

	<b>U.S. ENVIRONMENTAL PROTECTION AGENCY</b>  <b>Cooperative Agreement</b>	<b>ASSISTANCE ID NO.</b>			<b>DATE OF AWARD</b> 07/14/2010	
		<b>PRG</b>	<b>DOC ID</b>	<b>AMEND#</b>		
		<b>BF - 00J24101 - 0</b>			<b>MAILING DATE</b> 07/21/2010	
		<b>TYPE OF ACTION</b> New			<b>PAYMENT METHOD:</b> ACH#	
<b>RECIPIENT TYPE:</b> Municipal		<b>Send Payment Request to:</b> Las Vegas Finance Center FAX # 702-798-2423				
<b>RECIPIENT:</b> City of Moscow P.O. Box 9203 Moscow, ID 83843 EIN: B2-6000227		<b>PAYEE:</b> City of Moscow P.O. Box 9203 Moscow, ID 83843				
<b>PROJECT MANAGER</b> Travis Cary P.O. Box 9203 Moscow, ID 83843 E-Mail: tcary@ci.moscow.id.us Phone: (208) 883-7007		<b>EPA PROJECT OFFICER</b> Brooks Stanfield 1200 Sixth Avenue, Suite 900, ECL-112 Seattle, WA 98101 E-Mail: Stanfield.Brooks@epa.gov Phone: 206-553-4423		<b>EPA GRANT SPECIALIST</b> Bob Phillips Grants Administration, OMP-145 E-Mail: Phillips.Bob@epa.gov Phone: 206-553-6367		
<b>PROJECT TITLE AND DESCRIPTION</b> City of Moscow, BF Assessment This Cooperative Agreement will assist the recipient with the formation of a coalition of local governments and partners to establish an area-wide inventory of brownfield sites and a process for prioritizing sites for site specific assessment. Sites will center around Moscow, Idaho's urban renewal district and specifically the Legacy Crossing area. The recipient will conduct Phase I and Phase II site assessments and conduct cleanup planning where necessary in order to spur cleanup and redevelopment of contaminated parcels primed for urban renewal and infill.						
<b>BUDGET PERIOD</b> 10/01/2010 - 09/30/2013		<b>PROJECT PERIOD</b> 10/01/2010 - 09/30/2013		<b>TOTAL BUDGET PERIOD COST</b> \$475,000.00	<b>TOTAL PROJECT PERIOD COST</b> \$475,000.00	
<b>NOTICE OF AWARD</b>						
Based on your application dated 06/17/2010, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$475,000. EPA agrees to cost-share 100.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of \$475,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.						
<b>ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)</b>			<b>AWARD APPROVAL OFFICE</b>			
<b>ORGANIZATION / ADDRESS</b> EPA Region 10 Mail Code: OMP-145 1200 Sixth Avenue, Suite 900 Seattle, WA 98101			<b>ORGANIZATION / ADDRESS</b> U.S. EPA, Region 10 Office of Environmental Cleanup 1200 Sixth Avenue, Suite 900, ECL-112 Seattle, WA 98101			
<b>THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY</b>						
<b>SIGNATURE OF AWARD OFFICIAL</b> Digital signature applied by EPA Award Official		<b>TYPED NAME AND TITLE</b> Armina K. Nolan, Manager - Grants and Interagency Agreements Unit		<b>DATE</b> 07/14/2010		
<b>AFFIRMATION OF AWARD</b>						
<b>BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION</b>						
<b>SIGNATURE</b>		<b>TYPED NAME AND TITLE</b> Mr. Wayne Krauss, Acting Mayor		<b>DATE</b>		

## Code of Federal Regulations (CFR) and the Office of Management and Budget (OMB) Circulars

The regulations and circulars that apply to your grant are noted on page 2 of the assistance agreement and are circled below for your reference.

<u>Non-profits &amp; Hospitals</u>	<u>Universities</u>	<u>State, Local &amp; Tribal Governments</u>
40 CFR Part 30	40 CFR Part 30	40 CFR Part 31
OMB Circular A-122	OMB Circular A-21	OMB Circular A-87
OMB Circular A-133	OMB Circular A-133	OMB Circular A-133

Other regulations that apply (if circled) to your particular grant program:

- 40 CFR Part 35, Subpart A – States
- 40 CFR Part 35, Subpart B – Tribes
- 40 CFR Part 35, Subpart \_\_\_\_\_
- 40 CFR Part 47 – Environmental Education

### Reporting Forms

Some of the forms you will need in carrying out your assistance agreement are listed below. They, and other standard forms, may be found through the Region 10 Grants website previously cited and shown again here:

<http://yosemite.epa.gov/r10/OMP.NSF/grants/administration>

- SF 425, Federal Financial Reports
- EPA Form 5700-52A, Minority & Women=s Business (MBE/WBE) Report Form

### Grant Payments

If you have not previously enrolled in EPA's electronic funds transfer program, you will need SF 3881, the ACH Vendor/Miscellaneous Payment Enrollment Form, which is also on the Grants Administration Website.

See Administrative Condition #1 for additional information.

### Questions ?

Please feel free to contact your EPA Grants Specialist if you have any questions about the administrative requirements of your grant.

[ ] Enclosure: \_\_\_\_\_

# EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 475,000	\$ 475,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$	\$ 0
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 475,000	\$ 475,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 101(39)	40 CFR PART 31

Fiscal									
Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
MOSCOW HAZ	1010NEG014	10	E4	10N2AG7	402D79E	4114	G000NY00		375,750
MOSCOW PET	1010NEG014	10	E4	10N2AG7	402D79EBP	4114	G000OR00		99,250
									475,000

Budget Summary Page

<b>Table A - Object Class Category (Non-construction)</b>	<b>Total Approved Allowable Budget Period Cost</b>
1. Personnel	\$0
2. Fringe Benefits	\$0
3. Travel	\$4,500
4. Equipment	\$0
5. Supplies	\$2,000
6. Contractual	\$468,500
7. Construction	\$0
8. Other	\$0
9. Total Direct Charges	\$475,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>0.00</u> % Federal <u>100.00</u> %.)	\$475,000
12. Total Approved Assistance Amount	\$475,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$475,000
15. Total EPA Amount Awarded To Date	\$475,000

## **Administrative Conditions**

### **1. Payment Information**

All recipients must be enrolled to receive funds electronically via the EPA-EFT Payment Process. This electronic funds transfer process was initiated by EPA in response to the Debt Collection Improvement Act of 1996, P.L. 104-134 that requires all federal payments be made via Direct Deposit/Electronic Funds Transfer(DD/EFT). By signing the assistance agreement you are agreeing to receive payment electronically.

**In order to receive payments electronically, the ACH Vendor/ Miscellaneous Payment Enrollment Form (SF3881) must be completed and faxed to Marge Pumphrey at (702) 798-2423.**

After reviewing and processing the SF3881, the Las Vegas Finance Center (LVFC) will send you a letter assigning you an EFT Control Number, an EPA-EFT Recipient's Manual, and the necessary forms for requesting funds and reporting purposes.

If you need further assistance regarding enrollment, please contact Marge Pumphrey at (702) 798-2492 or by e-mail to: pumphrey.margaret@epa.gov.

**Any recipient currently using the Automated Standard Application for Payments (ASAP) system with another government agency should contact Marge Pumphrey at (702) 798-2492 or e-mail to: pumphrey.margaret@epa.gov.**

Under any of the above payment mechanisms, recipients may request/draw down advances for their immediate cash needs, provided the recipient meets the requirements of 40 CFR 30.22(b) or 40 CFR 31.21(c), as applicable. Additionally, recipients must liquidate all obligations incurred within 90 calendar days of the project period end date. Therefore, recipients must submit the final request for payment, and refund to EPA any balance of unobligated cash advanced within 90 calendar days after the end of the project period.

### **2. Cost Principles/Indirect Costs Not Included (All Organizations)**

The cost principles of OMB Circular A-21, "Cost Principles for Educational Institutions," relocated to 2 CFR Part 220, OMB Circular A-87, "State, Local or Indian Tribal Governments," relocated to 2 CFR Part 225, or OMB Circular A-122, "Cost Principles for Non-Profit Organizations," relocated to 2 CFR Part 230, are applicable, as appropriate, to this award. Since there are no indirect costs included in the assistance budget, they are not allowable under this Assistance Agreement.

### **3. Federal Financial Report (FFR)**

Recipients shall submit final Federal Financial Reports (FFR), Standard Form 425 (SF-425), 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, or by FAX to: 702-798-2423.**

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.

EPA may take enforcement actions in accordance with 40 CFR 30.62 and 40 CFR 31.43 if the recipient does not comply with this term and condition.

### **4. Audit Requirements**

The recipient agrees to comply with the requirements of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

### **5. Hotel-Motel Fire Safety Act**

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space

for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

## 6. Recycled Paper

### **INSTITUTIONS OF HIGHER EDUCATION HOSPITALS AND NON-PROFIT ORGANIZATIONS:**

In accordance with 40 CFR 30.16, the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

### **STATE AGENCIES AND POLITICAL SUBDIVISIONS:**

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

### **STATE AND LOCAL INSTITUTIONS OF HIGHER EDUCATION AND NON-PROFIT ORGANIZATIONS:**

In accordance with 40 CFR 30.16, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to EPA's guidelines.

### **STATE TRIBAL AND LOCAL GOVERNMENT RECIPIENTS:**

In accordance with the policies set forth in EPA Order 1000.25 and Executive Order 13423, Strengthening Federal Environmental, Energy and Transportation Management (January 24, 2007), the recipient agrees to use recycled paper and double sided printing for all reports which are prepared as a part of this agreement and delivered to EPA. This requirement does not apply to reports prepared on forms supplied by EPA, or to Standard Forms, which are printed on recycled paper and are available through the General Services Administration.

## 7. Lobbying

### **ALL RECIPIENTS:**

The recipient agrees to comply with Title 40 CFR Part 34, *New Restrictions on Lobbying*. The recipient shall include the language of this provision in award documents for all subawards exceeding \$100,000, and require that subrecipients submit certification and disclosure forms accordingly.

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

### **PART 30 RECIPIENTS:**

All contracts awarded by a recipient shall contain, when applicable, the anti-lobbying provision as stipulated in the Appendix at Title 40 CFR Part 30.

Pursuant to Section 18 of the Lobbying Disclosure Act, the recipient affirms that it is not a nonprofit organization described in Section 501(c)(4) of the Internal Revenue Code of 1986; or that it is a nonprofit organization described in Section 501(c)(4) of the Code but does not and will not engage in lobbying activities as defined in Section 3 of the Lobbying Disclosure Act.

## 8. Lobbying and Litigation

### **ALL RECIPIENTS:**

The chief executive officer of this recipient agency shall ensure that no grant funds awarded under this assistance agreement are used to engage in lobbying of the Federal Government or in litigation against

the United States unless authorized under existing law. The recipient shall abide by its respective OMB Circular (A-21, A-87, or A-122), which prohibits the use of Federal grant funds for litigation against the United States or for lobbying or other political activities.

#### **9. Suspension and Debarment**

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

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

#### **10. Drug-Free Workplace Certification for all EPA Recipients**

The recipient organization of this EPA assistance agreement must make an ongoing, good faith effort to maintain a drug-free workplace pursuant to the specific requirements set forth in Title 40 CFR 36.200 - 36.230. Additionally, in accordance with these regulations, the recipient organization must identify all known workplaces under its federal awards, and keep this information on file during the performance of the award.

Those recipients who are individuals must comply with the drug-free provisions set forth in Title 40 CFR 36.300.

The consequences for violating this condition are detailed under Title 40 CFR 36.510. Recipients can access the Code of Federal Regulations (CFR) Title 40 Part 36 at [http://www.access.gpo.gov/nara/cfr/waisidx\\_06/40cfr36\\_06.html](http://www.access.gpo.gov/nara/cfr/waisidx_06/40cfr36_06.html).

#### **11. Management Fees**

Management fees or similar charges in excess of the direct costs and approved indirect rates are not allowable. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs which are not allowable under this assistance agreement. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

#### **12. Reimbursement Limitation**

If the recipient expends more than the amount of federal funding in its EPA approved budget in anticipation of receiving additional funds from EPA, it does so at its own risk. EPA is not legally obligated to reimburse the recipient for costs incurred in excess of the EPA approved budget.

#### **13. Trafficking Victims Protection Act of 2000**

To implement requirements of Section 106 of the Trafficking Victims Protection Act of 2000, as amended, the following provisions apply to this award:

a. We, as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity: (1) is determined to have violated an applicable prohibition in the Prohibition Statement below; or (2) has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in the Prohibition Statement below through conduct that is either: (a) associated with performance under this award; or (b) imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 2 CFR part 1532.

You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in the Prohibition Statement below.

b. Our right to terminate unilaterally that is described in paragraph a of this award term: (1) implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and (2) is in addition to all other remedies for noncompliance that are available to us under this award.

c. You must include the requirements of the Prohibition Statement below in any subaward you make to a private entity.

**Prohibition Statement** - You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

#### **14. Disadvantaged Business Enterprise Requirements (Effective May 27, 2008)**

##### **GENERAL COMPLIANCE, 40 CFR, Part 33**

The recipient agrees to comply with the requirements of EPA's Program for Utilization of Small, Minority and Women's Business Enterprises in procurement under assistance agreements, contained in 40 CFR, Part 33.

##### **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 (MBE/WBE) participation in procurement under the financial assistance agreements.

##### **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 over \$250,000. The Idaho Dept. of Environmental Quality has negotiated the following, applicable MBE/WBE fair share objectives/goals with EPA as follows:

MBE: CONSTRUCTION 0; SUPPLIES .70%; SERVICES 1.20% ; EQUIPMENT .10%  
WBE: CONSTRUCTION 0; SUPPLIES 1.40%; SERVICES 1.80%; EQUIPMENT .30%

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

If the recipient has not yet negotiated its MBE/WBE fair share objectives/goals, the recipient agrees to submit proposed MBE/WBE objectives/goals based on an availability analysis, or disparity study, of qualified MBEs and WBEs in their relevant geographic buying market for construction, services, supplies and equipment.

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

##### **Objective/Goals of Loan Recipients**

As a recipient of an EPA financial assistance agreement to capitalize revolving loan funds, the recipient agrees to either apply its own fair share objectives negotiated with EPA to identified loans using a substantially similar relevant geographic market, or negotiate separate fair share objectives with its identified loan recipients. These separate objectives/goals must be based on demonstrable evidence of the availability of MBEs and WBEs in accordance with 40 CFR, Part 33, Subpart D.

The recipient agrees that if procurements will occur over more than one year, the recipient may choose to apply the fair share objective in place either for the year in which the identified loan is awarded or for the year in which the procurement action occurs. The recipient must specify this choice in the financial assistance agreement, or incorporate it by reference therein.

##### **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 ensure 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.

**MBE/WBE REPORTING, 40 CFR, Part 33, Sections 33.502 and 33.503**

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The reporting period is **semiannual**, with reporting periods ending March 31<sup>st</sup> and September 30<sup>th</sup>. The reports must be submitted within 30 days of the end of the semiannual reporting periods, **April 30<sup>th</sup> and October 30<sup>th</sup>.**

Recipients of financial assistance agreements that capitalize revolving loan programs agree to require entities receiving identified loans to submit their MBE/WBE participation reports on a semiannual basis to the financial assistance agreement recipient, rather than to EPA.

**Reports should be sent to the EPA Region 10, Grants Administration Unit, 1200 Sixth Avenue, Suite 900, Mailcode: OMP-145, Seattle, WA 98101. For further information, please contact Greg Luchey at (206) 553-2967, email: [Luchey.Greg@epa.gov](mailto:Luchey.Greg@epa.gov). Final MBE/WBE reports must be submitted within 90 days after the project period of the grant ends. Your grant cannot be officially closed without all MBE/WBE reports.**

EPA Form 5700-52A may be obtained from the EPA Office of Small Business Program's Home Page on the Internet at [www.epa.gov/osbp](http://www.epa.gov/osbp).

**CONTRACT ADMINISTRATION PROVISIONS, 40 CFR, Section 33.302**

The recipient agrees to comply with the contract administration provisions of 40 CFR, Section 33.302. The recipient also agrees to ensure that recipients of identified loans also comply with 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.

## 15. Payment to Consultants

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2010, the limit is \$596.00 per day \$74.50 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40 CFR Parts 30 or 31, as applicable, are not affected by this limitation unless the terms of the contract provide the recipient with responsibility for the selection, direction, and control of the individuals who will be providing services under the contract at an hourly or daily rate of compensation. See 40 CFR 30.27(b) or 40 CFR 31.36(j), as applicable, for additional information.

**NOTE:** For future years' limits, the recipient may find the annual salary for Level IV of the Executive Schedule on the following Internet site: <http://www.opm.gov/oca>. Select "Salary and Wages", and select "Executive Schedule". The annual salary is divided by 2087 hours to determine the maximum hourly rate, which is then multiplied by 8 to determine the maximum daily rate.

## **Programmatic Conditions**

1.

### **R10 2010 Brownfields Assessment Terms and Conditions**

Please note that these Terms and Conditions (T&Cs) apply to Brownfields Assessment Grants awarded under CERCLA 104(k).

#### **I. GENERAL FEDERAL REQUIREMENTS**

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

#### **A. Federal Policy and Guidance**

1. a. **Cooperative Agreement Recipients:** By awarding this cooperative agreement, EPA has approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2010 competition for Brownfields assessment cooperative agreements. However, the CAR may not expend ("draw down") funds to carry out this agreement until EPA's award official approves the final work plan.

b. In implementing this agreement, the CAR shall ensure that work done with cooperative agreement funds complies with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 104(k). The CAR shall also ensure that assessment activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations.

c. The recipient agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

d. The recipient must comply with Federal cross-cutting requirements. These requirements

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

e. The CAR must comply with Davis-Bacon Act prevailing wage requirements and associated U.S. Department of Labor (DOL) regulations for all construction, alteration and repair contracts and subcontracts awarded with funds provided under this agreement. Activities conducted under assessment grants generally do not involve construction, alteration and repair within the meaning of the Davis-Bacon Act. The recipient must contact EPA's Project Officer if there are unique circumstances (e.g. removal of an underground storage tank or another structure and restoration of the site) which indicate that the Davis-Bacon Act applies to an activity the CAR intends to carry out with funds provided under this agreement. The Agency will provide guidance on Davis-Bacon Act compliance if necessary.

## B. Eligible Brownfields Site Determinations

1. a. The CAR must provide information to EPA about site-specific work prior to incurring any costs under this cooperative agreement for sites that have not already been pre-approved in the CAR's work plan by the EPA. The information that must be provided includes whether or not the site meets the definition of a brownfield site as defined in §101(39) of CERCLA, the identity of the owner, and the date of acquisition.

b. If the site is excluded from the general definition of a brownfield, but is eligible for a property-specific funding determination, then the CAR must provide information sufficient for EPA to make a property-specific funding determination. The CAR must provide sufficient information on how financial assistance will protect human health and the environment, and either promote economic development or enable the creation of, preservation of, or addition to parks, greenways, undeveloped property, other recreational property, or other property used for nonprofit purposes. The CAR must not incur costs for assessing sites requiring a property-specific funding determination by EPA until the EPA Project Officer has advised the CAR that the Agency has determined that the property is eligible.

2. a. For any petroleum contaminated brownfield site that is not included in the CAR's EPA approved work plan, the CAR shall provide sufficient documentation to the EPA prior to incurring costs under this cooperative agreement which includes (see the latest version of EPA's *Proposal Guidelines for Brownfields Assessment Grants* dated August 2009 for discussion of this element) documenting that:

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

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

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

c. If the State chooses not to make the determinations described in 2.a. above, the CAR must contact the EPA Project Officer and provide the information

necessary for EPA to make the requisite determinations.

- d. EPA must also make all determinations on the eligibility of petroleum contaminated brownfield sites located on Indian tribal lands. Prior to incurring costs for these sites, the CAR must contact the EPA Project Officer and provide the information necessary for EPA to make the determinations described in 2.a. above.

## II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

### A. Term of the Agreement

1. The term of this agreement is three years from the date of award, unless otherwise extended by EPA at the CAR's request.
2. If after 18 months from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, EPA may terminate this agreement. For purposes of assessment grants, the recipient demonstrates "sufficient progress" when 35% of funds have been drawn down and obligated to eligible activities; for assessment coalition grants "sufficient progress" is demonstrated when a solicitation for services has been released, sites are prioritized or an inventory has been initiated if necessary, community involvement activities have been initiated and a Memorandum of Agreement is in place within eighteen months.
3. Assessment funding for any eligible brownfield site may not exceed \$200,000 unless a waiver has been granted by EPA. Following the granting of a waiver, funding is not to exceed \$350,000 at the site.

### B. Substantial Involvement

1. The EPA may be substantially involved in overseeing and monitoring this cooperative agreement.
  - a. Substantial involvement by EPA generally includes administrative activities such as monitoring, reviewing project phases, and approving substantive terms included in professional services contracts.
  - b. Substantial EPA involvement also includes brownfields property-specific funding determinations described in I.B. under *Eligible Brownfields Site Determinations* above. If the CAR awards a subgrant for site assessment, the CAR must obtain technical assistance from EPA on which sites qualify as a brownfield site and determine whether the statutory prohibition found in section 104(k)(4)(B)(i)(IV) of CERCLA applies. This prohibition precludes the subgrantee from using EPA funds to assess a site for which the subgrantee is potentially liable under §107 of CERCLA. (See Section II.C.3 for more information on subgrants.)
  - c. Substantial EPA involvement may include reviewing financial and environmental status reports; and monitoring all reporting, record-keeping, and other program requirements.
  - d. EPA may waive any of the provisions in term and condition II.B.1., with the exception of property-specific funding determinations. EPA will provide waivers in writing.
2. Effect of EPA's substantial involvement includes:
  - a. EPA's review of any project phase, document, or cost incurred under this cooperative agreement, will not have any effect upon CERCLA §128 *Eligible Response Site* determinations or rights, authorities, and actions under CERCLA or any Federal statute.

- b. The CAR remains responsible for ensuring that all assessments are protective of human health and the environment and comply with all applicable Federal and State laws.
- c. The CAR and its subgrantees remain responsible for incurring costs that are allowable under the applicable OMB Circulars.

### C. Cooperative Agreement Recipient Roles and Responsibilities

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

### D. Quarterly Progress Reports

- 1. The CAR must submit progress reports on a quarterly basis to the EPA Project Officer. Quarterly progress reports must include:
  - a. Summary of approved activities performed during the reporting quarter, summary of the performance outputs/outcomes achieved during the reporting quarter, a description of problems encountered during the reporting quarter that may affect the project schedule and a discussion of meeting the performance outputs/outcomes.
  - b. An update on project schedules and milestones.
  - c. A list of the properties where assessment activities were performed and/or completed during the reporting quarter.
  - d. A budget recap summary table with the following information: current approved project budget; costs incurred during the reporting quarter; costs incurred to date (cumulative expenditures); and total remaining funds.
  - e. If applicable, a separate budget recap summary table as described in D.1.c must be submitted for brownfields petroleum projects.
  - f. Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and must relate EPA-funded activities to the objectives and milestones agreed upon in the work plan including a list of sites where assessment activities were completed. To the extent consistent with the EPA approved work plan for this agreement, activities undertaken with EPA funds to be included in quarterly performance and financial reporting may include:
    - 1. *Assessment Start Date (interim measure to show grant progress)*
    - 2. *Acres per property*
    - 3. *Assessments completed*
    - 4. *No cleanup required*
    - 5. *Types of contaminants found*
    - 6. *Acres of greenspace created*
    - 7. *Engineering/institutional controls required, what type and whether they are in place*
    - 8. *Cleanup plans*

9. *Redevelopment underway*
  10. *Funds leveraged*
  11. *Jobs leveraged*
  12. *Health monitoring studies, insurance, institutional controls funded*
  13. *Lessons learned during planning and implementation; summary of project*
  14. *Photos of events and sites worked on, including before and after.*
- g. Documentation of the best efforts to identify and use clean diesel technologies, clean fuels, and/or other diesel emissions reductions practices.
  - h. When considering approaches to the assessment and cleanup of properties EPA's recommendation of best practices should be implemented whenever possible.
    - i. Use energy efficient equipment to minimize energy consumption and
      - use cleaner fuels to power machinery and auxiliary equipment.
    - ii. Minimize the generation of greenhouse gases by minimizing the generation and transport of airborne contaminants and dust.
    - iii. Minimize water use and impacts to water resources and employ best management practices for storm water.
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. If applicable, the CAR must maintain records that will enable it to report to EPA on the amount of funds expended on petroleum properties addressed under this cooperative agreement.
  4. In accordance with 40 CFR 31.40(d), the CAR agrees to inform EPA as soon as problems, delays, or adverse conditions become known which will materially impair the ability to meet the outputs/outcomes specified in the approved work plan.

#### E. Property Profile Submission

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

#### F. Final Report

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

### III. FINANCIAL ADMINISTRATION REQUIREMENTS

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

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

- a. Determining whether assessment activities at a particular site are authorized by CERCLA 104(k);

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

2. *Local Governments only . No more than 10% of the funds awarded by this agreement may be used for brownfield program development and implementation (including monitoring of health and institutional controls). These activities must be described as tasks in the EPA approved work plan. The CAR must maintain records on funds that are used to carry out any related work plan tasks to ensure compliance with this requirement.*

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

1. Cooperative agreement funds shall not be used by the CAR for any of the following activities:
  - a. Cleanup activities;
  - b. Development activities that are not brownfields assessment activities (e.g., construction of a new facility);
  - c. Job training unrelated to performing a specific assessment at a site covered by the grant;
  - d. To pay for a penalty or fine;
  - e. To pay a federal cost share requirement (for example, a cost-share required by another Federal grant) unless there is specific statutory authority;
  - f. To pay for a response cost at a brownfields site for which the recipient of the grant or subgrant is potentially liable under CERCLA §107;
  - g. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the assessment; and
  - h. Unallowable costs (e.g., lobbying and fund raising) under applicable OMB Circulars.
2. Under CERCLA 104(k)(4)(B), administrative costs are prohibited costs under this agreement. Prohibited administrative costs include all indirect costs under applicable OMB Circulars.
  - a. Ineligible administrative costs include costs incurred in the form of salaries, benefits, contractual costs, supplies, and data processing charges, incurred to comply with most provisions of the *Uniform Administrative Requirements for Grants* contained in 40 CFR Part 31. Direct costs for grant administration, with the exception of costs specifically identified as eligible programmatic costs, are ineligible even if the grant recipient is required to carry out the activity under the grant agreement.
  - b. Ineligible grant administration costs include direct costs for:
    - (1) Preparation of applications for brownfields grants;
    - (2) Record retention required under 40 CFR 31.42;
    - (3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 31.32 and 31.33;

- (4) Preparing revisions and changes in the budgets, scopes of work, program plans and other activities required under 40 CFR 31.30;
  - (5) Maintaining and operating financial management systems required under 40 CFR 31;
  - (6) Preparing payment requests and handling payments under 40 CFR 31.21;
  - (7) Non-federal audits required under 40 CFR 31.26 and OMB Circular A-133; and
  - (8) Close out under 40 CFR 31.50.
3. Cooperative agreement funds may not be used for any of the following properties:
- a. Facilities listed, or proposed for listing, on the National Priorities List (NPL);
  - b. Facilities subject to unilateral administrative orders, court orders, administrative orders on consent or judicial consent decree issued to or entered by parties under CERCLA;
  - c. Facilities that are subject to the jurisdiction, custody or control of the United States government except for land held in trust by the United States government for an Indian tribe; or
  - d. A site excluded from the definition of a brownfields site for which EPA has not made a property-specific funding determination.
4. The CAR must not include management fees or similar charges in excess of the direct costs or at the rate provided for by the terms of the agreement negotiated with EPA. The term "management fees or similar charges" refers to expenses added to the direct costs in order to accumulate and reserve funds for ongoing business expenses, unforeseen liabilities, or for other similar costs that are not allowable under EPA assistance agreements. Management fees or similar charges may not be used to improve or expand the project funded under this agreement, except to the extent authorized as a direct cost of carrying out the scope of work.

#### C. Interest -Bearing Accounts and Program Income

1. In accordance with 40 CFR 31.25(g)(2), the CAR is authorized to add program income to the funds awarded by the EPA and use the program income under the same terms and conditions of this agreement. Program income for the assessment CAR shall be defined as the gross income received by the recipient, directly generated by the cooperative agreement award or earned during the period of the award. Program income includes, but is not limited to, fees charged for conducting assessment, site characterizations, clean up planning or other activities when the costs for the activity is charged to this agreement.
2. The CAR must deposit advances of grant funds and program income (i.e. fees) in an interest bearing account.
  - a. For interest earned on advances, CARs are subject to the provisions of 40 CFR §31.21(l) to remitting interest on advances to EPA on a quarterly basis.
  - b. Interest earned on program income is considered additional program income.

### IV. ASSESSMENT ENVIRONMENTAL REQUIREMENTS

#### A. Authorized Assessment Activities

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



## B. Quality Assurance (QA) Requirements

1. When environmental samples are collected as part of the brownfields assessment, the CAR shall comply with 40 CFR Part 31.45 requirements to develop and implement quality assurance practices sufficient to produce data adequate to meet project objectives and to minimize data loss. State law may impose additional QA requirements.

## C. Completion of Assessment Activities

1. The CAR shall properly document the completion of all activities described in the EPA approved work plan. This must be done through a final report or letter from a qualified environmental professional, or other documentation provided by a State or Tribe that shows assessments are complete.

## D. All Appropriate Inquiry

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

## V. Conflict of interest : Appearance of lack of Impartiality

### A. Conflict of Interest

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

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

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

## VI. PAYMENT AND CLOSEOUT

### A. Payment Schedule

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

## **B. Schedule for Closeout**

1. Closeout will be conducted in accordance with 40 CFR 31.50. EPA will close out the award when it determines that all applicable administrative actions and all required work of the grant have been completed.
2. The CAR, within 90 days after the expiration or termination of the grant, must submit all financial, performance, and other reports required as a condition of the grant.
  - a. The CAR must submit the following documentation:
    1. The Final Report as described in II.F.
    2. A Final Federal Financial Report (FFR - SF425):

See administrative term and condition #3 for submission instructions.
    3. A Final MBE/WBE Report (EPA Form 5700-52A):

See administrative term and condition #14 for submission instructions
  - b. The CAR must ensure that all appropriate data has been entered into ACRES or all Property Profile Forms are submitted to the Region.
  - c. The grantee must immediately refund to the Federal agency any balance of unobligated (unencumbered) cash advanced that is not authorized to be retained for use on other grants.