

	U.S. ENVIRONMENTAL PROTECTION AGENCY Assistance Amendment	GRANT NUMBER (FAIN): 95406508 MODIFICATION NUMBER: 5 PROGRAM CODE: BF	DATE OF AWARD 09/13/2017
		TYPE OF ACTION No Cost Amendment	MAILING DATE 09/13/2017
		PAYMENT METHOD: ACH	ACH# 40147
		RECIPIENT TYPE: Special District	
RECIPIENT: West FL Regional Planning Council 4081 E. Olive Road, Suite A Pensacola, FL 32514 EIN: 59-0500582		PAYEE: West FL Regional Planning Council 4081 E. Olive Road, Suite A Pensacola, FL 32514	
PROJECT MANAGER Kate Daniel 4081 E. Olive Road, Suite A Pensacola, FL 32514 E-Mail: kate.daniel@wfrpc.org Phone: 850.332.7976		EPA PROJECT OFFICER Derek Street 61 Forsyth Street Atlanta, GA 30303-8960 E-Mail: street.derek@epa.gov Phone: 404-562-4300	
EPA GRANT SPECIALIST Sharonita Johnson Grants & Audit Management Office E-Mail: johnson.sharonita@epa.gov Phone: 404-562-8311			
PROJECT TITLE AND EXPLANATION OF CHANGES Brownfields Assessment and Cleanup Cooperative Agreements This action approves a time extension of the budget/project period end date from 09/30/17 to 09/30/18 to provide the West Florida Regional Planning Council additional time to achieve the goals in their work plan.			
BUDGET PERIOD 07/01/2008 - 09/30/2018	PROJECT PERIOD 07/01/2008 - 09/30/2018	TOTAL BUDGET PERIOD COST \$1,458,000.00	TOTAL PROJECT PERIOD COST \$1,458,000.00
NOTICE OF AWARD			
Based on your Application dated 05/27/2008 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$0. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$1,215,000. 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 61 Forsyth Street Atlanta, GA 30303-8960		ORGANIZATION / ADDRESS U.S. EPA, Region 4 Resource Conservation and Recovery Act Division 61 Forsyth Street Atlanta, GA 30303-8960	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY			
Digital signature applied by EPA Award Official Sharonita Johnson -			DATE 09/13/2017

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$124,600
2. Fringe Benefits	\$0
3. Travel	\$25,000
4. Equipment	\$0
5. Supplies	\$16,000
6. Contractual	\$115,000
7. Construction	\$0
8. Other	\$1,177,400
9. Total Direct Charges	\$1,458,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>16.67</u> % Federal <u>83.33</u> %.)	\$1,458,000
12. Total Approved Assistance Amount	\$1,215,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$0
15. Total EPA Amount Awarded To Date	\$1,215,000

Administrative Conditions

The following Administrative conditions have been revised :

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-april-27-2017-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 <http://www.epa.gov/grants/grant-terms-and-conditions>. The applicable terms and conditions below are in addition to the general terms and conditions noted above:

1. ANNUAL FFR (INTERIM) PURSUANT TO 2 CFR 200.327

Pursuant to 2 CFR 200.327, EPA recipients shall submit an interim annual Federal Financial Report (FFR, SF-425) to EPA no later than 90 calendar days following the anniversary of the award date. The form is available on the internet at: <http://www2.epa.gov/financial/forms>.

The following reporting period end dates shall be used for interim annual reports: 3/31, 6/30, 9/30, or 12/31.

At the end of the project, the recipient must submit a final FFR to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at: <http://www2.epa.gov/financial/forms>. All FFRs must be submitted to the Las Vegas Finance Center (LVFC) via email LVFC-grants@epa.gov.

2. 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.

MBE/WBE REPORTING, 40 CFR, Part 33, Subpart E

MBE/WBE reporting is required in annual reports. Reporting is required for assistance agreements where there are funds 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 that exceed the threshold amount of \$150,000,

including amendments and/or modifications.

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to the Disadvantaged Business Enterprise (DBE) Program reporting requirements. However, if recipient believes this award does not meet these conditions, it must provide the DBE Coordinator with a justification and budget detail within 21 days of the award date clearly demonstrating that, based on the planned budget, this award is not subject to the DBE reporting requirements.

The recipient agrees to complete and submit a "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" report (EPA Form 5700-52A) on an annual basis. All procurement actions are reportable, not just that portion which exceeds \$150,000.

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. 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.

The reporting requirement is based on total procurements. Recipients with expended and/or budgeted funds for procurement are required to report annually whether the planned procurements take place during the reporting period or not. If no budgeted procurements take place during the reporting period, the recipient should check the box in section 5B when completing the form.

MBE/WBE reports should be sent to:
R4epagrantsmbewbreporting@epa.gov
cc: johnson.sharonita@epa.gov
Attn: Sharonita Johnson

The current EPA Form 5700-52A can be found at the EPA Office of Small Business Program's Home Page at http://www.epa.gov/osbp/dbe_reporting.htm

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in effect, including the Good Faith Effort requirements as described in 40 CFR Part 33 Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D and explained below.

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

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance

agreements.

In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives requirements as described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

Accepting the Fair Share Objectives/Goals of Another Recipient

The dollar amount of this assistance agreement, or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION** as follows:

Combined MBE/WBE (DBE):
Includes Construction, Equipment, Services and Supplies 10%

By signing this financial assistance agreement, the recipient is accepting the fair share objectives/goals stated above and attests to the fact that it is purchasing the same or similar construction, supplies, services and equipment, in the same or similar relevant geographic buying market as the **FLORIDA DEPARTMENT OF ENVIRONMENTAL PROTECTION**.

Negotiating Fair Share Objectives/Goals, 40 CFR, Section 33.404

The recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is **not** accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study, to the Regional MBE/WBE Coordinator within 120 days of its acceptance of the financial assistance award. EPA will respond to the proposed fair share objective/goals within 30 days of receiving the submission. If proposed fair share objective/goals are not received within the 120-day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objective/goals are submitted.

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.

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.

Programmatic Conditions

The Following Programmatic Conditions Have Been Updated and all Other Programmatic Conditions Remain the Same:

Revolving Loan Fund (RLF) Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfields RLF capitalization Grants awarded under CERCLA § 104(k) and those that chose to transition to § 104(k), or those agreements

which have been amended after 12/24/14. They do not apply to pre-FY 2003 grants subject to § 104(d).

I. GENERAL FEDERAL REQUIREMENTS

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 subrecipients with cooperative agreement funds comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR will ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR will ensure cleanups are protective of human health and the environment.

3. The CAR must consider whether it is required to have borrowers or subrecipients conduct cleanups through a State or Tribal response program. If the CAR chooses not to require borrowers and subrecipients 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 subaward to ensure the proposed cleanup is protective of human health and environment.

II. SITE/BORROWER/SUBRECIPIENT ELIGIBILITY

A. Brownfields Site Eligibility

1. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, whether the CAR is the potentially responsible party under CERCLA § 107 and/or has defenses to liability.

2. If the site is excluded from the general definition of a brownfield site, but is eligible for a FY17 RLF Terms and Conditions property-specific funding determination, then the CAR may request a property-specific funding determination. In their 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 the Agency has determined that the property is eligible.

3. For any petroleum-contaminated brownfields site, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which documents that:

- a. a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum sites in the State;
- b. the State determines there is “no viable responsible party” for the site;
- c. 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
- d. 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 Office for additional information.

Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion to reach each determination that the site is of relatively low risk, 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.

4. If the State chooses not to make the determinations described in 3.a. above, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the requisite determinations.

5. EPA will make all determinations on the eligibility of petroleum-contaminated brownfields 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 “3” above.

B. Borrower and Subrecipient Eligibility

1. The CAR may only provide cleanup subawards to an eligible entity or nonprofit organization to clean up sites *owned* by the eligible entity or nonprofit organization at the time of the subawards. Eligible subrecipients include eligible entities as defined under CERCLA § 104(k)(1) and nonprofit organizations as defined in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999, Public Law 106-107. 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 subawards.

2. The subrecipient must retain ownership of the site throughout the period of performance of the subaward. For the purposes of this agreement, the term “owns” means fee simple title unless EPA headquarters approves a different ownership arrangement.

3. The CAR may not provide a subaward to itself or another component of its own unit of government or organization.

4. 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 percent, provided that the total amount of the principal forgiven for that loan shall not exceed \$200,000. Eligible entities include those identified in CERCLA § 104(k)(1) and nonprofit organizations as defined at Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999.

Private, for-profit entities are not eligible for discounted loans.

5. The CAR shall not loan or subaward funds that will be used to pay for cleanup activities at a site for which a loan recipient (borrower) or subrecipient is potentially liable under CERCLA § 107. The CAR may rely on its own investigation which can include an opinion from the subrecipient’s or borrower’s counsel. However, the CAR must advise the borrower or subrecipient that the investigation and/or opinion of the subrecipient’s or borrower’s counsel is not binding on the Federal Government.

6. For approved eligible petroleum-contaminated brownfields sites, the person cleaning up the site must be a person who is not potentially liable for cleaning up the site. For brownfields 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.

7. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subrecipients.

8. A borrower or subrecipient 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 subaward. The CAR, in consultation with the EPA, must consider this history in its analysis of the borrower or subrecipient as a cleanup and business risk.

9. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subrecipient.

C. Obligations for CARs, Borrowers, or Subrecipients Asserting a Limitation on Liability from CERCLA § 107

1. CARs, borrowers, or subrecipients who are eligible, or seek to become eligible, to receive a loan or subaward based on a liability protection from CERCLA as a: (1) bona fide prospective purchaser (BFPP), (2) contiguous property owner (CPO), or (3) innocent landowner (ILO) (known as the “landowner liability protections”), must meet certain threshold criteria and satisfy certain continuing obligations to maintain their status as an eligible grant recipient, borrower, or subrecipient. These include, but are not limited to the following:

a. All CARs, borrowers, or subrecipients asserting a BFPP, CPO or ILO limitation on liability must perform (or have already performed) "all appropriate inquiry," as found in section 101(35) (B) of CERCLA, on or before the date of acquisition of the property.

b. CARs, borrowers, or subrecipients seeking to qualify as bona fide prospective purchasers or contiguous property owners must not be potentially liable, or affiliated with any other person that is potentially liable for response costs at the facility through:

(a) any direct or indirect familial relationship; or

(b) any contractual, corporate, or financial relationships; or

(c) a reorganized business entity that was potentially liable or otherwise liable under CERCLA § 107(a) as a prior owner or operator, or generator or transporter of hazardous substances to the facility.

c. Landowners must meet certain continuing obligations in order to achieve and maintain status as a landowner protected from CERCLA liability. These continuing obligations include:

i. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;

ii. taking reasonable steps to stop any continuing hazardous substance releases, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance;

iii. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;

iv. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and

v. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) [see CERCLA § § 101(40) (B)-(H), 107(q)(1)(A), 101(35) (A)-(B)].

d. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§ 101 (35), 101(40), 107(b), 107(q) and 107(r).

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of an RLF agreement is five years, unless otherwise extended by EPA at the CAR's request.

2. If after 2 years from the date of award, EPA determines that the recipient has not made sufficient progress in implementing its cooperative agreement the recipient must implement a corrective action plan approved by the EPA Project 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 if EPA determines that the insufficient progress was not the fault of the CAR. Sufficient progress is indicated by the CAR having made loan(s) and/or subaward(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/subawards, or other documented activities that demonstrate to EPA's satisfaction that the CAR will successfully perform the cooperative agreement.

B. Substantial Involvement

1. The EPA may be substantially involved in overseeing and monitoring this cooperative agreement.

a. Substantial involvement by the EPA generally includes administrative activities by the Project Officer such as: monitoring; reviewing and approving of procedures for borrower and subrecipient selection; review 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, subaward, or contract with a particular entity.

b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in II.A.2. The CAR may also request technical assistance from EPA to determine if sites qualify as brownfields sites and to determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition does not allow a CAR or loan recipient to use cooperative agreement funds to clean up a site if the CAR, borrower or subrecipient is potentially liable under §107 of CERCLA for that site.

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 subawards.

e. EPA may waive any of the provisions in term and condition III.B.1, with the exception of property-specific funding determinations. EPA will provide waivers in writing.

2. Effect of EPA's substantial involvement includes:

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 for 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 EPA and the State.

c. The CAR remains responsible for ensuring costs are allowable under 2 CFR Parts 200 and 1500.

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 appoint a Qualified Environmental Professional(s) to coordinate, direct, and oversee the brownfields cleanup activities at a particular site, if they do 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 subaward 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](#).

4. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel must review all loan/subaward agreements prior to execution unless EPA's Project Officer waives this requirement.

5. The CAR is responsible for ensuring that borrowers and subaward recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subaward recipients are consistent with the terms and conditions of this agreement.

6. If the CAR makes any subawards under this agreement, then they become a pass-through entity under the "Establishing and Managing Subaward" General Term and Condition of this agreement. As the pass-through entity, the CAR must report to EPA on its subaward monitoring activities under 2 CFR 200.331(d), including the following information on subawards 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 subrecipient performance.
- c. Environmental results the subrecipient achieved.
- d. Summaries of audit findings and related pass-through entity management decisions.
- 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 Part 200.338 Remedies for Noncompliance](#).

7. 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.

D. Quarterly Progress Reports

1. The CAR must submit progress report on a quarterly basis to the EPA Project Officer. Quarterly progress report must include:
 - a. Summary 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.
 - b. An update on project schedules and milestones.
 - c. A list of the loans and/or subawards during the reporting quarter.
 - d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); cost share updates; program income generated and used; and total remaining funds.
2. 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
3. The CAR must maintain records that will enable it to report to EPA on the amount of funds (direct EPA funding, program income) disbursed by the CAR to clean up specific properties under this cooperative agreement.
4. 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 approved work plan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., loan signed, cleanup started) and any final accomplishments (i.e., cleanup completed, contaminants removed, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as 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. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

F. Community Outreach

The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved work plan, which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed. Specifically:

1. Public or Media Events

The Recipient agrees to notify the EPA Project Officer listed in this award document of public or media events publicizing the accomplishment of significant events related to construction 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.

2. Limited English Proficiency Communities

To increase public awareness of projects serving communities where English is not the predominant language, recipients 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.

G. Final Report

1. The CAR must submit a final report at the end of the period of performance in order to finalize the closeout of the cooperative agreement. This final report must capture the site names, what work was done at each site and how much funding was spent at each site. It should also provide information that documents the outreach efforts done by the CAR and other activities that help explain where the funding was utilized. See Section VII for more details on final report and closeout.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. CERCLA § 104(k)(9)(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) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be supported by adequate documentation.

B. Eligible uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subrecipients

1. To the extent allowable under the EPA approved workplan, cooperative agreement funds may be used for eligible programmatic expenses to capitalize the RLF and conduct cleanups.

a. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers or subrecipients at brownfields sites.

b. 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 brownfields sites and for eligible programmatic costs for managing the RLF. Up to 50% in direct EPA funding and associated cost share may be used for subawards to clean up eligible brownfield sites under the RLF and for eligible programmatic costs for managing subaward(s). (Note: cleanup subawards are limited to \$200,000 per site). (Note: The CAR may request a waiver to the 50% cap on subaward funds. Please consult with your Regional Project Officer for the waiver process.)

c. To determine whether a cleanup subaward is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(B)(c):

i. The extent the subaward will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;

- ii. The extent the subaward 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;
- iii. The extent the subaward will facilitate the use or reuse of existing infrastructure; and
- iv. 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.

2. The CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subawards for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include direct costs for:

- a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k).
- b. Ensuring that a RLF cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
- c. Limited site characterization including confirming the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.
- d. Preparing an Analysis of Brownfields Cleanup Alternatives (ABCA) 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 in light of reasonably foreseeable changing climate conditions (e.g., sea level rise, increased frequency and intensity of flooding and/or extreme weather events, 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.
- 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 U.S. EPA Order 53601.1, April 1984, as amended on May 5, 2000.
- h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subrecipients activities to ensure compliance with applicable federal and state environmental requirements.
- i. Ensuring that the site is secure if a borrower or subrecipient is unable or unwilling to complete a brownfields cleanup.
- j. Using a portion of a loan or subaward to purchase environmental insurance for the site. The loan or subaward may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section IV.C.
- k. Any other eligible programmatic costs including costs incurred by the recipient in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subawards; and carrying out outreach pertaining to the loan and subaward program to potential borrowers and subrecipients.

I. Subrecipient progress reporting to the CAR is an eligible programmatic cost.

3. 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 (including monitoring of health and institutional controls) as described in Task ___ of the EPA approved workplan. The CAR must maintain records on funds that will be used to carry out Task ___ of its EPA approved workplan to ensure that no more than 10% of its funds are used for brownfield program development and implementation (including monitoring of health and institutional controls).

4. If the CAR makes a subaward to a local government that includes an amount (not to exceed 10% of the subaward) for brownfields program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subrecipient maintains records adequate to ensure compliance with the limits on the amount of subaward funds that may be expended for this purpose.

C. Ineligible uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subrecipients

1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subrecipient 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 redevelopment activities that are not integral to the cleanup actions.
- d. Addressing public or private drinking water supplies that have deteriorated through ordinary use.
- e. Job training unrelated to performing a specific cleanup at a site covered by a loan or subaward.

f. To pay for a penalty or fine.

g. To pay a federal cost share requirement (for example, a cost-share required by another federal grant) unless there is specific statutory authority.

h. To pay for a response cost at a brownfields site for which the CAR or recipient of the subaward or loan is potentially liable under CERCLA § 107.

i. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup.

j. Unallowable costs (e.g., lobbying and fund raising) under 2 CFR Parts 200 and 1500.

2. Under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs incurred by the CAR and subrecipients under 2 CFR 200 Subpart E.

a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirement for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR 200 and 1500. Direct costs for cooperative agreement and subaward administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the CAR or subrecipient is required to carry out the activity under the cooperative agreement. Costs incurred to report quarterly performance to EPA under the grant are eligible.

b. Ineligible cooperative agreement or subaward administration costs include direct costs for:

i. Preparation of applications for Brownfields grants and subawards;

ii. Record retention required under 2 CFR Parts 200.333-337 and 1500.6;

iii. Record-keeping associated with equipment purchases required under 2 CFR 200.313;

iv. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR 200.308 and 2 CFR 1500.8;

v. Maintaining and operating financial management systems required under 2 CFR 200.302;

vi. Preparing payment requests and handling payments under 2 CFR 200.305

vii. Non-federal audits required under 2 CFR 200 Subpart F; and

viii. Close out under 2 CFR 200.343.

Borrowers are subject to the CERCLA § 104(k)(4)(B) administrative cost prohibition requirements. The CAR must ensure that loan agreements prohibit borrowers and subrecipients from using loans financed with cooperative agreement funds for administrative costs.

c. Prohibited administrative costs for the borrower (including those in the form of salaries, benefits, contractual costs, supplies, and data processing charges) are those incurred for loan administration and overhead costs.

d. Direct costs for loan administration are ineligible even if the borrower is required to carry out the activity under the loan agreement. Ineligible loan administration costs include expenses for:

i. Preparation of applications for loans and loan agreements;

ii. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;

iii. Maintaining and operating financial management and personnel systems;

iv. Preparing payment requests and handling payments; and

v. Audits.

e. Overhead costs by the borrower that do not directly clean up brownfields site contamination or comply with laws applicable to the cleanup are ineligible administrative costs. Examples of overhead costs that would be ineligible in loans include expenses 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);

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.

Costs incurred by the borrower for procurement are eligible only if the procurement contract is for services or products that are direct costs for performing the cleanup, for insurance costs, or for maintenance of institutional controls. Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.

4. Cooperative agreement funds may 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, 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 land held in trust by the United States government for an Indian tribe; or

d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.

D. Use of Program Income – During the Performance Period

1. 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 the EPA and use the program income under the same terms and conditions of this agreement unless otherwise specified (e.g. Section IV.B.1.b. regarding use of 50% of the funds for loans and managing the RLF). 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 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.

3. In accordance with Section 104(d)(3)(D), when a CAR transitions to a 104(k) cooperative agreement, any program income (e.g. fees, interest or principal repayments) generated prior to transition will be added to the 104(k) agreement and must be used in a manner consistent with Section 104(k)(3) and with the terms and conditions, contained herein.

4. The CAR may use program income, as defined above, to meet its cost-share. The CAR shall not use repayments of principal of loans to meet the CAR's cost-share requirement. Repayments of principal must be returned to the CAR's Brownfields cleanup revolving fund.

5. 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 the EPA to have been an ineligible or unallowable use of program income, the recipient shall reimburse the RLF or refunded to EPA as directed by the EPA in its disallowance determination. EPA will notify the recipient of the time period allowed for reimbursement or refund.

6. Loans or subawards 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 subawards 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.

7. The CAR must obtain EPA approval of the substantive terms of loans and subawards made entirely with program income unless this requirement is waived by EPA's 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. Interest earned on advances - CARs and subrecipients 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

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 agree to modify the terms.

1. 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. CAR must deposit program income into an interest bearing account. Interest earned on program income is considered additional program income.

3. 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.

4. 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). 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.

5. EPA prefers the primary use of retained and post-closeout program income be for providing loans for Brownfields cleanups. In addition to Brownfields cleanup loans, program income may be used to fund the following Brownfields activities:

a. Cleanup Subawards to eligible entities and nonprofit organizations for allowable activities as described in the terms of the CA.

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. Area-wide planning for the assessment, cleanup and re-use of Brownfields sites, and

e. Programmatic costs to manage and oversee the work being performed.

6. 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.4, Ineligible uses of the funds for the CAR, borrower, and/or subrecipients, unless otherwise noted as an eligible use of post closeout program income in the terms and conditions.

7. All assessment and cleanup work funded with program income must continue to be performed in accordance with state environmental rules and regulations and be protective of human health and the environment. If the CAR chooses not to have borrowers or subrecipients 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.

8. 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 agreement.

9. Retained and post-closeout program income shall not be used for site inventory work.

10. When possible, CAR may 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 subawards.

11. Program income may not be used to assess or cleanup 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 brownfields 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.

12. The CAR shall submit Annual Reports for the first 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 CA or a list of sites created and/or updated in the ACRES database.

13. 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.

14. 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 described in

Section IV.F.3 and requests termination of the closeout agreement.

a. No remaining program income or future loan repayments. The CAR shall notify EPA's Award Official 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 Section 10 of this closeout agreement. The Agency has 90 days from receipt of this notification to submit any objections to the termination of this closeout agreement. If the Agency 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 Award Official 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 Section 10. of this closeout agreement. The CAR must account for and return all program income to EPA in accordance with instructions provided by the EPA's Award Official or 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 Award Official or Grants Management Officer, the CAR must remit to EPA on a quarterly basis program income earned after the closeout agreement has been terminated.

15. All records and documents relating to performing the close out 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.

16. 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.

17. If the CAR expends retained program income in a manner inconsistent with this closeout agreement, the Agency may take actions authorized under 2 CFR Part 200, Remedies for Noncompliance.

18. 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.

19. No other Federal requirements apply to the use of program income under the terms of this closeout agreement.

V. RLF ENVIRONMENTAL REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR shall prepare an analysis of brownfields cleanup alternatives (ABCA) 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 in light of reasonably foreseeable changing climate conditions (e.g., sea level rise, increased frequency and intensity of flooding and/or extreme weather events, 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 EPA regarding potential applicability of the National Historic Preservation Act (NHPA) 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 brownfields 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.

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. All RLF loan and subaward 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 work plan, which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed. Specifically:

a. If any document, fact sheet, and/or web material 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 the 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: <http://www.epa.gov/ogd/tc.htm>.

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 records must be retained for three years after the termination of the closeout agreement subject to any requirements for maintaining records of site cleanups ongoing at the time of termination.

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 subaward 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 subrecipient 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 the 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. This documentation needs to be included as part of the administrative record.

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subaward 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/subawarding objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and, lending/subawarding practices that can include loan/subaward processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.

2. The CAR shall not incur costs under this cooperative agreement for loans, subawards or other eligible costs until an RLF cooperative agreement workplan. 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/subawards and lending/subawarding practices. These activities shall include, but not be limited to the following:

a. Considering awarding subawards on a competitive basis. If the CAR decides not to award any subawards competitively, it must document the basis for that decision and inform EPA's Project Officer in the first quarterly performance report. The CAR must inform EPA's Project Officer if the CAR subsequently decides to award subawards 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 subrecipients receive RLF financing.
- d. Developing a formal protocol for potential borrowers or subrecipients 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 subrecipient to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subrecipients 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 subrecipients submit information describing the borrower's or subrecipient's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subaward 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 subrecipient.

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

1. The CAR shall ensure that the borrower or subrecipient 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 subawards:
 - a. Borrowers or subrecipients 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 subrecipients shall ensure that the cleanup protects human health and the environment.
 - c. Borrowers or subrecipients shall document how funds are used. If a loan or subaward includes cleanup of a petroleum-contaminated brownfield site(s), the CAR shall include a term and condition requiring that the borrower or subrecipient maintain separate records for costs incurred at that site(s).
 - d. Borrowers or subrecipients shall maintain records for a minimum of three 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 subrecipients shall obtain written approval from the CAR prior to disposing of records. CARs shall also require that the borrower or subrecipient provide access to records relating to loans and subawards supported with RLF funds to authorized representatives of the federal government.
 - e. Borrowers or subrecipients 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 subaward.
 - f. Borrowers or subrecipients shall certify that they are not potentially liable under § 107 of CERCLA 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 subrecipient must state the basis for that assertion. When using cooperative agreement funds for petroleum-contaminated brownfields sites, borrowers or subrecipients 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 subrecipients shall conduct cleanup activities as required by the CAR.
 - h. Subrecipients shall comply with applicable EPA assistance regulations (2 CFR Parts 200 and 1500). All procurements conducted with subaward funds must comply with Procurement Standards of 2 CFR 200.317 through 200.326, as applicable.
 - i. A term and condition or other legally binding provision shall be included in all loans and subawards

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 subrecipients 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.

j. The CAR must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA cooperative agreement funds. For more detailed information on complying with Davis-Bacon, please see the Davis- Bacon Addendum to these terms and conditions. *(EPA Project Officer to attach appropriate Davis-Bacon term and condition to this particular cooperative agreement.)*

k. Federal cross-cutting requirements include, but are not limited to, DBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

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: (1) 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 (2) securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

D. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subawards and loans that create real or apparent personal conflicts of interest, or the CAR's appearance of lack of impartiality. Such situations include, but are not limited to, situations in which an employee, official, consultant, contractor, or other individual associated with the CAR (affected party) approves or administers a subaward or loan to a recipient in which the affected party has a financial or other interest. Such a conflict of interest or appearance of lack of impartiality may arise when:

- a. The affected party,
- b. Any member of his immediate family,
- c. His or her partner, or
- d. An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subrecipient or borrower.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subrecipients. Recipients may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary actions for violations of such standards by affected parties.

VII. DISBURSEMENT, PAYMENT AND CLOSEOUT

For the purposes of these terms and conditions, the following definitions apply: "payment" is the EPA's transfer of funds to the CAR; the CAR incurs an "obligation" when it enters into a loan agreement with the borrower or subrecipient; "disbursement" is the transfer of funds from the CAR to the borrower, subrecipient. 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\(b\)\(1\)](#). "Close out" refers to the process that the 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 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 incurred costs.

a. An 'actual expense' disbursement approach requires the borrower to submit documentation of the borrower'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 subrecipients 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 subrecipient's payment of costs incurred in carrying out the loan/subaward. In unusual circumstances, disbursement may occur upon execution of the loan or subaward. The CAR shall submit documentation of disbursement schedules to EPA.

c. If the disbursement schedule of the loan/subaward agreement calls for disbursement of the entire amount of the loan/subaward 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/subaward. Further, the CAR shall include an appropriate provision in the loan/subaward agreement which ensures that the borrower/recipient uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

d. Subaward funds must be disbursed to the subrecipient in accordance with 2 CFR 200.305, as applicable.

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 amount of the award are complete.

3. The CAR must follow Section IV. F - 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 brownfields cleanup and/or other brownfields activities as identified in Section IV. F 3.

C. Compliance with Closeout Schedule

If a 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 subrecipient may be subject to federal recovery.,

D. Final Requirements

1. The CAR, within 90 days after the end date of the period or performance or termination of the cooperative agreement, must submit all financial, performance, and other reports required as a condition of the cooperative agreement or 2 CFR Part 200.

a. The CAR must submit the following documentation:

1. The Final Report as described in III.G.

2. A Final Federal Financial Report (FFR - SF425). Submitted to:
US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bldg. C, Rm 503
Las Vegas, NV 89119

<https://www.epa.gov/financial/grants>

3. A Final MBE/WBE Report (EPA Form 5700-52A). Submitted to the regional office.

b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile

Forms are submitted to the Region.

E. Recovery of RLF Assets

1. In case of termination for cause or convenience, 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 the Agency 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 Agency'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) 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 or subrecipient (See Section on 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 assistance 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 may 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 financial institutions participating in the guaranteed loan program which documents that the financial institution has made a guaranteed loan to clean up a brownfields site in exchange for access to funds held in escrow in the event of a default by the borrower or subrecipient.

d. Federal Obligation to the Loan Guarantee Program

i. 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 subrecipient.

e. Repayment of Guaranteed Loans

i. 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 the EPA based on disposition instructions provided by EPA's Project Officer. Alternatively, the CAR may, with EPA approval, 1) guarantee additional loans under the terms and conditions of the agreement or,

2) amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfields related activities authorized by the terms of the cooperative agreement or, if applicable, a close out agreement.