

	U.S. ENVIRONMENTAL PROTECTION AGENCY Cooperative Agreement	ASSISTANCE ID NO.			DATE OF AWARD 07/21/2008	
		PRG	DOC ID	AMEND#		
		BF - 96074501 - 0			MAILING DATE 07/28/2008	
		TYPE OF ACTION New			PAYMENT METHOD:	
RECIPIENT TYPE: Municipal		Send Payment Request to: Las Vegas Finance Center FAX # 702-798-2423				
RECIPIENT: City of Portland 1120 SW 5th Ave, Rm 1000 Portland, OR 97204 EIN: 93-6002236		PAYEE: City of Portland 1120 SW 5th Ave, Rm 1000 Portland, OR 97204				
PROJECT MANAGER Clark Henry 1120 SW 5th Ave, Rm 1000 Portland, OR 97204 E-Mail: clarkh@bes.ci.portland.or.us Phone: (503) 823-5863		EPA PROJECT OFFICER Terri Griffith 1200 Sixth Avenue, Suite 900, ECL-112 Seattle, WA 98101 E-Mail: Griffith.Terri@epa.gov Phone: 206-553-8511		EPA GRANT SPECIALIST Bob Phillips Grants Administration, OMP-145 E-Mail: Phillips.Bob@epa.gov Phone: 206-553-6367		
PROJECT TITLE AND DESCRIPTION City of Portland Brownfields Petroleum Cleanup: Rollin' Tire Site This 7600 square foot site in Portland, Oregon is currently an open lot surfaced with gravel. The site was historically operated as a gas station, automobile service center, and tire retail outlet. Soil testing has identified several locations that are contaminated with gasoline, diesel, and naphthalene, some less than 50 feet from Johnson Creek. This site is part of a large-scale floodplain and habitat restoration project in Portland's Lents neighborhood. Objectives and goals for the project include the complete cleanup of the remaining contamination and contribution to revitalization of the Lents community with improvement in access to greenspace, opportunities for outdoor recreation, local employment, and connection to existing bike and trail networks. Grant funds will be used to conduct cleanup planning, community involvement activities, and site cleanup and restoration.						
BUDGET PERIOD 10/01/2008 - 09/29/2011		PROJECT PERIOD 10/01/2008 - 09/30/2011		TOTAL BUDGET PERIOD COST \$216,000.00	TOTAL PROJECT PERIOD COST \$216,000.00	
NOTICE OF AWARD						
Based on your application dated 06/10/2008, including all modifications and amendments, the United States acting by and through the US Environmental Protection Agency (EPA), hereby awards \$180,000. EPA agrees to cost-share <u>80.00%</u> of all approved budget period costs incurred, up to and not exceeding total federal funding of \$180,000. 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 EPA Region 10 Mail Code: OMP-145 1200 Sixth Avenue, Suite 900 Seattle, WA 98101			ORGANIZATION / ADDRESS U.S. EPA, Region 10 Office of Environmental Cleanup 1200 Sixth Avenue, Suite 900 Seattle, WA 98101			
THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY						
SIGNATURE OF AWARD OFFICIAL Digital signature applied by EPA Award Official		TYPED NAME AND TITLE Armina K. Nolan, Manager - Grants Administration Unit		DATE 07/21/2008		
AFFIRMATION OF AWARD						
BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION						
SIGNATURE		TYPED NAME AND TITLE Clark Henry, Program Director		DATE		

EPA Funding Information

FUNDS	FORMER AWARD	THIS ACTION	AMENDED TOTAL
EPA Amount This Action	\$	\$ 180,000	\$ 180,000
EPA In-Kind Amount	\$	\$	\$ 0
Unexpended Prior Year Balance	\$	\$	\$ 0
Other Federal Funds	\$	\$	\$ 0
Recipient Contribution	\$	\$ 36,000	\$ 36,000
State Contribution	\$	\$	\$ 0
Local Contribution	\$	\$	\$ 0
Other Contribution	\$	\$	\$ 0
Allowable Project Cost	\$ 0	\$ 216,000	\$ 216,000

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
-	0810NEG016	08	E4	10N3AG7	402D79EBP	4114	G052OT00		180,000
									180,000

Budget Summary Page

Table A - Object Class Category (Non-construction)	Total Approved Allowable Budget Period Cost
1. Personnel	\$19,500
2. Fringe Benefits	\$7,000
3. Travel	\$6,000
4. Equipment	\$0
5. Supplies	\$2,500
6. Contractual	\$176,000
7. Construction	\$0
8. Other	\$5,000
9. Total Direct Charges	\$216,000
10. Indirect Costs: % Base	\$0
11. Total (Share: Recipient <u>20.00</u> % Federal <u>80.00</u> %.)	\$216,000
12. Total Approved Assistance Amount	\$180,000
13. Program Income	\$0
14. Total EPA Amount Awarded This Action	\$180,000
15. Total EPA Amount Awarded To Date	\$180,000

Administrative Conditions

1. Payment Information

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

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

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

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

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

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

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

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

3. Financial Status Report (FSR) and Federal Cash Transactions Reports

FINAL FSR

The Financial Status Report (FSR), Standard Form 269A (or Standard Form 269 if program income is generated), for this award is due to EPA no later than 90 days after the budget period expires.

For agreements with multiple budget activities, separate FSRs must be provided for each of the activities, sites, or budgets, as applicable.

FEDERAL CASH TRANSACTIONS REPORTS

The recipient will provide timely reporting of cash disbursements and balances through annual submission (within fifteen (15) working days following December 31 of any given calendar year) of a Federal Cash Transactions Report (SF-272).

The Final FSR and Federal Cash Transactions Reports may be faxed to (702) 798-2423 or mailed to:

US Environmental Protection Agency
Las Vegas Finance Center
P.O. Box 98515

Las Vegas, NV 89193-8515

For additional information, please contact Marge Pumphrey at (702) 798-2492 or email: Pumphrey.Margaret@epa.gov.

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

4. **Audit Requirements**

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

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

Pursuant to 40 CFR 30.18, if applicable, and 15 USC 2225a, the recipient agrees to ensure that all space for conferences, meetings, conventions, or training seminars funded in whole or in part with federal funds complies with the protection and control guidelines of the Hotel and Motel Fire Safety Act (PL 101-391, as amended). Recipients may search the Hotel-Motel National Master List at <http://www.usfa.dhs.gov/applications/hotel> to see if a property is in compliance (FEMA ID is currently not required), or to find other information about the Act.

6. **Recycled Paper**

INSTITUTIONS OF HIGHER EDUCATION HOSPITALS AND NON-PROFIT ORGANIZATIONS:

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

STATE AGENCIES AND POLITICAL SUBDIVISIONS:

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

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

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

STATE TRIBAL AND LOCAL GOVERNMENT RECIPIENTS:

In accordance with the 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.

7. **Lobbying**

ALL RECIPIENTS:

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

In accordance with the Byrd Anti-Lobbying Amendment, any recipient who makes a prohibited

expenditure under Title 40 CFR Part 34 or fails to file the required certification or lobbying forms shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.

PART 30 RECIPIENTS:

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

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

8. Lobbying and Litigation

ALL RECIPIENTS:

Pursuant to EPA's annual Appropriations Act, the chief executive officer of this recipient agency shall require that no grant funds have been used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law.

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. Any Part 30 recipients shall abide by its respective OMB Circular (A-21 or A-122), which prohibits the use of Federal grant funds to participate in various forms of lobbying or other political activities.

9. Suspension and Debarment

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

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

10. Drug-Free Workplace Certification for all EPA Recipients

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

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

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

11. Management Fees

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

12. Reimbursement Limitation

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

13. Trafficking Victims Protection Act of 2000

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

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

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

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

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

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

GENERAL COMPLIANCE, 40 CFR, Part 33

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

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

A recipient must negotiate with the appropriate EPA award official, or his/her designee, fair share objectives for MBE and WBE (MBE/WBE) participation in procurement under the financial assistance agreements.

Current Fair Share Objective/Goal

This assistance agreement is a Technical Assistance Grant (TAG); or 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 ensure that sub-recipients, loan recipients, and prime contractors also comply. Records documenting compliance with the six good faith efforts shall be retained:

(a) Ensure DBEs are made aware of contracting opportunities to the fullest extent practicable through outreach and recruitment activities. For Indian Tribal, State and Local and Government recipients, this

will include placing DBEs on solicitation lists and soliciting them whenever they are potential sources.

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

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

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

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

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

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

The recipient agrees to complete and submit EPA Form 5700-52A, "MBE/WBE Utilization Under Federal Grants, Cooperative Agreements and Interagency Agreements" beginning with the Federal fiscal year reporting period the recipient receives the award, and continuing until the project is completed. **Only procurements with certified MBE/WBEs are counted toward a recipient's MBE/WBE accomplishments.** The 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 the EPA Region 10, Grants Administration Unit, 1200 Sixth Avenue, Suite 900, Mailcode: OMP-145, Seattle, WA 98101. For further information, please contact Greg Luchey at (206) 553-2967, email: Luchey.Greg@epa.gov. 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.

15. Payment to Consultants

EPA participation in the salary rate (excluding overhead) paid to individual consultants retained by recipients or by a recipient's contractors or subcontractors shall be limited to the maximum daily rate for Level IV of the Executive Schedule (formerly GS-18), to be adjusted annually. This limit applies to consultation services of designated individuals with specialized skills who are paid at a daily or hourly rate. As of January 1, 2008, the limit is \$571.15 per day \$71.39 per hour. This rate does not include transportation and subsistence costs for travel performed (the recipient will pay these in accordance with their normal travel reimbursement practices).

Subagreements with firms for services which are awarded using the procurement requirements in 40

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

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

Programmatic Conditions

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: In implementing this agreement, the cooperative agreement recipient (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.
 - b. The CAR must consider whether they are required to conduct cleanups under a State or Tribal response program. If the CAR chooses not to participate in a State or Tribal response program, then the CAR is required to consult with the Environmental Protection Agency (EPA) to ensure the proposed cleanup is protective of human health and the environment.
2. 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:
 - a. CERCLA 104(g) requires that grant recipients comply with the prevailing wage rate requirements under the Davis-Bacon Act of 1931 for construction, repair or alteration contracts "funded in whole or in part" with funds provided under this agreement. The CAR must obtain recent and applicable wage rates from the U.S. Department of Labor and incorporate them into the construction, alteration or repair contract.
 - b. The CAR agrees to comply with Executive Order 13202 (Feb. 22, 2001, 66 Fed. Reg. 11225) of February 17, 2001, entitled "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order 13208 (April 11, 2001, 66 Fed. Reg. 18717) of April 6, 2001, entitled "Amendment to Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects."
 - c. Federal cross-cutting requirements including, but not limited to, MBE/WBE requirements

found at 40 CFR 31.36(e) or 40 CFR 30.44(b); 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.

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 1½ years from the date of award, EPA determines that the CAR has not made sufficient progress in implementing its cooperative agreement, EPA may terminate this agreement.

1.

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 approval of substantive terms included in professional services contracts.
 - b. Substantial EPA involvement may include reviewing 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 reports on a quarterly basis (30 days after the end of each Federal fiscal quarter) to the EPA Project Officer. The progress reports must document incremental progress at achieving the project goals and milestones. Quarterly progress reports must include:

- a. Documentation of progress at meeting performance outcomes/outputs; project narrative; project time line; and an explanation for any slippage in meeting established outputs/outcomes.
- b. An update on project milestones.
- c. A budget recap summary page with the following headings: Current Approved Budget; Costs Incurred this Quarter; Costs Incurred to Date; and Total Remaining Funds.
- d. If applicable, quarterly reports must specify costs incurred at petroleum-only brownfields sites.
- e. *Recipient quarterly reports must clearly identify which activities performed during the reporting period were undertaken with EPA funds, and will relate EPA-funded activities to the objectives and milestones agreed upon in the work plan. To the extent consistent with the work plan for this agreement, activities undertaken with EPA funds to be included in quarterly performance reporting include:*
 1. *Acres per property*
 2. *Cleanup started/completed*
 3. *Types of contaminants cleaned up*
 4. *Acres of greenspace created*
 5. *Engineering/institutional controls required, type, and whether they are in place*
 6. *Redevelopment underway*
 7. *Funds leveraged*
 8. *Jobs leveraged*
 9. *Health monitoring studies, insurance, and/or institutional controls funded*

2. The CAR must maintain records that will enable it to report to EPA on the amount of funds expended by the CAR at petroleum sites identified in the EPA-approved work plan.

3. The CAR must complete and submit relevant portions of the Property Profile Form reporting the signing of a loan or subgrant, the initiation of cleanup activities, the completion of cleanup activities and other relevant project milestones, e.g., concerning institutional controls, contaminants, and reuse. The CAR must submit the updated Property Profile Form reflecting such events within 30 days after the end of the Federal fiscal quarter in which the event occurred. The CAR may be provided access to an on line reporting system, the Assessment, Cleanup and Redevelopment Exchange System, by the EPA Project Officer to perform their reporting requirements. Alternately, the CAR may complete a hard copy version of the Property Profile Form available from their EPA Project Officer or on line at: <http://www.epa.gov/brownfields/pubs/rptforms.htm>

4. In accordance with 40 CFR§31.40(d) or 40 CFR §30.51(f), the recipient 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 assistance agreement work plan.

III. FINANCIAL ADMINISTRATION REQUIREMENTS

A. Cost Share Requirement

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

B. Eligible Uses of the Funds for the Cooperative Agreement Recipient

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 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 approved workplan. In addition, the CAR must maintain records on funds 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 not 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 all indirect costs 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.

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 CERCLA 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 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.

2. For cleanup of petroleum sites identified in the EPA-approved work plan, an analysis of cleanup alternatives must include considering a range of proven cleanup methods including identification of contaminant sources, exposure pathways, and an evaluation of corrective measures. The cleanup method chosen must be based on this analysis.

3. 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.

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. Subject to the EPA notification and approval provision of Section I.B.1.b., the CAR is allowed to change cleanup activities as necessary based on comments from the public or any new information acquired.

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 non-compliance 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 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 work plan.