

KANSAS CITY REGIONAL BROWNFIELDS COALITION REVOLVING LOAN FUND

MEMORANDUM OF AGREEMENT BY AND BETWEEN THE

CITY OF KANSAS CITY, MISSOURI

AND

JACKSON COUNTY, MISSOURI

AND

UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS

This Memorandum of Agreement (“Agreement”, “MOA”, or “Interstate Compact”) is entered into on the ____ day of _____, 2022 by and between the CITY OF KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation of the State of Missouri, hereinafter referred to as “**KCMO**”; the UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS CITY, KANSAS, a municipal corporation of the state of Kansas, hereinafter referred to as “**UNIFIED GOVERNMENT**”; and JACKSON COUNTY, MISSOURI, hereinafter referred to as “**JACKSON COUNTY**” (collectively the “Coalition Members”). This Agreement memorializes the intentions, roles and responsibilities of the various parties involved in the Kansas City Regional Brownfields Coalition Revolving Loan Fund (RLF) Grant Project.

RECITALS

WHEREAS, the parties hereto each have authority to enter into this Agreement; and

WHEREAS, on May 6, 2020, a Brownfields Coalition RLF Grant in the amount of \$800,000.00, (hereinafter the “Grant”), was awarded to KCMO on behalf of the Coalition Members by the U.S. Environmental Protection Agency (EPA); and

WHEREAS, EPA and KCMO have entered into federal grant Cooperative Agreement No. BF-97782201, (hereinafter the “EPA Cooperative Agreement”) to fund the Coalition (as defined below) and its activities.

WHEREAS, the parties acknowledge that the Agreement has the status of an interstate compact under Kansas law, and the Agreement may alternatively be referred to as such.

AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements hereinafter expressed, the Parties mutually agree as follows:

1. The Coalition Members hereby agree to enter into the Kansas City Regional Brownfields Coalition RLF (hereinafter the “Coalition”), in accordance with the terms and conditions of this Agreement, for the purpose of implementing the EPA Cooperative Agreement and providing a framework of goals, objectives and operating parameters for the Coalition and its members. KCMO shall be the Lead Member of the Coalition.

2. The representation of the Coalition shall be as follows: one representative of KCMO shall be appointed by the Mayor of Kansas City, Missouri; one representative shall be appointed by the Mayor/Chief Executive Officer of the UNIFIED GOVERNMENT; and, one representative of JACKSON COUNTY shall be appointed by the County Chief Executive. From time to time, each Coalition Member may appoint an alternate representative to act in the designated representative’s stead.

3. Activities funded through the Coalition may include loans and subgrants for cleanup of eligible brownfield sites, cleanup and site reuse planning (subject to EPA approval), marketing and outreach materials and activities, and professional services, fees, and programmatic and administrative costs as allowed by EPA and as the Coalition Members may agree (“Coalition Activities”).

4. In accordance with the EPA-approved Work Plan for the Grant (attached as Attachment 2), the objectives of the Coalition are as follows:

- A. Objective 1: Assist eligible, quality brownfield projects with RLF cleanup loans and subgrants to accomplish the following: complete appropriate site cleanup; remove blight and environmental health risks; complete site redevelopment and construction; put site improvements into full operation; create jobs; and otherwise provide significant benefits to affected communities in need.
- B. Objective 2: Stimulate Demand for Regional RLF funds on the part of eligible applicants and quality projects through community involvement, education, and marketing and in-depth assistance to position potential applicants and projects to become eligible for RLF funding and knowledgeable about the RLF process and requirements, particularly in the regional communities that have not had meaningful access to brownfield resources previously.

5. In addition, it shall be an objective of the Coalition Members that the amount of Coalition Activities funded, the number of sites and projects assisted by the Coalition, and the overall pool of Coalition resources shall be equitably distributed between the KCMO, JACKSON COUNTY and UNIFIED GOVERNMENT to the extent practicable and consistent with the EPA Cooperative Agreement and the Work Plan (as defined below).

Lead Coalition Member Duties and Responsibilities

1. KCMO is responsible for the management of the Grant funds and compliance with the EPA Cooperative Agreement and all of its terms and conditions. KCMO shall inform the other Coalition Members of the terms and conditions of the EPA Cooperative Agreement and provide reasonable assistance to help Coalition members comply with the applicable requirements. A copy

of the EPA Cooperative Agreement is attached to this Agreement as Attachment 1. KCMO shall administer a Work Plan, as amended and approved by EPA (the “Work Plan”), for the purpose of implementing the EPA Cooperative Agreement. A copy of the current Work Plan is attached to this Agreement as Attachment 2.

2. It is the responsibility of KCMO to provide timely information to the other Coalition Members regarding the management of the EPA Cooperative Agreement and any amendments thereto. If any amendments to the EPA Cooperative Agreement alter the responsibilities of the Coalition Members, either individually or collectively, under this Agreement, then this Agreement shall be amended to reflect such changes, subject to the approval of each of the Coalition Members, which approval shall not be unreasonably withheld, conditioned or delayed.

3. KCMO shall provide staff, and engage professional services as necessary, to conduct the community engagement, programmatic support, project management and day to day operations of the RLF Program in accordance with the EPA Cooperative Agreement, the Work Plan and this Agreement.

4. KCMO shall also provide staff, and engage professional services as necessary, to serve the Brownfields Commission and facilitate the conduct of its business concerning the Coalition and the Grant, as described in Sections 23 to 26, herein below.

5. KCMO will ensure that a minimum of four (4) eligible sites receive RLF loan or subgrant assistance during the term of the EPA Cooperative Agreement unless otherwise agreed to by the Coalition Members, subject to EPA approval. There shall be assisted a minimum of one (1) RLF project site in each Coalition Member’s exclusive jurisdiction. The Work Plan identifies three priority sites to be addressed by the Grant, one for each Coalition Member: the Chouteau Courts Site at 1200, 1408 Independence Ave. in Kansas City, MO (“KCMO Priority Site”); the Rock City Site at 519 Blue Ridge Boulevard in Jackson County, MO (“Jackson County Priority Site”); and

the Northeast Grocery Site at 1726 Quindaro Boulevard in Kansas City, KS (“Unified Government Priority Site”). In addition to these three priority sites, KCMO will ensure at least one additional “non-priority” site is assisted by Grant funds.

6. Except as otherwise provided herein, all activities of the Coalition shall be approved by a vote of a majority of the Coalition Representatives in attendance at a public meeting. For purposes of Coalition public meetings, a quorum shall consist of all three Coalition members. Notwithstanding the above, no resolution or action of the Coalition that obligates or expends Grant funds may be approved without the consent of KCMO. In addition, all loans and subgrants of the Coalition shall be further approved by the Brownfields Commission, as provided in Sections 23 to 26 herein below. Furthermore, no site shall be selected, or project approved, without the approval of the Coalition Member(s) in whose jurisdiction the site or project is located. All sites and projects shall be selected according to a process and set of criteria agreed upon by all Coalition Members that includes public participation, confirmation of site and program eligibility, and advancement of the goals and objectives of the Grant and Work Plan.

7. In accordance with the budget of the approved Work Plan, KCMO may use Grant funds for eligible, reasonable, and necessary programmatic costs associated with performance of the Coalition Activities and ensuring compliance with the EPA Cooperative Agreement, including community outreach and information, progress reporting, and financial reporting and recordkeeping. In addition, the EPA Cooperative Agreement allows the KCMO to use up to 5% of the Grant funds for eligible direct or indirect administrative costs. In accordance with the budget of the approved Work Plan, KCMO may retain consultants and contractors under 40 CFR 31.36 to undertake reasonable and necessary programmatic activities funded through the EPA Cooperative Agreement, including financial evaluations of loans, policies of loan title insurance, real estate appraisals, etc. KCMO may also procure qualified professional consultant (QEP) services in

compliance with 40 CFR 31.36 requirements and applicable administrative regulations of KCMO. KCMO may issue Requests for Proposals, Requests for Qualifications, or utilize other appropriate solicitation methods, and will be the entity responsible for the selection and award of contracts.

8. Loans and subgrants funded by the Grant will be evaluated by KCMO and its QEP for site eligibility and borrower or subgrant recipient eligibility in accordance with the EPA Cooperative Agreement. Eligibility evaluations will be submitted to EPA for review and concurrence to ensure eligibility prior to the approval of any loan or subgrant.

9. Loans and subgrants will be further evaluated by an independent financial professional hired by KCMO who shall prepare a basic financial evaluation of the project, the proposed loan or subgrant, the project principals, the subject property, any available or offered collateral, the proposed rate and term (if a loan), and generally whether the proposed RLF assistance is consistent with prudent lending practices.

10. In the event that a cleanup undertaken by a recipient of an RLF loan or subgrant is interrupted, abandoned, or otherwise not properly completed to the satisfaction of the applicable state oversight agency, and the site is located within its jurisdiction, KCMO will immediately notify EPA and take reasonable steps to secure the project site to protect human health and the environment, as required by the EPA Cooperative Agreement. If the site is located in the exclusive jurisdiction of another Coalition Member, KCMO will work with that Coalition Member to ensure reasonable steps are taken, as provided in Section 17 herein below. Actions to secure a site may include the use of undisbursed portions of RLF loans and subgrants, and other available Grant funds, to engage environmental services, subject to oversight by EPA and/or the appropriate state environmental agency. To facilitate such actions, KCMO shall require that each loan and subgrant agreement include a license agreement granting KCMO (and any other Coalition Member in whose jurisdiction the project is located) access to respond to failed or abandoned cleanups.

Coalition Members' General Responsibilities

11. Each Coalition representative shall participate in the Coalition and its activities, including public meetings of the Coalition and public meetings of the Brownfields Commission, as provided by Sections 23 to 26 herein below. Coalition Members shall ensure their representatives are duly appointed and actively participate in the meetings and activities of the Coalition.

12. Coalition Members shall comply with all applicable terms and conditions of the EPA Cooperative Agreement, the Work Plan, and this Agreement including laws, regulations, executive orders and policies made applicable by the EPA Cooperative Agreement.

13. JACKSON COUNTY and UNIFIED GOVERNMENT shall not expend, obligate, or pledge Grant funds, or any funds of KCMO, or enter into any agreement to do so, without the express prior written approval of KCMO.

14. As allowed by law, Coalition Members shall provide to each other, and contractors undertaking Coalition activities, access to properties, documents, reports, and information within their control or possession, concerning the activities of the Coalition.

15. Coalition Members shall provide to each other such other reasonable non-monetary assistance, as necessary, to ensure compliance with the terms and conditions of the EPA Cooperative Agreement. Neither JACKSON COUNTY nor UNIFIED GOVERNMENT shall undertake any activity or task that may, in any way, hinder the KCMO's ability to maintain compliance with the EPA Cooperative Agreement.

16. Coalition Members shall work with RLF borrowers and subgrant recipients in their respective jurisdictions to develop and implement an appropriate Community Relations Plan (CRP), make available for public comment an Analysis of Brownfield Cleanup Alternatives (ABCA), and establish a publicly available Administrative Record repository as required by the EPA Cooperative Agreement. Coalition Members shall assist in identification of relevant

community stakeholders, neighborhood and community organizations, appropriate methods of public outreach and notices, and convenient and traditional community meeting places and times.

17. In the event a recipient of an RLF loan or subgrant fails to complete a cleanup, Coalition Members agree to facilitate access to the site of any failed cleanup within their jurisdiction by exercising their rights under the License Agreement included with each loan or subgrant agreement, and, to the extent permitted by law, through the exercise of their police powers, if any, to directly enter and temporarily secure unsafe sites as needed in an emergency. In addition, upon notification of a current or imminent threat to human health and the environment by KCMO or an appropriate local, state or federal oversight agency, and subject to the availability of Grant funds, Coalition Members agree to engage and dispatch an environmental services firm, in consultation with KCMO, EPA and the relevant state environmental oversight agency, to take action as necessary to stop the release or threatened release of contaminants into the environment, and such other temporary measures as may be necessary to protect human health and the environment. Available Grant funds may include the undispersed amount of any loan or subgrant to a recipient in default of their obligations to clean up the subject site. All costs incurred by a Coalition Member in the course of entering and securing a site in the event of an emergency shall be reimbursed by the Grant fund or its related program income, subject to the availability of such funds and the concurrence of EPA.

18. When required for purposes of collateral for an RLF loan within their respective jurisdictions, Coalition Members agree to hold a deed of trust, mortgage, or similar instrument with respect to the property upon which RLF cleanup activities are performed. In the event of a loan default, and to the extent permitted by law, Coalition members shall have the right to foreclose on such property to secure repayment of RLF loans. The proceeds of any foreclosure remedy exercised by a Coalition Member shall become program income of the Grant and may be used to compensate

such member for the costs of the exercising its remedy which are eligible under the EPA Cooperative Agreement. The remainder, if any, shall be reserved for loans or subgrants to cleanup sites within said Coalition Member's jurisdiction, subject to the terms and condition of the EPA Cooperative Agreement and this Agreement. Coalition Members will not be required to exercise foreclosure remedies.

General Principles of Coalition Administration

19. In order to achieve the objectives stated herein above, the Coalition Members further agree to the following principles. It is the intent of the Coalition that, to the greatest extent practicable, RLF loans be utilized to conduct cleanup actions that are protective of human health and the environment, promote site reuse, and provide economic, social and health benefits to disadvantaged communities, especially environmental justice communities that have historically borne a disproportionate share of environmental burdens relative to other communities.

20. Consistent with the foregoing goals and objectives of the RLF program, it is the financial objective of the Coalition that RLF program capital be loaned out to multiple eligible borrowers and projects; paid back in full, on time, and with interest within relatively short periods of time (5 years or less); and that RLF capital revolve, grow and be preserved for the future benefit of as many eligible projects and communities as possible.

21. The Coalition is committed to following prudent lending and subgranting practices in the operation of the RLF program, including utilizing financially sound structures, day-to-day management, and processing procedures to maintain the RLF and meet long-term brownfield cleanup lending and subgranting objectives. Threshold eligibility and evaluation criteria for processing loan and subgrant applications will be adopted by the Coalition that reflect the goals and objectives of the Coalition and the requirements of the EPA Cooperative Agreement and Work Plan.

22. It is acknowledged by the Coalition that the EPA Cooperative Agreement requires at least 50% of Grant funds awarded be used for RLF loans and related programmatic costs, and that the remaining Grant funds may be used for the award of subgrants to eligible entities, including governmental, quasi-governmental or non-profit entities (other than the Coalition Members themselves or their subunits of government). In addition to the foregoing requirements, it is the intent of the Coalition that subgrants also be limited as much as practicable to projects that:

- A. produce substantial and enduring public benefits in communities affected by brownfields, such as the creation of significant numbers of permanent living-wage jobs, affordable housing units, new public or greenspace amenities, access to fresh and healthy foods, etc.;
- B. benefit environmental justice or other disadvantaged communities that have not previously had meaningful access to brownfield RLF resources;
- C. would not be financially viable but for the subgrant assistance; and,
- D. to the extent practicable, combine subgrants with RLF loans, or utilize partially forgivable loans (up to 30% of the loan amount, not to exceed \$200,000), in order to extend subgrant assistance to as many eligible projects as possible.

The Kansas City Brownfields Commission

23. On July 22, 2021, JACKSON COUNTY and UNIFIED GOVERNMENT were added to the Brownfields Commission of Kansas City, Missouri (“Brownfields Commission”) by Committee Substitute for Ordinance 210585 adopted by the KCMO City Council. The complete KCMO city code provisions for the Brownfields Commission are attached to this Agreement as Attachment 3.

24. Each Coalition Members agrees that the individual designated as its representative on the Coalition shall also be that member’s representative on the Brownfields Commission. Each

Coalition Member further agrees to participate in the Brownfields Commission in accordance with KCMO city code provisions.

25. Coalition Members agree that all obligations or expenditures of Grant funds or related program income for RLF loans, subgrants, or loan guarantees require the concurrence of the Brownfields Commission, as well as either the City Council of KCMO, or the Director of the KCMO Department of City Planning and Development., depending on the amount of funding at issue as set forth in Paragraph 33. Such concurrence shall not be unreasonably withheld.

26. Notwithstanding the foregoing provisions, no site shall be selected, or RLF project approved, without the approval of the Coalition Member(s) in whose municipal jurisdiction(s) the site or project is located.

Priority Sites

27. The Work Plan targets the three priority sites included in the grant proposal: the Chouteau Courts Priority Site at 1200, 1408 Independence Ave. in Kansas City, MO; the Grandview Priority Site at 519 Blue Ridge Boulevard in Jackson County, MO; and the Northeast Grocery Priority Site at 1726 Quindaro Boulevard in Kansas City, KS. To the extent that remediation services are necessary and eligible at each priority site, it is the intent of the Coalition members to utilize Grant Funds, RLF supplemental awards (if any), and/or Grant program income to assist all three priority sites with a loan or subgrant during the term of the Grant. At any time during the Grant term, each Coalition Member may nominate an alternate priority site to substitute for the priority site designated in their jurisdiction. If approved by the Coalition, the remaining balance of the nominating Coalition Member's minimum RLF share shall be made available to the alternate priority site and EPA shall be notified of the change in priority site. Priority site RLF loan and subgrant applications will be processed, evaluated, and approved in the same manner as all other RLF applications.

28. In addition, each RLF Coalition Member may nominate additional non-priority RLF sites for assistance. The effect of project nomination is solely to designate the Coalition Member to whom the project is credited for purposes of the equitable allocation of RLF Grant funds and Program Income, pursuant to Section 30, herein below. It is the intent of the Coalition that at least one additional non-priority site will receive RLF assistance. Additional non-priority sites nominated by Coalition Members may be approved for RLF assistance, funds permitting.

29. Notwithstanding Section 27 herein above, the Coalition may consider and approve an RLF loan or subgrant for a non-priority site prior to assisting all three priority sites if it finds that:

a. The non-priority site project will result in a substantial benefit to the affected community;

b. The non-priority site project is determined to be eligible and “shovel-ready” (i.e., likely to proceed to closure of an RLF loan or subgrant and completion of the remediation project expeditiously and without foreseeable delay); AND

c. At least ONE of the following additional conditions is met:

i. Repayment of an RLF loan to the non-priority site (if a loan is provided) is likely to occur and result in substantial program income within the next three years so as to provide sufficient funds for the remaining priority site project(s);

ii. Other program income, supplemental RLF award funds, or alternative sources of funds can be identified or reasonably anticipated to ensure sufficient funds for the remaining priority site project(s).

30. The total RLF assistance for each Coalition Member shall be not less than \$200,000, nor more than \$300,000, without the written consent of all Coalition members. RLF assistance to projects may consist of loans, partially forgivable loans, and/or subgrants. Notwithstanding the foregoing minimum and maximum limits, the total RLF subgrant assistance (i.e., direct subgrants

plus all forgiven loan principal) for projects credited to each Coalition Member shall not exceed a maximum of \$150,000. In the event supplemental RLF funds and/or program income are added to the RLF, the above minimum and maximum amounts shall be increased proportionately.

General Operation of the RLF Program

31. Completed applications for RLF loans and subgrants will be reviewed by KCMO staff as to whether site eligibility and recipient eligibility can be determined under the EPA Cooperative Agreement, whether environmental contamination has been adequately investigated, whether cleanup costs have been accurately estimated or bid, whether an Analysis of Brownfield Cleanup Alternatives (ABCA) has been prepared, whether the site has been enrolled into a state environmental cleanup program, and whether enough information has been submitted to evaluate the financial and technical feasibility of the proposed cleanup and site reuse. Eligibility determinations will be submitted to EPA for review and concurrence. Technical review may also be sought from appraisal, underwriting and environmental professionals, as necessary, to complete staff review of the application.

32. KCMO staff shall prepare a report with recommendations on each completed application that is determined to meet the eligibility requirements of the EPA Cooperative Agreement. Staff reports shall be reviewed by the Director of the Department of City Planning & Development, or the Director's designee, before advancing the application and staff report to the Coalition and the Brownfields Commission.

33. If a loan or subgrant application is approved by the Coalition in a public meeting, it shall be advanced to the Brownfields Commission. If the Commission recommends approval of the application, KCMO staff shall seek an ordinance from the KCMO City Council approving the application, or the approval of the Director of the Department of City Planning and Development in the case of loans or subgrants of \$100,000 or less. Upon approval by a KCMO City Council

ordinance, or by the Department Director, as provided above, KCMO staff will be authorized to negotiate the final terms of agreements for loans or subgrants, prepare documents for review and execution, order title insurance and a real estate appraisal, and make other arrangements as necessary for closing.

34. For contractual services authorized in the Work Plan budget (i.e., fund manager services, underwriting, appraisal, qualified environmental professional services), KCMO shall be the sole entity to conduct procurement in compliance with the EPA Cooperative Agreement and applicable federal grant administration regulations. KCMO may issue Requests for Proposals, Requests for Qualifications, or utilize other appropriate solicitation methods, and will be the entity solely responsible for the selection and award of contracts.

35. In accordance with the budget of the approved Work Plan, up to 5 percent of the Grant funds may be utilized by KCMO for eligible administrative direct or indirect costs associated with the implementation of the EPA Cooperative Agreement, the Coalition program and specific Coalition activities. In addition, KCMO may utilize Grant funds and related program income for eligible programmatic activities, such as ensuring compliance with the EPA Cooperative Agreement, including community outreach and information, progress reporting, and financial reporting and recordkeeping.

36. As provided by the approved Work Plan, KCMO may also use RLF funds for programmatic and project management costs to establish and operate the RLF program, including oversight and day to day management of RLF activities, activities to ensure compliance with EPA Cooperative Agreement terms and conditions, including requirements concerning reporting obligations, data quality, ACRES database entries, Davis-Bacon Act, quarterly progress reports, preparing and updating property profile forms, tracking and reporting minority-owned enterprise (MBE) and women-owned enterprise (WBE) participation, and other grant management activities

in accordance with the approved Work Plan.

Notices

37. Contact information for the authorized representatives of the Coalition is as follows:

For KCMO:

Mayor (or designee to the Brownfields Commission)
City of Kansas City, Missouri
City Hall, 29th Floor
414 E. 12th Street
Kansas City, MO 64106

With a copy to:

Brownfields Coordinator
City Hall, 16th Floor
414 E. 12th Street
Kansas City, MO 64106

For UNIFIED GOVERNMENT:

Mayor/CEO (or designee to the Brownfields Commission)
Unified Government of Wyandotte County/Kansas City, Kansas
One McDowell Plaza
701 N. 7th Street
Kansas City, KS 66101

With a copy to:

Management Analyst for Brownfields Program
Unified Government of Wyandotte County/Kansas City, Kansas
One McDowell Plaza
701 N. 7th St., 4th Floor
Kansas City, KS 66101

For JACKSON COUNTY:

Jackson County Executive (or designee to the Brownfields Commission)
Jackson County Courthouse
415 E. 12th Street, 2nd Floor
Kansas City, MO 64106

With a copy to:

Project Manager for Brownfields Program
Jackson County Parks & Recreation
22807 SW Woods Chapel Rd
Blue Springs, MO 64015

Miscellaneous

38. The provisions of this Agreement are severable. In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable to any extent, then the remaining provisions of this Agreement and the portion of the offending provision (or any application thereof) which is not invalid, illegal or unenforceable shall remain in full force and effect.

39. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all which together shall constitute but one and the same instrument.

40. The Recitals are incorporated into this Agreement and shall be binding upon the parties as if fully set forth in this Agreement.

41. **Cash Basis Law.** This Agreement is subject to the Kansas Cash Basis Law, K.S.A. 10-1101 *et seq.* and amendments thereto. This Agreement shall be construed and interpreted so as to ensure that the Unified Government shall at all times stay in conformity with such laws and, as a condition of this Agreement, the Unified Government reserves the right to unilaterally terminate their participation in the Agreement if the Agreement is deemed to violate the terms of such law. The Unified Government is obligated only to make payments under the Agreement as may lawfully be made from: (a) funds budgeted and appropriated for that purpose during the Unified Government's current budget year; or (b) funds made available from any lawfully operated revenue producing source.

42. **Term of the Agreement.** For purposes of the Unified Government's participation in this Agreement, this Agreement shall be effective on the date it is approved by the Kansas Attorney General's Office, or otherwise deemed approved as set forth in K.S.A. 12-2901, *et seq.* and recorded

with the Wyandotte County Register of Deeds and the Kansas Secretary of State and shall continue for a period not to exceed fifteen years unless sooner terminated as provided herein (the “Term”). This Agreement shall become effective with respect to KCMO and Jackson County upon the date this Agreement is signed by said entities, and shall continue throughout the Term, unless terminated sooner as provided herein. Nothing shall prevent KCMO and Jackson County from meeting or beginning their work on the Work Plan while the Unified Government awaits approvals as set forth in K.S.A. 12-2901, *et seq.*

43. **Method of Termination.** Fifteen years from the effective date of this Agreement, so long as there are no outstanding RLF loans or active clean-up sites in a Coalition members’ jurisdiction, any Coalition member may terminate their participation in this Agreement, including participation in the RLF Loan Program, Coalition meetings, and the Brownfield Commission, with no less than ninety (90) days written notice to the other Coalition members. This Agreement shall also terminate with no less than (30) days written notice to the Coalition members upon EPA termination of the EPA Cooperative Agreement and any Post Closure Agreement related thereto.

SIGNATURE PAGES TO FOLLOW.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives the day and year first above written.

FOR CITY OF KANSAS CITY, MISSOURI
A Constitutionally Chartered Municipal
Corporation of the State of Missouri

Date: _____

By: _____
Quinton Lucas
Mayor

**UNIFIED GOVERNMENT OF WYANDOTTE
COUNTY/ KANSAS CITY, KANSAS**

Date: _____

By: _____
Tyrone Garner
Mayor/CEO

FOR JACKSON COUNTY, MISSOURI

Date: _____

By: _____
Frank White, Jr.
County Executive

ATTACHMENT 1
EPA COOPERATIVE AGREEMENT

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement		GRANT NUMBER (FAIN): 97782201 MODIFICATION NUMBER: 0 PROGRAM CODE: BF	DATE OF AWARD 09/18/2020
			TYPE OF ACTION New	MAILING DATE 09/25/2020
			PAYMENT METHOD: ASAP	ACH# 70779
			RECIPIENT TYPE: Municipal	
RECIPIENT: City of Kansas City Missouri 414 E. 12th Street Kansas City, MO 64106 EIN: 44-6000201		PAYEE: Same as Recipient 414 E. 12th Street Kansas City, MO 64106		
PROJECT MANAGER Andrew Bracker 414 E. 12th Street Kansas City, MO 64106 E-Mail: andrew.bracker@kcmo.org Phone: 816-513-3002		EPA PROJECT OFFICER Susan Klein 11201 Renner Boulevard, LCRD/BSPR Lenexa, KS 66219 E-Mail: Klein.Susan@epamail.epa.gov Phone: 913-551-7786		EPA GRANT SPECIALIST Heather Duncan Grants Management Office, MSD/RFMB/GRMS E-Mail: duncan.heather@epa.gov Phone: 913-551-7640
PROJECT TITLE AND DESCRIPTION Kansas City Regional Brownfields Coalition RLF Inventory, characterize, assess, conduct planning, community involvement, and cleanup brownfield sites.				
BUDGET PERIOD 09/01/2020 - 08/31/2025	PROJECT PERIOD 09/01/2020 - 08/31/2025	TOTAL BUDGET PERIOD COST \$960,000.00	TOTAL PROJECT PERIOD COST \$960,000.00	
NOTICE OF AWARD				
Based on your Application dated 12/03/2019 including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA) hereby awards \$800,000. EPA agrees to cost-share 83.33% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$800,000. Recipient's signature is not required on this agreement. The recipient demonstrates its commitment to carry out this award by either: 1) drawing down funds within 21 days after the EPA award or amendment mailing date; or 2) not filing a notice of disagreement with the award terms and conditions within 21 days after the EPA award or amendment mailing date. If the recipient disagrees with the terms and conditions specified in this award, the authorized representative of the recipient must furnish a notice of disagreement to the EPA Award Official within 21 days after the EPA award or amendment mailing date. In case of disagreement, and until the disagreement is resolved, the recipient should not draw down on the funds provided by this award/amendment, and any costs incurred by the recipient are at its own risk. This agreement is subject to applicable EPA regulatory and statutory provisions, all terms and conditions of this agreement and any attachments.				
ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)			AWARD APPROVAL OFFICE	
ORGANIZATION / ADDRESS Grants Management Office 11201 Renner Boulevard Lenexa, KS 66219			ORGANIZATION / ADDRESS U.S. EPA, Region 7 Land, Chemical and Redevelopment Division 11201 Renner Blvd Lenexa, KS 66219	
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY				
Digital signature applied by EPA Award Official Deboraha K. Titus - Grants Management Officer				DATE 09/18/2020

EPA Funding Information

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

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Multipurpose Assessment Revolving Loan Fund and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(3) Consolidated Appropriations Act of 2018 (P.L. 115-141)	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
-	2007RBX047	20	E4	0700AG7	000D79	4114			800,000
									800,000

Budget Summary Page: Kansas City Regional Brownfields Coalition RLF (KCMO)

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$97,396
2. Fringe Benefits	\$38,959
3. Travel	\$3,000
4. Equipment	\$0
5. Supplies	\$245
6. Contractual	\$82,000
7. Construction	\$0
8. Other	\$738,400
9. Total Direct Charges	\$960,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>16.67</u> % Federal <u>83.33</u> %.)	\$960,000
12. Total Approved Assistance Amount	\$800,000
13. Program Income	\$131,315
14. Total EPA Amount Awarded This Action	\$800,000
15. Total EPA Amount Awarded To Date	\$800,000

Administrative Conditions

A. General Terms and Conditions

The recipient agrees to comply with the current EPA general terms and conditions available at: <https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2019-or-later>
These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions, or restrictions cited throughout the award.

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

B. Correspondence Condition

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

- Federal Financial Reports (SF-425): RTPFC-grants@epa.gov and R7Grants@epa.gov
- MBE/WBE reports (EPA Form 5700-52A): R7Grants@epa.gov.
- All other forms/certifications/assurances, Indirect Cost Rate Agreements, updates to recipient information (including email addresses, changes in contact information or changes in authorized representatives) and other notifications: R7Grants@epa.gov.
- Payment requests (if applicable): RTPFC-grants@epa.gov.
- Requests for Extensions of the Budget and Project Period, Amendment Requests, Requests for other documents including: Quality Assurance, workplan revisions, equipment lists, programmatic reports and deliverables, contact the Project Officer identified on the front of the assistance agreement.

C. Extension of Project/Budget Period Expiration Date

EPA has not exercised the waiver option to allow automatic one-time extensions for non-research grants under 2 CFR 200.308 (d)(2). Therefore, if a no-cost time extension is necessary to extend the period of availability of funds the recipient must submit a written request to the EPA prior to the budget/project period expiration dates. **The written request must include:** a justification describing the need for additional time, an estimated date of completion, and a revised schedule for project completion including updated milestone target dates for the approved workplan activities. In addition, if there are overdue reports required by the general, administrative, and/or programmatic terms and conditions of this assistance agreement, the recipient must ensure that they are submitted along with or prior to submitting the no-cost time extension request.

D. Disadvantaged Business Enterprise (DBEs)

UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

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

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

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

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

Pursuant to 40 CFR, Section 33.301, the recipient agrees to make the following good faith efforts

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

- (a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.
- (b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.
- (c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.
- (d) Encourage contracting with a consortium of DBEs when a contract is too large for one of these firms to handle individually.
- (e) Use the services and assistance of the SBA and the Minority Business Development Agency of the Department of Commerce.
- (f) If the prime contractor awards subcontracts, require the prime contractor to take the steps in paragraphs (a) through (e) of this section.

CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302

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

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

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

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

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

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

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

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

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

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

E. Payment Frequency

Recipient agrees to submit, at a minimum, a quarterly billing (payment) request(s) to the EPA, for all eligible, allowable, allocable, necessary and reasonable costs which are incurred for this project/program. A payment request is not required to be submitted in the event that the recipient has not incurred such costs during the quarterly period, but more frequent payments may be requested as costs are incurred.

F. Program Income

Recipient agrees to use authorized program income for the purposes and under the conditions of the grant agreement according to 2 CFR 200.307(e)(2).

Programmatic Conditions

I. GENERAL FEDERAL REQUIREMENTS

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

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, the Environmental Protection Agency (EPA) has approved the proposal for the Cooperative Agreement Recipient (CAR).
2. In implementing this agreement, the CAR shall comply with and require that work done by borrowers and subgrantees with cooperative agreement funds comply with the requirements of CERCLA § 104(k). The CAR shall also ensure that cleanup activities supported with cooperative agreement funding comply with all applicable federal and state laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.
3. The CAR must consider whether it is required to have borrowers or subgrantees conduct cleanups through a State or Tribal response program. If the CAR chooses not to require borrowers and subgrantees to participate in a State or Tribal response program, then the CAR is required to consult with the EPA Project Officer on each loan or subgrant to ensure the proposed cleanup is protective of human health and the environment.
4. A term and condition or other legally binding provision shall be included in all agreements entered into with the funds awarded under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that the CAR complies with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Part 200.
5. The CAR must comply with federal cross-cutting requirements. These requirements include, but are not limited to, DBE requirements found at 40 CFR Part 33; OSHA Worker Health & Safety Standard 29 CFR § 1910.120; Uniform Relocation Act (40 USC § 61); National Historic Preservation Act (16 USC § 470); Endangered Species Act (P.L. 93-205); Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at

41 CFR § 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC §§ 327-333); the Anti-Kickback Act (40 USC § 276c); and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

6. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration, and repair contracts and subcontracts awarded with funds provided under this agreement by operation of CERCLA § 104(g). For more detailed information on complying with Davis-Bacon please see the Davis-Bacon terms and conditions nos. IX and X.

II. SITE/BORROWER/SUBGRANTEE ELIGIBILITY REQUIREMENTS

A. Brownfield Site Eligibility

1. The CAR must provide information to the EPA Project Officer about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's workplan by EPA. The information that must be provided includes whether the site meets the definition of a brownfield site as defined in § 101(39) of CERCLA and whether the CAR is the potentially responsible party under CERCLA § 107 is exempt from CERCLA liability or has defenses to CERCLA liability.
2. If the site is excluded from the general definition of a brownfield site but is eligible for a property-specific funding determination, then the CAR may request a property-specific funding determination from the EPA Project Officer. In its request, the CAR must provide information sufficient for EPA to make a property-specific funding determination on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for cleaning up sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that EPA has determined that the property is eligible.
3. Brownfield Sites Contaminated with Petroleum

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

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

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

Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

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

B. Borrower and Subgrantee Eligibility

1. The CAR may only provide cleanup subgrants to an eligible entity or nonprofit organization to clean up sites owned by the eligible entity or nonprofit organization at the time of the award of the subgrant. Eligible subgrantee include eligible entities as defined under CERCLA § 104(k)(1), which includes nonprofit organizations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, and other nonprofit organizations as defined at 2 CFR § 200.70. Nonprofit institutions of higher education as defined at 2 CFR § 200.55 are also eligible for cleanup subgrants. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subgrants.
2. The CAR may provide loans to an eligible entity, a site owner, a site developer, or another person without regard to whether the borrower is a for-profit organization. Borrowers do not have to own the property throughout the term of the loan unless ownership is required for the purpose of securing collateral or the CAR otherwise determines that borrower site ownership is necessary.
3. The subgrantee must retain ownership of the site throughout the period of performance of the subgrant and must consult with the EPA Project Officer prior to transferring title or otherwise conveying the real property comprising the site. For the purposes of this agreement, the term “owns” means fee simple title unless EPA Project Officer approves a different ownership arrangement.
4. The CAR shall not provide a subgrant to itself or another component of its own unit of government or organization.
5. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principal. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30%, provided that the total amount of the principal forgiven for that loan shall not exceed \$200,000. Eligible entities and nonprofit organizations described in Section II.B.1. are eligible for discounted loans. **Private, for-profit entities are not eligible for discounted loans.** In addition to these terms, a discounted loan shall not be used in combination with a subgrant at the same site.
6. The CAR shall not loan or subgrant funds that will be used to pay for cleanup activities at a site for which a borrower or subgrantee is potentially liable under CERCLA § 107. The CAR may rely on its own investigation which can include an opinion from the borrower’s or subgrantee’s counsel. However, the CAR must advise the borrower or subgrantee that the investigation and/or opinion of its subgrantee counsel is not binding on the Federal Government.
7. For approved eligible petroleum-contaminated brownfield sites, the borrower or subgrantee cleaning up the site must not be potentially liable for cleaning up the site. For brownfield grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleum-product at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.
8. The CAR shall maintain sufficient documentation supporting and demonstrating the eligibility of the sites, borrowers, and subgrantees.

9. A borrower or subgrantee must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant. The CAR, in consultation with EPA, must consider this history in its analysis of the borrower or subgrantee as a cleanup and business risk.
10. An entity that is currently suspended, debarred, or otherwise declared ineligible cannot be a borrower or subgrantee.

C. Obligations for CARs, Borrowers, or Subgrantees

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

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

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

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

Notwithstanding the CAR's, borrower's, and subgrantee's continuing obligations under this agreement, the CAR, borrower, and subgrantee are subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain liability protection. These obligations are found at §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

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

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Sufficient Progress

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

B. Substantial Involvement

1. EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
 - a. Substantial involvement by EPA generally includes administrative activities by the EPA Project Officer such as monitoring, reviewing, and approving of procedures for borrower and subgrantee selection, reviewing of project phases, and approving substantive terms included in professional services contracts. EPA will not direct or recommend that the CAR enter into a loan, subgrant, or contract with a particular entity.
 - b. Substantial EPA involvement includes brownfield property-specific funding determinations described in [Section II.A](#). The CAR may request technical assistance from EPA to determine if sites qualify as brownfield sites and to determine whether the statutory prohibition found in CERCLA § 104(k)(5)(B)(i)(IV) applies. This prohibition does not allow a CAR, borrower, or subgrantee to use cooperative agreement funds to clean up a site if the CAR, borrower, or subgrantee is potentially liable under CERCLA § 107.
 - c. Substantial EPA involvement may include reviewing financial and environmental status reports and monitoring all reporting, record-keeping, and other program requirements.
 - d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subgrants.
 - e. EPA may waive any of the provisions in [Section III.B.1.](#), except for property-specific funding determinations, at its own initiative or upon request by the CAR. The EPA Project Officer will provide waivers in writing.
2. Effects of EPA's substantial involvement include:
 - a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or

any federal statute.

- b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable federal and state laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with the EPA Project Officer and the State.
- c. The CAR remains responsible for ensuring costs are allowable under 2 CFR Part 200, Subpart E.

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR is responsible for establishing an RLF team that will implement the program and assign a Program Manager for coordinating the team's activities as outlined below.
2. The CAR must acquire the services of a Qualified Environmental Professional(s) as defined in 40 CFR § 312.10 to coordinate, direct, and oversee the brownfield site cleanup activities at a given site, if it does not have such a professional on staff.
3. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subgrant program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager must be consistent with 2 CFR Parts 200 and 1500 and [EPA's Subaward Policy](#). Additional information is available in EPA's [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#).
4. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel must review all loan/subgrant agreements prior to execution unless the EPA Project Officer waives this requirement.
5. The CAR is responsible for ensuring that borrowers and subgrantees comply with the terms of their agreements with the CAR, and that agreements between the CAR and borrowers and subgrantees are consistent with the terms and conditions of this agreement.
6. When the CAR makes loans and subgrants under this agreement, they become a pass-through entity for the purposes of the subrecipient oversight and management requirements of [2 CFR §§ 200.330 through 200.332](#). Requirements for oversight and management of subgrantees are supplemented in EPA's National Term and Condition for Subawards which is included in the General Terms and Conditions of this Cooperative Agreement.
7. The following requirements apply when a pass-through entity (CAR) makes loans. These requirements apply to loans and borrowers in lieu of those specified in EPA's National Term and Condition for Subawards.
 - a. Pass-through entities must establish and follow a system that ensures all loan agreements are in writing and contain all of the elements required by [2 CFR § 200.331\(a\)](#) with the exception of the indirect cost provision of 2 CFR § 200.331(a)(4). EPA has developed an optional template for subaward agreements that is available in [Appendix D of EPA's Subaward Policy](#) which may also be used for loan agreements.
 - b. Borrowers must comply with the internal control requirements specified at [2 CFR § 200.303](#) and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The pass-through entity (CAR) must include a condition in all loans that requires borrowers to comply with this requirement. No other provisions of the Uniform Grant Guidance, including the Procurement Standards, apply directly to borrowers.
 - c. Prior to making loans or subgrants, the pass-through entity (CAR) must ensure that each borrower or subgrantee has a "unique entity identifier." This identifier is required for registering in the [System for Award Management](#) (SAM) and by [2 CFR Part 25](#) and [2 CFR § 200.331\(a\)\(1\)](#). The unique entity identifier currently is the entity's Data Universal Numbering System (DUNS) number. Information on

obtaining a DUNS number and registering in SAM is available in the General Condition of the pass-through entity's (CAR's) agreement with EPA entitled "Central Contractor Registration/System for Award Management and Universal Identifier Requirements" T&C of the pass-through entity's (CAR's) agreement with EPA.

- d. The pass-through entity (CAR) must ensure that the terms of all loan agreements and subgrants require that borrowers and subgrantees comply with [2 CFR Part 170, Reporting Subaward and Executive Compensation](#) under Federal Funding Accountability and Transparency Act (FFATA) set forth in the General Condition of the pass-through entity's (CAR's) agreement with EPA entitled "Reporting Subawards and Executive Compensation."
- e. In addition to other prudent lending practices described, in [Section VI.](#), pass-through entities (CARs) must establish and follow a system for evaluating borrowers risks of noncompliance with federal statutes, regulations, and the terms and conditions of the loan agreement as required by [2 CFR § 200.331\(b\)](#) and document the evaluation. Risk factors may include:
 - i. Prior experience with same or similar loans;
 - ii. Results of previous audits;
 - iii. Whether the borrower has new or substantially changed personnel or systems; and
 - iv. Extent and results, if any, of federal awarding agency or the pass-through entity's monitoring of the borrower.
- f. Pass-through entities (CARs) must establish and follow a process for deciding whether to impose additional requirements on borrowers based on risk factors as required by [2 CFR § 200.331\(c\)](#). Examples of additional requirements authorized by [2 CFR § 200.207](#) include:
 - i. Only disbursing funds to the borrower under the "actual expense" method after obtaining detailed cost accounting records;
 - ii. Withholding authority to proceed to the next phase of the loan funded project until receipt of evidence of acceptable performance within a given period of performance;
 - iii. Requiring additional, more detailed financial reports;
 - iv. Requiring additional project monitoring;
 - v. Requiring the borrower to obtain technical or management assistance; and
 - vi. Establishing additional prior approvals.
 - vii. Pass-through entities (CARs) must establish and follow a system for monitoring borrower performance that includes the elements required by [2 CFR § 200.331\(d\)](#) and report the results of the monitoring in performance reports as provided in the reporting terms and conditions of this agreement.
 - viii. Pass-through entities (CARs) must establish and follow written procedures under [2 CFR § 200.302\(b\)\(7\)](#) for determining that loan costs are allowable in accordance with [2 CFR Part 200, Subpart E](#) and the terms and conditions of this award. These procedures may provide for allowability determinations on a pre-award basis, through ongoing monitoring of costs that borrowers incur, or a combination of both approaches provided the pass-through entity (CAR) documents its determinations.
- i. Pass-through entities (CARs) must establish and maintain a system under [2 CFR § 200.331\(d\)\(3\)](#) and [2 CFR § 200.521\(c\)](#) for issuing management decisions for Federal or Single Audits of loans that make findings relating to this award. However, the CAR remains accountable to EPA for ensuring that unallowable loan costs initially paid by EPA are reimbursed or mitigated through offset with allowable costs whether the recipient recovers those costs from the borrower or not.

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

designed and implemented.

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

If the recipient's connections as defined above do not go through the Environmental Information Exchange Network or EPA's Central Data Exchange, the recipient agrees to contact the EPA Project Officer (PO) no later than 90 days after the date of this award and work with the designated Regional/ Headquarters Information Security Officer to ensure that the connections meet EPA security requirements, including entering into Interconnection Service Agreements as appropriate. This condition does not apply to manual entry of data by the recipient into systems operated and used by EPA's regulatory programs for the submission of reporting and/or compliance data.
 - b. The recipient agrees that any subawards it makes under this agreement will require the subrecipient to comply with the requirements in Cybersecurity Section a. above if the subrecipient's network or information system is connected to EPA networks to transfer data to the Agency using systems other than the Environmental Information Exchange Network or EPA's Central Data Exchange. The recipient will be in compliance with this condition: by including this requirement in subaward agreements; and during subrecipient monitoring deemed necessary by the recipient under 2 CFR § 200.331(d), by inquiring whether the subrecipient has contacted the EPA Project Officer. Nothing in this condition requires the recipient to contact the EPA Project Officer on behalf of a subrecipient or to be involved in the negotiation of an Interconnection Service Agreement between the subrecipient and EPA.
10. All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

D. Quarterly Progress Reports

1. In accordance with EPA regulations 2 CFR Parts 200 and 1500 (specifically, § 200.328, *Monitoring and Reporting Program Performance*), the CAR agrees to submit quarterly progress reports, also known as quarterly performance 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, including the required cost share, and related activities completed with other sources of leveraged funding.
 - b. A summary and status of approved activities performed during the reporting quarter; a summary of the performance outputs/outcomes achieved during the reporting quarter; and a description of problems encountered during the reporting quarter that may affect the project schedule.
 - c. An update on project schedules and milestones, including an explanation of any discrepancies from the EPA-approved workplan.
 - d. A list of the loans and/or subgrants during the reporting quarter.
 - e. A budget summary table with the following information: current approved project budget; EPA funds drawn down during the reporting quarter; costs drawn down to date (cumulative expenditures); cost share contributions; program income generated and used; and total remaining funds. The CAR should include an explanation of any discrepancies in the budget from the EPA-approved workplan, of cost overruns or high unit costs, and other pertinent information.

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

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

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., loan signed, clean up started) and any final accomplishments (i.e., clean up completed, contaminants removed, institutional controls, engineering controls) by completing and submitting relevant portions of the Property Profile Form using the Assessment, Cleanup and Redevelopment Exchange System (ACRES). The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or within 30 days after the end of each reporting quarter. The CAR must enter any new data into ACRES prior to

submitting the quarterly progress report to the EPA Project Officer. The CAR must utilize ACRES unless approval is obtained from the EPA Project Officer to utilize the hardcopy version of the Property Profile Form.

F. Final Technical Cooperative Agreement Report with Environmental Results

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

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

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

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

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

1. To the extent allowable under the EPA-approved workplan, the CAR may use cooperative agreement funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include activities described in [Section V](#) of these Terms and Conditions. In addition, eligible programmatic expenses may include:
 - a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k).
 - b. Ensuring that an RLF cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
 - c. Limited site characterization to confirm the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.
 - d. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.
 - e. Ensuring that public participation requirements are met. This includes preparing a Community Relations Plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to

comments.

- f. Establishing an Administrative Record for each site.
 - g. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR § 1500.11. The specific requirement for a QAPP is outlined in [Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance](#) . h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable federal and state environmental requirements.
 - i. Ensuring that the site is secure if a borrower or subgrantee is unable or unwilling to complete a brownfield site cleanup.
 - j. Using a portion of a loan or subgrant to purchase environmental insurance for the site. The loan or subgrant shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under [Section IV, Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees](#) .
 - k. Any other eligible programmatic costs, including costs incurred by the recipient in making and managing a loan or subgrant; obtaining RLF fund manager services; quarterly reporting to EPA including preparation of Property Profiles; awarding, managing and monitoring loans and subgrants as required by the terms of this agreement implementing 2 CFR § 200.331; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrantees.
 - l. Borrower and subgrantee progress reporting to the CAR is an eligible programmatic cost.
2. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers, or subgrantees at brownfield sites.
 3. At least 50% of the funds EPA awards directly to the CAR and the associated cost share must be used by the CAR to provide loans for the cleanup of eligible brownfield sites and associated eligible programmatic costs. The remaining EPA funding and associated cost share may be used for eligible programmatic costs, including issuing and managing subgrants to clean up eligible brownfield sites. (Note: cleanup subgrants are limited to \$350,000 per site. The CAR may request a waiver of the \$350,000 subgrant limit by consulting with the EPA Project Officer for the waiver process.)
 4. To determine whether a cleanup subgrant is appropriate, the CAR must consider the following as required by CERCLA § 104(k)(3)(B)(c):
 - a. The extent to which the subgrant will facilitate the creation of, preservation of, or addition to a park, greenway, undeveloped property, recreational property, or other property used for nonprofit purposes;
 - b. The extent to which the subgrant will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;
 - c. The extent to which the subgrant will facilitate the use or reuse of existing infrastructure; and
 - d. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

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

5. **Local Governments Only.** No more than 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for Brownfield Program development and implementation of monitoring health conditions and institutional controls. The health monitoring activities must be associated with brownfield sites at which at least a Phase II environmental site assessment is conducted, and the assessment indicates that the sites are contaminated with hazardous substances. The CAR must maintain records on funds that will be used to carry out this task to ensure compliance

with this requirement

6. If the CAR makes a subgrant to a local government that includes an amount (not to exceed 10% of the subgrant) for Brownfields Program development and implementation, the terms and conditions of that agreement must include a provision that ensures that the local government subgrantee maintains records adequate to ensure compliance with the limits on the amount of subgrant funds that may be expended for this purpose.
7. Under CERCLA § 104(k)(5)(E), CARs and subgrantees may use up to 5% of the amount of federal funding for this cooperative agreement for administrative costs, including indirect costs under 2 CFR § 200.414. The limit on administrative costs for the CAR under this agreement is \$40,000. The total amount of indirect costs and any direct costs for cooperative agreement administration by the CAR paid for by EPA under the cooperative agreement, or used to meet the recipient's cost share, shall not exceed this amount. Subgrantees and borrowers may use up to 5% of the amount of Federal funds in their subawards for administrative costs. As required by 2 CFR § 200.403(d), the CAR and subgrantees must classify administrative costs as direct or indirect consistently and shall not classify the same types of costs in both categories. [Note, borrowers cannot charge indirect costs.]
The term "administrative costs" does not include:
 - a. Investigation and identification of the extent of contamination of a brownfield site;
 - b. design and performance of a response action; or
 - c. monitoring of a natural resource.

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

- a. Costs incurred to comply with the following provisions of the *Uniform Administrative Requirements for Cost Principles and Audit Requirements for Federal Awards* at 2 CFR Parts 200 and 1500 other than those identified as programmatic.
 - i. Record-keeping associated with equipment purchases required under 2 CFR § 200.313;
 - ii. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR § 200.308;
 - iii. Maintaining and operating financial management systems required under 2 CFR § 200.302;
 - iv. Preparing payment requests and handling payments under 2 CFR § 200.305;
 - v. Financial reporting under 2 CFR § 200.327;
 - vi. Non-federal audits required under 2 CFR Part 200, Subpart F; and
 - vii. Closeout under 2 CFR § 200.343 with the exception of preparing the recipient's final performance report. Costs for preparing this report are programmatic and are not subject to the 5% limitation on direct administrative costs.
- b. Pre-award costs for preparation of the proposal and application for this cooperative agreement (including the final workplan) or applications for subgrants are not allowable as direct costs but may be included in the CAR's or subrecipient's indirect cost pool to the extent authorized by 2 CFR § 200.460.
- c. Borrowers may use up to 5% of the amount of the Federal funds in the loan for loan administration costs. Eligible administrative costs for borrowers include direct costs for:
 - i. Salaries, benefits and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel) but only to the extent to which these persons activities support the cleanup and subsequent re-use of the site;
 - ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and
 - iii. Supplies and equipment not used directly for cleanup at the site.

- d. Eligible direct costs for loan administration include expenses for:
 - i. Preparing revisions and changes in the budget, workplans, and other documents required under the loan agreement;
 - ii. Maintaining and operating financial management and personnel systems;
 - iii. Preparing payment requests and handling payments; and
 - iv. Audits including non-federal audits required under 2 CFR Part 200, Subpart F.
- e. Borrowers shall not use loan funds for indirect costs even if the borrower has an indirect cost rate approved by a cognizant Federal agency.

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

1. Cooperative agreement funds shall not be used by the CAR, borrower and/or subgrantee for any of the following activities:
 - a. Environmental assessment activities, including Phase I and Phase II Environmental Site Assessments;
 - b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;
 - c. Construction, demolition, and site development activities that are not cleanup actions (e.g., marketing of property, construction of a new facility, or addressing public or private drinking water supplies that have deteriorated through ordinary use);
 - d. Job training activities unrelated to performing a specific cleanup at a site covered by a loan or subgrant;
 - e. To pay for a penalty or fine;
 - f. To pay a federal cost share requirement (e.g., a cost share required by another federal grant) unless there is specific statutory authority;
 - g. To pay for a response cost at a brownfield site for which the CAR or recipient of the subgrant or loan is potentially liable under CERCLA § 107;
 - h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and
 - i. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR 200, Subpart E.
2. Cooperative agreement funds shall not be used for any of the following properties:
 - a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
 - b. Facilities subject to unilateral administrative orders, court orders, and administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
 - c. Facilities that are subject to the jurisdiction, custody, or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
 - d. A site excluded from the definition of a brownfield site for which EPA has not made a property-specific funding determination.

D. Use of Program Income – During the Performance Period

1. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and

loan-related charges received from borrowers and other income generated from
including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.

2. In accordance with 2 CFR § 200.307 and 2 CFR § 1500.7, during the performance period of the cooperative agreement the CAR is authorized to add program income to the funds awarded by EPA and use the program income under the same terms and conditions of this agreement unless otherwise specified (e.g. [Section IV](#), regarding use of 50% of the funds for loans). CARs that intend to use program income for cost share under 2 CFR § 200.307(e)(3) must obtain prior approval from EPA's Grant Management Officer or Award Official unless the cost share method for using program income was approved at time of award. Note that repayments of principal for loans made all or in part with cooperative agreement funds shall not be used for cost share. These repayments of principal must be returned to the CAR's Brownfields Revolving Loan Fund.
3. In accordance with 2 CFR § 1500.7(c), to continue the mission of the Brownfields Revolving Loan Fund, recipients may use cooperative agreement funding prior to using program income funds generated by the revolving loan fund.
4. Removed (not applicable)
5. The CAR that elects to use program income to cover all or part of an RLF's programmatic costs shall maintain adequate accounting records and source documentation to substantiate the amount and percent of program income expended for eligible RLF programmatic costs, and comply with OMB cost principles at 2 CFR Part 200, Subpart E when charging costs against program income. For any cost determined by 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.
6. 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.
7. The CAR must obtain EPA approval of the substantive terms of loans and subgrants made entirely with program income unless this requirement is waived by the EPA Project Officer.

E. Interest-Bearing Accounts

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

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

1. As provided at 2 CFR § 200.307(f) and 2 CFR § 1500.7(c) after the end of the award period, the CAR may keep and use program income at the end of the cooperative agreement (retained program income) and use program income earned after the award period (post-closeout program income) in accordance with the following Closeout Agreement unless the CAR and EPA's Award Official or Grants Management Officer agree to modify the terms.
2. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through

defaults of loans

3. CAR must deposit program income into an interest-bearing account. Interest earned on program income is considered additional program income.
4. CARs shall use program income to continue to operate the revolving loan fund or for some other brownfield purpose as outlined in the terms of this Closeout Agreement.
5. In accordance with 2 CFR § 200.333(e), the CAR shall maintain appropriate records to document compliance with the requirements of the Closeout Agreement (i.e., records relating to the use of accrued and post-award program income) for a three-year period following the end of the Closeout Agreement; unless one of the conditions specified in the regulation applies. EPA may request access to these records to verify that retained and post-closeout program income has been used in accordance with the terms and conditions of this Closeout Agreement.
6. EPA prefers the primary use of retained and post-closeout program income be for providing loans for Brownfields cleanups. In addition to Brownfield cleanup loans, program income may be used to fund the following brownfield activities:
 - a. Cleanup subgrants to eligible entities (other than the CAR itself) and nonprofit organizations for allowable activities as described in the terms of the cooperative agreement;
 - b. Phase I Environmental Site Assessments at brownfield sites performed in accordance with EPA All Appropriate Inquiries Final Rule or ASTM E1527-13 (or the most current version);
 - c. Phase II Environmental Site Assessments and cleanup planning activities at brownfield sites;
 - d. Planning for the assessment, cleanup and re-use of brownfield sites; and
 - e. Programmatic costs to manage and oversee the work being performed.
7. The CAR must ensure that program income is used on a property that is a brownfield site as defined at CERCLA § 101(39) and in accordance with [Section IV.C.](#), *Ineligible Uses of the funds for the CAR, Borrower, and/or Subgrantees* in the CAR's cooperative agreement with EPA, unless otherwise noted as an eligible use of post-closeout program income in the terms and conditions of this Closeout Agreement.
8. All assessment and cleanup work funded with program income must continue to be performed in accordance with state or tribal environmental rules and regulations and be protective of human health and the environment. If the CAR chooses not to have borrowers or subgrantees conduct assessments or cleanups through State or Tribal response program, then the CAR is required to consult with EPA to ensure the proposed assessment/cleanup is protective of human health and the environment.
9. All brownfield sites that will be using the program income must be located within jurisdiction of the CAR as described in the scope of work for this cooperative agreement.
10. Retained and post-closeout program income shall not be used for site inventory work.
11. When possible, the CAR must continue to perform community involvement activities to solicit input from local communities, these outreach activities may take place with potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, regarding the need for site-specific assessments, loans and subgrants.
12. Program income shall not be used to assess or clean up a site at which the CAR, the borrower, or the subrecipient is potentially liable under CERCLA § 107 unless they qualify for a limitation or defense to liability under CERCLA. The CAR and borrower or subrecipient must make and retain a certification to that effect as part of the records for this Closeout Agreement. If asserting a limitation or defense to liability, the borrower or subrecipient must state the basis for that assertion. When using program income for petroleum-contaminated brownfield sites, the CAR, borrower or subrecipient shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the

site and retain a certification to that effect as part of the records for this Closeout Agreement. The CAR may consult with EPA for assistance with this matter.

13. The CAR shall submit Annual Reports for the first five (5) years following the effective date of this Closeout Agreement, and thereafter, the CAR shall submit a report once every five years until there is no program income. The effective date of the Closeout Agreement is defined as the day after the cooperative agreement is closed. The annual reports/five-year report(s) shall include the following information:
 - a. A cover page indicating the CAR's organization, cooperative agreement number, annual report number (i.e., 1, 2 or 3), dates for the reporting period, persons/organizations preparing and submitting the report, and the date of the report submission.
 - b. A summary of the activities conducted during the reporting period, a list of reports and documents generated during the reporting period, and a budget summary table reflecting the expenses incurred and program income received.
 - c. Site data consistent with information requested in current Property Profile Forms as required by the [Section III.E., Property Profile Submission](#), of the cooperative agreement or a list of sites created and/or updated in the ACRES database.
14. The CAR must maintain adequate accounting records for how retained and post-closeout program income is managed and spent as well as all other appropriate records and documents related to the activities conducted using retained and post-closeout program income.
15. Termination of this Closeout Agreement occurs when no program income remains to be disbursed and all loans have been repaid, the recipient decides to discontinue carrying out the activities and requests termination of the Closeout Agreement; or EPA determines that the CAR is not effectively deploying the program income.
 - a. No remaining program income or future loan repayments. The CAR shall notify EPA's Grants Management Officer in writing when this occurs and certify that all funds have been expended in accordance with the terms and conditions of this Closeout Agreement. The notification must provide a final report regarding the relevant cooperative agreement information in the format specified in item 13. above. EPA has 90 days from receipt of this notification to submit any objections to the termination of this Closeout Agreement. If EPA does not object within that time period, then this Closeout Agreement will terminate with no further action.
 - b. Discontinuance of the Closeout Agreement. The CAR shall notify EPA's Grants Management Officer and Project Officer in writing that it has decided to discontinue performing the Closeout Agreement. The notification must provide a final report with the relevant cooperative agreement information in the format specified in item 13. above. The CAR must account for and return all program income to EPA in accordance with instructions provided by the EPA's Grants Management Officer. CARs must also describe the status and amounts of principal and interest payments that will take place after the Closeout Agreement is terminated. Unless waived by the Grants Management Officer, the CAR must remit to EPA on a quarterly basis program income earned after the Closeout Agreement has been terminated.
 - c. EPA revocation of the Closeout Agreement. If the recipient holds more than \$500,000 in program income three (3) years after the effective date of this Closeout Agreement EPA may assess whether the CAR has effectively carried out the Closeout Agreement. This assessment will take into account the amount of program income the CAR has disbursed within the three-year period, whether the program income being held is retained program income or post-close out program income, and other factors relevant to ensuring that the recipient deploys program income in a timely manner. EPA may revoke the Closeout Agreement and direct the recipient to return the unused program income to EPA based on this assessment.
16. All records and documents relating to performing the Closeout Agreement must be retained for a period of three (3) years following termination or discontinuation of this Closeout Agreement. Records

and documents relating solely to performing the cooperative agreement prior to close out may be disposed of in accordance with 2 CFR § 200.333.

17. EPA's Award Official or Grants Management Officer and the CAR must agree to any modifications to this Closeout Agreement. Agreed-upon modifications must be in writing. Oral or unilateral modifications shall not be effective or binding.
18. If the CAR expends retained program income in a manner inconsistent with this Closeout Agreement, EPA may take actions authorized under 2 CFR Part 200, *Remedies for Noncompliance*.
19. If any provisions of this Closeout Agreement are invalidated by a court of law, the parties shall remain bound to comply with the provisions of this Closeout Agreement that have not been invalidated.
20. No other federal requirements apply to the use of program income under the terms of this Closeout Agreement.

V. RLF REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR shall prepare an Analysis of Brownfield Cleanup Alternatives (ABCA), or equivalent state Brownfields program document, which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, ability to implement, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options to address potential adverse impacts caused by extreme weather events (e.g., sea level rise, increased frequency and intensity of flooding, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.
2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the CAR shall consult with the EPA Project Officer regarding potential applicability of the National Historic Preservation Act (NHPA) (16 USC § 470) and, if applicable, shall assist EPA in complying with any requirements of the NHPA and implementing regulations.

B. Quality Assurance (QA) Requirements

1. When environmental data are collected as part of the brownfield assessment and cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 2 CFR § 1500.11 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements. Recipients implementing environmental programs within the scope of the assistance agreement must submit to the EPA Project Manager/Officer an approvable Quality Assurance Project Plan (QAPP) at least 60 days prior to the initiating of data collection or data compilation. The 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 shall be prepared in compliance 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 Manager/Officer and Quality Assurance Regional Manager. Additional information on these 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-e-pa-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 Manager/Officer for this award.
3. Individual or generic Quality Assurance Project Plans (QAPPs) for activities within the scope of this agreement must be submitted for EPA approval (or state approval, in accordance with condition no. V.B.3.a. below) prior to the collection of environmental data and samples.
 - a. EPA may request assistance from a state program with the review and approval of QAPPs for non-state EPA CARs. For this to occur, the state program must be authorized through an approved Quality Management Plan (QMP), to review and approve QAPPs in lieu of EPA. Review and approval of non-state EPA brownfield CAR QAPPs by a state program will be limited to those instances where there is mutual agreement among the parties involved (the state, EPA, and the CAR), and the non-State EPA CAR agrees to participate in and follow the guidelines established within the State Response Program. Oversight of the state's QAPP approval process for Brownfields will be part of the Management Systems Review (MSR) process described in EPA Region 7s QMP. All QA documents will be prepared in accordance with current EPA requirements as defined in EPA Requirements for Quality Assurance Project Plans: EPA QA/R-5 (EPA/240/B-01/003, March 2001) and Guidance for Quality Assurance Project Plans: EPA QA/G-5 (EPA/240/R-02/009, December 2002) or their subsequent revision.
 - b. Recipient agrees that no funds may be expended or requested for reimbursement for environmental data generation or use until a Quality Assurance Project Plan (QAPP) is received and approved by the EPA Project Manager/Officer and the Regional Quality Assurance Manager, or the State (in accordance with Section V.B.1., above). Recipient agrees to adhere to the approved QAPP for environmental data generation or use under this agreement for the environmental data activities to be eligible for reimbursement. Recipient agrees that any significant revisions to the QAPP must be reviewed and approved by the EPA Project Manager/Officer and Regional Quality Assurance Manager or State (if appropriate) before implementation.

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. All RLF loan and subgrant cleanup activities require a site-specific Community Relations Plan that includes providing reasonable notice, and the opportunity for public involvement and comment on the proposed cleanup options under consideration for the site.
2. The CAR agrees to clearly reference EPA investments in the project during all phases of community outreach outlined in the EPA-approved workplan which may include the development of any post-project summary or success materials that highlight achievements to which this project contributed.
 - a. If any documents, fact sheets, and/or web materials are developed as part of this cooperative agreement, then they shall include the following statement: **"Though this project has been funded, wholly or in part, by EPA, the contents of this document do not necessarily reflect the views and policies of EPA."**
 - b. If a sign is developed as part of a project funded by this cooperative agreement, then the sign

shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at

<https://www.epa.gov/grants/epa-logo-seal-specifications-signage-produced-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.

D. Administrative Record

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

E. Implementation of RLF Cleanup Activities

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

F. Completion of RLF Cleanup Activities

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

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subgranting Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet long-term brownfield cleanup lending/subgranting objectives. These include establishing: underwriting principles that can include the establishment of interest rates, repayment terms, fee structure, and collateral requirements; and, lending/subgranting practices that can include loan/subgrant processing, documentation, approval, servicing, administrative procedures, collection, and recovery actions.

2. The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subgrants and lending/subgranting practices. These activities shall include, but not be limited to the following:
 - a. Considering awarding subgrants on a competitive basis. If the CAR decides not to award any such subgrants competitively, it must document the basis for that decision and inform the EPA Project Officer in the first quarterly performance report. The CAR must inform the EPA Project Officer if the CAR subsequently decides to award subgrants competitively in the quarterly performance report immediately following the decision.
 - b. Establishing appropriate project selection criteria consistent with federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.
 - c. Establishing threshold eligibility requirements whereby only eligible borrowers or subgrantees receive RLF financing.
 - d. Developing a formal protocol for potential borrowers or subgrantees to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects that will be funded, how loan monies will be used, and qualifications of the borrower or subgrantee to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subgrantees for an explanation of how a project, if selected, would be consistent with RLF program objectives, statutory requirements and limitations, and protect human health and the environment.
 - e. Requiring that borrowers or subgrantees submit information describing the borrower's or subgrantee's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subgrant recipient as a cleanup and business risk.
 - f. Establishing procedures for handling the day-to-day management and processing of loans and repayments.
 - g. Establishing standardized procedures for the disbursement of funds to the borrower or subgrantee.

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

1. All loans and subgrants must include the information required by 2 CFR § 200.331(a). EPA has developed an optional template to use in creating this agreement that is available on EPA's [Subaward Policy](#) internet page. EPA does not require CARs to use the template.
2. The CAR shall ensure that the borrower or subgrantee meets the cleanup and other program requirements of the RLF cooperative agreement by including the following special terms and conditions in RLF loan agreements and subgrants:
 - a. Borrowers or subgrantees shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable federal and state laws and regulations. (See [Section I.A.2.](#) and [Section II.](#))
 - b. Borrowers or subgrantees shall ensure that the cleanup protects human health and the environment.
 - c. Borrowers or subgrantees shall document how funds are used.
 - d. Borrowers or subgrantees shall maintain records for a minimum of three (3) years following completion of the cleanup financed all or in part with RLF funds unless one of the conditions described at [2 CFR § 200.333](#) is present. Borrowers or subgrantees shall obtain written approval from the CAR prior to disposing of records. CARs shall also require that the borrower or subgrantee provide access to records relating to loans and subgrants supported with RLF funds to authorized representatives of the federal government. As stated in [Section IV.F](#), records related to the closeout agreement must be retained by the CAR for the duration of the closeout agreement and retained for a period of three (3) years following termination or

discontinuation of this Closeout Agreement

- e. Borrowers or subgrantees shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site subject to the loan or subgrant.
- f. Borrowers or subgrantees shall certify that they are not potentially liable under CERCLA § 107 for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subgrantee must state the basis for that assertion. When using cooperative agreement funds for petroleum-contaminated brownfield sites, borrowers or subgrantees shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. The CAR may consult with EPA for assistance with this matter.
- g. Borrowers or subgrantees shall conduct cleanup activities as required by the CAR.
- h. Subgrantees, other than borrowers, shall comply with all applicable EPA assistance regulations (2 CFR Parts 200 and 1500). All procurements conducted with subgrant funds, but not loans, must comply with Procurement Standards of 2 CFR §§ 200.317 through 200.326, as applicable.
- i. Borrowers must comply with the internal control requirements specified at 2 CFR § 200.303 and are subject to the 2 CFR Part 200, Subpart F, *Audit Requirements*. The CAR must oversee and manage loans as required by 2 CFR §§ 200.330 through 200.332. No other provisions of the Uniform Grant Guidance apply directly to borrowers.
- j. A term and condition or other legally binding provision shall be included in all loans and subgrants entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that borrowers and subgrantees comply with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include 2 CFR Parts 200 and 1500.
- k. EPA provides general information on statutes, regulations and Executive Orders that apply to EPA grants on the [Grants internet site](#) at www.epa.gov/grants. Many federal requirements are agreement or program specific and EPA encourages CARs to review the terms of their cooperative agreement carefully and consult with their EPA Project Officer for advice if necessary.

C. Default

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

VII. DISBURSEMENT, PAYMENT, AND CLOSEOUT

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

A. Methods of Disbursement

1. The CAR may choose to disburse funds to the borrower or subgrantee by means of 'actual expense' or 'schedule.' If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower's or subgrantee's incurred costs.
 - a. An 'actual expense' disbursement approach requires the borrower or subgrantee to submit documentation of the borrower's or subgrantee's expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.
 - b. A 'schedule' disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower or subgrantee on the basis of an agreed upon schedule (e.g., progress payments) provided the schedule minimizes the time elapsing between disbursement by the CAR and the borrower or subgrantee's payment of costs incurred in carrying out the loan/subgrant. In unusual circumstances, disbursement may occur upon execution of the loan or subgrant. The CAR shall submit documentation of disbursement schedules to EPA.
 - c. If the disbursement schedule of the loan/subgrant agreement calls for disbursement of the entire amount of the loan/subgrant upon execution, the CAR shall demonstrate to the EPA Project Officer that this method of disbursement is necessary for purposes of cleaning up the site covered by the loan/subgrant. Further, the CAR shall include an appropriate provision in the loan/subgrant agreement which ensures that the borrower/subgrantee uses funds promptly for costs incurred in connection with the cleanup and that interest accumulated on schedule disbursements is applied to the cleanup.

B. Schedule for Closeout

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

C. Compliance with Closeout Schedule

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

D. Final Requirements

1. The CAR must submit the following documentation:
 - a. The Final Technical Cooperative Agreement Report as described in [Section III.F.](#) of these Terms and Conditions.
 - b. Administrative and Financial Reports as described in the Grant-Specific Administrative Terms and Conditions of this agreement.
2. The CAR must ensure that all appropriate data have been entered into ACRES or all hardcopy

Property Profile Forms are submitted to the EPA Project Officer.

E. Recovery of RLF Assets

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

VIII. LEVERAGING

The Recipient agrees to provide the proposed leveraged funding, including any voluntary cost-share contribution or overmatch, that is described in its application narrative dated 12/13/2019. If the proposed leveraging does not materialize during the period of award performance, and the recipient does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future proposals from the recipient. In addition, if the proposed leveraging does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the leveraged funding the recipient described in its proposal, EPA may take action as authorized by 2 CFR Part 180 as applicable

IX. WORK PRODUCT, REPORT AND OTHER REQUIRED SUBMISSIONS

1. Work products and reports provided to EPA in accordance with this agreement shall be submitted in an electronic format acceptable to EPA, unless otherwise approved by the EPA project officer. Current acceptable formats include Microsoft WORD, Microsoft EXCEL or Portable Document (PDF). Work products and reports shall be submitted via email to the EPA Region 7 project officer.
2. In accordance with programmatic condition II.A.1., CAR shall email a site eligibility determination to the EPA Region 7 Project Officer for confirmation of eligibility. The subject of the email shall start with the following: "Site Eligibility Information". The email shall also include "**R7_Brownfields@epa.gov**" as a **cc**.
3. In accordance with programmatic condition "V.B. Quality Assurance (QA) Requirements", CAR shall submit its quality assurance documents and/or documentation of QA oversight by State, if applicable, directly to the EPA Region 7 Project Officer via email. The subject of the email shall start with the following: "**QA Submittal**". The email shall also include **R7_Brownfields@epa.gov** as a **cc**.

X. DAVIS BACON PREVAILING WAGE TERM AND CONDITION FOR HAZARDOUS WASTE CLEANUP ACTIVITIES

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

1. Applicability of the Davis Bacon Prevailing Wage Requirements

For the purposes of this term and condition, EPA has determined that all construction, alteration and

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

2. Obtaining Wage Determinations

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

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

- (b) CARs shall obtain the wage determination for the locality in which a Brownfields cleanup activity subject to DB will take place *prior* to issuing requests for bids, proposals, quotes or other methods for soliciting contracts (solicitation) for activities subject to DB. These wage determinations shall be incorporated into solicitations and any subsequent contracts. Prime contracts must contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.
- (i) While the solicitation remains open, the CAR shall monitor <https://beta.sam.gov/> on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The CAR shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the CAR may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency’s finding to the CAR.
 - (ii) If the CAR does not award the contract within 90 days of the closure of the solicitation, any modifications or determination contained in the solicitation shall be effective unless EPA, at the request of the CAR, obtains an extension of the 90-day period from DOL pursuant to 29 CFR 1.6(c)(3)(iv). The CAR shall monitor <https://beta.sam.gov/> on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.
 - (iii) If the CAR carries out Brownfield cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the CAR shall insert the appropriate DOL wage determination from <https://beta.sam.gov/> into the ordering instrument.
- (c) CARs shall review all subcontracts subject to DB entered into by prime contractors to verify that

the prime contractor has required its subcontractors to include the applicable wage determinations.

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

3. Contract and Subcontract Provisions

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

(1) Minimum wages.

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

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

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

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

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

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

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

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

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

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

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

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

(2) Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and

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

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

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

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

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

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

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

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

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

(4) Apprentices and Trainees

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

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be

paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract

work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

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

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

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

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

5. Compliance Verification

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

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

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

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

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

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

X. DAVIS BACON PREVAILING WAGE TERM AND CONDITION FOR PETROLEUM CLEANUP ACTIVITIES

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

1. Applicability of the Davis Bacon Prevailing Wage Requirements

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

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

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

presents uncertainties regarding DB applicability, the CAR must discuss the situation with EPA before authorizing work on that site.

2. Obtaining Wage Determinations

- (a) Unless otherwise instructed by EPA on a project specific basis, the CAR shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. CARs must obtain wage determinations for specific localities at <https://beta.sam.gov/>.
- (i) When soliciting competitive contracts, awarding new contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments) for installing piping to connect households or businesses to public water systems or replacing public water system supply well(s) and associated piping, including soil excavation/replacement, the CARs shall use the “Heavy Construction” Classification.
 - (ii) When soliciting competitive contracts, awarding new contracts, or issuing ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at current or former service station sites, hospitals, fire stations, industrial or freight terminal facilities, or other sites that are associated with a facility that is not used solely for the underground storage of fuel or other contaminant the CAR shall use the “Building Construction” classification.
 - (iii) When soliciting competitive contracts, awarding new contracts or issuing ordering instruments for soil excavation/replacement, tank removal, and restoring the area by paving or pouring concrete when the soil excavation/replacement occurs in conjunction with both tank removal and paving or concrete replacement at a facility that is used solely for the underground storage of fuel or other contaminant the CAR shall use the “Heavy Construction” classification.

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

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

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

work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the CAR shall insert the appropriate DOL wage determination from <https://beta.sam.gov/> into the ordering instrument.

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

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

3. Contract and Subcontract Provisions

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

(1) Minimum wages.

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

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

(ii)(A) The CAR, on behalf of EPA, shall require that contracts and subcontracts entered into under this agreement provide that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The EPA Award Official shall

approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

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

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

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

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

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

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

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

guarantee of funds until such violations have ceased.

(2) Payrolls and basic records.

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

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

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

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

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

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

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

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

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

(4) Apprentices and Trainees

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

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

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

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

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

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

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

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

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

(10) Certification of eligibility.

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

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

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

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

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

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

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

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

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

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

5. Compliance Verification

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

CAR must use Standard Form 1445 or equivalent documentation to memorialize the interviews. Copies of the SF 1445 are available from EPA on request.

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

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

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

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

ATTACHMENT 2

WORK PLAN

**BROWNFIELDS REVOLVING LOAN FUND
COOPERATIVE AGREEMENT
WORK PLAN**

FOR

***THE KANSAS CITY REGIONAL BROWNFIELD COALITION
REVOLVING LOAN FUND (RLF)***

COOPERATIVE AGREEMENT NO. BF-97782201

August 3, 2020

Revision No. 0.0

BUDGET/PROJECT PERIOD

START: 09/01/20

END: 08/30/25

Submitted by

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TABLE OF CONTENTS

1. INTRODUCTION..... 3

1.1 Project Description, Goals and Objectives. 3

1.2 Project Summary..... 5

1.3 Organizational Structure and Responsibilities..... 10

1.3.1. Cooperative Agreement Recipient (CAR) 12

1.3.2. Fund Manager 14

1.3.3. Qualified Environmental Professional 15

1.4 Project Outputs and Outcomes..... 15

2. PROJECT TASK DESCRIPTIONS 17

2.1. Task 1 - Program Management..... 17

2.2. Task 2 - RLF Operations 18

2.3 TASK 3 - Cleanups & Reuse Plans 19

3. SCHEDULE AND DELIVERABLES..... 20

3.1 Programmatic Reporting..... 21

3.1.1. Programmatic Performance Reports 21

3.2 Site-Specific Accomplishments: Property Profile Form (PPF)/ ACRES Data Entry..... 22

4. BUDGET: 22

4.1 Budget Narrative:..... 23

5. QUALITY ASSURANCE PROJECT PLANS (QAPP)..... 25

1. INTRODUCTION

In December 2019, the City of Kansas City, Missouri (“KCMO”) joined with Jackson County, Missouri (“Jackson County”) and the Unified Government of Wyandotte County/Kansas City, Kansas (“Unified Government”) to form the Kansas City Regional Brownfields Coalition and seek an EPA Brownfields Coalition Revolving Loan Fund Grant. On May 6, 2020, the Coalition was selected to receive an \$800,000 RLF grant. The RLF Cooperative Agreement has a total budget (including a 20% cost share) of \$960,000 in funds available for RLF loans, subgrants and eligible programmatic activities. This Work Plan governs the use of these funds awarded under CERCLA Section 104(k)(3).

1.1 Project Description, Goals and Objectives.

RLF funding will be used to address cleanup needs for projects that will protect the community and the environment from petroleum and hazardous substances, provide affordable housing, create new jobs, increase greenspace and sustainable land use, and spark redevelopment.

This Cooperative Agreement will be administered by KCMO as the Cooperative Agreement Recipient (“CAR”). The Loan Fund will be administered by KCMO with assistance from the EDC Loan Corporation under a separate cooperative agreement with KCMO. The performance period is 5 years. The budget is \$960,000.00, including the required 20% local cost share.

The Kansas City Regional Brownfields Coalition RLF program (“Regional RLF” or “Project”) is a partnership between KCMO, the Unified Government, Jackson County, EPA, the Missouri Department of Natural Resources (“MDNR”), the Kansas Department of Health and the Environment (“KDHE”), Mid-America Regional Council (“MARC”), the Economic Development Corporation of Kansas City, Missouri (“EDCKC”), and many other public and private stakeholders. The Regional RLF will focus on community-based, market-driven projects with solid redevelopment potential and a stable and committed project team working in partnership with the public sector and the community. The Regional RLF will target the priority sites identified in the Regional RLF grant proposal and other projects located in or near Opportunity Zones and mobility corridors within the respective Coalition members’ jurisdictions.

The **Chouteau Courts Priority Site**, located near Downtown at the west end of Independence Ave., contains the site of a former 140 unit public housing complex. Prior to 1958, the site was a deep ravine known as “Belvedere Hollow,” a poor community of improvised housing and cottage industries. The site was razed and filled for construction of an adjacent highway interchange. The fill caused chronic structural problems in the housing units and preliminary assessment has identified elevated levels of lead, arsenic and polycyclic aromatic hydrocarbons (PAHs). The redevelopment of this site is identified as a priority by the Paseo Gateway Community Transformation Plan and a \$30 million HUD Choice Neighborhoods grant in 2015. Located on 15 acres overlooking downtown highways, the site includes Belvedere Park, an isolated and underused amenity. The site has good reuse potential due to its proximity to the Paseo Gateway intersection with Independence Ave. which is anticipated to undergo a \$13 million reconstruction. In fall 2020, a Technical Assistance Panel funded by the Urban Land Institute will create a redevelopment strategy for the project area.

The **Grandview Priority Site**, located at 519 Blue Ridge Boulevard, Grandview, MO, was a commercial concrete mixing and aggregate storage site. An on-site power facility with older transformers may contain PCBs. A fire destroyed a two-story office building that may contain asbestos. The site is a priority for the community because: (1) a portion of it will be used for a critical railroad overpass improvement project that will re-connect an environmental justice community that has been separated by the railroad line; (2) the property is blighted will likely remain idle unless investigated and cleaned up; and (3) it has good reuse potential due to its immediate access to both the railroad and Highway I-49.

The **Northeast Grocery Priority Site** centers on a 0.18 acre property with an approximately 7800 square foot commercial structure located at 1726 Quindaro Blvd., Kansas City, KS. According to local residents, former uses include a furniture store, grocery, and hardware store. Potential contaminants include solvents, stains, paints, pesticides and herbicides in the soil and/or groundwater, and asbestos and lead-based paint in the building. The structure is currently vacant. The site includes Project RALLY, an approximately 0.44 acre urban farm immediately to the west. The project may grow to include many nearby vacant properties owned by Wyandotte County Land Bank. The site is a priority because: 1) it will introduce affordable, healthy foods in a food desert, high-diabetes community, 2) it will help stabilize part of an important and historic commercial corridor and attract infill housing to the surrounding neighborhoods, and 3) the project was identified by residents as one of three early actions in the Northeast Area Master Plan (November 2018).

Efforts will also be made to direct assistance to smaller communities and areas within the regional Coalition that have not had meaningful access to brownfields assistance prior to this grant. These areas include, without limitation, Wyandotte County/Kansas City, KS; City of Independence, MO; Raytown, MO; Grandview, MO; Lee's Summit, MO; and unincorporated portions of Jackson County, MO.

The Regional RLF is designed to complement an EPA Brownfields Coalition Assessment grant awarded to a similar regional coalition concurrently in FY20, led by MARC as the CAR and including KCMO, the Unified Government and Jackson County ("Regional Assessment Grant"). The Regional RLF will also complement an existing Kansas City Brownfields Revolving Loan Fund ("KCMO RLF") funded by a separate RLF grant awarded to KCMO in 2009. Efforts to market services and inform stakeholders in the region will be coordinated and include the Regional Assessment Grant, the Regional RLF and the KCMO RLF programs, as appropriate.

Project Objectives/Goals. The following Goal, Objective and Sub-Objective link this Project to EPA's strategic plan:

Goal 1: A Cleaner, Healthier Environment

Objective 1.3.: Revitalize Land and Prevent Contamination

Program Results Code (PRC): 103D79

Catalog of Federal Domestic Assistance (CFDA): 66.818 Brownfields Assessment and
Cleanup Cooperative Agreements

The Regional RLF will focus on providing assistance to organized projects involving eligible

properties and applicants, on marketing the RLF program, on educating stakeholders about the RLF, and stimulating demand for RLF resources in the communities of the regional coalition.

The following specific goals and objectives are established for this Project:

Objective 1: Aid Quality Projects. The primary objective is to assist eligible, quality brownfield projects with RLF cleanup loans and subgrants to accomplish the following: complete appropriate site cleanup; remove blight and environmental health risks; complete site redevelopment and construction; put site improvements into full operation; create jobs; and otherwise provide significant benefits to affected communities in need.

Objective 2: Stimulate Demand. The second objective is to stimulate demand for Regional RLF funds on the part of eligible applicants and quality projects. This will be accomplished through community involvement, education, and marketing and in-depth assistance to position potential applicants and projects to become eligible for RLF funding and knowledgeable about the RLF process and requirements, particularly in the regional communities that have not had meaningful access to brownfield resources previously.

The following goals are designed to accomplish the Regional RLF program objectives.

Goal 1: Issue commitments for loans and/or subgrants totaling 25% of Project funds within the first 3 years (starting 09/01/20) and commit 50% of funds within 4 years. In addition, drawdown 12% within the first 3 years, 50% within 4 years, and 100% within 5 years.

Goal 2: Initiate one site cleanup within the first 3 years, two site cleanups within 4 years, and three site cleanups within 5 years. In addition, at least two site cleanups will be *completed* within 5 years.

1.2 Project Summary

Capitalization of Loan Fund

The loan fund will be capitalized exclusively through Regional RLF Cooperative Agreement funds awarded by EPA and eligible program income. Cost share funds of 20% will be provided by RLF borrowers and subgrant recipients and included in the Project. Other leveraged resources also may be used to fund RLF eligible and non-eligible cleanup activities or other development activities for brownfield sites, but such funds will not be considered part of RLF program funds. Other local, state and federal resources may include Missouri Brownfields Redevelopment Program remediation tax credits; Federal, Missouri and Kansas historic preservation tax credits; Federal, Missouri and Kansas low-income housing tax credits; Community Development Block Grant (CDBG) or other HUD funds either directly or through Missouri, Kansas or the regional coalition member jurisdictions; any applicable Missouri or Kansas economic development incentive programs; and, local tax increment financing and tax abatement as available within the regional coalition member jurisdictions.

Marketing Strategy

Outreach activities will include informing all stakeholders of the availability of RLF loan funds and targeting potential RLF borrowers with information about loan process and eligibility requirements. The Regional RLF intends to use the following methods:

- Organize public meetings in affected communities, with an effort to reach communities that have previously not had meaningful access to brownfield resources.
- Present workshops on the RLF program.
- Host a roundtable event with leaders in the local private and public finance, private development, and community development sectors to raise awareness of the RLF program and suggest strategies to increase utilization of RLF funds.
- Word of mouth through regional, business and community partners (e.g., Kansas City Area Development Council; Economic Development Corporation of Kansas City, Missouri; Wyandotte County Economic Development Council; Kansas City Industrial Council; Hispanic Economic Development Corporation, etc.)
- Regional Coalition member outreach efforts to key development, community and non-profit organizations within their respective jurisdictions;
- Distribute pamphlets and materials prepared by KCMO.

Eligibility Determinations

Eligibility of borrowers, sites and activities under the Regional RLF will be evaluated by the CAR in an Eligibility Determination document. For each RLF loan or subgrant project, the CAR will submit an Eligibility Determination to EPA for review and approval. After EPA approves an Eligibility Determination, the CAR will begin the application process with the applicant.

Loan Eligibility Criteria

Eligibility criteria for RLF loans conform to applicable terms and conditions of the Cooperative Agreement and EPA rules and guidance regarding eligibility for RLF loans and subgrants. A brownfields site eligible for RLF assistance is defined to be consistent with CERCLA Section 104(k) and applicable guidance, as “real property” the expansion, redevelopment or reuse of which is complicated by the presence or potential presence of hazardous substance, pollutant, or contaminant.

Site eligibility will be confirmed for all sites in accordance with the requirements of the Cooperative Agreement. Site eligibility for petroleum sites will be confirmed through the states of Kansas or Missouri depending on the state in which the site is located, and sites requiring a site-specific determination will be confirmed through EPA Region 7.

The following is a summary of eligibility criteria applicable to RLF Loans. The full eligibility requirements are provided by the Cooperative Agreement terms and conditions. Loans may be made to a public or private entity, including a site owner, developer, or other person that:

- A. is authorized to enter into a loan agreement
- B. (if the owner) on or before the date of acquiring property, carried out “all appropriate inquiries” to meet the definition of an “innocent landowner” or “bona fide prospective purchaser”;

- C. is not using the funds to pay for response costs at a site for which they are potentially liable under section 107 of CERCLA;
- D. is not a federally-suspended or debarred party.

Prudent Lending Practices

In accordance with guidelines developed for the existing Kansas City RLF, the Regional RLF will follow prudent lending and subaward practices. KCMO will procure an experienced community lender/underwriter to perform an independent, basic financial evaluation of each loan. The evaluations will examine each applicant's financial statements, audits, tax returns and other records to determine the relative likelihood that RLF funds will be repaid on-time with interest. The evaluation will also include appropriate collateral requirements, whether the proposed cleanup and reuse project appears financially feasible, and a general recommendation on the loan.

In addition, each applicant must respond to general criteria that evaluate:

- 1) Project Strength (the perceived ability to complete the cleanup and redevelopment project, as measured by leadership, team members, experience, track record, community support, and financial resources);
- 2) Protection of Human Health and Environment (cleanup feasibility, mitigation of significant health risks, environmental justice);
- 3) Public Benefits (job creation, affordable housing, public amenities, healthy foods);
- 4) Financial Need (non-profit or institutional status, or inadequate return on investment);
- 5) Plan Consistency (demonstrated project consistency with current zoning, area plans, special district plans, community plans and will reuse existing infrastructure.)

Application Process

The CAR will advise applicants as to borrower and site eligibility requirements before an application is prepared. The RLF loan application will incorporate information required by the voluntary cleanup program of the state in which the site is located (Missouri Brownfields Voluntary Cleanup Program (BVCP) or Kansas Voluntary Cleanup and Property Redevelopment Program (VCPRP)) and (if applicable) the Missouri Brownfields Redevelopment Program applications and additional information to determine whether site assessment data complies with Cooperative Agreement terms and conditions, and whether the intended development project or site use appears feasible and consistent with Region RLF objectives. These findings will be documented in an Eligibility Determination and provided to EPA Region 7 for review and approval.

If eligible, the CAR will then designate a Fund Manager for the project (either the EDC Loan Corp. or the CAR), designate a Qualified Environmental Professional ("QEP"), and work with the RLF applicant to prepare all required items for processing RLF loans and subgrants and to prepare and implement a Community Involvement Plan. The eligible site will be entered into the voluntary cleanup program or tank oversight program of the state in which it is located. The CAR will work with the prospective borrower, the regional Coalition member in whose jurisdiction the site is located (if other than KCMO), and the affected community to select a

response action consistent with the applicable state voluntary cleanup program requirements and other applicable or relevant and appropriate requirements (ARARs).

The prospective borrower will be assisted in completing a full loan application for consideration by the Kansas City Regional Brownfields Commission (“Regional Brownfields Commission”) and the CAR. The Kansas City Brownfields Initiative (“KCBI”) or similar public forum will provide public input and comment on the proposed RLF assistance, cleanup and reuse project. Upon recommendation of the Regional Brownfields Commission and KCBI, the CAR will consider the loan or subgrant for final approval. If the loan or subgrant amount is above \$100,000, the final RLF loan or subgrant decision will be made by KCMO City Ordinance. For loan applications only, the designated Fund Manager or a loan underwriter hired by the CAR, will perform a financial evaluation of the applicant and proposed loan. The CAR may withhold or withdraw approval of a loan based on the financial evaluation.

Borrower Evaluation

Prospective borrowers will be evaluated by a loan underwriting services firm from a general financial perspective to consider whether loans will be repaid and whether proposed developments appear financially feasible. The underwriter will review business plans, financial statements, audit reports, balance sheets, cash flow, leverage, liquidity, and analyze the borrower’s other assets, revenue and debts to determine repayment ability and advise on collateral requirements. The CAR and the Regional Brownfields Commission, which includes business and development representatives, also will review prospective borrowers to develop an impression of their business track record, project capacity and feasibility of their business plan.

Loan Terms & Conditions

Minimum Amount: \$25,000.00.

Maximum Amount: \$400,000.00 (50% of grant award) AND no more than 75% of RLF loan capital (including program income). Limits may be waived by Regional Brownfields Commission and CAR for good cause.

Term: Terms of no longer than 5 years are encouraged to revolve funds back to the RLF. Maximum term of 10 years. Term limit may be waived by CAR for good cause.

Local Cost-Share: Twenty-eight percent (28%) from non-federal funds provided by the loan recipient. Percentage may change slightly in order to meet the overall 20% cost share requirement for the federal cooperative agreement.

Interest Rate: 3.0% is the program base rate, subject to adjustment for changes in the prime rate. Lower rates may be offered to encourage short-term gap financing or higher rates to accommodate longer terms and amortizations.

Collateral: Personal or other guarantee; trust deed (if sufficient value after taking into account environmental impairments); accounts receivable; other commercial assets.

Except where it may conflict with any applicable term or condition of the EPA Cooperative Agreement, any one or combination of the above term restrictions is subject to waiver if the Regional Brownfields Commission and CAR determine such waiver to be in the public interest and does not put the sustainability of the RLF at undue risk.

All applicable terms and conditions of the EPA Cooperative Agreement, including cross-cutting federal requirements will be incorporated into Loan Agreements, including Davis-Bacon wage thresholds, labor standards, equal employment opportunity, etc. In addition, borrowers will receive technical assistance from KCMO and KCBI on cross cutting legal requirements.

Loan Management

The process of loan origination, servicing and management administered by the EDC Loan Corporation will be similar to that used for its Small Business Administration 504 loans and other loan programs. The loan management procedures are addressed within the Fund Manager cooperative agreement between KCMO and EDC Loan Corporation. Each loan is subject to an annual audit. Loan defaults will be identified by EDC Loan Corporation staff and the CAR will work out defaults with the borrower to minimize the impact on the program.

Subgrant Eligibility

The following is a summary of eligibility criteria applicable to RLF subgrants. The full eligibility requirements are provided by the Cooperative Agreement terms and conditions. Subgrants for cleanup may be provided to governmental organizations (other than the CAR), quasi-governmental organizations, or nonprofit entities, that:

- A. meet the applicable eligibility criteria for RLF Loans (above);
- B. own fee-simple title to the cleanup site property and will retain ownership for the duration of the RLF-funded cleanup;

In deciding whether to award an RLF subgrant, the CAR and its advisory bodies will take into account the following considerations:

- The extent to which the subgrant facilitates creation, preservation or addition to a park or greenspace, undeveloped property, or other property used for nonprofit purposes;
- The extent to which the subgrant meets the needs of a community that lacks the ability to draw on other resources for cleanup and subsequent redevelopment because of the small population or low income of the community;
- The extent to which the subgrant will facilitate reuse of existing infrastructure;

- The benefit of promoting the long-term availability of funds from a brownfields revolving loan fund.
- whether the proposed development appears financially feasible and reasonably likely to succeed, based on the applicant's development track record, project capacity and feasibility of the reuse plan.

Subgrant Terms & Conditions

Maximum Amount: \$160,000 (20% of grant award), or 75% of uncommitted loan capital, whichever is less.

Loan Match: To ensure greater availability of subgrants to more recipients, subgrants will be matched to RLF loans whenever feasible at a ratio of at least \$1 of loans for every \$1 of subgrants.

Cost-Share: Twenty-eight percent (28%) from non-federal funds provided by the loan recipient. Percentage may change slightly in order to meet the overall 20% cost share requirement for the federal cooperative agreement.

Except where it may conflict with any applicable term or condition of the EPA Cooperative Agreement, any one or combination of the above term restrictions is subject to waiver if the CAR determines such waiver to be in the public interest and does not put the sustainability of the RLF at undue risk.

Cooperative Agreement Terms and Conditions; Cross-Cutting federal requirements: All applicable terms and conditions of the EPA Cooperative Agreement, including cross-cutting federal requirements will be incorporated into Loan Agreements, including federal procurement regulations applicable to governmental MBE/WBE requirements, Davis-Bacon wage thresholds, labor standards, equal employment opportunity, etc. In addition, subgrant agreements will incorporate additional Cooperative Agreement terms and conditions specific to subgrants. Recipients will receive technical assistance from KCMO and KCBI on cross-cutting legal requirements.

1.3 Organizational Structure and Responsibilities

This Project will continue the basic organization structure of the existing Kansas City RLF Program. The major project roles are as follows:

Cooperative Agreement Recipient (CAR)

City of Kansas City, Missouri
Department of City Planning and Development
Urban Redevelopment Division
Lead: Director, KCMO Department of City Planning and Development
Program Manager: KCMO Brownfields Coordinator

CAR Advisory Bodies:

1. Regional Brownfields Commission
Lead: Chair, Brownfields Commission
2. Kansas City Brownfields Initiative (KCBI) Steering Committee
Lead: Brownfields Coordinator

For loans, subgrants and agreements in excess of \$100,000:

City Council of the City of Kansas City, Missouri
Lead: Mayor of Kansas City, Missouri

Fund Manager

For Loans (minimum amount = \$25,000):

EDC Loan Corporation for loan servicing and RLF program marketing
Lead: Chief Financial Officer, EDCKC

For RLF subgrants:

City of Kansas City, Missouri
Department of City Planning and Development
Division of Business and Economic Development
Lead: Director, Department of City Planning and Development
Program Manager: Brownfields Coordinator

Qualified Environmental Professional (QEP)

The QEP will oversee the work of environmental contractors hired by KCMO on RLF projects and those hired by RLF borrowers and subgrantees. The QEP will verify compliance with due diligence requirements (All Appropriate Inquiries); site eligibility requirements and prepare determinations for EPA review; Quality Assurance Project Plan requirements; Missouri Voluntary Cleanup Program; Superfund 104(k) requirements; agreement terms and conditions concerning environmental standards and performance. The QEP will oversee KCMO and borrower or subgrantee procurements, contractor work and written deliverables.

In most cases, QEP services will be performed by an independent private environmental services firm selected through a competitive procurement process. If the services of a private QEP contractor are not available, QEP services may also be performed by the following:

Office of Environmental Quality
City Manager's Office, City of Kansas City, Missouri
Lead: Chief Environmental Officer
Program Manager: Chief Environmental Compliance Officer or designated
OEQ environmental staff member.

1.3.1. Cooperative Agreement Recipient (CAR)

KMCO occupies the role of Cooperative Agreement Recipient (CAR). On behalf of KCMO, the Department of City Planning & Development (Department) and the Department Director personally, is responsible for overall management of this grant. The Brownfields Coordinator, a full-time Department employee, carries out the day to day management of the cooperative agreement and overall management duties, except for the management and administration of loans or subgrants and CAR approvals of loans and subgrants. The Coordinator supervises a Development Specialist, another full-time Department employee, who is responsible for programmatic and administrative tasks necessary for the operation of the Regional RLF. The Coordinator is subject to oversight, currently provided by the Department Director. The Department Director is ultimately responsible for CAR actions and provides final oversight and approval of CAR activities, including CAR approval of loans & subgrants, as needed.

1.3.2. Kansas City Regional Brownfields Commission (CAR Advisor)

The CAR relies on two public advisory bodies in the process of approving loans and subgrants. The primary body is the Regional Brownfields Commission. Its role is to review projects seeking RLF loans and subgrants and make recommendations to the CAR whether or not to approve. Its purpose is to develop and implement policies to help finance the cleanup of brownfield properties for redevelopment projects that eliminate blight and environmental threats, create equitable economic opportunities, and benefit impacted and environmental justice communities, while being responsible stewards of our public brownfield resources. The Commission will be a public body created by KCMO ordinance. As currently proposed, the Commission will be a fifteen-member body. The KCMO Mayor will appoints six Kansas City residents to four-year terms representing the areas of development, business, law, environmental consulting, and two from citizen and community groups. The Commission will also include three representatives appointed by the Mayor of the Unified Government and three representatives appointed by the County Executive of Jackson County. Finally, the Commission will include three “ex officio” members: the KCMO Mayor, the MARC Board Chair, and the Kansas City Area Development Council Board Chair. Ex officio members may designate an individual to serve in their place on the Commission. The details of the Commission are subject to the approval of the KCMO City Council.

1.3.3. Kansas City Brownfields Initiative (KCBI) (CAR Advisor)

The Kansas City Brownfields Initiative (KCBI) Steering Committee also reviews projects seeking RLF loans and subgrants and solicits input from a broad range of stakeholders. The KCBI Steering Committee is an unincorporated association of federal and local government, industry, business, and community representatives that has operated since 1997 to provide stakeholder review and input on local brownfield grants and activities.

Commission recommendations and KCBI stakeholder input on loans and subgrants are provided to the Department Director, and the KCMO City Council (if the applicable the loan or subgrant will be in excess of \$100,000). The Department Director (and KCMO City Council) then decide whether or not to approve loans and subgrants on behalf of the CAR. CAR approval of loans and subgrants for projects exclusively in the jurisdictions of the Unified Government or Jackson County shall not be unreasonably withheld. CAR approval of each loan or subgrant application

is necessary, but not sufficient, to issue a loan commitment. Loan applications are also processed as described below. Subgrants applications are processed by the CAR.

CAR responsibilities include the following:

- Loans & Subgrants
 - CAR loan and subgrant application reviews and approvals
 - Management of the Regional Brownfield Commission and KCBI review and recommendations process.
 - Preparing necessary administrative findings of borrower and site eligibility for each loan/subgrant.
 - Performing Fund Manager duties for all subgrants
- Community Involvement
 - Ensuring Community Involvement Plans are developed and implemented for each loan/subgrant, either directly or through the Coalition member in whose jurisdiction the project is located.
 - Ensuring public notice and comment on the Analysis of Brownfield Cleanup Alternatives (ABCA) for each loan/subgrant, either directly or through the Coalition member in whose jurisdiction the project is located.
 - Convening KCBI meetings to review loan and subgrant applications.
 - Establishing administrative record repositories for each loan/subgrant project and informing the public about its location and availability, either directly or through the Coalition member in whose jurisdiction the project is located.
- Cooperative agreement progress reporting
 - Quarterly reports, financial reports, MBE/WBE reports, final report, ACRES reporting
 - Requiring and overseeing sub-recipients' ACRES input for site-specific activities.
 - Managing procurement and oversight of professional services to assist in performing progress reporting duties.
 - Executing the closeout reports.
- Oversight of Fund Manager
 - Management of Contract Agreement with Fund Manager and underwriting services firm.
 - Ensuring Fund Manager compliance with Cooperative Agreement terms, conditions and applicable regulations and guidance regarding loan processing and maintenance.
 - Consulting with Fund Manager on RLF marketing strategy and implementation.
 - Consulting with underwriter on basic financial evaluation and collateral requirements.
- Marketing Program
 - Organize a public workshop
 - Prepare a marketing brochure on the RLF program
 - Advertising availability of RLF funds in local media
 - Creating webpage on RLF program and activities

- Oversight of Qualified Environmental Professional (QEP)
 - Ensuring QEP compliance with Cooperative Agreement terms, conditions and applicable regulations and guidance regarding design, review, and implementation of site remediation activities.

1.3.2. Fund Manager

The EDC Loan Corporation serves as the Fund Manager for RLF loans, but not subgrants. The Fund Manager role and duties for subgrants will be managed by the CAR through the Brownfields Coordinator or Development Specialist with assistance from staff members in the KCMO Finance Department. For RLF loans, the day to day duties of the Fund Manager are performed by the Chief Financial Officer of the EDC, or by the CAR Brownfields Coordinator or Development Specialist. The Fund Manager has the following duties:

- Marketing the RLF program and services.
- Servicing loans, including keeping financial accounts, processing principal and interest payments, loan closeout, identifying and notifying CAR of loan default conditions.
- Ensuring compliance with audit requirements for RLF funds, accounts and loans.

KCMO and EDC Loan Corp. have entered into a cooperative agreement for these Fund Manager duties. The agreement is organized on the following agreed principles:

1. A tiered fee structure will be used for RLF loan origination fees and RLF loan servicing fees that reasonably reflects the actual programmatic costs of loan services EDC Loan Corp. provides for Brownfield RLF loans. The fee structure recoups eligible costs of all services provided by EDC Loan Corp. The fee structure will be levied in tiers, depending upon the value of the loans (Tier 1 : under \$200,000; Tier 2 : over \$200,000; etc.) EDC Loan Corp. will not be Fund Manager for loans under \$100,000.

2. EDC Loan Corp. will manage no more than four (4) RLF loans each year.

3. EDC Loan Corporation will not manage RLF subgrants. These will be administered by KCMO.

A copy of the final Cooperative Agreement between KCMO and EDC Loan Corp. for RLF Fund Manager services is attached to this Work Plan.

In the event that loan servicing is not performed by the EDC, loan servicing will be performed by the CAR through the Brownfields Coordinator or Development Specialist, with assistance from staff members in the KCMO Finance Department.

Fund Manager services are included in the Project Budget under the “Contractual” budget category. In addition, a loan origination fee of 1.5% and an annual loan servicing fee of 0.75% will be collected by the CAR. These fees will be recorded as Project revenues and may be used

to pay unreimbursed Fund Manager services for the loans in lieu of federal grant funds, thereby conserving grant funds for other eligible activities.

1.3.3. Qualified Environmental Professional

The QEP will be one of the following entities assigned by the CAR on a case-by-case basis:

1. Office of Environmental Quality (OEQ)
City Manager's Office, City of Kansas City, Missouri
Lead: Chief Environmental Officer
Program Manager: Chief Environmental Compliance Officer or designated OEQ environmental staff member.
2. Private contractor procured by competitive process

As a general rule, for simple cleanup projects the KCMO Office of Environmental Quality will be assigned as the QEP. For cleanup projects involving more than an ordinary level of agency coordination and more complex cleanup projects, a private contractor will be hired to perform the duties of the QEP. The Brownfields Coordinator will work closely to consult with and oversee the QEP. A private contractor serving as QEP may not bid on RLF contractual or cleanup work in order to avoid conflicts of interest.

QEP duties include:

- Preparing or reviewing ABCAs for feasibility, acceptability, timeliness and cost-effectiveness.
- Ensuring that an appropriate RLF response action is selected.
- Reviewing Quality Assurance Project Plans (QAPPs).
- Developing or reviewing the ABCA Approval Memorandums on a site-specific basis to determine if an RLF appropriate.
- Documenting final selection of an RLF response in decision documents (action memoranda) that explain why the RLF response is authorized, identify the selected action and explain the rationale for selecting the particular response.
- Serving as a liaison to the appropriate state voluntary cleanup or underground storage tank program and assisting with site enrollment.
- Conducting remediation oversight in order to ensure that all environmental cleanup requirements will be met.
- Preparing closeout reports that document the situation, actions taken resources committed and any problems.
- Maintaining records related to approved environmental remediation activities.

1.4 Project Outputs and Outcomes

Project Outputs correspond to the Goals set forth in Section 1.1 above. The Outputs are designed to measure the relative progress in putting RLF funds to work on a number of eligible projects quickly, and increasing stakeholder awareness and knowledge of the RLF program in order to

attract new quality projects and sustain project activity and capacity. Due to the long-term nature of many RLF redevelopments and their impacts in the community, the achievement of Output objectives, and the measurement of Outputs, may occur after the end of the Project performance period.

Output 1: Number Of Loans And/Or Subgrants Issued. A baseline target of four loans/subgrants is set for the Project. The percentage of funds issued as subgrants or incurred as related programmatic expenses will be no more than 50% of the total grant award. This ratio is based upon the maximum allowable subgrant ratio permitted by RLF guidance. RLF applicants seeking subgrants will be strongly encouraged to match subgrant funds with loans to stay within the ratio limits during the Regional RLF grant period.

Output 2: Number Of Site Cleanups Initiated. A baseline target of four site cleanups initiated is set for the Project. The number of site cleanups initiated, rather than completed, is significant because initiation of site cleanup is often the critical milestone in any brownfield project. Once initiated, most cleanups will proceed to completion. Furthermore, data on site cleanups initiated will be available faster than data on completions, thereby aiding in the reporting of project progress and evaluation of project effectiveness.

Output 3: Number Of Site Cleanups Completed. A baseline target of four site cleanups completed is set for the Project. This output will continue to be measured after the project performance period, as necessary, until the target is achieved.

Project Outcomes are guided by the Objectives set forth in Section 1.1 above.

Outcome 1: Value Of New Public And Private Investment Leveraged. The value of new investment leveraged is a precursor and indicator of many other outcomes, such as job creation, construction of housing units, public improvements, and other community and stakeholder benefits. Leveraged investment will be reported in a table similar to the following to be included in the quarterly progress and final reports.

Leveraged Investment	RLF Project	Amount	Date
<i>(Example: Investor Equity)</i>	<i>(Prospect Mobility Center)</i>	<i>(\$1,000,000.00)</i>	<i>(10/25/2022)</i>

Outcome 2: Number Of Acres Made Ready For Reuse. This outcome measures all acres on which site cleanups are completed and property is ready for reuse.

Outcome 3: Number Of Acres Of Greenspace Created. This outcome measures an important indicator of program success that is not otherwise directly captured in the above measures.

2. PROJECT TASK DESCRIPTIONS

2.1. Task 1 - Program Management				
Overall program management is performed by KCMO as CAR, and through a cooperative agreement between KCMO and EDC Loan Corp. for the administration of the Fund Manager duties of the RLF and in accordance with the executed Memorandum of Agreement (MOA) between the coalition members. RLF Program Procedures will be developed by the CAR based on the interim RLF Program Guidelines for the existing Kansas City RLF Program and updating and adapting procedures for the Regional RLF Coalition Project. The CAR will review model loan agreements, security agreements and promissory note instruments (“model RLF documents”) developed for the existing RLF program and similar instruments used in other RLFs. The CAR will utilize legal counsel, either on staff or procured, to review and edit model RLF documents. The documents will be updated for use in all coalition member jurisdictions and incorporate new requirements and provisions under the EPA Cooperative Agreement and current RLF guidance. Model RLF documents will also be reviewed by EPA. The current RLF loan application materials will also be reviewed and updated to clearly inform the applicant of the relevant activity and reporting requirements of the EPA Cooperative Agreement and current RLF guidance.				
Activities	Expected Timeframe for Accomplishment	Project Results of Activities & Reporting (outputs)	Projected Environmental Improvement (outcomes)	Established Baseline for Measurement
2.1.1. Working Agreements Finalize and execute Memorandum of Agreement (MOA)	Within first 6 months	Executed MOA	Effective, transparent and equitable implementation of RLF coalition program.	Completed MOA
2.1.2 Operating Procedures <ul style="list-style-type: none"> Prepare application and model documents Establish RLF loan and subgrant procedures (based on existing Kansas City Interim RLF Guidelines). 	Within first 6 months	Updated RLF application and model documents; RLF Program Guidelines		No. of documents completed Adopted RLF Program Guidelines
2.1.3 Program Implementation <ul style="list-style-type: none"> Create and maintain Kansas City Regional Brownfields Commission to consider RLF loan/subgrant applications. Coalition representatives to attend national brownfields training conferences to update RLF best practices and attract developer/OZ investor interest in RLF project sites. 	On-going	Meeting notes; Commission recommendations		No. Commission Mtgs held. No. of Commission recommendations No. of conferences attended
2.1.4. Oversight and Evaluation <ul style="list-style-type: none"> Prepare and submit RLF progress, financial, and MBE/WBE reports; create and update ACRES database profiles. Ensure compliance with grant terms and conditions; track outputs/outcomes. 	On-going	20 quarterly progress reports; 10 semi-annual MBE/WBE reports; five annual financial status reports; at least four ACRES property profiles.		No. and timeliness of required reports No. of sites entered in ACRES and timeliness of updates.
2.1.5. Closeout Agreement Establish a post-closeout plan for use of program income to continue to operate the RLF	Final Quarter of Performance Period	Post-closeout Plan		Continued access to brownfield cleanup funds for coalition members and their constituents

2.2. Task 2 - RLF Operations

Loan/subgrant application materials will be finalized and made available to prospective applicants that have demonstrated interest in new RLF funds. In the application process, the CAR will submit to EPA an Eligibility Determination for the prospective borrower or subgrant recipient and the prospective cleanup site. If eligible, the CAR and QEP will assist applicants in preparation of their application, preparation and implementation of their Community Involvement Plan, and ensure their project site is enrolled into the appropriate state oversight program. Meetings of the CAR advisory bodies – the Regional Brownfields Commission and the Kansas City Brownfields Initiative – will be convened.

In operating the RLF, the CAR will process applications, verify eligibilities, prepare agreements, close loans/subgrants, disburse funds, manage program income. Funds will be disbursed on a periodic basis for cleanup activities based upon invoices of the borrower/subgrantee’s cleanup contractor that are reviewed by the QEP. Invoices must accurately reflect work performed in accordance with the approved cleanup plan and confirmed by the QEP as properly performed. The CAR will withhold a reasonable retainage (10-25% of the loan/subgrant amount, depending on the risk of non-performance) to be released upon evidence of a Certificate of Completion or No Further Action letter issued by MDNR for the project. The Fund Manager will develop and implement a marketing strategy, will service loan repayments, set up and maintain loan accounts and manage audit requirements. The CAR will procure professional underwriting and appraisal services to evaluate loan applications.

Activities	Expected Timeframe for Accomplishment	Project Results of Activities & Reporting (outputs)	Projected Environmental Improvement (outcomes)	Established Baseline for Measurement
2.2.1. Fund Manager Services Negotiate Fund Manager agreement to service loans, perform bookkeeping, and market RLF program	By end of 2 nd quarter, execute Fund Manager agreement and begin FM activities (on-going)	Accurate loan repayment accounts; effective marketing program	Transparent and efficient loan administration	Executed Fund Manager agreement.
2.2.2. QEP Services Procure QEP services to review remedial design, cleanup, performance, and reporting activities for two more complex RLF projects. QEP services will be performed by the CAR through the Office of Environmental Quality (OEQ) for at least two simple RLF projects.	By end of 2 nd quarter	Cleanup plans approved by State agencies; cleanups successfully performed;	Cleanups that are protective of human health and the environment and appropriate for the planned site reuse.	Executed QEP agreement.
2.2.3. Other Services <ul style="list-style-type: none"> • Procure loan underwriting services • Procure appraisals of RLF properties for collateral purposes. 	By end of 3 rd Quarter	Basic financial evaluations of loans, borrowers and projects; Appraisals of cleanup sites and other loan collateral	Prudent Lending practices and appropriate use of federal funds.	No. of basic financial evaluations No. of appraisals
2.2.4. RLF Marketing Develop and implement RLF marketing strategy	By end of 3 rd quarter	Design and production of brochures, fact sheets, webpages, and social media resources	Informed and empowered loan applicants, including within target areas.	No. of brochures and fact sheets distributed No. of “hits” on webpages and social media
2.2.5. Eligibility Determination CAR to submit to EPA an Eligibility Determination of applicant and the cleanup site	See schedule	At least four eligibility determinations for each site and loan/subaward recipient.		No. of priority site eligibilities No. of non-priority site eligibilities
2.2.6. Process Applications CAR, Fund Manager and QEP will process applications		At least four applications processed		No. of loan or subgrant applications.

<p>2.2.7. Public Meetings CAR will prepare and convene meetings of the Regional Brownfields Commission, KCBI, and (if recommended), introduce legislation to approve loans and subgrants.</p>		<p>At least four Commission meetings / City Council meetings</p>	<p>Prudent Lending practices and appropriate use of federal funds.</p>	
<p>2.2.7. Execute loan and subgrant agreements</p>		<p>At least four loans or subgrants No more than 50% of funds for subgrants.</p>		<p>No. of loans or subgrants executed for priority sites and for non-priority sites. \$ for loans and subgrants</p>
<p>2.2.8. Disburse funds</p>	<p>Monthly as appropriate</p>	<p>Funds disbursed within 30 days of completed loan advance request.</p>		<p>No. of days to disburse funds after receipt of completed loan advance request.</p>

<p>2.3 TASK 3 - Cleanups & Reuse Plans The CAR and QEP will assist applicant in preparation of the Analysis of Brownfield Cleanup Alternatives (ABCA), as needed, and ensure compliance with public notice and comment requirements. The CAR and QEP will also work with borrowers and subgrant recipients to ensure their sites are enrolled in the appropriate state oversight program. To help the CAR ensure cleanups are properly performed and protective of human health and the environment, the QEP will review and provide technical support for all phases of the remediation process.</p>				
<p>Activities</p>	<p>Expected Timeframe for Accomplishment</p>	<p>Project Results of Activities & Reporting (outputs)</p>	<p>Projected Environmental Improvement (outcomes)</p>	<p>Established Baseline for Measurement</p>
<p>2.3.1. QEP Project Management. QEP to review or prepare analyses of brownfield cleanup alternatives (ABCAs) and cost estimates; review quality assurance project plans (QAPPs), cleanup plans, bid documents, invoices, closeout reports, and operation & maintenance plans; conduct cleanup confirmation sampling; and oversee cleanup activities.</p>	<p>On-going</p>	<p>4 ABCAs and cleanup plan approvals</p>	<p>Cleanups protective of human health and the environment</p>	<p>No. of ABCAs and cleanup plans developed</p>
<p>2.3.2. State Oversight. CAR & QEP to manage and facilitate site cleanups through state voluntary cleanup program (VCP): enrollment, plan approval, completion certification and land use controls.</p>		<p>Four VCP completed cleanups (state letter of completion)</p>	<p>No. of Acres made ready for reuse. No. of Acres of greenspace created</p>	<p>No. of cleanups completed No. of land use controls implemented.</p>
<p>2.3.3. Public Outreach.</p> <ul style="list-style-type: none"> • Assist with preparation of community involvement plans (CIPs) • Assist with set up of administrative records (ARs). • Conduct KCBI meetings to inform stakeholders and solicit input on loans/subgrants, and cleanup and reuse options. 	<p>On-going</p>	<p>Four community involvement plans and administrative records; 20 KCBI meetings</p>	<p>Informed and engaged stakeholders, including those within target areas.</p>	<p>No. of CIPs, No. of Admin Records No. of KCBI meetings</p>

2.3.4. Reuse Planning <ul style="list-style-type: none"> • Procure site reuse plan for Grandview site; • Procure site revitalization plan for Northeast Co-op site. 	By end of 6 th quarter.	2 site reuse plans	Community-supported reuse plan	No. and type of plans.
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3. SCHEDULE AND DELIVERABLES

The Work Plan schedule sets forth the following milestones for Tasks and Outputs/Deliverables. Substantial progress must be achieved at the midpoint (30 months) of the project period (05/01/09 – 04/20/14). By that time, the first two of four RLF projects must be approved, processed, funded and cleanup work initiated.

Task	Completed
Task 1 – Project Management	
1.1 Working Agreements – Review and Update	6 months
1.2 Operating Procedures – Review and Update	6 months
1.3 Program Implementation	Ongoing
1.4 Oversight and Evaluation	Ongoing
Task 2 – Loan and Subgrant Processing and Administration	6-48 months
Task 3 - Qualified Environmental Professional	6 months
Task 4 – Cleanup Performance and Completion	12-48 months
Output/Deliverable	Completed
1 st Borrower/Site Eligibility (EPA approval required)	12 months
1 st ABCA prepared	12 months
1 st Administrative Record established	12 months
1 st VCP Enrollment	12 months
1 st loan/subgrant processed/approved	15 months
1 st site cleanup initiated	21 months
2 nd Borrower/Site Eligibility (EPA approval required)	24 months
2 nd ABCA, AR, VCP	24 months
2 nd loan/subgrant processed/approved	24 months
2 nd site cleanup initiated	27 months
3 rd Borrower/Site Eligibility (EPA approval required)	36 months
3 rd ABCA, ARs, VCP	36 months
3 rd loan/subgrant processed/approved	36 months
3 rd site cleanup initiated	39 months
4 th loan/subgrant processed/approved	48 months
4 th site cleanup initiated	56 months
First and Second site cleanup completed	50 months
Third and Fourth site cleanup completed	60 months
Prepare and Negotiate close-out agreement with EPA	54 months
Complete all work, expenditures and draw-down of funds	60 months
Final FSR and close-out cooperative agreement	63 months

3.1 Programmatic Reporting

The CAR will prepare and file the appropriate reports as summarized below. When feasible, reports and deliverables submitted to EPA will be provided in electronic format (Microsoft Word, Excel, Powerpoint, Publisher or Adobe “pdf.”) At the CAR’s request and with agreement of the EPA project officer, deliverables may be transmitted in electronic format only.

3.1.1. Programmatic Performance Reports

Quarterly Performance Reports (submitted electronically no later than 30 days after the end of each federal fiscal quarter)

Quarterly reports will include both a narrative discussion and performance data related to accomplishments for each task and associated activities during the quarter. Quarterly reports will clearly identify which activities performed during the reporting period were undertaken with EPA funds and will relate EPA-funded tasks and activities to the anticipated outputs, outcomes and milestone schedule. Activities performed with in-kind funds and services will also be identified.

Quarterly reports will include:

1. The status of tasks, milestones, activities and deliverables agreed to in the work plan including a list of sites where significant activities were conducted during the performance period and a brief description of the activity.
2. Proposed changes to the work plan or budget (including budget changes made by the recipient pursuant to recipient’s authority to reprogram up to 10% of the total budget during the agreement); based on tracking of budget expenditures, the recipient will determine if the target number of sites can be completed within approved budget and address changes to work plan commitments as necessary.
3. Demonstration of the completion of work plan commitments and programmatic requirements such as ABCAs, community meetings, administrative records etc.
4. A budget summary table showing funds expended and remaining for the reporting period with explanatory notes describing expenditures.

Final Performance Report (submitted electronically within 90 days of the expiration or termination of the agreement)

The final performance report may include the final quarter’s performance report as described above, as well as, a summation of the work conducted throughout the performance period. The final performance report will address the items below:

1. An abstract or overview of the project in terms of its overall process and outcomes. Indicate which eligible activities and/or EPA criteria were addressed and how these were fulfilled;
2. Information on the target audience benefiting from the work (i.e., local residents, community groups, businesses, etc.);

3. Description of evaluation measures and results including the list of sites and total number of sites cleaned up and acres made ready for reuse” and associated measures including redevelopment underway or completed (including greenspace) at properties addressed under the agreement, dollars leveraged for cleanup and redevelopment, jobs leveraged;
4. High quality “before”, “during” or “after” pictures;
5. Plans for dissemination of project results in terms of method of dissemination and target audience (i.e., conference presentations, educator networks, community forums, etc.);
6. Any problems encountered that prohibited the completion of the project goals or objectives and how they have been resolved; and,
7. Benefits gained by the recipient and their target audience from this program

3.2 Site-Specific Accomplishments: Property Profile Form (PPF)/ ACRES Data Entry

Site-specific activities and accomplishments will be entered into EPA’s on-line reporting system, the Assessment, Cleanup and Redevelopment Exchange System (ACRES) in a timely fashion. Relevant data for each site will be entered into the system as soon as practicable and in accordance with the instructions for EPA’s Property Profile Form (EPA Form 9310-3 (8-2003) or more currently approved version). Prior to final close-out of the agreement, all relevant data (including accomplishments) for all of the properties investigated through this agreement will be entered into ACRES.

4. BUDGET:

The revised budget is provided in Budget Table 1 by task and budget object class (BOC).

Budget Table 1:

BOC	Tasks				Budget Total
	Task 1	Task 2	Task 3		
	Program Management	RLF Operations	Cleanups & Reuse Plans		
	Federal Share	Federal Share	Federal Share	Local Share	
Personnel	\$37,946	\$37,946	\$21,504	\$0	\$97,396
Fringe Benefits	\$15,179	\$15,178	\$8,602	\$0	\$38,959
Travel	\$3,000	\$0	\$0	\$0	\$3,000
Equip	\$0	\$0	\$0	\$0	\$0
Supplies	\$0	\$0	\$245	\$0	\$245
Contract	\$0	\$16,000	\$66,000	\$0	\$82,000
Other	\$0	\$562,000	\$16,400	\$160,000	\$738,400
Total	\$56,125	\$631,124	\$112,751	\$160,000	\$960,000

4.1 Budget Narrative:

Personnel and Fringe (40%): \$136,355 (\$97,396 personnel and \$38,959 fringe benefits)

Brownfields Coordinator - \$110,441 (personnel & fringe benefits). The Brownfields Coordinator will serve as the representative of the CAR for most day to day RLF activities, apart from Fund Manager duties for loans, and will perform certain programmatic activities to accomplish work plan tasks, such as Program Implementation, processing of applications, working with RLF recipients and stakeholders to ensure compliance with cooperative agreement terms and conditions and regulatory requirements, and lead procurement of remediation services funded by RLF activities. In addition, the Brownfields Coordinator will perform the Fund Manager duties for all RLF subgrants. To perform origination and servicing of loans and subgrants, assistance will be provided by KCMO attorneys and development finance specialists in the KCMO Planning and Finance Department and the costs of these services will be compensated through collection of loan origination and annual loan servicing fees. The personnel costs are estimated as follows: Program Management (MOA, Commission, grant compliance): 37.5hrs/qtr x 20qtrs x \$57.37/hr = \$43,029; RLF Operations (manage professional services, application processing, public meetings): 37.5hrs/qtr x 20qtrs x \$57.37/hr = \$43,029; Cleanups and Reuse Plans (cleanup planning, performance, reuse plans): 25hrs/qtr x 17qtrs x \$57.37/hr = \$24,383. Total = \$43,029 + \$43,029 + \$24,383 = \$110,441.

Development Specialist - \$25,912 (personnel & fringe benefits). A KCMO employee as staff support to the KCMO Brownfields program will assist with programmatic activities for the RLF program, including; managing procurement of RLF services; administering contracts for RLF services, including contract payments, amendments, and monitoring Davis-Bacon compliance, MBE/WBE utilization and compliance, etc.; servicing RLF loan repayments for loans not serviced by Fund Manager; entering RLF sites into the ACRES database and updating progress; drafting Community Involvement Plans (CIPs) and implementing CIPs for RLF sites, including organizing public outreach activities, public notice advertisements, making available ABCAs and related materials, establishing and maintaining administrative record repositories, etc. The personnel costs are estimated as follows: Program Management (marketing materials, procurements): 18.75hrs/qtr x 20qtrs x \$26.92/hr = \$10,096; RLF Operations (draft grant reports, ACRES, public meetings): 18.75hrs/qtr x 20qtrs x \$26.92/hr = \$10,096; Cleanups and Reuse Plans (ABCA notice & meetings, administrative records, contract admin): 12.5hrs/qtr x 17trs x \$26.92/hr = \$5,721. Total = \$10,096 + \$10,096 + \$5,721 = \$25,912.

**Budget Table 2
Allowed Personnel Costs**

Budget Period September 1, 2020 – August 30, 2025

Position	Hours	Budget Amount
Brownfields Coordinator	1,540	\$110,441
Brownfields Development Specialist	770	\$25,912
Total		\$136,353

Note: includes Fringe Benefits.

Travel: **\$3,000** Travel for two Coalition member representatives to one national brownfields training conference (2 persons x (\$600 airfare + \$600 hotel + \$300 ground transport & per diem.))

Supplies: **\$245.** General office supplies necessary for community involvement plan activities. (\$245 for poster boards, stickers, markers, name tags).

Contractual: **\$82,000.**

a. \$16,000. Task 2 – Direct costs of RLF Fund Manager for activities necessary to perform Fund Manager duties not included in loan origination or loan servicing fees, including, professional accounting and audit services as required for RLF program accounts and loans, RLF marketing brochures and materials, legal services to evaluate conditions of loan default and prepare appropriate responses, etc. (10hrs/qtr x 20qtrs x \$80/hr.) Hourly service fees will comply with the fee limit provided in the Cooperative Agreement terms and conditions

b. \$36,000. Task 3 - Qualified Environmental Professional (QEP) services for at least four RLF funded cleanup projects to develop required documents and findings, including the Analysis of Brownfields Cleanup Alternatives (ABCA) or review applicant provided ABCAs, planning, remedy selection and final technical reports), coordinate with the Missouri Department of Natural Resources (MDNR) and EPA, technical oversight of the borrower/subgrantee’s cleanup including review of contractor solicitation scope of work and other activities to ensure ensure that cleanups activities are appropriate and protective of human health and the environment (90 hrs/site @\$100/hr for four sites). Hourly service fees will comply with the fee limit provided in the Cooperative Agreement terms and conditions.

c. \$30,000. Task 3 – Planning. Site planning, community planning, and/or market studies to support redevelopment efforts for two sites including 150 hrs/site @\$100/hr.

Other **\$738,400**

Loans and Subgrants: \$722,000 (\$562,000 federal and \$160,000 local cost share) will be used for loans and subgrants to eligible recipients. At least four site cleanups will be funded. In accordance with the award conditions, subgrants will be limited to no more than 50% of the funds.

VCP fees: **\$6,400.** RLF funds will be used to pay state Voluntary Cleanup Program (VCP) fees for enrollment and oversight remedial activities for two sites (2 sites x \$200 enrollment x \$3,000 oversight fees).

Advertisements: **\$10,000.** Public notice ads for KCBI and Regional Brownfield Commission meetings. (1 meeting/quarter x 20 quarters x \$500/ads per meeting).

Additional Budget Information

Local Cost Share. To comply with the Cooperative Agreement condition of a twenty percent (20%) cost share from non-federal sources, KCMO will require that RLF loan and subgrant recipients provide sufficient cost share to satisfy the 20% share requirement. In the present budget, a cost share of approximately 28% will be required for each loan and subgrant. The cost share requirement on an individual subaward may be waived upon request if KCMO determines it to be in the public interest to do so. However, in doing so, KCMO will ensure that future RLF

recipients will provide sufficient funding to fulfill the Cities cost share commitment or identify an alternate means for satisfying the cost share requirement.

Accrued Program Income. Program income from loan interest and fees (late fees, penalties, etc.) will be maintained in a separate interest-bearing account. If the \$406,000 available for loans is loaned out at 3% in two loans of relatively equal amounts with terms of 60 months starting in Years 3 and 4, respectively, of the grant period, it is estimated that approximately \$131,315 of program income will be earned during the grant period, of which approximately \$15,541 would be interest income and the remainder repayments of principal. It is also estimated there will be program income of approximately \$9,767 from service fees, such as loan origination fee and annual loan servicing fee, which will be collected in a separate interest-bearing account to pay the Fund Manager expenses incurred for those services under a cooperative agreement or contract, or if performed by the KCMO, the expenses of KCMO staff not otherwise compensated as eligible programmatic expenses through the personnel and fringe benefits Budget categories. Accrued program income will be tracked and reported in a separate table in quarterly progress reports showing accrued income and expended program income.

5. QUALITY ASSURANCE PROJECT PLANS (QAPP)

When environmental samples are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR will ensure that a Quality Assurance Project Plan is prepared either by the QEP or RLF Recipient, in compliance 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.

In most cases, RLF sites are required to be enrolled into a state voluntary cleanup program VCP. If the state program has a Quality Management Plan that has been approved by EPA Region 7 and if the scope of the QMP includes the VCP, the borrower or subgrant recipient is entitled to rely state oversight of the Quality Assurance, to satisfy the RLF data quality requirements. In all other cases a site-specific QAPP shall be prepared by the subrecipient, and reviewed and approved by EPA Region 7 and the CAR.

ATTACHMENT 3
BROWNFIELDS COMMISSION
CODE OF ORDINANCES OF THE CITY OF KANSAS CITY, MISSOURI

COMMITTEE SUBSTITUTE FOR ORDINANCE NO. 210585

Amending Chapter 2, Code of Ordinances, by repealing Sections 2-964, entitled Commission established; membership; officers, and 2-965 entitled Duties of commission, and enacting in lieu thereof new sections of like numbers and subject matter.

BE IT ORDAINED BY THE COUNCIL OF KANSAS CITY:

Section 1. That Chapter 2, Code of Ordinances of the City of Kansas City, Missouri, is hereby amended by repealing Sections 2-964, entitled Commission established; membership; officers, and 2-965, entitled Commission established; membership; officers, and enacting in lieu thereof new sections, to read as follows:

Sec. 2-964. Commission established; membership; officers.

There is hereby created and established a commission to be known as the Brownfields Commission. The commission shall be composed of 15 members. Eight of those commissioners shall be residents of the city, appointed by the mayor to serve four-year terms, further delineated as follows: three representing citizen and community groups who reside in environmental justice census tracts; one representing regional environmental justice communities; one with expertise in the field of business; one with expertise in the field of real estate development; one with expertise in the field of environmental assessment and remediation; and one being a lawyer member of the Missouri Bar Association with expertise in environmental law. Three additional commissioners shall be the mayor, chairman of the city plan commission and chairman of the board of directors of the economic development corporation of Kansas City, or their designees, who shall be ex officio members of the commission. Four regional commissioners shall be the chief executive of Jackson County, Missouri; the mayor of the Unified Government of Wyandotte County/Kansas City, Kansas; the chief executive of the Mid-America Regional Council; and the chief executive of the Kansas City Area Development Council, or their designees, who shall be ex officio members of the commission representing governments and non-profit entities in partnership with the city for brownfields redevelopment. The members of the commission shall serve without compensation and those appointed by the mayor shall be subject to removal by the mayor. The mayor shall designate one of the commissioners as chairperson of the commission and another as vice-chairperson. The director of Brownfields shall be the secretary and provide administrative support for the commission.

Sec. 2-965. Duties of commission.

(a) The duties of the Brownfields Commission shall be to promote the cleanup and reuse of brownfield properties in order to create jobs, increase the tax base, remove potential threats to public health and the environment, or otherwise productively reuse idle, abandoned or underutilized properties. When conducting business concerning primarily the city or the Kansas City Brownfields Revolving Loan Fund, the commission, excluding the four regional commissioners, shall:

- (1) consider applications for loans and subgrants of funds from the Kansas City Brownfields Revolving Loan Fund, vote on resolutions to approve applications

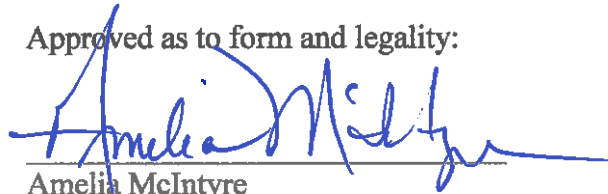
for assistance of \$100,000 or less, and vote on resolutions to recommend to the city council approval of applications for assistance over \$100,000;

- (2) consider requests for city endorsement of applications to the Missouri Brownfields Redevelopment Program or other state or federal Brownfields Assistance Program, and vote on resolutions to recommend endorsement to the city council; and
- (3) conduct such other business of the city as necessary to provide guidance and policy recommendations concerning the promotion of brownfields redevelopment, in partnership with federal, state and regional and local entities.

(b) When conducting business concerning the Kansas City Regional Coalition Brownfields Revolving Loan Fund, the commission, excluding the three commissioners who are Kansas City, Missouri residents representing citizen and community groups, and the chairman of the board of directors of the economic development corporation of Kansas City, shall:

- (1) consider applications for loans and subgrants of funds from the Kansas City Regional Coalition Brownfields Revolving Loan Fund and vote on resolutions to approve applications for assistance of \$100,000.00 or less, and vote on resolutions to recommend to the city council approval of applications for assistance over \$100,000.00; and
- (2) conduct such other business of the regional brownfields coalition as necessary to provide guidance and policy recommendations concerning the promotion of brownfields redevelopment, in partnership with federal, state and regional and local entities. In providing such assistance, approval or confirmation, the commission, commissioners, city and regional municipal partners do not assume any responsibility or liability for any risks or costs associated with any such environmental impairment identification or management activities.

Approved as to form and legality:


Amelia McIntyre
Assistant City Attorney



Authenticated as Passed


Quinlan, Mayor


Marilyn Sanders, City Clerk

JUL 22 2021

Date Passed