

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement		GRANT NUMBER (FAIN): 96270623 MODIFICATION NUMBER: 0 PROGRAM CODE: 4B		DATE OF AWARD 09/30/2022	
			TYPE OF ACTION New		MAILING DATE 10/05/2022	
			PAYMENT METHOD: Advance		ACH# 20179	
			RECIPIENT TYPE: County		Send Payment Request to: Contact EPA RTPFC at: rtpfc-grants@epa.gov	
RECIPIENT: County of Niagara New York Dept. of Plng & Dev, 59 Park Ave Lockport, NY 14094-2740 EIN: 16-6002564		PAYEE: County of Niagara New York Dept. of Plng & Dev, 59 Park Ave Lockport, NY 14094-2740				
PROJECT MANAGER Amy Fisk 6311 Inducon Corporate Drive, Suite One Sanborn, NY 14132 Email: amy.fisk@niagaracounty.com Phone: 716-278-8750		EPA PROJECT OFFICER Ashita Patel 290 Broadway, LCRD/LRPB New York, NY 10007-1866 Email: patel.ashita@epa.gov Phone: 212-673-4372		EPA GRANT SPECIALIST Michele Junker Grants and Audit Management Branch, MSD/GAMB 290 Broadway New York, NY 10007-1866 Email: Junker.Michele@epa.gov Phone: 212-637-3418		
PROJECT TITLE AND DESCRIPTION Niagara County Brownfields Revolving Loan Fund See Attachment 1 for project description.						
BUDGET PERIOD 10/01/2022 - 09/30/2027		PROJECT PERIOD 10/01/2022 - 09/30/2027		TOTAL BUDGET PERIOD COST \$3,900,000.00	TOTAL PROJECT PERIOD COST \$3,900,000.00	
NOTICE OF AWARD						
Based on your Application dated 07/19/2022 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$3,900,000.00. EPA agrees to cost-share <u>100.00%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$3,900,000.00. 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 2 , Grants and Audit Management Branch 290 Broadway, 27th Floor New York, NY 10007-1866			ORGANIZATION / ADDRESS U.S. EPA, Region 2, Land, Chemicals, and Redevelopment Branch R2 - Region 2 290 Broadway New York, NY 10007-1866			
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY						
Digital signature applied by EPA Award Official Donald Pace - Director, Mission Support Division					DATE 09/30/2022	

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$0	\$3,900,000	\$3,900,000
EPA In-Kind Amount	\$0	\$0	\$0
Unexpended Prior Year Balance	\$0	\$0	\$0
Other Federal Funds	\$0	\$0	\$0
Recipient Contribution	\$0	\$0	\$0
State Contribution	\$0	\$0	\$0
Local Contribution	\$0	\$0	\$0
Other Contribution	\$0	\$0	\$0
Allowable Project Cost	\$0	\$3,900,000	\$3,900,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Multipurpose, Assessment, Revolving Loan Fund, and Cleanup Cooperative Agreements	CERCLA: Secs. 104(k)(3) & 104(k)(5)(E) & 104(k)(10)(B)(iii) & Infrastructure Investment and Jobs Act (IIJA) (PL 117-58)	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
-	2202HE0270	22	E4SD	02X0AG7	000D79X89	4114	-	-	\$3,900,000
									\$3,900,000

Budget Summary Page

Table A - Object Class Category (Non-Construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$62,000
2. Fringe Benefits	\$18,600
3. Travel	\$7,000
4. Equipment	\$0
5. Supplies	\$0
6. Contractual	\$298,400
7. Construction	\$0
8. Other	\$3,514,000
9. Total Direct Charges	\$3,900,000
10. Indirect Costs: 0.00 % Base	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %)	\$3,900,000
12. Total Approved Assistance Amount	\$3,900,000
13. Program Income	\$11,000
14. Total EPA Amount Awarded This Action	\$3,900,000
15. Total EPA Amount Awarded To Date	\$3,900,000

Attachment 1 - Project Description

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. This agreement will provide funding under the Infrastructure Investment and Jobs Act for Niagara County to re-capitalize a revolving loan fund as authorized by CERCLA 104(k)(5)(A)(ii) in Niagara County, New York. This agreement will provide funding for the recipient to re-capitalize a revolving loan fund from which to make loans and subgrants to clean up brownfield site(s) and conduct other necessary activities to prudently manage the RLF. Additionally, the recipient will competitively procure (as needed) and direct a Qualified Environmental Professional to oversee the environmental site activities and will create a community involvement plan and administrative record for each site that is remediated. The recipient will report on program income, interim progress, and final accomplishments by completing and submitting relevant portions of the Property Profile Form and Brownfields RLF Form using EPA's Assessment, Cleanup and Redevelopment Exchange System (ACRES). The recipient will issue approximately 5 loans and 12 subgrants to remediate 17 brownfield sites; anticipates holding several community meetings, finalizing 17 analysis of Brownfield Cleanup Alternatives, and submitting several quarterly reports. Work conducted under this agreement will benefit the residents, business owners, and stakeholders in and near Niagara County, New York. Subawards will be used to remediate contaminated sites in order to facilitate property's redevelopment.

Administrative Conditions

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-1-2021-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>.

GRANT-SPECIFIC ADMINISTRATIVE CONDITIONS

A. 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; Region2_GrantApplicationBox@epa.gov and the Grants Specialist of record for this agreement.
- MBE/WBE reports (EPA Form 5700-52A): Region2_GrantApplicationBox@epa.gov and the Grants Specialist of record for this agreement.
- 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: Region2_GrantApplicationBox@epa.gov; the Grants Specialist of record for this agreement and the Project Officer of record for this agreement.
- Payment requests (if applicable): Region2_GrantApplicationBox@epa.gov; the Grants Specialist of record for this agreement and the Project Officer of record for this agreement.
- Quality Assurance documents, workplan revisions, equipment lists, programmatic reports and deliverables: Project Officer of record for this agreement.

B. 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 written 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 administrative and 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.

The extension request must be submitted to the EPA-Grants and Audit Management Branch via email to Region2_GrantApplicationBox@epa.gov and the EPA Grants Specialist. All Federal Financial Reports (SF-425) must be emailed to the RTP-Finance Center at rtpfc-grants@epa.gov; the Grants and Audit Management Branch at

Region2_GrantApplicationBox@epa.gov; the EPA Grants Specialist and the EPA Project Officer. All email attachments must be sent in pdf or other acceptable software format (e.g., DocuSign). Any forms requiring signature must be electronically or digitally signed in accordance with EPA's Recipient/Applicant Information Notice (RAIN), [Establishment of Standards for Submission of Administrative and Financial Assistance Agreement Forms/Documents with Electronic or Digital Signatures by Email](#)

Programmatic Conditions

FY22 Revolving Loan Fund (RLF) Cooperative Agreement

Terms and Conditions

Infrastructure Investment and Jobs Act Funds

Please note that these Terms and Conditions (T&Cs) apply to Brownfields RLF capitalization cooperative agreements 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.

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 § 200.1. 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 application for the Cooperative Agreement Recipient (CAR). These T&Cs are effective for activities occurring after the date of award of this cooperative agreement.
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 loan and subgrant 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. For additional information on cross-cutting requirements visit <https://www.epa.gov/grants/epa-subaward-cross-cutter-requirements>.

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.

7. Refer to the General Term & Conditions for Buy America Sourcing requirements under the Build America, Buy America provisions of the Infrastructure Investment and Jobs Act (IIJA) (P.L. 117-58, §§70911-70917).

8. This is an interim term and condition for management of funding provided under the IIJA. EPA's Award Official or Grants Management Officer may amend this agreement to specify additional requirements applicable to IIJA funding as information becomes available. In the interim, the recipient agrees to have financial management and programmatic management systems in place to:

- a. Track and report on expenditures of IIJA funds.
- b. Track and report outputs and outcomes achieved with IIJA funds.

9. RLF supplemental funding is generally awarded on an annual basis to high-performing CARs who meet specific criteria. The CAR can find additional information on the timing and procedures for supplemental funding requests on the EPA Brownfields Program website (<https://www.epa.gov/brownfields/brownfields-revolving-loan-fund-rlf-grants>).

II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY REQUIREMENTS

A. Brownfield Site Eligibility

1. All brownfield sites that will be addressed using RLF funds (EPA funds and/or program income) must be located within the geographic area described in the scope of work for this cooperative agreement (i.e., the EPA-approved workplan). 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.

B. Borrower and Subgrantee Eligibility

1. 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.
2. 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 subgrantees 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.
3. The subgrantee must retain ownership of the site throughout the period of performance of the subgrant. The subgrantee must consult with the CAR, who in turn must consult with the EPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site during the period of performance of the subgrant. Once the subgrant ends, the statutory ownership requirement is extinguished. 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 50%, provided that the total amount of the principal forgiven for that loan shall not exceed \$500,000 of total award funds (EPA funds). 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. The discounted amount in a discounted loan shall apply towards subgrants in the loan to subgrant ratio described in [Section IV.B.3.](#) (i.e., the discounted amount cannot apply towards the 50% of EPA funds that must be spent on loans and associated eligible programmatic expenses). The CAR may request a waiver of the discounted amount, discounted percentage, or the minimum 50% loan to subgrant ratio by consulting with the EPA Project Officer for the waiver process.
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. In addition, the borrower or subgrantee may not be affiliated with a potentially liable person as described in CERCLA §§ 101(40)(H) and 107(q)(1)(A)(ii). 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 petroleumproduct 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 subgrant 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 limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§ 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 Termination and Sufficient Progress Conditions in the General Terms and Conditions. EPA's Project Officer will assess whether the recipient is making sufficient progress in implementing its cooperative agreement 2 years from the date of award and on an annual basis thereafter. If EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the CAR, if directed to do so, 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 § 200.340. for material non-compliance with its terms, or with the consent of the CAR as provided at 2 CFR § 200.340, depending on the circumstances. Sufficient progress at 2 years and annually thereafter 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.

2. Partial termination can occur if a CAR fails to complete the initial round of lending in the time schedule provided in the cooperative agreement. In this situation, as provided at 2 CFR §§ 200.340(a)(1) and (5) or 2 CFR § 200.340(a)(3), as appropriate, the agreement may be partially terminated and the following actions may occur:

- a. Unused cooperative agreement funds will be deobligated by EPA;
- b. The cooperative agreement award may be amended to reflect the reduced amount of the cooperative agreement;
- c. EPA may determine whether sufficient funds remain to permit effective RLF operation; or
- d. EPA may terminate the agreement and recover the federal share of its assets if it determines that the purpose of the cooperative agreement cannot be met.

B. Substantial Involvement

1. The EPA Project Officer will be substantially involved in overseeing and monitoring this cooperative agreement. Substantial involvement, includes, but is not limited to:

- a. Close monitoring of the CAR's performance to verify compliance with the EPA-approved workplan and achievement of environmental results.
- b. Participation in periodic telephone conference calls to share ideas, project successes and challenges, etc., with EPA.
- c. Reviewing and commenting on quarterly and annual reports prepared under the cooperative agreement (the final decision on the content of reports rests with the recipient or subrecipients receiving pass-through awards).
- d. Verifying sites meet applicable site eligibility criteria (including property-specific funding determinations described in Section II.A.2.) and when the CAR awards a subaward. The CAR must obtain technical assistance from the EPA Project Officer, or his/her designee, on which sites qualify as a brownfield site and determine whether the statutory prohibitions found in CERCLA § 104(k)(5)(B)(i)-(iv) apply. (Note, the prohibition does not allow a subrecipient to use EPA cooperative agreement funds to assess a site for which the subrecipient is potentially liable under CERCLA § 107.)
- e. Reviewing and approving Quality Assurance Project Plans and related documents or verifying that appropriate Quality Assurance requirements have been met where quality assurance activities are being conducted pursuant to an EPA-approved Quality Assurance Management Plan.
- f. Monitoring the use of program income after the cooperative agreement project period ends.

Substantial involvement may also include, depending on the direction of the EPA Project Officer:

- a. Collaboration during the performance of the scope of work including participation in project activities, to the extent permissible under EPA policies. Examples of collaboration include:
 - i. Consultation between EPA staff and the CAR on effective methods of carrying out the scope of work provided the CAR makes the final decision on how to perform authorized activities.
 - ii. Advice from EPA staff on how to access publicly available information on EPA or other federal agency websites.
 - iii. With the consent of the CAR, EPA staff may provide technical advice to the CAR's contractors or subrecipients provided the CAR approves any expenditures of funds necessary to follow advice from EPA staff. (The CAR remains accountable for performing contract and subaward management as specified in 2 CFR § 200.318 and 2 CFR § 200.332 as well as the terms of the EPA cooperative agreement.)
 - iv. EPA staff participation in meetings, webinars, and similar events upon the request of the CAR or in connection with a co-sponsorship agreement.
- b. Reviewing proposed procurements in accordance with 2 CFR § 200.325, as well as the substantive terms of proposed contracts or subawards as appropriate.
- c. Reviewing the qualifications of key personnel (EPA does not have the authority to select employees or

contractors, including consultants, employed by the award CAR or subrecipients receiving pass-through awards).

d. Reviewing all costs incurred by the CAR and/or its contractor(s) if needed to ensure appropriate expenditure of grant funds.

EPA may waive any of the provisions in Section III.B.1., except for property-specific funding determinations. The EPA Project Officer will provide waivers to provisions a. – f. in Section III.B.1 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 and its subrecipients remain responsible for ensuring costs are allowable under 2 CFR Part 200, Subpart E.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. CARs, other than state entities, that procure a contractor(s) (including consultants) where the contract will be more than the micro-purchase threshold in 2 CFR § 200.320(a)(1) (\$10,000 for most CARs) must select the contractor(s) in compliance with the fair and open competition requirements in 2 CFR Part 200 and 2 CFR Part 1500. CARs may procure multiple contractors to ensure the appropriate expertise is in place to perform work under the agreement (e.g., expertise to provide oversight on site cleanup activities vs. community engagement) and to allow the ability for work be performed concurrently in multiple target areas and/or at sites.

2. 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.

3. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10, if it does not have such a professional on staff, to provide technical assistance, advice, and expertise to the CAR while the borrower or subgrantee and their cleanup contractor direct the cleanup at a given site.

4. 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](#).

5. 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.

6. 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.

7. 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 §§ 200.331 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.

8. 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 § 200.332\(a\)](#) with the exception of the indirect cost provision of 2 CFR § 200.332(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 § 200.332\(a\)\(1\)](#). The unique entity identifier (UEI) is generated when an entity registers in SAM. Information on registering in SAM and obtaining a UEI is available in the General Condition of the pass-through entity's (CAR's) agreement with EPA entitled "*System for Award Management and Universal Identifier Requirements*."

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](#), below, pass-through entities (CARs) must comply with EPA's General T&Cs (Establishing and Managing Subawards).

9. As the pass-through entity, the CAR must report to EPA on its borrower and subgrantee monitoring activities under [2 CFR § 200.332\(d\)](#), 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 § 200.332\(e\)](#), [2 CFR § 200.208, Specific conditions](#), and the [2 CFR § 200.339, Remedies for Noncompliance](#).

10. 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 and 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 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 § 200.332(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.

11. 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, § 200.329, *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 unless approval is obtained from the EPA Project Officer to use an alternate format for 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, 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. A comparison of actual accomplishments to the anticipated outputs/outcomes specified in the EPA-approved workplan and reasons why anticipated outputs/outcomes were not met.
 - d. An update on project schedules and milestones, including an explanation of any discrepancies from the EPA-approved workplan.
 - e. A list of the loans and/or subgrants during the reporting quarter.
 - f. 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); 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, cost overruns or high unit costs, and other pertinent information. Program income accounting records must differentiate program income generated from interest and fees, versus program income generated from principal repayments.
 - g. For local governments that are using RLF funding for health monitoring, the quarterly report must also include the specific budget, the quarterly expenditure, and cumulative expenditures to demonstrate that 10% of federal funding is not exceeded.

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 borrower 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 § 200.329(e)(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. ACRES Data Submission

1. Property Profile Form: 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.

2. Brownfields RLF Form: Additionally, the CAR must also report program income details on the Brownfields RLF Form, which is located on the CAR's RLF cooperative agreement homepage in ACRES.

F. Final Technical Cooperative Agreement Report with Environmental Results

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.329 *Monitoring and Reporting Program Performance* and 2 CFR § 200.344(a), *Closeout*), the CAR agrees to submit to the EPA Project Officer within 120 days after the expiration or termination of the approved project period a final technical report on the cooperative agreement via email, unless the EPA Project Officer agrees to accept a paper copy of the report. 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.

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

1. As provided in IIJA, no cost share is required for this agreement.

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

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 Involvement Plan (previously known as 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 § 1500.12. The specific requirement for a QAPP is outlined in Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance available at <https://www.epa.gov/grants/implementation-quality-assurance-requirements-organizations-receiving-epa-financial>.
- 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 § 200.332 and the "Establishing and Managing Subawards" General Term and Condition; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrantees.
- l. Borrower and subgrantee progress reporting to the CAR.

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 total award amount (i.e., funds EPA awards directly to the CAR) 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 may be used for eligible programmatic costs, including issuing and managing subgrants to clean up eligible brownfield sites. Note: cleanup subgrants are limited to \$500,000 of total award funds (EPA funds) per site. The CAR may request a waiver of the \$500,000 subgrant limit or the minimum 50% loan to subgrant ratio by consulting with the EPA Project Officer for the waiver process. However, a waiver is not required for either requirement when only program income is used, since subgrants that are funded with 100% program income are not limited in amount and do not contribute to this 50% limitation. A waiver is also not required for the discounted amount of a loan if the loan is funded with 100% program income.
4. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(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.** If authorized in the EPA-approved workplan and budget narrative, up to 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 direct EPA 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 \$195,000. 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 shall not exceed this amount. Note that additional administrative costs may be allowed when using program income received under this cooperative agreement (see Section IV.D.2.). 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 § 200.328;
 - vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and
 - vii. Closeout under 2 CFR § 200.344 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 Subgrantee

1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrantee for any of the following activities:

a. Pre-cleanup Phase I and Phase II environmental site assessment activities with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;

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 (activities or products created specifically to attract buyers or investors), 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 Part 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 § 1500.8, 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.B.3](#) regarding use of 50% of the funds for loans). Accordingly, program income may be used for administrative costs, including any applicable indirect costs, provided that the total amount of funds used for administrative costs does not exceed 5% of the sum of direct EPA funding and program income the CAR generates. CARs that intend to use program income for cost share for other Brownfield Grants 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 for other Brownfield Grants. These repayments of principal must be returned to the CAR's Brownfields Revolving Loan Fund.

3. In accordance with 2 CFR § 1500.8(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 unique to this cooperative agreement [i.e., separate from post-closeout program income governed under a Closeout Agreement (COA) since separate reporting of funds is required under a COA].

2. Advances of EPA funds (and other Federal funds as well) must also be placed in interest bearing accounts as provided in 2 CFR § 200.305(b)(8) for CARs other than states which are subject to applicable Treasury regulations. Advances of EPA funds must be maintained in an account that is separate from the program income in the RLF. While interest earned by CARs on advances of EPA funds should be minimal given the regulatory and T&C requirements for prompt disbursement of drawn down funds, any interest the CAR does earn on advanced Federal funds is subject to 2 CFR § 200.305(b)(9). This regulation generally requires that interest on advanced Federal funds in excess of \$500 must be transmitted annually to the U.S. Department of Health and Human Services.

3. Interest earned on program income is considered additional program income.

F. Closeout Agreement and Use of Post Cooperative Agreement (i.e., Post-Closeout) Program Income

1. As provided at 2 CFR § 200.307(f) and 2 CFR § 1500.8(c) after the end of the period of performance of the cooperative agreement, 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 cooperative agreement period of performance (post-closeout program income) in accordance with terms of a COA. At the end of the cooperative agreement period of performance, the CAR shall comply with the attached COA. This award is contingent upon the CAR signing and returning the attached COA to the EPA Project Officer no later than 30 days of award. The COA goes into effect for this assistance agreement number the day after the cooperative agreement period of performance ends unless otherwise designated by EPA's Award Official or Grants Management Officer. The period of performance is identified as the project period in the Notice of Award.

2. This COA is based on the FY22 RLF COA template. EPA plans to modify RLF COA templates every five years. EPA reserves the right to renegotiate the terms of this RLF COA every five years, in conjunction with the template change (e.g., next change will be in FY27). If the CAR agrees to continue to operate the RLF under a COA past FY27, the CAR shall work with EPA's Project Officer to update to the latest COA template. Otherwise, the Project Officer and CAR will negotiate a mutually acceptable disposition of unused program income, and an Authorized EPA Official (e.g., Award Official or Grants Management Officer) will modify the COA accordingly.

V. RLF REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR, or borrower/subgrantee with CAR concurrence, shall prepare an 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 of, 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 and documented in a decision document upon completion of the public comment period. The CAR, or borrower/subgrantee with CAR concurrence, must consult with the relevant state program (or EPA if there is not a state program that covers the site) to determine if the selected cleanup requires formal modification based on public comments or new information.
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 § 1500.12 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 45 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. Public Involvement and Community Outreach in RLF Cleanup Activities

1. All RLF loan and subgrant cleanup activities require a site-specific Community Involvement Plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site. All information, including responses to public comments and administrative records, may be made available to the public to the extent consistent with 2 CFR § 200.338 and applicable state, tribal, or local law.
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 comply with the *Acknowledgement Requirements for Non-ORD Assistance Agreements* in the General Terms and Conditions of this agreement.
 - 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 a 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-epa-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.
5. All public awareness activities conducted with EPA funding are subject to the provisions in the General Terms and Conditions on compliance with section 504 of the Americans with Disabilities Act.

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 CAR's COA.

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 longterm 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 sufficient to recover, as a minimum, the principal amount of the loan less any repayment discounts; 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 by the EPA Project Officer or program manager. 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 § 200.332(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 § 200.334](#) is present. Borrowers or subgrantees shall obtain written approval from the CAR prior to disposing of records, so that the CAR can maintain the records, if necessary, for complying with the CAR's obligations under [2 CFR § 200.334](#). 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 the attached COA, records related to the COA must be retained by the CAR for the duration of the COA and retained for a period of three (3) years following termination or discontinuation of the COA.
 - e. Borrowers or subgrantees shall certify that they are not currently, nor have they been, subject to any

penalties resulting from environmental noncompliance 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 200.327, 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.

D. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subawards 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 grant or subaward to a subaward 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.

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 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 COA 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 the attached COA 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 the attached COA.

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 General 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 §§ 200.339 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 COA.

EPA General Terms and Conditions Effective October 1, 2022

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. 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 200.339 and 200.340.
- (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 1500.2, Adoption of 2 CFR Part 200, states the 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 Part 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 2 CFR 200.1) 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 Parts 200 and 1500).

3. Termination

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 1500.9](#).

5. Automated Standard Application Payments (ASAP) and Proper Payment Draw Down

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;
- 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-R](#).

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 rtpfc-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. Returning Funds: [Pay.gov](#) is the preferred mechanism to return funds. It is free, secure, paperless, expedient, and does not require the recipient/vendor to create an account. Contact RTPFC-Grants at rtpfc-grants@epa.gov to obtain complete instructions. Additional information is available at the [Pay.gov website](#): (<https://www.pay.gov/public/home>). 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 200.208 and/or 2 CFR 200.339.
- 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-R](#). 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.

Proper Payment Drawdown for State Recipients

In accordance with [2 CFR 200.305\(a\)](#), payments are governed by Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at [31 CFR Part 205, Subparts A and B](#) and [Treasury Financial Manual \(TFM\) 4A-2000, "Overall Disbursing Rules for All Federal Agencies"](#) unless a program specific regulation (e.g. 40 CFR 35.3160 or 40 CFR 35.3560) provides otherwise. Pursuant to 31 CFR Part 205, [Subpart A—Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement](#), States follow their Treasury-State CMIA Agreement for major Federal programs listed in the agreement. For those programs not listed as major in the Treasury-State agreement, the State follows the default procedures in 31 CFR Part 205, [Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement](#), which directs State recipients to draw-down and disburse Federal financial assistance funds in anticipation of immediate cash needs of the State for work under the award. States must comply with [2 CFR 200.302\(a\)](#) in reconciling costs incurred and charged to EPA financial assistance agreements at time of close out unless a program specific regulation provides otherwise.

Selected Items of Cost

6. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

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).

Information on how to calculate the maximum daily rate and the daily pay limitation is available at the Office of Personnel Management's [Fact Sheet: How to Compute Rates of Pay](#) and [Fact Sheet: Expert and Consultant Pay](#). Specifically, to determine the maximum daily rate, follow these steps:

1. Divide the Level IV salary by 2087 to determine the hourly rate. Rates must be rounded to the nearest cent, counting one-half cent and over as the next higher cent (e.g., round \$18.845 to \$18.85).
2. Multiply the hourly rate by 8 hours. The product is the maximum daily rate.

Contracts and subcontracts with firms for services that are awarded using the procurement requirements in Subpart D of 2 CFR Part 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 1500.10](#).

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://www.epa.gov/grants/grants-policy-issuance-gpi-16-01-epa-subaward-policy-epa-assistance-agreement-recipients>.

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

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 2 CFR 200.331 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 are not employees of the pass-through entity must be classified as participant support costs rather than subawards as provided in [2 CFR 200.1 Participant support costs](#), [2 CFR 200.1 Subaward](#), and EPA's [Guidance on Participant Support Costs](#).
 - (c) Subsidies, rebates and similar payments to participants in EPA funded programs to encourage environmental stewardship are also classified as *Participant support costs* as provided in 2 CFR 1500.1 and EPA's [Guidance on Participant Support Costs](#).
2. Establish and follow a system that ensures all subaward agreements are in writing and contain all of the elements required by 2 CFR 200.332(a). EPA has developed a template for subaward agreements that is available in [Appendix D](#) of the [EPA Subaward Policy](#).
3. Prior to making subawards, ensure that each subrecipient has a "Unique Entity Identifier (UEI)." The UEI is required by [2 CFR Part 25](#) and [2 CFR 200.332\(a\)\(1\)](#). Subrecipients are not required to complete full System for Award Management (SAM) registration to obtain a UEI. Information regarding obtaining a UEI is available at the SAM Internet site: <https://www.sam.gov/SAM/> and in EPA's General Term and Condition "**System for Award Management and Universal Identifier Requirements**" of the pass-through entity's agreement with the EPA.
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 200.332(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 1500.10 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.

- 5. Ensure, for states and other public recipients, that subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.
- 6. 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 200.332(b) and document the evaluation. Risk factors may include:

Prior experience with same or similar subawards;

- (a) Results of previous audits;
- (b) Whether new or substantially changed personnel or systems, and;
- (c) Extent and results of Federal awarding agency or the pass-through entity's monitoring.

- 7. Establish and follow a process for deciding whether to impose additional requirements on subrecipients based on risk factors as required by 2 CFR 200.332(c). Examples of additional requirements authorized by 2 CFR 200.208 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. Establish and follow a system for monitoring subrecipient performance that includes the elements required by 2 CFR 200.332(d) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.

9. Establish and maintain an accounting system which ensures compliance with the \$25,000 limitation at 2 CFR 200.1, *Modified Total Direct Costs*, if applicable, on including subaward costs in *Modified Total Direct Costs* for the purposes of distributing indirect costs. Recipients with Federally approved indirect cost rates that use a different basis for distributing indirect costs to subawards must comply with their Indirect Cost Rate Agreement.

10. 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.

11. 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 200.308](#).

12. 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.

13. 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.

14. Establish and maintain a system under [2 CFR 200.332\(d\)\(3\)](#) and [2 CFR 200.521](#) 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.

15. As provided in 2 CFR 200.333, 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 1 through 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. 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 current information in the SAM. This includes information on the recipient's immediate and highest level owner and subsidiaries, as well as on all the recipient's predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, 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 Unique Entity Identifier. If the recipient is authorized to make subawards under this award, the recipient:

- a. Must notify potential subrecipients that no entity (see definition in paragraph 13.3 of this award term) may receive a subaward unless the entity has provided its Unique Entity Identifier.
- b. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier. Subrecipients are not required to obtain an active SAM registration but must obtain a Unique Entity Identifier.

- 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 SAM Internet site: <https://www.sam.gov/SAM/>.
 - b. **Unique Entity Identifier** means the identifier assigned by SAM to uniquely identify business entities.
 - c. **Entity** includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following:
 - 13.3.c.1. A foreign organization;
 - 13.3.c.2. A foreign public entity;
 - 13.3.c.3. A domestic for-profit organization; and
 - 13.3.c.4. A domestic or foreign for-profit organization; and
 - 13.3.c.5. A Federal agency.
 - d. **Subaward** is defined at 2 CFR 200.1.
 - e. **Subrecipient** is defined at 2 CFR 200.1.

14. Reporting Subawards and Executive Compensation

14.1. Reporting of first-tier subawards.

- a. **Applicability.** Unless the recipient is exempt as provided in paragraph 14.4. of this award term, the recipient must report each action that obligates \$30,000 or more in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph 14.5 of this award term).
- b. **Where and when to report.** (1) The recipient must report each obligating action described in paragraph 14.1.a of this award term to www.frs.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.frs.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 \$30,000 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 14.2.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 14.4. of this award term, for each first-tier non-Federal entity 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 14.3.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. (i) subawards, and (ii) the total compensation of the five most highly compensated executives of any subrecipient.

14.5. Definitions. For purposes of this award term:

- a. **Federal agency** means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C 552(f).

- b. **Non-Federal 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; and (iv.) A domestic or foreign for-profit organization.

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

- d. **Subaward:**

14.5.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 you received this award and that you as the recipient award to an eligible subrecipient.

14.5.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 200.331).

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

- e. **Subrecipient** means a non-Federal entity or Federal agency that:

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

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

- f. **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.f.1. Salary and bonus.

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

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

14.5.f.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 15.2.c.1, 15.2.c.2, or 15.2.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 15.1 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)

Pursuant to 2 CFR 200.328 and 2 CFR 200.344, 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 calendar days after the end of each specified reporting period for quarterly and semi-annual reports and 90 calendar days for annual reports. Final reports are due no later than 120 calendar days after the end date of the period of performance of the award. Extension of reporting due dates may be approved by EPA when requested and justified by 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 provides requirements for recipients using EPA funds for indirect costs and applies to all EPA assistance agreements unless there are [statutory or regulatory limits on IDCs](#). See also [EPA's Indirect Cost Policy for Recipients of EPA Assistance Agreements](#) (IDC Policy).

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 an expired fixed rate with carry-forward on an exception basis, 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 Part 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 if they have submitted a proposed IDC rate to their cognizant Federal agency or requested an exception from EPA under subsection 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 200.332(a)(4)(i) and (ii) when establishing indirect cost rates for subawards.

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://facides.census.gov/>.

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

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 200.339 and 2 CFR 200.340, 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 200.1 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 200.1. 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 200.1 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 EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at \$250,000 but the amount is subject to adjustment.

(1) As provided at 2 CFR 200.308(f), the 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 with a copy to the Project 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 EPA's share of the total project costs exceeds the Simplified Acquisition Threshold. Simplified Acquisition Threshold is defined at 2 CFR 200.1 and is currently set at \$250,000 but the amount is subject to adjustment.

To determine if a post-award change in work plan commitments is significant and requires prior written approval for the purposes of [40 CFR §35.114\(a\)](#) or [40 CFR §35.514\(a\)](#), the recipient agrees to consult the EPA Project Officer (PO) before making the change. The term work plan commitments is defined at [40 CFR §35.102](#). If the PO determines the change is significant, the recipient cannot make the change without prior written approval by the EPA Award Official or Grants Management Officer.

The recipient must obtain written approval from the EPA Award Official prior to transferring funds from one budget category to another if the EPA Award Official determines that such transfer significantly changes work plan commitment(s). All transfers must be reported in required performance reports. In addition, unless approved with the budget at the time of award, Continuing Environmental Program (CEP) recipients must also obtain prior written approval from the EPA Award Official or Grants Management Officer to use EPA funds for directly charging compensation for administrative and clerical personnel under 2 CFR 200.413(c) and the General Provisions for Selected Items of Cost allowability at 2 CFR 200.420 through 200.476 as supplemented by [EPA's Guidance on Selected Items of Cost](#). The recipient is not required to obtain prior written approval from the EPA Award Official for other items requiring prior EPA approval listed in [2 CFR §§ 200.407](#).

24. Electronic/Digital Signatures on Financial Assistance Agreement Form(s)/Document(s)

Throughout the life of this assistance agreement, the recipient agrees to ensure that any form(s)/document(s) required to be signed by the recipient and submitted to EPA through any means including but not limited to hard copy via U.S. mail or express mail, hand delivery or through electronic means such as e-mail are: (1) signed by the individual identified on the form/document, and (2) the signer has the authority to sign the form/document for the recipient. Submission of any signed form(s)/document(s) is subject to any provisions of law on making false statements (e.g., 18 U.S.C. 1001).

25. 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\(e\)\(2\)](#). 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.

26. Utilization of Disadvantaged 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.

The following text either provides updates to 40 CFR, Part 33 based upon the associated class exception or highlights a requirement.

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

EPA no longer certifies entities as Minority-Owned Business Entities (MBEs) or Women-Owned Business Entities (WBEs) pursuant to a class exception issued in October 2019. The class exception was authorized pursuant to the authority in 2 CFR, Section 1500.3(b).

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

Pursuant to 40 CFR Section 33.301, the recipient agrees to make 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. The specific six good faith efforts can be found at: [40 CFR Section 33.301 \(a\)-\(f\)](#).

However, in EPA assistance agreements that are for the benefit of Native Americans, the recipient must solicit and recruit Native American organizations and Native American-owned economic enterprises and give them preference in the award process prior to undertaking the six good faith efforts ([40 CFR Section 33.304](#)). If recruiting efforts are unsuccessful, the recipient must follow the six good faith efforts.

3. 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).

4. 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.

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

In October 2019, a class exception to the entire Subpart D of 40 CFR, Part 33 has been authorized pursuant to the authority in 2 CFR Section 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.

6. MBE/WBE REPORTING, 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/system/files/documents/2021-08/epa_form_5700_52a.pdf.

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

Simplified Acquisition Threshold (SAT) (currently, \$250,000 however the threshold will be automatically revised whenever the SAT is adjusted; See 2 CFR Section 200.1), including amendments and/or modifications. When reporting is required, all procurement actions are reportable, not just the portion which exceeds the SAT.

Annual reports are due by October 30th of each year. Final reports are due 120 days after the end of the project period.

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

7. MBE/WBE RECORDKEEPING, 40 CFR, Part 33, Subpart E

The recipient agrees to comply with all recordkeeping requirements as stipulated in 40 CFR, Part 33, Subpart E including creating and maintaining a bidders list, when required. Any document created as a record to demonstrate compliance with any requirement of 40 CFR, Part 33 must be maintained pursuant to the requirements stated in this Subpart.

Programmatic General Terms and Conditions

27. 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.

28. 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 [i.e., authorized by] 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.

29. 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 <https://www.nist.gov/iedison>. 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 <https://www.nist.gov/iedison>. 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.”

30. 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.

31. 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/about/policy/accessibility.html>).

32. 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.

33. 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 the Care and Use of Laboratory Animals](#), prepared by the Institute of Laboratory Animal Resources, National Research Council.

34. 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.

35. Tangible Personal Property

35.1 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.

35.2 Disposition

35.2.1 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.

35.2.2 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.

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

36. 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.]

37. Research Misconduct

In accordance with 2 CFR 200.329, 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]

38. 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:

38.1 Scientific Products

- 38.1.1** Produce scientific products of the highest quality, rigor, and objectivity, by adhering to applicable EPA [information quality guidelines](#) [quality policy](#) and peer review policy.
- 38.1.2** 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.
- 38.1.3** 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.

38.2 Scientific Findings

- 38.2.1** 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.
- 38.2.2** 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.
- 38.2.3** 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.
- 38.2.4** Document the use of independent validation of scientific methods.
- 38.2.5** 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.
- 38.2.6** Make scientific information available online in open formats in a timely manner, including access to data and non-proprietary models.

38.3 Scientific Misconduct

- 38.3.1** 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.
- 38.3.2** 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.
- 38.3.3** 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.

- 38.3.4** 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.

38.4 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/Zc0T7foot8>.

Public Policy Requirements

39. Civil Rights Obligations

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.

40. 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/.

41. 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.

42. 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 Part 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.

43. 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.

44. 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 200.323, 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.

45. 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 Part 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 Part 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).

46. Build America, Buy America (Effective May 14, 2022 and applicable to all funding that date forward; Clarifications added October 1, 2022)

a. The recipient is subject to the Buy America Sourcing requirements under the Build America, Buy America provisions of the [Infrastructure Investment and Jobs Act](#) (IIJA) (P.L. 117-58, §§70911-70917) for the types of infrastructure projects under the EPA program and activities specified in the [chart, “Environmental Protection Agency's Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America Buy America Provisions of the Infrastructure Investment and Jobs Act.”](#) None of the funds provided under this award may be used for a project of infrastructure unless all iron and steel, manufactured products, and construction materials that are consumed in, incorporated into, or affixed to an infrastructure project are produced in the United States. The Buy America preference requirement applies to an entire infrastructure project, even if it is funded by

both Federal and non-Federal funds. The recipient must implement these requirements in its procurements, and these requirements must flow down to all subawards and contracts at any tier. For legal definitions and sourcing requirements, the recipient must consult EPA's [Build America, Buy America website](#) and the Office of Management and Budget's (OMB) [Memorandum M-22-11, Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#).

b. When supported by rationale provided in IIJA §70914, the recipient may submit a waiver request to EPA. Recipients should request guidance on the submission instructions of an EPA waiver request from the EPA Project Officer for this agreement. A list of approved EPA waivers (general applicability and project specific) is available on the EPA [Build America, Buy America website](#).

c. For questions regarding the applicability of the Build America, Buy America Act requirements to this assistance agreement or if there is an approved waiver in place, please contact the EPA Project Officer for this agreement.