

CITY OF FLAGSTAFF
STAFF SUMMARY REPORT

To: The Honorable Mayor and Council
From: Karl Eberhard, Comm Design & Redevelopment Mgr
Date: 10/02/2012
Meeting Date: 11/06/2012



TITLE:

Consideration of Acceptance of Grant Funding: Arizona Route 66 Coalition Communities U.S. Environmental Protection Agency 2012 Brownfields Community-wide Assessment Grant.

RECOMMENDED ACTION:

Authorize acceptance or direct staff to decline grant funding.

Policy Decision or Reason for Action:

Funds from this grant in the amount of \$700,000 from United States Environmental Protection Agency (USEPA) will be used for community involvement, property inventory, performing environmental assessments (approximately sixty sites), and for cleanup or redevelopment planning, addressing real or perceived contamination from petroleum products and/or hazardous substances on public or private properties along Route 66. In the case of contaminated properties, it will advance clean-up activities. Contaminated or not, having environmental determinations prepared helps to advance redevelopment opportunities. The partnerships established advance collaborative economic development in Northern Arizona. The knowledge of existing conditions advances city and regional planning efforts. As the City works with its own real estate holdings, these funds can provide the required assessment documentation.

Financial Impact:

There is minimal City cost associated with this grant. There are no matching funds required, in addition grant funds include funding to reimburse the City for any direct staff time expended, as well as for contract management of the grant. Indirect costs, overhead costs, are not eligible for reimbursement. The grant is budgeted in FY 2013 in the amount of \$1,000,000 under the Community Investment Section in account number 001-1863-550.

Connection to Council Goal:

A sustainable community through economic vitality, environmental protection and social inclusion.

Has There Been Previous Council Decision on This:

No.

Options and Alternatives

1) Accept the grant; 2) Decline the grant.

Background/History:

Brownfield Definition

The EPA originally defined a Brownfield as real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. It was later expanded to include "abandoned or under-utilized" properties and mine scarred properties, as well as clarifications to include more contaminants such as petroleum and controlled substances.

Route 66 Brownfields

Established in 1928, historic Route 66, known as the "Mother Road," became the country's main east-west artery connecting communities from Chicago to Los Angeles with over 2,400 miles of continuously paved roadway. A rich history is tied into Route 66 beyond the road itself. It served as an agent of social transformation and represents a remnant of America's past. Cities and towns along Route 66 reaped the benefits of the highway with motels, diners, and gasoline and service stations springing up along the way as the country increasingly became a mobile society. Northern Arizona communities flourished and grew from this western movement, first driven by those seeking the prospects of a new beginning during the Great Depression, later by traffic headed west to support the defense industry in the 1940s, and then by the new American phenomenon of the 1950s, the family vacation.

By 1966, the interstate highway system replaced Route 66, bypassing over 200 miles of Route 66 roadway in Northern Arizona. This change coincided with other powerful forces that consolidated highway services, including the advent of traffic interchanges and the creation of national chains of gasoline stations, motels, and restaurants. The abandonment of Route 66 resulted in economic, environmental, and cultural resource implications that continue to plague Northern Arizona communities to this day. National chains that sprang up at the interchanges supplanted the locally-owned businesses along the highway. Route 66 businesses became less viable, even closed, and many properties remain underutilized or abandoned.

The environmental legacy includes over 1,100 known underground storage tanks in our area, about 40% of which have leaked. While a number of these have been properly removed and closed, concerns and suspicions of the potentially-contaminated sites remain. Combined with other sources, such as railroad facilities, timber production sites, and other commercial and industrial operations, we estimate that over 150 Brownfields sites may exist in the project area. The contaminants likely to be encountered at the sites are a host of petroleum hydrocarbons, as well as volatile organic compounds, heavy metals, and asbestos.

Using Flagstaff as an example, 27 motels along Route 66 are eligible for, or are listed on, the National Register of Historic Places. The other highway supporting facilities, such as the diners and service stations, have not been evaluated, but are likely also eligible. The National Park Service, during the course of their recent study of all of Route 66, identified Route 66 in Flagstaff as the most intact segment in the country. Setting aside the intrinsic benefits of preserving our heritage, these properties have the potential to be exploited for heritage tourism. Heritage tourists stay longer, do more, and spend more than other tourists - approximately 50% more. Albuquerque has successfully converted blighted Route 66 motels into viable businesses catering to heritage tourists.

There is great economic potential for these areas, including redevelopment, infill, tourism, heritage tourism, and more; however, the specter of unknown environmental hazards has hindered

redevelopment.

Community-wide Assessment Grants

EPA assessment grants provide funding to the community to inventory, characterize, assess, and conduct planning related to Brownfields sites. Eligible applicants include only governments and certain quasi-governmental agencies. An eligible entity may apply for up to \$200,000 to assess sites contaminated by hazardous substances, pollutants, or contaminants (including hazardous substances co-mingled with petroleum) and up to \$200,000 to address sites contaminated by petroleum. A coalition of three or more eligible applicants can submit one grant proposal under the name of one of the coalition members for up to \$1,000,000. The performance period for these grants is three years. Assessment grants do not provide resources to conduct cleanup or building demolition activities.

Prior Experience

The City of Flagstaff individually received this same Community-wide Assessment Grant in 2006. The subject area of that grant was much smaller, focused on south Downtown and a portion of Route 66. However, with those funds, the City performed significant community outreach and involvement, inventoried area properties, prepared a redevelopment plan for City owned properties on Phoenix Avenue, and prepared a GIS based Brownfield Sensitivity (planning) Map. Importantly, 20 Phase I and four (4) Phase II Environmental Site Assessments (ESAs) were prepared for various public and private properties. Approximately \$120,000 was directly disseminated into the Flagstaff community in the form of contract awards and Environmental Site Assessments reports. Grant compliance was exemplary and included the preparation of a Quality Assurance Project Plan (QAPP) and a Health and Safety Plan (HASP), quarterly reports, MBE/WBE reports, and ACRES database reporting, as well as presentations given at three national conferences and three Western Brownfield Workshops.

Key Considerations:

Arizona Route 66 Coalition - IGAs

This grant has been submitted in the name of the City of Flagstaff representing the cities of Flagstaff, Winslow, and Holbrook and the counties of Coconino and Navajo. The City of Flagstaff has a track record of very successful grant management that is headed by the Grants Management Team (GMT) composed of the Grants Manager, Financial Officer/Accountant, and Project Representative and is currently managing \$29,776,130 (FY 2013 budgeted grant revenue) in Federal and State grant funding. As a result of this general expertise, and due to our specific experience with EPA Community-wide Assessment grants, the City of Flagstaff is the logical agency to lead the current effort. By including our neighbors as partners, we will need to enter into an Intergovernmental Agreement [IGA - referred to as "Memorandum of Agreement (MOA)" in the grant documents] with each partner. The agreements will memorialize the procedures between the various agencies, already conceptually drafted, and will pass along the rights and responsibilities of the grant terms from the City of Flagstaff to the partner communities.

Consultant Services

As with the 2006 Community-wide Assessment Grant, the majority of these funds will be expended for a number of consultants that perform services such as preparing ESAs and planning documents. Additionally, for this grant, the City of Flagstaff anticipates engaging a consultant for overall project administration and coordination, community outreach, and project specific assistance. Project administration would include establishing project protocols and preparing various required documents (QAPP and HASP), planning and managing the distribution of funds, managing the project selection process, and preparing and reporting to the EPA via the City, as well as the boards or councils of the Coalition. Project coordination includes coordination with the City of Flagstaff Project Manager and other staff, coordinating the interactions and efforts of the Coalition partners, scheduling and conducting

individual and/or group meetings, and coordinating grant activities with local, state, and federal agencies. This consultant would also be responsible for comprehensive community outreach including press releases and newsletters, meetings, and other strategies as well as assisting and advising all of the coalition partners in technical and procedural matters, evaluation of proposed projects, and on-site representation.

Community Benefits and Considerations:

Whole Community

For the broader community, this work will foster redevelopment and environmental clean-up, and it will aid with community planning.

Redevelopment directly reduces blight, sprawl, and the cost of city infrastructure, maintenance, and services, provides affordable space for businesses and employment, converts unproductive properties to tax generating properties, improves districts and neighborhoods, increases property values, improves the citizen's quality of life, supports commercial activities and tourism, and preserves heritage resources. Surrounding business and properties indirectly enjoy many of these same benefits.

There is a general public health benefit, and also a general ecosystem benefit for the community if contamination is cleaned up. This is especially true for sensitive sub-populations, such as children, pregnant women and the elderly, who can be disproportionately affected. And, while cleaning up a contaminated site reduces exposure on a particular site, it also reduces exposure off-site by halting the migration of contamination into nearby air, soil and water.

Understanding the extent of contamination of a property aids community and redevelopment planning, and economic development planning, by providing information to prospects early in the process, making more predictable the work needed to be done, allowing for a more accurate determination of profitability.

Setting aside the previously noted economic benefits of heritage preservation, redevelopment through heritage preservation preserves the City's unique sense of place, fosters a strong local identity based upon a sound understanding of our unique history, provides opportunities for public service and volunteerism, enhances local cultural life, and is a critical component of being a sustainable community by reducing reliance on new materials, environmentally unfriendly building materials, and energy intensive production and transport of new building materials.

Property Owners

Direct benefits to specific property owners include many of the community benefits. More simply, having ESAs on hand makes the property inherently more valuable, particularly when they document that a property is not contaminated. This is the case for both private and public property owners, but private property owners also benefit from tax benefits associated with Brownfield redevelopment. The City of Flagstaff has utilized ESAs prepared with these funds as the basis of several land transactions, and for projects, reducing the draw down of other fund sources.

Community Involvement:

Preparing the Grant

In preparing the grant, all of the communities along Route 66 in Arizona in all cities and all counties, were invited to participate. Due to time constraints and other considerations, not all were able to do so. Multiple meetings of the interested communities were hosted by the City of Flagstaff to work out particulars, a draft IGA, and to prepare and review the grant application. Each participating community conducted two public meetings in their community to seek review and input on the application. These

meetings were noticed on websites, advertised in local newspapers, and were further publicized with handbills and flyers. Numerous agencies and associations were also consulted in the preparation of the application. We received 14 letters of support from these organizations including the Economic Collaborative of Northern Arizona (ECoNA), the Sustainable Economic Development Initiative (SEDI), the Historic Route 66 Association of Arizona, the Rotary Clubs of Winslow and Flagstaff, the Holbrook Painted Desert Kiwanis Club, and the Standin' on the Corner Foundation, Inc. Additionally, the Arizona Department of Environmental Quality was a vital partner in the development of this application.

During the Grant Term

The work of this grant is divided into four tasks and Task 2 is titled "Community Involvement." The Coalition members will continue to keep the public, business, and regulatory community involved throughout the life of this grant (through mailings, website postings, City Council reports, newsletters, as well as public and one-on-one meetings) regarding the activities planned by the Coalition, schedule information, and utilize means by which individuals and interested organizations can stay informed and involved. Each of the application-supporting agencies and organizations have also committed to assisting with community involvement.

Date of Council Approval:

Attachments: [Grant Agreement #00T97401 EPA Brownfield Assessment](#)

Form Review

Inbox	Reviewed By	Date
Grants Manager	Stacey Brechler-Knaggs	10/08/2012 02:56 PM
Finance Director	Rick Tadder	10/08/2012 03:12 PM
Economic Vitality Director	Stacey Button	10/09/2012 05:11 PM
Legal Assistant	Vicki Baker	10/09/2012 05:44 PM
Senior Assistant City Attorney DW	David Womochil	10/11/2012 12:02 PM
DCM - Jerene Watson	Jerene Watson	10/11/2012 03:32 PM
Comm Design & Redevelopment Mgr (Originator)	Karl Eberhard	10/30/2012 10:07 AM
Economic Vitality Director	Stacey Button	11/01/2012 11:17 AM
DCM - Jerene Watson	Jerene Watson	11/01/2012 03:28 PM
Form Started By: Karl Eberhard		Started On: 10/02/2012 07:54 AM
Final Approval Date: 11/01/2012		



U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

GRANT NUMBER (FAIN): 00T97401

MODIFICATION NUMBER: 0

PROGRAM CODE: BF

DATE OF AWARD
09/14/2012TYPE OF ACTION
NewMAILING DATE
09/21/2012PAYMENT METHOD:
AdvanceACH#
90541RECIPIENT TYPE:
MunicipalSend Payment Request to:
Las Vegas Finance Center, Fax (702) 798-2423

RECIPIENT:

PAYEE:

City of Flagstaff
211 West Aspen Ave.
Flagstaff, AZ 86001
EIN: 86-6000244City of Flagstaff
211 West Aspen Ave.
Flagstaff, AZ 86001

PROJECT MANAGER

EPA PROJECT OFFICER

EPA GRANT SPECIALIST

Stacey Brechler-Knaggs
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Flagstaff, AZ 86001
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75 Hawthorne Street, SFD-6
San Francisco, CA 94105
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Phone: 415-972-3247Alba Espitia
Grants Management Office, MTS-7
E-Mail: Espitia.Alba@epa.gov
Phone: 415-972-3667

PROJECT TITLE AND DESCRIPTION

BROWNFIELDS ASSESSMENT COOPERATIVE AGREEMENT

This cooperative agreement will be used to conduct community wide assessments at potential Brownfields sites contaminated with Petroleum or Hazardous Substances. Activities include conducting site prioritization and Phase I and Phase II Assessments at selected sites. Funds will also be used for public outreach and community involvement/public participation processes. This Assistance Agreement provides full Federal funding in the amount of \$700,000.

BUDGET PERIOD

10/01/2012 - 10/31/2015

PROJECT PERIOD

10/01/2012 - 10/31/2015

TOTAL BUDGET PERIOD COST

\$700,000.00

TOTAL PROJECT PERIOD COST

\$700,000.00

NOTICE OF AWARD

Based on your application dated 07/11/2012, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$700,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$700,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)

AWARD APPROVAL OFFICE

ORGANIZATION / ADDRESS

ORGANIZATION / ADDRESS

U.S. EPA, Region 9
Grants Management Office, MTS-7
75 Hawthorne Street
San Francisco, CA 94105U.S. EPA, Region 9
Superfund Division, SFD-1
75 Hawthorne Street
San Francisco, CA 94105

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY

Digital signature applied by EPA Award Official Denise Zvanovec - Grants Management Officer

DATE
09/14/2012

AFFIRMATION OF AWARD

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE

TYPED NAME AND TITLE

Kevin Burke, City Manager

DATE

Grant Agency: U.S Department of Environmental Protection Agency
Project Title: 2012 Brownfields Assessment Cooperative Agreement
Grant Number: 00T97401

Attest:

City Clerk

Approved as to Form:

City Attorney

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 700,000	\$ 700,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 700,000	\$ 700,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(2)	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	1209K0B020	12	E4	09K1AG7	301D79	4114	G9B3NY00		400,000
-	1209K0B020	12	E4	09K1AG7	301D79XBP	4114	G9B3OR00		300,000
									700,000

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$17,100
2. Fringe Benefits	\$0
3. Travel	\$25,900
4. Equipment	\$0
5. Supplies	\$23,760
6. Contractual	\$633,240
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$700,000
10. Indirect Costs: % Base <u>N/A</u>	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %.)	\$700,000
12. Total Approved Assistance Amount	\$700,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$700,000
15. Total EPA Amount Awarded To Date	\$700,000

Administrative Conditions

1. Federal Financial Report (SF 425)

The final Federal Financial Report (FFR) covering the entire project period shall be submitted within 90 days after the end of the project period according to 40 CFR Part 31.23(b) and 31.41(b). The LVFC 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.

For awards with cumulative project and budget periods greater than 12 months, an interim FFR covering the period from "project/budget period start date" to September 30 of each calendar year shall be submitted to the U.S. EPA Las Vegas Finance Center, 4220 South Maryland Parkway, Bldg. C, Room 503, Las Vegas, NV 89193-8515, no later than December 30 of the same calendar year.

2. Single Audit Act

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends \$500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. The recipient **MUST** submit the SF-SAC and a Single Audit Report Package using the Federal Audit Clearinghouse's Internet Data Entry System. For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: <http://harvester.census.gov/fac/>.

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

A. Requirement for Central Contractor Registration (CCR)/System for Award Management (SAM).

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another award term.

B. Requirement for Data Universal Numbering System (DUNS) numbers. If you are authorized to make subawards under this award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.
2. May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1. Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site <http://www.sam.gov>.
2. Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).
3. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:
 - a. A Governmental organization, which is a State, local government, or Indian tribe;
 - b. A foreign public entity;
 - c. A domestic or foreign nonprofit organization;
 - d. A domestic or foreign for-profit organization; and

- e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- 4. Subaward:
 - a. 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.
 - b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
- 5. Subrecipient means an entity that:
 - a. Receives a subaward from you under this award; and
 - b. Is accountable to you for the use of the Federal funds provided by the subaward.

4. **Reporting Subawards and Executive Compensation**

- a. Reporting of first-tier subawards.
 - 1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).
 - 2. Where and when to report.
 - i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrc.gov.
 - ii. 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 November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
 - 3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrc.gov specify.
- b. Reporting Total Compensation of Recipient Executives.
 - 1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if –
 - i. **The total Federal funding authorized to date under this award is \$25,000 or more;**
 - ii. In the preceding fiscal year, you received—
 - (A) 80 percent or more of your 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
 - (B) \$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
 - iii. 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>.)
 - 2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:
 - i. As part of your registration profile at www.ccr.gov.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c. Reporting of Total Compensation of Subrecipient Executives.
 - 1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you 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 –
 - i. in the subrecipient's preceding fiscal year, the subrecipient received—

- (A) 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
- B) \$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

ii. 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>.)

2. **Where and when to report.** You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

- i. To the recipient.
- ii. By the end of the month following the month during which you make 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), you must report any required compensation information of the subrecipient by November 30 of that year.

d. **Exemptions.** If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- i. subawards, and
- ii. the total compensation of the five most highly compensated executives of any subrecipient.

e. **Definitions.** For purposes of this award term:

1. **Entity** means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
2. **Executive** means officers, managing partners, or any other employees in management positions.
3. **Subaward:**
 - i. 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.
 - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
4. **Subrecipient** means an entity that:
 - i. Receives a subaward from you (the recipient) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
5. **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)):
 - i. *Salary and bonus* .
 - ii. *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.
 - iii. *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.
 - iv. *Change in pension value*. This is the change in present value of defined benefit and actuarial pension plans.
 - v. *Above-market earnings on deferred compensation which is not tax-qualified* .

vi. 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.

5. Trafficking in Persons

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

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;

ii. Procure a commercial sex act during the period of time that the award is in effect; or

iii. Use forced labor in the performance of the award or subawards under the award.

2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity—

i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either—

A. Associated with performance under this award; or

B. Imputed to you or 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 our Agency at 2 CFR 1532.

b. Provision applicable to a recipient other than a private entity . We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. 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 our agency at 2 CFR 1532

c. Provisions applicable to any recipient .

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

ii. Is in addition to all other remedies for noncompliance that are available to us under this award.

3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

d. Definitions . For purposes of this award term:

1. "Employee" means either:

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. 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.

2. "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.

3. "Private entity":

i. 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.

ii. 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.

4. "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).

6. Recycled Paper

In accordance with Executive Order 13423 (Strengthening Federal Environmental, Energy and Transportation Management dated January 24, 2007), EPA Order 1000.25 and 40 CFR Part 30.16 (as applicable), the recipient shall 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, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration. The recipient shall give preference in its procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines, as applicable.

Any State agency or agency of a political subdivision of a State shall also comply with the requirements set forth in the Resource Conservation and Recovery Act (RCRA), Section 6002 (42 U.S.C. 6962), which requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by EPA under 40 CFR Part 247. Regulations issued under RCRA Section 6002 apply to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more.

7. Hotel and Motel Fire Safety

The recipient agrees to ensure that all conference, meeting, convention, or training 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 <http://www.usfa.dhs.gov/applications/hotel/> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act. (Refer to 40 CFR Part 30.18 and 15 U.S.C. 2225a, as applicable.)

8. 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 <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=701081165f70316effa8ebf67df73de0&rqn=div5&view=text&node=2:1.2.11.11.2&idno=2>.

9. Debarment, Suspension and Other Responsibility Matters

The recipient shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." The recipient is responsible for ensuring that any lower tier covered transaction as described in Subpart B of 2 CFR Part 180 and 2 CFR Part 1532, entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. The recipient is responsible for further requiring the inclusion of a similar term or condition in any subsequent lower tier covered transactions. The recipient acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

Recipient may access the Excluded Parties List System at www.epls.gov. This term and condition supersedes EPA Form 5700-49, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

10. Reimbursement Limitation

EPA's financial obligations to the recipient are limited by the amount of federal funding awarded to date as shown on line 15 in its EPA approved budget. If the recipient incurs costs in anticipation of receiving additional funds from EPA, it does so at its own risk.

11. 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.

12. Lobbying and Litigation Prohibition

The recipient 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 United States unless authorized under existing law. The recipient shall abide by 2 CFR 225 (OMB Circular A-87), which prohibits the use of federal grant funds for litigation against the United States or for lobbying or other political activities.

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. 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.

13. Utilization of Disadvantaged Business Enterprises

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements as set forth in 40 CFR Part 33. The EPA DBE rule can be accessed at <http://www.epa.gov/osbp>. In addition, the recipient agrees to make good faith efforts whenever procuring construction, equipment, services and supplies under an EPA assistance agreement, and to ensure that sub-recipients, loan recipients, and prime contractors also comply with 40 CFR Section 33.301. Records documenting compliance with the six good faith efforts shall be retained.

The recipient accepts the applicable MBE/WBE fair share objectives/goals negotiated with EPA by the **Arizona Department of Environmental Quality**, as follows:

	<u>MBE</u>	<u>WBE</u>
Construction	15%	7%
Equipment	14%	20%
Services	15%	32%
Supplies	15%	31%

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

Pursuant to 40 CFR Section 33.404, the recipient has the option to negotiate its own MBE/WBE fair share objectives/goals. If the recipient wishes to negotiate its own MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

The submission of proposed fair share goals with the supporting analysis or disparity study means that the recipient is not accepting the fair share objectives/goals of another recipient. The recipient agrees to submit proposed fair share objectives/goals, together with the supporting availability analysis or disparity study to Tiffanie Pang, MTS-1, the Regional MBE/WBE Coordinator, within 120 days of acceptance of the financial assistance award. EPA will respond to the proposed fair share objectives/goals within 30 days of receiving the submission. If proposed fair share objectives/goals are not received within the 120 day time frame, the recipient may not expend its EPA funds for procurements until the proposed fair share objectives/goals are submitted.

A recipient of a Continuing Environmental Program Grant or other annual grant agrees to create and maintain a bidders list. A recipient of an EPA financial assistance agreement to capitalize a revolving loan

fund also agrees 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. Refer to 40 CFR Section 33.501 (b) and (c) for specific requirements and exemptions.

14. MBE/WBE Utilization Report

The recipient agrees to complete and submit to the Grants Management Office, MTS-7, a MBE/WBE Utilization Report (EPA Form 5700-52A), within 30 days after the end of the Federal fiscal year; i.e., by October 30 of each calendar year. Negative reports are required. Only procurements with certified MBE/WBEs are counted towards a recipient's MBE/WBE accomplishments. A final MBE/WBE report must be submitted within 90 days after the end of the project period. Your grant cannot be officially closed without all MBE/WBE reports. EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the internet at www.epa.gov/osbp.

15. Indirect Costs

The cost principles of 2 CFR 225 (OMB Circular A-87) are applicable to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

16. Payment to Consultants

Per 40 CFR Part 31.36(j), EPA's participation in the salary rate (excluding overhead and travel) 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, to be adjusted annually. The Federal Executive Schedule (i.e., Salary Table) is located at: <http://www.opm.gov/oca/>

This limit applies to consultation services of designated individuals with specialized skills and if 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. This rate does not include overhead or travel costs and the recipient may pay these in accordance with its normal travel practices.

Subagreements with firms or individuals for services which are awarded using the procurement requirements in 40 CFR Part 31, 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 40 CFR Part 31.36(j)(2).

17. Procurement

The recipient will ensure all procurement transactions will be conducted in a manner providing full and open competition consistent with EPA regulations under 40 CFR Part 30.43, 31.36 or 35.6555, as applicable. In accordance with 40 CFR Part 30.45, 31.36(f) or 35.6585, as applicable, the grantee and subgrantee(s) must perform a cost or price analysis in connection with every procurement action, including contract modifications.

18. Subawards

a. The recipient agrees to:

- (1) Establish all subaward agreements in writing;
- (2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);
- (3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
- (4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;
- (5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
- (6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;
- (7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and
- (8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at <http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf>. Guidance for distinguishing

between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at <http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf> and http://www.whitehouse.gov/omb/financial_fin_single_audit

c. The recipient is responsible for selecting its subrecipients and, if applicable, for conducting subaward competitions.

Programmatic Conditions

I. GENERAL FEDERAL REQUIREMENTS

NOTE: For the purposes of these Terms and Conditions the term "assessment" includes, eligible activities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k)(2)(A)(i) such as activities involving the inventory, characterization, assessment, and planning relating to brownfield sites as described in the EPA approved work plan.

A. Federal Policy and Guidance

1. a. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2012 competition for Brownfields assessment cooperative agreements. However, the CAR may not expend ("draw down") funds to carry out this agreement until EPA's award official approves the final work plan.
- b. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations.
- c. The recipient must comply with Federal cross-cutting requirements. These requirements include but are not limited to, MBE/WBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC § 327-333) the Anti Kickback Act (40 USC § 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.
- d. 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. Activities conducted under assessment grants generally do not involve construction, alteration and repair within the meaning of the Davis-Bacon Act. The recipient must contact EPA's Project Officer if there are unique circumstances (e.g. removal of an underground storage tank or another structure and restoration of the site) which indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. The Agency will provide guidance on Davis-Bacon Act compliance if necessary.

B. Eligible Brownfields Site Determinations

1. a. The CAR must provide information to EPA 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 work plan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA, the identity of the owner, and the date of acquisition.
- b. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information 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 assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.

2. a. For any petroleum contaminated brownfield site that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment Grants* dated September 2011 for discussion of this element) documenting that:
 - (1) a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum-only sites in the State,
 - (2) the State determines there is "no viable responsible party" for the site;
 - (3) the State determines that the person assessing or investigating the site is a person who is not potentially liable for cleaning up the site; and
 - (4) 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 petroleum program official.

b. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion relating to the state's determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing or investigating 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 2.a. 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 brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in 2.a. above.

II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR's request.

2. If after 18 months from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the recipient must implement a corrective action plan approved by the EPA PO or EPA may terminate this agreement for material non-compliance with its terms. For purposes of assessment grants, the recipient demonstrates "sufficient progress" when 35% of funds have been drawn down and obligated to eligible activities; for assessment coalition grants "sufficient progress" is demonstrated when a solicitation for services has been released, sites are prioritized or an inventory has been initiated if necessary, community involvement activities have been initiated and a Memorandum of Agreement is in place.

3. Assessment funding for an eligible brownfield site may not exceed \$200,000 unless a waiver has been granted by EPA. Following the granting of a waiver, funding is not to exceed \$350,000 at the site.

B. Substantial Involvement

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

a. Substantial involvement by EPA generally includes administrative activities such as

monitoring, reviewing project phases, and approving substantive terms included in professional services contracts.

- b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a subgrant for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition precludes the subgrantee from using EPA funds to assess a site for which the subgrantee is potentially liable under § 107 of CERCLA. (See Section II.C.3 for more information on subgrants.)
 - c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
 - d. EPA may waive any of the provisions in term and condition II.B.1., with the exception of property-specific funding determinations. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
- a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any Federal statute.
 - b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.
 - c. The CAR and its subgrantees remain responsible for incurring costs that are allowable under the applicable OMB Circulars.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields assessment activities at a particular site, if they do not have such a professional on staff.
2. The CAR is responsible for ensuring that contractors and subgrant recipients comply with the terms of their agreements with the CAR, and that agreements between the CAR and subgrant recipients and contractors comply with the terms and conditions of this agreement.
3. Subgrants are defined at 40 CFR 31.3. The CAR may not subgrant to for-profit organizations. The CAR must obtain commercial services and products necessary to carry out this agreement under competitive procurement procedures as described in 40 CFR 31.36. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.
4. The CAR is responsible for assuring that EPA's Brownfields Assessment Grant funding received under this grant, or in combination with any other previously awarded Brownfields Assessment grant does not exceed the \$200,000 assessment grant funding limitation for an individual brownfield site. Waiver of this funding limit for a brownfields site must be approved by EPA prior to the expenditure of funding exceeding \$200,000. In no case may EPA funding exceed \$350,000 on a site receiving a waiver.
5. CARs expending funding from a community-wide assessment grant on a particular site must include such funding amount in any total funding expended on the site.

D. Quarterly Progress Reports- Note: Report to be combined with Cleanup Grant Progress Report

1. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. Quarterly progress reports must include:
 - a. Summary of approved activities performed during the reporting quarter, summary of the performance outputs/outcomes achieved during the reporting quarter, a description of

problems encountered during the reporting quarter that may affect the project schedule and a discussion of meeting the performance outputs/outcomes.

- b. An update on project schedules and milestones.
- c. A list of the properties where assessment activities were performed and/or completed during the reporting quarter.
- d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); and total remaining funds.

2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.

3. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., assessment started) and any final accomplishments (i.e., assessment completed, cleanup required, contaminants, Institution Controls, Engineering Controls) by completing and submitting relevant portions of the Property Profile Form using the Brownfields Program on-line reporting system, known as Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. EPA will provide the CAR with training prior to obtaining access to ACRES. The training is required to obtain access to ACRES. The CAR must utilize the ACRES system unless approval is obtained from the regional Project Officer to utilize the Property Profile Form.

F. Final Report

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

III. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Eligible Uses of the Funds for the Cooperative Agreement Recipient

1. To the extent allowable under the work plan, cooperative agreement funds may be used for eligible programmatic expenses to inventory, characterize, assess, and conduct planning and outreach. Eligible programmatic expenses include activities described in Section IV of these Terms and Conditions. In addition, such eligible programmatic expenses may include:

- a. Determining whether assessment activities at a particular site are authorized by CERCLA § 104(k);
- b. Ensuring that an assessment complies with applicable requirements under Federal and State laws, as required by CERCLA § 104(k);
- c. Using a portion of the grant to purchase environmental insurance for the characterization or assessment of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section III.B.
- d. Any other eligible programmatic costs including direct costs incurred by the recipient in reporting to EPA; procuring and managing contracts; awarding and managing subgrants to the extent allowable under III. B. 2.; and carrying out community involvement pertaining to the assessment activities.

2. **Local Governments only.** No more than 10% of the funds awarded by this agreement may be

used for brownfield program development and implementation (including monitoring of health and institutional controls) as described in the EPA approved work plan. The CAR must maintain records on funds that will be used to carry the EPA approved work plan to ensure compliance with this requirement.

B. Ineligible Uses of the Funds for the Cooperative Agreement Recipient

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:
 - a. Cleanup activities;
 - b. Development activities that are not brownfields assessment activities (e.g., construction of a new facility);
 - c. Job training unrelated to performing a specific assessment at a site covered by the grant;
 - d. To pay for a penalty or fine;
 - e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
 - f. To pay for a response cost at a brownfields site for which the recipient of the grant or subgrant is potentially liable under CERCLA § 107;
 - g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and
 - h. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
2. Under CERCLA § 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars.
 - a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement.
 - b. Ineligible grant administration costs include direct costs for:
 - (1) Preparation of applications for brownfields grants;
 - (2) Record retention required under 40 CFR 31.42;
 - (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 31.32 and 31.33;
 - (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 31.30;
 - (5) Maintaining and operating financial management systems required under 40 CFR 31;
 - (6) Preparing payment requests and handling payments under 40 CFR 31.21;
 - (7) Non-federal audits required under 40 CFR 31.26 and OMB Circular A-133; and
 - (8) Close out under 40 CFR 31.50.
3. Cooperative agreement funds may not be used for any of the following properties:
 - a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
 - b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
 - c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
 - d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.
4. The CAR must not include management fees or similar charges in excess of the direct costs or at the rate provided for by the terms of the agreement negotiated with EPA. 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 that are not allowable under EPA assistance agreements. 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.

C. Interest -Bearing Accounts and Program Income

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the assessment CAR 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 includes, but is not limited to, fees charged for conducting assessment, site characterizations, clean up planning or other activities when the costs for the activity is charged to this agreement.
2. The CAR must deposit advances of grant funds and program income (i.e. fees) in an interest bearing account.
 - a. For interest earned on advances, CARs are subject to the provisions of 40 CFR §31.21(i) to remitting interest on advances to EPA on a quarterly basis.
 - b. Interest earned on program income is considered additional program income.
 - c. The CAR must disburse program income (including interest earned on program income) before requesting additional payments from EPA as required by 40 CFR 31.21(f).

IV. ASSESSMENT ENVIRONMENTAL REQUIREMENTS

A. Authorized Assessment Activities

1. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling), the CAR shall consult with EPA regarding potential applicability of the National Historic Preservation Act and, if applicable, shall assist EPA in complying with any requirements of the Act and implementing regulations.

B. Quality Assurance (QA) Requirements

1. When environmental samples are collected as part of the brownfields assessment, the CAR shall comply with 40 CFR Part 31.45 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.
2. The CAR should comply with the following QA requirements:
 - a. This grant includes the performance of environmental measurements, therefore, a QA Plan, a Sampling and Analysis Plan, or other comparable document covering QA activities, must be prepared before any sampling or cleanup activities at the site may begin. An example of a comparable document is a Sampling Plan approved by the state oversight authority. If the document submitted does not meet EPA's basic information requirements, an addendum or supplemental Sampling and Analysis Plan may be required before sampling work may begin. The recipient should consult with the Region 9 Quality Assurance Office at 415-972-3411 to determine if a QA document is required. The Quality Assurance Manager will determine what type of QA documentation would be most appropriate and what QA guidance should be followed if a document is required. The QA Plan must be approved by the EPA Project Officer, the Region 9 Quality Assurance Manager, and the recipient's Quality Assurance Officer before measurement activities are undertaken. Typically, measurement activities must be described by the type of media (soil, water, air), by the phase of the project (i.e.: sampling backfill material, air monitoring during removal work, confirmation sampling), and by location.
 - b. Emergency measurements may be taken without a QA Plan being prepared if the Region 9 Quality Assurance Manager agrees that the nature of the data collection activity required due to the emergency warrants an exemption and the recipient contacts the Quality Assurance Manager to obtain approval prior to beginning the sampling work. Contact the QA Office at 415-972-3411. In the event an unforeseen site condition arises during the cleanup work, changes or deviations to the type of contaminant sampled, methodology, or sample spacing, the recipient must contact the Quality Assurance Manager to determine if the Sampling and Analysis Plan must be amended before new work is initiated. If the change is such that a site hazard is created by a delay in the work, the recipient shall contact the Quality Assurance Manager to obtain approval prior to

formally revising the document. Minor field deviations (i.e: slight location changes) should be noted in the final cleanup report, but do not require EPA approval.

- c. Under the Assessment program, area-wide projects or multi-site projects will require the preparation of a Quality Assurance Project Plan (QAPP) in addition to site specific Sampling and Analysis Plans.
- d. Under the Assessment, Cleanup, and Revolving Loan Fund programs, a one-site project may use the one-site Region 9 Sampling and Analysis Plan which incorporates the QAPP.
- e. If the review and approval of the QAPP was completed five years ago, it must be resubmitted to EPA for review and approval to ensure it remains a useful and valid document for the site.
- f. In general, a QAPP or Sampling and Analysis Plan will require approximately two to four weeks for the EPA Quality Assurance Manager to review and return comments. Documents generally require one revision and re-submittal. The re-submittal review time is typically two weeks.

C. Completion of Assessment Activities

1. The CAR shall properly document the completion of all activities described in the EPA approved work plan. 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 assessments are complete.

D. All Appropriate Inquiry

1. As required by CERCLA § 104(k)(2)(B)(ii) and CERCLA § 101(35)(B), the CAR shall ensure that a Phase I site characterization and assessment carried out under this agreement will be performed in accordance with EPA's standard for all appropriate inquiries. The CAR shall utilize the practices in ASTM standard E1527-05 "Standard Practices for Environmental Site Assessment: Phase I Environmental Site Assessment Process," or EPA's All Appropriate Inquiries Final Rule "All Appropriate Inquiries Rule: Reporting Requirements and Suggestions on Report Content", (Publication Number: EPA 560-F-06-244). This does not preclude the use of grant funds for additional site characterization and assessment activities that may be necessary to characterize the environmental impacts at the site or to comply with applicable State standards.

2. All Appropriate Inquiries (AAI) final reports produced with funding from this agreement must comply with 40 C.F.R. Part 312 and must, at a minimum, include the information below. All AAI reports submitted to EPA Project Officers as deliverables under this agreement must be accompanied by a completed "Reporting Requirements Checklist" that EPA's Project Officer will provide to the recipient. The checklist also is available to grantees on the EPA website at www.epa.gov/brownfields.

- a. An **opinion** as to whether the inquiry has identified conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property.
- b. An identification of "**significant**" **data gaps** (as defined in 40 C.F.R. 312.10), if any, in the information collected for the inquiry. Significant data gaps include missing or unattainable information that affects the ability of the environmental professional to identify conditions indicative of releases or threatened releases of hazardous substances, and as applicable, pollutants and contaminants, petroleum or petroleum products, or controlled substances, on, at, in, or to the subject property. The documentation of significant data gaps must include information regarding the significance of these data gaps.
- c. **Qualifications and signature** of the environmental professional(s). The environmental professional must place the following statements in the document and sign the document:

"[I, We] declare that, to the best of [my, our] professional knowledge and belief, [I, we] meet the definition of Environmental Professional as defined in §312.10 of this part."

"[I, We] have the specific qualifications based on education, training, and experience to assess a property of the nature, history, and setting of the subject property. [I, We] have developed and performed the all appropriate inquiries in conformance with the standards and practices set forth in 40 CFR Part 312."

Note: Please use either "I" or "We."

- d. In compliance with §312.31(b), the environmental professional must include in the final report an ***opinion regarding additional appropriate investigation***, if the environmental professional has such an opinion.
3. EPA may review checklists and AAI final reports for compliance with the AAI regulation documentation requirements at 40 CFR part 312 (or comparable requirements for those using ASTM Standard 1527-05). Any deficiencies identified during an EPA review of these documents must be corrected by the recipient within 30 days of notification. Failure to correct any identified deficiencies may result in EPA disallowing the costs for the entire AAI report as authorized by 40 CFR 31.43(a)(2). If a recipient willfully fails to correct the deficiencies the Agency may consider other available remedies under 40 CFR 31.43 and 2 CFR Part 180.

V. Conflict of interest: Appearance of lack of Impartiality

A. Conflict of Interest

1. The CAR shall establish and enforce conflict of interest provisions that prevent the award of subgrants 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 subgrant to a subgrant 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:

- (i) The affected party,
- (ii) Any member of his immediate family,
- (iii) His or her partner, or
- (iv) An organization which employs, or is about to employ, any of the above, has a financial or other interest in the subgrant recipient.

Affected employees will neither solicit nor accept gratuities, favors, or anything of monetary value from subgrant recipients. 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.

VI. PAYMENT AND CLOSEOUT

A. Payment Schedule

1. The CAR may request payment from EPA pursuant to 40 CFR §31.21(c).

B. Schedule for Closeout

1. Closeout will be conducted in accordance with 40 CFR 31.50. EPA will close out the award when it determines that all applicable administrative actions and all required work of the grant have been completed.

2. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.

a. The CAR must submit the following documentation:

1. The Final Report as described in II.F.

2. A Final Federal Financial Report (FFR - SF425). Submitted to:

U.S. EPA Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld. C, Rm 503
Las Vegas, NV 89119
Fax: (702) 798-2423
<http://www.epa.gov/ocfo/finservices/payinfo.html>

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

- b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region.
- c. The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.

END-OF-DOCUMENT