

EXHIBIT A
CLOSEOUT AGREEMENT
between
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
and
City of Portland, Oregon
BF-00J45201

This agreement governs post-closeout use of program income for the EPA Brownfields Revolving Loan Fund (RLF) operated under the assistance agreement number(s) listed in the Attachment, which were awarded under CERCLA § 104(k). This Closeout Agreement (COA) sets forth the terms and conditions for continued management and use of program income generated pre- and post-closeout. This COA has been prepared in accordance with the provisions of 2 CFR § 200.307(f) and 2 CFR § 1500.8(c).

If the recipient of this COA no longer has an open Cooperative Agreement (CA), it may be known as a “former” Cooperative Agreement Recipient (CAR). However, for simplicity this COA refers to the recipient as the CAR throughout.

1. As provided at 2 CFR § 200.307(f) and 2 CFR § 1500.8(c) after the end of the period of performance of the CA, the CAR may keep and use program income at the end of the CA (retained program income) and use program income earned after the CA period of performance (post-closeout program income) in accordance with the following COA, unless the CAR and EPA’s Award Official or Grants Management Officer agree to modify the terms.

As of the effective date of this COA, the City of Portland agrees to use and track all retained and post-closeout program income funds from the assistance agreement(s) listed in the Attachment in accordance with the requirements of this COA. The Attachment includes assistance agreements with a period of performance that has either ended or will end while this COA is in effect. The period of performance is identified as the project period in the Notice of Award for each assistance agreement listed in the Attachment.

This COA replaces the previous COA(s), if any, between the EPA and the City of Portland, and those COAs are terminated. As of the effective date of this signed COA, all retained and post-closeout program income from any COAs for assistance agreement numbers listed in the Attachment will be tracked by both EPA and the CAR as one under this COA for assistance agreement number BF-00J45201.

2. This COA is based on the FY22 RLF COA template. EPA plans to modify RLF COA templates every five years. EPA reserves the right to renegotiate the terms of this RLF COA every five years, in conjunction with the template change (e.g., next change will be in FY27). If the CAR agrees to continue to operate the RLF under a COA past FY27, the CAR shall work with EPA’s Project Officer to update to the latest COA template. Otherwise, the

Project Officer and CAR will negotiate a mutually acceptable disposition of unused program income, and an Authorized EPA Official (e.g., Award Official or Grants Management Officer) will modify the COA accordingly.

3. Program income shall include principal repayments, interest earned on outstanding loan principal, interest earned on accounts holding RLF program income not needed for immediate lending, all loan fees and loan-related charges received from borrowers, and other income generated from RLF operations including fees charged for assessments and proceeds from the sale, collection, or liquidations of assets acquired through defaults of loans.
4. The CAR must deposit program income into an interest-bearing account unique to this COA (i.e., separate from RLF funds under an open grant). Interest earned on program income is considered additional program income.
5. The CAR shall use program income to continue to operate the revolving loan fund or for some other brownfield purpose as outlined in the terms of this COA.
6. EPA prefers the primary use of retained and post-closeout program income be for providing loans for Brownfields cleanups. In addition to Brownfield cleanup loans, program income may be used to fund the following brownfield activities:
 - a. Cleanup subgrants to eligible entities under CERCLA § 104(k)(1) and other nonprofit organizations (other than organizations exempt from taxation under Section 501(c)(4) of the Internal Revenue Code that lobby) for allowable activities (see Addendum);
 - b. Direct cleanup of sites by the CAR at the request of the property owner when the CAR has the necessary legal authority under state, tribal, or local law and the property owner is an eligible entity under CERCLA § 104(k)(1) or other nonprofit organization; the property can be owned by the CAR provided the CAR is not potentially liable under CERCLA § 107, but cannot be owned by a private, for-profit entity (NOTE: Determination of necessary legal authority is the responsibility of the CAR and must be documented in the CAR's RLF files);
 - c. Health monitoring of vulnerable populations near sites cleaned up or assessed¹;
 - d. Institutional control and engineering control monitoring to ensure continued protection of public health¹;
 - e. Phase I Environmental Site Assessments at brownfield sites performed in accordance with EPA All Appropriate Inquiries Final Rule or ASTM E1527-21 (or the most current version) and, as applicable, state voluntary cleanup program requirements;
 - f. Phase II Environmental Site Assessments and cleanup planning activities at brownfield sites;
 - g. Area-wide planning for the assessment, cleanup and/or re-use of brownfield sites (e.g., developing a reuse vision for a brownfield site or area; conducting a site reuse assessment, market evaluation/feasibility assessment, infrastructure evaluation, and/or land use assessment; and developing a site disposition strategy and resource roadmap);

¹ Health monitoring and institutional control and engineering control monitoring are not restricted to local governments. In addition, health monitoring is not restricted to hazardous substances (e.g., can be a pollutant or contaminant).

- h. Programmatic costs to manage and oversee the work being performed; and
 - i. Cost share requirement of another EPA Brownfields grant, only if using program income generated from interest and fees, not principal repayments.
- 7. Retained and post-closeout program income shall not be used for site inventory work.
- 8. The CAR must ensure that program income is used on a property that is a brownfield site as defined at CERCLA § 101(39) and in accordance with Eligible and Ineligible Uses of the funds for the CAR, Borrower, and/or Subgrantees (see Addendum), unless otherwise noted as an eligible use of post-closeout program income in the terms and conditions of this COA. If the CAR wants to include a site under CERCLA §101(39)(C), the CAR must request that EPA make a site-specific determination.
- 9. Program income shall not be used to assess or clean up a site at which the CAR, borrower, subgrantee, or property owner is potentially liable under CERCLA § 107 unless it qualifies for a limitation or defense to liability under CERCLA. The CAR must make and retain a certification to that effect as part of the records for this COA. If asserting a limitation or defense to liability, the borrower, subgrantee, or property owner must state the basis for that assertion. When using program income for petroleum-contaminated brownfield sites, the CAR, borrower, subgrantee, or property owner shall certify that it is not a viable responsible party or potentially liable for the petroleum contamination at the site and retain a certification to that effect as part of the records for this COA. The CAR may consult with the state/tribal response program and/or EPA for assistance with this matter.
- 10. The CAR must ensure that borrowers and subgrantees are not currently suspended, debarred, or otherwise declared ineligible under 2 CFR § 180. The CAR may access the System for Award Management (SAM) exclusion list at <https://sam.gov/SAM/> to determine whether an entity or individual is presently excluded or disqualified.
- 11. The CAR must comply with EPA regulations at 40 CFR § 7 regarding non-discrimination in EPA funded programs.
- 12. All assessment and cleanup work funded with program income must continue to be performed in accordance with state or tribal environmental rules and regulations and be protective of human health and the environment. If the CAR chooses not to have borrowers or subgrantees conduct assessments or cleanups through a State or Tribal response program, or one does not exist, then the CAR is required to consult with EPA to ensure the proposed assessment/cleanup is protective of human health and the environment.
- 13. All brownfield sites that will be addressed using the post-closeout program income must be located in or within 100 miles of the geographic boundary described in the scope of work for assistance agreement number(s) listed in the Attachment (i.e., the EPA-approved workplan for the original CA), as long as work outside that geographic boundary is legally permissible.
- 14. The CAR must continue to perform community involvement activities on all activities funded by post-closeout program income. For example, the CAR must solicit input on

cleanup alternatives and proposed actions from local communities. Outreach must be extended to communities with environmental justice challenges, communities with economically disadvantaged areas or remote areas, and communities with a health risk related to exposure to hazardous waste or other public health concerns, as applicable. Cleanup alternatives must include considerations of climate change (e.g., reducing greenhouse gas emissions) and greener cleanup.

15. The CAR shall submit Annual Post-Closeout Reports by October 31st of each year following the effective date of this COA until the COA ends, unless EPA's Project Officer agrees to an extension of time due to extraordinary circumstances. The annual reports shall include the following information:

- a. A cover page indicating the CAR's organization, assistance agreement number(s) listed in the Attachment, annual report number (i.e., 1, 2 or 3), dates for the reporting period, persons/organizations preparing and submitting the report, and the date of the report submission.
- b. A summary of the activities conducted during the reporting period (to include community involvement activities), a list of reports and documents generated during the reporting period, and a budget summary table reflecting the expenses incurred and program income received. Report must specify total program income accrued since the grant was awarded (retained plus post-closeout), as well as the current program income balance as of September 30th (i.e., one month prior to report due date). Program income accounting records must differentiate program income generated from interest and fees, versus program income generated from principal repayments.
- c. (1) A summary of updates made in the Assessment, Cleanup, and Redevelopment Exchange System (ACRES) for the reporting period. All ACRES data entered for post-closeout program income (i.e., related to the assistance agreement[s] listed in the Attachment) must be associated with the assistance agreement number on the title page of this COA. ACRES data associated with open assistance agreements whose period of performance has not ended must be associated with the applicable open assistance agreement number. These updates must include interim progress (e.g., loan signed, assessment started, clean up started) and any final accomplishments (e.g., assessment completed, clean up completed, contaminants removed, institutional controls, engineering controls) at sites with activities funded through this COA.

(2) The CAR must complete and submit these updates using the relevant portions of the Property Profile Form in ACRES. The CAR must enter the data in ACRES as soon as the interim action or final accomplishment has occurred, or at a minimum, prior to submitting the Annual Post-Closeout Report to the EPA Project Officer. The CAR must utilize ACRES unless approval is obtained from the EPA Project Officer to utilize the hardcopy version of the Property Profile Form. Note that ACRES reporting requirements can change over time, and the CAR is responsible for complying with the latest ACRES reporting requirements for RLFs at the time of each annual report submission (e.g., reporting current program income balance).

(3) If the assistance agreement numbers listed in Attachment 1 only include agreements awarded before 2003 (i.e., the assistance agreement number includes “BL”), the CAR must contact the EPA Project Officer regarding how to meet these requirements.

16. The CAR must maintain adequate accounting records for how retained and post-closeout program income is managed and spent as well as all other appropriate records and documents related to the activities conducted using retained and post-closeout program income.

17. Termination of this COA occurs when no program income remains to be disbursed and all loans have been repaid, the recipient decides to discontinue carrying out the activities and requests termination of the COA, or EPA determines that the CAR is not effectively deploying the program income. For each of these three situations, EPA’s Grants Management Officer will issue a letter to the CAR stating that the COA is terminated as of the effective date and the conditions of the termination.

- a. No remaining program income or future loan repayments. The CAR shall notify EPA’s Project Officer in writing when this occurs and certify that all funds have been expended in accordance with the terms and conditions of this COA. The notification must provide a final report regarding the relevant COA information in the format specified in item 13, above. The Project Officer will coordinate with EPA’s Grants Management Officer, who has 90 days from receipt of this notification to submit any objections or agree to the termination of this COA, unless the Grants Management Officer informs the CAR in writing that this 90-day period has been extended.
- b. Discontinuance of the COA. The CAR shall notify EPA’s Project Officer in writing that it has decided to discontinue performing the COA. The notification must provide a final report with the relevant COA information in the format specified in item 13, above. The CAR must account for and return all program income to EPA in accordance with instructions provided by the EPA’s Grants Management Officer. CARs must also describe the status and amounts of principal and interest payments that will take place after the COA is terminated. Unless waived by the Grants Management Officer, the CAR must remit to EPA on a quarterly basis program income earned after the COA has been terminated.
- c. EPA revocation of the COA. EPA will assess whether the CAR has effectively carried out the COA if the recipient holds more than \$500,000 in program income as of the end of the federal fiscal year (September 30th) three (3) years after the effective date of this COA and annually thereafter. However, if the CAR previously had a COA which included this assessment after three (3) years (e.g., a COA which started in 2018 or later), the first assessment will occur three (3) years from the effective date of that previous COA (i.e., the three-year period does not restart with this COA). This assessment will take into account the amount of program income the CAR has disbursed within the three-year (or annual) period, whether the program income being held is retained program income or post-closeout program income, and other factors relevant to ensuring that the recipient deploys program income in a timely manner. EPA’s Grants

Management Officer may revoke the COA and direct the recipient to return the unused program income to EPA based on this assessment.

18. In accordance with 2 CFR § 200.334(e), the CAR shall maintain appropriate records to document compliance with the requirements of the COA (i.e., records relating to the use of retained and post-closeout program income) for a three-year period following the end of the COA, unless one of the conditions specified in the regulation applies. EPA may request access to these records to verify that retained and post-closeout program income has been used in accordance with the terms and conditions of this COA. Records and documents relating solely to performing the CA prior to close out may be disposed of in accordance with 2 CFR § 200.334.
19. EPA's Award Official or Grants Management Officer must agree to any modifications to this COA other than the addition of assistance agreements to the Attachment. The CAR must agree to all modifications to this COA including the addition of program income from closed cooperative agreements added to the list in the Attachment. Agreed-upon modifications must be in writing and signed by each party. Oral or unilateral modifications shall not be effective or binding.
20. If the CAR expends retained and post-closeout program income in a manner inconsistent with this COA, EPA may take actions authorized under 2 CFR § 200.339, Remedies for Noncompliance.
21. This agreement along with the Attachment and Addendum are the entire COA between the EPA and CAR. If any provisions of this COA are invalidated by a court of law, the parties shall remain bound to comply with the provisions of this COA that have not been invalidated.
22. No other federal requirements apply to the use of program income under the terms of this COA.
23. This agreement becomes effective upon the signature of both parties.

Points of Contact (POC):

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If changes are made to the POCs above, the respective party must notify the other within 30 days of the change.

Signatures

Dawn Uchiyama
Interim Director
City of Portland Bureau of Environmental Services

Date

Melissa Winters
EPA Region 10 Branch Chief

Date

APPROVAL AS TO FORM

City Attorney

ADDENDUM

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

1. To the extent allowable under the EPA-approved COA, the CAR may use COA funds to capitalize a revolving loan fund to be used for loans or subgrants for cleanup and for eligible programmatic expenses. Eligible programmatic expenses may include:
 - a. Determining whether RLF assessment and cleanup activities at a particular site are authorized by CERCLA § 104(k).
 - b. Ensuring that an RLF assessment and cleanup complies with applicable requirements under federal and state laws, as required by CERCLA § 104(k).
 - c. Preparing and updating an Analysis of Brownfield Cleanup Alternatives (ABCA) which will include information about the site and contamination issues, cleanup standards, applicable laws, alternatives considered, and the proposed cleanup.
 - d. Ensuring that public participation requirements are met. This includes preparing a Community Involvement Plan (previously known as a Community Relations Plan) which will include reasonable notice, opportunity for public involvement and comment on the proposed cleanup, and response to comments.
 - e. Establishing a public Administrative Record for each site.
 - f. Developing a Quality Assurance Project Plan (QAPP) as described by 2 CFR § 1500.12 with the exception of paragraph (d). The specific requirement for a QAPP is outlined in [Implementation of Quality Assurance Requirements for Organizations Receiving EPA Financial Assistance](#).
 - g. Ensuring the adequacy of each RLF assessment or cleanup as it is implemented, including overseeing the borrowers and/or subgrantees activities to ensure compliance with applicable federal and state environmental requirements.
 - h. Ensuring that the site is secure if a borrower or subgrantee is unable or unwilling to complete a brownfield site cleanup.
 - i. Using a portion of a direct cleanup, loan, or subgrant to purchase environmental insurance for the site. The direct cleanup, loan, or subgrant shall not be used to purchase insurance intended to provide coverage for any of the ineligible uses under *Ineligible Uses of the Funds for the Cooperative Agreement Recipient, Borrower, and/or Subgrantees*.
 - j. Any other eligible programmatic costs, including costs incurred by the recipient in making and managing a loan or subgrant; obtaining RLF fund manager services; annual post-closeout reporting to EPA including preparation of Property Profiles and all ACRES reporting; awarding, managing and monitoring loans and subgrants as required by the terms of this agreement implementing 2 CFR § 200.332; and carrying out outreach pertaining to the loan and subgrant program to potential borrowers and subgrantees.
 - k. Borrower and subgrantee progress reporting to the CAR is an eligible programmatic cost to the extent required by the terms of the loan or subgrant.
 - l. Direct and indirect administrative costs for managing the RLF.

2. The CAR must maintain records that will enable it to report to EPA on the amount of costs incurred by the CAR, borrowers, or subgrantees at brownfield sites throughout the term of the COA.

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

1. COA funds shall not be used by the CAR, borrower, and/or subgrantee for any of the following activities:
 - a. 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.
 - b. Construction, demolition, and site development activities that are not cleanup actions (e.g., marketing of property, construction of a new facility, or addressing public or private drinking water supplies that have deteriorated through ordinary use).
 - c. Job training activities unrelated to performing a specific cleanup at a site covered by a loan or subgrant.
 - d. To pay for a penalty or fine.
 - e. Unallowable costs (e.g., lobbying and purchases of alcoholic beverages) under 2 CFR § 200, Subpart E.

ATTACHMENT

The following assistance agreement numbers are subject to this COA. As additional assistance agreements are added, this page will be updated and the COA will be re-signed by both EPA's Approval Official and the CAR. No other changes may be made to the COA other than adding assistance agreements in this Attachment.

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