

**Merrimack Valley Planning Commission
Brownfields Revolving Loan Fund Program**



Request for Proposals

Brownfields Qualified Environmental Professionals

Proposal Due Date: Friday, October 7, 2016, 12:00 P.M.

**Merrimack Valley Planning Commission
Dennis A. DiZoglio, Executive Director
160 Main Street
Haverhill, MA 01830
Telephone: (978) 374 - 0519
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I. Introduction

Request for Professional Environmental Services

The Merrimack Valley Planning Commission (MVPC) is seeking Proposals from qualified environmental professionals to provide technical services supporting site remediation at eligible properties selected for assistance through the Commission's regional Brownfields Program. MVPC administers the Merrimack Valley Brownfields Cleanup Revolving Loan Fund, which offers financing assistance to eligible property owner sub recipients for environmental remediation of properties contaminated by petroleum or hazardous materials. The fund has been recapitalized through a Federal Fiscal Year 2016 Brownfields Revolving Loan Fund grant award to the MVPC from the U.S. Environmental Protection Agency.

Regional Program Overview

The Merrimack Valley Brownfields Program is administered by MVPC, a Regional Planning Agency that provides comprehensive planning and technical services to 15 municipalities in northeastern Massachusetts. Established in 1959 under Mass. General Laws Chapter 40B, MVPC's mission is to "promote with the greatest efficiency and economy the coordinated and orderly development of the region's municipalities and the general welfare and prosperity of its citizens." To accomplish this, MVPC offers a broad range of professional planning and technical services in the areas of community and economic development planning, environmental and energy planning, land use planning, transportation and transit planning, and Geographic Information Systems (GIS) development and applications.

The Merrimack Valley region's *Comprehensive Economic Development Strategy* and the three Brownfields Program target communities' (Lawrence, Haverhill and Methuen) current local redevelopment plans all identify the cleanup and reuse of Brownfields sites as a critical element of the area's overall economic revitalization strategy. MVPC's RLF Program advances these established plans, and is carried out in cooperation and coordination with the local Community Development Departments and other key stakeholders including state agencies such as MassDevelopment and Mass. Department of Environmental Protection. With the FY16 EPA Program grant funding awarded, the Merrimack Valley RLF program goal is to finance remediation work at a projected seven (7) sites, five of which will be Hazardous Materials contaminated properties and two (2) Petroleum-contaminated properties.

Site Eligibility. Sites in all 15 MVPC District municipalities meeting federal CERCLA definition of brownfields may qualify for program financing assistance, however the outreach focus is to urban (primarily downtown) sites in the densely-developed Gateway communities of Haverhill, Lawrence, and Methuen. These three central cities have a disproportionate share of the region's documented Brownfield sites, as well as the highest concentration of residents (including low-income minority populations) who are at risk from the contaminants and blight conditions attendant at these sites. Targeted candidate sites include but are not limited to inactive or underutilized mill properties, manufacturing facilities, and machine shops. The emphasis will be on properties in the urban core sewer, water, and public transportation facilities serve that, and whose cleanup and redevelopment will demonstrably improve the urban environment and public well-being.

Priority Sites. Our preferred redevelopment scenario involves the *cleanup and reuse of vacant or underutilized mill structures for mixed uses*, including a range of business and housing types. The

long term impact of this approach will be a healthy diversification of the region's economic base, the creation of new and different job opportunities, the creation of sorely needed affordable housing, and the promotion of more vibrant, livable communities.

Site Selection. MVPC and our coalition partners have developed a fair and objective process for selecting appropriate sites to make loans and sub grants. This process was developed under our EPA-funded regional Brownfields assessment program, and employs ranking criteria that allow a numerical value to be established for each potential site. These criteria include, among others:

- Documented Community Need and Support – Will redevelopment of the property have a positive impact on the target community and help reverse the “slum and blight” of the area, and is there strong community support for the redevelopment plan?
- Housing and Employment Opportunities - Will the proposed reuse/redevelopment project create affordable housing and/or jobs to meet the needs of low/moderate income populations?
- Sustainable Reuse – Will redevelopment of the site make use of existing infrastructure, incorporate low impact development and energy conservation measures, enhance “livability“, and reduce future sprawl?
- Greenspace – Will redevelopment of the site increase the amount and accessibility of public open space and habitat?
- Reduction of Threats – Will remediation of the site lead to the reduction of risks to the surrounding population and environment?
- Redevelopment Potential – Is there strong developer interest in the site, and will site cleanup spur new economic investment, create needed jobs, and add dollars to the community's tax base?
- Commitment of Leveraged Funds/In-Kind Services – Are there committed matching funds and/or in-kind professional services available to extend the reach of the EPA RLF funds and help ensure the project's timely completion and success.

Sustainable Source of Cleanup Funds. The Merrimack Valley Brownfields Revolving Loan Fund is structured as a true revolving loan fund, limiting loans to borrowers with the demonstrated credit worthiness of repaying the fund to ensure that loan funds will be available for future applicants. In this way, the RLF and the management program that supports it will be sustainable over the long term. MVPC has operating guidelines consistent with EPA Brownfields Program requirements to establish eligibility, loan terms and conditions, procurement rules, procedures for funds disbursement, and repayment schedules.

The program offers low-interest/no-interest flexible loans to eligible applicants, with the interest rates lower than prime and tailored to make the financing work on a case-by-case basis. The loans will cover up to 80% of the cleanup costs, with the remainder coming from a combination of eligible matching funds from the sub recipient and in-kind professional services.

II. General Information and Proposal Submission Requirements

- A. Pursuant to M.G.L. Chapter 30B, the Merrimack Valley Planning Commission ("MVPC") seeks proposals qualified environmental professionals to provide technical services supporting site remediation at eligible properties selected for assistance through the Commission's regional Brownfields Program. MVPC requests proposals for environmental contractor services to the

Merrimack Valley Brownfields Cleanup Revolving Loan Fund (MVBCRLF) Program. MVPC's Brownfields Cleanup RLF Program is funded through a five-year cooperative agreement with the U.S. Environmental Protection Agency. The selected contractors will provide technical services to MVPC to review and evaluate: loan applications and related materials (including eligibility of site, borrower, and proposed environmental cleanup activities for federal Brownfields funds), preparation of Community Involvement Plans, Analysis of Brownfields Cleanup Alternatives (ABCA), Quality Assurance Project Plans (QAPP), Health & Safety Plans, assistance in submittal of grant progress and closeout; review and approvals of contractor payments, and preparation of cleanup completion reports.

- B. The MVPC will host a pre-bid meeting to answer any questions about its regional Brownfields Program and this RFP. The briefing, scheduled for 10:30 A.M. Monday, Sept. 19, 2016, will be held at MVPC offices, 160 Main Street, Haverhill, MA 01830.
- C. Proposals are to be submitted by 12:00 p.m., Friday, October 7, 2016, at which time they will be publicly opened. Postmarks will not be considered. Proposals submitted in any other form, including email and facsimile, will not be accepted as valid proposals.
- D. Envelopes containing sealed proposals will be accepted by the Merrimack Valley Planning Commission, 160 Main Street, Haverhill MA 01830 until the time indicated. M.G.L. Chapter 30B requires that Price Proposals must be separate from Technical Proposals. Therefore, please make no reference to pricing in the Technical Proposal. Failure to adhere to this requirement will result in disqualification. It is the sole responsibility of the Bidder to insure that the proposal arrives on time at the designated place. Four (4) separate sealed envelopes, three (3) containing the Technical Proposal marked "Firm's Name - Technical Proposal" and one (1) containing the Price Proposal marked "Firm's Name - Price Proposal"
- E. The MVPC endeavors to expedite the award and execution of the contract documents. A selection committee will review and rate the proposals and may select most qualified teams for final interviews prior to making recommendation for Contract award. It is the intent of the MVPC to award a Professional Services Contract within ten (10) calendar days after final award decision has been made. Services under the Contract will commence as soon as practical thereafter.
- F. If any changes are made to the Request for Proposals (RFP), an addendum will be issued. Addenda will be mailed, faxed, or emailed to all Proposers on record as having picked up/downloaded the RFP. Proposers shall be responsible for ensuring that all addenda are in receipt prior to proposal deadline. The MVPC will require acknowledgement of any addenda issued to be included on the proposal form.
- G. Questions concerning this proposal must be submitted in writing to: Joseph Cosgrove, MVPC Environmental Program Manager (email jcosgrove@mvpc.org), before 5:00 pm, September 21, 2016. Questions may be mailed, emailed or faxed. Written responses will be emailed or faxed to all Proposers on record as having picked up/downloaded the RFP.
- H. After the proposal opening, a Proposer may not change any provision of the proposal in a manner prejudicial to the interests of the MVPC or fair competition. Minor informalities will be waived or the Proposer will be allowed to correct them. If a mistake and the intended proposal are clearly evident on the face of the proposal document, the mistake will be corrected to reflect the intended

correct proposal, and the Proposer will be notified in writing.

- I. The MVPC may cancel this RFP, or reject in whole or in part any and all proposals, if the MVPC determines that the cancellation or rejection serves the best interests of the MVPC.
- J. All proposals submitted in response to this RFP must remain firm for sixty (60) days following the proposal opening.
- K. A proposal must be signed as follows: 1) if the Proposer is an individual, by her/him personally; 2) if the Proposer is a partnership, by the name of the partnership, followed by the signature of each general partner; and 3) if the Proposer is a corporation, by the authorized officer.

III. Contract Term:

The term of the contract will cover five (5) years from date of contract execution. At the sole discretion of the MVPC, the contract may be extended for two (2) one (1) year extensions.

The selected contractors will be required to enter into a professional services contract with MVPC, the term of which shall be consistent with MVPC's cooperative agreement with U.S. EPA. Activities shall conclude no later than September 30th, 2021, but may be extended with approval of MVPC subject to continued funding availability.

It is anticipated that the contract will be a task-assignment type contract, although MVPC reserves the right to award another contract type if such will be more advantageous to MVPC, price and other factors considered.

Services shall be authorized on a Task Assignment basis. The selected contractors shall not perform any services under the contracts resulting from this solicitation until a Task Assignment has been fully executed by both parties. The selected contractors will not be authorized to perform any services, which exceed the authorized funding amount issued for each Task Assignment.

No minimum or maximum amount of work is guaranteed under any contracts resulting from this solicitation. MVPC reserves the right to decide which of the selected firms will be chosen to perform any of the contracted tasks.

IV. Rule for Award

The MVPC shall award contracts to the most advantageous Proposer(s) taking into consideration the price and technical proposals. MVPC expects to enter into contract agreements with multiple environmental firms.

V. Quality Requirements

Each firm submitting a proposal must meet the following Quality Requirements.

- A. Firm must have a minimum of five (5) years experience working in the Commonwealth of Massachusetts with the MA Department of Environmental Protection brownfields environmental site remediation regulatory requirements of the Massachusetts Contingency Plan;
- B. Principals of firm must have at least three (3) years experience conducting Brownfields Phase I, II and III environmental site assessments and developing site remediation strategies for municipalities. Please list examples of work relating to such activities that have been performed within the last five (5) years. Include the name of a contact person and a telephone number so that references regarding the firm's experience may be validated;
- C. Firm must provide verification that assigned project personnel team includes at least one Licensed Site Professional (LSP) with current certification in the Commonwealth of Massachusetts.

Proposers must specify a "Yes" or "No" response to each of the Quality Requirements (Quality Requirements - Appendix C). If any Requirement is marked "No", that proposal will be REJECTED.

VI. Additional Contract Terms & Conditions

- A. The contract shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. The selected contractors shall comply with all applicable federal, state, and local laws and regulations, including U.S. Environmental Protection Agency (EPA) and Massachusetts Department of Environmental Protection (DEP) regulations and administrative procedures. Respondents are advised to review all applicable federal regulations prior to submitting a Proposal especially 2 CFR, Part 200 and the requirements of the Cooperative Agreement executed between the U.S. EPA and MVPC. (Cooperative Agreement provisions of the EPA grant are included as Appendix F of this RFP; terms and conditions of the Agreement will be incorporated into the final contract with the selected contractor team).
- B. Purchases of goods and services by the MVPC are exempt from the payment of Federal excise taxes and the Massachusetts sales tax, and any such taxes must not be included in the price computations.
- C. The successful Proposer will not be permitted to assign or underlet the contract, nor assign either legal or equitably, any monies hereunder, or its claim thereto, without the previous written consent of the MVPC.
- D. Verbal orders are not binding on the MVPC and work done without formal Purchase Order or Contract are at the risk of the Proposer and may result in an unenforceable claim.

- E. All words, signatures and figures submitted on the proposal shall be in ink. Proposals which are conditional, obscure or which contain additions not called for, erasures, alterations or irregularities, or any prices which contain abnormally high or low amounts for any item, may be rejected as informal. More than one proposal from the same Proposer will not be considered.
- F. The selected Proposer will be required to sign a contract with the MVPC in which he/she accepts responsibility for the performance of services as stated in the submitted proposal and be prepared to commence work immediately upon execution of the signed contract
- G. Ownership of Information: All information acquired by the Proposer from the MVPC or from others at the expense of the MVPC in the performance of the agreement shall be and remain the property of the MVPC. All records, data files, computer records, work sheets, and all other types of information prepared or acquired by the Proposer for delivery to the MVPC shall be and remain the property of the MVPC. The Proposer agrees that he/she will use this information only as required in the performance of this agreement and will not, before or after the completion of this agreement, otherwise use said information, or copy or reproduce the same in any form, except pursuant to the sole written instructions of the MVPC. The Proposer further agrees to return said information in whatever form it is maintained by the Proposer.
- H. Respondents to this RFP shall represent a firm or team possessing expertise and experience in environmental risk assessment; Quality Assurance Project Plans; soil, groundwater, and building sampling; site remediation strategies; community outreach and education programs; and the professional standards thereof.
- I. Respondents must submit complete responses to all of the information requested. Respondents who do not respond to the entire content of this RFP may be disqualified. All Proposals become the property of MVPC. MVPC has the right to disclose information in the Proposals once an award has been made.
- J. The selected contractors will assume sole responsibility for the scope of services specified in this RFP. MVPC will consider only the primary consulting firm as the sole point of contact with regard to contract matters, whether or not subcontractors are used by the contractor for one or more elements of the scope of services. Respondents who intend to subcontract one or more elements of the scope of services shall identify those work elements to be subcontracted and the subcontracting firm(s). Subcontractors shall not be substituted, nor any portions of the contract assigned to other parties after contract award, without prior written approval by MVPC.
- K. MVPC will not assume any responsibility for costs incurred by respondents as part of the preparation and submission of the Technical and Price Proposals, nor for costs associated with the issuance of a contract.
- L. The selected contractors shall be solely responsible for all claims of whatever nature arising out of the rendering of professional services by the contractor during the term of this project, and the contractor shall indemnify and hold harmless MVPC against the same to the extent permitted by law. The selected contractors will be required to provide statements of insurance acceptable to MVPC prior to execution of a contract, with MVPC being listed as an additional

insured party for general liability and motor vehicle coverage. Respondents shall indicate their ability to provide proof of coverage for the following insurance requirements:

- General Liability coverage of \$1 million per occurrence and \$2 million in the aggregate;
- Motor Vehicle Liability coverage of \$1 million combined single limit;
- Professional Errors and Omissions coverage of \$1 million; and,
- Workers Compensation coverage

M. In accordance with U.S. EPA’s Program for Utilization of Small, Minority, and Women’s Business Enterprises, the selected contractors shall agree to accept, to the fullest extent possible, the applicable “fair share” goals/objectives for utilization of MBE/WBE subcontractor(s) for supplies, services, and equipment. These fair share objectives are as follows:

	MBE	WBE
Services/Supplies/Equipment	3.4%	3.8%

- N. The performance and payment obligations of the MVPC will be subject to appropriation or availability of funds. If the MVPC should not, for any reason at any time appropriate or otherwise make available funds to support continuation of performance in any fiscal year succeeding the first year, the MVPC will cancel any contract pursuant to this RFP without penalty to the MVPC upon thirty (30) days written notice to the successful Proposer.
- O. If at any time the successful Proposer fails to fulfill or comply with any of the requirements of this proposal/contract, the MVPC, at its option, can terminate this contract upon thirty (30) days written notice to the firm.
- P. The selected Proposer must indemnify the MVPC for any damages that are the result of its negligence or that of its employees.
- Q. Reports and materials developed by the successful respondent under a contract that may result from this RFP are considered public information and may not be copyrighted.
- R. All information presented in this RFP, including information disclosed by the MVPC during the proposal process, is considered confidential. Information shall not be released to outside parties and the RFP shall not be discussed with anyone at the MVPC, other than the known participants, without written consent of the MVPC. A Proposer shall not discuss his/her proposal with another proposer.
- S. MVPC is an Affirmative Action/Equal Opportunity Employer in its programs and activities and encourages proposals from qualified minority, women-owned, and disadvantaged business enterprises. The contractors shall be selected by MVPC without regard to race, color, sex, age, religion, political affiliation, or national origin.

VII. Comparative Evaluation Criteria

The following Comparative Evaluation Criteria will be applied to all eligible Technical Proposals submitted. Each criterion will be rated Highly Advantageous, Advantageous, or Not Advantageous.

Criteria	Highly Advantageous	Advantageous	Not Advantageous
1. Overall understanding of and responsiveness (completeness, clarity, brevity, quality) to scope of work, contract period, and contract budget;	Proposal is of highest quality, well-organized, clear, and demonstrates depth of team resource capacity and strategic approaches to implement Brownfields RLF program work scope efficiently and effectively.	Proposal is clear and well-organized and clearly outlines approaches and team resources to be used in implementing the work scope.	Proposal lacks clarity and is incomplete in addressing one or more elements of work scope.
2. Site assessment and remediation qualifications and certifications of primary project team members;	Proposer team is made of credentialed key staff with extensive education and broad-based experience in environmental site assessment/cleanup in Massachusetts communities. Team is well organized with defined responsibilities & experience working with federal EPA and MassDEP Brownfields programs and regulations.	Proposer team includes key staff with documented qualifications and experience necessary to implement work scope program.	Proposer team meets minimum qualification requirements of RFP but proposal unclear as to staff assignments or responsibilities that would raise questions about ability to implement work program.
3. Technical knowledge and understanding of federal requirements in implementing EPA Brownfields programs	Proposer demonstrates highest familiarity with EPA programmatic requirements of Brownfields RLF grant implementation and Mass. Contingency Plan standards.	Proposer demonstrates familiarity with EPA programmatic requirements of Brownfields RLF grant implementation and Mass. Contingency Plan standards.	Proposer indicates gaps in technical knowledge/understanding of EPA and/or Massachusetts Contingency Plan requirements & procedures.
4. Quality and track record of prior Brownfields assessment/remediation work.	Proposer team has excellent references from prior projects involving Brownfields sites in Massachusetts communities. Proposal documents successful track record of remediation and redevelopment outcomes at more than 5 sites by team.	Proposer team has good references from prior projects involving Brownfields sites in Massachusetts communities. Proposal documents track record of successful remediation and redevelopment outcomes at 3 to 5 sites by team.	Proposer team has fair-poor references from prior projects involving Brownfields sites in Massachusetts communities. Proposal documents successful remediation outcomes at fewer than 3 prior case sites.

VIII. RFP Schedule

Event	Time / Date
Pre Bid Meeting	10:30 am on September 19, 2016
Question Deadline	5:00 pm on September 21, 2016
Proposal Due Date	12:00 pm on October 7, 2016
Anticipated Contract Award	November 17, 2016

IX. Interviews

Interviews may be required at the MVPC's discretion after review of the technical proposals. Proposers will be provided with advance notice of at least five (5) working days. Presentations should not exceed forty (40) minutes in length, with twenty (20) minutes for a question and answer period.

X. Proposal Submission Requirements

- A. Technical Proposal Package: All proposers shall submit a Technical Proposal in strict accordance with the submission requirements listed below. Any firms failing to provide all of the submission requirements will be considered "not responsive" and the proposal may be rejected without further consideration.

- B. The information submitted must include the following items:
 - a. Cover Letter. A cover letter signed by an authorized officer of the firm, binding the firm to all of the commitments made in the Proposal. The cover letter shall be limited to two (2) pages, and shall be composed using a minimum 12 point font and with one-inch margins. The cover letter should concisely summarize the distinctive attributes of the respondent firm to execute the scope of services, answering the question: "Why should MVPC select your firm?"
 - b. Proposed Approach to the Scope of Services, including at a minimum tasks outlined in Appendix A of this RFP.
 - c. Statement of Qualifications & Experience, including:
 - i. Brief description of the firm, including location, number of years in business, principal owners and operators, professional services offered, and affiliations.
 - ii. Organizational structure of proposal team to implement the program scope of work;
 - iii. Resumes summarizing the qualifications, education and relevant professional experience of all team members proposed to participate in tasks identified in the scope of services. The principal in charge and project manager shall be identified, along with the roles of other significant project personnel and sub-contractors, if applicable.
 - iv. Identification of Principal in Charge and Project Manager.
 - v. Indicate whether or not your firm has been dismissed or disqualified from a bid/contract within the past five years, and if yes, the reason(s) why.
 - vi. Describe how your organization is properly licensed, bonded and/or insured (both fidelity insurance and errors and omissions insurance).

- vii. Description of efforts proposed to meet the contracting goal requirements prescribed by U.S. EPA for involvement of small, minority, and women's Business Enterprises.
 - viii. Disclose any conditions (e.g., bankruptcy or other financial problems, pending litigation, planned office closures, impending merger) that may affect your organization's ability to perform contractually.
 - d. Signed and completed Quality Requirements - Appendix C.
 - e. Signed and completed Certifications - Appendix D.
 - f. Professional References: Provide at least three client references from prior Brownfields environmental remediation assessment projects. Include contact name, organization and current telephone number – Appendix E.
- C. **Price Proposal Package:** All proposers shall submit a Price Proposal in strict accordance with the submission requirements. Any Proposer failing to provide the following submission requirement will be considered "not responsive" and the proposal may be rejected without further consideration.
- a. The information submitted must include the following items
 - i. Price Proposal - Appendix B.
 - ii. Acknowledgment of Addenda: Each Proposer shall acknowledge the receipt of any addenda on their Price Proposal.

Appendix A Scope of Services

Said Contractors, under the direction of and in collaboration with MVPC's Brownfields Program staff and RLF Loan Review Committee, shall carry out the following activities during the contract period.

Task 1: Application Intake Assistance and Eligibility Review

For each financing application package submitted to the MVBRLF by a prospective borrower, the environmental contractor shall undertake site eligibility review, provide technical assistance and make recommendation to MVPC Program staff on gap financing assistance level, prepare site eligibility form documentation for EPA/MassDEP approvals, and attend meetings as needed with Program Staff, applicants and the regional Brownfields Program advisory committee (Comprehensive Economic Development Strategy (CEDS) Committee).

Procedures:

Contractors shall review each loan application received by MVPC and provide written comments either confirming that the loan applicant meets the minimum site eligibility requirements as outlined below or does not. If the applicant does not meet the minimum eligibility requirements, then the reasons must be outlined in writing by the contractor. The minimum eligibility criteria are as follows:

- Site must have been determined to have an actual release or substantial threat of release of a hazardous substance.
- Proposed cleanup activities are consistent with Phase I and Phase II Environmental Site Assessments previously completed according to the requirements of Massachusetts General Law, Chapter 21E (MGL CH. 21E) and provide information on the source and cause of contamination, and the nature, amount and location of hazardous materials;
- There is sufficient time (six months) available to plan and select a response and to implement community relations and public involvement activities prior to initiating cleanup;
- Site assessment and cleanup must be completed in accordance with all applicable federal and state regulations, including but not limited to: the Massachusetts Contingency Plan, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), and the Massachusetts Contingency Plan;
- The site or borrower cannot be under federal or state enforcement actions;
- The borrower cannot be a generator or transporter of contamination at the site;
- The site cannot be listed on the EPA National Priority List or be a Resource Conservation and Recovery Act (RCRA) permitted or interim-status facility;
- The borrower must certify that they will submit Quarterly Progress Reports to MVPC and its environmental contractors, documenting cleanup activities and use of loan funds; and
- The borrower must certify that they will provide written notification to MVPC's MVBCRLF Project Manager, MVPC's environmental contractors, and the U.S. EPA of CERCLA waste to out-of-state sites.

Deliverables:

Meeting attendance and written contractor comments regarding the eligibility and any concerns related to the proposed cleanup activities.

Task 2: Provide technical assistance in MVPC Brownfields Program community outreach.

Procedures:

The Contractor will provide technical support to MVPC and the program community engagement partner Groundworks Lawrence in development and production of outreach print materials, website information and PowerPoint presentations to be used in program operation. In addition, the contractor will assist in preparation of required Community Relations Plans and attend community/neighborhood meetings as well as site project kick-off meetings with EPA, MassDEP, applicants and contractors.

Deliverables:

- Attendance and briefings at public/community meetings, as needed.
- Assistance in providing technical content for program outreach print and web media

Task 3: Preparation and/or Review of Program Documents

Procedures:

The QEP Contractor team will review, or as needed, take lead in preparing documents required to undertake site cleanup remediation's:

1. Analysis of Brownfields Cleanup Alternatives (ABCA);
2. Quality Assurance Project Plan (QAPP);
3. Health and Safety Plan
4. Section 106 review
5. Review and approval of specifications to be included in site cleanup contractor procurement documents, including incorporation of applicable David-Bacon wage requirements and Green and Sustainable Remediation principles and techniques

Deliverables:

Written comments on the Analysis of Brownfields Cleanup Alternatives (ABCA), Contractor Procurement Documents, environmental review, Quality Assurance Project Plans and Health and Safety Plans.

Task 4: Oversight of Cleanup Activities, Review Progress Reports and Requests for Loan Drawdowns Submitted by Borrowers

Procedures:

1. The environmental contractors shall review and be involved with the request for payment and loan drawdown process and shall provide documentation of site cleanup activities completed. It is anticipated that loan drawdown requests to the EPA will be made only to reimburse costs already incurred for approved cleanup activities. MVPC, the DEP Site Manager (if applicable), and the borrower's LSP shall also approve of payment and loan drawdown requests.
2. Consult with MVPC, the DEP Site Manager (if applicable), and the borrower's LSP as needed to confirm completion of approved activities on-site for which funding is being requested.
3. Assist MVPC Project Manager in providing information on projects status for reporting in EPA ACRES database.

Deliverables:

Written approval of MVPC requests for EPA funds to be used to reimburse each loan recipient for approved remediation actions.

Site visits, meetings, phone, fax and e-mail discussions with MVPC, the DEP Site Manager (if applicable), the borrower's LSP, and EPA, as needed.

Task 5: Cleanup Documentation

Procedures:

At the completion of site cleanup, the environmental contractor team shall review and as needed assist applicant in completing required Cleanup Documentation, including Completion Report and the Response Action Outcome Report prepared by each loan recipient . Contractor shall provide written comment verification of compliance with the requirements of both the National Contingency Plan and the Massachusetts Contingency Plan.

Deliverables:

Written comments regarding compliance with the requirements of the National Contingency Plan and the Massachusetts Contingency Plan.

AGENCY COORDINATION

Work completed under this contract must be completed in coordination with the U.S. Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (MADEP), and their approval of documents or processes is required during various steps in the Brownfields RLF Program.

Appendix B Price Proposal

Please provide a schedule of standard hourly rates for the following categories of work, as well as such other categories as may be appropriate (rates to be inclusive of all overhead and profit).

Task	Proposed Hourly Rate for each Assigned Staff Position
Principal LSP	
LSP	
Project Leader	
Senior Engineer /PM	
Project Engineer	
Sub Contract Consultants	
Other Professional Staff	
Additional Services	

This RFP includes addenda numbered _____.

Name of bidding company _____

Address _____

Signature of Company Official _____

Printed Name of Company Official _____

Title of Company Official _____

Phone number _____

E-Mail _____

Date _____

Appendix C Quality Requirements

Please specify under the columns marked “Yes” or “No” your response to each of the following Quality Requirements.

Requirements	Yes	No
Firm must have a minimum of five (5) years experience working in the Commonwealth of Massachusetts with the MA Department of Environmental Protection brownfields environmental site remediation regulatory requirements of the Massachusetts Contingency Plan.		
Principals of firm must have at least three (3) years experience conducting Brownfields Phase I, II and III environmental site assessments and developing site remediation strategies for municipalities. Please list examples of work relating to such activities that have been performed within the last five (5) years. Include the name of a contact person and a telephone number so that references regarding the firm’s experience may be validated.		
Firm must provide verification that assigned project personnel team includes at least one Licensed Site Professional (LSP) with current certification in the Commonwealth of Massachusetts.		

Firm _____

Signature of Company Official: _____

Printed Name of Company Official: _____

Title of Company Official: _____

Appendix D Certifications

NON-COLLUSION

The undersigned certifies under penalties of perjury that this proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee club, or other organization, entity, or group or individuals.

TAX COMPLIANCE

Pursuant to M.G.L. Chapter 62C, Sec. 49A, I certify under the penalties of perjury that, to the best of my knowledge and belief, I am in compliance with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

CERTIFICATE OF FOREIGN CORPORATION

The undersigned hereby certifies that it has been duly established, organized, or chartered as a corporation under the laws of: _____

(Jurisdiction)

The undersigned further certifies that it has complied with the requirements of M.G.L. c. 30, & 39L, and with the requirements of M.G.L. c. 181 relative to the registration and operation of foreign corporations within the Commonwealth of Massachusetts.

Signature of Authorized Company Official

Print Name

Name of Firm

Appendix E Professional References

Brownfield Project / Location	Contact	Phone Number

Name of Firm

Appendix F

Terms & Conditions Of Brownfields Program Cooperative Agreement

Administrative Conditions

1. General Administrative 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-March 26, 2016-or-later>. These terms and conditions are in addition to the assurances and certifications made as a part of the award and the terms, conditions or restrictions cited throughout the award.

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

2. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES

GENERAL COMPLIANCE, 40 CFR, Part 33

The recipient agrees to comply with the requirements of EPA's Disadvantaged Business Enterprise (DBE) Program for procurement activities under assistance agreements, contained in 40 CFR, Part 33.

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

MBE/WBE reporting is required in annual reports. Reporting is required for assistance agreements where there are funds budgeted for procuring construction, equipment, services and supplies, including funds budgeted for direct procurement by the recipient or procurement under subawards or loans in the "Other" category that exceed the threshold amount of \$150,000, including amendments and/or modifications.

Based on EPA's review of the planned budget, this award meets the conditions above and is subject to the Disadvantaged Business Enterprise (DBE) Program reporting requirements. However, if recipient believes this award does not meet these conditions, it must provide [insert Regional or Headquarters point

of contact] with a justification and budget detail within 21 days of the award date clearly demonstrating that, based on the planned budget, this award is not subject to the DBE reporting requirements.

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

When completing the annual report, recipients are instructed to check the box titled "annual" in section 1B of the form. For the final report, recipients are instructed to check the box indicated for the "last report" of the project in section 1B of the form. Annual reports are due by October 30th of each year. Final reports are due by October 30th or 90 days after the end of the project period, whichever comes first.

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

MBE/WBE reports should be sent to :

United States Environmental Protection Agency ,
5 Post Office Square, Suite 100
Boston, MA. 02109-3912

Attn: Larry Wells, DBE Coordinator, Region 1

If you have additional questions, Mr. Wells can be reach at (617) 918-1836, or e-mail:

Wells.Larry@epa.gov

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

This provision represents an approved deviation from the MBE/WBE reporting requirements as described in 40 CFR, Part 33, Section 33.502; however, the other requirements outlined in 40 CFR Part 33 remain in

effect, including the Good Faith Effort requirements as described in 40 CFR Part 33 Subpart C, and Fair Share Objectives negotiation as described in 40 CFR Part 33 Subpart D and explained below.

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

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE participation in procurement under the financial assistance agreements. In accordance with 40 CFR, Section 33.411 some recipients may be exempt from the fair share objectives

requirements described in 40 CFR, Part 33, Subpart D. Recipients should work with their DBE coordinator, if they think their organization may qualify for an exemption.

Current Fair Share Objective /Goal

The dollar amount of this assistance agreement or the total dollar amount of all of the recipient's financial assistance agreements in the current federal fiscal year from EPA is \$250,000, or more. The Massachusetts Department of Environmental Protection has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

MBE: CONSTRUCTION; SUPPLIES; SERVICES and EQUIPMENT : Blended 3.4%

WBE: CONSTRUCTION; SUPPLIES; SERVICES and EQUIPMENT : Blended 3.8%

Negotiating Fair Share Objectives /Goals

In accordance with 40 CFR, Part 33, Subpart D, established goals/objectives remain in effect for three fiscal years unless there are significant changes to the data supporting the fair share objectives. The recipient is required to follow requirements as outlined in 40 CFR Part 33, Subpart D when renegotiating the fair share objectives/goals.

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

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

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

(b) Make information on forthcoming opportunities available to DBEs and arrange time frames for contracts and establish delivery schedules, where the requirements permit, in a way that encourages and facilitates participation by DBEs in the competitive process. This includes, whenever possible, posting solicitations for bids or proposals for a minimum of 30 calendar days before the bid or proposal closing date.

(c) Consider in the contracting process whether firms competing for large contracts could subcontract with DBEs. For Indian Tribal, State and local Government recipients, this will include dividing total requirements when economically feasible into smaller tasks or quantities to permit maximum participation by DBEs in the competitive process.

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

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

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

CONTRACT ADMINISTRATION PROVISIONS , 40 CFR, Section 33.302

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302.

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

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

3. Annual Federal Financial Report (SF-425)

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit an annual Federal Financial Report (SF-425) to EPA no later than 90 calendar days following the end of the reporting quarter

At the end of the project, the recipient must submit a final Federal Financial Report to EPA no later than 90 calendar days after the end of the project period. The form is available on the internet at

<http://www.epa.gov/ocfo/finservices/forms.htm> . All FFRs must be submitted to the Las Vegas Finance Center: US EPA, LVFC, PO Box 98515, Las Vegas, NV 89193, by Fax to: 702-798-2423 or E-mail: LVFC-grants@epa.gov .

The LVFC will make adjustments, as necessary, to obligated funds after reviewing and accepting a final Federal Financial Report. Recipients will be notified and instructed by EPA if they must complete any

additional forms for the closeout of the assistance agreement.

Programmatic Conditions

Revolving Loan Fund (RLF) Terms and Conditions

Please note that these Terms and Conditions (T&Cs) apply to Brownfields RLF capitalization Grants awarded under CERCLA § 104(k) and those that chose to transition to § 104(k), or those agreements which have been amended after 12/24/14

They do not apply to pre-FY 2003 grants subject to § 104(d).

I. GENERAL FEDERAL REQUIREMENTS

A. Federal Policy and Guidance

1. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR).
2. In implementing this agreement, the cooperative agreement recipient shall comply with and require that work done by borrowers and subrecipients with cooperative agreement funds comply with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) § 104(k). The CAR will ensure that cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR will ensure cleanups are protective of human health and the environment.
3. The CAR must consider whether it is required to have borrowers or subrecipients conduct cleanups through a State or Tribal response program. If the CAR chooses not to require borrowers and subrecipients to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) on each loan or subaward to ensure the proposed cleanup is protective of human health and environment.

II. SITE/BORROWER/SUBRECIPIENTS ELIGIBILITY

A. Brownfields Site Eligibility

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

which includes (refer to EPA's Proposal Guidelines for Brownfields Revolving Loan Fund Grants dated October 2015 for discussion of this element) documenting that:

- a. a State has determined that the petroleum site is of relatively low risk, as compared to other petroleum sites in the State;
- b. the State determines there is "no viable responsible party" for the site;
- c. the State determines that the person assessing, investigating, or cleaning up the site is a person who is not potentially liable for cleaning up the site; and
- d. the site is not subject to any order issued under section 9003(h) of the Solid Waste Disposal Act.

This documentation must be prepared by the CAR or the State following contact and discussion with the appropriate state petroleum program official.

4. Documentation must include (1) the identity of the State program official contacted, (2) the State official's telephone number, (3) the date of the contact, and (4) a summary of the discussion to reach each determination that the site is of relatively low risk, that there is no viable responsible party and that the person assessing, investigating, or cleaning up the site is not potentially liable for cleaning up the site. Other documentation provided by a State to the recipient relevant to any of the determinations by the State must also be provided to the EPA Project Officer.

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

6. EPA will make all determinations on the eligibility of petroleum-contaminated brownfields sites located on tribal lands (i.e., reservation lands or lands otherwise in Indian country, as defined at 18 U.S.C. 1151). Before incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in "3" above.

B. Borrower and Subrecipient Eligibility

1. The CAR may only provide cleanup subawards to an eligible entity or nonprofit organization to clean up sites owned by the eligible entity or nonprofit organization at the time of the subawards. Eligible subrecipients include eligible entities as defined under CERCLA § 104(k)(1) and nonprofit organizations as defined in Section 4(6) of the Federal Financial Assistance Management Improvement Act of 1999. Nonprofit organizations described in Section 501(c)(4) of the Internal Revenue Code that engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act of 1995 are not eligible for subawards.

2. The subrecipient must retain ownership of the site throughout the period of performance of the subaward. For the purposes of this agreement, the term "owns" means fee simple title unless EPA headquarters approves a different ownership arrangement. However, the CAR may not provide a subaward to itself or another component of its own unit of government or organization .

3. The CAR may discount loans, also referred to as the practice of forgiving a portion of loan principle. For an individual loan, the amount of principal discounted may be any percentage of the total loan amount up to 30 percent, provided that the total amount of the principal forgiven for that loan shall not exceed \$200,000. Eligible entities include those identified in CERCLA § 104(k)(1) and nonprofit organizations as defined at Section 4(6) of the Federal Financial Assistance

Management Improvement Act of 1999. Private, forprofit entities are not eligible for discounted loans.

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

5. For approved eligible petroleum-contaminated brownfields sites, the person cleaning up the site must be a person who is not potentially liable for cleaning up the site. For brownfields grant purposes, an entity generally will not be considered potentially liable for petroleum contamination if it has not dispensed or disposed of petroleum or petroleumproduct at the site, has not exacerbated the contamination at the site, and taken reasonable steps with regard to the contamination at the site.

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

7. A borrower or subrecipient must submit information regarding its overall environmental compliance history including any penalties resulting from environmental non-compliance at the site subject to the loan or subaward. The CAR, in consultation with the EPA, must consider this history in its analysis of the borrower or subrecipient as a cleanup and business risk.

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

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

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

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

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

(a) any direct or indirect familial relationship; or

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

(c) a reorganized business entity that was potentially liable or otherwise liable under CERCLA § 107(a) as a prior owner or

operator, or generator or transporter of hazardous substances to the facility.

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

- i. complying with any land use restrictions established or relied on in connection with the response action at the vessel or facility and not impeding the effectiveness or integrity of institutional controls;
- ii. taking reasonable steps to stop any continuing hazardous substance releases, prevent any threatened future release, and prevent or limit human, environmental, or natural resource exposure to any previously released hazardous substance;
- iii. providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration;
- iv. complying with information requests and administrative subpoenas (applies to bona fide prospective purchasers and contiguous property owners); and
- v. complying with legally required notices (again, applies to bona fide prospective purchasers and contiguous property owners) [see CERCLA § § 101(40)(B)-(H), 107(q)(1)(A), 101(35)(A)-(B).].

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

III. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

1. The term of an RLF agreement is five years, unless otherwise extended by EPA at the CAR's request.
2. If after 2 years from the date of award, EPA determines that the recipient has not made sufficient progress in implementing its cooperative agreement the recipient must implement a corrective action plan approved by the EPA Project Officer or EPA may terminate this agreement for material non-compliance with its terms. Sufficient progress is indicated by the grantee having made loan(s) and/or subaward(s), but may also be demonstrated by a combination of all the following: hiring of all key personnel, the establishment and advertisement of the RLF, and the development of one or more potential loans/subawards.

B. Substantial Involvement

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

a. Substantial involvement by the U.S. EPA generally includes administrative activities such as: monitoring; reviewing and approving of procedures for loan and subrecipient selection; review of project phases; and approving substantive terms included in professional services contracts.

b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B.1. under EPA and/or State Approvals of Brownfields Sites above. The CAR may also request technical assistance from EPA to determine if sites qualify as brownfields sites and to determine whether

the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition prohibits a grant or loan recipient from using grant funds to clean up a site if the recipient is potentially liable under §107 of CERCLA for that site.

c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.

d. Substantial EPA involvement may include the review of the substantive terms of RLF loans and cleanup subawards.

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

2. Effect of EPA's substantial involvement includes:

a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement will not have any effect upon CERCLA § 128 Eligible Response Site determinations or for rights, authorities, and actions under CERCLA or any federal statute.

b. The CAR remains responsible for ensuring that all cleanups are protective of human health and the environment and comply with all applicable federal and state laws. If changes to the expected cleanup become necessary based on public comment or other reasons, the CAR must consult with EPA.

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

C. Cooperative Agreement Recipient Roles and Responsibilities

1. The CAR is responsible for establishing an RLF team that will implement the program and for coordinating the team's activities as outlined below.

2. The CAR must acquire the services of a qualified environmental professional(s) to coordinate, direct, and oversee the brownfields cleanup activities at a particular site, if they do not have such a professional on staff.

3. The CAR shall act as or appoint a qualified "fund manager" to carry out responsibilities that relate to financial management of the loan and/or subaward program. However, the CAR remains accountable to EPA for the proper expenditure of cooperative agreement funds. Any funding arrangements between the CAR and the fund manager for services performed must be consistent with 2 CFR Parts 200 and 1500.

4. The CAR shall appoint appropriate legal counsel if counsel is not already available. Counsel should review all loan/subaward agreements prior to execution.

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

6. Competency of Organizations Generating Environmental Measurement Data : In accordance with Agency Policy Directive Number FEM-2012-02, Policy to Assure the Competency of Organizations Generating Environmental Measurement Data under Agency-Funded Assistance Agreements, the CAR agrees, by entering into this agreement, that it has demonstrated competency prior to award, or alternatively,

where a pre-award demonstration of competency is not practicable, the CAR agrees to demonstrate competency prior to carrying out any activities under the award involving the generation or use of environmental data. The CAR shall maintain competency for the duration of the project period of this agreement and this will be documented during the annual reporting process. A copy of the Policy is available online at http://www.epa.gov/fem/lab_comp.htm or a copy may also be requested by contacting the EPA project officer for this award.

D. Quarterly Progress Reports

1. The CAR must submit progress report on a quarterly basis to the EPA Project Officer. The CAR shall refer to and utilize the RLF model quarterly report found at <https://www.epa.gov/brownfields/grantee-forms-reporting-brownfields-and-land-revitalization-new-england> or utilize the Quarterly Reporting function resident within the Assessment, Cleanup and Redevelopment Exchange System (ACRES).
2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended on specific properties under this cooperative agreement.
3. In accordance with 2 CFR 200.328(d)(1) the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.
4. The recipient must report on its subaward monitoring activities under 2 CFR 200.331(d).

E. Property Profile Submission

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

F. Final Report

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

IV. FINANCIAL ADMINISTRATION REQUIREMENTS

OPTIONAL/CAN CHANGE - Not applicable if costshare waived by EPA

A. Cost Share Requirement

1. CERCLA § 104(k)(9)(B)(iii) requires the recipient of this cooperative agreement to pay a cost share (which may be in the form of a contribution of money, labor, material, or services from a non-federal source) of at least 20 percent (i.e., 20 percent of the total federal funds awarded). The cost share contribution must be for costs that are eligible and allowable under the cooperative agreement and must be

supported by adequate documentation.

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

Subrecipients

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

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

b. At least 50% of the funds must be used by the CAR to provide loans for the cleanup of eligible brownfields sites and for eligible programmatic costs for managing the RLF. Up to 50% can be used for subawards to clean up eligible brownfield sites under the RLF and for eligible programmatic costs for managing subaward(s). (Note: cleanup subawards are limited to \$200,000 per site). (Note: The CAR may request a waiver to the 50% cap on subaward funds. Please consult with your Regional Project Officer for the waiver process.)

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

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

ii. The extent the subaward will meet the needs of a community that has the inability to draw on other sources of funding for environmental remediation and subsequent redevelopment of the area in which a brownfield site is located because of the small population or low income of the community;

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

iv. The benefit of promoting the long-term availability of funds from a revolving loan fund for brownfield remediation.

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

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

a. Determining whether RLF cleanup activities at a particular site are authorized by CERCLA § 104(k).

b. Ensuring that a RLF cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).

c. Limited site characterization including confirming the effectiveness of the proposed cleanup design or the effectiveness of a cleanup once an action has been completed.

d. Preparing an analysis of brownfields cleanup alternatives 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, implementability, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options in light of reasonably foreseeable changing climate conditions (e.g., sea level rise, increased frequency and intensity of flooding and/or extreme weather events, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.

e. Ensuring that public participation requirements are met. This includes preparing a community relations plan which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.

f. Establishing an administrative record for each site.

g. Developing a Quality Assurance Project Plan (QAPP) as required by 2 CFR 1500.11. The specific requirement for a QAPP is outlined in U.S. EPA Order 53601.1, April 1984, as amended on May 5, 2000.

h. Ensuring the adequacy of each RLF cleanup as it is implemented, including overseeing the borrowers and/or subrecipients activities to ensure compliance with applicable federal and state environmental requirements.

i. Ensuring that the site is secure if a borrower or subrecipient is unable or unwilling to complete a brownfields cleanup.

j. Using a portion of a loan or subaward to purchase environmental insurance for the site. The loan or subaward may not be used to purchase insurance intended to provide coverage for any of the Ineligible Uses under Section C.

k. Any other eligible programmatic costs including costs incurred by the recipient in making and managing a loan; obtaining financial management services; quarterly reporting to EPA; awarding and managing subawards; and carrying out outreach pertaining to the loan and subaward program to potential borrowers and subrecipients.

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

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

4. If the CAR makes a subaward to a local government that includes an amount (not to exceed 10% of the subaward) for brownfields program development and implementation, the terms and conditions of that agreement must include a provision

that ensures that the local government subrecipient maintains records adequate to ensure compliance with the limits on the amount of subaward funds that may be expended for this purpose.

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

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

- a. Environmental assessment activities, including Phase I and Phase II Environmental Site Assessments.
- b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action.
- c. Construction, demolition, and development activities that are not integral to the cleanup actions, and addressing public or private drinking water supplies that have deteriorated through ordinary use.
- d. Job training unrelated to performing a specific cleanup at a site covered by a loan or subaward.
- e. To pay for a penalty or fine.
- f. To pay a federal cost share requirement (for example, a cost-share required by another federal grant) unless there is specific statutory authority.
- g. To pay for a response cost at a brownfields site for which the recipient of the grant 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.
- i. Unallowable costs (e.g., lobbying and fund raising) under 2 CFR Parts 200 and 1500.

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

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

b. Ineligible grant or subaward administration costs include direct costs for:

- i. Preparation of applications for Brownfields grants and subawards;
- ii. Record retention required under 2 CFR Parts 200.333-337 and 1500.6;
- iii. Record-keeping associated with equipment purchases required under 2 CFR 200.313;
- iv. Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 2 CFR 200.308 and 2 CFR 1500.8;
- v. Maintaining and operating financial management systems required

under 2 CFR 200.302;

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

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

viii. Close out under 2 CFR 200.343.

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

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

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

i. Preparation of applications for loans and loan agreements;

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

iii. Maintaining and operating financial management and personnel systems;

iv. Preparing payment requests and handling payments; and

v. Audits.

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

i. Salaries, benefits and other compensation for persons who are not directly engaged in the cleanup of the site (e.g., marketing and human resource personnel);

ii. Facility costs such as depreciation, utilities, and rent on the borrower's administrative offices; and

iii. Supplies and equipment not used directly for cleanup at the site.

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

Direct costs by the borrower for progress reporting to the lender are eligible programmatic costs.

4. Cooperative agreement funds may not be used for any of the following properties:

a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);

b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;

c. Facilities that are subject to the jurisdiction, custody or control of the United States government except land held in trust by the United States government for an Indian tribe; or

d. A site excluded from the definition of a brownfields site for which EPA has not made a

property-specific funding determination.

D. Use of Program Income

1. In accordance with 2 CFR 200.307 and 2 CFR 1500.7, the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. In accordance with 2 CFR 1500.7(c), to continue the mission of the Brownfields Revolving Loan fund, recipients may use grant funding prior to using program income funds generated by the revolving loan fund. Program income for the RLF shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers and other income generated from RLF operations including proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.

2. The CAR may use program income from fees, interest payments from loans, and other forms of eligible program income to meet its cost-share. The CAR shall not use repayments of principal of loans to meet the CAR's cost-share requirement. Repayments of principal must be returned to the CAR's Brownfields cleanup revolving fund.

3. 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 applicable OMB cost principles when charging costs against program income. For any cost determined by the EPA to have been an ineligible use of program income, the recipient shall reimburse the RLF or the EPA. EPA will notify the recipient of the time period allowed for reimbursement.

4. Loans or subawards made with a combination of program income and direct funding from EPA are subject to the same terms and conditions as those applicable to this agreement. Loans and subawards made with direct funding from EPA in combination with non-federal sources of funds are also subject to the same terms and conditions of this agreement.

5. The CAR must obtain EPA approval of the substantive terms of loans and subawards made entirely with program income.

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

As provided at 2 CFR 200.307(f) and 2 CFR 1500.7(c) after the end of the award period, the CAR may keep and use program income at the end of the assistance agreement and use program income earned after the award period in accordance with the following close out agreement unless the CAR and EPA's Award Official agree to modify the terms.

1. Recipients shall use program income to continue to operate the revolving loan fund or some other brownfield purpose as outlined in the terms of this closeout agreement.

2. In accordance with 2 CFR 200.333(e), the CAR shall maintain appropriate records to document compliance with the requirements of the close out agreement (i.e.,

records relating to the use of accrued and post-award program income). EPA may request access to these records to verify that accrued and post-award program income has been used in accordance with the terms and conditions of this close out agreement.

3. EPA prefers the primary use of retained program income be for providing loans for Brownfields cleanups. In addition to Brownfields cleanup loans program income may also be used to fund the following Brownfields activities:

a. Cleanup Subawards

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, and

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

4. The CAR must ensure that any site specific use of program income takes place only on a property that is a Brownfield site as defined at CERCLA 101(39) in accordance with section IV C. 4, Ineligible uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subrecipients, unless otherwise noted as an eligible use of post closeout program income in the terms and conditions.

5. All assessment and cleanup work funded with program income must continue to be performed in accordance with state environmental rules and regulations and be protective of human health and the environment. If the CAR chooses not to have borrowers or subrecipients conduct assessments or cleanups through State or Tribal response program, then the CAR is required to consult with EPA to ensure the proposed assessment/cleanup is protective of human health and the environment.

6. Retained program income shall not be used for site inventory work.

7. When possible , RLF grantees should solicit input from local communities , especially potential environmental justice communities , communities with a health risk related to exposure to hazardous waste or other public health concerns , economically disadvantaged or remote areas , regarding the need for site specific assessments, loans and subawards.

8. Program income may not be used to assess or cleanup a site at which the CAR, the borrower, or the subrecipient is potentially liable under CERCLA 107 unless they qualify for a limitation or defense to liability under CERCLA. The CAR and borrower or subrecipient must make and retain a certification to that effect as part of the records for this closeout agreement. If asserting a limitation or defense to liability, the borrower or subrecipient must state the basis for that assertion. When program income for petroleum-contaminated brownfields sites, the CAR, borrower or subrecipient shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site and retain a certification to that effect as part of the records for this closeout agreement. The CAR may refer to the most recent issue of EPA's Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants for a discussion of these terms. The CAR may consult with EPA for assistance with this matter.

9. The CAR shall submit Annual Reports for the first 5 years following the effective

date of this closeout agreement. The annual report shall include the following information:

a. A cover page indicating the grant recipient's organization, grant 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 expensed incurred and program income received.

c. Site data consistent with information requested in current Property Profile Forms as required by the section III E, Property Profile Submission, of the CA or a list of sites created and/or updated in the ACRES database.

10. The grant recipient must maintain adequate accounting records for how retained program income is managed and spent as well as all other appropriate records and documents related to the activities conducted using retained program income.

11. Termination of this closeout agreement occurs when all program income has been expended. The CAR shall notify EPA's Award Official in writing when this occurs and certify that all funds have been expended in accordance with the terms and conditions of this closeout agreement. The notification should provide the relevant grant information specified in Section 8 a. of this closeout agreement. The Agency has 90 days from receipt of this notification to submit any objections to the termination of this closeout agreement. If the Agency does not object within that time period, then this closeout agreement will terminate with no further action.

12. All records and documents must be retained for a period of three (3) years following termination of this closeout agreement.

13. EPA and the grant recipient 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.

14. If the grant recipient expends retained program income in a manner inconsistent with this Closeout Agreement, the Agency may take actions authorized under 2 CFR Part 200, Remedies for Noncompliance.

15. 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.

16. No other Federal requirements apply to the use of program income under the terms of this close out agreement.

F. Interest-Bearing Accounts

1. The CAR must deposit advances of grant funds and program income (e.g., fees, interest payments, repayment of principal) in an interest bearing account.

2. Interest earned on advances, CARs and subrecipients are subject to the provisions of 2 CFR 200.305(b)(7)(ii) relating to remitting interest on advances to EPA on a quarterly basis.

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

V. RLF ENVIRONMENTAL REQUIREMENTS

A. Authorized RLF Cleanup Activities

1. The CAR shall prepare an analysis of brownfields cleanup alternatives 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, implementability, and the cost of the response proposed. The evaluation of alternatives must also consider the resilience of the remedial options in light of reasonably foreseeable changing climate conditions (e.g., sea level rise, increased frequency and intensity of flooding and/or extreme weather events, etc.). The alternatives may additionally consider the degree to which they reduce greenhouse gas discharges, reduce energy use or employ alternative energy sources, reduce volume of wastewater generated/disposed, reduce volume of materials taken to landfills, and recycle and re-use materials generated during the cleanup process to the maximum extent practicable. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis.

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

B. Quality Assurance (QA) Requirements

If environmental data are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 2 CFR 1500.11 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements. The recipient shall develop Quality Assurance Project Plans (QAPP) to support all environmental data operations in accordance with "The EPA New England Planning and Documenting Brownfields Projects - Generic Quality Assurance Project Plans and Site Specific QAPP Addenda," March 2009. The term "environmental data operations" refers to any measurement or information that describe environmental processes, conditions, or location; ecological or health effects; produced from models or surveys; compiled from other sources such as data bases and literature; or the performance of environmental technology. The Quality Assurance Project Plan must be approved by EPA before data collection and/or data generation activities begin. The recipient will submit the QAPP to the following:

EPA Project Officer (see page 1 of the assistance agreement for name and address), and

Regional Quality Assurance Manager (EQA)

US Environmental Protection Agency

11 Technology Drive

North Chelmsford, MA 01863

C. Community Relations and Public Involvement in RLF Cleanup Activities

1. All RLF loan and subaward cleanup activities require a site-specific community relations plan that includes providing reasonable notice, and the opportunity for

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

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

a. If any document, fact sheet, and/or web material are developed as part of this cooperative agreement, then they shall include the following statement:

"Though this project has been funded, wholly or in part, by EPA, the contents of this document do not necessarily reflect the views and policies of the EPA."

b. If a sign is developed, as part of a project funded by this cooperative agreement, then the sign shall include either a statement (e.g., this project has been funded, wholly or in part, by EPA) and/or EPA's logo acknowledging that EPA is a source of funding for the project. The EPA logo may be used on project signage when the sign can be placed in a visible location with direct linkage to site activities. Use of the EPA logo must follow the sign specifications available at: <http://www.epa.gov/ogd/tc.htm> .

D. Administrative Record

1. The CAR shall establish an administrative record that contains the documents that form the basis for the selection of a cleanup plan. Documents in the administrative record shall include the analysis of brownfield cleanup alternatives; 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.

E. Implementation of RLF Cleanup Activities

1. The CAR shall ensure the adequacy of each RLF cleanup in protecting human health and the environment as it is implemented. Each loan and subaward agreement shall contain terms and conditions, subject to any required approvals by the regulatory oversight authority, that allow the CAR to change cleanup activities as necessary based on comments from the public or any new information acquired.

2. If the borrower or subrecipient is unable or unwilling to complete the RLF cleanup, the CAR shall ensure that the site is secure. The CAR shall notify the appropriate state agency and the U.S. EPA to ensure an orderly transition should additional activities become necessary.

F. Completion of RLF Cleanup Activities

1. The CAR shall ensure that the successful completion of an RLF cleanup is properly documented. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows cleanups are complete. This documentation needs to be included as part of the administrative record.

VI. REVOLVING LOAN FUND REQUIREMENTS

A. Prudent Lending and Subaward Practices

1. The CAR is expected to establish economically sound structures and day-to-day management and processing procedures to maintain the RLF and meet longterm brownfield cleanup lending/subawarding objectives. These include establishing:

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

2. The CAR shall not incur costs under this cooperative agreement for loans, subawards or other eligible costs until an RLF grant has been submitted to and approved by U.S. EPA. The CAR shall ensure that the objectives of the workplan are met through its or the fund manager's selection and structuring of individual loans/subawards and lending/subawarding practices. These activities shall include, but not be limited to the following:

a. Considering awarding subawards on a competitive basis. If the CAR decides not to award any subawards competitively, it must document the basis for that decision and inform EPA.

b. Establishing appropriate project selection criteria consistent with Federal and state requirements, the intent of the RLF program, and the cooperative agreement entered into with EPA.

c. Establishing threshold eligibility requirements whereby only eligible borrowers or subrecipients receive RLF financing.

d. Developing a formal protocol for potential borrowers or subrecipients to demonstrate eligibility, based on the procedures described in the initial RLF application proposal and cooperative agreement application. Such a protocol shall include descriptions of projects

that will be funded, how loan monies will be used, and qualifications of the borrower or subrecipient to make legitimate use of the funds. Additionally, CARs shall ask borrowers or subrecipients for an explanation of how a project, if selected, would be consistent with

RLF program objectives, statutory requirements and limitations, and protect human health and the environment.

e. Requiring that borrowers or subrecipients submit information describing the borrower's or subrecipient's environmental compliance history. The CAR shall consider this history in an analysis of the borrower or subaward recipient as a cleanup and business risk.

f. Establishing procedures for handling the daytoday management and processing of loans and repayments.

g. Establishing standardized procedures for the disbursement of funds to the borrower or subrecipient.

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

1. The CAR shall ensure that the borrower or subrecipient meets the cleanup and other program requirements of the RLF grants by including the following special terms and conditions in RLF loan agreements and subawards:

a. Borrowers or subrecipients shall use funds only for eligible activities and in compliance with the requirements of CERCLA § 104(k) and applicable Federal and State laws and regulations. See Section I.A.2.

b. Borrowers or subrecipients shall ensure that the cleanup protects human health and the environment.

c. Borrowers or subrecipients shall document how funds are used. If a loan or subaward includes cleanup of a petroleum-contaminated brownfields site(s), the CAR shall include a term and condition requiring that the borrower or subrecipient maintain separate records for costs incurred at that site(s).

d. Borrowers or subrecipients shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with RLF funds. Borrowers or subrecipients shall obtain written approval from the CAR prior to disposing of records. Cooperative agreement recipients shall also require that the borrower or subrecipient provide access to records relating to loans and subawards supported with RLF funds to authorized representatives of the Federal Government.

e. Borrowers or subrecipients shall certify that they are not currently, nor have they been, subject to any penalties resulting from environmental noncompliance at the site subject to the loan.

f. Borrowers or subrecipients shall certify that they are not potentially liable under § 107 of CERCLA for the site or that, if they are, they qualify for a limitation or defense to liability under CERCLA. If asserting a limitation or defense to liability, the borrower or subrecipient must state the basis for that assertion. When using grant funds for petroleum-contaminated brownfields sites, borrowers or subrecipients shall certify that they are not a viable responsible party or potentially liable for the petroleum contamination at the site. Refer to the most recent issue of EPA's Proposal Guidelines for Brownfields Assessment, Revolving Loan Fund and Cleanup Grants for a discussion of these terms. The CAR may consult with EPA for assistance with this matter.

g. Borrowers or subrecipients shall conduct cleanup activities as required by the CAR.

h. Subrecipients shall comply with applicable EPA assistance regulations (2 CFR Parts 200 and 1500). All procurements conducted with subaward funds must comply with Procurement Standards of 2 CFR 200.317 through 200.326, as applicable.

i. A term and condition or other legally binding provision shall be included in all loans and subawards entered into with the funds under this agreement, or when funds awarded under this agreement are used in combination with non-federal sources of funds, to ensure that borrowers and subrecipients comply with all applicable federal and state laws and requirements. In addition to CERCLA § 104(k), federal applicable laws and requirements include: 2 CFR Parts 200 and 1500.

j. The CAR must comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA grant funds. For more detailed information on complying with Davis-Bacon, please see the Davis- Bacon Addendum to these terms and conditions.

k. Federal cross-cutting requirements include, but are not limited to, DBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation

Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

C. Default

1. In the event of a loan default, the CAR shall make reasonable efforts to enforce the terms of the loan agreement including proceeding against the assets pledged as collateral to cover losses to the loan. If the cleanup is not complete at the time of default, the CAR is responsible for: (1) documenting the nexus between the amount paid to the borrower (bank or other financial institution) and the cleanup that took place prior to the default; and (2) securing the site (e.g., ensuring public safety) and informing the EPA Project Officer and the State.

D. Conflict of Interest

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

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

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

VII. DISBURSEMENT, PAYMENT AND CLOSEOUT

For the purposes of these terms and conditions, the following definitions apply:

“payment” is the

U.S. EPA's transfer of funds to the CAR; the CAR incurs an “obligation” when it enters into a loan agreement with the borrower or subrecipient; “disbursement” is the transfer of

funds from the CAR to the borrower or subrecipient. “Close out” refers to the process that the U.S. EPA follows to both ensure that all administrative actions and work required under the cooperative agreement have been completed, and, to establish a closeout agreement to govern the use of program income.

A. Methods of Disbursement

1. The CAR may choose to disburse funds to the borrower by means of ‘actual

expense' or 'schedule.' If the schedule method is used, the recipient must ensure that the schedule is designed to reasonably approximate the borrower's incurred costs.

a. An 'actual expense' disbursement approach requires the borrower to submit documentation of the borrower's expenditures (e.g., invoices) to the CAR prior to requesting payment from EPA.

b. A 'schedule' disbursement is one in which all, or an agreed upon portion, of the obligated funds are disbursed to the borrower or subrecipients on the basis of an agreed upon schedule (e.g., progress payments) provided the schedule minimizes the time elapsing between disbursement by the CAR and the borrower or subrecipient's payment of costs incurred in carrying out the loan/subaward. In unusual circumstances, disbursement may occur upon execution of the loan or subaward. The CAR shall submit documentation of disbursement schedules to EPA.

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

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

B. Schedule for Closeout

1. There are two fundamental criteria for closeout:

a. Final payment of funds from EPA to the CAR following expiration of the terms of the agreement or expenditure of the funds awarded; and

b. Completion of all cleanup activities funded by 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 initial amount of the award are complete.

3. The CAR must negotiate a closeout agreement with EPA to govern the use of program income after closeout. Eligible uses include continuing to operate an RLF for brownfields cleanup and/or other brownfields activities.

4. The closeout agreement terms outlined in Section IV.E require that any assessments or cleanups financed with program income be consistent with the CERCLA § 107 prohibitions and site eligibility limitations.

C. Compliance with Closeout Schedule

1. If a CAR fails to comply with the closeout schedule, any cooperative agreement funds not obligated under loan agreement to a borrower or subrecipient may be subject to federal recovery, and the cooperative agreement award may be amended to reflect the reduced amount of the cooperative agreement.

D. Final Requirements

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

grant.

a. The CAR must submit the following documentation:

1. The Final Report as described in III.F.
2. A Final Federal Financial Report (FFR - SF425). Submitted to:
US EPA, Las Vegas Finance Center
4220 S. Maryland Pkwy, Bld C, Rm 503
Las Vegas, NV 89119

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

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

b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region.

E. Recovery of RLF Assets

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

F. Loan Guarantees

1. If the CAR chooses to use the RLF funds to support a loan guarantee approach, the following terms and conditions apply:

a. The CAR shall:

- i. document the relationship between the expenditure of CERCLA § 104(k) funds and cleanup activities;
- ii. maintain an escrow account expressly for the purpose of guaranteeing loans, by following the payment requirement described under the Escrow Requirements term and condition below; and
- iii. ensure that cleanup activities guaranteed by RLF funds are carried out in accordance with CERCLA § 104(k) and applicable federal and state laws and will protect human health and the environment.

b. Payment of funds to a CAR shall not be made until a guaranteed loan has been issued by a participating financial institution. Loans guaranteed with RLF funds shall be made available as needed for specified cleanup activities on an "actual expense" or "schedule" basis to the borrower or subrecipient (See Section on Methods of Disbursement). The CAR's escrow arrangement shall be structured to ensure that the CERCLA § 104(k) funds are properly "disbursed" by the recipient for the purposes of the assistance agreement as required by 2 CFR 200.305. If the funds are not properly disbursed, the CERCLA § 104(k) funds that the recipient places in an escrow account will be

subject to the interest recovery provisions of 2 CFR 200.305.

c. To ensure that funds transferred to the CAR are disbursements of assisted funds, the escrow account shall be structured to ensure that:

- i. the recipient cannot retain the funds;
- ii. the recipient does not have access to the escrow funds on demand;
- iii. the funds remain in escrow unless there is a default of a guaranteed loan;
- iv. the organization holding the escrow (i.e., the escrow agency), shall be a bank or similar financial institution that is independent of the recipient; and
- v. there must be an agreement with financial institutions participating in the guaranteed loan program which documents that the financial institution has made a guaranteed loan to clean up a brownfields site in exchange for access to funds held in escrow in the event of a default by the borrower or subrecipient.

d. Federal Obligation to the Loan Guarantee Program

- i. Any obligations that the CAR incurs for loan guarantees in excess of the amount awarded under the cooperative agreement are the CAR's responsibility. This limitation on the extent of the Federal Government's financial commitment to the CAR's loan guarantee program shall be communicated to all participating banks and borrower or subrecipient.

e. Repayment of Guaranteed Loans

- i. Upon repayment of a guaranteed loan and release of the escrow amount by the participating financial institution, the CAR shall return the cooperative agreement funds placed in escrow to the U.S. EPA.

Alternatively, the CAR may, with EPA approval,

- 1) guarantee additional loans under the terms and conditions of the agreement or,
- 2) amend the terms and conditions of the agreement to provide for another disposition of funds that will redirect the funds for other brownfields related activities.

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Davis Bacon Term and Condition for Revolving Loan Fund Grants to Governmental/Quasi-Governmental Organizations

6/28/16

Davis Bacon Term and Condition

For

Revolving Loan Fund Grants to Governmental/Quasi-Governmental Organizations

DAVIS BACON PREVAILING WAGE TERM AND CONDITION

The following terms and conditions specify how Recipients will assist EPA in meeting its Davis Bacon (DB) responsibilities when DB applies to EPA awards of financial assistance under the Recovery Act or any other statute which makes DB applicable to EPA financial assistance. If a Recipient 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

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.

With regard to remediation of petroleum contamination, following consultation with the U.S. Department of Labor, EPA has determined that for remediation of petroleum contamination at brownfields sites, DB prevailing wage requirement apply when the project includes:

- (i) 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,
- (ii) Soil excavation/replacement when undertaken in conjunction with the installation of public water lines/wells described above, or
- (iii) 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 cleanup activities at brownfields sites contaminated by petroleum 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 a RLF Recipient encounters a unique situation at a site (e.g. unusually extensive excavation) that presents uncertainties regarding DB applicability, the RLF Recipient must discuss the situation with EPA before authorizing work on that site.

Note: If an RLF Recipient encounters a unique situation at a petroleum or hazardous substance site that presents uncertainties regarding DB applicability, the RLF Recipient must discuss the situation with EPA before advising a borrower or subrecipient that DB does not apply.

2. Obtaining Wage Determinations

(a) The RLF Recipient is responsible for obtaining DB wage determinations from DOL and ensuring the borrowers and subrecipient include the correct wage determinations in solicitations for competitive contracts by way of requests for bids, proposals, quotes or other methods for soliciting contracts (solicitations), new contracts, and task orders, work assignments or similar instruments issued to existing contractors (ordering instruments).

(b) Unless otherwise instructed by EPA on a project specific basis, the RLF Recipient shall use the following DOL General Wage Classifications for the locality in which the construction activity subject to DB will take place. RLF Recipients must obtain wage determinations for specific localities at www.wdol.gov.

(i) For solicitations, new contracts and ordering instruments for the excavation and removal of hazardous substances, construction of caps, barriers and similar activities the RLF Recipient shall use the “Heavy Construction” Classification.

(ii) For solicitations, new contracts and ordering instruments for the construction of structures which house treatment equipment. And abatement or contamination in buildings (other than residential structures less than 4 stories in height) the RLF Recipient 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 Recipient shall use “Residential Construction” classification.

(iv) For solicitations, new contracts and 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 Recipient shall use the “Building Construction” classification.

(v) For solicitations, new contracts and 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 Recipient shall use the “Heavy Construction” classification.

Recipients must discuss unique situations that may not be covered by the General Wage Classifications described above with EPA. If, based on discussions with an RLF Recipient, EPA determines that DB applies to a unique situation involving a Brownfields site contaminated with petroleum (e.g. unusually extensive excavation) the Agency will advise the Recipient which General wage determination to use based on the nature of the construction activity at the site.

(b) RLF Recipients shall include a term and condition in all loans and subawards which ensures that the borrower or subrecipient complies with the above requirements for including wage determinations in solicitations, new contracts and ordering instruments. The RLF Recipient must ensure that prime contracts entered into by borrowers and subrecipient contain a provision requiring that subcontractors follow the wage determination incorporated into the prime contract.

(i) While the borrower or subrecipient’s solicitation remains open, the RLF Recipient shall require that the borrower or subrecipient monitor www.wdol.gov on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The RLF Recipient shall require that the borrower or subrecipient 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 RLF Recipient may, on behalf of the borrower or subrecipient, 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 RLF Recipient.

(ii) If the borrower or subrecipient 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 RLF Recipient, obtains an extension of the 90 day period from DOL pursuant to 29 CFR 1.6(c) (3) (iv). The RLF Recipient shall ensure that borrowers and subrecipients monitor www.wdol.gov on a weekly basis if the borrower or subrecipient does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current. If the applicable wage determination changes, the RLF Recipient shall provide the borrower or subrecipient with the current wage determination from www.wdol.gov.

(iii) If the borrower or subrecipient 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 RLF Recipient shall ensure that the borrower or subrecipient inserts the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

(c) RLF Recipients shall ensure that borrowers and subrecipients 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 borrower or subrecipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the borrower or subrecipient 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 RLF Recipient shall require that the borrower or subrecipient 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 RLF Recipient must ensure that the borrower or subrecipient compensates the contractor for any increases in wages resulting from the use of DOL's revised wage determination. RLF Recipients may, but are not required to, provide additional loan or subaward funds to the borrower or subrecipient for this purpose.

3. Contract and Subcontract Provisions

(a) The RLF Recipient shall ensure that borrowers and subrecipients 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 RLF Recipient 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. RLF Recipients shall require that the contractor and subcontractors include the name of the RLF Recipient employee or official responsible for monitoring compliance with DB on the poster.

(ii)(A) The RLF Recipient, on behalf of EPA, shall require that contracts and subcontracts entered into by borrowers and subrecipients 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, upon the request of the RLF Recipient 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.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the RLF Recipient and the borrower or subrecipient 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 RLF Recipient 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.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, **and the RLF Recipient and borrower or subrecipient** do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the RLF Recipient shall provide a report on the disagreement which includes submissions by all interested parties to the EPA Award Official. 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 Award Official or will notify the Award Official within the 30-day period that additional time is necessary. The Award Official will direct that the RLF Recipient take appropriate action to implement the Administrator's determination.

(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 RLF Recipient, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause the borrower or subrecipient to withhold from the contractor under the affected 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 RLF Recipient 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 borrower or subrecipient and to the RLF Recipient 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 Web site at <https://www.dol.gov/whd/programs/dbra/wh347.htm> 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 RLF Recipient 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 RLF Recipient.

(B) Each payroll submitted to the RLF Recipient 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.

(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.

(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, **Recipient, borrower or recipient**, 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 RLF Recipient, 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 RLF Recipient shall ensure that subrecipients and borrowers*** 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 CFF 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 RLF Recipient shall upon written request from the Award Official or an authorized representative of the Department of Labor withhold or cause to be withheld by the borrower or subrecipient 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 RLF Recipient 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 RLF Recipient 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

Note: RLF Recipients may require that borrowers or subrecipients verify that contractors and subcontractors comply with DB provisions or conduct compliance verification itself. RLF Recipients must ensure that borrowers and subrecipients understand the compliance verification requirements and can interpret prevailing wage determinations properly before placing the responsibility for compliance verification on borrowers or subrecipients. Moreover, the RLF Recipient remains accountable to EPA for ensuring that the borrowers' and subrecipients' contractors and subcontractors comply with DB.

(a) The RLF Recipient periodically interview, or require that borrowers or subrecipients 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 RLF Recipient 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 RLF Recipient shall establish and follow, or ensure that borrowers or subrecipients 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 RLF Recipient, or the borrower or subrecipient, 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. RLF Recipients, or borrowers or subrecipients, 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. RLF Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage requirements that it uncovers itself or that is reported to it by a borrower or subrecipients. All interviews shall be conducted in confidence.

(c) The RLF Recipient shall conduct, or require that borrowers or subrecipients 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 RLF Recipient shall establish and follow or ensure that borrowers or subrecipients follow a spot check schedule based on an 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 RLF Recipient must spot check, or require that borrowers or subrecipients 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 of the contract or subcontract. RLF Recipients must conduct, or require that borrowers or subrecipients 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 RLF Recipient shall verify, or require that borrower or subrecipients verify, evidence of fringe benefit plans and payments there under by contractors and subcontractors who claim credit for fringe benefit contributions.

(d) The RLF Recipient shall periodically review, or require that borrowers or subrecipients 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) RLF Recipients must immediately report, or require that borrowers or subrecipients 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>