) in the preparation of brownfields site or area wide reuse/redevelopment plans
- Prepare presentations as appropriate for meetings providing implementation status and solicit input from SRC members on specific sites or revitalization needs.
- QEP and PPF to attend quarterly SRC and PMT meetings
- Professional planning firm (PPF) to develop fact sheets with similar formatting of previous fact sheets, with the County SRP Project Manager, EDWC and QEP contributing
- Attend quarterly SRC and PMT meetings including presentations as necessary

Qualified Environmental Professional – Deliverables

- ACRES updates
- Quarterly reports
- Project requests to the SRC including project costs
- Site and Property Owner Eligibility Determination Forms
- Completed reports for environmental site assessments, site investigations, hazardous building materials surveys, remedial action options, remedial action plans, and surveying and geotechnical studies.
- QAPP
- Area-wide reuse/redevelopment plans
- Fact sheets
- Project tracking Survey 123 database updates

Request for Qualifications Requirements

General Expectations

Consultants are asked to submit a concise proposal demonstrating their qualifications and describing their capacity to manage projects and their experience with similar projects. The proposals should include a clear outline of the firm's qualifications and how these qualifications would help the County in implementing the US EPA FY2020 Revolving Loan Fund, the Washington County Brownfield Revolving Loan Fund, the Washington County Brownfield Assessment Fund, and potentially the FY2022 Brownfield Assessment grant should the County be awarded. Samples of brownfield phase I and phase II environmental site assessments, remedial action plans and reports as part of your firm's past experience are expected as part of your proposal.

Proposals

Proposals should be prepared on standard size paper and limited to thirty (30) pages, exclusive of resumes and sample reports. Charts and spreadsheets may be larger. Standard advertising brochures should not be included in the proposal. The proposal shall include the following information in the order presented below:

Business Organization – This section shall include the firm's name, areas of expertise, a brief history of the firm, size, office locations, and business addresses. The name, address, and telephone number of a contact person regarding the proposal shall be included. If subcontractors are being utilized, similar information should be included for all subcontracted firms and show their relationship to the project team in an organizational chart. Also identify your firm's access to necessary equipment and facilities relative to this project.

Management Outline – A description of the project and how the consultant's qualifications would be used and how you will manage and implement the four funding programs and related activities shall be provided. This section shall include the applicant's approach and methodology to planning, organization, and management.

Project Methodology – In order to evaluate your qualifications for this project, provide four separate methodologies for implementation services for the various funding programs as follows:

- i) Provide your understanding of the project and requirements as depicted in this document and identify key issues from the consultant's perspective.
- ii) Provide a description of how your firm will manage and implement the scope of services outlined above for the various funding programs including the firm's approach and methodology to planning, how you intend to follow all requirements, organization and managing the process and how this approach is expected to achieve positive results. The selected firm should outline their methodology to separate invoicing appropriately for meeting attendance and fact sheet development.
- iii) Address all scope of work issues and indicate how consulting firm will go about accomplishing all the tasks and coordinate the project with the County.
- iv) Indicate who you would include or involve in the process throughout the project and provide their qualifications for this work as well.

Experience and Capabilities – The relevant management experience and the technical experience and capabilities of the consulting firm shall be defined with respect to the following activities:

A. Professional/Project Experience:

- i) Provide information on your firm's specific abilities and qualifications to provide professional services for the four funding programs.
- ii) Provide examples of your firm's specific knowledge and expertise related to each funding programs implementation and reporting. Include examples of numerous (2-3) recent (5 years) past, similar successful programs your firm has completed with contact information included so that Washington County may contact the owners as a reference. Include all pertinent contact information (company name, contact person, phone number, etc.) and describe the project and your firm's involvement with it.
- iii) Also include information on firm's experience on the following:
 - US EPA Grant experience and success in EPA Region 5 including grant writing.
 - Conducting brownfields inventories, Phase I and Phase II Environmental Site Assessments, site investigations under a US EPA Brownfields grant, other governmental reimbursement and/or equivalent grant funded programs.
 - Redevelopment planning and market research activities related to brownfields properties and site reuse.
 - Experience implementing a successful US EPA Revolving Loan Fund Program
 - Public outreach and involvement.
 - Development and review of quality assurance and quality control procedures (QA/QC) as well as OSHA-compliant Health and Safety Plans.
 - Environmental/engineering/consulting experience with petroleum and hazardous contaminant brownfields remediation.
 - Designing and managing brownfields remediation strategies.
 - Other information and material which show a clear understanding of the project goals and tasks, and the ability to cooperatively and conclusively work with the County.

B. Regulatory and Scientific/Technical Knowledge

Each firm shall provide a list of proposed key personnel and their current office location. Provide resume'(s) of key individuals that would be assigned to the project identifying project experience and regulatory and scientific knowledge as outlined below.

i) Regulatory Knowledge and Compliance with:

- Knowledge and expertise pertaining to Federal environmental statutes and associated regulations.
- Knowledge and expertise pertaining to Wisconsin environmental statutes and other related state laws and regulations.
- Knowledge and expertise pertaining to OSHA and other health and safety rules or requirements related to Brownfields Assessments.
- Knowledge and expertise pertaining to site redevelopment services (planning, surveying and engineering).
- Individual staff knowledge and technical experience relative to ESA's, brownfield projects, ABCA creation, CIP creation and contaminated site remediation and monitoring and revolving loan funded remediation/redevelopment projects.

ii) Scientific/Technical Knowledge:

- Physical/chemical/biological sciences: geology/hydrology; soil chemistry/soil mechanics; geophysical/geotechnical methods; chemistry; biology; toxicology; air quality; epidemiology.
- Risk Analysis: Risk assessment; toxicology; epidemiology; chemistry; air quality; EPA guidance; risk modeling; biology.
- Engineering: Chemical; surveying and mapping; cost estimating; preparation of plans and specifications; methods of resource recovery and alternative hazardous substance treatment; construction management (including storage, treatment and disposal facilities).
- Environmental Oversight: Monitoring techniques; design of monitoring programs; installation and operation of monitoring equipment; drilling and installation of groundwater monitoring wells, sampling, and analytical procedures for surface and groundwater, air, soil/sediment, and hazardous substances; biological sampling; personnel and equipment decontamination procedures; use of the EPA's laboratory methods and chain-of-custody procedures.
- All project staff performing field work on brownfield sites will be required to have current OSHA HAZWOPER training. In addition, the selected firm should have a Certified Industrial Hygienist (CIH) on staff to oversee the health and safety program.
- Internal staff assigned to the project should include at a minimum; a state licensed Professional Geologist (PG) or Professional Engineer (PE) as project manager with at least 10 years of experience effectively managing large and challenging brownfield projects and another staff person with equivalent experience as their replacement should it be needed during the term if the agreement and other support and field staff typically used on site assessment projects.

All representative project descriptions provided shall include the month and year the project was completed, the location of the project, and the name and phone number of a knowledgeable contact person. The County may contact these people to check past performance records.

Project Communication

The Site Redevelopment Program is a multi-jurisdictional effort led by Washington County in partnership with Economic Development Washington County. The Washington County point of contact is Debora Sielski, Deputy Director, Planning and Parks.

Address: Debora Sielski, Deputy Director
Planning and Parks Department
333 East Washington Street, Suite 2300
West Bend WI 53095

Phone: 262-335-4772

Fax: 262-335-6868

Email: Deb.Sielski@washcowisco.gov

Project Management

The selected firm will be required to assume responsibility for all services required, including any services provided by subcontractors. Further, the County will consider the firm to be the sole point of contact with regard to contractual matters, including payment of any and all charges to the subcontractors resulting from the contract. The selected firm is responsible for adherence by the subcontractors to all provisions of the contract. If the selected firm is using subcontractors, previous projects on which the two firms had worked together should be noted.

Other Requirements

Contracting with Disadvantaged Business Enterprises

It is US EPA policy to award a fair share of contracts to disadvantaged business firms (such as Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms). Accordingly, affirmative steps must be taken to ensure that disadvantaged businesses are utilized when possible as sources of supplies, equipment, and services. The selected firm shall agree to support the US EPA's disadvantaged business enterprise contract procurement program ensuring those businesses' participation in subcontracts.

Affirmative steps include the following as a minimum:

1. Including qualified disadvantaged businesses on solicitation lists;
2. Ensuring that disadvantaged firms are solicited whenever they are potential sources;
3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit disadvantaged business participation;
4. Where the requirement permits, establishing delivery schedules which will encourage participation by disadvantaged businesses;
5. Using the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce, and the Community Services Administration as required;
6. Consultants are encouraged to procure goods and services from disadvantaged businesses.

Buy American

It is US EPA policy that all bidding documents, subagreements, and, if appropriate, requests for proposals must contain the following "Buy American" provision: In accordance with section 215 of the Clean Water Act (33 U.S.C. 1251 et seq.) and implementing EPA regulations, the contractor agrees that preference will be given to domestic construction materials by the contractor, subcontractors, materialmen and suppliers in the performance of this subagreement.

Equal Employment Opportunity

The proposer agrees to comply with all federal, state, and local laws, resolutions, ordinances, rules, regulations, and executive orders pertaining to unlawful discrimination on account of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, sexual preference, disability, or age. When required by law or requested by the County, the Proposer shall furnish a written affirmative action plan.

Protest Process

Washington County is committed to full, fair, and impartial review and selection of successful bids and contractors for procurements. An unsuccessful bidder/proposer who feels that the County has not given its bid/proposal full, fair, and impartial consideration shall make its protest known in writing to the Purchasing Manager within forty-eight (48) hours of the written announcement of the intent to award the procurement. For the protest to be valid, the protester shall have complied with all requirements of the bid/proposal solicitation; including, but not limited to, timeliness of submission, compliance with all technical requirements, and submission of all required certifications and any bonding requirements if applicable. Upon such valid notification, the Purchasing Manager shall place the award on hold until such time as the protest is resolved. If a contractor would like to see a full copy of the County's Protest Procedure, they should contact the Washington County Purchasing Manager at purchasing1@washcowisco.gov.

Request for Qualifications Submission, Review and Tentative Schedule

Qualifications must be submitted in a ***sealed envelope/box*** to the address and by the qualifications due date and time as indicated in this RFQu in order to be considered. Firms responding to this RFQu are to ***submit 5 complete hardcopy*** submittals ***and 1 electronic copy on a jump drive*** to Washington County with their information organized as outlined herein.

Qualifications Review – Qualifications will be reviewed following a qualifications based selection process with firm's responses being evaluated from a qualifications standpoint first. Top qualified firms will be invited in for a brief presentation and interview with the evaluation team to determine the most qualified firm for this project. The County will then negotiate separate costs for each of the scope of services included with this request with the top qualified firm following the evaluation process.

If the County, for any reason, is unable to reach a final agreement with this finalist; the County then reserves the right to reject such finalist and negotiate a final agreement with another finalist who is the next most qualified and so on until an agreement can be reached with the finalist.

The County reserves the right to request any additional information that might be deemed necessary during the evaluation process.

Tentative Schedule:

- RFQu Packets available starting June 10, 2021
- Sealed qualification responses due: July 14, 2021 by 2:00 PM (CT)
- Firms will be short-listed to the top qualified firms by July 21, 2021
- Interviews will be conducted with top qualified firms with the evaluating team on **July 29, 2021**. Interviews will be limited to approximately 1 hour and firm's interview times will be scheduled under separate correspondence following the receipt of qualification submissions.
- Tentative selection of firm to negotiate a contract with to be made following the completion of interviews.
- Project Kick-Off meeting with the County following award and receipt of signed agreement.
- If the County is awarded an FY 2022 Assessment grant, a second Kick-Off meeting with the County for grant implementation will take place.

NOTE: Respondents should set aside the above date for the interview. Please block your calendars accordingly. It is anticipated that short listed firms will be notified of their interview date and time on or **before July 21, 2021**.

Qualification submissions shall be prepared in accordance with the RFQu response format below. Qualification submissions not complying with this format may be considered non-responsive and may be rejected.

Qualification submissions are to be sealed in an envelope/box and labeled as: **US EPA and County Funded Brownfield Services – RFQu #PP21-32**. Submit 5 complete hard copies and 1 electronic copy on a jump drive.

Firms responding to this request are to provide their qualifications to include:

Business Organization

- 1) Completed Exhibit B.
- 2) Include your completed addendum acknowledgement for any addenda issued for this project (if any)
- 3) Provide the information as requested on page 10 of this RFQu

Management Outline

- 1) Provide the information as requested on pages 10 of this RFQu

Project Methodology

- 1) Provide the information as requested on pages 10 of this RFQu

Experience and Capabilities

- 1) Provide the information as requested on pages 10-11 of this RFQu

Other

- 1) Insurance Requirements
 - Acknowledge firm's ability to obtain insurance as required – Reference Exhibit A with this packet.
- 2) Proposed Contract
 - Include your proposed contract that covers all the terms, conditions and specifications for the work related to this request.

Evaluation of Firms

Firms will be evaluated based on the criteria listed on the Evaluation Criteria Form below.

**Request for Qualifications (RFQu)
Qualified Environmental Professional
US EPA and County Funded Brownfield Services
Washington County WI
RFQu #PP21-32**

Evaluation Criteria Form
(This form will be used to rate firms Proposals)

Evaluation Criteria	Maximum Pts.	Points
1. <u>Completeness of Qualifications Submission:</u> Extent to which complete RFQu elements are submitted.	5	_____
2. <u>Professional Experience:</u> The extent to which the firm has demonstrated competence in grant implementation and reporting for US EPA Brownfield RLF Grants, other funded projects outlined in this RFQu and the extent of former client satisfaction.	25	_____
3. <u>Capacity:</u> The extent to which the firm has the appropriate personnel, project experience, regulatory and scientific knowledge, equipment, and facilities to perform the scope of services to implement the funded projects outlined in this RFQu.	25	_____
4. <u>Project Methodology:</u> The extent to which the firm has demonstrated their approach to manage and implement the scope of services outlined for each funded project outlined in this RFQu.	25	_____
Subtotal	80	_____
5. <u>Interview:</u> The extent to which the evaluation team feels the firm has the qualifications and capability to perform the duties outlined and to complete the scope of work in a timely manner and achieve positive results.	20	_____
TOTAL	100	_____

Standard Terms & Conditions for Request for Qualifications

Negotiations

This is a negotiated procurement. Negotiation is a procedure that includes the receipt of proposal from offers, permits bargaining, and usually affords an opportunity to revise offers before award of a contract. Bargaining, in the sense of discussion, persuasion, alteration of initial assumption and positions may apply to price, schedule, technical requirements, type of contract or other terms of a proposed contract.

Binding Contract

A response and negotiations resulting in response to a request for qualifications (RFQu) is an offer that can be accepted by Washington County to create a binding contract.

Award

Award shall be made to the most qualified responsive, responsible firm whose response to this request overall is the most advantageous to the County.

Rejection of Qualification Submission

Washington County reserves the right to reject all qualification submissions or parts thereof which are determined not to be in the best interest for Washington County. Such rejection is not subject to appeal.

Funding

If funds are not appropriated for payment of this contract, Washington County may terminate the contract with the awarded firm without any early termination penalties, charges, fees or cost of any kind to Washington County.

Delivery Terms

All products and/or services provided shall include delivery costs to the specified delivery point, all transportation charges prepaid and borne by the contractor.

Delays in Delivery

Delays in delivery caused by bonafide strikes, government priority or requisition, riots, fires, sabotage, acts of God or any other delay deemed by Washington County to be clearly and unequivocally beyond the contractors control, shall be recognized by the County. The vendor may be relieved of meeting delivery time specified, if vendor files with Washington County a request for extension of time, signed by a responsible official, giving in detail the essential circumstances which, upon verification by County's authorized representative, justifies such extension.

Exhibit A
Washington County Insurance Requirements
Insurance Requirements for Architect, Consulting Engineer & Construction Manager

I. Minimum Scope and Limits

- A. Architects and Engineers Errors & Omissions (Professional Liability) coverage, with a minimum limit of \$1,000,000 per claim, \$2,000,000 annual aggregate. This insurance is to be maintained for at least two years after completion of the project. If the firm changes insurance carriers and this policy is provided on a "claims made" basis, the firm will secure the appropriate coverage extension to provide coverage to the project for a period of at least two years following the completion of the project.
- B. Commercial General Liability coverage with limits of no less than the following:
- | | | | |
|----|---|-------------|-------------|
| 1. | General aggregate limit
(Other than Products-Completed Operations) | per project | \$2,000,000 |
| 2. | Products-Completed Operations Aggregate | per project | \$1,000,000 |
| 3. | Personal and Advertising Injury Limit | | \$1,000,000 |
| 4. | Each Occurrence Limit | | \$1,000,000 |
| 5. | Fire Damage limit – any one Fire | | \$ 50,000 |
| 6. | Medical Expense limit – any one Person | | \$ 5,000 |
- C. Automobile Liability coverage with minimum limits of \$1,000,000 combined single limit per accident for bodily injury and property damage, provided on a Symbol 1-Any Auto basis.
- D. Workers' Compensation and Employers Liability Insurance with sufficient limits to meet underlying Umbrella Liability insurance requirements
- E. Umbrella Liability providing coverage at least as broad as the underlying General Liability, Automobile Liability and Employers Liability coverages, with a minimum Limit of \$2,000,000 each occurrence and \$2,000,000 annual aggregate, and a maximum self-retention of \$10,000.

II. Other Requirements

- A. Acceptability of Insurers. Insurance is to be placed with insurers who have a *Best's Insurance Reports* rating of no less than A and a Financial Size Category of no less than Class VI, and who are authorized as an admitted insurance company in the state of Wisconsin.
- B. Washington County, Washington County's elected and appointed officials, and Washington County employees shall be named as additional insureds on all liability policies for liability arising out of project work. Please provide a copy of this endorsement with your certificate of insurance.
- C. Certificates of Insurance acceptable to Washington County shall be submitted prior to commencement of the work. These certificates shall contain a provision that coverage afforded under the policies will not be cancelled until at least 30 days' prior written notice has been given to Washington County.

**Exhibit B
Request for Qualifications (RFQu)
Qualified Environmental Professional
US EPA and County Funded Brownfield Services
Washington County WI
RFQu #PP21-32**

RFQu Statement

Complete this page and include it with your sealed response to this request. Please insert it as the first part of the Qualification submission.

Addenda Acknowledgement (if any were issued for this request):

The qualifications submitted for this request includes and acknowledges addenda No. ____ - ____ that have been issued for this request.

Authority to Sign Contracts or Agreements:

Provide the name or names of the person or persons with position titles from your organization who are duly authorized to sign the resulting contract of this request (if awarded to your firm) in the space provided below. Persons listed must be an authorized agent of your firm who is authorized to legally bind your firm into a contract with Washington County. By providing this name or names you attest that the County can rely on this information as true and accurate as indicated herein.

Name or Names of persons authorized to enter into agreements for your firm:

Name: _____	Title: _____
Name: _____	Title: _____
Name: _____	Title: _____

Preferred Method of Payment:

Washington County prefers to make payment electronically for purchases made. Upon award, firm will be provided with the County's ACH payment sign-up information. Payment via credit card at no added cost to the County is also encouraged. **Please circle "Yes" or "No" below to indicate if your company accepts credit cards for payment with no added fees. (Your answer to this will not adversely affect your response to this request.)**

Yes or No (Circle One)

I have read this Request for Qualifications (RFQu), all the attachments, addenda (if any) and exhibits issued for this project and understand their contents and requirements.

Binding Signatures:

Company: _____

Address: _____

Signature (Manual Signature) _____

Name (Print or Type) _____

Title _____ Date: _____

Phone Number: _____ Fax Number: _____

Email: _____

RFQu #PP21-32
Exhibit C 1

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	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement		GRANT NUMBER (FAIN): 00E02895 MODIFICATION NUMBER: 0 PROGRAM CODE: BF		DATE OF AWARD 08/12/2020
			TYPE OF ACTION New		MAILING DATE 08/19/2020
			PAYMENT METHOD: ASAP		ACH# 50920
	RECIPIENT TYPE: County		Send Payment Request to: Research Triangle Park Finance Center		
RECIPIENT: Washington County 333 E. Washington St., Ste 2300 PO Box 2003 West Bend, WI 53095-2003 EIN: 39-6005754		PAYEE: Washington County 333 E. Washington St., Ste 2300 PO Box 2003 West Bend, WI 53095-2003			
PROJECT MANAGER Debora Sielski 333 E. Washington St., Ste 2300 PO Box 2003 West Bend, WI 53095-2003 E-Mail: deb.sielski@co.washington.wi.us Phone: 262-335-4772		EPA PROJECT OFFICER Brian Kennedy 77 West Jackson Blvd., LB-5J Chicago, IL 60604-3507 E-Mail: kennedy.brain@epa.gov Phone: 312-353-4383		EPA GRANT SPECIALIST Mauricio Lobato Assistance Section, MA-10J E-Mail: lobato.mauricio@epa.gov Phone: 312-353-2515	
PROJECT TITLE AND DESCRIPTION FY2020 USEPA Revolving Loan Fund Grant for Washington County, WI This agreement will provide funding for Washington County, Wisconsin (representing its coalition partners) to capitalize a revolving loan fund from which to make loans and subaward to clean up brownfields site(s), and conduct other necessary activities to prudently manage the RLF. Washington County will lead this RLF coalition grant with seven partners: The Cities of Hartford and West Bend and the Villages of Germantown, Jackson, Kewaskum, Richfield and Slinger. The County will initially focus its efforts on the Cities of Hartford and West Bend, but all coalition partners will benefit from the RLF. Brownfields are real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.					
BUDGET PERIOD 08/17/2020 - 09/30/2025		PROJECT PERIOD 08/17/2020 - 09/30/2025		TOTAL BUDGET PERIOD COST \$960,000.00	
				TOTAL PROJECT PERIOD COST \$960,000.00	
NOTICE OF AWARD					
Based on your Application dated 07/08/2020 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$800,000. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$800,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.					
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE		
ORGANIZATION / ADDRESS U.S. EPA Region 5 Mail Code MA-10J 77 West Jackson Blvd. Chicago, IL 60604-3507			ORGANIZATION / ADDRESS U.S. EPA, Region 5 Land, Chemicals and Redevelopment Division 77 West Jackson Blvd., L-17J Chicago, IL 60604		
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY					
Digital signature applied by EPA Award Official William Massie - Chief, Acquisition & Assistance Branch					DATE 08/12/2020

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FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 800,000	\$ 800,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 160,000	\$ 160,000
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 960,000	\$ 960,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Multipurpose Assessment Revolving Loan Fund and Cleanup Cooperative Agreements	CERCLA: Sec. 101(39) CERCLA: Sec. 104(k)(3)	2 CFR 200 2 CFR 1500 and 40 CFR 33

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	2005QEX042	20	E4	05Q6AG7	000D79	4114	-	-	800,000
									800,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$33,300
2. Fringe Benefits	\$0
3. Travel	\$5,600
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$189,600
7. Construction	\$0
8. Other	\$731,500
9. Total Direct Charges	\$960,000
10. Indirect Costs: % Base <u>N/A</u>	\$0
11. Total (Share: Recipient <u>16.67</u> % Federal <u>83.33</u> %.)	\$960,000
12. Total Approved Assistance Amount	\$800,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$800,000
15. Total EPA Amount Awarded To Date	\$800,000

Administrative Conditions

A. General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at:

<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2019-or-later>

These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

The EPA repository for the general terms and conditions by year can be found at: <https://www.epa.gov/grants/grant-terms-and-conditions>.

B. Correspondence Condition

The terms and conditions of this agreement require the submittal of reports, specific requests for approval, or notifications to EPA. Unless otherwise noted, all such correspondence should be sent to the following email addresses:

- Federal Financial Reports (SF-425): rtpfc-grants@epa.gov and lobato.mauricio@epa.gov
- MBE/WBE reports (EPA Form 5700-52A): **Mauricio Lobato at** lobato.mauricio@epa.gov and region5closeouts@epa.gov
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other Prior Approvals, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: **Brian Kennedy at** kennedy.brian@epa.gov
- Payment requests (if applicable): **Brian Kennedy at** kennedy.brian@epa.gov
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: **Brian Kennedy at** kennedy.brian@epa.gov

C. Extension of Project/Budget Period Expiration Date

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under 2 CFR 200.308 (d)(2). Therefore, if a no-cost time extension is necessary to extend the period of availability of funds the recipient must submit a written request to the EPA prior to the budget/project period expiration dates. **The written request must include:** a justification describing the need for additional time, an estimated date of completion, and a revised schedule for project completion including

updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the general, administrative, and/or programmatic terms and conditions of this assistance agreement, the recipient must ensure that they are submitted along with or prior to submitting the no-cost time extension request.

D. Disadvantaged Business Enterprise (DBEs)

UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33 except as described below based upon the associated class deviation.

EPA MBE/WBE CERTIFICATION, 40 CFR, Part 33, Subpart B

A class exception to the following provisions of Subpart B of 40 CFR Part 33 has been issued suspending the EPA MBE/WBE certification program: §33.204(a)(3) providing that an entity may apply to EPA MBE or WBE certification after unsuccessfully attempting to obtain certification as otherwise described in §33.204; and §33.205 through and including §33.211. The class exception was authorized pursuant to the authority in 2 CFR 1500.3(b).

SIX GOOD FAITH EFFORTS, 40 CFR, Part 33, Subpart C

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts whenever procuring construction, equipment, services and supplies under an EPA financial assistance agreement, and to require that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when

economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

(d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.

(e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.

(f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302 (a)-(d) and (i).

BIDDERS LIST, 40 CFR, Section 33.501(b) and (c)

Recipients of a Continuing Environmental Program Grant or other annual reporting grant, agree to create and maintain a bidders list. Recipients of an EPA financial assistance agreement to capitalize a revolving loan fund also agree to require entities receiving identified loans to create and maintain a bidders list if the recipient of the loan is subject to, or chooses to follow, competitive bidding requirements. Please see 40 CFR, Section 33.501 (b) and (c) for specific requirements and exemptions.

FAIR SHARE OBJECTIVES, 40 CFR, Part 33, Subpart D

A class exception to the entire Subpart D of 40 CFR Part 33 has been authorized pursuant to the authority in 2 CFR 1500.3(b). Notwithstanding Subpart D of 40 CFR Part 33, recipients are not required to negotiate or apply fair share objectives in procurements under assistance agreements.

MBE/WBE REPORTING- SPECIFIC CHANGES PURSUANT TO CLASS DEVIATION, 40 CFR, Part 33, Subpart E

When required, the recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants and Cooperative Agreements" report (EPA Form 5700-52A) on an annual basis. The current EPA Form 5700-52A can be found at the EPA Grantee Forms Page at <https://www.epa.gov/grants/epa-grantee-forms>.

Reporting is required for assistance agreements where funds are budgeted for procuring construction, equipment, services and supplies (including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category) with a cumulative total that exceed the threshold amount of **\$250,000**, including amendments and/or modifications. When reporting is required, all procurement actions are reportable, not just that portion which exceeds **\$250,000**.

Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502.

Programmatic Conditions

GRANT-SPECIFIC PROGRAMMATIC TERMS & CONDITIONS

FY20 Revolving Loan Fund (RLF) Cooperative Agreement Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfields RLF capitalization Grants awarded under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k), agreements that transitioned to § 104(k), or agreements which have been amended after 12/24/14. These T&Cs do not apply to pre-FY 2003 agreements subject to CERCLA § 104(d).

I. GENERAL FEDERAL REQUIREMENTS

Note: For the purposes of complying with certain provisions of the Uniform Grant Guidance (UGG), 2 CFR Part 200, loans made by RLF recipients are subawards as that term is defined at 2 CFR § 200.92. The term subaward also encompasses “grants” made by the RLF recipient under CERCLA § 104(k)(3)(B)(ii). The UGG requirements for subawards in the form of loans and subawards in the form of grants are different. For clarity, these T&Cs refer to “loans” to describe subawards that generate program income from repayments of principal, interest charges and loan processing fees paid by “borrowers”. The T&Cs refer to “subgrants” to describe subawards the RLF recipient provides to an eligible entity or nonprofit organization (“subgrantees”) under terms that do not require repayment.

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the proposal for the Cooperative Agreement Recipient (CAR).
2. In implementing this agreement, the CAR shall comply with and require that work done by borrowers and subgrantees with cooperative agreement funds comply with the requirements of CERCLA § 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.
3. The CAR must consider whether it is required to have borrowers or subgrantees conduct cleanups through a State or Tribal response program. If the CAR chooses

not to require borrowers and subgrantees to participate in a State or Tribal response program, then the CAR is required to consult with the EPA Project Officer on each loan or subgrant to ensure the proposed cleanup is protective of human health and the environment.

4. A term and condition or other legally binding provision shall be included in all agreements entered into with the funds awarded under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that the CAR complies with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Part 200.
5. The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); 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.
6. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this agreement by operation of CERCLA § 104(g). For more detailed information on complying with Davis-Bacon please see the Davis-Bacon Addendum to these terms and conditions.



Davis Bacon Brownfields Petroleum - Governmental Entities_final.doc



Davis Bacon Brownfields Hazardous Waste - Governmental Entities_final.doc

II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY REQUIREMENTS

A. Brownfield Site Eligibility

1. The CAR must provide information to the EPA Project Officer about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's workplan by EPA. The information that must be provided includes whether the site meets the definition of a brownfield

site as defined in § 101(39) of CERCLA and whether the CAR is the potentially responsible party under CERCLA § 107 is exempt from CERCLA liability or has defenses to CERCLA liability.

2. If the site is excluded from the general definition of a brownfield site but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination from the EPA Project Officer. In its request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that EPA has determined that the property is eligible.

3. Brownfield Sites Contaminated with Petroleum

- a. For any petroleum-contaminated brownfield site that is not included in the CAR's EPA-approved workplan, the CAR shall provide sufficient documentation to EPA prior to incurring costs under this cooperative agreement which documents that:
 - i. the State determines there is "no viable responsible party" for the site;
 - ii. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and
 - iii. the site is not subject to any order issued under Section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State, following contact and discussion with the appropriate state petroleum program official. Please contact the EPA Project Officer for additional information.

- b. Documentation must include:
 - i. the identity of the State program official contacted;
 - ii. the State official's telephone number;
 - iii. the date of the contact; and
 - iv. a summary of the discussion relating to the State's determination that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site.

Other documentation provided by a State to the recipient relevant to any of

the determinations by the State must also be provided to the EPA Project Officer.

- c. If the State chooses not to make the determinations described in Section II.A.3. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.
- d. EPA will make all determinations on the eligibility of petroleum-contaminated brownfield sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. § 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in Section II.A.3.b. above.

B. Borrower and Subgrantee Eligibility

1. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites owned by the eligible entity or nonprofit organization at the time of the award of the subgrant. Eligible subgrantee include eligible entities as defined under CERCLA § 104(k)(1), which includes nonprofit organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and other nonprofit organizations as defined at 2 CFR § 200.70. Nonprofit institutions of higher education as defined at 2 CFR § 200.55 are also eligible for cleanup subgrants. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.
2. The CAR may provide loans to an eligible entity, a site owner, a site developer, or another person without regard to whether the borrower is a for-profit organization. Borrowers do not have to own the property throughout the term of the loan unless ownership is required for the purpose of securing collateral or the CAR otherwise determines that borrower site ownership is necessary.
3. The subgrantee must retain ownership of the site throughout the period of performance of the subgrant and must consult with the EPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site. For the purposes of this agreement, the term “owns” means fee simple title unless EPA Project Officer approves a different ownership arrangement.
4. The CAR shall not provide a subgrant to itself or another component of its own unit of government or organization.
5. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principal. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30%, provided that the total amount of

the principal forgiven for that loan shall not exceed \$200,000. Eligible entities and nonprofit organizations described in Section II.B.1. are eligible for discounted loans. **Private, for-profit entities are not eligible for discounted loans.** In addition to these terms, a discounted loan shall not be used in combination with a subgrant at the same site.

6. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a borrower or subgrantee is potentially liable under CERCLA § 107. The CAR may rely on its own investigation which can include an opinion from the borrower's or subgrantee's counsel. However, the CAR must advise the borrower or subgrantee that the investigation and/or opinion of its subgrantee counsel is not binding on the Federal Government.
7. For approved eligible petroleum-contaminated brownfield sites, the borrower or subgrantee cleaning up the site must not be potentially liable for cleaning up the site. For brownfield grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.
8. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrantees.
9. A borrower or subgrantee must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The CAR, in consultation with EPA, must consider this history in its analysis of the borrower or subgrantee as a cleanup and business risk.
10. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrantee.

C. Obligations for CARs, Borrowers, or Subgrantees

1. CARs, borrowers, or subgrantees who are eligible, or seek to become eligible, to receive a loan or subaward must provide information indicating that cooperative agreement funds will not be used to pay for a response cost at a site for which the CAR, borrower, or subgrantee is potentially liable under CERCLA § 107. The CAR, borrower, or subgrantee must demonstrate that it meets the requirements for one of the Landowner Liability Protections as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Landowner (ILO). These requirements include certain threshold criteria and continuing obligations that must be met in order for the CAR, borrower, or subgrantee to maintain its eligible status. If the CAR, borrower, or subgrantee fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERCLA § 104(k)(8)(C). The Landowner Liability Protection requirements include:

- a. Performing “all appropriate inquiries” into the previous ownership and uses of the property before acquiring the property.
- b. Not being potentially liable or affiliated with any other person who is potentially liable for response costs at the site through: any direct or indirect familial relationship, any contractual, corporate, or financial relationships, or through the result of a reorganized business entity that was potentially liable.

While not necessary to obtain ILO protection, the CAR, borrower, or subgrantee must still establish by a preponderance of the evidence that the act or omission that caused the release or threat of release of hazardous substances and any resulting damages were caused by a third party with whom the person does not have an employment, agency, or contractual relationship.

- c. Demonstrate that no disposal of hazardous substances occurred at the facility after acquisition by the landowner (does not specifically apply for the CPO protection).
- d. Taking “reasonable steps” with respect to hazardous substance releases by stopping any continuing releases, preventing any threatened future releases, and preventing or limiting human, environmental, or natural resource exposure to any previously released hazardous substance.
- e. Complying with any land use restrictions established or relied on in connection with the response action at the site and not impeding the effectiveness or integrity of institutional controls employed in connection with the response action.
- f. Providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration at the site from which there has been a release or threatened release.
- g. Complying with information requests and administrative subpoenas (does not specifically apply for the ILO protection).
- h. Providing all legally required notices with respect to the discovery or release of any hazardous substances at the site (does not specifically apply for the ILO protection).

Notwithstanding the CAR’s, borrower’s, and subgrantee’s continuing obligations under this agreement, the CAR, borrower, and subgrantee are subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain liability protection. These

obligations are found at §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

CARs, borrowers, and subgrantees that are exempt from CERCLA liability or do not have to meet the requirements for asserting an affirmative defense to CERCLA liability must also comply with continuing obligation items c.-h.

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Sufficient Progress

1. This condition supplements the requirements of the Sufficient Progress Condition in the General Terms and Conditions. If after 2 years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR must implement a corrective action plan concurred on by the EPA Project Officer and approved by the Award Official or Grants Management Officer. Alternatively, EPA may terminate this agreement under 2 CFR § 200.339. for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.339, depending on the circumstances. Sufficient progress is indicated by the CAR having made a loan(s) and/or grant(s), but may also be demonstrated by a combination of all the following: hiring of all key personnel, the establishment and advertisement of the RLF, the development of one or more potential loans/subgrants, or other documented activities that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

B. Substantial Involvement

1. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
 - a. Substantial involvement by EPA generally includes administrative activities by the EPA Project Officer such as monitoring, reviewing, and approving of procedures for borrower and subgrantee selection, reviewing of project phases, and approving substantive terms included in professional services contracts. EPA will not direct or recommend that the CAR enter into a loan, subgrant, or contract with a particular entity.
 - b. Substantial EPA involvement includes brownfield property-specific funding determinations described in [Section II.A.](#) The CAR may request technical assistance from EPA to determine if sites qualify as brownfield sites and to determine whether the statutory prohibition found in CERCLA § 104(k)(5)(B)(i)(IV) applies. This prohibition does not allow a CAR, borrower, or subgrantee to use cooperative agreement funds to clean up a site if the CAR, borrower, or subgrantee is potentially liable under CERCLA § 107.

- c. Substantial EPA involvement may include reviewing financial and environmental status reports and monitoring all reporting, record-keeping, and other program requirements.
- d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subgrants.
- e. EPA may waive any of the provisions in [Section III.B.1.](#), except for property-specific funding determinations, at its own initiative or upon request by the CAR. The EPA Project Officer will provide waivers in writing.

2. Effects of EPA's substantial involvement include:

- a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any federal statute.
- b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable federal and state laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with the EPA Project Officer and the State.
- c. The CAR remains responsible for ensuring costs are allowable under 2 CFR Part 200, Subpart E.

C. Cooperative Agreement Recipient Roles and Responsibilities

- 1. The CAR is responsible for establishing an RLF team that will implement the program and assign a Program Manager for coordinating the team's activities as outlined below.
- 2. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10 to coordinate, direct, and oversee the brownfield site cleanup activities at a given site, if it does not have such a professional on staff.
- 3. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager must be consistent with 2 CFR Parts 200 and 1500 and [EPA's Subaward Policy](#). Additional information is available in EPA's [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#).
- 4. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel must review all loan/subgrant agreements prior to execution unless the EPA Project Officer waives this requirement.

5. The CAR is responsible for ensuring that borrowers and subgrantees comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrantees are consistent with the terms and conditions of this agreement.
6. When the CAR makes loans and subgrants under this agreement, they become a pass-through entity for the purposes of the subrecipient oversight and management requirements of [2 CFR §§ 200.330 through 200.332](#). Requirements for oversight and management of subgrantees are supplemented in EPA's National Term and Condition for Subawards which is included in the General Terms and Conditions of this Cooperative Agreement.
7. The following requirements apply when a pass-through entity (CAR) makes loans. These requirements apply to loans and borrowers in lieu of those specified in EPA's National Term and Condition for Subawards.
 - a. Pass-through entities must establish and follow a system that ensures all loan agreements are in writing and contain all of the elements required by [2 CFR § 200.331\(a\)](#) with the exception of the indirect cost provision of 2 CFR § 200.331(a)(4). EPA has developed an optional template for subaward agreements that is available in [Appendix D of EPA's Subaward Policy](#) which may also be used for loan agreements.
 - b. Borrowers must comply with the internal control requirements specified at [2 CFR § 200.303](#) and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The pass-through entity (CAR) must include a condition in all loans that requires borrowers to comply with this requirement. No other provisions of the Uniform Grant Guidance, including the Procurement Standards, apply directly to borrowers.
 - c. Prior to making loans or subgrants, the pass-through entity (CAR) must ensure that each borrower or subgrantee has a "unique entity identifier." This identifier is required for registering in the [System for Award Management](#) (SAM) and by [2 CFR Part 25](#) and [2 CFR § 200.331\(a\)\(1\)](#). The unique entity identifier currently is the entity's Data Universal Numbering System (DUNS) number. Information on obtaining a DUNS number and registering in SAM is available in the General Condition of the pass-through entity's (CAR's) agreement with EPA entitled "*Central Contractor Registration/System for Award Management and Universal Identifier Requirements*" T&C of the pass-through entity's (CAR's) agreement with EPA.
 - d. The pass-through entity (CAR) must ensure that the terms of all loan agreements and subgrants require that borrowers and subgrantees comply with [2 CFR Part 170, Reporting Subaward and Executive Compensation](#) under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition of the pass-through entity's (CAR's) agreement

with EPA entitled *“Reporting Subawards and Executive Compensation.”*

- e. In addition to other prudent lending practices described, in [Section VI](#), pass-through entities (CARs) must establish and follow a system for evaluating borrowers risks of noncompliance with federal statutes, regulations, and the terms and conditions of the loan agreement as required by [2 CFR § 200.331\(b\)](#) and document the evaluation. Risk factors may include:
 - i. Prior experience with same or similar loans;
 - ii. Results of previous audits;
 - iii. Whether the borrower has new or substantially changed personnel or systems; and
 - iv. Extent and results, if any, of federal awarding agency or the pass-through entity’s monitoring of the borrower.
- f. Pass-through entities (CARs) must establish and follow a process for deciding whether to impose additional requirements on borrowers based on risk factors as required by [2 CFR § 200.331\(c\)](#). Examples of additional requirements authorized by [2 CFR § 200.207](#) include:
 - i. Only disbursing funds to the borrower under the “actual expense” method after obtaining detailed cost accounting records;
 - ii. Withholding authority to proceed to the next phase of the loan funded project until receipt of evidence of acceptable performance within a given period of performance;
 - iii. Requiring additional, more detailed financial reports;
 - iv. Requiring additional project monitoring;
 - v. Requiring the borrower to obtain technical or management assistance; and
 - vi. Establishing additional prior approvals.
- vii. Pass-through entities (CARs) must establish and follow a system for monitoring borrower performance that includes the elements required by [2 CFR § 200.331\(d\)](#) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.
- viii. Pass-through entities (CARs) must establish and follow written procedures under [2 CFR § 200.302\(b\)\(7\)](#) for determining that loan costs are allowable in accordance with [2 CFR Part 200, Subpart E](#) and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that borrowers incur, or a combination of both approaches provided the pass-through entity (CAR) documents its

determinations.

- i. Pass-through entities (CARs) must establish and maintain a system under [2 CFR § 200.331\(d\)\(3\)](#) and [2 CFR § 200.521\(c\)](#) for issuing management decisions for Federal or Single Audits of loans that make findings relating to this award. However, the CAR remains accountable to EPA for ensuring that unallowable loan costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the borrower or not.

By accepting this award, the CAR is certifying that it either has systems in place to comply with the requirements described in items in [Section III.C.](#) or will refrain from making loans until the systems are designed and implemented.

8. As the pass-through entity, the CAR must report to EPA on its borrower and subgrantee monitoring activities under [2 CFR § 200.331\(d\)](#), including the following information as part of the CAR's quarterly performance reporting:
 - a. Summaries of results of reviews of financial and programmatic reports;
 - b. Summaries of findings from site visits and/or desk reviews to ensure effective borrower or subgrantee performance;
 - c. Environmental results the borrower or subgrantee achieved;
 - d. Summaries of audit findings and related pass-through entity management decisions, if any; and
 - e. Actions the pass-through entity has taken to correct any deficiencies such as those specified at [2 CFR § 200.331\(e\)](#), [2 CFR § 200.207](#) and the [2 CFR § 200.338, Remedies for Noncompliance](#).
9. Cybersecurity - The recipient agrees that when collecting and managing environmental data under this cooperative agreement, it will protect the data by following all applicable State or Tribal law cybersecurity requirements.
 - a. EPA must ensure that any connections between the recipient's network or information system and EPA networks used by the recipient to transfer data under this agreement are secure. For purposes of this section, a connection is defined as a dedicated persistent interface between an Agency IT system and an external IT system for the purpose of transferring information. Transitory, user-controlled connections such as website browsing are excluded from this definition.

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/ Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into

Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.

- b. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in Cybersecurity Section a. above if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR § 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.

10. All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

D. Quarterly Progress Reports

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.328, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly progress reports to the EPA Project Officer within 30 days after each reporting period. The reporting periods are October 1 - December 31 (1st quarter); January 1 - March 31 (2nd quarter); April 1 - June 30 (3rd quarter); and July 1 - September 30 (4th quarter).

These reports shall cover work status, work progress, difficulties encountered, preliminary data results and a statement of activity anticipated during the subsequent reporting period, including a description of equipment, techniques, and materials to be used or evaluated. A discussion of expenditures and financial status for each workplan task, along with a comparison of the percentage of the project completed to the project schedule and an explanation of significant discrepancies shall be included in the report. The report shall also include any changes of key personnel concerned with the project.

The CAR shall refer to and utilize the Quarterly Reporting function within the Assessment, Cleanup and Redevelopment Exchange System (ACRES) to submit quarterly reports.

2. The CAR must submit progress reports on a quarterly basis in ACRES. Quarterly

progress reports must include:

- a. A summary that clearly differentiates between activities completed with EPA funds provided under the Brownfield RLF cooperative agreement, including the required cost share, and related activities completed with other sources of leveraged funding.
- b. A summary and status of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
- c. An update on project schedules and milestones, including an explanation of any discrepancies from the EPA-approved workplan.
- d. A list of the loans and/or subgrants during the reporting quarter.
- e. A budget summary table with the following information: current approved project budget; EPA funds drawn down during the reporting quarter; costs drawn down to date (cumulative expenditures); cost share contributions; program income generated and used; and total remaining funds. The CAR should include an explanation of any discrepancies in the budget from the EPA-approved workplan, of cost overruns or high unit costs, and other pertinent information.

Note: Each property where cleanup activities were performed and/or completed must have its corresponding information updated in ACRES (or via the Property Profile Form with prior approval from the EPA Project Officer) prior to submitting the quarterly progress report (see [Section III.E.](#) below).

3. For the loans executed by the CAR under this agreement, the CAR must also report on the following items as part of the CAR's quarterly performance reporting:
 - a. Summaries of results of reviews of financial and programmatic reports.
 - b. Environmental results achieved by the borrower.
4. The CAR must maintain records that will enable it to report to EPA on the amount of funds (direct EPA funding and program income) disbursed by the CAR to clean up specific properties under this cooperative agreement.
5. In accordance with 2 CFR § 200.328(d)(1) the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the EPA-approved workplan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., loan signed, clean up started) and any final accomplishments (i.e., clean up completed, contaminants removed, institutional controls, engineering controls) by completing and submitting relevant

portions of the Property Profile Form using the Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. The CAR must enter any new data into ACRES prior to submitting the quarterly progress report to the EPA Project Officer. The CAR must utilize ACRES unless approval is obtained from the EPA Project Officer to utilize the hardcopy version of the Property Profile Form.

F. Final Technical Cooperative Agreement Report with Environmental Results

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.328 *Monitoring and Reporting Program Performance*), the CAR agrees to submit to the EPA Project Officer within 90 days after the expiration or termination of the approved project period a final technical report on the cooperative agreement and at least one reproducible copy suitable for printing. The final technical report shall document project activities over the entire project period and shall include brief information on each of the following areas:
 - a. a comparison of actual accomplishments with the anticipated outputs/outcomes specified in the EPA-approved workplan;
 - b. reasons why anticipated outputs/outcomes were not met; and
 - c. other pertinent information, including when appropriate, analysis and explanation of cost overruns or high unit costs.

The CAR agrees that it will notify EPA of problems, delays, or adverse conditions which materially impair the ability to meet the outputs/outcomes specified in the EPA-approved workplan.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. CERCLA § 104(k)(10)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source unless a Federal statute provides otherwise) of at least 20% (i.e., 20% of the total federal funds awarded, which equates to 16.67% of total project costs as shown in the budget table of this agreement). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement, be supported by adequate documentation, and otherwise comply with 2 CFR § 200.306. The recipient may use allowable administrative costs borne by the recipient or a third party to meet its cost share obligation, including indirect costs, subject to the 5% limit on administrative costs described in the Administrative Cost clause in Section IV. Administrative costs, whether paid for by EPA or used as cost share (or a combination of both), shall not exceed the 5% limit.

B. Eligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees

1. To the extent allowable under the EPA-approved workplan, the CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include activities described in [Section V](#) of these Terms and Conditions. In addition, eligible programmatic expenses may include:
 - a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k).
 - b. Ensuring that an RLF cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
 - c. Limited site characterization to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.
 - d. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.
 - e. Ensuring that public participation requirements are met. This includes preparing a Community Relations Plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.
 - f. Establishing an Administrative Record for each site.
 - g. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.11. The specific requirement for a QAPP is outlined in [Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance](#).
 - h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable federal and state environmental requirements.
 - i. Ensuring that the site is secure if a borrower or subgrantee is unable or unwilling to complete a brownfield site cleanup.
 - j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. The loan or subgrant shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under [Section IV](#), *Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees*.
 - k. Any other eligible programmatic costs, including costs incurred by the recipient in making and managing a loan or subgrant; obtaining RLF fund manager services; quarterly reporting to EPA including preparation of Property Profiles; awarding, managing and monitoring

loans and subgrants as required by the terms of this agreement implementing 2 CFR § 200.331; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrantees.

- I. Borrower and subgrantee progress reporting to the CAR is an eligible programmatic cost.
2. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers, or subgrantees at brownfield sites.
3. At least 50% of the funds EPA awards directly to the CAR and the associated cost share must be used by the CAR to provide loans for the cleanup of eligible brownfield sites and associated eligible programmatic costs. The remaining EPA funding and associated cost share may be used for eligible programmatic costs, including issuing and managing subgrants to clean up eligible brownfield sites. (Note: cleanup subgrants are limited to \$350,000 per site. The CAR may request a waiver of the \$350,000 subgrant limit by consulting with the EPA Project Officer for the waiver process.)
4. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(B)(c):
 - a. The extent to which the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
 - b. The extent to which the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
 - c. The extent to which the subgrant will facilitate the use or reuse of existing infrastructure; and
 - d. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

The CAR must maintain sufficient records to support and document these determinations.

5. **Local Governments Only.** No more than 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for Brownfield Program development and implementation of monitoring health conditions and institutional controls. The health monitoring activities must be associated with brownfield sites at which at least a Phase II environmental site assessment is conducted, and the assessment indicates that the sites are contaminated with hazardous substances. The CAR must maintain records on funds that will be used to carry out this task to ensure compliance with this requirement.
6. If the CAR makes a subgrant to a local government that includes an amount (not to

exceed 10% of the subgrant) for Brownfields Program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the limits on the amount of subgrant funds that may be expended for this purpose.

7. Under CERCLA § 104(k)(5)(E), CARs and subgrantees may use up to 5% of the amount of federal funding for this cooperative agreement for administrative costs, including indirect costs under 2 CFR § 200.414. The limit on administrative costs for the CAR under this agreement is \$40,000. The total amount of indirect costs and any direct costs for cooperative agreement administration by the CAR paid for by EPA under the cooperative agreement, or used to meet the recipient's cost share, shall not exceed this amount. Subgrantees and borrowers may use up to 5% of the amount of Federal funds in their subawards for administrative costs. As required by 2 CFR § 200.403(d), the CAR and subgrantees must classify administrative costs as direct or indirect consistently and shall not classify the same types of costs in both categories. [Note, borrowers cannot charge indirect costs.]

The term "administrative costs" does not include:

- a. Investigation and identification of the extent of contamination of a brownfield site;
- b. design and performance of a response action; or
- c. monitoring of a natural resource.

Eligible cooperative agreement and subgrant administrative costs subject to the 5% limitation include direct costs for:

- a. Costs incurred to comply with the following provisions of the *Uniform Administrative Requirements for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR Parts 200 and 1500 other than those identified as programmatic.
 - i. Record-keeping associated with equipment purchases required under 2 CFR § 200.313;
 - ii. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;
 - iii. Maintaining and operating financial management systems required under 2 CFR § 200.302;
 - iv. Preparing payment requests and handling payments under 2 CFR § 200.305;
 - v. Financial reporting under 2 CFR § 200.327;
 - vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and
 - vii. Closeout under 2 CFR § 200.343 with the exception of preparing the recipient's final performance report. Costs for preparing this report are programmatic and are not subject to the 5% limitation on direct administrative costs.

- b. Pre-award costs for preparation of the proposal and application for this cooperative agreement (including the final workplan) or applications for subgrants are not allowable as direct costs but may be included in the CAR's or subrecipient's indirect cost pool to the extent authorized by 2 CFR § 200.460.
- c. Borrowers may use up to 5% of the amount of the Federal funds in the loan for loan administration costs. Eligible administrative costs for borrowers include direct costs for:
 - i. Salaries, benefits and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel) but only to the extent to which these persons activities support the cleanup and subsequent re-use of the site;
 - ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and
 - iii. Supplies and equipment not used directly for cleanup at the site.
- d. Eligible direct costs for loan administration include expenses for:
 - i. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;
 - ii. Maintaining and operating financial management and personnel systems;
 - iii. Preparing payment requests and handling payments; and
 - iv. Audits including non-federal audits required under 2 CFR Part 200, Subpart F.
- e. Borrowers shall not use loan funds for indirect costs even if the borrower has an indirect cost rate approved by a cognizant Federal agency.

C. Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees

1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrantee for any of the following activities:
 - a. Environmental assessment activities, including Phase I and Phase II Environmental Site Assessments;
 - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;
 - c. Construction, demolition, and site development activities that are not cleanup actions (e.g., marketing of property, construction of a new facility, or

addressing public or private drinking water supplies that have deteriorated through ordinary use);

- d. Job training activities unrelated to performing a specific cleanup at a site covered by a loan or subgrant;
 - e. To pay for a penalty or fine;
 - f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is specific statutory authority;
 - g. To pay for a response cost at a brownfield site for which the CAR or recipient of the subgrant or loan is potentially liable under CERCLA § 107;
 - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
 - i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR 200, Subpart E.
2. Cooperative agreement funds shall not be used for any of the following properties:
- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
 - b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
 - c. Facilities that are subject to the jurisdiction, custody, or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
 - d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

D. Use of Program Income - During the Performance Period

1. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.
2. In accordance with 2 CFR § 200.307 and 2 CFR § 1500.7, during the performance period of the cooperative agreement the CAR is authorized to add program income to the funds awarded by EPA and use the program income under the same terms and conditions of this agreement unless otherwise specified (e.g. [Section IV](#), regarding use of 50% of the funds for loans). CARs that intend to use program income for cost share under 2 CFR § 200.307(e)(3) must obtain prior approval from

EPA's Grant Management Officer or Award Official unless the cost share method for using program income was approved at time of award. Note that repayments of principal for loans made all or in part with cooperative agreement funds shall not be used for cost share. These repayments of principal must be returned to the CAR's Brownfields Revolving Loan Fund.

3. In accordance with 2 CFR § 1500.7(c), to continue the mission of the Brownfields Revolving Loan Fund, recipients may use cooperative agreement funding prior to using program income funds generated by the revolving loan fund.
4. The CAR that elects to use program income to cover all or part of an RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with OMB cost principles at 2 CFR Part 200, Subpart E when charging costs against program income. For any cost determined by EPA to have been an ineligible or unallowable use of program income, the recipient shall reimburse the RLF or refund the amount to EPA as directed by EPA's Action Official in its disallowance determination. EPA will notify the recipient of the time period allowed for reimbursement or refund.
5. Loans or subgrants made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subgrants made with direct funding from EPA in combination with non-federal sources of funds are also subject to the same terms and conditions of this agreement.
6. The CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income unless this requirement is waived by the EPA Project Officer.

E. Interest-Bearing Accounts

1. The CAR must deposit advances of cooperative agreement funds (as described in [Section VII.A., *Methods of Disbursement*](#)) and program income (as defined earlier) in an interest-bearing account.
2. For interest earned on advances, CARs and subgrantees are subject to the provisions of 2 CFR § 200.305(b)(7)(ii) relating to remitting interest on advances to EPA on a quarterly basis.
3. Interest earned on program income is considered additional program income.

F. Closeout Agreement and Use of Post Cooperative Agreement Program Income

1. As provided at 2 CFR § 200.307(f) and 2 CFR § 1500.7(c) after the end of the award period, the CAR may keep and use program income at the end of the cooperative agreement (retained program income) and use program income earned after the

award period (post-closeout program income) in accordance with the following Closeout Agreement unless the CAR and EPA's Award Official or Grants Management Officer agree to modify the terms.

2. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.
3. CAR must deposit program income into an interest-bearing account. Interest earned on program income is considered additional program income.
4. CARs shall use program income to continue to operate the revolving loan fund or for some other brownfield purpose as outlined in the terms of this Closeout Agreement.
5. In accordance with 2 CFR § 200.333(e), the CAR shall maintain appropriate records to document compliance with the requirements of the Closeout Agreement (i.e., records relating to the use of accrued and post-award program income) for a three-year period following the end of the Closeout Agreement; unless one of the conditions specified in the regulation applies. EPA may request access to these records to verify that retained and post-closeout program income has been used in accordance with the terms and conditions of this Closeout Agreement.
6. EPA prefers the primary use of retained and post-closeout program income be for providing loans for Brownfields cleanups. In addition to Brownfield cleanup loans, program income may be used to fund the following brownfield activities:
 - a. Cleanup subgrants to eligible entities (other than the CAR itself) and nonprofit organizations for allowable activities as described in the terms of the cooperative agreement;
 - b. Phase I Environmental Site Assessments at brownfield sites performed in accordance with EPA All Appropriate Inquiries Final Rule or ASTM E1527-13 (or the most current version);
 - c. Phase II Environmental Site Assessments and cleanup planning activities at brownfield sites;
 - d. Planning for the assessment, cleanup and re-use of brownfield sites; and
 - e. Programmatic costs to manage and oversee the work being performed.
7. The CAR must ensure that program income is used on a property that is a brownfield site as defined at CERCLA § 101(39) and in accordance with [Section IV.C.](#), *Ineligible Uses of the funds for the CAR, Borrower, and/or Subgrantees* in the CAR's cooperative agreement with EPA, unless otherwise noted as an eligible use of post-closeout program income in the terms and conditions of this Closeout Agreement.

8. All assessment and cleanup work funded with program income must continue to be performed in accordance with state or tribal environmental rules and regulations and be protective of human health and the environment. If the CAR chooses not to have borrowers or subgrantees conduct assessments or cleanups through State or Tribal response program, then the CAR is required to consult with EPA to ensure the proposed assessment/cleanup is protective of human health and the environment.
9. All brownfield sites that will be using the program income must be located within jurisdiction of the CAR as described in the scope of work for this cooperative agreement.
10. Retained and post-closeout program income shall not be used for site inventory work.
11. When possible, the CAR must continue to perform community involvement activities to solicit input from local communities, these outreach activities may take place with potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, regarding the need for site-specific assessments, loans and subgrants.
12. Program income shall not be used to assess or clean up a site at which the CAR, the borrower, or the subrecipient is potentially liable under CERCLA § 107 unless they qualify for a limitation or defense to liability under CERCLA. The CAR and borrower or subrecipient must make and retain a certification to that effect as part of the records for this Closeout Agreement. If asserting a limitation or defense to liability, the borrower or subrecipient must state the basis for that assertion. When using program income for petroleum-contaminated brownfield sites, the CAR, borrower or subrecipient shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site and retain a certification to that effect as part of the records for this Closeout Agreement. The CAR may consult with EPA for assistance with this matter.
13. The CAR shall submit Annual Reports for the first five (5) years following the effective date of this Closeout Agreement, and thereafter, the CAR shall submit a report once every five years until there is no program income. The effective date of the Closeout Agreement is defined as the day after the cooperative agreement is closed. The annual reports/five-year report(s) shall include the following information:
 - a. A cover page indicating the CAR's organization, cooperative agreement number, annual report number (i.e., 1, 2 or 3), dates for the reporting period, persons/organizations preparing and submitting the report, and the date of the report submission.
 - b. A summary of the activities conducted during the reporting period, a list of reports and documents generated during the reporting period, and a budget summary table reflecting the expenses incurred and program income

received.

- c. Site data consistent with information requested in current Property Profile Forms as required by the [Section III.E., *Property Profile Submission*](#), of the cooperative agreement or a list of sites created and/or updated in the ACRES database.
14. The CAR must maintain adequate accounting records for how retained and post-closeout program income is managed and spent as well as all other appropriate records and documents related to the activities conducted using retained and post-closeout program income.
15. Termination of this Closeout Agreement occurs when no program income remains to be disbursed and all loans have been repaid, the recipient decides to discontinue carrying out the activities and requests termination of the Closeout Agreement; or EPA determines that the CAR is not effectively deploying the program income.
- a. No remaining program income or future loan repayments. The CAR shall notify EPA's Grants Management Officer in writing when this occurs and certify that all funds have been expended in accordance with the terms and conditions of this Closeout Agreement. The notification must provide a final report regarding the relevant cooperative agreement information in the format specified in item 13. above. EPA has 90 days from receipt of this notification to submit any objections to the termination of this Closeout Agreement. If EPA does not object within that time period, then this Closeout Agreement will terminate with no further action.
 - b. Discontinuance of the Closeout Agreement. The CAR shall notify EPA's Grants Management Officer and Project Officer in writing that it has decided to discontinue performing the Closeout Agreement. The notification must provide a final report with the relevant cooperative agreement information in the format specified in item 13. above. The CAR must account for and return all program income to EPA in accordance with instructions provided by the EPA's Grants Management Officer. CARs must also describe the status and amounts of principal and interest payments that will take place after the Closeout Agreement is terminated. Unless waived by the Grants Management Officer, the CAR must remit to EPA on a quarterly basis program income earned after the Closeout Agreement has been terminated.
 - c. EPA revocation of the Closeout Agreement. If the recipient holds more than \$500,000 in program income three (3) years after the effective date of this Closeout Agreement EPA may assess whether the CAR has effectively carried out the Closeout Agreement. This assessment will take into account the amount of program income the CAR has disbursed within the three-year period, whether the program income being held is retained program income or post-close out program income, and other factors relevant to ensuring that the recipient deploys program income in a timely manner. EPA may revoke

the Closeout Agreement and direct the recipient to return the unused program income to EPA based on this assessment.

16. All records and documents relating to performing the Closeout Agreement must be retained for a period of three (3) years following termination or discontinuation of this Closeout Agreement. Records and documents relating solely to performing the cooperative agreement prior to close out may be disposed of in accordance with 2 CFR § 200.333.
17. EPA's Award Official or Grants Management Officer and the CAR must agree to any modifications to this Closeout Agreement. Agreed-upon modifications must be in writing. Oral or unilateral modifications shall not be effective or binding.
18. If the CAR expends retained program income in a manner inconsistent with this Closeout Agreement, EPA may take actions authorized under 2 CFR Part 200, *Remedies for Noncompliance*.
19. If any provisions of this Closeout Agreement are invalidated by a court of law, the parties shall remain bound to comply with the provisions of this Closeout Agreement that have not been invalidated.
20. No other federal requirements apply to the use of program income under the terms of this Closeout Agreement.

V. RLF REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR shall prepare an Analysis of Brownfield Cleanup Alternatives (ABCA), or equivalent state Brownfields program document, which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, ability to implement, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options to address potential adverse impacts caused by extreme weather events (e.g., sea level rise, increased frequency and intensity of flooding, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.
2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the CAR shall consult

with the EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist EPA in complying with any requirements of the NHPA and implementing regulations.

B. Quality Assurance (QA) Requirements

1. If environmental data are to be collected as part of the brownfield cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 2 CFR § 1500.11 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Officer an approvable Quality Assurance Project Plan (QAPP) at least 30 days prior to the initiating of data collection or data compilation. The Quality Assurance Project Plan (QAPP) is the document that provides comprehensive details about the quality assurance, quality control, and technical activities that must be implemented to ensure that project objectives are met. Environmental programs include direct measurements or data generation, environmental modeling, compilation of data from literature or electronic media, and data supporting the design, construction, and operation of environmental technology.

The QAPP should be prepared in accordance with EPA QA/R-5: EPA Requirements for Quality Assurance Project Plans. No environmental data collection or data compilation may occur until the QAPP is approved by the EPA Project Officer and Quality Assurance Regional Manager. Additional information on the requirements can be found at the EPA Office of Grants and Debarment website at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.

2. **Competency of Organizations Generating Environmental Measurement Data:** In accordance with Agency Policy Directive Number FEM-2012-02, *Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements*, the CAR agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively, where a pre-award demonstration of competency is not practicable, the CAR agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The CAR shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA Project Officer for this award.

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. All RLF loan and subgrant cleanup activities require a site-specific Community Relations Plan that includes providing reasonable notice, and the opportunity for

public involvement and comment on the proposed cleanup options under consideration for the site.

2. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved workplan which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.
 - a. If any documents, fact sheets, and/or web materials are developed as part of this cooperative agreement, then they shall include the following statement: "**Though this project has been funded, wholly or in part, by EPA, the contents of this document do not necessarily reflect the views and policies of EPA.**"
 - b. If a sign is developed as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at <https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-e-pa-assistance-agreement-recipients>.
3. The CAR agrees to notify the EPA Project Officer of public or media events publicizing the accomplishment of significant events related to construction and/or site reuse projects as a result of this agreement, and provide the opportunity for attendance and participation by federal representatives with at least ten (10) working days' notice.
4. To increase public awareness of projects serving communities where English is not the predominant language, CARs are encouraged to include in their outreach strategies communication in non-English languages. Translation costs for this purpose are allowable, provided the costs are reasonable.

D. Administrative Record

1. The CAR shall establish an Administrative Record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the Administrative Record shall include the ABCA; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanups are complete. The CAR shall keep the Administrative Record available at a location convenient to the public and make it available for inspection. The Administrative Record must be retained for three (3) years after the termination of the cooperative agreement subject to any requirements for maintaining records of site cleanups ongoing at the time of termination contained in the recipient's Closeout Agreement.

E. Implementation of RLF Cleanup Activities

1. The CAR shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subgrant agreement shall contain terms and conditions, subject to any required approvals by the state or tribal regulatory oversight authority, that allow the CAR to change cleanup activities as necessary based on comments from the public or any new information acquired.
2. If the borrower or subgrantee is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and EPA to ensure an orderly transition should additional activities become necessary.

F. Completion of RLF Cleanup Activities

1. The CAR shall ensure that the successful completion of an RLF cleanup is properly documented. This must be done through a final report or letter from a Qualified Environmental Professional, or other documentation provided by a State or Tribe that shows cleanups are complete (including No Further Action letters, institutional controls, etc.). This documentation must be included as part of the Administrative Record.

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet long-term brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.
2. The CAR shall not incur costs under this cooperative agreement for loans subgrants or other eligible costs until an RLF cooperative agreement workplan has been submitted to and approved the EPA Project Officer or program manager. Though the workplan must identify tasks and milestones for establishing and operating the RLF, more detailed information may be submitted in supplemental documents, e.g., an "implementation plan." The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:
 - a. Considering awarding subgrants on a competitive basis. If the CAR decides

not to award any such subgrants competitively, it must document the basis for that decision and inform the EPA Project Officer in the first quarterly performance report. The CAR must inform the EPA Project Officer if the CAR subsequently decides to award subgrants competitively in the quarterly performance report immediately following the decision.

- b. Establishing appropriate project selection criteria consistent with federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.
- c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrantees receive RLF financing.
- d. Developing a formal protocol for potential borrowers or subgrantees to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrantee to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrantees for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.
- e. Requiring that borrowers or subgrantees submit information describing the borrower's or subgrantee's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.
- f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.
- g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrantee.

B. Inclusion of Additional Terms and Conditions in RLF Loan and Subgrant Documents

1. All loans and subgrants must include the information required by 2 CFR § 200.331(a). EPA has developed an optional template to use in creating this agreement that is available on EPA's [Subaward Policy](#) internet page. EPA does not require CARs to use the template.
2. The CAR shall ensure that the borrower or subgrantee meets the cleanup and other program requirements of the RLF cooperative agreement by including the following special terms and conditions in RLF loan agreements and subgrants:
 - a. Borrowers or subgrantees shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable federal and state laws and regulations. (See [Section I.A.2.](#) and [Section II.](#))
 - b. Borrowers or subgrantees shall ensure that the cleanup protects human

health and the environment.

- c. Borrowers or subgrantees shall document how funds are used.
- d. Borrowers or subgrantees shall maintain records for a minimum of three (3) years following completion of the cleanup financed all or in part with RLF funds unless one of the conditions described at [2 CFR § 200.333](#) is present. Borrowers or subgrantees shall obtain written approval from the CAR prior to disposing of records. CARs shall also require that the borrower or subgrantee provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the federal government. As stated in [Section IV.F](#), records related to the closeout agreement must be retained by the CAR for the duration of the closeout agreement and retained for a period of three (3) years following termination or discontinuation of this Closeout Agreement.
- e. Borrowers or subgrantees shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant.
- f. Borrowers or subgrantees shall certify that they are not potentially liable under CERCLA § 107 for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrantee must state the basis for that assertion. When using cooperative agreement funds for petroleum-contaminated brownfield sites, borrowers or subgrantees shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. The CAR may consult with EPA for assistance with this matter.
- g. Borrowers or subgrantees shall conduct cleanup activities as required by the CAR.
- h. Subgrantees, other than borrowers, shall comply with all applicable EPA assistance regulations (2 CFR Parts 200 and 1500). All procurements conducted with subgrant funds, but not loans, must comply with Procurement Standards of 2 CFR §§ 200.317 through 200.326, as applicable.
- i. Borrowers must comply with the internal control requirements specified at 2 CFR § 200.303 and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The CAR must oversee and manage loans as required by 2 CFR §§ 200.330 through 200.332. No other provisions of the Uniform Grant Guidance apply directly to borrowers.
- j. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that borrowers and subgrantees comply with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal

applicable laws and requirements include 2 CFR Parts 200 and 1500.

- k. EPA provides general information on statutes, regulations and Executive Orders that apply to EPA grants on the [Grants internet site](http://www.epa.gov/grants) at www.epa.gov/grants. Many federal requirements are agreement or program specific and EPA encourages CARs to review the terms of their cooperative agreement carefully and consult with their EPA Project Officer for advice if necessary.

C. Default

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for:
 - a. documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and
 - b. securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

VII. DISBURSEMENT, PAYMENT, AND CLOSEOUT

For the purposes of these Terms and Conditions, the following definitions apply: “payment” is EPA’s transfer of funds to the CAR; the CAR incurs an “obligation” when it enters into an agreement with a borrower or a subgrantee; “disbursement” is the transfer of funds from the CAR to the borrower or subgrantee. The CAR may also disburse funds to a contractor or to pay an allowable cost (e.g. personnel compensation) as provided in [2 CFR § 200.305\(b\)\(1\)](#). “Closeout” refers to the process EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed and to establish a Closeout Agreement to govern the use of program income.

A. Methods of Disbursement

1. The CAR may choose to disburse funds to the borrower or subgrantee by means of ‘actual expense’ or ‘schedule.’ If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower’s or subgrantee’s incurred costs.
 - a. An ‘actual expense’ disbursement approach requires the borrower or subgrantee to submit documentation of the borrower’s or subgrantee’s expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.
 - b. A ‘schedule’ disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower or

subgrantee on the basis of an agreed upon schedule (e.g., progress payments) provided the schedule minimizes the time elapsing between disbursement by the CAR and the borrower or subgrantee's payment of costs incurred in carrying out the loan/subgrant. In unusual circumstances, disbursement may occur upon execution of the loan or subgrant. The CAR shall submit documentation of disbursement schedules to EPA.

- c. If the disbursement schedule of the loan/subgrant agreement calls for disbursement of the entire amount of the loan/subgrant upon execution, the CAR shall demonstrate to the EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan/subgrant. Further, the CAR shall include an appropriate provision in the loan/subgrant agreement which ensures that the borrower/subgrantee uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

B. Schedule for Closeout

1. There are two fundamental criteria for closeout:
 - a. Final payment of funds from EPA to the CAR following the end date for the cooperative agreement or prior to the end date when the CAR has disbursed all of the EPA funding of the funds awarded; and
 - b. Completion of all cleanup activities funded completely, or in part, by direct EPA funding from the amount of the award.
2. The first criterion of cooperative agreement closeout is met when the CAR receives all payments from EPA. The second closeout criterion is met when all cleanup activities funded by the cooperative agreement are complete.
3. The CAR must follow [Section IV.](#), *Closeout Agreement and Use of Post Cooperative Agreement Program Income* for any retained and future program income generated after closeout. Eligible uses include continuing to operate an RLF for brownfield site cleanup and/or other brownfield site activities as identified in item 6 of the *Closeout Agreement and Use of Post Cooperative Agreement Program Income*.

C. Compliance with Closeout Schedule

1. If the CAR fails to comply with the closeout schedule, any funds attributable to the cooperative agreement, including retained program income not obligated under loan agreement to a borrower or subgrantee, may be subject to federal recovery.

D. Final Requirements

1. The CAR must submit the following documentation:
 - a. The Final Technical Cooperative Agreement Report as described in [Section](#)

[III.F.](#) of these Terms and Conditions.

- b. Administrative and Financial Reports as described in the Grant-Specific Administrative Terms and Conditions of this agreement.
2. The CAR must ensure that all appropriate data have been entered into ACRES or all hardcopy Property Profile Forms are submitted to the EPA Project Officer.

E. Recovery of RLF Assets

1. In case of termination, the CAR shall return to EPA its fair share of the value of the RLF assets consisting of cash, receivables, personal and real property, and notes or other financial instruments developed through use of the funds. EPA's fair share is the amount computed by applying the percentage of EPA participation in the total capitalization of the RLF to the current fair market value of the assets thereof. EPA also has remedies under *Remedies for Noncompliance* at 2 CFR §§ 200.338 through 200.342 and CERCLA § 104(k) when EPA determines that the value of such assets has been reduced by improper/illegal use of cooperative agreement funding. In such instances, the CAR may be required to compensate EPA over and above the EPA's share of the current fair market value of the assets. Nothing in this agreement limits EPA's authorities under CERCLA to recover response costs from a potentially responsible party.

F. Loan Guarantees

1. If the CAR chooses to use the RLF funds to support a loan guarantee approach, the following terms and conditions apply:
 - a. The CAR shall:
 - i. Document the relationship between the expenditure of CERCLA § 104(k) funds and cleanup activities;
 - ii. Maintain an escrow account expressly for the purpose of guaranteeing loans, by following the payment requirement described under the Escrow Requirements term and condition below; and
 - iii. Ensure that cleanup activities guaranteed by RLF funds are carried out in accordance with CERCLA § 104(k), CERCLA § 104(g) relating to compliance with the Davis-Bacon Act, and applicable federal and state laws and will protect human health and the environment.
 - b. Payment of funds to a CAR shall not be made until a guaranteed loan has been issued by a participating financial institution. Loans guaranteed with RLF funds shall be made available as needed for specified cleanup activities on an "actual expense" or "schedule" basis to the borrower. (See [Section VII.A.](#), *Methods of Disbursement*). The CAR's escrow arrangement shall be structured to ensure that the CERCLA § 104(k) funds are properly "disbursed"

by the recipient for the purposes of the cooperative agreement as required by 2 CFR § 200.305. If the funds are not properly disbursed, the CERCLA § 104(k) funds that the recipient places in an escrow account will be subject to the interest recovery provisions of 2 CFR § 200.305.

- c. To ensure that funds transferred to the CAR are disbursements of assisted funds, the escrow account shall be structured to ensure that:
 - i. The recipient does not retain the funds;
 - ii. The recipient does not have access to the escrow funds on demand;
 - iii. The funds remain in escrow unless there is a default of a guaranteed loan;
 - iv. The organization holding the escrow (i.e., the escrow agency), shall be a bank or similar financial institution that is independent of the recipient; and
 - v. There must be an agreement with the financial institution participating in the guaranteed loan program which documents that the financial institution has made a guaranteed loan to clean up a brownfield site in exchange for access to funds held in escrow in the event of a default by the borrower or subgrantee.
- d. Federal Obligation to the Loan Guarantee Program - Any obligations that the CAR incurs for loan guarantees in excess of the amount awarded under the cooperative agreement are the CAR's responsibility. This limitation on the extent of the Federal Government's financial commitment to the CAR's loan guarantee program shall be communicated to all participating banks and borrower or subgrantee.
- e. Repayment of Guaranteed Loans - Upon repayment of a guaranteed loan and release of the escrow amount by the participating financial institution, the CAR shall return the cooperative agreement funds placed in escrow to EPA based on disposition instructions provided by the EPA Project Officer. Alternatively, the CAR may, with EPA approval:
 - i. Guarantee additional loans under the terms and conditions of the agreement; or
 - ii. Amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfield sites' related activities authorized by the terms of the cooperative agreement or, if applicable, a Closeout Agreement.

Davis Bacon Terms and Conditions For
Cooperative Agreements with Cleanup Activities using Hazardous Waste
Funding - Governmental Entities

DAVIS BACON PREVAILING WAGE TERM AND CONDITION

The following terms and conditions specify how Cooperative Agreement Recipients (CARs) will assist EPA in meeting its Davis-Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under CERCLA 104(g) and any other statute which makes DB applicable to EPA financial assistance. If a CAR has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, they should contact the regional Brownfields Coordinator or Project Officer.

1. Applicability of the Davis Bacon Prevailing Wage Requirements

For the purposes of this term and condition, EPA has determined that all construction, alteration and repair activity involving the remediation of hazardous substances, including excavation and removal of hazardous substances, construction of caps, barriers, structures which house treatment equipment, and abatement of contamination in buildings, is subject to DB. If CAR encounters a unique situation at a site that presents uncertainties regarding DB applicability, the CAR must discuss the situation with EPA before authorizing work on that site.

2. Obtaining Wage Determinations

- (a) Unless otherwise instructed by EPA on a project specific basis, the CAR shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. CARs must obtain wage determinations for specific localities at <https://beta.sam.gov/>.
 - (i) When soliciting competitive contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments) for, the excavation and removal of hazardous substances, construction of caps, barriers, and similar activities that do not involve construction of buildings CAR shall use the “Heavy Construction” Classification.
 - (ii) When soliciting competitive contracts or issuing ordering instruments for the construction of structures which house treatment equipment, and abatement of contamination in buildings (other than residential structures less than 4 stories in height) CAR shall use “Building Construction” classification.
 - (iii) When soliciting competitive contracts or issuing ordering instruments for the abatement of contamination in residential structures less than 4 stories in height the CAR shall use “Residential Construction” classification.

Note: CARs must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with a CAR, EPA

determines that DB applies to a unique situation the Agency will advise the CAR which General Wage Classification to use based on the nature of the construction activity at the site.

(b) CARs shall obtain the wage determination for the locality in which a Brownfields cleanup activity subject to DB will take place *prior* to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the CAR shall monitor <https://beta.sam.gov/> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The CAR shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the CAR may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the CAR.
- (ii) If the CAR does not award the contract within 90 days of the closure of the solicitation, any modifications or determination contained in the solicitation shall be effective unless EPA, at the request of the CAR, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The CAR shall monitor <https://beta.sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
- (iii) If the CAR carries out Brownfield cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the CAR shall insert the appropriate DOL wage determination from <https://beta.sam.gov/> into the ordering instrument.

(c) CARs shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a CAR's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the CAR has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the CAR shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The CAR's contractor

must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

(a) The CAR shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to DB, the following labor standards provisions.

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the CAR obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. CARs shall require that the contractor and subcontractors include the name of the CAR employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The CAR, on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the CAR agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the CAR to the EPA Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the award official or will notify the award official within the 30-day period that additional time is necessary.

(ii)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the CAR do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

(ii)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(1) Withholding. The CAR, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, EPA may, after written notice to the contractor, or CAR take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the CAR who will maintain the records on behalf of

EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the CAR for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the CAR.

(ii)(B) Each payroll submitted to the CAR shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(ii)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(ii)(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, CAR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize

apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), the CAR, borrower or subrecipient and EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provisions for Contracts in Excess of \$100,000

(a) Contract Work Hours and Safety Standards Act. The **CAR** shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done

under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The **CAR**, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the CAR shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the CAR shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The CAR shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The CAR must use Standard Form 1445 or equivalent

documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The CAR shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. CARs must conduct more frequent interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. CARs shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The CAR shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The CAR shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. CARs must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the CAR shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The CAR shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) CARs must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/whd/america2.htm>.

Davis Bacon Terms and Conditions For Cooperative Agreements with Cleanup Activities using Petroleum Funding - Governmental Entities

DAVIS BACON PREVAILING WAGE TERM AND CONDITION

The following terms and conditions specify how Cooperative Agreement Recipients (CARs) will assist EPA in meeting its Davis Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under CERCLA 104(g) and any other statute which makes DB applicable to EPA financial assistance. If a CAR has questions regarding when DB applies, obtaining the correct DB wage determinations, DB contract provisions, or DB compliance monitoring, they should contact the Regional Brownfields Coordinator or Project Officer for guidance.

1. Applicability of the Davis Bacon Prevailing Wage Requirements

After consultation with DOL, EPA has determined that for Brownfields grants for cleanups of sites contaminated with petroleum, DB prevailing wage requirement apply when the project includes:

- (a) Installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping due to groundwater contamination,
- (b) Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or
- (c) Soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement.

In the above circumstances, all the laborers and mechanics employed by contractors and subcontractors will be covered by the DB requirements for all construction work performed on the site. Other petroleum site cleanup activities such as in situ remediation, and soil excavation/replacement and tank removal when not in conjunction with paving or concrete replacement, will normally not trigger DB requirements. However, if the CAR encounters a unique situation at a site (e.g. unusually extensive excavation, construction of permanent facilities to house in situ remediation systems, reconstruction of roadways) that presents uncertainties regarding DB applicability, the CAR must discuss the situation with EPA before authorizing work on that site.

2. Obtaining Wage Determinations

- (a) Unless otherwise instructed by EPA on a project specific basis, the CAR shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. CARs must obtain wage determinations for specific localities at <https://beta.sam.gov/>.

- (i) When soliciting competitive contracts, awarding new contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments) for installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping, including soil excavation/replacement, the CARs shall use the “Heavy Construction” Classification.
- (ii) When soliciting competitive contracts, awarding new contracts, or issuing ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant the CAR shall use the “Building Construction” classification.
- (iii) When soliciting competitive contracts, awarding new contracts or issuing ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant the CAR shall use the “Heavy Construction” classification.

Note: CARs must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with a CAR, EPA determines that DB applies to a unique situation (e.g. unusually extensive excavation) the Agency will advise the CAR which General Wage Classification to use based on the nature of the construction activity at the site.

(b) CARs shall obtain the wage determination for the locality in which a Brownfields cleanup activity subject to DB will take place *prior* to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

- (i) While the solicitation remains open, the CAR shall monitor <https://beta.sam.gov/> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The CAR shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the CAR may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency’s finding to the CAR.

- (ii) If the CAR does not award the contract within 90 days of the closure of the solicitation, any modifications or supersedes DOL makes to the wage determination contained in the solicitation shall be effective unless EPA, at the request of the CAR, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The CAR shall monitor <https://beta.sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
 - (iii) If the CAR carries out Brownfields cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the CAR shall insert the appropriate DOL wage determination from <https://beta.sam.gov/> into the ordering instrument.
- (c) CARs shall review all subcontracts subject to DB entered into by prime contractors to verify that the prime contractor has required its subcontractors to include the applicable wage determinations.
- (d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a CAR's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the CAR has failed to incorporate a wage determination or has used a wage determination that clearly does not apply to the contract or ordering instrument. If this occurs, the CAR shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The CAR's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

(a) The CAR shall insert in full in any contract in excess of \$2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds or in accordance with guarantees of a Federal agency or financed from funds obtained by pledge of any contract of a Federal agency to make a loan, grant or annual contribution (except where a different meaning is expressly indicated), and which is subject to DB, the following labor standards provisions.

(1) Minimum wages.

- (i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the

applicable wage determination of the Secretary of Labor which the CAR obtained under the procedures specified in Item 2, above, and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (a)(1)(iv) of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. CARs shall require that the contractor and subcontractors include the name of the CAR employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The CAR, on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

- (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2) The classification is utilized in the area by the construction industry; and
- (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(ii)(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the CAR agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the CAR to the EPA

Award Official. The Award Official will transmit the report, to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the award official or will notify the award official within the 30-day period that additional time is necessary.

(ii)(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the CAR do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the award official shall refer the questions, including the views of all interested parties and the recommendation of the award official, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the Award Official within the 30-day period that additional time is necessary.

(ii)(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii)(B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(1) Withholding. The CAR, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work all or part of the wages

required by the contract, EPA may, after written notice to the contractor, or CAR take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(2) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)(A) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the CAR who will maintain the records on behalf of EPA. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/whd/forms/wh347.pdf> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the CAR for transmission to the EPA, if requested by EPA, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide

addresses and social security numbers to the prime contractor for its own records, without weekly submission to the CAR.

(ii)(B) Each payroll submitted to the CAR shall be accompanied by a “Statement of Compliance,” signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR Part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR Part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(ii)(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the “Statement of Compliance” required by paragraph (a)(3)(ii)(B) of this section.

(ii)(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the EPA or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, EPA may, after written notice to the contractor, CAR, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) Apprentices and Trainees

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable

wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

(6) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the EPA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this term and condition.

(7) Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors), the

CAR, borrower or subrecipient and EPA, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

4. Contract Provisions for Contracts in Excess of \$100,000

(a) Contract Work Hours and Safety Standards Act. The **CAR** shall insert the following clauses set forth in paragraphs (a)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by Item 3, above or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The **CAR**, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (a)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (a)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (a)(1) through (4) of this section.

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the CAR shall insert a clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the CAR shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the (write the name of agency) and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

5. Compliance Verification

(a) The CAR shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The CAR must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

(b) The CAR shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must conduct interviews with a representative group of covered employees within two weeks of each contractor or subcontractor's submission of its initial weekly payroll data and two weeks prior to the estimated completion date for the contract or subcontract. CARs must conduct more frequent

interviews if the initial interviews or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. CARs shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements. All interviews shall be conducted in confidence.

(c) The CAR shall periodically conduct spot checks of a representative sample of weekly payroll data to verify that contractors or subcontractors are paying the appropriate wage rates. The CAR shall establish and follow a spot check schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the CAR must spot check payroll data within two weeks of each contractor or subcontractor's submission of its initial payroll data and two weeks prior to the completion date the contract or subcontract. CARs must conduct more frequent spot checks if the initial spot check or other information indicates that there is a risk that the contractor or subcontractor is not complying with DB. In addition, during the examinations the CAR shall verify evidence of fringe benefit plans and payments thereunder by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The CAR shall periodically review contractors and subcontractors use of apprentices and trainees to verify registration and certification with respect to apprenticeship and training programs approved by either the U.S Department of Labor or a state, as appropriate, and that contractors and subcontractors are not using disproportionate numbers of, laborers, trainees and apprentices. These reviews shall be conducted in accordance with the schedules for spot checks and interviews described in Item 5(b) and (c) above.

(e) CARs must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at <https://www.dol.gov/whd/america2.htm>.

EPA General Terms and Conditions

Effective October 1, 2019

1. Introduction

- (a) The recipient and any sub-recipient must comply with the applicable EPA general terms and conditions outlined below. These terms and conditions are in addition to the assurances and certifications made as part of the award and terms, conditions, and restrictions reflected on the official assistance award document. **Please note that EPA updated these terms and conditions to include coverage effective August 13, 2020 prohibiting the use of EPA funds to purchase certain telecommunications services or products (General Term and Condition #6) and amending the termination bases available for EPA assistance agreements (General Term and Condition #3).** Recipients must review their official award document for additional administrative and programmatic requirements. Failure to comply with the general terms and conditions outlined below and those directly reflected on the official assistance award document may result in enforcement actions as outlined in 2 CFR 200.338 and 200.339.
- (b) If the EPA General Terms and Conditions have been revised, EPA will update the terms and conditions when it provides additional funding (incremental or supplemental) prior to the end of the period of performance of this agreement. The recipient must comply with the revised terms and conditions after the effective date of the EPA action that leads to the revision. Revised terms and conditions do not apply to the recipient's expenditures of EPA funds or activities the recipient carries out prior to the effective date of the EPA action. EPA will inform the recipient of revised terms and conditions in the action adding additional funds.

2. Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards

This award is subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards; Title 2 CFR, Parts 200 and 1500. 2 CFR 1500.1, Adoption of 2 CFR 200, states Environmental Protection Agency adopts the Office of Management and Budget (OMB) guidance Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards to Non-Federal Entities (subparts A through F of 2 CFR 200), as supplemented by 2 CFR Part 1500, as the Environmental Protection Agency (EPA) policies and procedures for financial assistance administration. 2 CFR Part 1500 satisfies the requirements of 2 CFR 200.110(a) and gives regulatory effect to the OMB guidance as supplemented by 2 CFR Part 1500. This award is also subject to applicable requirements contained in EPA programmatic regulations located in 40 CFR Chapter 1 Subchapter B.

2.1. Effective Date and Incremental or Supplemental Funding. Consistent with the OMB Frequently Asked Questions at <https://cfo.gov/cofar> on Effective Date and Incremental Funding, any new funding through an amendment (supplemental or incremental) on or after December 26, 2014, and any unobligated balances (defined at 200.98) remaining on the award at the time of the amendment, will be subject to the requirements of the Uniform Administrative Requirements, Cost Principles and Audit Requirements (2 CFR 200 and 1500).

3. Termination (Effective 8/13/2020)

Consistent with 2 CFR 200.340, EPA may unilaterally terminate this award in whole or in part:

- a. if a recipient fails to comply with the terms and conditions of the award including statutory or regulatory requirements; or
- b. if the award no longer effectuates the program goals or agency priorities. Situations in which EPA may terminate an award under this provision include when:
- (i) EPA obtains evidence that was not considered in making the award that reveals that specific award

objective(s) are ineffective at achieving program goals and EPA determines that it is in the government's interest to terminate the award;

(ii) EPA obtains evidence that was not considered in making the award that causes EPA to significantly question the feasibility of the intended objective(s) of the award and EPA determines that it is in the government's interest to terminate the award;

(iii) EPA determines that the objectives of the award are no longer consistent with funding priorities for achieving program goals.

Financial Information

4. Reimbursement Limitation

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as reflected on the award document. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk. See 2 CFR 1500.8

5. Automated Standard Application Payments (ASAP) and Proper Payment Draw Down (Updated 12/11/2019)

Electronic Payments. Recipients must be enrolled or enroll in the Automated Standard Application for Payments (ASAP) system to receive payments under EPA financial assistance agreements unless:

- EPA grants a recipient specific exception or the assistance program has received a waiver from this requirement;
- The recipient is exempt from this requirement under [31 CFR 208.4](#); or,
- The recipient is a fellowship recipient pursuant to [40 CFR Part 46](#).

EPA will not make payments to recipients until the ASAP enrollment requirement is met unless the recipients fall under one of the above categories. Recipients may request exceptions using the procedures below but only EPA programs may obtain waivers.

To enroll in ASAP, complete the ASAP Initiate Enrollment form located at:

<https://www.epa.gov/financial/forms> and email it to rtpfc-grants@epa.gov or mail it to:

US Environmental Protection Agency
RTP-Finance Center (Mail Code AA216-01)
4930 Page Rd.
Durham, NC 27711

Under this payment mechanism, the recipient initiates an electronic payment request online via ASAP, which is approved or rejected based on the amount of available funds authorized by EPA in the recipient's ASAP account. Approved payments are credited to the account at the financial institution of the recipient organization set up by the recipient during the ASAP enrollment process. Additional information concerning ASAP and enrollment can be obtained by contacting the EPA Research Triangle Park Finance Center (RTPFC), at rtpfc-grants@epa.gov or 919-541-5347, or by visiting: <https://www.fiscal.treasury.gov/asap/>.

EPA will grant exceptions to the ASAP enrollment requirement only in situations in which the recipient demonstrates to EPA that receiving payment via ASAP places an undue administrative or financial management burden on the recipient or EPA determines that granting the waiver is in the public interest. Recipients may request an exception to the requirement by following the procedures specified in [RAIN-2018-G06](#).

Proper Payment Drawdown (for recipients other than states)

- a. As required by [2 CFR 200.305\(b\)](#), the recipient must draw funds from ASAP only for the minimum amounts needed for actual and immediate cash requirements to pay employees, contractors, subrecipients or to satisfy other obligations for allowable costs under this assistance agreement. The timing and amounts of the drawdowns must be as close as administratively feasible to actual disbursements of EPA funds. Disbursement within 5 business days of drawdown will comply with this requirement and the recipient agrees to meet this standard when performing this award.
- b. Recipients may not retain more than 5% of the amount drawn down, or \$1,000 whichever is less, 5 business days after drawdown to materially comply with the standard. Any EPA funds subject to this paragraph that remain undisbursed after 5 business days must be fully disbursed within 15 business days of draw down or be returned to EPA.
- c. If the recipient draws down EPA funds in excess of that allowed by paragraph b., the recipient must contact rtpec-grants@epa.gov for instructions on whether to return the funds to EPA. Recipients must comply with the requirements at [2 CFR 200.305\(b\)\(8\) and \(9\)](#) regarding depositing advances of Federal funds in interest bearing accounts.
- d. Information on how to repay EPA via check is available at <https://www.epa.gov/financial/makepayment>. Instructions on how to return funds to EPA electronically via ASAP are available at <https://www.fiscal.treasury.gov/asap/>
- e. Failure on the part of the recipient to materially comply with this condition may, in addition to EPA recovery of the un-disbursed portions of the drawn down funds, lead to changing the payment method from advance payment to a reimbursable basis. EPA may also take other remedies for noncompliance under [2 CFR 200.207](#) and/or [200.338](#).
- f. If the recipient believes that there are extraordinary circumstances that prevent it from complying with the 5-business day disbursement requirement throughout the performance period of this agreement, recipients may request an exception to the requirement by following the procedures specified in [RAIN-2018-G06](#). EPA will grant exceptions to the 5-business day disbursement requirement only if the recipient demonstrates that compliance places an undue administrative or financial management burden or EPA determines that granting the exception is in the public interest.

Selected Items of Cost

6. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment (Effective 8/13/2020)

This term and condition implements 2 CFR 200.216 and is effective for obligations and expenditures of EPA financial assistance funding on or after 8/13/2020.

As required by 2 CFR 200.216, EPA recipients and subrecipients, including borrowers under EPA funded revolving loan fund programs, are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities). Recipients, subrecipients, and borrowers also may not use EPA funds to purchase:

- a. For the purpose of public safety, security of government facilities, physical security surveillance of critical

infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

- b. Telecommunications or video surveillance services provided by such entities or using such equipment.
- c. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

Consistent with 2 CFR 200.471, costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, and cloud servers are allowable except for the following circumstances:

- a. Obligating or expending EPA funds for covered telecommunications and video surveillance services or equipment or services as described in 2 CFR 200.216 to:
 - (1) Procure or obtain, extend or renew a contract to procure or obtain;
 - (2) Enter into a contract (or extend or renew a contract) to procure; or
 - (3) Obtain the equipment, services, or systems.

Certain prohibited equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified in section 889, are recorded in the [System for Award Management](#) exclusion list.

7. Consultant Cap

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for a Level IV of the Executive Schedule, available at: <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/>, to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in Subpart D of 2 CFR 200 are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 2 CFR 1500.9.

8. Establishing and Managing Subawards

If the recipient chooses to pass funds from this assistance agreement to other entities, the recipient must comply with applicable provisions of 2 CFR Part 200 and the EPA Subaward Policy, which may be found at: <https://epa.gov/grants/epa-subaward-policy>.

As a pass-through entity, the recipient agrees to:

- 8.1.** Be responsible for selecting subrecipients and as appropriate conducting subaward competitions using a system for properly differentiating between subrecipients and procurement contractors under the standards at 2CFR 200.330 and EPA's supplemental guidance in Appendix A of the EPA Subaward Policy.

- a.** For-profit organizations and individual consultants, in almost all cases, are not eligible subrecipients under EPA financial assistance programs and the pass-through entity must obtain prior written approval from EPA's Award Official for subawards to these entities unless the EPA-approved budget and work plan

for this agreement contain a precise description of such subawards.

b. Stipends and travel assistance for trainees (including interns) and similar individuals who are not employees of the pass-through entity must be classified as participant support costs rather than subawards as required by 2 CFR 200.75 and 2 CFR 200.92.

8.2. Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.331(a). EPA has developed a template for subaward agreements that is available in Appendix D of the EPA Subaward Policy.

8.3. Prior to making subawards, ensure that each subrecipient has a “unique entity identifier.” This identifier is required for registering in the System for Award Management (SAM) and by 2 CFR Part 25 and 2 CFR 200.331(a)(1). The unique entity identifier currently is the subrecipient’s Data Universal Numbering System (DUNS) number. Information regarding obtaining a DUNS number and registering in SAM is available in the General Condition of the pass-through entity’s agreement with EPA entitled “**Central Contractor Registration/System for Award Management and Universal Identifier Requirements**” T&C of the pass-through entity’s agreement with the EPA.

8.4. Ensure that subrecipients are aware that they are subject to the same requirements as those that apply to the pass-through entity’s EPA award as required by 2 CFR 200.331(a)(2). These requirements include, among others:

a. Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.

b. Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition pass-through entity’s agreement with EPA entitled “**Reporting Subawards and Executive Compensation.**”

c. Limitations on individual consultant fees as set forth in 2 CFR 1500.9 and the General Condition of the pass-through entity’s agreement with EPA entitled “**Consultant Fee Cap.**”

d. EPA’s prohibition on paying management fees as set forth in General Condition of the pass-through entity’s agreement with EPA entitled “**Management Fees.**”

e. The Procurement Standards in 2 CFR Part 200 including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants). EPA provides general information on other statutes, regulations and Executive Orders on the Grants internet site at www.epa.gov/grants. Many Federal requirements are agreement or program specific and EPA encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice if necessary.

8.5. Establish and follow a system for evaluating subrecipient risks of noncompliance with Federal statutes, regulations and the terms and conditions of the subaward as required by 2 CFR 200.331(b) and document the evaluation. Risk factors may include:

a. Prior experience with same or similar subawards;

b. Results of previous audits;

c. Whether new or substantially changed personnel or systems, and;

d. Extent and results of Federal awarding agency or the pass-through entity’s monitoring.

8.6. Establish and follow a process for deciding whether to impose additional requirements on subrecipients based on risk factors as required by 2 CFR 200.331(c). Examples of additional requirements authorized by 2 CFR 200.207 include:

- a. Requiring payments as reimbursements rather than advance payments;
 - b. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
 - c. Requiring additional, more detailed financial reports;
 - d. Requiring additional project monitoring;
 - e. Requiring the non-Federal entity to obtain technical or management assistance, and
 - f. Establishing additional prior approvals.
- 8.7.** Establish and follow a system for monitoring subrecipient performance that includes the elements required by 2 CFR 200.331(d) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.
- 8.8.** Establish and maintain an accounting system which ensures compliance with the \$25,000 limitation at 2 CFR 200.68 on including subaward costs in Modified Total Direct Cost for the purposes of distributing indirect costs.
- 8.9.** Work with EPA's Project Officer to obtain the written consent of EPA's Office of International and Tribal Affairs (OITA), prior to awarding a subaward to a foreign or international organization, or a subaward to be performed in a foreign country even if that subaward is described in a proposed scope of work.
- 8.10.** Obtain written approval from EPA's Award Official for any subawards that are not described in the approved work plan in accordance with 2 CFR Part 200.308.
- 8.11.** Obtain the written approval of EPA's Award Official prior to awarding a subaward to an individual if the EPA-approved scope of work does not include a description of subawards to individuals.
- 8.12.** Establish and follow written procedures under 2 CFR 200.302(b)(7) for determining that subaward costs are allowable in accordance with 2 CFR Part 200, Subpart E and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that subrecipients incur, or a combination of both approaches provided the pass-through entity documents its determinations.
- 8.13.** Establish and maintain a system under 2 CFR 200.331(d)(3) and 2 CFR 200.521(c) for issuing management decisions for audits of subrecipients that relate to Federal awards. However, the recipient remains accountable to EPA for ensuring that unallowable subaward costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the subrecipient or not.
- 8.14.** As provided in 2 CFR 200.332, pass-through entities must obtain EPA approval to make fixed amount subawards. EPA is restricting the use of fixed amount subawards to a limited number of situations that are authorized in official EPA pilot projects. Recipients should consult with their EPA Project Officer regarding the status of these pilot projects.

By accepting this award, the recipient is certifying that it either has systems in place to comply with the requirements described in Items 7.1 through 7.14 above or will refrain from making subawards until the systems are designed and implemented.

9. Management Fees

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses; unforeseen liabilities; or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used

to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

10. Federal Employee Costs

The recipient understands that none of the funds for this project (including funds contributed by the recipient as cost sharing) may be used to pay for the travel of Federal employees or for other costs associated with Federal participation in this project unless a Federal agency will be providing services to the recipient as authorized by a Federal statute.

11. Foreign Travel

EPA policy requires that all foreign travel must be approved by its Office of International and Tribal Affairs. The recipient agrees to obtain prior EPA approval before using funds available under this agreement for international travel unless the trip(s) are already described in the EPA approved budget for this agreement. Foreign travel includes trips to Mexico and Canada but does not include trips to Puerto Rico, the U.S. Territories or possessions. Recipients that request post-award approval to travel frequently to Mexico and Canada by motor vehicle (e.g. for sampling or meetings) may describe their proposed travel in general terms in their request for EPA approval. Requests for prior approval must be submitted to the Project Officer for this agreement.

12. The Fly America Act and Foreign Travel

The recipient understands that all foreign travel **funded under this assistance agreement** must comply with the Fly America Act. All travel must be on U.S. air carriers certified under 49 U.S.C. Section 40118, to the extent that service by such carriers is available even if foreign air carrier costs are less than the American air carrier.

Reporting and Additional Post-Award Requirements

13. Central Contractor Registration/System for Award Management and Universal Identifier Requirements

13.1. Requirement for System for Award Management (SAM) Unless exempted from this requirement under 2 CFR 25.110, the recipient must maintain the currency of the organization's information in SAM until the submittal of the final financial report required under this award or receipt of the final payment, whichever is later. This requires that the recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in the information or another award term.

13.2. Requirement for Data Universal Numbering System (DUNS) numbers. If the recipient is authorized to make subawards under this award, the recipient:

- a.** Must notify potential subrecipients that no entity (definition paragraph 12.3 of this award term) may receive a subaward unless the entity has provided its DUNS number.
- b.** May not make a subaward to an entity unless the entity has provided its DUNS number.

13.3. Definitions. For the purposes of this award term:

- a. System for Award Management (SAM)** means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site: <https://www.sam.gov/SAM/>
- b. Data Universal Numbering System (DUNS) number** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform/>).

- c. **Entity**, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - 13.3.c.1. A Governmental organization, which is a State, local government, or Indian tribe;
 - 13.3.c.2. A foreign public entity;
 - 13.3.c.3. A domestic or foreign nonprofit organization;
 - 13.3.c.4. A domestic or foreign for-profit organization; and
 - 13.3.c.5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- d. **Subaward:**
 - 13.3.d.1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the recipient received this award and that the recipient awards to an eligible subrecipient.
 - 13.3.d.2. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 Subpart D).
 - 13.3.d.3. A subaward may be provided through any legal agreement, including an agreement that the recipient considers a contract.
- e. **Subrecipient** means an entity that:
 - 13.3.e.1. Receives a subaward from the recipient under this award; and
 - 13.3.e.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.

14. Reporting Subawards and Executive Compensation

14.1. Reporting of first-tier subawards.

- a. **Applicability.** Unless the recipient is exempt as provided in paragraph 12.4. of this award term, the recipient must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph 12.5 of this award term).
- b. **Where and when to report.** (1) The recipient must report each obligating action described in paragraph 12.1.a of this award term to www.fsrs.gov. (2) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on any date during the month of November of a given year, the obligation must be reported by no later than December 31 of that year.)
- c. **What to report.** The recipient must report the information about each obligating action as described in the submission instructions available at: <http://www.fsrs.gov>.

14.2. Reporting Total Compensation of Recipient Executives.

- a. **Applicability and what to report.** The recipient must report total compensation for each of their five most highly compensated executives for the preceding completed fiscal year, if:
 - 14.2.a.1. the total Federal funding authorized to date under this award is \$25,000 or more;
 - 14.2.a.2. in the preceding fiscal year, the recipient received: (i.) 80 percent or more of their annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); (ii.) and \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - 14.2.a.3. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: <http://www.sec.gov/answers/execomp.htm>.)
- b. **Where and when to report.** The recipient must report executive total compensation described in

paragraph 12.2.a of this award term: (i.) As part of the registration Central System for Award Management profile available at <https://www.sam.gov/SAM/> (ii.) By the end of the month following the month in which this award is made, and annually thereafter.

14.3. Reporting of Total Compensation of Subrecipient Executives.

- a. Applicability and what to report.** Unless exempt as provided in paragraph 12.4. of this award term, for each first-tier subrecipient under this award, the recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:

14.3.a.1. in the subrecipient's preceding fiscal year, the subrecipient received: (i.) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and (ii.) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

14.3.a.2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at: <http://www.sec.gov/answers/execomp.htm>.)

- b. Where and when to report.** The recipient must report subrecipient executive total compensation described in paragraph 12.3.a. of this award term:

14.3.b.1. To the recipient.

14.3.b.2. By the end of the month following the month during which the recipient makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), the recipient must report any required compensation information of the subrecipient by November 30 of that year.

14.4. Exemptions

- a.** If, in the previous tax year, the recipient had gross income, from all sources, under \$300,000, the recipient is exempt from the requirements to report:

14.4.a.1. subawards, and the total compensation of the five most highly compensated executives of any subrecipient.

14.5. Definitions. For purposes of this award term:

- a. Entity** means all of the following, as defined in 2 CFR Part 25: (i.) A Governmental organization, which is a State, local government, or Indian tribe; (ii.) A foreign public entity; (iii.) A domestic or foreign nonprofit organization; (iv.) A domestic or foreign for-profit organization; (v.) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

- b. Executive** means officers, managing partners, or any other employees in management positions.

- c. Subaward:**

14.5.c.1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that the recipient award to an eligible subrecipient.

14.5.c.2. The term does not include procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200 Subpart D).

14.5.c.3. A subaward may be provided through any legal agreement, including an agreement that the recipient or a subrecipient considers a contract.

- d. Subrecipient** means an entity that:

14.5.d.1. Receives a subaward from the recipient under this award; and

14.5.d.2. Is accountable to the recipient for the use of the Federal funds provided by the subaward.

- e. Total compensation** means the cash and noncash dollar value earned by the executive during the

recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

14.5.e.1. Salary and bonus.

14.5.e.2. Awards of stock, stock options and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

14.5.e.3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

14.5.e.4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.

14.5.e.5. Above-market earnings on deferred compensation which is not tax-qualified.

14.5.e.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

15. Recipient Integrity and Performance Matters - Reporting of Matters Related to Recipient Integrity and Performance

15.1. General Reporting Requirement

If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

15.2. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- a.** Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- b.** Reached its final disposition during the most recent five-year period; and
- c.** Is one of the following:

15.2.c.1. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

15.2.c.2. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;

15.2.c.3. An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

15.2.c.4. Any other criminal, civil, or administrative proceeding if:

15.2.c.4.1. It could have led to an outcome described in paragraph 13.2.c.1, 13.2.c.2, or 13.2.c.3 of this award term and condition;

15.2.c.4.2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and

15.2.c.4.3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

15.3. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

15.4. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 13.1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

15.5. Definitions

For purposes of this award term and condition:

- a.** Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (*e.g.*, Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b.** Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of *nolo contendere*.
- c.** Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - 15.5.c.1.** Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - 15.5.c.2.** The value of all expected funding increments under a Federal award and options, even if not yet exercised.

16. Federal Financial Reporting (FFR) (Updated 12/11/2019)

Pursuant to 2 CFR 200.327 and 200.343, EPA recipients must submit the Federal Financial Report (SF-425) at least annually and no more frequently than quarterly. EPA's standard reporting frequency is annual unless an EPA Region has included an additional term and condition specifying greater reporting frequency within this award document. EPA recipients must submit the SF-425 no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extension of reporting due dates may be approved by EPA upon request of the recipient. The FFR form is available on the internet at: <https://www.epa.gov/financial/forms> All FFRs must be submitted to the Research Triangle Park Finance Center (RTPFC) via email at rtpfc-grants@epa.gov or mail it to:

US Environmental Protection Agency
RTP-Finance Center (Mail Code AA216-01)
4930 Page Rd.
Durham, NC 27703

The RTPFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any additional forms for the closeout of the assistance agreement.

17. Indirect Cost Rate Agreements

This term and condition implements EPA's [Indirect Cost Policy for Recipients of EPA Assistance Agreements](#) (IDC Policy) and applies to all EPA assistance agreements unless there are [statutory or regulatory limits on IDCs](#).

In order for the assistance agreement recipient to use EPA funding for indirect costs, the IDC category of the recipient's assistance agreement award budget must include an amount for IDCs and at least one of the following must apply:

- With the exception of “exempt” agencies and Institutions of Higher Education as noted below, all recipients must have one of the following current (not expired) IDC rates, including IDC rates that have been extended by the cognizant agency:
 - Provisional;
 - Final;
 - Fixed rate with carry-forward;
 - Predetermined;
 - 10% *de minimis* rate authorized by 2 CFR 200.414(f)
 - EPA-approved use of one of the following on an exception basis for EPA agreements:
 - 10% *de minimis* as detailed in section 6.3 of the IDC Policy; or
 - Expired fixed rate with carry-forward as detailed in section 6.4.a. of the IDC Policy.
- “Exempt” state or local governmental departments or agencies are agencies that receive up to and including \$35,000,000 in Federal funding per the department or agency's fiscal year, and must have an IDC rate proposal developed in accordance with [2 CFR 200 Appendix VII](#), with documentation maintained and available for audit.
- Institutions of Higher Education must use the IDC rate in place at the time of award for the life of the assistance agreement (unless the rate was provisional at time of award, in which case the rate will change once it becomes final). As provided by [2 CFR Part 200, Appendix III\(C\)\(7\)](#), the term “life of the assistance agreement”, means each competitive segment of the project. Additional information is available in the regulation.

IDCs incurred during any period of the assistance agreement that are not covered by the provisions above are not allowable costs and must not be drawn down by the recipient. Recipients may budget for IDCs pending approval of their IDC rate by the cognizant Federal agency or an exception granted by EPA under section 6.3 or 6.4 of the IDC Policy. However, recipients may not draw down IDCs until their rate is approved, if applicable, or EPA grants an exception. IDC drawdowns must comply with the indirect rate corresponding to the period during which the costs were incurred.

This term and condition does not govern indirect rates for subrecipients or recipient procurement contractors under EPA assistance agreements. Pass-through entities are required to comply with [2 CFR 200.331\(a\)\(4\)](#) when establishing indirect cost rates for subawards.

See the [Indirect Cost Guidance for Recipients of EPA Assistance Agreements](#) for additional information.

18. Audit Requirements

In accordance with 2 CFR 200.501(a), the recipient hereby agrees to obtain a single audit from an independent auditor, if their organization expends \$750,000 or more in total Federal funds in their fiscal year beginning on or after December 26, 2014.

The recipient must submit the form SF-SAC and a Single Audit Report Package within 9 months of the end of the recipient's fiscal year or 30 days after receiving the report from an independent auditor. The SF-SAC and a Single Audit Report Package MUST be submitted using the Federal Audit Clearinghouse's Internet Data Entry System available at: [https://harvester.census.gov/facides/\(S\(3wauetz2yufokbe3engv0dtek\)\)/account/login.aspx](https://harvester.census.gov/facides/(S(3wauetz2yufokbe3engv0dtek))/account/login.aspx).

For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <https://harvester.census.gov/facweb/Default.aspx>.

19. Closeout Requirements

Reports required for closeout of the assistance agreement must be submitted in accordance with this

agreement. Submission requirements and frequently asked questions can also be found at:
<https://www.epa.gov/grants/frequent-questions-about-closeouts>

20. Suspension and Debarment

Recipient shall fully comply with Subpart C of 2 C.F.R. Part 180 entitled, “Responsibilities of Participants Regarding Transactions Doing Business With Other Persons,” as implemented and supplemented by 2 C.F.R. Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 C.F.R. Part 180, entitled “Covered Transactions,” and 2 C.F.R. § 1532.220, includes a term or condition requiring compliance with 2 C.F.R. Part 180, Subpart C. Recipient is responsible for further requiring the inclusion of a similar term and condition in any subsequent lower tier covered transactions. Recipient acknowledges that failing to disclose the information required under 2 C.F.R. § 180.335 to the EPA office that is entering into the transaction with the recipient may result in the delay or negation of this assistance agreement, or pursuance of administrative remedies, including suspension and debarment. Recipients may access the System for Award Management (SAM) exclusion list at <https://sam.gov/SAM/> to determine whether an entity or individual is presently excluded or disqualified.

21. Representation by Corporations Regarding Delinquent Tax Liability or a Felony Conviction under any Federal Law. This award is subject to the provisions contained in an appropriations act(s) which prohibits the Federal Government from entering into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to any corporation having a delinquent Federal tax liability or a felony conviction under any Federal law, unless the agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government. A “corporation” is a legal entity that is separate and distinct from the entities that own, manage, or control it. It is organized and incorporated under the jurisdictional authority of a governmental body, such as a State or the District of Columbia. A corporation may be a for-profit or non-profit organization.

As required by the appropriations act(s) prohibitions, the Government will not enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee with any corporation that — (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless an agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless an agency has considered suspension or debarment of the corporation and made a determination that this action is not necessary to protect the interests of the Government.

By accepting this award, the recipient represents that it is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability; and it is not a corporation that was convicted of a felony criminal violation under a Federal law within the preceding 24 months.

Alternatively, by accepting this award, the recipient represents that it disclosed unpaid Federal tax liability information and/or Federal felony conviction information to the EPA. The Recipient may accept this award if the EPA Suspension and Debarment Official has considered suspension or debarment of the corporation based on a tax liabilities and/or Federal felony convictions and determined that suspension or debarment is not necessary to protect the Government's interests.

If the recipient fails to comply with this term and condition, EPA will annul this agreement and may recover any funds the recipient has expended in violation of the appropriations act(s) prohibition(s). The EPA may also pursue other administrative remedies as outlined in 2 CFR 200.338, and may also pursue suspension and

debarment.

22. Disclosing Conflict of Interests

22.1. For awards to Non-federal entities and individuals (other than states and fellowship recipients under 40 CFR Part 46).

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at <https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental and incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

EPA's COI Policy requires that recipients have systems in place to address, resolve and disclose to EPA COIs described in sections 4.0(b), (c) and/or (d) of the COI Policy that affect any contract or subaward regardless of amount funded under this award. The recipient's COI Point of Contact for the award must disclose any COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of the discovery of the potential COI and their approach for resolving the COI.

EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COI's described in section 4.0(b)(c) and (d) of the COI Policy regardless of the amount of the transaction. Recipients who are pass-through entities as defined at 2 CFR 200.74 must require that subrecipients being considered for or receiving subawards disclose COI to the pass-through entities in a manner that, at a minimum, is in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. Pass-through entities must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that recipients and subrecipients disclose COI's that are discovered under their systems for addressing and resolving COI. If recipients or subrecipients do not discover a COI, they do not need to advise EPA or the pass-through entity of the absence of a COI.

Upon notice from the recipient of a potential COI and the approach for resolving it, the Agency will then make a determination regarding the effectiveness of these measures within 30 days of receipt of the recipient's notice unless a longer period is necessary due to the complexity of the matter. Recipients may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. Failure to disclose a COI may result in cost disallowances.

Disclosure of a potential COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the recipient notifies EPA of measures the recipient or subrecipient has taken to eliminate, neutralize or mitigate the conflict of interest when making the disclosure.

22.2. For awards to states including state universities that are state agencies or instrumentalities

As required by 2 CFR 200.112, EPA has established a policy (COI Policy) for disclosure of conflicts of interest (COI) that may affect EPA financial assistance awards. EPA's COI Policy is posted at: <https://www.epa.gov/grants/epas-financial-assistance-conflict-interest-policy>. The posted version of EPA's COI Policy is applicable to new funding (initial awards, supplemental, incremental funding) awarded on or after October 1, 2015. This COI term and condition supersedes prior COI terms and conditions for this award based on either EPA's May 22, 2015 Revised Interim COI Policy or December 26, 2014 Interim COI Policy.

For competitive awards, recipients must disclose any competition related COI described in section 4.0(a) of the COI Policy that are discovered after award to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of discovery of the COI. The Grants Specialist will respond to any such disclosure within 30 calendar days.

States including state universities that are state agencies and instrumentalities receiving funding from EPA are only required to disclose subrecipient COI as a pass-through entity as defined by 2 CFR 200.74. Any other COI are subject to state laws, regulations and policies. EPA's COI Policy requires that subrecipients have systems in place to address, resolve and disclose COIs described in section 4.0(b)(c) and (d) of the COI Policy that arise after EPA made the award regardless of the amount of the transaction. States who are pass-through entities as defined at 2 CFR 200.74 must require that subrecipients being considered for or receiving subawards disclose COI to the state in a manner that, as a minimum, in accordance with sections 5.0(d) and 7.0(c) of EPA's COI Policy. States must disclose the subrecipient COI along with the approach for resolving the COI to the EPA Grants Specialist listed on the Assistance Agreement/Amendment within 30 calendar days of receiving notification of the COI by the subrecipient.

EPA only requires that subrecipients disclose COI's to state pass-through entities that are discovered under their systems for addressing, resolving, and disclosing COI. If subrecipients do not discover a COI, they do not need to advise state pass-through entities of the absence of a COI.

Upon receiving notice of a potential COI and the approach for resolving it, the Agency will make a determination regarding the effectiveness of these measures within 30 days of receipt of the state's notice of a subrecipient COI unless a longer period is necessary due to the complexity of the matter. States may not request payment from EPA for costs for transactions subject to the COI pending notification of EPA's determination. A subrecipient's failure to disclose a COI to the state and EPA may result in cost disallowances.

Disclosure of a potential subrecipient COI will not necessarily result in EPA disallowing costs, with the exception of procurement contracts that the Agency determines violate 2 CFR 200.318(c)(1) or (2), provided the subrecipient has taken measures that EPA and the state agree eliminate, neutralize or mitigate the conflict of interest.

23. Transfer of Funds

Applicable to all assistance agreements other than Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514 when the amount of the award exceeds the 2 CFR 200.88 Simplified Acquisition Threshold.

- (1) As provided at 2 CFR 200.308(e), recipient must obtain prior approval from EPA's Grants Management Officer if the cumulative amount of funding transfers among direct budget categories or programs, functions and activities exceeds 10% of the total budget. Recipients must submit requests for prior approval to the Grant Specialist and Grants Management Officer for this agreement.
- (2) Recipients must notify EPA's Grant Specialist and Project Officer of cumulative funding transfers among direct budget categories or programs, functions and activities that do not exceed 10% of the total budget for the

agreement. Recipients must also notify the EPA Grant Specialist and Project Officer when transferring funds from direct budget categories to the indirect cost category or from the indirect cost category to the direct cost category. Prior approval by EPA's Grant Management Officer is required if the transfer involves any of the items listed in 2 CFR 200.407 that EPA did not previously approve at time of award or in response to a previous post-award request by the recipient.

Applicable to Continuing Environmental Program Grants subject to 40 CFR 35.114 and 40 CFR 35.514, when the amount of the award exceeds the 2 CFR 200.88 Simplified Acquisition Threshold.

Recipients of continuing environmental program grants subject to 40 CFR 35.114 and 40 CFR 35.514 must notify the EPA Grant Specialist and Project Officer of funding transfers among direct budget categories, programs, functions and activities or transfers that change amounts budgeted for indirect costs, but prior EPA approval is not required unless the transfer results in significant changes to work plan commitments. Recipients must obtain prior written approval if the transfer involves any of the items listed in 2 CFR 200.407 that EPA did not previously approve at time of award, in response to a previous post-award request by the recipient, or is subject to an EPA waiver of prior approval under 40 CFR 35.114(d) or 40 CFR 35.514(d).

Programmatic General Terms and Conditions

24. Sufficient Progress

EPA will measure sufficient progress by examining the performance required under the workplan in conjunction with the milestone schedule, the time remaining for performance within the project period and/or the availability of funds necessary to complete the project. EPA may terminate the assistance agreement for failure to ensure reasonable completion of the project within the project period.

25. Copyrighted Material and Data

In accordance with 2 CFR 200.315, EPA has the right to reproduce, publish, use and authorize others to reproduce, publish and use copyrighted works or other data developed under this assistance agreement for Federal purposes.

Examples of a Federal purpose include but are not limited to: (1) Use by EPA and other Federal employees for official Government purposes; (2) Use by Federal contractors performing specific tasks for the Government; (3) Publication in EPA documents provided the document does not disclose trade secrets (e.g. software codes) and the work is properly attributed to the recipient through citation or otherwise; (4) Reproduction of documents for inclusion in Federal depositories; (5) Use by State, tribal and local governments that carry out delegated Federal environmental programs as "co-regulators" or act as official partners with EPA to carry out a national environmental program within their jurisdiction and; (6) Limited use by other grantees to carry out Federal grants provided the use is consistent with the terms of EPA's authorization to the other grantee to use the copyrighted works or other data.

Under Item 6, the grantee acknowledges that EPA may authorize another grantee(s) to use the copyrighted works or other data developed under this grant as a result of:

- the selection of another grantee by EPA to perform a project that will involve the use of the copyrighted works or other data or;
- termination or expiration of this agreement.

In addition, EPA may authorize another grantee to use copyrighted works or other data developed with Agency funds provided under this grant to perform another grant when such use promotes efficient and effective use of Federal grant funds.

26. Patents and Inventions

Rights to inventions made under this assistance agreement are subject to federal patent and licensing

regulations, which are codified at Title 37 CFR Part 401 and Title 35 USC Sections 200-212.

Pursuant to the Bayh-Dole Act (set forth in 35 USC 200-212), EPA retains the right to a worldwide, nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention owned by the assistance agreement holder, as defined in the Act. To streamline the invention reporting process and to facilitate compliance with the Bayh-Dole Act, the recipient must utilize the Interagency Edison extramural invention reporting system at iEdison.gov. Annual utilization reports must be submitted through the system. The recipient is required to notify the Project Officer identified on the award document when an invention report, patent report, or utilization report is filed at iEdison.gov. EPA elects not to require the recipient to provide a report prior to the close-out of a funding agreement listing all subject inventions or stating that there were none.

In accordance with Executive Order 12591, as amended, government owned and operated laboratories can enter into cooperative research and development agreements with other federal laboratories, state and local governments, universities, and the private sector, and license, assign, or waive rights to intellectual property “developed by the laboratory either under such cooperative research or development agreements and from within individual laboratories.”

27. Acknowledgement Requirements for Non-ORD Assistance Agreements

The recipient agrees that any reports, documents, publications or other materials developed for public distribution supported by this assistance agreement shall contain the following statement:

"This project has been funded wholly or in part by the United States Environmental Protection Agency under assistance agreement (number) to (recipient). The contents of this document do not necessarily reflect the views and policies of the Environmental Protection Agency, nor does the EPA endorse trade names or recommend the use of commercial products mentioned in this document."

Recipients of EPA Office of Research Development (ORD) research awards must follow the acknowledgement requirements outlined in the research T&Cs available at: <https://www.nsf.gov/awards/managing/rtc.jsp>. A Federal-wide workgroup is currently updating the Federal-Wide Research Terms and Conditions Overlay to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards and when completed recipients of EPA ORD research must abide by the research T&Cs.

28. Electronic and Information Technology Accessibility

Recipients are subject to the program accessibility provisions of Section 504 of the Rehabilitation Act, codified in 40 CFR Part 7, which includes an obligation to provide individuals with disabilities reasonable accommodations and an equal and effective opportunity to benefit from or participate in a program, including those offered through electronic and information technology (“EIT”). In compliance with Section 504, EIT systems or products funded by this award must be designed to meet the diverse needs of users (e.g., U.S. public, recipient personnel) without barriers or diminished function or quality. Systems shall include usability features or functions that accommodate the needs of persons with disabilities, including those who use assistive technology. At this time, the EPA will consider a recipient’s websites, interactive tools, and other EIT as being in compliance with Section 504 if such technologies meet standards established under Section 508 of the Rehabilitation Act, codified at 36 CFR Part 1194. While Section 508 does not apply directly to grant recipients, we encourage recipients to follow either the 508 guidelines or other comparable guidelines that concern accessibility to EIT for individuals with disabilities.

Recipients may wish to consult the latest Section 508 guidelines issued by the U.S. Access Board or W3C’s Web Content Accessibility Guidelines (WCAG) 2.0 (see <https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-section-508-standards/guide-to-the-section-508-standards>).

29. Human Subjects

Human subjects research is any activity that meets the regulatory definitions of both research AND human subject. *Research* is a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. *Human subject* means a living individual about

whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. [40 CFR 26.102 (d)(f)]

No research involving human subjects will be conducted under this agreement without prior written approval of the EPA to proceed with that research. If engaged in human subjects research as part of this agreement, the recipient agrees to comply with all applicable provisions of EPA Regulation 40 CFR 26 (Protection of Human Subjects). This includes, at Subpart A, the Basic Federal Policy for the Protection of Human Research Subjects, also known as the Common Rule. It also includes, at Subparts B, C, and D, prohibitions and additional protections for children, nursing women, pregnant women, and fetuses in research conducted or supported by EPA.

The recipient further agrees to comply with EPA's procedures for oversight of the recipient's compliance with 40 CFR 26, as given in EPA Order 1000.17 Change A1 (Policy and Procedures on Protection of Human Research Subjects in EPA Conducted or Supported Research). As per this order, no human subject may be involved in any research conducted under this assistance agreement, including recruitment, until the research has been approved or determined to be exempt by the EPA Human Subjects Research Review Official (HSRRO) after review of the approval or exemption determination of the Institutional Review Board(s) (IRB(s)) with jurisdiction over the research under 40 CFR 26.

For HSRRO approval, the recipient must forward to the Project Officer: (1) copies of all documents upon which the IRB(s) with jurisdiction based their approval(s) or exemption determination(s), (2) copies of the IRB approval or exemption determination letter(s), (3) copy of the IRB-approved consent forms and subject recruitment materials, if applicable, and (4) copies of all supplementary IRB correspondence.

Following the initial approvals indicated above, the recipient must, as part of the annual report(s), provide evidence of continuing review and approval of the research by the IRB(s) with jurisdiction, as required by 40 CFR 26.109(e). Materials submitted to the IRB(s) for their continuing review and approval are to be provided to the Project Officer upon IRB approval. During the course of the research, investigators must promptly report any unanticipated problems involving risk to subjects or others according to requirements set forth by the IRB. In addition, any event that is significant enough to result in the removal of the subject from the study should also be reported to the Project Officer, even if the event is not reportable to the IRB of record.

30. Animal Subjects

The recipient agrees to comply with the Animal Welfare Act of 1966 (P.L. 89-544), as amended, 7 USC 2131-2156. Recipient also agrees to abide by the "U.S. Government Principles for the Utilization and Care of Vertebrate Animals used in Testing, Research, and Training." (Federal Register 50(97): 20864-20865. May 20, 1985). The nine principles can be viewed at <https://olaw.nih.gov/policies-laws/phs-policy.htm>. For additional information about the Principles, the recipient should consult the *Guide for Care and Use of Laboratory Animals*, prepared by the Institute of Laboratory Animal Resources, National Research Council and can be accessed at: <http://www.nap.edu/readingroom/books/labrats/>.

31. Light Refreshments and/or Meals

APPLICABLE TO ALL AGREEMENTS EXCEPT STATE CONTINUING ENVIRONMENTAL PROGRAMS (AS DESCRIBED BELOW):

Unless the event(s) and all of its components are described in the approved workplan, the recipient agrees to obtain prior approval from EPA for the use of grant funds for light refreshments and/or meals served at meetings, conferences, training workshops and outreach activities (events). The recipient must send requests for approval to the EPA Project Officer and include:

- (1) An estimated budget and description for the light refreshments, meals, and/or beverages to be served at the event(s);
- (2) A description of the purpose, agenda, location, length and timing for the event; and,

- (3) An estimated number of participants in the event and a description of their roles.

Costs for light refreshments and meals for recipient staff meetings and similar day-to-day activities are not allowable under EPA assistance agreements.

Recipients may address questions about whether costs for light refreshments, and meals for events may be allowable to the recipient's EPA Project Officer; however, the Agency Award Official or Grant Management Officer will make final determinations on allowability. Agency policy prohibits the use of EPA funds for receptions, banquets and similar activities that take place after normal business hours unless the recipient has provided a justification that has been expressly approved by EPA's Award Official or Grants Management Officer.

EPA funding for meals, light refreshments, and space rental may not be used for any portion of an event where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

Note: U.S. General Services Administration regulations define light refreshments for morning, afternoon or evening breaks to include, but not be limited to, coffee, tea, milk, juice, soft drinks, donuts, bagels, fruit, pretzels, cookies, chips, or muffins. (41 CFR 301-74.7)

FOR STATE CONTINUING ENVIRONMENTAL PROGRAM GRANT RECIPIENTS EXCLUDING STATE UNIVERSITIES:

If the state maintains systems capable of complying with federal grant regulations at 2 CFR 200.432 and 200.438, EPA has waived the prior approval requirements for the use of EPA funds for light refreshments and/or meals served at meetings, conferences, and training, as described above. The state may follow its own procedures without requesting prior approval from EPA. However, notwithstanding state policies, EPA funds may not be used for (1) evening receptions, or (2) other evening events (with the exception of working meetings). Examples of working meetings include those evening events in which small groups discuss technical subjects on the basis of a structured agenda or there are presentations being conducted by experts. EPA funds for meals, light refreshments, and space rental may not be used for any portion of an event (including evening working meetings) where alcohol is served, purchased, or otherwise available as part of the event or meeting, even if EPA funds are not used to purchase the alcohol.

By accepting this award, the state is certifying that it has systems in place (including internal controls) to comply with the requirements described above.

32. Tangible Personal Property

32.1 Reporting Pursuant to 2 CFR 200.312 and 200.314, property reports, if applicable, are required for Federally-owned property in the custody of a non-Federal entity upon completion of the Federal award or when the property is no longer needed. Additionally, upon termination or completion of the project, residual unused supplies with a total aggregate fair market value exceeding \$5,000 not needed for any other Federally-sponsored programs or projects must be reported. For Superfund awards under Subpart O, refer to 40 CFR 35.6340 and 35.6660 for property reporting requirements. Recipients should utilize the Tangible Personal Property Report form series (SF-428) to report tangible personal property.

32.2. Disposition

32.2.1 Most Recipients. Consistent with 2 CFR 200.313, unless instructed otherwise on the official award document, this award term, or at closeout, the recipient may keep the equipment and continue to use it on the project originally funded through this assistance agreement or on other federally funded projects whether or not the project or program continues to be supported by Federal funds.

32.2.2 State Agencies. Per 2 CFR 200.313(b), state agencies may manage and dispose of equipment acquired under this assistance agreement in accordance with state laws and procedures.

32.2.3 Superfund Recipients. Equipment purchased under Superfund projects is subject to specific disposal options in accordance with 40 CFR Part 35.6345.

33. Dual Use Research of Concern (DURC)

The recipient agrees to conduct all life science research* in compliance [with EPA's Order on the Policy and Procedures for Managing Dual Use Research of Concern](#) (EPA DURC Order) [and United States Government Policy for Institutional Oversight of Life Sciences Dual Use Research of Concern](#) (iDURC Policy). If the recipient is an institution within the United States that receives funding through this agreement, or from any other source, the recipient agrees to comply with the iDURC Policy if they conduct or sponsor research involving any of the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If the institution is outside the United States and receives funding through this agreement to conduct or sponsor research involving any of those same agents or toxins, the recipient agrees to comply with the iDURC Policy. The recipient agrees to provide any additional information that may be requested by EPA regarding DURC and iDURC. The recipient agrees to immediately notify the EPA Project Officer should the project use or introduce use of any of the agents or toxins identified in the iDURC Policy. The recipient's Institution/Organization must also comply with USG iDURC policy and EPA DURC Order and will inform the appropriate government agency if funded by such agency of research with the agents or toxins identified in Section 6.2.1 of the iDURC Policy. If privately funded the recipient agrees to notify the National Institutes of Health at DURC@od.nih.gov.

*"Life Sciences Research," for purposes of the EPA DURC Order, and based on the definition of research in 40 CFR §26.102(d), is a systematic investigation designed to develop or contribute to generalizable knowledge involving living organisms (e.g., microbes, human beings, animals, and plants) and their products. EPA does not consider the following activities to be research: routine product testing, quality control, mapping, collection of general-purpose statistics, routine monitoring and evaluation of an operational program, observational studies, and the training of scientific and technical personnel. [Note: This is consistent with Office of Management and Budget Circular A-11.]

34. Research Misconduct

In accordance with 2 CFR 200.328, the recipient agrees to notify the EPA Project Officer in writing about research misconduct involving research activities that are supported in whole or in part with EPA funds under this project. EPA defines research misconduct as fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results [65 FR 76262. I], or ordering, advising or suggesting that subordinates engage in research misconduct. The recipient agrees to:

- (1) Immediately notify the EPA Project Officer who will then inform the EPA Office of Inspector General (OIG) if, at any time, an allegation of research misconduct falls into one of the categories listed below:
 - A. Public health or safety is at risk.
 - B. Agency resources or interests are threatened.
 - C. Circumstances where research activities should be suspended.
 - D. There is a reasonable indication of possible violations of civil or criminal law.
 - E. Federal action is required to protect the interests of those involved in the investigation.
 - F. The research entity believes that the inquiry or investigation may be made public prematurely so that appropriate steps can be taken to safeguard evidence and protect the rights of those involved.
 - G. Circumstances where the research community or public should be informed. [65 FR 76263.III]
- (2) Report other allegations to the OIG when they have conducted an inquiry and determined that there is sufficient evidence to proceed with an investigation. [65 FR 76263. III]

35. Scientific Integrity Terms and Conditions

The recipient agrees to comply with [EPA's Scientific Integrity Policy](#) when conducting, supervising, and communicating science and when using or applying the results of science. For purposes of this award condition scientific activities include, but are not limited to, computer modelling, economic analysis, field sampling, laboratory experimentation, demonstrating new technology, statistical analysis, and writing a review article on a scientific issue. The recipient agrees to:

35.1 Scientific Products

- 35.1.1** Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA [information quality guidelines](#), [quality policy](#), and peer review policy.
- 35.1.2** Prohibit all recipient employees, contractors, and program participants, including scientists, managers, and other recipient leadership, from suppressing, altering, or otherwise impeding the timely release of scientific findings or conclusions.
- 35.1.3** Adhere to [EPA's Peer Review Handbook, 4th Edition](#), for the peer review of scientific and technical work products generated through EPA grants or cooperative agreements which, by definition, are not primarily for EPA's direct use or benefit.

35.2 Scientific Findings

- 35.2.1** Require that reviews regarding the content of a scientific product that are conducted by the project manager and other recipient managers and the broader management chain be based only on scientific quality considerations, e.g., the methods used are clear and appropriate, the presentation of results and conclusions is impartial.
- 35.2.2** Ensure scientific findings are generated and disseminated in a timely and transparent manner, including scientific research performed by employees, contractors, and program participants, who assist with developing or applying the results of scientific activities.
- 35.2.3** Include, when communicating scientific findings, an explication of underlying assumptions, accurate contextualization of uncertainties, and a description of the probabilities associated with both optimistic and pessimistic projections, if applicable.
- 35.2.4** Document the use of independent validation of scientific methods.
- 35.2.5** Document any independent review of the recipient's scientific facilities and testing activities, as occurs with accreditation by a nationally or internationally recognized sanctioning body.
- 35.2.6** Make scientific information available online in open formats in a timely manner, including access to data and non-proprietary models.

35.3 Scientific Misconduct

- 35.3.1** Prohibit intimidation or coercion of scientists to alter scientific data, findings, or professional opinions or non-scientific influence of scientific advisory boards. In addition, recipient employees, contractors, and program participants, including scientists, managers, and other leadership, shall not knowingly misrepresent, exaggerate, or downplay areas of scientific uncertainty.
- 35.3.2** Prohibit retaliation or other punitive actions toward recipient employees who uncover or report allegations of scientific and research misconduct, or who express a differing scientific opinion. Employees who have allegedly engaged in scientific or research misconduct shall be afforded the due process protections provided by law, regulation, and applicable collective bargaining agreements, prior to any action. Recipients shall ensure that all employees and contractors of the recipient shall be familiar with these protections and avoid the appearance of retaliatory actions.
- 35.3.3** Require all recipient employees, contractors, and program participants to act honestly and refrain from acts of research misconduct, including publication or reporting, as described in [EPA's Policy and Procedures for Addressing Research Misconduct](#), Section 9.C. Research misconduct does not include honest error or differences of opinion. While EPA retains the ultimate oversight authority for EPA-supported research, grant recipients conducting research bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institution.
- 35.3.4** Take the actions required on the part of the recipient described in EPA's Policy and Procedures for Addressing Research Misconduct, Sections 6 through 9, when research misconduct is suspected or found.

35.4 Additional Resources

For more information about the Scientific Integrity Policy, an introductory video can be accessed at: <https://youtu.be/FQJCy8BXXq8>. A training video is available at: <https://youtu.be/Zc0T7fooot8>.

Public Policy Requirements

36. Civil Rights Obligations (Updated 5/7/2020)

This term and condition incorporates by reference the signed assurance provided by the recipient's authorized representative on: 1) EPA Form 4700-4, "Preaward Compliance Review Report for All Applicants and Recipients Requesting EPA Financial Assistance"; and 2) Certifications and Representations in Sam.gov or Standard Form 424D, as applicable.

These assurances and this term and condition obligate the recipient to comply fully with applicable civil rights statutes and implementing federal and EPA regulations.

a. Statutory Requirements

- i. In carrying out this agreement, the recipient must comply with:
 1. Title VI of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, and national origin, including limited English proficiency (LEP), by entities receiving Federal financial assistance.
 2. Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination against persons with disabilities by entities receiving Federal financial assistance; and
 3. The Age Discrimination Act of 1975, which prohibits age discrimination by entities receiving Federal financial assistance.
- ii. If the recipient is an education program or activity (e.g., school, college or university) or if the recipient is conducting an education program or activity under this agreement, it must also comply with:
 1. Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities operated by entities receiving Federal financial assistance. For further information about your compliance obligations regarding Title IX, see 40 CFR Part 5 and <https://www.justice.gov/crt/title-ix>
- iii. If this agreement is funded with financial assistance under the Clean Water Act (CWA), the recipient must also comply with:
 1. Section 13 of the Federal Water Pollution Control Act Amendments of 1972, which prohibits discrimination on the basis of sex in CWA-funded programs or activities.

b. Regulatory Requirements

- i. The recipient agrees to comply with all applicable EPA civil rights regulations, including:
 1. For Title IX obligations, 40 C.F.R. Part 5; and
 2. For Title VI, Section 504, Age Discrimination Act, and Section 13 obligations, 40 CFR Part 7.
 3. For statutory and national policy requirements, including those prohibiting discrimination and those described in Executive Order 13798 promoting free speech and religious freedom, 2 CFR 200.300.
 4. As noted on the EPA Form 4700-4 signed by the recipient's authorized representative, these regulations establish specific requirements including maintaining compliance information, establishing grievance procedures, designating a Civil Rights Coordinator and providing notices of non-discrimination.

c. TITLE VI – LEP, Public Participation and Affirmative Compliance Obligation

- i. As a recipient of EPA financial assistance, you are required by Title VI of the Civil Rights Act to provide meaningful access to LEP individuals. In implementing that requirement, the

recipient agrees to use as a guide the Office of Civil Rights (OCR) document entitled "Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons." The guidance can be found at:

<https://www.federalregister.gov/documents/2004/06/25/04-14464/guidance-to-environmental-protection-agency-financial-assistance-recipients-regarding-title-vi>

- ii. If the recipient is administering permitting programs under this agreement, the recipient agrees to use as a guide OCR's Title VI Public Involvement Guidance for EPA Assistance Recipients Administering Environmental Permitting Programs. The Guidance can be found at: <https://www.govinfo.gov/content/pkg/FR-2006-03-21/pdf/06-2691.pdf>
- iii. In accepting this assistance agreement, the recipient acknowledges it has an affirmative obligation to implement effective Title VI compliance programs and ensure that its actions do not involve discriminatory treatment and do not have discriminatory effects even when facially neutral. The recipient must be prepared to demonstrate to EPA that such compliance programs exist and are being implemented or to otherwise demonstrate how it is meeting its Title VI obligations.

37. Drug-Free Workplace

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 2 CFR Part 1536 Subpart B. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 2 CFR Part 1536 Subpart C.

The consequences for violating this condition are detailed under Title 2 CFR Part 1536 Subpart E. Recipients can access the Code of Federal Regulations (CFR) Title 2 Part 1536 at www.ecfr.gov/.

38. Hotel-Motel Fire Safety

Pursuant to 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <https://apps.usfa.fema.gov/hotel/> to see if a property is in compliance, or to find other information about the Act.

39. Lobbying Restrictions

a) This assistance agreement is subject to lobbying restrictions as described below. Applicable to all assistance agreements:

- i) The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against the U.S. unless authorized under existing law. The recipient shall abide by the Cost Principles available at 2 CFR 200 which generally prohibits the use of federal grant funds for litigation against the U.S. or for lobbying or other political activities.
- ii) The recipient agrees to comply with Title 40 CFR Part 34, New Restrictions on Lobbying. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000 and require that subrecipients submit certification and disclosure forms accordingly.

- iii) In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
- iv) Contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.
- v) By accepting this award, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986 as required by Section 18 of the Lobbying Disclosure Act; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act. Nonprofit organizations exempt from taxation under section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities are ineligible for EPA subawards.

b) Applicable to assistance agreements when the amount of the award is over \$100,000:

- i) By accepting this award, the recipient certifies, to the best of its knowledge and belief, that:
 - (1) No Federal appropriated funds have been or will be paid, by or on behalf of the recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, or any employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the recipient shall complete and submit the linked [Standard Form -- LLL, "Disclosure Form to Report Lobbying,"](#) in accordance with its instructions.
 - (3) The recipient shall require that the language of this certification be included in the award documents for all subawards exceeding \$100,000 at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- ii) This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

40. Recycled Paper

When directed to provide paper documents, the recipient agrees to use recycled paper and double-sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA.

41. Resource Conservation and Recovery Act

Consistent with goals of section 6002 of RCRA (42 U.S.C. 6962), State and local institutions of higher education,

hospitals and non-profit organization recipients agree to give preference in procurement programs to the purchase of specific products containing recycled materials, as identified in 40 CFR Part 247.

Consistent with section 6002 of RCRA (42 U.S.C. 6962) and 2 CFR 200.322, State agencies or agencies of a political subdivision of a State and its contractors are required to purchase certain items made from recycled materials, as identified in 40 CFR Part 247, when the purchase price exceeds \$10,000 during the course of a fiscal year or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. Pursuant to 40 CFR 247.2 (d), the recipient may decide not to procure such items if they are not reasonably available in a reasonable period of time; fail to meet reasonable performance standards; or are only available at an unreasonable price.

42. Trafficking in Persons

a. Provisions applicable to a recipient that is a private entity.

- i. The recipient, the recipient's employees, subrecipients under this award, and subrecipients' employees may not—
 1. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 2. Procure a commercial sex act during the period of time that the award is in effect; or
 3. Use forced labor in the performance of the award or subawards under the award.
- ii. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if the recipient or a subrecipient that is a private entity—
 1. Is determined to have violated a prohibition in paragraph a of this award term; or
 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a of this award term through conduct that is either—
 - a. Associated with performance under this award; or
 - b. Imputed to the recipient or subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our Agency at 2 CFR 1532.

b. Provision applicable to a recipient other than a private entity. EPA may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

- i. Is determined to have violated an applicable prohibition in paragraph a. of this award term; or
- ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a of this award term through conduct that is either—
 1. Associated with performance under this award; or
 2. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by EPA at 2 CFR 1532

c. Provisions applicable to any recipient.

- i. The recipient must inform the EPA immediately of any information received from any source alleging a violation of a prohibition in paragraph a of this award term.
- ii. Our right to terminate unilaterally that is described in paragraph a and b:
 1. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
 2. Is in addition to all other remedies for noncompliance that are available to us under

this award.

- iii. The recipient must include the requirements of paragraph a of this award term in any subaward made to a private entity.

d. Definitions. For purposes of this award term:

- i. “Employee” means either:
 - 1. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 - 2. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- ii. “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
- iii. “Private entity”:
 - 1. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
 - 2. Includes:
 - a. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - b. A for-profit organization.
- iv. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

IMPLEMENTATION WORK PLAN
United States Environmental Protection Agency
Revolving Loan Fund Coalition Grant - \$800,000

Washington County, Wisconsin
Site Redevelopment Program
July 24, 2020

Grant Recipient: Washington County, Wisconsin
333. E. Washington St., Suite 2300
P.O. Box 2003
West Bend, WI 53095-2003

Project Contact: Debora M Sielski
Deputy Director, Planning and Parks
Washington County Planning and Parks Dept.
Office Telephone: 262-335-4445
Direct Telephone: 262-335-4772
Fax: 262-335-6868
E-mail: deb.sielski@co.washington.wi.us

Project Period: August 17, 2020 – September 30, 2025 (5 Years)

CFDA: 66.818; The Small Business Liability Relief and Brownfields
Revitalization Act

CERCLA Authority: 104(k)(2)

DCN:

Budget FY: 2020

Appropriation:

Budget Org:

Object Class:

Program Results Code:

This project supports the following goals and objectives outlined in the US EPA's FY 2018-2022 Strategic Plan:

EPA Goal 1 – A Cleaner, Healthier Environment

Objective 1.3 – Revitalize Land and Prevent Contamination

Specifically, this Brownfields assistance agreement will provide funding to Washington County to clean up brownfield properties for future use and redevelopment. Washington County in partnership with seven local government coalition members and Economic Development Washington County (EDWC) will work together to create and capitalize a Site Redevelopment Program Revolving Loan Fund to issue loans and subgrants to address and reduce the threat of hazardous substances, petroleum and other contaminants by remediating and rehabilitating contaminated properties.

1.0 Introduction and Project Overview

Washington County, Wisconsin was awarded an \$800,000 US EPA Revolving Loan Fund Coalition Grant (RLF) to capitalize a revolving loan fund from which loans and subgrants will be provided to support brownfield cleanup activities that will support the creation of jobs, the cleanup of distressed areas, the elimination of blight and increase the tax base. Washington County Site Redevelopment Program (SRP) is a County-led coalition of local governments including the City of Hartford, City of West Bend and the villages of Jackson, Richfield, Slinger, Kewaskum and Germantown.

The RLF grant will be a vital addition to the SRP and fund projects that will further the successes achieved by the Coalition since 2014 through the implementation of the FY2014 and FY2017 EPA assessment grants. Initially, the grant will focus on revitalization in the northern downtown area of the City of Hartford, and the north Milwaukee River area and south Eisenbahn Trail area of the City of West Bend. The funds may also be used in other municipalities which have sites that were identified in the inventory completed as part of previous US EPA assessment grants.

Recently the Washington County Board of Supervisors approved \$600,000 to establish a County Brownfield Environmental Assessment Fund and \$1,000,000 for a County Brownfield RLF. These funding sources will advance the goals of the SRP, which include the impactful redevelopment of sites, utilizing Federal, State, local, and private resources, optimizing real estate and utilities already built out and currently underutilized, mitigate risk and maximize the return on investment of redevelopment sites. The ongoing funding of the SRP will continue the transformation of redevelopment sites into “once-in-a-lifetime” opportunities.

2.0 Management and Coordination

To maximize the effectiveness of the RLF Program, the County will utilize its existing, successful SRP governance structure, building on the strengths, experience, and commitment of its coalition partners. The County, as the grantee, will execute all activities and responsibilities related to the implementation and execution of the EPA’s Brownfield RLF grant.

The County will act as the grant manager, responsible for all activities related to the technical and administrative operation of the EPA RLF grant award. The County will use existing SRP partnerships, including its connection to EDWC to establish and implement the RLF Program.

Grant Manager – Debora M. Sielski, Deputy Director, County Planning and Parks Department: Ms. Sielski will serve as the Grant Manager and primary point of EPA contact in implementation of the RLF grant award. Ms. Sielski is the Project Manager for the County’s FY2014 and FY2017 CWA Grants. Ms. Sielski will coordinate reports; organize SRC meetings; secure assistance from other County staff as needed; ensure compliance with EPA guidelines, program requirements and

EPA reporting; and oversee work by the QEP or other consultants contracted to help implement the grant. Ms. Sielski will work with the County Finance Department for activities related to loan and subgrant disbursement. Ms. Sielski has 30 years of professional experience in public administration, urban and regional planning, and landscape architecture. She is responsible for all long-range planning in the County and has experience in grant writing and administration, project management, intergovernmental collaboration and public and stakeholder engagement.

Site Redevelopment Committee (SRC): Under the County's FY2014 and FY2017 CWA grants, the SRC has directed the disbursement of grant funds and established a site selection process and brownfield inventory that has led to successful site redevelopment across the County. The SRC is a formal committee authorized by the County Board of Supervisors and subject to all public meetings, public records and other requirements. The committee is comprised of representatives from all of the coalition partners, the EDWC and a commercial real estate professional. The SRC will assist the SRP RLF Program in achieving long-term outcomes by constructing the program's policies and procedures manual for loan terms and application approval guidelines that will be executed by the SRP RLF Program Committee. The manual will also outline policies and procedures for subgrants.

The SRC's involvement in developing the policies and procedures will ensure consistency in program goals and prioritize projects that align with community plans. The SRC will review and approve subgrant applications and ensure alignment with SRP goals and priorities. The SRC also serves as a forum for sharing best practices for brownfields revitalization among local planning and development professionals and the public.

Project Management Team (PMT): The SRP PMT comprised of County staff, EDWC staff, and QEP and planning consultants has assisted the County in implementing the FY2014 and FY2017 CWA grants and will continue in an advisory, technical assistance role under the RLF Program, as applicable. The County will engage in a qualifications based procurement process to secure a QEP and planning consultant.

With over eight years of experience managing successful revolving loan fund programs, a key strength of this RLF Program is EDWC's commitment to serve as the RLF Loan Manager. A founding SRC member, EDWC has the leadership, programmatic capacity, and connections in the business and development world to ensure EPA grant dollars are maximized to meet the desired end of the SRP and EPA program goals.

EDWC will serve as Loan Manager, using its existing RLF Committee and program structure as a foundation for the SRP's EPA-funded RLF Program. As Loan Manager, EDWC will be responsible for the timely expenditure of RLF funds, and maintenance of all program income during and beyond the 5-year grant period. EDWC maintains a long-term partnership with the SRP in the advancement of its goals and will therefore be a

responsible steward of the RLF Program for the full five-year grant period, and beyond. EDWC will lead the SRP RLF Program in fund establishment, execution, management, and oversight including the loan and subgrant application process, selection and servicing—this will be in addition to their ongoing role with the SRC.

Loan Manager – EDWC - Christian Tscheschlok, Executive Director: Mr. Tscheschlok will spearhead the EDWC's role as Loan Manager and will be the primary lead in the execution of the SRP's RLF Program. EDWC has a proven understanding of real estate financing principles including loan underwriting, servicing, and credit analysis. With over ten years of experience managing economic development RLF programs (current portfolio value of \$13.4 million) for Washington County, Mr. Tscheschlok has well over 20 years of economic development and deal experience, including 12 years of direct risk analysis work. He is a Certified Economic Developer and is a former President of the WI Economic Development Association. Under Mr. Tscheschlok's direction, EDWC will bring the SRP RLF into the fold of the experienced RLF Committee and ensure EPA compliance and competent program management and fund management including program income after the completion of the grant period.

SRP RLF Committee: The SRP RLF Committee will be comprised of the existing EDWC RLF Committee, which includes high-ranking bankers, attorneys, members of the business community and county representatives. These seven core members are discrete, professional, and well versed in responsible lending and underwriting practices. The SRP RLF Committee members have been part of the EDWC's successful RLF process for eight years and have nearly 100 years of combined experience in financial management and underwriting activities.

For brownfield related loan applications, the RLF Committee will include an SRC representative, QEP and planning consultant to provide technical environmental and planning knowhow and ensure applications align with SRP goals and priorities. By partnering with EDWC and building on the established success of the CWA projects, the SRP will avoid many of the obstacle's programs can face in constructing effective deals that include revolving loans.

3.0 Implementation

Project Overview and Eligibility: The County RLF grant of \$800,000 is matched by a 20% non-federal cost share (\$160,000) from an approved allocation by the County's Board of Supervisors.

All properties within the County will be eligible for the RLF Program, with priority given to sites that are ready for redevelopment and have been ranked through the SRP Site Identification and Prioritization Process. Eligible applicants must have site control, meet EPA eligibility for participation, and must provide a WDNR-approved remedial action options report meeting the requirements of Chapter NR722.13 to ensure minimum

remedial standards are met and are protective of human health and the environment.

Through this grant and the existing FY2017 CWA grant, the SRP Project Management Team will assist applicants in fulfilling programmatic requirements such as preparation of a Quality Assurance Project Plan (QAPP), Section 106 and Endangered Species review, preparation of Analysis of Brownfield Cleanup Alternatives (ABCAs), and Community Involvement Plans.

Marketing Strategy: The target market for the SRP RLF cleanup funds will be for-profit, not-for-profit, and municipal entities in control of sites meeting the EPA Brownfields requirements. While the program will be broadly marketed, Washington County's SRP has already, via its site prioritization and site assessment work, identified target sites. Potential RLF candidate sites include the former WB Place Tannery site in the City of Harford and the Praefke Brake site in the City of West Bend.

Ideal funding opportunities would include large sites that have been significantly impacted by brownfield issues that have remained untouched by the redevelopment market, or those sites in which the highest and best use may be public greenspace due to environmental issues such as location in flood plain or existence of wetlands.

As the RLF Loan Manager, EDWC is already well-positioned to market the RLF Program and gauge interest in RLF opportunities. As the face for economic development in the County, EDWC is very active in the Greater Milwaukee Region along with the County's communities, since 2010, has annually participated in projects with over 305 businesses and organizations, roughly 30% of whom could become potential borrowers in the RLF Program. These interactions provide a keen understanding of the market, recognizing interest in redevelopment and directly addressing local limitations in access to the capital needed to complete projects where cleanup is required.

Specific outreach efforts that will serve as direct marketing for the SRP RLF include outreach to local governments, community development agencies, non-profit organizations, environmental groups, developers, major property owners, and realtors. The SRP RLF Program will be marketed on the EDWC's brownfield services page and with its Location Analysis Tool; all available at www.edwc.org. EDWC recently hired a Director of Business Development charged with cultivating and nurturing project leads, several of which may translate into qualified applicants to the brownfield RLF program as they repurpose existing challenged sites. The County also maintains marketing and communications for the existing SRP and will further deploy marketing specific to the SRP RLF Program.

The SRP will update marketing materials, including fact-sheets containing details about the program as well as information on the SRP's website. Information will be distributed through a variety of outlets including the local media.

Loan and Grant Review and Approval Process: The County's SRP RLF Program will make the awarded funds available for loans and subgrants. The SRP RLF Program loan review and approval process will build off EDWC's existing successful RLF program model. EDWC, as the Loan Manager, will receive loan applications and will work directly with applicants to assist them with program requirements. Once the ABCA and CIP requirements have been completed and the site is determined eligible by the EPA, the completed applications will be forwarded to the EDWC RLF Committee. The RLF Committee will review applications using the comprehensive policies and procedures manual constructed by the County, EDWC and SRC and will make decisions on applications based on the conformity of the proposed project with SRP objectives. The SRC will review and approve subgrant applications and ensure alignment with SRP goals and priorities.

Loan and Grant Review Criteria: Consistent with the SRP RLF Program Manual, and in compliance with all relevant EPA requirements, applications will be approved based on the following program standards:

- (1) compliance with redevelopment goals (consistency with adopted County plans, community plans, and SRP goals, result in the appropriate level of investment for the site)
- (2) compliance with sustainable remediation goals (consistency with sustainability policies modeled on the WDNR Initiative for Sustainable Remediation and Redevelopment, e.g. recycling demolition debris and using green remedial technologies)
- (3) compliance with project financial feasibility requirements including the costs of remediation
- (4) compliance with credit-worthiness requirements and other risk-mitigation measures to demonstrate ability to repay loans
- (5) commitment to sustainability and equitable development projects that: use existing infrastructure, involve energy conservation measures, enhance livability, reduce sprawl, incorporate sustainable design, improve access to public open space and habitat and serve low-income or underserved populations.

Further, priority will be given to applicants who demonstrate that their project will result in community benefits such as:

- (1) significant additional sustainability project features or methods
- (2) significant community and local outreach
- (3) local hiring and procurement plans
- (4) direct proximity to sensitive populations
- (5) leverage of the loan or subgrant to obtain other funds

Loan and Grant Products: The SRP RLF will provide flexible, low-interest loans to eligible applicants. Interest rates and repayment periods will be negotiated on a case-by-case basis, dependent on the risk-profile of the applicant and the needs of the project. RLF loans may cover up to 100% of an applicant's site cleanup costs, to serve as gap financing for high-risk projects that would otherwise not be financially feasible. However, to maximize federal dollars, cleanup costs will not be allowed to exceed 50% of total project costs. Other basic loan terms include:

- (1) Risk-based interest rate starting at 75% prime
- (2) Initial term: maximum of 10 years
- (3) Maximum loan amount determined on a project basis

Up to \$70,000 in subgrants will be available for eligible applicants who meet all criteria outlined above and demonstrate their projects are not feasible but for the use of a subgrant. Subgrant applicants will have defined criteria in the RLF Program manual and will need to demonstrate that they own the site and that they are not potentially liable for the contamination at the site. The SRC will review subgrant applications for project and redevelopment feasibility.

Subgrant awards provide opportunities to bridge the gap in financing and enable Coalition communities and non-profit entities an opportunity to cleanup sites that may not otherwise be considered by the redevelopment market. As part of the SRP program policies and procedures manual developed by the SRC, opportunities for loan forgiveness will be outlined.

Task 1 – Establish the RLF

To establish the SRP RLF Program, the County and EDWC will work with the SRC to create a comprehensive program policies and procedures manual that will be specialized to brownfield site applications and used to review and approve loan and subgrant applications. SRP will tailor EDWC's loan application policies, loan review criteria, and documents to suit the unique characteristics of brownfield sites. This task will also include finalizing the Loan Manager service agreement between the County and EDWC. The County will also contract the services of a QEP and redevelopment planning consultants to provide technical assistance and review relevant environmental assessment documents, cleanup plans, and remediation oversight. The County will work with Coalition Partners to formalize MOAs prior to drawing any EPA funds.

Task 1 - Establish the RLF

Activity	Deliverable	Schedule
Formalize Service Agreement with County, SRP and EDWC	Agreement	Oct. 2020 – Dec. 2020
Formalize MOAs with Coalition Members	MOAs	Oct. 2020 – Dec. 2020
Develop EPA RLF Comprehensive Policies and Procedures Manual	SRP RLF Policies and Procedure Manual	Oct. 2020 – Dec. 2020
Create Brownfield RLF Loan Application Documents	Application Forms/Loan Agreements templates including terms and conditions	Nov. 2020 – Jan. 2021
Perform QBP and Contract QEP & Planning Consultant	Contract	Aug. 2020 – Oct. 2020

Task 2 – Marketing the RLF

Success of the RLF Program will depend on proactive marketing. Creating a Marketing Plan will be critical to the success of the program. The focus of the Marketing Plan will be to target challenging brownfield sites where there may not be current market interest. The SRP RLF will be brought into the EDWC economic development toolbox, with digital and print marketing materials prepared specifically for this program. Existing SRP outreach and marketing efforts will be used to promote the RLF Program including public meetings and marketing site specific RLF opportunities.

Task 2 - Marketing the RLF

Activity	Deliverable	Schedule
Promote/market/provide updates on the RLF	Press releases, website updates, fact sheets, marketing materials, meeting summaries	On-going throughout duration of RLF Program
Create Marketing Plan for SRP RLF	Marketing Plan	Dec. 2020 – Feb. 2021
Link SRP RLF to EDWCs brownfield redevelopment website	Website updates	Dec. 2020 – Feb. 2021
Outreach and marketing efforts – public meetings, market site specific RLF opportunities	None	On-going throughout duration of RLF Program

Task 3 – Site Selection, Program Operations and Oversight

Using prudent lending practices, the SRP RLF Committee will review and approve loans to eligible applicants based on cleanup project eligibility, as approved by the EPA, applicant credit worthiness, and demonstrated project economic, community and environmental benefits. The SRC will review and approve subgrants. In Task 3, ABCAs and Community Involvement Plans will be prepared and a Decision Memorandum completed for each project.

The Community Involvement Plan (CIP) will be implemented for each site including notifying landowners and communities in target areas about cleanup schedules and project progress; conducting 30-day comment periods on ABCAs; creating technical presentations, exhibits, and handouts for meetings; drafting meeting summaries and responding to public comments gathered in meetings and through the County SRP website. The SRP website will also contain a public repository (administrative record) for each cleanup loan and subgrant containing all relevant cleanup documents

The County will partner with community organizations on marketing and community outreach efforts in Washington County. The County will also create bilingual outreach materials to augment our existing materials and meet the needs of impacted communities.

The RLF Program will receive technical assistance from a QEP and Planning Consultant for Task 3 activities. The QEP will conduct site visits, confirm and coordinate loan and subgrant applicant's enrollment and compliance with RLF requirements, State and Federal requirements including Davis-Bacon, track construction progress and complete ACRES reporting.

The EDWC and County Finance Dept. will track financial progress on each loan including program income. The County Project Manager will complete all grant administration, track overall progress of program and submit required EPA quarterly and annual reporting. The budget also includes travel costs (for airfare, hotel, meals and conference fees) for two County staff or SRC members to attend two EPA-sponsored National Brownfields conferences (or alternative relevant conferences if the EPA conferences are not held as anticipated).

Task 3 – Site Selection, Program Operations and Oversight

Activity	Deliverable	Schedule
Meetings with Loan/subgrant applicants	None	On-going throughout duration of RLF Program
Review applications based on SRC RLF Policies & Procedures Manual, SRP Program Standards, anticipated cleanup project eligibility, applicant credit worthiness, and demonstrated project economic, community and environmental benefits.	None	On-going throughout duration of RLF Program
Complete eligibility determinations for each project for EPA review	Eligibility Determination	On-going throughout duration of RLF Program
Develop ABCA and Community Relations Plan for EPA review	ABCA and Community Relations Plan for each site	On-going throughout duration of RLF Program – prepared for each project after ED approved
Conduct required community involvement activities described in the approved CIP following project initiation	Press releases, letters, emails, meeting summaries	On-going throughout duration of RLF Program
Notify Landowners and Communities of Cleanup Schedules and Project Progress	Press releases, letters, emails, meeting summaries	On-going throughout duration of RLF Program
Conduct 30-day Public Comment Periods on Analysis of Brownfields Cleanup Alternatives (ABCAs)	Press releases, summary of public comment	On-going throughout duration of RLF Program
Respond to Questions and Public Comments	Summary of public comments	On-going throughout duration of RLF Program
Create Bilingual Outreach Materials	Bilingual materials	On-going throughout duration of RLF Program
Create Technical Presentations, Exhibits, Handouts for Meetings	Meeting presentations, exhibits, handouts	On-going throughout duration of RLF Program
Develop Decision Memorandum for EPA review	Decision Memorandum for each site	On-going throughout duration of RLF Program – prepared for each project after public comment
Loan Underwriting	None	On-going throughout duration of RLF Program
SRP RLF Committee – Loan Review, Structure Discussion, Approval	None	On-going throughout duration of RLF Program
Negotiate Term Sheets, Development of Loan Docs, Closure of Loan	Loan Docs	On-going throughout duration of RLF Program
SRC – Subgrant approval process, Development of Subgrant Docs	Subgrant Docs	On-going throughout duration of RLF Program
Site Visits and Monitoring Project Related to State and Federal Requirements	Update Summary in Quarterly and Annual Report	On-going throughout duration of RLF Program
Tracking of loans and subgrants	Update Summary in Quarterly and Annual Report	On-going throughout duration of RLF Program
Update ACRES	Property Profiles (online)	On-going throughout duration of RLF Program
SRC Meetings	Meeting agendas and minutes	On-going throughout duration of RLF Program
Grant Administration and Tracking Overall Progress, Program Income of SRP RLF Program	Update Summary in Quarterly and Annual Report	On-going throughout duration of RLF Program
Attend National Brownfields Conferences	None	Timing to be Determined

Task 4 – Cleanup Loans and Subgrants

Employing risk-based lending practices, the County Finance Department with assistance from the Loan Manager will carry out the managed disbursement of approved loans and subgrants to approved applicants for the site cleanup work to be performed by the applicants. Activities under this task will be funded by federal grant award funds and the designated match dollars.

Task 4 – Cleanup Loans and Subgrants		
Activity	Deliverable	Schedule
Execute Loans and Subgrants	Estimate 3 loans averaging \$230,000 each	On-going throughout duration of RLF Program
Execute Subgrants	Estimate 1 subgrants averaging \$70,000 each	On-going throughout duration of RLF Program
Disbursement of Approved Loans and Subgrants	Summary in Quarterly Reports	On-going throughout duration of RLF Program

4.0 Outcomes and Outputs

The SRP has demonstrated ongoing success that will be continued as part of the RLF program. To date, over \$61 million in funding has been leveraged for additional assessment, cleanup and construction since 2014. The Coalition and SRP will continue to strengthen its success by providing for reuse planning, assessment, cleanup planning, and redevelopment financing to drive redevelopment of the priority sites in the target areas.

Target areas and priority sites are served with community water, wastewater and storm water systems, electricity, natural gas and existing roads. Redevelopment of priority brownfield sites will limit uncontrolled, potentially contaminated stormwater runoff, benefitting the Rubicon and Milwaukee Rivers and numerous other water bodies. Redevelopment will also integrate long-term sustainable energy resources, stormwater management systems, green landscaping, and green construction in these older areas.

It is anticipated that the highest and best use for portions of sites within the flood plain and bordering rivers in the *North Downtown Revitalization Area* in Hartford and the *N. Milwaukee River Revitalization Area* in West Bend will be public greenspace. This will result in retention and attraction of residents and work force to the area, increased tax base and business climate, and improvements in the livability, housing and healthy life choices of the County's residents. The redevelopment of the area will also include incorporation of more sustainable energy efficient building practices throughout the older portions of the County.

Outputs will be tracked and reported to EPA through completion of the quarterly and annual reports and through use of ACRES. The following outputs will be tracked and documented on a quarterly basis over the five-year period in a project spreadsheet.

- Number of inquiries for RLF Program information/application package
- Number of presentations or community outreach efforts conducted specific to the RLF Program
- Number of applications submitted for RLF loan or subgrant consideration
- Number of loans awarded
- Number of subgrants awarded
- Number of sites for which remedial action is completed.

Sites involved in the RLF Program will be linked to parcel identification numbers, to allow for efficient tracking, documentation, and analysis of project outcomes using the County geographic information system (GIS). This will also enable the number of parcels and acreage associated with each assessment to be accurately tracked.

The project team will document, track and evaluate the following outcomes on a quarterly basis throughout the project for brownfield sites on which RLF funding is used:

- Number of sites identified as target areas and high priority sites awarded loans or subgrants
- Number of sites and acres of land redeveloped
- Acres of parks or other greenspace created
- Amount of private investment leveraged for redevelopment projects
- Amount of other funding leveraged for redevelopment projects
- Number of jobs created or retained associated with redevelopment projects
- Number of housing units created
- Increased property and sales tax revenue generated
- Increased property value.

5.0 Budget

A summary of the proposed budget for grant funded activities is provided below followed by detailed explanation for each grant task. Due to the reduction of anticipated grant award, adjustments were made to the estimated number and amount of loans and subgrants to offset the necessary costs of activities in Tasks 1, 2 and 3. Based on the task activities, the implementation of the Community Involvement Plan was moved from Task 2 to Task 3. A new travel budget category was added to attend two EPA-sponsored National Brownfield Conferences.

Budget Categories*	Task 1	Task 2	Task 3	Task 4	Totals
	Establish the RLF	Market the RLF	Site Selection, Program Operation & Oversight	Cleanup Loans & Subgrants	
Personnel ⁽¹⁾	\$1,600	\$9,600	\$13,600	\$8,500.00	\$33,300
Contractual ⁽²⁾	\$18,200	\$34,400	\$135,000	\$2,000.00	\$189,600
Travel ⁽³⁾			\$5,600		\$5,600
Loans				\$661,500	\$661,500
Subgrants				\$70,000	\$70,000
SUBTOTALS	\$19,800	\$44,000	\$154,200	\$742,000	\$960,000
EPA RLF Grant Subtotal	\$19,800	\$44,000	\$154,200	\$582,000	\$800,000
Applicant Match Subtotal				\$160,000	\$160,000
RLF Project Total	\$19,800	\$44,000	\$154,200	\$742,000	\$960,000

Notes: *Funds are not requested for fringe benefit, or supply related activities and therefore are not reflected in the budget table. (1) **Personnel** costs refer to activities related to EPA grant implementation, management, and administration performed by the RLF grantee. Personnel calculated at \$50 per hour rate. (2) **Contractual** costs refer to activities performed by the contracted Loan Manager, QEP, and subcontractors in running and implementing the RLF Program. Contractual costs assume all travel, supplies, and benefits are inclusive of contractual agreement. Contractual expenses include: a.) Loan Manager activities, including establishing the RLF, marketing, application review, loan underwriting and loan review and approval at \$21,360 per year/5 years; b.) QEP contractor activities, including application review, technical assistance and environmental review and oversight at \$11,000 per year/5 years; c.) Redevelopment planning and design subcontractor activities including technical assistance, community outreach, marketing materials, presentations, and site redevelopment advancement assistance at \$5,560 per year/5 years. (3) **Travel** costs include two County staff or SRC members attending two EPA sponsored National Brownfields Conferences.

Task 1: Establish the RLF: Personnel costs of 32 hrs. at \$50 per hr. = \$1,600; Contractual includes establishment of the RLF Program Loan Manager and QEP and Redevelopment Planning Subcontractor \$3,640 per year/5 years; **Total Task Budget = \$19,800.**

Task 2: Market the RLF: Personnel costs of 192 hours at \$50 per hr. = \$9,600; Contractual Loan Manager and QEP and Redevelopment Planning Subcontractor contract fees at \$6,880 per year/5 years = \$34,400; **Total Task Budget = \$44,000.**

Task 3: Site Selection, Program Operations, and Oversight: Personnel costs of 272 hours at \$50 per hr. = \$13,600; Contractual Loan Manager and QEP and Redevelopment Planning Subcontractor contract fees at \$27,000 per year/5 years = \$135,000; travel costs (for airfare, hotel, meals and conference fees) for two County staff or SRC members to attend two EPA-sponsored National Brownfields conferences (or alternative relevant conferences if the EPA conferences are not held as anticipated). Travel costs are estimated at \$1,400 per person per conference (Per person costs include \$350-flight, \$200-registration, \$300-food/expenses and \$550-hotel) = \$5,600; **Total Task Budget = \$154,200.**

Task 4: Cleanup Loans and Subgrants: Personnel costs of 170 hours at \$50 per hr. = \$8,500 for tracking and disbursement of loans and subgrants; Contractual Loan Manager contract fees at \$400 per year/5 years = \$2,000 to assist in loan tracking and financial reporting; Up to \$70,000 in subgrants and \$661,500 in loans for the cleanup of eligible brownfield sites and associated eligible programmatic costs; **Total Task Budget = \$742,000.**



HEADS OF TERMS

Framework for Brownfield RLF Carve-Out from Impact RLF Fund

Revisions:

- June 7, 2021 (V5)
- June 1, 2021 (V4)
- May, 26, 2021 (V3)
- September 15, 2020 (V2)
- September 1, 2020 (V1)

Public Purpose

- A brownfield is an underutilized, idled or abandoned property for which the expansion, redevelopment, or reuse may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. There are estimated to be more than 450,000 brownfields in the United States.
- The Washington County Site Redevelopment Coalition – formed in 2013 and now including the Cities of Hartford and West Bend, and the Villages of Germantown, Jackson, Kewaskum, Slinger, and Richfield – has forged a new and repeatable model for courageously tackling other tough challenges and powerful opportunities facing the county's communities, businesses and residents.
- Washington County received a \$600,000 grant in May 2014 from USEPA. The grant funds were used to complete a county-wide inventory and prioritization of sites that have redevelopment potential and perform Phase I and Phase II environmental site assessments on priority sites.
- US EPA announced in 2017 that Washington County was successful in securing a second Countywide Coalition Brownfield Assessment Grant totaling \$600,000 to fund an update of the inventory and site prioritization, perform Phase I and Phase II environmental site assessments on priority sites, complete remedial action plans and redevelopment plans.
- The Site Redevelopment Program's \$1 million investment in brownfield sites through USEPA funding has resulted in 32 redeveloped brownfield acres, 262 new housing units, nearly \$3 million leveraged for cleanup from other sources and over \$43.5 million in new construction.
- The SRP's repurposing already existing public infrastructure, cleaning up blight, building new business assets and bringing deals across the finish line has had significant economic and fiscal benefits to local taxpayers. The downtown West Bend hotel project on the former Gehl site will alone will generate over \$2.5 million in direct net revenue to associated units of government and local taxpayers over the next 10 years.
- US EPA Region 5 has taken notice of these accomplishments, recognizing the Site Redevelopment Program and the City of West Bend for 'Outstanding Contributions in Brownfields Redevelopment' at the National Brownfields Conference for the Barton School Apartment Redevelopment.
- Despite these results, there remain numerous blighted and underutilized properties throughout Washington County. Addressing these is a stated priority of County Executive Josh Schoemann who explains, "For every brownfield, such as the Gehl site, this group redevelops, it makes it easier to preserve green spaces and farmland. This is a great example of how when governments work together, the taxpayers win."
- Repurposing underutilized and blighted sites to higher and better uses for direct taxpayer benefit is also a stated priority of the Washington County Board of Supervisors, who authorized in 2019 transfer of \$1.6 million from the General Fund to fund a Site Redevelopment Program Environmental Assessment Fund (\$600,000) and a Brownfields Revolving Loan Fund (\$1,000,000).
- Additionally, USEPA awarded Washington County's Site Redevelopment Program \$800,000 in May 2020 for a Brownfield RLF.
- **This Heads of Terms applies only to the \$1 million General Fund transfer the County Board authorized for a Washington County Brownfields Revolving Loan Fund.**

- It is anticipated use of these funds for a brownfield revolving loan program will result in removal of blight, benefits to utility rate payers by maximizing use of already existing public infrastructure, new private sector investment, accelerated business growth, new quality jobs.
- Loan proceeds shall be sourced via an up to \$1 million “carve-out” from the current Impact RLF portfolio for the purposes of creating a special “Brownfield Remediation” segment subject to repayment and revolved back into the Impact RLF.
- To enhance deployment and fit of loan proceeds for use in uniquely supporting brownfield remediation activity within redevelopment projects, EDWC will require broader flexibilities for this segment, including but not limited to underwriting adjusted to loan size, reduced collateral requirements, term lengths longer than that normally associated with working capital, deferment and other creative repayment structures and variable interest rate pricing.
- With this flexibility comes the potential for enhanced risk. The public purpose objectives stated herein are, however, of such critical importance that this risk and the required investment therein are in the best interests of Washington County taxpayers. As such, the \$1 million General Fund transfer shall be preserved in escrow to guarantee the carve-out from the Impact RLF portfolio.
- The escrowed funds shall have the option to convert from a guarantee to funds available for lending upon certain mutually agreed triggers being met.
- Proceeds may be stacked with other public incentives, including sources of funds generated from outside the County.
- Proceeds shall not be used to satisfy any outstanding obligations to public entities and authorities.

Public Purpose Requirements

- In fulfillment of the public purpose objectives spelled above and to ensure required flexibility, speed and efficiency, loans made through this portfolio segment will not be subject to the standard public purpose requirements of the Impact Revolving Loan Fund Program Management Agreement dated December 20, 2018.
- Such public purpose modifications shall include but not be limited to removal at the RLF Committee’s discretion of both job creation and private investment leveraging requirements.
- Further, processes involved in program administration will be modified as outlined below; materially departing from the December 2018 management agreement.
- As such, pursuit of the brownfield segment carve-out from the Impact RLF will require amendment of said agreement.

Borrower Qualification

- Must be a private, for-profit businesses
- Business must demonstrate that it has contracted with an experienced environmental engineering firm qualified to perform required environmental assessment and / or remediation work as funded: a (Qualified Engineering Professional – QEP)
- A QEP possesses the required licensure, certifications, qualifications and related experience to evaluate and prepare environmental site assessments, site investigations, hazardous building materials surveys, remedial action plans, implementation plans and specifications, onsite inspection and remedial documentation associated with adaptive reuse/renovation, demolition and remediation/abatement. Related knowledge, skills and abilities include but are not limited to: the Chapter NR 700 Wisconsin Administrative Code Rule series requirements and related Wisconsin Department of Natural Resources guidance; National/Wisconsin Environmental Policy Act (NEPA/WEPA) requirements, which include endangered species, endangered resources; Army Corps of Engineers waterways and wetlands requirements; and All Appropriate Inquiries Rule and ASTM International standards. Knowledge of State Historic Preservation Office requirements including historic buildings, archaeological sites and cultural resources is beneficial. The firm should also have knowledge of and experience in appropriate health and safety requirements of environmental remediation and abatement.
- Business must have been organized or directly affiliated with another business organized at least 24 months prior to application
- Business headquarters and operations must be in Washington County for the life of the note
- Must be organized as a C-Corp, S-Corp, LLC, LLP, SC or sole proprietorship employing a minimum of three (3) non-related full-time equivalents

- Must be in good standing with State of Wisconsin
- Majority shareholder must self-certify that he / she:
 - Is not presently subject to an indictment, criminal information, arraignment, or other means by which formal criminal charges are brought in any jurisdiction
 - Has not been arrested in the past six months for any criminal offense
 - Has not ever, for any criminal offense – other than a minor vehicle violation – 1) been convicted; 2) plead guilty; 3) plead nolo contendere; 4) been placed on pretrial diversion; or 5) been placed on any form of parole or probation (including probation before judgment).
 - Is current on all obligations with all federal, state and local governmental bodies
- Majority shareholder must authorize EDWC to obtain and provide such information that may be necessary for a credit score

Program Priorities

- Priority shall be given to those projects for which proceeds are to be used for environmental remediation activities
- Further priority shall be given to sites included in Washington County's redevelopment site inventory; with particular preference given to those sites that have been listed as highest priority by the Site Redevelopment Program Committee
- The Site Redevelopment Committee will determine eligibility criteria to align with the established SRP program goals

Eligible Use of Funds

- Environmental assessment including but not limited to phase 1 environmental site assessment, phase 2 environmental site assessment, hazardous building materials survey and related testing
- Environmental planning including but not limited to remedial action plans, reuse plans, marketing studies to determine the viability of new end-uses, and other plans that may be required by the Wisconsin Department of Natural Resources, the local community or other regulatory bodies respective to addressing known or suspected environmental issues
- Environmental remediation including but not limited to environmental hazard mitigation activities and systems, contamination clean-up, asbestos abatement work, hazard monitoring activities and systems and other activities included in remedial action plans as necessary to achieve desired redevelopment objectives
- Redevelopment and reconstruction activities including but not limited to demolition, rehabilitation, site preparation, reconstruction, construction and landscaping work necessary to achieve desired remediation and redevelopment objectives

Ineligible Use of Funds

- Proceeds may not be used to support redevelopment projects that result in any of the following end-uses:
 - Payday loan and title companies
 - Telemarketing other than inbound call centers
 - Pawn shops
 - Liquor stores
 - Adult entertainment venues
 - Home-based businesses
- Proceeds shall not be used to pay down other lender debt nor distributions to owners

Loan Structure

- Loan Amount: Up to \$250,000
- Interest Rate: May be variable, fixed or some hybrid thereof. Determined case-by-case by the EDWC loan committee as part of an overall loan structure designed to support desired environmental remediation and redevelopment objectives and aligned with appropriate and acceptable levels of risk
- Term: Determined by EDWC's loan committee as part of an overall loan structure designed to support desired environmental remediation and redevelopment objectives and aligned with appropriate and acceptable levels of risk

	<ul style="list-style-type: none"> • Amortization: Determined by EDWC's loan committee as part of an overall loan structure designed to support desired environmental remediation and redevelopment objectives and aligned with appropriate and acceptable levels of risk • Deferral: Up to 6-months; may be principal and interest or interest only; the granting of a deferral and the associated conditions therewith are determined exclusively by EDWC's loan committee • Borrower Guarantees: Unlimited personal guarantees of any owner 20% or greater; corporate cross-guarantees of any related entities • Collateral: Determined by EDWC's loan committee as part of an overall loan structure designed to support desired environmental remediation and redevelopment objectives and aligned with appropriate and acceptable levels of risk
Modified Underwriting	<ul style="list-style-type: none"> • Borrowers will be required to complete a modified brownfield RLF application package that, in addition to requirements within the standard Impact RLF application, includes documentation evidencing requirements above and a specific plan depicting how the proceeds, if awarded, will support the segment's redevelopment objectives and eligible environmental specific uses. They must additionally provide documented evidence their lead lender has approved brownfield RLF participation in the project. • Final program eligibility shall be determined by EDWC • EDWC shall verify the company is in good standing with State of Wisconsin • EDWC shall obtain the credit score of the majority shareholder, which must be minimally rated as "average" or above by a major credit bureau / service selected by EDWC
Modified Lending Process	Applications shall be accepted from the point of full funding of the escrow account until the maximum brownfield RLF segment size is reached.
Payment	Automatic ACH only
Servicing	Standard
Application of Payments	Payments of principal shall return to the brownfield segment of the Impact RLF portfolio, replenishing funds previously deployed under the brownfield RLF program. Interest payments shall be treated in accordance to the Impact Revolving Loan Fund Program Management Agreement dated December 20, 2018.
Collection Efforts	<ul style="list-style-type: none"> • Shall follow the standard approach outlined in the Impact RLF Program manual and in accordance with the borrower's loan agreement. • Upon the EDWC RLF Loan Committee's determination that the cost / benefit of collection efforts is no longer positive, said balance shall be deemed as loss and thus fully recovered through the Guarantee Escrow Fund. This determination is at the sole discretion of the EDWC RLF Loan Committee.
Guarantee Escrow Fund	<ul style="list-style-type: none"> • Guarantee funds must cover 100% of the original determined brownfield RLF carve-out size • Brownfield RLF fund carve-out size shall be \$1 million and may be adjusted per convertibility provisions below; however, in no event, shall the carve-out size exceed the dollars available within Guarantee Escrow Fund • Guarantee funds must be held in escrow by a qualified financial institution as determined by EDWC and shall be deposited into escrow prior to acceptance of first loan application • Interest shall be earned to the benefit of the guarantors • Guarantors and EDWC are solely responsible for their own set-up costs • Account administrative fees are born by the guarantors • Escrow account settlement date is the maturity date of the final loan in portfolio • Claims for loss shall be made within 150 days of the settlement date • Claims for loss shall include principal only • Final decisions of loss determined by EDWC and not reviewable or contested by any guarantor

Guarantee Convertibility	<ul style="list-style-type: none"> While the \$1 million General Fund transfer initially serves as the 100% guarantee for the brownfield carve-out from the Impact RLF portfolio, both parties recognize that there are circumstances for which fulfillment of the public purpose objectives stated herein may be better served by recharacterizing all or a portion of the guarantee funds into available proceeds for direct lending (conversion) Both parties thus agree that any amendments to the Impact RLF program agreement under this Heads of Terms shall include a convertibility provision whereby all or a portion of the guarantee funds may be converted into available direct loan funds upon the occurrence of certain, mutually agreed triggers Such triggers shall include but not necessarily be limited to: <ul style="list-style-type: none"> The Impact RLF Program portfolio reaching a utilization rate of 70% or greater Both parties mutually agree that otherwise unforeseen circumstances warrant Converted funds shall be added to the Impact RLF Program loan portfolio and preserved for brownfield segment use; thus freeing up currently segmented funds for other uses intended within the public purpose objectives of the Impact RLF Program Guarantee funds required to sustain 100% guarantee of any brownfield RLF segment balances currently outstanding are not eligible for conversion
Brownfield RLF Carve-Out Authorities:	<p>Fiscal Agency – County</p> <p>Loan Program Manual – Follows that of Impact RLF Program as modified to include this segment</p> <p>Eligibility Guidelines-SRC to determine eligibility criteria to align with program goals</p> <p>Marketing & Promotion – EDWC</p> <p>Application – EDWC</p> <p>Underwriting – EDWC RLF Committee</p> <p>Pricing and Terms – EDWC RLF Committee</p> <p>Collateral and Security Structure – EDWC RLF Committee</p> <p>Loan Approval – EDWC RLF Committee</p> <p>Authoring and Executing Loan Documents – EDWC</p> <p>Servicing – EDWC</p> <p>Defaults & Penalties – EDWC</p> <p>Loan Amendments & Modifications – EDWC RLF Committee</p> <p>Write-Off – NA (guaranteed through escrow account)</p> <p>Loan Loss Reserve (Amount & Application) – NA (guaranteed through escrow account)</p> <p>Reinstatement of Loan Loss Principal Excess of Reserve – NA (guaranteed through escrow account)</p> <p>Portfolio Health Analysis & Reporting – EDWC</p> <p>Borrower Payment Status & Activity Reporting – County</p> <p>Portfolio Earnings Reporting – County</p> <p>Investing Undeployed Funds – County</p>
Signing Authority	Follows December 2018 Impact Revolving Loan Fund Management Agreement
RLF Committee:	For loan applications seeking brownfield RLF segment proceeds, the EDWC loan committee shall additionally include a member of the Site Redevelopment Program project management team as determined by the Site Redevelopment Program Committee and like all committee members, is volunteer and subject to EDWC's Conflict of Interest and Confidentiality policies and requirements. A qualified environmental engineering professional will assist the loan committee as needed regarding brownfield related issues on proposed sites.
Reporting:	Follows December 2018 Impact Revolving Loan Fund Management Agreement and shall also include the economic and fiscal impact of the loans.
Confidentiality, & Records:	Follows December 2018 Impact Revolving Loan Fund Management Agreement
Write-Offs & Loss Reserve:	NA (guaranteed through escrow account)

Fees:	Per Impact RLF Program Manual as modified
Penalties to Borrowers:	Per Impact RLF Program Manual as modified
Other Provisions:	All other matters not specifically addressed here shall follow December 2018 Impact Revolving Loan Fund Management Agreement

--SIGNATURE PAGE FOLLOWS--

DRAFT

On behalf of Washington County, Wisconsin, and EDWC, we acknowledge receipt of the framework for a COVID-19 Microloan Carve-Out from Impact RLF Fund as outlined herein. This heads of terms is merely a summary of the main terms and conditions of the modification of the existing contractual relationship among the parties and is not, and shall not be deemed to be, binding upon the parties until such time as the parties have executed and delivered a mutually acceptable definitive limited amendment to the December 2018 management agreement with respect to the matters described above and the parties acknowledge any other agreements among the parties shall not be modified or amended as a result of the acknowledgment of these heads of terms.

Joshua Schoemann
Washington County Executive

Christian Tscheschlok, CEcD
EDWC Executive Director

Patrick Thomey
EDWC RLF Committee Chair



Washington County

Site Redevelopment Program



RFQu #PP21-32
Exhibit E

Framework for the Washington County Brownfields Assessment Fund

Draft Date October 6, 2020

Funding Source

- With a unanimous vote on March 11, 2020, the Washington County Board of Supervisors authorized a transfer of \$600,000 from the General Fund to fund a Brownfield Environmental Assessment Fund.
- All Coalition Partners utilizing the County Brownfield Environmental Assessment Fund shall be required to provide a 20% match for all projects.
- Coalition Partners and any local government interested in utilizing the County Brownfield Environmental Assessment Fund shall enter into a Memorandum of Agreement with Washington County outlining roles & responsibilities.

Project Approval Process for County Brownfield Assessment Fund

Task	County SRP Project Manager - PMT	Site Redevelop. Committee (SRC)	Coalition Partner	Economic Develop. Washington County (EDWC) - PMT	Qualified Environ. Prof. (QEP) - PMT	Property Developer / Owner	County Executive Committee	County Executive
Determine Initial Project Eligibility (Site Screening Checklist and Meetings w/Coalition Partners)	X		X	X	X	X		
Development of Project Funding Needs and Request Report	X		X	X	X	X		
Confirm 20% Required Fund Match			X					
Development of SRC Agenda	X							
Notification of SRC Agenda		X	X	X	X	X	X	X
Confirm Project Eligibility w/ Recommendation to Executive Committee		X						
Approve Project Funding Through Consent Agenda							X	
Development of Site Access Agreement	X				X			
Execution of Site Access Agreement			X			X		X
Execution of Assessment Work	X				X			

PMT - Site Redevelopment Program Project Management Team



Planning and Parks Department

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Washington County

Site Redevelopment Program



Public Purpose Objectives

- A brownfield is an underutilized, idled or abandoned property for which the expansion, redevelopment, or reuse may be complicated by the presence or potential presence of hazardous substance, pollutant, or contaminant. There are estimated to be more than 450,000 brownfields in the United States.
- The Site Redevelopment Program (SRP) continues to make a positive impact in Washington County and its Coalition Partners with a wide range of benefits related to *Economic Growth & Vitality* and *Safe & Secure Community Goals* by spurring numerous brownfield redevelopment projects, resulting in millions of dollars in leveraged funds in environmental assessments, abatement, remediation, and construction generating an increased tax base and increased employment opportunities.
- Washington County Site Redevelopment Program is a County led coalition of local governments formed in 2013 and now includes the City of Hartford, City of West Bend, and the Villages of Slinger, Jackson, Germantown, Kewaskum and Richfield. The Coalition has forged a new and repeatable model for courageously tackling other tough challenges and powerful opportunities facing the County's communities, businesses and residents.
- Projects funded by the County Brownfield Environmental Assessment Fund will advance the goals of the County's Site Redevelopment Program and continue successes achieved to date through implementation of a previous EPA Brownfields Assessment Grant awarded in 2014 and 2017.
- The Site Redevelopment Program's \$1 million investment in brownfield sites through USEPA funding has resulted in 32 redeveloped brownfield acres, 262 new housing units, nearly \$3 million leveraged for cleanup from other sources and over \$43.5 million in new construction.
- The SRP's repurposing already existing public infrastructure, cleaning up blight, building new business assets and bringing deals across the finish line has had significant economic and fiscal benefits to local taxpayers. The downtown West Bend hotel project on the former Gehl site will alone will generate over \$2.5 million in direct net revenue to associated units of government and local taxpayers over the next 10 years.
- US EPA Region 5 has taken notice of these accomplishments, recognizing the Site Redevelopment Program and the City of West Bend for 'Outstanding Contributions in Brownfields Redevelopment' at the National Brownfields Conference for the Barton School Apartment Redevelopment.
- Despite these results, there remain numerous blighted and underutilized properties throughout Washington County. Addressing these is a stated priority of County Executive Josh Schoemann who explains, "For every brownfield, such as the Gehl site, this group redevelops, it makes it easier to preserve green spaces and farmland. This is a great example of how when governments work together, the taxpayers win."
- Repurposing underutilized and blighted sites to higher and better uses for direct taxpayer benefit is also a stated priority of the Washington County Board of Supervisors, who authorized in 2019 transfer of \$1.6 million from the General Fund to fund a Site Redevelopment Program Environmental Assessment Fund (\$600,000) and a Brownfields Revolving Loan Fund (\$1,000,000).
- This Framework applies only to the \$600,000 General Fund transfer the County Board authorized for a Brownfield Environmental Assessment Fund.
- The County Brownfield Environmental Assessment Fund will be used to complete:
 - Phase I and Phase II environmental site assessments (ESAs) including additional site investigations on brownfields sites



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Washington County

Site Redevelopment Program



- Remedial action plan development for select sites for which Phase II ESAs are completed
- Site-specific and area-wide redevelopment planning on brownfields sites
- Site-specific and area-wide redevelopment related studies on brownfield sites
- Community outreach and education related to brownfields as needed
- Better connect potential business and other end-users with brownfield sites that can be a focus for redevelopment and reuse
- The County intends to achieve these goals by utilizing the county-wide inventory of potential redevelopment sites that was completed in 2015 using the FY2014 Brownfield Assessment Grant. The inventory will be used in conjunction with assessment and planning activities to encourage revitalization and reuse of brownfield sites.
- Funding will also be made available to support brownfield projects in all areas throughout the County.

Site Eligibility

- Continue to utilize the Site Redevelopment Program Checklist (see attached) to determine if a proposed site is ready for redevelopment and therefore appropriate for County Brownfield Environmental Assessment Fund investment. Eligibility will be based on the following:
 - Potential to obtain site access
 - Willingness of property owner to work with SRP
 - Meets definition of a Brownfield (Any real property, the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant or contaminate.)
 - Neither Washington County nor local government are a responsible party
 - No known open environmental enforcement actions
 - End user/developer is prepared to address Phase I findings
 - Local government has tools, time and resources in place to make the site a priority
 - Consideration of Site Complexity
 - Consideration of Environmental Conditions
 - Consideration of Redevelopment Market
 - Consideration of Community Goals

Fund Authorities/Responsibilities

- The Site Redevelopment Committee (SRC) will confirm eligibility of projects funded through the County Brownfield Environmental Assessment Fund and provide a recommendation to the Executive Committee of the Washington County Board of Supervisors.
- The Executive Committee will approve project funding through consent agenda.
- To continue to ensure continuity and efficiency of the Site Redevelopment Program, the SRP Project Management Team will work with Coalition Partners and the Site Redevelopment Committee to move projects through the process. General roles and responsibilities are as follows:



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Washington County

Site Redevelopment Program



- **County:**

- County SRP Project Manager is responsible for project oversight including managing the consultant activities, reviewing environmental site assessments, reports and plans, and preparing required reports and other correspondence as needed. Such reports may include preparing and submitting progress reports, as needed to the Executive Committee and general communications between consultants and Coalition Partners.
- County SRP Project Manager will work with the County Attorney and local governments to complete coalition agreements.
- County SRP Project Manager has primary responsibility for all components of the SRC meetings, except those identified for EDWC and the QEP including preparing and distributing agendas and minutes. The SRC will generally meet on a quarterly basis.
- County SRP Project Manager will provide notice of SRC agendas to the Executive Committee and the County Executive.
- The County will enter into a contract with a qualified environmental professional to complete all environmental work.
- County SRP Project Manager will work with the County Attorney and local governments to complete site access agreements. The County will work with individual Coalition Partners in which sites are located to develop and execute property access agreements for all parcels on which work will be performed that include on-site inspections, testing, or the physical entry onto the properties. The process for securing access will vary depending on whether sites are currently owned by local governments versus private parties, whether sites are currently tax delinquent, and whether sites are subject to specific development proposals or sales agreements at the time of assessment. In all instances, it is anticipated that the local governments within which the site(s) are located, in cooperation with the County and the Qualified Environmental Professional (QEP), will have primary responsibility for securing access. This is in recognition that those local officials will have the best understanding of access challenges. For sites that are tax delinquent, the County has the ability, under Wisconsin law, to obtain an environmental inspection warrant that can be used to secure access for testing in circumstances where the current property owner is unwilling to provide access. However, the preferred option for all sites (including those that are tax delinquent) will be to secure the willing and legal consent of the property owner through the execution of an access agreement.

- **EDWC:**

- Assist the QEP as needed in completion of any updates to the site ranking and prioritization process.
- Review and provide input into QEP-led remedial action planning and brownfields site or area-wide reuse/redevelopment plans.
- Compete ROI Impact Analysis for brownfield redevelopment projects impacted by the County Brownfield Environmental Assessment Fund at a specified cost per Impact Analysis.
- Assist in community outreach as appropriate to better connect potential businesses, developers and other end-users with brownfields sites that can be a focus for redevelopment and reuse.
- Continue to utilize the EDWC website focused on connecting prospective end users and local stakeholders with information on redevelopment sites and associated reuse opportunities.



Planning and Parks Department

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Washington County

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- If requested, EDWC will provide input on meeting agendas and prepare presentations for the SRC meetings and public community meetings as necessary.
- EDWC staff will continue attending all quarterly SRC Committee meetings and participate in quarterly “check-in” in-person meetings and/or tele/web conferences with Project Management Team.
- The EDWC will operate under the current loan program contract except there will be a fee of \$1,400 for each ROI Impact Study completed by EDWC staff.
- ***Qualified Environmental Professional (QEP) with subcontract with Professional Planning Firm (PPF):***
 - The work of the QEP for the County Brownfield Environmental Assessment Fund will be included in the Request for Qualifications used in hiring a QEP for implementing the FY2020 US EPA Revolving Loan Fund.
 - The successful firm should possess the required licensure, certifications, qualifications and related experience to conduct and prepare environmental site assessments, site investigations, hazardous building materials surveys, remedial action options, remedial action plans, and perform surveying and geotechnical studies.
 - The successful firm should possess the resources to complete these studies or identify a qualified subconsultant to conduct and prepare implementation plans; demolition/remediation/abatement specifications; material management plans; onsite inspection; and remedial documentation associated with adaptive reuse/renovation and associated costs. These include, but are not limited to the Chapter NR 700 Wisconsin Administrative Code Rule series requirements and related Wisconsin Department of Natural Resources guidance; local, state and federal permitting requirements (National/Wisconsin Environmental Policy Act (NEPA/WEPA), which include endangered species, endangered resources, waterways and wetlands, historical/archaeological sites, Army Corps of Engineers navigable waters, etc.), the All Appropriate Inquiries Rule and ASTM International standards.
 - The QEP should also have knowledge and experience in appropriate health and safety requirements related to investigation and remediation/abatement of contaminated media and construction/demolition debris.
 - Provide project specific status updates to the County SRP Project Manager on generally a monthly basis.
 - Integrate new sites into the existing inventory and removing sites that have been redeveloped as necessary.
 - Utilize Survey 123 for tracking work on funded redevelopment sites.
 - Assist the County SRP Project Manager in site ranking and prioritization as necessary for SRC to determine appropriate funding priorities.
 - Conduct all Phase I and Phase II Environmental Site Assessments and Remedial Action Planning.
 - Assist in guiding individual Coalition Partners in which sites are located to execute property access agreements.
 - Provide oversight to professional planning firm (PPF) in the preparation of brownfields site or area-wide reuse/redevelopment plans.



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- Prepare presentations as appropriate for meetings as necessary providing implementation status and solicit input from SRC members on specific sites or revitalization needs. If requested, QEP to provide input on meeting agendas and materials.
 - PPF to develop two fact sheets per year, with the County SRP Project Manager, EDWC and QEP contributing.
 - QEP and PPF to attend quarterly SRC and PMT meetings.
 - PPF will lead any additional site selection, ranking and prioritization of sites using the established three-tiered site identification and prioritization process with the SRC.
 - With oversight from QEP, as directed by the County, PPF to assist in remedial action planning.
 - As directed by the County, with oversight from QEP, prepare brownfields site or area-wide reuse/redevelopment plans in cooperation with the County and EDWC.
 - PPF will prepare presentations as appropriate for the SRC meetings and public community meetings as necessary regarding site selection, ranking, prioritization and reuse/redevelopment planning.
- **Coalition Partners:**
 - Assist the County in securing access agreements for privately owned parcels targeted for assessment within their jurisdictional area.
 - All Coalition Partners utilizing the County Brownfield Environmental Assessment Fund shall be required to provide a 20% match for all projects as outlined in the Memorandum of Agreement.
 - Provide access for parcels owned by the Coalition Partner that are targeted for assessment within their jurisdictional area. Partners will have primary responsibility for securing signatures from private property owners necessary to execute access agreements for those parcels, as well as any parcels targeted for assessment for which they are the owner. (Access agreement forms will be developed by the County).
 - Assist in the eligibility determination process for sites targeted for assessment within their jurisdictional areas, by providing information where available, relevant to past and current ownership, past assessment activities, known or suspected environmental liabilities, and reuse plans.
 - Assist in the process of selecting and prioritizing sites for use of EPA funding.
 - Assist in clearing of public utilities as appropriate for utility clearance performed prior to intrusive subsurface sampling activities for parcels targeted for assessment within their jurisdictional area.
 - Provide input into reuse/redevelopment planning efforts.
 - Coalition representative will continue attending all quarterly SRC Committee meetings.

Measures of Success

Washington County Site Redevelopment Program has identified the following measures of success that will be tracked and documented in fact sheets to be provided to the Executive Committee including update of the SRP Success Dashboard and infographic.

- Number of completed Phase I and Phase II environmental site assessments (ESAs) on priority brownfield sites.



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- Number of completed additional site investigations and remedial action plans developed for select sites for which Phase II ESAs are completed.
- Number of successful projects where County Brownfield Environmental Assessment Fund was used to leverage additional funding for redevelopment projects.
- Number of success story profiles and case studies developed to further market the Site Redevelopment Program in order to connect potential investors and other end-users with brownfield sites that can be a focus for redevelopment and reuse.
- Number of brownfield acres redeveloped utilizing County Brownfield Environmental Assessment Fund.
- Number of new housing units constructed utilizing County Brownfield Environmental Assessment Fund.
- Amount of additional investment in environmental assessments, abatement, demolition and cleanup for projects utilizing County Brownfield Environmental Assessment Fund.
- Amount of additional investment in construction for projects utilizing County Brownfield Environmental Assessment Fund.

SRC

- Since 2010, the County has proactively involved Washington County communities in development and advancement of a brownfields-focused Site Revitalization Program. To lead this effort, in early 2013, the County established a Site Revitalization Committee (SRC) to guide and advance brownfield redevelopment, community outreach and involvement, reuse planning and site assessment.
- The SRC includes representatives from all Coalition Partners, Economic Development Washington County (EDWC) and complementary organizations to oversee the Washington County Site Redevelopment Program.
- The SRC will confirm eligibility of projects funded through the Site Redevelopment Program Environmental Assessment Fund subject to the consent approval of the Executive Committee of the Washington County Board of Supervisors.
- The SRC will convene on at least a quarterly basis, with the public meetings widely promoted encouraging participation by our partnering organizations and public. To maximize the extent to which community residents and other stakeholders can provide meaningful input to the project, the SRC comprehensive community outreach program will continue, with elements that include SRC public meetings, County-wide and community specific public meetings and forums, print and web-based communication tools including the development and distribution of marketing and informational materials, and joint outreach and education efforts with community partner organizations.



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Other Key Stakeholders

- Wisconsin Department of Natural Resources (WDNR)
- US Environmental Protection Agency
- Washington County Health Department
- Wisconsin Economic Development Corporation (WEDC)

Reporting

- The County SRP Project Manager will:
 - Provide a status report to the Executive Committee as needed.
 - Work with the QEP on preparing SRP Fact Sheets to continue to report overall leveraging.
 - Continue to develop success stories and update County Success Story maps and videos.



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