APPENDIX B -
EPA COOPERATIVE
AGREEMENT

Town's Copy

U.S. ENVIRONMENTAL PROTECTION AGENCY

Cooperative Agreement

GRANT NUMBER (FAIN): 96162501 MODIFICATION NUMBER: 0 PROGRAM CODE: BF	DATE OF AWARD 08/02/2012
TYPE OF ACTION New	MAILING DATE 08/09/2012
PAYMENT METHOD: Advance	ACH#

RECIPIENT TYPE:
Municipal

Send Payment Request to:
U.S. EPA Las Vegas Finance Center
4220 South Maryland Parkway, Building C, Room 503
Las Vegas, NV 89119
Tel: (702) 798-2406
Fax: (702) 798-2423
http://www.epa.gov/ocfo/finservices/payinfo.htm

RECIPIENT:	PAYEE:
Town of Tilton 257 Main Street Tilton, NH 03276 **EIN:** 02-6000916	Town of Tilton 257 Main Street Tilton, NH 03276

PROJECT MANAGER	EPA PROJECT OFFICER	EPA GRANT SPECIALIST
Joyce Fulweiler 257 Main Street Tilton, NH 03276 **E-Mail:** townadmin@tiltonnh.org **Phone:** 603-286-4521 x101	Kathleen Castagna 5 Post Office Square, Suite 100, OSRR07-3 Boston, MA 02109-3912 **E-Mail:** Castagna.Kathleen@epamail.epa.gov **Phone:** 617-918-1429	Brian Tocci Grants Management Office, OARM16-2 **E-Mail:** Tocci.Brian@epamail.epa.gov **Phone:** 617-918-1979

PROJECT TITLE AND DESCRIPTION
Tilton Brownfields Cleanup Program
This assistance agreement will provide funding to the Town of Tilton, New Hampshire to cleanup a brownfields site, the former Ernie's Auto Sales site, in Tilton, New Hampshire. Brownfields are real property, the expansion, development or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant .

BUDGET PERIOD	PROJECT PERIOD	TOTAL BUDGET PERIOD COST	TOTAL PROJECT PERIOD COST
10/01/2012 - 09/30/2015	10/01/2012 - 09/30/2015	$220,000.00	$220,000.00

NOTICE OF AWARD

Based on your application dated 07/12/2012, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards $200,000. EPA agrees to cost-share 90.00% of all approved budget period costs incurred, up to and not exceeding total federal funding of $200,000. Such award may be terminated by EPA without further cause if the recipient fails to provide timely affirmation of the award by signing under the Affirmation of Award section and returning all pages of this agreement to the Grants Management Office listed below within 21 days after receipt, or any extension of time, as may be granted by EPA. This agreement is subject to applicable EPA statutory provisions. The applicable regulatory provisions are 40 CFR Chapter 1, Subchapter B, and all terms and conditions of this agreement and any attachments.

ISSUING OFFICE (GRANTS MANAGEMENT OFFICE)	AWARD APPROVAL OFFICE
ORGANIZATION / ADDRESS	ORGANIZATION / ADDRESS
EPA New England 5 Post Office Square, Suite 100 Boston, MA 02109-3912	U.S. EPA, Region 1 5 Post Office Square, Suite 100 Boston, MA 02109-3912

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

Digital signature applied by EPA Award Official for Michael Kenyon - Director, Office of Administration & Resource Management Fred Weeks - Award Official delegate	DATE 08/02/2012

AFFIRMATION OF AWARD

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION

SIGNATURE	TYPED NAME AND TITLE	DATE
Patricia Consentino	Patricia A. Consentino, Chairman, Board of Selectmen, Town of Tilton, NH	8/16/2012

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	$	$ 200,000	$ 200,000
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	$	$ 20,000	$ 20,000
Allowable Project Cost	$ 0	$ 220,000	$ 220,000

Assistance Program (CFDA)	Statutory Authority	Regulatory Authority
66.818 - Brownfields Assessment and Cleanup Cooperative Agreements	CERCLA: Sec. 104(k)(3)	40 CFR PART 31

Fiscal

Site Name	Req No	FY	Approp. Code	Budget Organization	PRC	Object Class	Site/Project	Cost Organization	Obligation / Deobligation
-	12010CG029	12	E4	0140AG7	301D79	4114	G1S3OQ00	-	200,000
									200,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	$4,000
2. Fringe Benefits	$0
3. Travel	$3,000
4. Equipment	$0
5. Supplies	$0
6. Contractual	$193,000
7. Construction	$0
8. Other	$20,000
9. Total Direct Charges	$220,000
10. Indirect Costs: % Base	$0
11. Total (Share: Recipient 10.00 % Federal 90.00 %.)	$220,000
12. Total Approved Assistance Amount	$200,000
13. Program Income	$0
14. Total EPA Amount Awarded This Action	$200,000
15. Total EPA Amount Awarded To Date	$200,000

Administrative Conditions

1. 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 a 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, 2012, the limit is $596.00 per day and $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 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 31.36(j) or 30.27(b).

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 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 award amount of this assistance agreement is $250,000, or less; or the total dollar amount of all of the recipient's financial assistance agreements from EPA in the current Federal fiscal year is $250,000, or less. Therefore, the recipient of this assistance agreement is exempt from the fair share objective requirements of 40 CFR, Part 33, Subpart D, and is not required to negotiate a fair share objective/goal for the utilization of MBE/WBEs in its procurements.

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) Require 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 reports must be submitted **semiannually** for the periods ending March 31st and September 30th for:

Recipients of financial assistance agreements that capitalize revolving loan programs (CWSRF, DWSRF, Brownfields); and
All other recipients not identified as annual reporters (40 CFR Part 30 and 40 CFR Part 35, Subpart A and Subpart B recipients are annual reporters).

The reports are due within 30 days of the end of the semiannual reporting periods (April 30th and October 30th). Reports should be sent to:

U.S. Environmental Protection Agency – Region I
5 Post Office Square – Suite 100 (OARM16-2)
Boston, MA 02109-3912
Attn: Mr. Larry Wells, Disadvantaged Business Utilization Program Manager

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 .

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 and sub 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. DRUG-FREE WORKPLACE CERTIFICATION

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.

4. CENTRAL CONTRACTOR REGISTRATION AND UNIVERSAL IDENTIFIER REQUIREMENTS

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

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

1.Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its DUNS number to you.

2.May not make a subaward to an entity unless the entity has provided its DUNS number to you.

C. Definitions. For purposes of this award term:

1.Central Contractor Registration (CCR)/System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management (SAM) Internet site http://www.sam.gov.

2.Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at http://fedgov.dnb.com/webform).

3.Entity, as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C:

a. A Governmental organization, which is a State, local government, or Indian tribe;
b. A foreign public entity;
c. A domestic or foreign nonprofit organization;
d. A domestic or foreign for-profit organization; and
e. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4.Subaward:

a. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

b. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

c. A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

5. Subrecipient means an entity that:

a. Receives a subaward from you under this award; and

b. Is accountable to you for the use of the Federal funds provided by the subaward.

5. FISCAL YEAR 2012 FEDERAL TAX LIABILITY

This award is subject to the provisions contained in the Department of Interior, Environment, and Related Agencies Appropriations Act, 2012, HR 2055, Division E, Sections 433 and 434 (sections 433 and 434) regarding unpaid federal tax liabilities and federal felony convictions. Accordingly, by accepting this award the recipient acknowledges that it: (1) is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) has not been convicted (or had an officer or agent acting on its behalf convicted) of a felony criminal conviction under any Federal law within 24 months preceding the award, unless EPA has considered suspension or debarment of the corporation, or such officer or agent, based on these tax liabilities or convictions and determined that such action is not necessary to protect the Government's interests. If the recipient fails to comply with these provisions, EPA will annul this agreement and may recover any funds the recipient has expended in violation of sections 433 and 434.

6. GEOSPATIAL DATA STANDARDS

All geospatial data created must be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards may be found at www.fgdc.gov.

7. HOTEL-MOTEL FIRE SAFETY

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.

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.

the auditor, the recipient shall submit the SF-SAC and a Single Audit Report Package. **The recipient MUST** submit the SF-SAC and a Single Audit Report Package, using the Federal Audit Clearinghouse's Internet Data Entry System. For complete information on how to accomplish the single audit submissions, you will need to visit the Federal Audit Clearinghouse Web site: http://harvester.census.gov/fac/

15. REPORTING SUB-AWARDS AND EXECUTIVE COMPENSATION

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph e of this award term).

2. Where and when to report.

i. You must report each obligating action described in paragraph a.1. of this award term to www.fsrs.gov.

ii.For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at www.fsrs.gov specify.

b. Reporting Total Compensation of Recipient Executives.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if --

i.the total Federal funding authorized to date under this award is $25,000 or more;

ii. in the preceding fiscal year, you received—

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

iii.The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

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

i. As part of your registration Central Contractor Registration/System for Award Management profile available at www.sam.gov.

9. 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.

10. 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.

11. RECYCLING TERM AND CONDITION (1)

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.

12. RECYCLING TERM AND CONDITION (2)

In accordance with the polices 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.

13. REIMBURSEMENT LIMITATION

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

14. A-133 SINGLE AUDIT

In accordance with OMB Circular A-133, which implements the Single Audit Act, the recipient hereby agrees to obtain a single audit from an independent auditor, if it expends $500,000 or more in total Federal funds in any fiscal year. Within nine months after the end of a recipient's fiscal year or 30 days after receiving the report from

3. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. --.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

4. Subrecipient means an entity that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

5. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):

i. Salary and bonus .

ii. *Awards of stock, stock options, and stock appreciation rights* . Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

iii. *Earnings for services under non-equity incentive plans* . This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

iv. *Change in pension value.* This is the change in present value of defined benefit and actuarial pension plans.

v. *Above-market earnings on deferred compensation which is not tax-qualified* .

vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds $10,000.

16. NATIONAL TERM AND CONDITION FOR SUB-AWARDS

a. The recipient agrees to:

(1) Establish all subaward agreements in writing;

(2) Maintain primary responsibility for ensuring successful completion of the EPA-approved project (this responsibility cannot be delegated or transferred to a subrecipient);

(3) Ensure that any subawards comply with the standards in Section 210(a)-(d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;

(4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable, and allocable;

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if --

i. in the subrecipient's preceding fiscal year, the subrecipient received—

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

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

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions

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

i. subawards,

and

ii. the total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization;

iv. A domestic or foreign for-profit organization;

v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

2. Executive means officers, managing partners, or any other employees in management positions.

(5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;

(6) Monitor the performance of their recipients and ensure that they comply with all applicable regulations, statutes, and terms and conditions which flow down in the subaward;

(7) Obtain EPA's consent before making a subaward to a foreign or international organization, or a subaward to be performed in a foreign country; and

(8) Obtain approval from EPA for any new subaward work that is not outlined in the approved work plan in accordance with 40 CFR Parts 30.25 and 31.30, as applicable.

b. Any questions about subrecipient eligibility or other issues pertaining to subawards should be addressed to the recipient's EPA Project Officer. Additional information regarding subawards may be found at http://www.epa.gov/ogd/guide/subaward-policy-part-2.pdf. Guidance for distinguishing between vendor and subrecipient relationships and ensuring compliance with Section 210(a)-(d) of OMB Circular A-133 can be found at http://www.epa.gov/ogd/guide/subawards-appendix-b.pdf and http://www.whitehouse.gov/omb/circulars/a133/a133.html.

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

17. SUSPENSION AND DEBARMENT

Recipients shall fully comply with Subpart C of 2 CFR Part 180 entitled, "Responsibilities of Participants Regarding Transactions Doing Business With Other Persons," as implemented and supplemented by 2 CFR Part 1532. Recipient is responsible for ensuring that any lower tier covered transaction, as described in Subpart B of 2 CFR Part 180, 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 required under 2 CFR 180.335 may result in the delay or negation of this assistance agreement, or pursuance of legal remedies, including suspension and debarment.

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

18. TRAFFICKING IN PERSONS

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

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

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

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

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

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

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

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

A. Associated with performance under this award; or

B. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB

Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),'' as implemented by our Agency at 2 CFR 1532.

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

1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
i. Associated with performance under this award; or
ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, ''OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),'' as implemented by our agency at 2 CFR 1532

c. *Provisions applicable to any recipient* .

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.

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

1. ''Employee'' means either:
i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
2. ''Forced labor'' means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
3. ''Private entity'':
i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25.
ii. Includes:
A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
B. A for-profit organization.
4. ''Severe forms of trafficking in persons,'' ''commercial sex act,'' and ''coercion'' have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

19. TRAFFICKING VICTIMS PROTECTION ACT OF 2000

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.

20. UNLIQUIDATED OBLIGATIONS PART 31 - FEDERAL FINANCIAL REPORT

Pursuant to 40 CFR 31.41(b) and 31.50(b), EPA recipients shall submit a final Federal Financial Report (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 31.43 if the recipient does not comply with this term and condition.

21. ADVANCE METHOD OF PAYMENT

The recipient must request payment on EPA 1901-F-00-104. This form should be faxed to the Las Vegas Finance Center. No payment will be made to the recipient until the executed assistance agreement is returned to the Grants Management Office.

The amount of the payment request will be based on the recipient's projected cash requirements, not to exceed those amounts necessary for immediate disbursement needs. Typically reimbursement of Federal Funds will be within 3 to 5 days of receipt of funds from EPA.

The recipient agrees to sign and return the Standard Form 3881, ACH Vendor/Miscellaneous Payment Enrollment Form, the Las Vegas Finance Center as indicated on the memorandum dated December 11, 2006 that was attached to your initial award with EPA. As required by Public Law 104-134; Debt Collection Improvement Act of 1996, Electronic Fund Transfer payments will not be processed until this form has been received by the

Las Vegas Finance Center.

22. LEVERAGING

The recipient agrees to provide the proposed leveraged funding, including any voluntary cost-share contribution or overmatch, that is described in its proposal dated **7/12/2012 (See also clause..below if the leveraging included a voluntary cost-share contribution or overmatch).** If the proposed leveraging does not materialize during the period of award performance, and the recipient does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future proposals from the recipient. In addition, if the proposed leveraging does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the leveraged funding the recipient described in its proposal dated **7/12/2012** EPA may take action as authorized by 40 CFR Parts 30 or 31 and/or 2 CFR Part 180 as applicable.

Voluntary Cost-Share or Overmatch

This award and the resulting federal funding of **$200,000** is based on estimated costs requested in the recipient's application dated **7/12/2012**. Included in these costs is a voluntary cost-share contribution of **$20,000** by the recipient in the form of a voluntary cost-share or overmatch (providing more than any minimum required cost-share) that the recipient included in its proposal dated **7/12/2012**. The recipient must provide this voluntary cost-share contribution during performance of this award unless the EPA agrees otherwise in a modification to this agreement. While actual total costs may differ from the estimates in the recipient's application, EPA's participation shall not exceed the total amount of federal funds awarded.

If the recipient fails to provide the voluntary cost-share contribution during the period of award performance, and does not provide a satisfactory explanation, the Agency may consider this factor in evaluating future proposals from the recipient. In addition, if the voluntary cost-share contribution does not materialize during the period of award performance then EPA may reconsider the legitimacy of the award; if EPA determines that the recipient knowingly or recklessly provided inaccurate information regarding the voluntary cost-share or overmatch the recipient described in its proposal dated **7/12/2012** EPA may take action as authorized by 40 CFR Parts 30 or 31 and/or 2 CFR Part 180 as applicable.

Programmatic Conditions

Fiscal Year 2012 Cleanup Terms and Conditions

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

I. GENERAL FEDERAL REQUIREMENTS

Note: These terms and conditions contain references to EPA financial assistance regulations at 40 CFR Parts 30 and 31. 40 CFR Part 30 is applicable to non-profit and educational institution recipients and 40 CFR Part 31 is applicable to governmental recipients.

A. Federal Policy and Guidance

1. a. Cooperative Agreement Recipients: By awarding this cooperative agreement, EPA has

approved the proposal for the Cooperative Agreement Recipient (CAR) submitted in the Fiscal Year 2012 competition for Brownfields cleanup 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 cleanup activities supported with cooperative agreement funding comply with all applicable Federal and State laws and regulations. The CAR must ensure cleanups are protective of human health and the environment.

c. The CAR must enter the cleanup property into the state's voluntary cleanup program.

d. A term and condition or other legally binding provision shall be included in all agreements entered into with the funds, or when funds awarded under this agreement are used in combination with non-Federal sources of funds, to ensure that recipients comply with all applicable Federal and State laws and requirements. In addition to CERCLA § 104(k), Federal applicable laws and requirements include:

e. Federal cross-cutting requirements including, but not limited to, MBE/WBE 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.

f. 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 refer to the Davis- Bacon Addendum to these terms and conditions.

B. Changes to Sites and Cleanup Methods

1. a. The CAR must use funds provided by this agreement to clean up the brownfield site in the EPA approved work plan. Any changes to the boundaries of the site must be approved by EPA in a revised work plan.

b. The CAR may not make substantial changes to the cleanup method described in the work plan without prior EPA approval.

II. GENERAL COOPERATIVE AGREEMENT ADMINISTRATIVE REQUIREMENTS

A. Term of the Agreement

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

at the CAR's request.

2. If after 18 months from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, the recipient must implement a corrective action plan approved by the EPA Project Officer or EPA may terminate this agreement for material non-compliance with its terms. For purposes of the Cleanup Grants, "sufficient progress in implementing a cooperative agreement" means that an appropriate remediation plan is in place, institutional control development, if necessary, has commenced, initial community involvement activities have taken place, relevant state or tribal pre-cleanup requirements are being addressed and a solicitation for remediation services has been issued.

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, review of project phases, and approving substantive terms included in professional services contracts.

b. Substantial EPA involvement may include review of financial and program performance reports and monitoring all reporting, record-keeping, and other program requirements.

c. EPA may waive any of the provisions in term and condition II.B.1., at its own initiative or upon request by the CAR. 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.

c. The CAR remains responsible for ensuring costs are allowable under 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 and cleanup 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 are consistent with the terms and conditions of this agreement.

3. Subgrants are defined at 40 CFR 31.3 and 40 CFR 30.2(f). 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 or the Procurement Standards of 40 CFR Part 30, as applicable. In addition, EPA policy encourages awarding subgrants competitively and the CAR must consider awarding subgrants through competition.

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 cleanup model quarterly report found at www. epa.gov/region1/brownfields.

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

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

E. Property Profile Submission

1. The CAR must report on interim progress (i.e., 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 any 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.

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 what work was performed at the 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. Cost Share Requirement

CERCLA § 104(k)(9)(B)(iii) requires that the recipient of this cooperative agreement 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

1. To the extent allowable under the EPA-approved work plan, cooperative agreement funds may be used for programmatic expenses necessary to clean up sites. Eligible programmatic expenses include activities described in Section IV of these terms and conditions. In addition, eligible programmatic expenses may include:

a. Ensuring cleanup activities at a particular site are authorized by CERCLA § 104(k) and the EPA approved work plan;

b. Ensuring that a cleanup 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 remediation of the site. Funds may not be used to purchase insurance intended to provide coverage for any of the ineligible uses under Section III.C;

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 in III.C.2; and carrying out community involvement pertaining to the cleanup activities.

2. **Local Governments Only.** No more than 10% of the funds awarded by this agreement may be used by the CAR itself as a programmatic cost for brownfields program development and implementation (including monitoring of health and institutional controls) as described in the EPA-approved work plan. The CAR must maintain records on funds that will be used to carry out its EPA-approved work plan to ensure that no more than 10% of its funds are used for brownfields program development and implementation (including monitoring of health and institutional controls).

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

1. Cooperative agreement funds shall <u>not</u> be used by the CAR for any of the following activities:

a. Pre-cleanup environmental assessment activities such as site assessment, identification, and characterization with the exception of site monitoring activities that are reasonable and necessary during the cleanup process, including determination of the effectiveness of a cleanup;

b. Monitoring and data collection necessary to apply for, or comply with, environmental permits under other federal and state laws, unless such a permit is required as a component of the cleanup action;

c. Construction, demolition, and development activities that are not cleanup actions (e.g., marketing of property or construction of a new facility or 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 the grant;

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 is potentially liable under CERCLA § 107;

h. To pay a cost of compliance with any federal law, excluding the cost of compliance with laws applicable to the cleanup; and

i. Unallowable costs (e.g., lobbying and 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 <u>all indirect costs</u> under applicable OMB Circulars incurred by the CAR.

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 30 or 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. Costs incurred to report quarterly performance to EPA under the grant are eligible.

b. Ineligible grant administration costs include direct costs for:

(1) Preparation of applications for Brownfields grants;

(2) Record retention required under 40 CFR 30.53 and 40 CFR 31.42;

(3) Record-keeping associated with supplies and equipment purchases required under 40 CFR 30.33, 30.34, and 30.35 and 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 30.25 and 40 CFR 31.30;

(5) Maintaining and operating financial management systems required under 40 CFR 30 and 40 CFR 31;

(6) Preparing payment requests and handling payments under 40 CFR 30.22 and 40 CFR 31.21;

(7) Non-federal audits required under 40 CFR 30.26, 40 CFR 31.26, and OMB Circular A-133; and

(8) Close out under 40 CFR 30.71 and 40 CFR 31.50.

c. 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.

D. Grant Recipient Eligibility

1. The CAR may only clean up sites *it solely owns.* The CAR must retain ownership of the site throughout the period of performance of the grant. For the purposes of this agreement, the term "owns" means fee simple title unless EPA approves a different arrangement.

E. Obligations for Grant Recipients Asserting a Limitation on Liability from CERCLA § 107

1. EPA awarded this cooperative agreement to the CAR based on information indicating that the CAR would not use cooperative agreement funds to pay for a response cost at the site for which the CAR was potentially liable under CERCLA § 107. If the CAR is not potentially liable based on its status as either a Bona Fide Prospective Purchaser (BFPP), Contiguous Property Owner (CPO), or Innocent Land Owner (ILO), the CAR must meet certain continuing obligations in order to maintain its status. If the CAR fails to meet these obligations, EPA may disallow the costs incurred under this cooperative agreement for cleaning up the site under CERLCA § 104(k)(7)(C). These continuing obligations include:

(1) 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;

(2) taking reasonable steps with respect to hazardous substance releases;

(3) providing full cooperation, assistance, and access to persons that are authorized to conduct response actions or natural resource restoration; and

(4) complying with information requests and administrative subpoenas and legally required notices (applies to the criteria for bona fide prospective purchasers and contiguous property owners).

Notwithstanding the CAR's continuing obligations under this agreement, the CAR is subject to the applicable liability provisions of CERCLA governing its status as a BFPP, CPO, or ILO. CERCLA requires additional obligations to maintain the liability limitations for BFPP, CPO, and ILO; the relevant provisions for these obligations include §§ 101(35), 101(40), 107(b), 107(q) and 107(r).

F. Interest-Bearing Accounts and Program Income

1. Interest earned on advances are subject to the provisions of 40 CFR §31.21(i) and §30.22(l) relating

to remitting interest on advances to EPA on a quarterly basis.

2. Any program income earned by the CAR will be added to the funds EPA has committed to this agreement and used only for eligible and allowable costs under the agreement as provided in 40 CFR 30.24(b)(1) or 40 CFR 31.25(g)(2), as applicable.

IV. CLEANUP ENVIRONMENTAL REQUIREMENTS

A. Authorized Cleanup Activities

1. The CAR shall prepare an analysis of brownfields cleanup alternatives or equivalent state Brownfields program document which will include information about the site and contamination issues (i.e., exposure pathways, identification of contaminant sources, etc.); cleanup standards; applicable laws; alternatives considered; and the proposed cleanup. The evaluation of alternatives must include effectiveness, implementability, and the cost of the response proposed. The evaluation will include an analysis of reasonable alternatives including no action. The cleanup method chosen must be based on this analysis. After the proposed cleanup plan is presented, an additional statement shall be included that will provide ways to make the proposed cleanup "greener" or "more sustainable," such as reducing energy use or employing alternative energy sources, reducing volume of wastewater generated/disposed, reducing volume of materials taken to landfills, and recycling and re-using materials generated during the cleanup process to the maximum extent practicable.

2. Prior to conducting or engaging in any on-site activity with the potential to impact historic properties (such as invasive sampling or cleanup), the CAR shall consult with 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. If environmental samples are to be collected as part of the brownfields cleanup (e.g., cleanup verification sampling, post-cleanup confirmation sampling), the CAR shall comply with 40 CFR Part 31.45 (or 40 CFR Part 30.54 requirements for nonprofit organizations) 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 will 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 any data collection and/or generation activities begin. Unless an alternate schedule was previously agreed upon, no later than 30 days prior to the scheduled commencement of data collection and/or data generation activities, the recipient will submit a Quality Assurance Project Plan to the following:

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

and

Regional Quality Assurance Manager (EQA)
U.S. Environmental Protection Agency
11 Technology Drive
North Chelmsford, MA 01863

C. Community Relations and Public Involvement in Cleanup Activities

1. All cleanup activities require a site-specific community relations plan that includes providing reasonable notice, opportunity for involvement, response to comments, and administrative records that are available to the public.

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 an analysis of reasonable alternatives including no action; site investigation reports; the cleanup plan; cleanup standards used; responses to public comments; and verification that shows that cleanup is 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 Cleanup Activities

1. The CAR shall ensure the adequacy of each cleanup in protecting human health and the environment as it is implemented. If changes to the expected cleanup are necessary based on public comment or other reasons, the CAR must consult with EPA and may not make substantial changes to the cleanup method described in the work plan without prior EPA approval.

2. If the CAR is unable or unwilling to complete the 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 Cleanup Activities

1. The CAR shall ensure that the successful completion of a 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 cleanup is complete. This documentation needs to be included as part of the administrative record.

V. OTHER CLEANUP GRANT REQUIREMENTS

A. Inclusion of Special Terms and Conditions in Cleanup Documents

1. The CAR shall meet the cleanup and other program requirements of the cleanup including:

a. In accordance with 40 CFR 31.42 or 40 CFR 30.53, the CAR shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with

cleanup grant funds. Cooperative agreement recipients shall provide access to records relating to cleanups supported with cleanup grant funds to authorized representatives of the Federal government.

b. The CAR has an ongoing obligation to advise EPA if assessed any penalties resulting from environmental noncompliance at the site subject to this agreement.

B. 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 appearance of the CAR's 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 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

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; "close out" refers to the process that the U.S. EPA follows to ensure that all administrative actions and work required under the cooperative agreement have been completed.

A. Payment Schedule

1. **Alternate 1.** If the approved budget for the project includes a substantial amount of construction costs, EPA will pay the CAR on a reimbursement basis. The CAR must submit documentation of obligations and expenses incurred under the agreement to EPA's project officer for approval prior to obtaining payment from EPA.

2. **Alternate 2.** If the approved budget for the project includes construction costs, EPA will pay the CAR on a progress payment basis according to an agreed-upon schedule, provided the recipient can document that it incurred costs that require disbursements equal to the amount of the progress payment.

3. **Alternate 3.** (Approved budget does not include construction costs) The CAR will be paid in advance provided it has funds management controls in place which meet the requirements of 40 CFR 30. 22 or 40 CFR.§31.21, as applicable.

B. Schedule for Closeout

1. Closeout will be conducted in accordance with 40 CFR 31.50 or 40 CFR 30.71 following expiration of the term of the agreement or expenditure of the funds awarded and completion of the activities described by the EPA-approved workplan.

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

a. The CAR must submit the following documentation:

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

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

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

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

The CAR must ensure that all appropriate data has been entered into ACRES.

b. 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.

Davis Bacon Term and Condition for Hazardous Waste Cleanup Grants to Governmental Entities

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 any 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.

1. Applicability of the Davis Bacon Prevailing Wage Requirements

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

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

2. Obtaining Wage Determinations

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

(i) When soliciting competitive contracts or issuing task orders, work assignments or similar instruments to existing contractors (ordering instruments) for, the excavation and removal of hazardous substances, construction of caps, barriers, and similar activities that do not involve construction of buildings Recipient shall use the "Heavy Construction" Classification.

(ii) When soliciting competitive contracts or issuing ordering instruments for the construction of structures which house treatment equipment, and abatement of contamination in buildings (other than residential structures less than 4 stories in height) 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.

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

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

(i) While the solicitation remains open, the Recipient shall monitor www.wdol.gov. on a weekly basis to ensure that the wage determination contained in the solicitation remains current. The Recipient shall amend the solicitation if DOL issues a modification more than 10 days prior to the closing date (i.e. bid opening) for the solicitation. If DOL modifies or supersedes the applicable wage determination less than 10 days prior to the closing date, the Recipient may request a finding from EPA that there is not a reasonable time to notify interested contractors of the modification of the wage determination. EPA will provide a report of the Agency's finding to the Recipient.

(ii) If the Recipient does not award the contract within 90 days of the closure of the solicitation, any modifications or determination contained in the solicitation shall be effective unless EPA, at the request of the Recipient, obtains an extension of the 90 day period from DOL

pursuant to 29 CFR 1.6(c)(3)(iv). The Recipient shall monitor www.wdol.gov on a weekly basis if it does not award the contract within 90 days of closure of the solicitation to ensure that wage determinations contained in the solicitation remain current.

(iii) If the Recipient carries out Brownfield cleanup activity subject to DB by issuing a task order, work assignment or similar instrument to an existing contractor (ordering instrument) rather than by publishing a solicitation, the Recipient shall insert the appropriate DOL wage determination from www.wdol.gov into the ordering instrument.

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

(d) As provided in 29 CFR 1.6(f), DOL may issue a revised wage determination applicable to a Recipient's contract after the award of a contract or the issuance of an ordering instrument if DOL determines that the Recipient 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 Recipient shall either terminate the contract or ordering instrument and issue a revised solicitation or ordering instrument or incorporate DOL's wage determination retroactive to the beginning of the contract or ordering instrument by change order. The Recipient's contractor must be compensated for any increases in wages resulting from the use of DOL's revised wage determination.

3. Contract and Subcontract Provisions

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

(1) Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the applicable wage determination of the Secretary of Labor which the 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. Recipients shall require that the contractor and subcontractors include the name of the Recipient employee or official responsible for monitoring compliance with DB on the poster.

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

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

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

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

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

(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 Recipient, upon written request of the Award Official or an authorized representative of the Department of Labor, shall withhold or cause to withhold from the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work , all or part of the wages required by the contract, EPA may, after written notice to the contractor, or 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 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 http://www.dol.gov/esa/whd/forms/wh347instr.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 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 Recipient.

(B) Each payroll submitted to the 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, 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

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

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

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (a)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to

each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (a)(1) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (a)(1) of this section.

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

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

(b) In addition to the clauses contained in Item 3, above, in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR 5.1, the 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 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

(a). The Recipient shall periodically interview a sufficient number of employees entitled to DB prevailing wages (covered employees) to verify that contractors or subcontractors are paying the appropriate wage rates. As provided in 29 CFR 5.6(a)(6), all interviews must be conducted in confidence. The 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 Recipient shall establish and follow an interview schedule based on its assessment of the risks of noncompliance with DB posed by contractors or subcontractors and the duration of the contract or subcontract. At a minimum, the Recipient 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. Recipients 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 . Recipients shall immediately conduct necessary interviews in response to an alleged violation of the prevailing wage

requirements. All interviews shall be conducted in confidence.

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

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

(e) Recipients must immediately report potential violations of the DB prevailing wage requirements to the EPA DB contact listed above and to the appropriate DOL Wage and Hour District Office listed at *http://www.dol.gov/esa/contacts/whd/america2.htm* .1.